

Stench of racism surrounds indictment of Wen Ho Lee

by William Jones

Nuclear physicist Wen Ho Lee was arrested in New Mexico on Dec. 10 and charged with 59 counts of mishandling classified information and violating secrecy provisions of the Atomic Energy Act, some of which carry a maximum sentence of life in prison. The Federal grand jury in Albuquerque that returned the 45-page indictment did not, however, charge the Taiwan-born scientist with espionage. Officials said that they were unable to find any credible evidence that Lee was a spy who had provided nuclear weapons secrets to Beijing, or anyone else. While Lee had for months been named as the target of a botched FBI investigation, his arrest on a multitude of such grave charges has caused a political shockwave, not least of all within the Asian-American community. To add insult to injury, Lee was denied bail, allegedly because of “risk for flight,” in spite of the fact that he had been under 24-hour surveillance since May of this year.

The investigation began as a result of information provided to the CIA by a Chinese intelligence “walk-in,” which indicated that the Chinese were in possession of classified data relating to the highly secret W-88 nuclear warhead. The CIA concluded that since the informant was a Chinese agent, the document he provided was therefore unreliable. Nevertheless, the Department of Energy launched an investigation. One of the chief targets of the investigation was Dr. Lee, who worked at the Los Alamos National Laboratory.

As the investigation unfolded, initially under the direction of Department of Energy security chief Notra Trulock, and then later taken up by the FBI, no real evidence of espionage was ever found. It became evident, however, that Lee had been targeted by Trulock precisely because he was a Chinese-American. In fact, among the 250 or more possible sources of the information on the W-88 at Los Alamos, only the 12 foreign-born Los Alamos scientists were investigated, and

Lee was chosen on the basis of a blatantly racist assumption that, as a Chinese-American, he would have more of a “propensity” to relay classified material to the Chinese authorities than other possible suspects. Trulock had been heavily relied on by the “Cox Committee”—ponderously named the House Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China, and chaired by Rep. Christopher Cox (R-Calif.)—in its crusade against the Clinton administration for being “soft” on China. The loss of credibility of their chief witness would carry a heavy political toll for the Republican China-bashers in Congress.

As the FBI took up the case, it relentlessly pursued the same dead-end trail, in spite of warnings from their own field investigators that there was no case against the Los Alamos physicist. While FBI officials investigating Lee earlier warned, in a series of memos to FBI Director Louis Freeh, that there was reason to believe that Lee was *not* the source of leaks of data on the W-88 to China, FBI Assistant Director Neil J. Gallagher nevertheless testified before Congress in June 1999 that the original Department of Energy probe of Lee had made a “compelling case” that he was not the source of national security leaks. The FBI continued its investigation on the purely circumstantial grounds that Dr. Lee had access to the information in question, and that he travelled to China on scientific visits, which were, in fact, approved by Los Alamos.

According to the Associated Press on Dec. 13, the FBI’s Gallagher has admitted that in November and December 1998, and again in January 1999, the FBI office in Albuquerque had written to headquarters that there were serious questions about the “accuracy of certain representations and conclusions” about Lee’s role in espionage. Copies of those

documents, the FBI admitted, were part of a briefing book that was given to Gallagher prior to his June testimony on Capitol Hill.

The three memos, and other secret FBI documents, were recently turned over to the Department of Justice and to Congressional committees probing the FBI's handling of the case. One government source who has reviewed the documents told Associated Press that on Jan. 22, 1999, the FBI office in Albuquerque informed Freeh and others that "it appears" that Lee was not responsible for leaking the W-88 data to China. A Jan. 29 followup memo "continues to insist" that Lee was not a spy.

Even while a McCarthyite atmosphere has been deliberately fostered, scientists at the national labs helped to "blow the whistle" on the attempted frame-up, accusing Trulock of racial targeting of Lee. Officials at the national labs were the first to react against the Lee case, fearing that the witch-hunt against him would discourage promising scientists from working in such an environment of fear. Former security chief at Los Alamos Robert Voorman told the press that "a lot of Caucasians" had not been investigated, even though they had access to the same material.

The indictment

Dr. Lee is accused of transferring weapons data to a non-secure computer, leaving them vulnerable to spies or computer hackers—an offense for which former CIA director John Deutch had lost his security clearance. But there is no indication that the FBI plans to prosecute Deutch, even though his own violation of security regulations is even more egregious, given his position.

Ironically, the FBI discovered the "violations" when Lee agreed voluntarily to a search of his office and home. Embarrassed by their earlier lack of success in uncovering any "espionage," Justice Department officials seem eager to "throw the book" at Lee for whatever violations they could find.

"This case is being prosecuted because Wen Ho Lee has denied the United States its exclusive dominion and control over some of this nation's most sensitive nuclear secrets," John J. Kelly, the U.S. Attorney in New Mexico, said in Albuquerque. "Although Lee has not been charged with communicating classified information to a foreign power, the mishandling of classified information alleged in the indictment has, in the government's view, resulted in serious damage to important national interests."

"The indictment does not allege that Lee passed classified information to any particular foreign government, including the People's Republic of China," he added. Among other counts, the indictment accuses Lee of having transferred material to computer tapes, seven of which the FBI have not found. Lee's lawyer, Mark Holscher, said that he would make his client "immediately available to a mutually agreeable polygraph examiner" to prove that he had neither mishandled the tapes nor given them to someone else.

Legal experts note that the charges against Lee appear to be the first criminal prosecution under a section of the Atomic Energy Act that prohibits removing, concealing, or tampering with classified nuclear weapons data. However, this section specifies that the individual thus charged must act "with intent to injure the United States or with intent to secure an advantage to any foreign nation," a condition which, in the case of Lee, is far from evident, and which the government will be hard pressed to prove, if it is shown that he indeed moved the material at all.

'Suspect motives'

Lawyers from O'Melveny and Myers, the law firm that is defending Lee, said in a statement after the indictment that prosecutors had made decisions that had been "influenced by other branches of government whose political motives and agendas are suspect." Noting the fact that Lee had voluntarily relinquished his passport and voluntarily notified the government on every occasion when he would leave his home, his lawyers called the decision to deny bail "wholly unjustified." "It is astounding to have this case reach this level," the statement said.

According to press reports, the decision to arrest was taken by Attorney General Janet Reno after a White House meeting on the weekend of Dec. 4-5. In attendance were CIA director George Tenet, FBI Director Louis Freeh, National Security Adviser Sandy Berger, Secretary of Energy Bill Richardson, and Reno. The White House has been under heavy fire by House Republicans for alleged "negligence" in failure to take measures against what they allege to be Chinese espionage. As Monica Lewinsky faded into well-earned oblivion, "Chinagate" became the brunt of Republican attempts to "Get Clinton." With Reno and the FBI having to cover for the blunders during the earlier part of the investigations of Lee, and pressure on Richardson at the Department of Energy to prevent further "leaks," Reno seems to have been given the green light to go after Lee.

The arrest of Lee has sparked an angry reaction from the Asian-American community. Professional organizations, which normally shy away from political activity, have been fully activated, fearing that the actions taken against Lee will signify a broader campaign against Asian-Americans generally.

"We've never done anything like this before," said Bill Chang, president of the Chinese-American Engineers and Scientists Association of Southern California, one of the organizations mobilizing on Lee's behalf, "but I've been getting a lot of calls from our members. They're very scared and angry. They're really upset about what this means for them." Tina Hsu, a Washington lawyer, commented to the *New York Times*, "I'm deeply suspicious of the way they went about this. He's not even charged with spying. He's been charged with mishandling information. He seems like a sacrificial lamb."