

**Report on the Investigation of Espionage Allegations  
Against Dr. Wen Ho Lee**

March 8, 2000

**Summary**

While the full impact of the errors and omissions by the Department of Energy and the Department of Justice, including the FBI, on the investigation of Dr. Wen Ho Lee requires reading the full report, this summary covers some of the highlights.

The importance of Dr. Lee's case was articulated at his bail hearing on December 13, 1999 when Dr. Stephen Younger, Assistant Laboratory Director for Nuclear Weapons at Los Alamos, testified:

These codes and their associated data bases and the input file, combined with someone that knew how to use them, could, in my opinion, in the wrong hands, change the global strategic balance. (Emphasis added)

As Dr. Younger further noted about the codes Dr. Lee mishandled:

They enable the possessor to design the only objects that could result in the military defeat of America's conventional forces...They represent the gravest possible security risk to...the supreme national interest. (Emphasis added)

It would be hard, realistically impossible, to pose more severe risks to U.S. national security.

Although the FBI knew Dr. Lee had access to highly classified information, had repeated contacts with the PRC scientists and lied about his activities, the FBI investigation was inept. In December 1982, Dr. Lee called a former employee of Lawrence Livermore National

Laboratory who was suspected of passing classified information to the PRC. Notwithstanding the facts that Dr. Lee denied (lied) about calling that person, admitted to sending documents to Taiwan marked no foreign dissemination and made other misrepresentations to the FBI in 1983 and 1984, the FBI closed its investigation in March 1984.

A new investigation was initiated in 1994 by the FBI after Dr. Lee failed in his obligation to report a meeting with a high ranking PRC nuclear scientist who said that Dr. Lee had been helpful to China's nuclear program. This contact occurred at a time when the PRC had computerized codes to which Dr. Lee had unique access. Notwithstanding good cause to actively pursue this investigation, the FBI deferred its inquiry from November 2, 1995 to May 30, 1996 because of a Department of Energy Administrative Inquiry, which was developed by a DoE counterintelligence expert in concert with a seasoned FBI agent who had been assigned to the DOE for the purposes of the inquiry.

In the 1993-1994 time frame, DoE was incredibly lax in failing to pursue obvious evidence that Dr. Lee was downloading large quantities of classified information to an unclassified system. According to Dr. Stephen Younger, it was access to that information which would eventually enable the possessor to defeat America's conventional forces. DoE's ineptitude had disastrous consequences when the FBI asked DoE's counter-intelligence team leader for access to Dr. Lee's computer and the team leader did not know Dr. Lee had

signed a consent-to-monitor waiver.

The most serious mistake in this sequence of events occurred when DoJ did not forward the FBI request for a Foreign Intelligence Surveillance Act (FISA) warrant to the FISA court where:

- (1) The FBI presented ample, if not overwhelming, information to justify the warrant;
- (2) The Attorney General assigned the matter to a DoJ subordinate who applied the wrong standard and admitted it was the first time he had worked on a FISA request;
- (3) Notwithstanding Assistant FBI Director John Lewis's request to the Attorney General for the FISA warrant, the Attorney General did not check on the matter after assigning it to her inexperienced subordinate.

After DoJ's decision not to forward the FBI's request for a FISA warrant, which could have been reversed with the submission of further evidence, the FBI investigation languished for 16 months with DoE permitting Dr. Lee to continue on the job with access to classified information.

On the eve of the release of the Cox Committee Report that was expected to be highly critical of DoE, DoE arranged with Wackenhut, a security firm with which the DoE had a contract, to polygraph Dr. Lee on December 23, 1998 upon his return from Taiwan. According to FBI protocol, Dr. Lee would have been questioned as part of the post-travel interview. However, the case agents were inexplicably unprepared to conduct such an interview. Ultimately, the polygraph decision was coordinated between DoE and the FBI's National Security Division. The selection of Wackenhut to conduct this polygraph was

questioned by the President's Foreign Intelligence Advisory Board and criticized as irresponsible by the FBI agent working Dr. Lee's case.

The FBI's investigation was thrown off course when they were told Dr. Lee had passed the December 23, 1998 polygraph which the Secretary of DoE announced on national TV in March 1999.

A review of the Wackenhut polygraph records by late January contradicted the Department of Energy's claims that Dr. Lee had passed the December 1998 polygraph; and a February 10, 1999 FBI polygraph of Dr. Lee confirmed his failure. In the interim from mid-January, Dr. Lee began a sequence of massive file deletions which continued on February 10, 11, 12 and 17 after he failed the February 10, 1999 polygraph.

It was not until three weeks after the February 10, 1999 polygraph that the FBI asked for and received permission to search Dr. Lee's computer which led to his firing on March 8, 1999. A search warrant for his home was not obtained until April 9, 1999. Those delays are inexplicable in a matter of this importance.

The investigation of Dr. Lee demonstrates the need for remedial legislation to:

1. Require that upon the personal request of the Director of the FBI, the Secretary of State, the Secretary of Defense or the Director of Central Intelligence, the Attorney General will personally review a FISA application submitted by the requesting official.
2. Where the Attorney General declines a FISA application, the declination must be communicated in writing to the requesting official, with specific recommendations regarding additional investigative steps that should be taken to establish the

requisite probable cause.

3. The official making a request for Attorney General review must personally supervise the implementation of the Attorney General's recommendations.
4. Explicitly eliminate any requirement that the suspect be presently engaged in the suspect activity.
5. Require disclosure of any relevant relationship between a suspect and a federal law enforcement or intelligence agency.
6. Require that when the FBI desires, for investigative reasons, to leave in place a suspect who has access to classified information, that decision must be communicated in writing to the head of the affected agency, along with a plan to minimize the potential harm to the national security. National security concerns will take precedence over investigative concerns.
7. The affected agency head must likewise respond in writing, and any disagreements over the proper course of action will be referred to the National Counterintelligence Policy Board.