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Avery Dennison: A Case Study in Trade Secret Theft

By [James D. Robenalt](#)

As the lights dimmed in the courtroom in Youngstown, Ohio, jurors squinted to peer into television monitors or at a big screen that had been lowered to allow the viewing of a scratchy videotape.



The videotape had been taken by the FBI from behind a two-way mirror in a hotel room located near the interstate in Westlake, Ohio. The three figures who appeared on the videotape seemed relaxed as they munched on bagels and sat around a table speaking in Chinese. A translation of their conversation popped up on the videotape so that the jurors could understand what was being discussed. At a critical point in the videotape, however, it became unnecessary for there to be a translation. One of the figures, an elderly man, pulled out a Swiss army knife and began to cut away confidential stamps on documents he was given. He also cut references to the owner of the documents, Avery Dennison Corporation, and asked the provider of the documents to make sure to take the clippings and dispose of them in a secure place outside of the hotel.

Why did the FBI film this scene? Why were jurors watching this video in a landmark criminal trial? To begin to understand, one need only consider a staggering statistic that Louis J. Freeh, the Director of the Federal Bureau of Investigation, provided to the Senate Committee on Intelligence in 1998: "The American Society of Industrial Security ("ASIS") reported this month to the FBI," Freeh testified, "that over \$30 billion in American Intellectual Property was 'placed at risk' for attempted theft in 1996 alone." The high financial risk of economic espionage to American businesses, communities, and jobs led Freeh to campaign for a national law to try to address what in 1996 was becoming increasingly clear: in the age of the computer, trade secret theft had become an epidemic.

The Economic Espionage Act of 1996



Prior to 1996, there was no federal law addressing trade secret theft. While individual states had trade secret laws on the books, industry received no help from the federal government in addressing the rising tide of trade secret plunder, not only by agents of foreign governments, but also through foreign companies. Statistics showed that the United States invested up to \$250 billion a year in the 90's in research and development and led the world in technology. It had become the largest target for foreign industrial spies.

In October 1996, Congress enacted (and President Clinton signed into law) the Economic Espionage Act of 1996 ("EEA"). In his 1998 report to the Senate Committee on Intelligence, Freeh noted: "The statute was the result of a Congressional mandate, coupled with a joint effort on the part of the FBI and industry, to provide law enforcement with a tool to deal effectively with trade secret theft.

The EEA resolved many gaps and inadequacies in existing federal laws by creating two new felonies outlawing acts of economic espionage (Title 18, U.S.C. 1831) and commercial theft (Title 18, U.S.C. 1832), and by specifically addressing the national security aspect of these crimes.

While the law originally was targeted at acts of economic espionage by foreign governments and their agents, the final version of the law was broadened to apply to foreign and domestic trade secret disputes. When the EEA was passed, Attorney General Janet Reno agreed that all EEA complaints would be approved by the Attorney General or his or her designees until October 2001. Prosecutions under the EEA are screened by the Computer Crime and Intellectual Property Section of the U.S. Department of Justice.

The First Federal Case

There were several arrests following the passage of the EEA. On December 7, 1996, the first arrests under the new law occurred in Pittsburgh, Pennsylvania. There, Patrick Worthing and his brother, Daniel, were arrested by FBI agents after agreeing to sell Pittsburgh Plate Glass ("PPG") information for \$1,000 to a Pittsburgh agent posing as a representative of Owens-Corning of Toledo, Ohio. In June 1997, Hsu Kai-Lo and Chester H. Ho, naturalized U.S. citizens, were arrested by the FBI and charged with attempting to steal the plant cell culture technology of Taxol, patented and licensed by the Bristol-Myers Squibb Company. In both of these cases, the defendants pled guilty and were sentenced.



The Avery Dennison case was the first EEA case to go to trial. On September 5, 1997, Pin Yen Yang, and his daughter, Hwei-Chen Yang (a.k.a. Sally Yang), were arrested at Hopkins International Airport in Cleveland, Ohio following the videotaping of their attempt to steal trade secrets from Avery Dennison Corporation. A trial in April 1999 resulted in convictions of the individuals and the company (Four Pillars Enterprises) under the EEA. The sentences included a \$5 million fine against the corporation. The story behind the convictions and the intrigue that led to the arrests is one that provides valuable lessons for all American industry.

By Refusing to Decline, He Accepted

At the center of the controversy is a diminutive scientist named Victor Lee. Lee was born in Taiwan and raised on the streets of Taipei by his mother. Desperately poor, Lee sought higher education opportunities in the United States. He was a brilliant physicist and chemist, having received advanced degrees from Texas Tech University and the

University of Akron. After graduating, Lee found a job at Avery Dennison's Fasson Roll Division in Concord, Ohio in 1986. He was a model employee and valuable scientist. Lee regularly signed documents acknowledging his responsibility to maintain the confidentiality of Avery Dennison's trade secrets.

In May 1988, Lee was visited by a former Texas Tech classmate who was traveling in the United States. The classmate was employed by the Industrial Technology Research Institute ("ITRI") in Taiwan, which is a Taiwanese Government-funded group that introduces American technology into Taiwan. Lee told his former classmate of an intention to visit Taiwan in July 1989 for a vacation. The classmate arranged for Lee to give a presentation to the Institute while he was in Taiwan.

When Lee spoke to the ITRI, representatives of Four Pillars Enterprises, a Taiwanese tape and label manufacturer, were present. Lee was asked to give his same presentation to Four Pillars executives in a private setting. Following that presentation, Lee was invited to dinner by the Chairman of Four Pillars, Pin Yen Yang. Following the dinner, Yang took Lee aside and asked him to teach Four Pillars about ways to strengthen their label business. Lee was told he would be paid \$25,000 for his first year of consulting (he was then making \$45,000 a year at Avery Dennison). According to Chinese tradition, by failing to decline the offer, Lee accepted. As he testified at the criminal trial: "That is part of our cultural tradition, that if I don't say no, that means that I accept it."

Lee Delivers The Goods

Lee returned to the United States and immediately began sending Four Pillars trade secret and confidential information belonging to Avery Dennison. In his first transmittal he included an action plan setting forth the categories of materials he intended to deliver. He noted that most of the data would be taken from Avery Dennison and asked Four Pillars to "please make sure to treat them as confidential material." A week later, Lee sent "two extremely confidential reports" which he stated were the "fruit of painstaking work at Avery Research Center over a period of several years." In addition, Lee began to send formulas and research and development memos. All tolled, Lee sent nearly 12,000 pages of documents containing confidential information. Four Pillars duplicated adhesives of Avery Dennison and modified them. Lee actually tested some of the modified adhesives of Four Pillars in Avery Dennison's laboratories. In addition, he traveled to Taiwan to give several day-long seminars to Four Pillars' scientists on Avery Dennison's technology. Lee received regular payments from Four Pillars for his activities (between \$150,000 and \$160,000, most of which he saved in bank accounts). The money was paid through various avenues, including payments laundered through relatives in Taiwan.



The Uncovering of a Spy

In 1996, one of Four Pillars' employees decided to move from Taiwan to the United States. The Four Pillars employee, who knew of Lee's work as a spy for Four Pillars, applied for employment with Avery Dennison. After accepting an offer of employment,

he suddenly reneged when Yang found out that he had found a job at Avery Dennison. Yang protested that Avery Dennison could not hire his employee because, ironically, Yang contended that his employment with Avery Dennison would result in the disclosure of trade secret information belonging to Four Pillars. Puzzled, Avery Dennison employees questioned the Four Pillars employee on his sudden reversal. Eventually, after several calls, the Four Pillars employee advised Avery Dennison that Four Pillars had a consultant within Avery Dennison.

Avery began an internal investigation and in November 1996 contacted the FBI.

The FBI set up a surveillance operation to determine if in fact Lee was a spy. At a meeting in January 1997, Lee was shown a binder that contained confidential information of Avery Dennison involving its plan for operations in Asia. Lee was told that the information was confidential and that copies of the information were not to be made. After the meeting concluded, Lee came back to the office, which the FBI had wired for closed-circuit television, and looked in the files for the Asia plan. He left the office and then returned, turned off the lights, closed the blinds, put on winter gloves and opened the file drawer, taking the binder and leaving the room. His activities were caught on tape by the FBI.

Armed with this information, FBI officials confronted Lee and he soon confessed that he had been spying for Four Pillars since 1989. After agreeing to cooperate, Lee wrote out a detailed confession identifying the materials he had supplied to Four Pillars.

Meeting at The Westlake Hotel

Following Lee's agreement to cooperate, he was contacted by Yang concerning technical difficulties Four Pillars was having with some of its label machinery. Lee had provided Four Pillars with an Avery Dennison study relating to the operation of the machinery. Lee agreed to allow the FBI to monitor and record his calls with Yang. During these conversations, Yang advised Lee of his intention to visit the United States in September in order to meet with certain customers and to attend the U.S. Open in New York. Yang indicated an interest in obtaining additional information from Lee concerning Avery Dennison's plans in the Far East and new developments in technology. A meeting was set up at the Westlake Holiday Inn, which was secretly videotaped by the FBI.



During the videotaping, Yang carefully reviewed confidential Avery memos provided by Lee. He cut out all references to "CONFIDENTIAL MATERIAL" and to Avery Dennison Corporation before loading the documents into his suitcase. Towards the end of the several hours-long videotape, Yang said to Lee, "I'm a very careful person, whatever I get, I get rid of immediately. I do not like to make phone calls so she [indicating his daughter, Sally] called you, but I wouldn't." As the Yangs packed up and left the hotel to travel to Cleveland Hopkins Airport, they had little idea that several FBI agents waited for them as they entered the airport.

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