

## Wen Ho Lee Case: Defeat for Justice Department Terror

by Marsha Freeman and Edward Spannaus

“If Wen Ho Lee had been prosecuted in the Eastern District of Virginia — where most espionage cases are tried — rather than New Mexico, he’d be on death row by now.” That was the reaction of one observer to the freeing from jail of the former Los Alamos scientist on Sept. 13.

The horror of what the Justice Department and FBI were attempting to do in the Lee case, comes clearly into focus, if one considers what would have happened if the government had been able to bring its case against Lee in its favorite venue for such cases: the Federal court in Alexandria, Virginia, which is notorious for its pro-prosecution bias, and its routine denial of defendants’ motions. The difference is that the Justice Department and FBI could have gotten away with their railroad of Wen Ho Lee, had their fraudulent case not come under the careful scrutiny of an extraordinary and honest judge, as it did in the Federal court in New Mexico.

As you read the following account of the attempted frame-up of Lee for espionage on behalf of a foreign power, China, keep in mind what would have been the outcome if Judge James Parker had merely accepted the government’s secret submissions and fanciful allegations against Lee at face value, and if Judge Parker had not eventually granted Lee’s motion for discovery in his attempt to have the indictment against him dismissed on grounds of selective prosecution. (Discovery on such motions by a defendant are rarely granted, and are almost



*Dr. Wen Ho Lee*

never granted in the “rocket docket” in the Eastern District of Virginia.)

Also keep in mind how much more of a penalty against the Justice Department would have existed, had Congress passed the full “Citizens’ Protection Act,” popularly known as the McDade-Murtha Bill, in 1998, instead of succumbing to Justice Department pressure to water down the landmark legislation.

### DOJ Terror Tactics

On March 8, 1999, Wen Ho Lee was being interrogated by FBI agents at the Los Alamos National Laboratory, without an attorney present. As Lee insisted on his innocence, the FBI agents waved an article published two days earlier in the *New York Times*, with the headline, “China Stole Nuclear Secrets for Bombs.”

“You know what?” one of the agents told Lee. “The Rosenbergs professed their innocence. They weren’t concerned either. The Rosenbergs are dead. They electrocuted them.”

It was all a bluff. The FBI never had any evidence that Lee was spying for the People’s Republic of China, or that he was handing over the “crown jewels” of the U.S. nuclear arsenal, as had been alleged. But the “shock effect” — of accusing him of spying, threatening him with the death penalty, indicting him in December 1999 on 59 felony counts, and jailing him under maximum-security conditions without bail — was all intended to make him “crack” and plead guilty, as most defendants will do under the circumstances, irrespective of the lack of evidence.

And, under most circumstances, under the ominous specter of “national security,” most judges will go along, without scrutinizing or challenging the government’s “secret” evidence.



*Lyndon H. LaRouche, Jr. and co-defendant Michael Billington (behind him), on their way to prison in 1989, after the Justice Department succeeded in railroading a conviction through the corrupt “rocket docket” in the Eastern District of Virginia in Alexandria. Had the Justice Department been able to prosecute Wen Ho Lee in Alexandria, Lee wouldn’t have had a chance to defend himself—just as LaRouche was prevented from defending himself from the government’s fraudulent charges.*

Judge Parker did not.

In his statement accepting the plea of Wen Ho Lee to one count of mishandling sensitive data, Judge Parker noted that last December, the Justice Department had presented him “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.” He repeatedly said that he had been misled by the Justice Department and FBI, and he pointedly remarked that the government had agreed to Lee’s release “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.”

“What I believe remains unanswered,” the Judge stated, “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.”

## The Background

On April 4, 1998, two months before President Clinton was to make an historic state visit to China, the *New York Times* ran a front-page story reporting that two American communications satellite manufacturers were suspected of having provided “space expertise that significantly advanced Beijing’s ballistic missile program.” Two days later, neo-conservative, and hysterical China- and Russia-basher, Frank Gaffney, issued a press release from his Center for Security

Policy, stating that this was just one more instance of the “Clinton Administration’s indifference to the arming of Communist China.” The “scandal” was off and running.

The *New York Times*’s Jeff Gerth followed up his initial report on April 13, by revealing that Loral Space Systems and Hughes were large contributors to the Democratic Party. In fact, Loral’s head, Bernard Schwartz, was the single largest contributor to the party. So, while the Republicans in the Congress were already probing Chinese-connected fundraising ties to the Clinton White House, they now had a China scandal with a supposedly direct tie-in to national security.

Within a matter of weeks, contentious hearings on the satellite technology transfer cases were held on Capitol Hill, with contradictory presentations on whether U.S. national security had been damaged. A special committee was formed, headed by Rep. Chris Cox (R-Calif.), called the Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China.

Toward the end of its deliberations, in October 1998, the Cox Committee was made aware of investigations that had been ongoing by the FBI and Department of Energy (DOE) counterintelligence officials, into the possibility that China had obtained access to classified information on the U.S. W-88 advanced nuclear warhead. These otherwise quiet investigations made front-page headlines, when leaks from the Cox Committee, and later the unclassified version of the report, became public in the first half of 1999.

The very first conclusion presented in the three-volume

Cox report was: “The People’s Republic of China has stolen design information on the United States’ most advanced thermonuclear weapons.” The report continued: “P.R.C. penetration of our national weapons laboratories spans at least the past several decades and almost certainly continues today.” Upon being questioned about their basis for this conclusion, when prominent scientists had already declared that this was highly doubtful, committee representatives stated that they did not “have time” during their deliberations to hear from witnesses who would dispute these breathtaking claims.

Then, on March 6, 1999 the *New York Times*’s Jeff Gerth and James Risen, quoting unnamed “Administration officials,” wrote that espionage by China, believed to have occurred in the mid-1980s, would lead to a “leap” in the development of miniaturized nuclear bombs, using secrets stolen from Los Alamos National Laboratory.

“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,” Risen and Gerth asserted. “Now, at the end of the Cold War, the Chinese seemed to have succeeded in penetrating the same weapons lab.” The comparison was mentioned again in a *New York Times* article six days later, by Sandra Blakeslee, who recounted that two of Klaus Fuchs’ couriers for Los Alamos nuclear secrets, “Julius and Ethel Rosenberg, were executed for espionage.”

The March 6 article recounted the history of the FBI’s investigation of an unnamed Chinese-American computer scientist at Los Alamos, complaining that the Bureau had been dragging its feet, because there had been no arrests. But, “after prodding from Congress, and the Secretary of Energy,” in February government officials administered a lie detector test to the “main suspect,” which he failed, the *Times* claimed.

The *Times* referred to testimony to the closed Cox Committee hearings by the head of intelligence at the Department of Energy, Notra Trulock (someone with no technical background, but a bachelor’s degree in political science), who spent years, unsuccessfully, trying to convince the CIA of the Chinese nuclear spy scenario. Nor was Trulock successful in convincing many other security officials at the Department. But he nevertheless became the star witness for the Republican Congress, who could use the alleged cover-up of Chinese spying as a club against the Clinton Administration.

The accusations of a cover-up were immediately countered by Gary Samore, senior official at the National Security Council, who handled the issue. Samore told the *Times* that the NSC did not accept the Energy Department’s conclusion that China’s advances in nuclear technology stemmed from theft of U.S. secrets. But this did not stop the police-state tactics by the FBI.

The day after the *New York Times* article, Senate Majority Leader Trent Lott (R-Miss.) called for hearings, and sanctions against the Administration’s policy of engagement with China.

Two days after the *Times* article appeared, Energy Secre-

tary Bill Richardson buckled, and announced that he had “recommended the dismissal” of a Los Alamos employee, soon identified as Dr. Wen Ho Lee, who was immediately fired. Richardson also announced that there would be polygraph testing of more than 1,000 Lab workers who handle classified material. But at the same time, Edward Curran, the Department of Energy’s director of counterintelligence, said that it was not clear how much the Chinese weapons programs may have been helped by unauthorized procurement of sensitive information.

Within days of the Wen Ho Lee firing, Sen. Robert Smith (R-N.H.), chairman of the Armed Services Committee, said that he was “shocked and outraged by the lack of response of this Administration,” and called for hearings to find out why Dr. Lee had not been charged with a crime.

While the Administration and the Congress wrangled over how much of the Cox Committee report should be made public, with Cox accusing the Administration of suppressing his report, various studies were initiated, including an independent panel convened by CIA Director George Tenet to study the “damage” from Chinese nuclear spying, and a review by the President’s Foreign Intelligence Advisory Board, led by former Sen. Warren Rudman (R-N.H.). (The Rudman review would conclude in June that the FBI’s investigation focussed almost exclusively on Wen Ho Lee, when there was no hard evidence that he, or anyone else at Los Alamos, was the source of any classified information obtained by China.)

When the CIA review, headed by Adm. David Jeremiah (ret.), was released on April 21, it stated that the conclusions about Chinese access to nuclear secrets drawn by Trulock were a lot more uncertain that was being admitted in public. It also noted that China traditionally had a nuclear deterrent — not offensive — strategy.

On May 12, Attorney General Janet Reno was attacked by Sen. Richard Shelby (R-Ala.), chairman of Senate Select Committee on Intelligence, for failing to aggressively respond to the espionage threat. Reno stood by her earlier decisions that there had not been enough evidence against Dr. Lee to authorize an FBI wiretap, and by the evaluation that whatever investigators would find on Dr. Lee’s computer would be “stale,” since the reputed espionage had taken place in the 1980s.

Two weeks later, Justice Department officials told the *Washington Post* that the FBI came to them three times over the course of its investigation, seeking a warrant for a wiretap for Lee, but they were sent back for additional evidence each time. No one who reviewed the case thought that a warrant or a wiretap could be justified, the officials stated. “Everybody thinks it was either a ‘no’ or a ‘no way.’” The FBI would have to show probable cause that Lee was not only engaged in clandestine intelligence gathering on behalf of China, but was also “knowingly” violating Federal law, the officials stated. There was no such evidence.

In the end, however, Attorney General Reno bent to the political pressure, and approved the 59-count indictment against Wen Ho Lee, the first prosecution ever under the Atomic Energy Act.

### **All There But the Evidence**

Looking back on the Wen Ho Lee case, one observes that it was made crystal clear, more than half a year before he was indicted, that there was never any case against Lee—and no case for Chinese nuclear spying either.

During hearings on the Cox Committee's findings, at the end of May 1999, it was revealed that the Central Intelligence Agency was dubious about the report handed to the United States in 1995 by a supposed defector, said to reveal what China knew about advanced nuclear warheads. It was this report from a "walk-in," which had started the whole witch-hunt for spies. After taking another look at the document, the CIA believed the document was actually a plant by Chinese intelligence. Even the *New York Times* had to admit that "no one has ever come up with a persuasive explanation of why China sent the documents to American spies." From the moment the nuclear spying allegations became public, the contention that China had stolen nuclear secrets was seriously in dispute.

The firing of Dr. Lee from Los Alamos, and the charges of nuclear espionage floating around Capitol Hill and the press with the release of the Cox report in May 1999, triggered an immediate response from the scientific community, which shoulders the actual responsibility for nuclear research.

Nuclear physicist Dr. Edward Teller, the elder statesman of nuclear weapons design, wrote in a commentary in the May 14, 1999 *New York Times*, that even if there were Chinese spying, this case should not be compared to that of the Klaus Fuchs case 50 years ago, and to how U.S. secrets helped Soviet research. (The press had already tried to equate this case with the execution of the Rosenbergs.)

Chinese scientists "have had 50 years to consider the possibilities that we kept secret. It seems to be probable that the Chinese must have made discoveries that made the added knowledge from intelligence less important," Dr. Teller wrote.

What disturbed Dr. Teller most was the response to the spying accusations. On March 15, Senator Shelby asked the DOE to suspend parts of an exchange program involving more than 20,000 foreign scientists. "At present the proposed remedy is more security," Dr. Teller wrote, "including exclusion from participation of people from abroad. Let us remember that past military successes have been accomplished by remarkable people from abroad—for instance, Enrico Fermi. I claim that our continuing security is acquired by new knowledge rather than by conserving old knowledge."

On May 30, Dr. Harold M. Agnew, director of Los Alamos during 1970-79 when the W-88 was developed, and Dr. Johnny S. Foster, who was the head of Lawrence Liver-

more Laboratory during 1952-65, responded to the Cox Committee report. Both said that whatever the Chinese might have obtained through espionage, only would have added to what its scientists already knew. Drs. Agnew and Foster said that even data on the size, weight, shape, and yield of nuclear weapons, although highly classified, do not represent a war-head's design in any real sense.

Dr. Agnew said that the original W-88 design went back to the 1950s. "The Chinese physicists certainly have the brains to develop their own weapons. . . . They are smart, and have been trained in England, Scotland, and the U.S." (Incidentally, neither of these two scientists had been asked to appear before the Cox Committee.)

On July 4, 1999, Dr. Teller was quoted in the *Sacramento Bee*: "I would hope the Congress in Washington would be one-tenth as careful about not spreading secrets, as the labs." He was referring to the nine hearings in June alone into allegations of Chinese spying. "People outside the labs, and particularly politicians, have completely failed to understand that there is not 'one' secret. We are trying to preserve what is, in fact, gone; and gone not because of spies, but because of independent [foreign] work."

By then, 79 House members had proposed a moratorium on visits to weapons laboratories from "sensitive" countries. Dr. Teller said that that is the opposite of the direction the labs should go in. "Attempting to keep secret what is not secret interferes with our obtaining information in other countries. Peace can be assured through cooperation."

### **Lee and His Computer**

When Wen Ho Lee was fired from Los Alamos, it was on the grounds that he had withheld information about his contacts with Chinese scientists—not that he had done anything illegal, but only violated lab procedures. But on April 27, the *New York Times* broke what would become the *real* story. After Dr. Lee gave the FBI permission to search his computer, a few days before he was fired, agents found that he had improperly transferred secret data from a secure computer to his unsecured computer at the lab.

On April 29, the *Times* followed its initial report with an article by science writer William Broad titled, "Downloaded Secret Codes Make Up Cookbook for Atomic Weapons, Experts Say." The *Times* quoted from a former Los Alamos researcher, now at the environmentalist Natural Resources Defense Council: "It's the distillation of 50 years of work, over 1,000 nuclear tests, and thousands upon thousands of man-hours."

As the constant press attention to the Wen Ho Lee case continued, some very interesting little details began to make their way into the press. On April 26, the *Washington Post* reported that Dr. Lee's wife, Sylvia, who worked at Los Alamos, in an administrative position, was used as an "informational asset" by the FBI between 1985 and 1991, to report on the activities of Chinese scientists visiting the United

States—meaning that she provided useful information to the FBI.

Los Alamos further used Sylvia Lee's access to Chinese scientists by providing her with video tapes for a presentation on a trip to China in the 1980s, "because the lab was anxious for her to go there," according to one intelligence source.

The *Post* revealed on May 2 that Wen Ho Lee himself had cooperated with the FBI in 1982, when the Bureau was investigating a scientist at Lawrence Livermore laboratory for espionage! Dr. Lee's attorney, Mark Holscher, said in response to the report, that his client's cooperation with the government is "completely consistent with his innocence" of the allegations against him. In fact, a retired Los Alamos computer scientist commented that Lee might have downloaded the nuclear codes because they were easier to edit on a desktop computer.

On May 5, during hearings by the Senate Energy and Natural Resources Committee, it was revealed that after two years of investigating Wen Ho Lee, the FBI realized in 1998 that it had failed to turn up any evidence that he gave any secrets of any kind to the Chinese. That Summer, the FBI tried to "entice" (or entrap) Dr. Lee into spying, using two Chinese-American FBI agents. They were rebuffed by Wen Ho Lee. It was also pointed out by Sen. Pete Domenici (R-N.M.) that, in 1984, Dr. Lee had passed a second polygraph test, when the results of a first were inconclusive.

The following day, Holscher issued a statement citing all the "incorrect" assertions that had been made in the press concerning spying allegations. The six-page statement also provided more details of the Lees' cooperative relationship with the FBI.

In addition, law enforcement, intelligence, and counterintelligence experts were convinced that Wen Ho Lee was not a spy. Experts in espionage cases told the *Washington Post* at the end of May that there has been no known prosecution of anyone for transferring data from classified to unclassified government computer systems. Any such case would hinge on unlawful "intent," for which, in Dr. Lee's case, there was no evidence. While two former National Security Council employees were prosecuted for having retained documents at their home, this does not apply to Dr. Lee, although it does apply to former CIA Director John Deutch, lawyers told the *Post*.

By June, the press was reporting that it was "unlikely" Wen Ho Lee would face spying charges, or that even his downloading of classified material was against the law. There were no witnesses, the *New York Times* stated, there was no evidence of a motive, there was no evidence that Taiwan-born Dr. Lee was "ideologically allied with Beijing," and "even the evidence that a theft occurred is circumstantial"!

On Aug. 1, Wen Ho Lee broke his silence about the spying accusations, telling the CBS News program "60 Minutes" interviewer Mike Wallace, "The reason I downloaded the computer codes from a classified machine to an unclassified machine is part of my job to protect my code." He described

it as "a routine part of my job," which is done by many other people at the lab. "Plus," he continued, "when I downloaded into unclassified machines, I have three levels of passwords. It's almost impossible for anybody to break in. . . . Sometimes I even had a hard time to break in myself."

The same day, the *Los Angeles Times* carried a report of meetings Lee's lawyers had with Justice Department officials and prosecutors, where they explained that the back-up of files on the unclassified computer was done to protect the nuclear bomb codes, were there to be a computer crash. Their legal brief, compiled to head off an indictment for mishandling classified data, called Lee a victim of political hysteria, and a "scapegoat" for the lack of security at Los Alamos. The brief described the case as a result of "xenophobia," in which Dr. Lee was targeted because of his Chinese heritage.

In September, 1999, Robert S. Vrooman, who was head of counterintelligence at Los Alamos during 1987-98, and during the period when the first suspicions about Chinese nuclear spying were investigated in 1995, stated that the inquiry was marred by a racist bias against Chinese-Americans. The short list of suspects, he stated, put together by Trulock, included only those people whose trips to China had been paid by the Department of Energy, leaving unexamined at least 15 others whose trips were paid for by the Chinese, the CIA, the Air Force, or private companies. Vrooman also noted that one secret document describing the design of the W-88 warhead was mailed to 548 addresses in the government and military!

## The Indictment

But none of the evidence of Dr. Lee's innocence was able to stop the flight-forward by the FBI. According to the *New York Times*, on Sept. 4, a meeting took place at the White House, involving FBI Director Louis Freeh, CIA Director Tenet, National Security Adviser Sandy Berger, Energy Secretary Richardson, and Federal prosecutor John Kelly from Albuquerque. Attorney General Reno was asked to give the final approval for prosecution.

Finally, on Dec. 10, 1999, Wen Ho Lee was indicted by a grand jury on 59 counts: 29 counts of removing and tampering with restricted data, 10 counts of retaining restricted data, 10 counts of gathering national defense information, and 10 counts of unlawful retention of national defense information, under Federal espionage laws. The government had dropped talk about the death penalty, and the indictment did not allege that Dr. Lee gave the material to anyone, but it charged that he removed classified nuclear weapons data "with the intent to injure the United States and with the intent to secure an advantage for a foreign power." This, despite the fact that there was absolutely no evidence of any such intent.

Lee's attorney sent a letter dated Dec. 10 to Federal prosecutor Kelly, offering to make Dr. Lee available for a polygraph test "to verify our repeated written representations that at no time did he mishandle those tapes in question and to confirm that he not provide the tapes to any third party." This

request was never agreed to by the prosecution.

Most interestingly, three days later, Associated Press reported that three memos had been written to FBI Director Freeh by investigators involved in the Lee case, stating that there was reason to believe Wen Ho Lee was not the source of any leaks of classified data, and that the probe had been too narrow.

Soon after the indictment, Dr. Lee decided to sue the FBI, the Justice Department, and the Energy Department, claiming that they violated his privacy and wrongly portrayed him as a Chinese spy. The suit cited the above-mentioned FBI memos, and made the case that the FBI continued to pursue him and leak false information, months after they knew he wasn't a spy. (Now that the criminal case against Dr. Lee has been settled, this civil suit will be back on the docket.)

The next outrage in this case came on Dec. 27, when the government argued in a hearing that Wen Ho Lee should be continued to be held without bail. The government presented testimony from laboratory specialists claiming that what Dr. Lee had downloaded could be used "to design and analyze U.S. nuclear weapons."

The testimony of Richard Krajcik, a leader at Los Alamos' nuclear weapons design X division, would later become a ringing headache for the prosecution in this case, since he stated that the files Wen Ho Lee had downloaded into his computer, were the "crown jewels" of America's nuclear arsenal. Another statement prosecutors would live to regret, was made by Paul Robinson, president of Sandia National Laboratory, who said that any release of the secrets could "truly change the world strategic balance."

Another star witness for the prosecution, FBI agent Robert Messemer, testified how evasive Wen Ho Lee was under questioning, describing Lee's activities in the lab as a "pattern of deception." Opposing a proposal to grant bail to Lee while keeping him in home detention under round-the-clock FBI surveillance, Messemer said that even the most innocent remark Lee might pass, could be a code. Dr. Lee's lawyer called the claims "ludicrous."

But the dramatic, sweeping, and serious nature of these charges led Judge Parker to deny bail. Parker did urge prosecutors to take Dr. Lee up on his standing offer to be subjected to a polygraph examination on the missing computer tapes, which Lee had said he destroyed. Parker said he would reconsider the issue of bail, depending on the outcome of such a polygraph test.

## **FBI Threats**

As the outrage in the Asian-American and scientific communities grew over this case, in which a scientist who very few were convinced had done anything illegal, was being held in solitary confinement, able to meet with his family for only one hour per week, more details were emerging as to how the case had been conducted.

In early January, this year, the *Washington Post* obtained the transcript of the interrogation of Wen Ho Lee one day

before he was fired by the Department of Energy in March 1998, which had been introduced into the December bail hearing. Dr. Lee had taken a polygraph test administered by the Department in December of that year. The DOE concluded that Dr. Lee was telling the truth in his denials that he had given secrets of nuclear weapons to Beijing.

But two months later, the FBI decided that he had been "deceptive" in that interview, and carried out another lie detector test. In their final interrogation of Dr. Lee just before his firing, the FBI outright lied to Dr. Lee, telling him he had better tell the truth this time, because he had failed the DOE polygraph test.

During questioning, the *Post* reported, Lee continued to insist that he never gave any classified information to the Chinese. The FBI countered: "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."

Lee attorney Holscher told the *Post* that "the transcript clearly shows that the FBI on at least a dozen occasions [during the interrogation] pressured Dr. Lee to confess to a death penalty offense, which even the Department of Justice must now concede he did not commit."

This case is reminiscent of the case of Arthur Rudolph, outrageously accused in the 1980s of committing Nazi war crimes while he was a rocket engineer in Germany during the Second World War. Likewise, Rudolph, a foreign-born American citizen, was terrorized by FBI agents, without a lawyer present, when he didn't really understand the charges that the FBI was cooking up against him.

The conditions of Wen Ho Lee's confinement, and the increasing doubt about any credible criminal case against him, even mobilized the usually apolitical scientific community into action. On March 7, 2000, the American Physical Society, the American Association for the Advancement of Science, the New York Academy of Sciences, and the Committee of Concerned Scientists sent letters to Attorney General Reno protesting the conditions of Dr. Lee's imprisonment.

Dr. Irving Lerch, who drafted the letter for the AAAS, said that some scientists feared that Lee "was being intimidated in order to force him into a plea bargain." All of the letters likened the treatment of Wen Ho Lee to that of Soviet-era, or Chinese, dissidents.

On Sept. 1, the National Academy of Sciences sent a strongly worded letter to Reno, protesting the "unjust treatment" of Wen Ho Lee. The Academy said that it was making this letter public because private letters that had been sent on March 10, April 14, and June 26, had been answered only with a form letter. The letter curtly stated, "The concerns that we have expressed and the questions that we have posed in our letters are identical to those that our Committee on Human Rights regularly poses to foreign governments, some of which have had the courtesy to respond."

Meanwhile, soon after Dr. Lee was denied bail, his lawyers began their effort to obtain access to the classified material which Dr. Lee had downloaded, which could prove the innocence of their client. And in April, a most stunning revelation appeared in the *Albuquerque Journal*. The paper reported that the supposed “crown jewels” of the nuclear weapons program, which Wen Ho Lee had been accused of illegally copying into his computer at Los Alamos, had carried a significantly lower classification when they were downloaded, than they did later. They were designated “protect as restricted data,” which is a lower classification than “secret.” They were only reclassified after charges were filed against Dr. Lee!

On Aug. 16, the third hearing on a request for bail, turned into the final scene for the FBI’s dramatic play. On the first day of the hearing, although Sandia President Robinson stuck by his story, that if the downloaded tapes had fallen into the wrong hands, the damage would be unimaginable, John Richter, a former top nuclear weapons designer and intelligence official at Los Alamos, stated that about 99% of the information Dr. Lee downloaded had already been made public, in various forums.

By the second day, the government’s case was crumbling. FBI special agent Messemmer admitted that he had provided false testimony in the December bail hearing, about how Wen Ho Lee had appeared to be “deceptive.” (As the *Minneapolis Star Tribune* editorialized after the last day of the hearing, it was shown that it was not Dr. Lee who was deceptive, but an FBI agent.)

On Aug. 24, Judge Parker ordered Dr. Lee released on \$1 million bail, and gave the government three days to appeal. It was clear that if the judge had determined that Dr. Lee was not a threat to national security, and thus could go home, the rest of the government’s absurd 59-count indictment was in serious trouble.

Five days later, Judge Parker made a ruling that drove the last stake into the heart of the prosecution’s spy case. He ordered the government to turn over thousands of pages of classified documents to him, so he could determine if Lee had been unfairly singled out for prosecution because he is a Chinese-American. On Aug. 31, Judge Parker unsealed two affidavits in the case from former Los Alamos intelligence officials, who corroborated the defense’s assertion that Dr. Lee was the victim of racial profiling.

An eleventh-hour intervention by the government postponed Dr. Lee’s release on bail, but secured a plea bargain for the scientist on the terms that the defense had offered months before: that he serve no further jail time, and that there be no further charges. In return, Dr. Lee would cooperate with investigators seeking to determine what happened to missing computer tapes, and would explain why he downloaded the data and what he did with it.

On Sept. 13, Judge Parker accepted Dr. Lee’s plea of guilty to one count of mishandling sensitive data, and, dropping of the other 58 counts against him, he made a most

extraordinary public statement.

After asking Dr. Lee’s indulgence for explaining the Constitution, which Dr. Lee already had had to study to become a citizen—unlike others who are born into having that right—Judge Parker made clear that the Attorney General is the head of the U.S. 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 Executive branch has enormous power, the abuse of which can be devastating to our citizens,” Parker declared.

Addressing the scientist directly, Judge Parker said: “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. . . .

“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.”

The judge read the letter from Dr. Lee’s attorneys last December, that made their client available to explain what happened to the missing tapes of data, and stated that he had tried to get both sides to accept the terms the defense was offering.

Judge Parker scored the leadership of the Departments of Energy and Justice as responsible for the fiasco. “They did not embarrass me alone,” he stated. “They have embarrassed our entire nation and each of us who is a citizen of it.”

## **Clean Out the DOJ and FBI**

Following the release of Lee, President Clinton characterized the case as “quite troubling,” and “disturbing.” But the Lee case is much more than “troubling” and “disturbing.” Aside from the unconscionable detainment of Dr. Lee in solitary confinement for nine months, his firing from Los Alamos Laboratory not only ended his scientific career, it has damaged the national security of the nation by demoralizing scientists at the lab, and is driving new science recruits, particularly Asians and Asian-Americans, out of nuclear weapons research.

The President has called for an “analysis” of the government’s activities in the case. Undoubtedly, there will be internal reviews at the FBI and the Justice Department, and Congressional hearings led by the same Congressmen who were demanding Wen Ho Lee’s head last year. But a sweeping clean-out of both agencies, which President Clinton should have carried out when he took office seven years ago, is the only way to prevent such miscarriages of justice from being repeated again and again.