

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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CO 108 17 PM 1:00

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 99-1417 JC/DS

WEN HO LEE,

Defendant.

MOTION TO SUPPRESS EVIDENCE

The defendant, Dr. Wen Ho Lee, through his undersigned attorneys, respectfully moves the Court, pursuant to the Fourth Amendment to the Constitution of the United States of America and Federal Rule of Criminal Procedure 12(b)(3), to suppress all items obtained as a result of the search of Dr. Lee's home located at 80 Barcelona Avenue, White Rock, New Mexico, pursuant to a search warrant served on or about April 10, 1999 (attached as Exhibit A), all fruits of that evidence, and all other evidence, tangible or intangible, obtained directly or indirectly as a result of that search.

As grounds for this motion, Dr. Lee states the following:

1. On April 9, 1999, agents of the FBI procured a search warrant which they served on the premises of 80 Barcelona Avenue, White Rock, New Mexico.
2. Dr. Lee was a resident and occupant of the premises, which is his home, and he had a reasonable expectation of privacy in his home.
3. As a result of the illegal entry into and search of Dr. Lee's home, the FBI officers reported that they seized the property described in the search warrant inventory attached hereto as Exhibit B.

4. The general warrant the FBI officers used as a justification for their search was not a lawful search warrant for the following reasons:¹

- A. The general warrant failed to contain the required particularized description of the place to be searched.
- B. The general warrant failed to contain the required particularized description of the items the agents were authorized to seize.
- C. The general warrant failed to include the required statement regarding how the property to be seized related to any alleged criminal activity.

5. The conduct of the officers in executing this general warrant to obtain the above-described evidence was therefore unreasonable and unlawful under the Constitution and the laws of the United States of America.

6. The facts and the law supporting this motion are fully set out in the contemporaneously filed memorandum in support of this motion.

7. Due to the nature of this motion, counsel assumes the government opposes it.

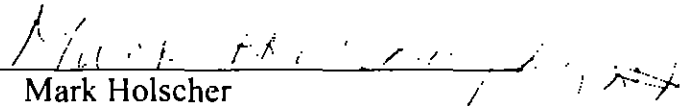
8. Dr. Lec requests an evidentiary hearing on this motion.

WHEREFORE, for the reasons stated herein and in the accompanying memorandum of law, the defendant, Dr. Lec, respectfully moves the Court to grant this motion.

¹Dr. Lec limits this motion to the issues contained herein and reserves the right to file subsequent motions to suppress evidence seized as a result of this search warrant after he has received additional discovery to which he is entitled, including the search warrant affidavit.

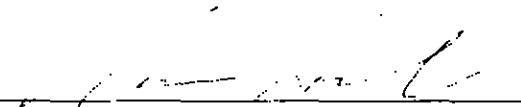
Respectfully submitted,

O'MELVENY & MYERS LLP

By: 
Mark Holscher
Richard Myers, II

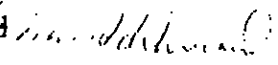
400 South Hope Street
Los Angeles, CA 90071
Telephone: (213) 430-6000
Fax: (213) 430-6407


FREEDMAN BOYD DANIELS HOLLANDER
GOLDBERG & CLINE P.A.

By: 
Nancy Hollander
John D. Cline

20 First Plaza, Suite 700
Albuquerque, NM 87102
Telephone: (505) 842-9960
Fax: (505) 842-0761

Attorneys for Defendant, Dr. Wen Ho Lee

I HEREBY CERTIFY that a true copy of the foregoing was mailed to opposing counsel this 17th day of April, 2000. 


Nancy Hollander

United States District Court

DISTRICT OF New Mexico

In the Matter of the Search of

(Name, address or brief description of person or property to be searched)

LEE, WEN HO
80 Barcelona Avenue
White Rock, New Mexico

SEARCH WARRANT

CASE NUMBER:

TO: Any Special Agent of the FBI and any Authorized Officer of the United States

Affidavit(s) having been made before me by SA Michael W. Lowe who has reason to

Affiant

believe that on the person of or on the premises known as (name, description and/or location)

80 Barcelona Avenue
White Rock, New Mexico

in the County of Los Alamos District of New Mexico there is now
concealed a certain person or property, namely (describe the person or property)

Items to be seized are described in Attachment B of this Affidavit, and include but are not limited to records, documents and materials including those used to facilitate communications, electronic data and computer equipment and peripherals.

I am satisfied that the affidavit(s) and any recorded testimony establish probable cause to believe that the person or property so described is now concealed on the person or premises above-described and establish grounds for the issuance of this warrant.

YOU ARE HEREBY COMMANDED to search on or before 4/11/99 Date

(not to exceed 10 days) the person or place named above for the person or property specified, serving this warrant and making the search (in the daytime — 6:00 A.M. to 10:00 P.M.) (at any time in the day or night as I find reasonable cause has been established) and if the person or property be found there to seize same, leaving a copy of this warrant and receipt for the person or property taken, and prepare a written inventory of the person or property seized and promptly return this warrant to WILLIAM W. DEATON or other Judge
as required by law. U.S. Judge or Magistrate

4/9/99 10:40 p.m.
Date and Time Issued
WILLIAM W. DEATON
U.S. MAGISTRATE JUDGE

at Albuquerque, New Mexico
City and State
William W. Deaton
Signature of Judicial Officer

EXHIBIT
A

er Date Search Typitem

Description of Items

4/10/99	Miscellaneous	Computer Printer	- 3" printer
4/10/99	Miscellaneous	Binders with Printouts	} print and data (No picture)
4/10/99	Miscellaneous	Binders with Printouts	
4/10/99	Miscellaneous	Box of Misc. Documents	- Garage.
4/10/99	Miscellaneous	Green Manual with LANL on it	- BAS - photo
4/10/99	Miscellaneous	Computer Print Outs	- (3) - comp. output (Figure)
4/10/99	Miscellaneous	Manilla Envelope Addressed to Alberta Lee	- Alberta
4/10/99	Miscellaneous	Letters, photos, Slides, Reels of Tapes	- Garage

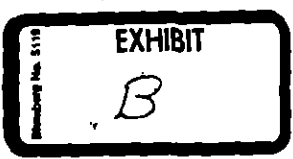
Victoria Johnson

Victoria Johnson

FAL SEARCH REPORT 10-Apr-99 80 Barcelona Ave, Los Alamos, New Mexico

SPC David Kitzler
505 234-2000

Date Search	Typeltem	Description of Items
4/10/99	Address Book	Address Book with Phone Numbers
4/10/99	Phone Book	Albuquerque Telephone Book
4/10/99	Phone Book	Santa Fe/Los Alamos Telephone Book
4/10/99	Correspondence - General	Yellow notepad with phone numbers and chinese characters
4/10/99	Correspondence - General	Blue Spiral Notebook
4/10/99	Manuals	Microsoft Word Manuals
4/10/99	Correspondence - General	Purple Folder with Computer Information
4/10/99	Computer - Software	2 Boxes of Floppy Disks
4/10/99	Credit Cards	Budget Rental Rate Card
4/10/99	Keys	Hyatt Envelope With Chinese Characters
4/10/99	Address Book	Address Book
4/10/99	Miscellaneous	NoteBook
4/10/99	Manuals	Computer Manuals
4/10/99	Miscellaneous	Background application and letter in chinese
4/10/99	Miscellaneous	3 Address books, 2 Alumni Listings and Misc. Business Cards
4/10/99	Miscellaneous	Log Book with Newspaper Clippings and map of China
4/10/99	Computer - Software	Computer Disks Found in Various Diskette Containers
4/10/99	Miscellaneous	Computer Programming Books
4/10/99	Miscellaneous	Book, Guy De Maupassant, Selected Short Stories



Item Number	Date Search	Type/Item	Description of Items
1	4/10/99	Photographs	Photos, including travel photos that appear to be PRC
1	4/10/99	Manuals	Manuals - computer
1	4/10/99	Miscellaneous	Letterhead from Los Alamos -- Note in
1	4/10/99	Manuals	Manuals containing LANL Documents -- Manual
1	4/10/99	Phone Book	Phone List of Los Alamos Chinese Cultural Association
1	4/10/99	Miscellaneous	Chinese Cultural Association of Los Alamos Member Directory
1	4/10/99	Address Book	Address Book - <i>Ketchum</i>
1	4/10/99	Miscellaneous	Book, Tennessee Williams - Four Plays
1	4/10/99	Address Book	Blue Address Book, Record Plate 8300 -- <i>Alberta Book</i>
1	4/10/99	Miscellaneous	1993 DateBook, Dark Green Leather Bound Date Book <i>Alberta</i>
1	4/10/99	Miscellaneous	Book containing note with Telephone Number 273-0910 - <i>Alberta</i>
1	4/10/99	Miscellaneous	Five Books, Konica Brand Photo Books Containing Numerous Photographs -- <i>Alberta</i>
1	4/10/99	Miscellaneous	Envelope Addressed to Wen Ho Lee -- <i>Alberta</i>
1	4/10/99	Miscellaneous	Green NoteBook containing Mathematical Equations <i>Alberta</i>
1	4/10/99	Miscellaneous	Airline Ticket, Chia Wei Liu, Taipei to San Diego -- <i>Nepheris</i>
1	4/10/99	Miscellaneous	Brown NoteBook, 3 ring Binder -- <i>Down w. Book</i>
1	4/10/99	Miscellaneous	White 3 ring Binder/Notebook <i>Chung Form</i>
1	4/10/99	Miscellaneous	Computer Code Manuals -- <i>GoRage</i>
1	4/10/99	Miscellaneous	Misc. Documents -- <i>216" paper</i>
1	4/10/99	Computer - Hardware	<u>Apple Hard Drive and Computer Components</u> -- <i>old</i>