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## CHAPTER FOUR

### (U) OVERVIEW OF THE FBI'S HANDLING OF THE WEN HO LEE INVESTIGATION

#### (U) Questions Presented:

Question One: (U) Did the FBI assign a sufficient number of agents to the investigation?

Question Two: (U) Were the assigned case agents the "right" agents for this investigation?

Question Three: (U) How did two new agents come to be diverted from working on the investigation?

Question Four: (U) Was the FBI's Albuquerque Division ("FBI-AQ") understaffed in its National Foreign Intelligence Program ("NFIP")? Was foreign counterintelligence matters assigned an appropriately high priority at FBI-AQ, given the presence in New Mexico of Los Alamos National Laboratory, Sandia National Laboratory, and sensitive military facilities?

Question Five: <sup>(U)</sup> ~~(S)~~ Was the "Kindred Spirit" investigation pursued aggressively and given the priority that the underlying allegations warranted? Were there unnecessary delays?

Question Six: (U) Were supervisory personnel in FBI-AQ appropriately engaged in directing and managing the case?

Question Seven: (U) Were supervisory personnel in FBI Headquarters' National Security Division appropriately engaged in providing guidance and direction to the field and in ensuring that the case was pursued aggressively and with the proper commitment of resources?

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Question Eight: (U) To what extent did changes in personnel affect the FBI's ability and capacity to aggressively pursue the investigation?

Question Nine: (U) Was senior FBI-HQ management promptly, adequately and explicitly informed about the investigation and its problems?

*PFLAB Question #1: (U) Whether the FBI committed sufficient resources, including agents with appropriate expertise, and demonstrated a sense of urgency commensurate with an apparent compromise of classified U.S. nuclear weapons information.*

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A. (U) Introduction

(U) The fundamental question posed by this chapter is this: Did the FBI devote to this investigation the resources that the matter warranted and deserved, and did it provide to the investigation appropriate management and supervision? The answer is unequivocally no.<sup>60</sup>

(U) Unfortunately, this investigation was a paradigm of how not to manage and work an important counterintelligence case. Until late December 1998, this matter was never handled within the FBI with a due regard for its importance – not in the choice of agents to work the case, not in the number of agents assigned to work the case, not in the execution of case assignments, and not in the attention and supervision given the case by management at either FBI-AQ or FBI-HQ.

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<sup>60</sup>(U) It should be emphasized at the outset that the AGRT is not referring here to the post-March 1999 investigation of Lee touched off by the discovery of Lee's activities involving LANL's classified computer files. Review of the criminal investigation of Lee between March 1999 and the present is not part of the AGRT's assigned mission.

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(U) (S) Between April 1994 - when the preliminary inquiry against Lee was opened - and December 1998 - when Lee was interviewed and polygraphed by DOE personnel - this case proceeded at a pace that can only be described as languid, if not torpid, and that pace was itself periodically disrupted by dead-stop-in-the-water delays that, in an important counterintelligence investigation, can only be characterized as maddening and inexplicable."

(U) In addition, case progress was materially undermined by eight factors: (1) the lack of priority accorded the investigation at both FBI-HQ and FBI-AQ; (2) the problematic choice of case agents to work the case; (3) an unfortunate decision by FBI-AQ management that deprived the investigation of two additional requisitioned agents; (4) the remarkable frequency with which personnel changed assignments, resulting in case agents, supervisors and senior management having to learn the "case" over and over and over again; (5) a failure by certain FBI-AQ's and FBI-HQ's managers and

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"(U) This failure to treat the case with urgency and priority changed in December 1998 only because DOE - out of frustration with an FBI investigation that often seemed frozen in place, and out of concern that it take immediate steps to remove Lee from access to classified material - took two extraordinary actions: First, DOE decided that DOE would interview and polygraph the long-term subject of an FBI counterintelligence investigation. As will be discussed in a later chapter, this was done with FBI senior management's full knowledge and acquiescence and represents an error in judgment by FBI senior management that had significant collateral consequences. Second, DOE removed Wen Ho Lee from his job in X Division and set what the FBI interpreted as a 30-day deadline for a resolution of the Wen Ho Lee investigation.

(U) (S) DOE's frustration with the pace of the investigation was completely understandable, as was its desire to have a final resolution of the matter. The 30-day deadline, however, had a very unfortunate and unintended consequence. It led to the hurried creation by the FBI of a January 22, 1999 electronic communication ("EC") containing a SAC analysis of the case that was both improvident and, even on its face, premature. The FBI would never have created this document if it had waited even two more weeks, because by that time it knew that Wen Ho Lee had not "passed" the December 23, 1998 DOE polygraph as previously thought.

supervisors appropriately to advance the case; (6) a relationship between Headquarters and Albuquerque Division that was at times unproductive and problematic; (7) FBI-HQ's submission to OIPR of a FISA request that omitted critical information;<sup>62</sup> and (8) an unwillingness by knowledgeable supervisors and managers at FBI-HQ to avail themselves of established institutional mechanisms to complain about case progress or to bluntly convey to the FBI's senior management that the case was not being pursued aggressively and, in some respects, not even competently.

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~~(U)~~ Certain things *did* go right in the FBI's almost five-year long investigation of Wen Ho Lee. For example, one Headquarters supervisor periodically devoted exceptional attention and energy to the case; on a few occasions, different supervisors at Albuquerque Division and at Headquarters attempted to jump start the case [REDACTED] which, although defective in both its design and execution, was nevertheless a partial success; the case agents directly responsible for the case did a number of things that were right and appropriate; and the new SAC and ASAC at Albuquerque Division took several positive steps in the fall of 1998 and the spring of 1999 to advance the case.

(U) But, fundamentally, the investigation of Wen Ho Lee, from almost its beginning to almost its end, was mis-managed, mis-supervised, and mis-investigated by the FBI, and responsibility for this failure lies with *both* FBI-AQ and FBI-HQ.<sup>63</sup>

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~~(S)~~ As set forth in Chapter 11, the rejection by OIPR of the FISA application was a very significant mistake. That the FBI *contributed* to this mistake by omitting critical information from its submission should not detract from the recognition that this was, ultimately, OIPR's error, not the FBI's.

~~(S/AF/RD)~~ This Chapter, as it must, examines the FBI's conduct as if the case - as presented to the FBI in DOE's Administrative Inquiry ("AI") - was properly predicated, in other words, [REDACTED]

[REDACTED] Neither presumption is, in fact, correct, but the FBI did not recognize this until 1999, which, of course, is itself one of the principal problems the AGRT has identified. See Chapters 4, 6 and 7. Nevertheless,

B. (U) Did the FBI assign a sufficient number of agents to the investigation?

(U) Until 1999, when the FBI began to devote significant resources to the investigation of Wen Ho Lee, the FBI never assigned a sufficient number of agents to the investigation. As an actual - as opposed to an "on paper" - matter, there was never more than one agent actively and routinely working the case and no agent was ever assigned the Wen Ho Lee investigation *exclusively*. Thus, at all times, the case agent was subject to being pulled off to work on other matters and, periodically, did work on other matters. Indeed, at one point, there was *no* agent working on the case.<sup>64</sup>

(U) (SANT) From April 20, 1994, when a preliminary inquiry on Wen Ho Lee was opened, until November 2, 1995, when it was formally closed, SA [REDACTED] was the sole agent responsible for the investigation.

(U) From November 2, 1995 to May 30, 1996, there was no active investigation of Wen Ho Lee and, thus, no case agent. DOE's Administrative Inquiry ("AI") was underway and there was an FBI Special Agent, [REDACTED] assigned to the matter, but his work on the AI lasted just a few weeks.<sup>65</sup>

the only way accurately and fairly to evaluate the FBI's conduct of this investigation is to evaluate it in the context of the FBI's actual belief as to the essential nature of the case at the time it conducted the investigation.

(U) On October 22, 1998, SA [REDACTED] told SSA [REDACTED] he had not worked the case for several weeks due to certain drug surveillance responsibilities. (FBI 1374)

(U) (S) SA [REDACTED] involvement in the AI was limited, and ultimately curtailed by another assignment. His work consisted of the following: (1) He attended a DOE briefing on the investigation on October 31, 1995; (2) He accompanied [REDACTED] a DOE OCI investigator, to Lawrence Livermore National Laboratory ("LLNL") in early December 1995; (3) He created and disseminated an investigative plan on December 13, 1995; (4) He reviewed records at DOE Headquarters on December 19, 1995; (5) He accompanied [REDACTED] to Los Alamos National Laboratory ("LANL") and DOE's Albuquerque Operations Office in mid-February 1996 to review records and conduct

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(8) From May 30, 1996 until approximately March 30, 1997, SA [REDACTED] was the sole agent who worked the case. Throughout his work on the case, SA [REDACTED] also had other responsibilities, including serving as the liaison between the FBI and LANL and routinely meeting with a number of FBI assets. [REDACTED] 8/12/99) Because he worked in a Resident Agency with as few as three assigned agents, he was also periodically pulled off foreign counterintelligence work to support criminal investigations and conduct background investigations. (Id.)

(U) In late November 1996, SA [REDACTED] submitted applications for various supervisory positions at FBI-HQ and, on or about January 28, 1997, he was advised that he had been selected to be an FBI-HQ Supervisory Special Agent. (FBI 21574)

(U) Two days later, on January 30, 1997, SA [REDACTED] was advised by his supervisor, SSA [REDACTED] that he would be the "co-case agent" with SA [REDACTED] on the Wen Ho Lee investigation. (AQI 5596) This did not, however, necessarily mean that Albuquerque Division had decided to assign two agents to actively work the case since SA [REDACTED] was now on his way out of Albuquerque Division.

(U) SA [REDACTED] like SA [REDACTED] did not work exclusively on this investigation. When SA [REDACTED] was first assigned to the Wen Ho Lee investigation, his supervisor, SSA [REDACTED] told him that the investigation and another foreign counterintelligence matter would keep him "occupied full time." (AQI 5590) SA [REDACTED] received a similar message from SSA [REDACTED] in a meeting with him on April 17, 1997, which SA [REDACTED] recorded in a note to the file: "This case is my priority. All other cases must be put on back burner." (AQI 5375) Nevertheless, SA [REDACTED] did have other assignments, including handling leads arising out of [REDACTED] investigation and, occasionally, participating in drug surveillance operations and even investigating bank robberies. [REDACTED] 9/12/99; FBI 16127)

several interviews; (5) He wrote up several memos concerning his interviews and review of records; (6) He created and disseminated a plan for additional investigative activity on or about March 4, 1996; and (7) He reviewed and modified a draft of the Administrative Inquiry in mid-March 1996. SA [REDACTED] estimated he worked on the matter for a total of five weeks. [REDACTED] 12/14/99)

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(W) (S) During a part of the time period that SA [REDACTED] was the case agent, SA [REDACTED] was designated as the alternate case agent. SA [REDACTED] involvement in the case, however, was extremely limited. She accompanied SA [REDACTED] to several interviews; she was the FBI's point of contact on the mail cover of Lee that was initiated in early 1997; and she sent out a few leads generated by the mail cover itself.

(U) SA [REDACTED] remained the sole case agent until SA [REDACTED] replaced him as case agent in November 1998. SA [REDACTED] joined the Albuquerque Division on October 31, 1997 and was assigned to the Santa Fe Resident Agency, where she served as the FBI's liaison with LANL. As the LANL liaison, SA [REDACTED] had some limited involvement in the Wen Ho Lee investigation between November 1997 and November 1998.<sup>67</sup>

(S) (S) In November 1998, SA [REDACTED] was replaced on the case by SA [REDACTED]. This was certainly attributable at least in part to an October 31, 1998 FBI-HQ meeting between the new FBI-AQ Assistant Special Agent in Charge ("ASAC"), Will Lueckenhoff, and SSA [REDACTED] and [REDACTED] Unit Chief [REDACTED] in which SSA [REDACTED] and UC [REDACTED] complained about lack of progress in the Wen Ho Lee investigation. SA [REDACTED] was removed as case agent on or about November 4, 1998.

(U) SA [REDACTED] was the case agent from November 6, 1998 to approximately March 9, 1999, when [REDACTED]. A number of extremely significant events occurred during that time period - e.g., the December 1998 DOE interview and polygraph of Lee, the January 17, 1999 interview of Lee and subsequent

"(U) On March 18, 1997, SSA [REDACTED] instructed that SA [REDACTED] be briefed on the case as the alternate case agent. (AQI 5592)

(S) (S) During this time period, she interviewed [REDACTED] concerning the possibility that Lee was engaged in [REDACTED]. She interviewed [REDACTED] about information they had relevant to the investigation. She attended several meetings at LANL or FBI-AQ related to the case and she provided support to the [REDACTED].

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signed statement by Lee, the February 10, 1999 FBI polygraph of Lee, the March 5, 1999 interview of Lee and the March 7, 1999 interrogation of Lee. SA [REDACTED] had assistance on each of these matters from other FBI personnel, including SA [REDACTED] and SA [REDACTED] [REDACTED]

(U) The foregoing makes clear that until December 1998, the FBI handled this matter as a one agent case, and even that one agent was not dedicated to the case exclusively. Many of the problems discussed in this report stem from the simple fact that there was too much work and too few agents to accomplish that work. As a result, matters were done *consecutively* that, with a task force, or even with several dedicated agents, would have been done *simultaneously*. It is a partial, but only a partial, explanation as to why this case took so long and, prior to the search of Lee's office, achieved so little.

C. (U) Were the assigned case agents the "right" agents for this investigation?

(U) Were SA [REDACTED] SA [REDACTED] and SA [REDACTED] the most appropriate, the most experienced and the best agents for this assignment? As to SA [REDACTED] and SA [REDACTED] the agents who had the case for most of its existence - the answer is no, although that answer must be qualified by several considerations described below.

(U) As to SA [REDACTED] who was the case agent from November 6, 1998 to March 8, 1999, it is impossible to fairly evaluate her performance for two reasons:

(U) First, she was the case agent for only four months before [REDACTED] [REDACTED] By the time she came back to work in June 1999, the criminal investigation was well underway and she had been replaced by SA [REDACTED]

(U) (8) Second, and more significantly, by the late fall of 1998, the Wen Ho Lee case was becoming the proverbial "hot potato," and was already the subject of intense interest to the Select Committee on U.S. National Security and Military/Commercial Concerns with The People's Republic of China (the "Cox Committee"), a circumstance that itself

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influenced events. If the term "case agent" implies at least some degree of autonomy, control and decision-making authority over the progression of a case, that was no longer true for the Wen Ho Lee investigation by November/December 1998.

(U) This much, however, can be said: By December 1998, and certainly by January 1999, the Wen Ho Lee investigation – which for years had suffered from neglect, faulty judgment, bad personnel choices, inept investigation and the inadequate supervision of that inept investigation, nearly non-existent follow-up, faulty communication between DOE and the FBI and between FBI-HQ and FBI-AQ, and a consistent failure to recognize or appreciate the gravity of the case – would, at least and at long last, receive the attention it deserved.

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1. (U) SA [REDACTED]

(U) SA [REDACTED] entered on duty with the FBI on [REDACTED] and spent most of his career in FCI work. [REDACTED] 8/12/99) In about 1991, he learned that FBI-AQ was seeking an agent with FCI experience for its Santa Fe RA and he responded to the posting. (Id.) Although SSA [REDACTED] said that SA [REDACTED] was not FBI-AQ's first choice, SA [REDACTED] ultimately obtained the position. [REDACTED] 12/1/99) SA [REDACTED] reported to the Santa Fe RA in May 1991. (FBI 21591)

(U) SA [REDACTED] was the case agent who opened the preliminary inquiry on Wen Ho Lee that began in April 1994 and remained open until November 1995. SA [REDACTED] was then assigned the full investigation on Wen Ho Lee and Sylvia Lee when it was formally opened on May 30, 1996."

(U)  
"(8) The full investigation of Wen Ho Lee and Sylvia Lee, opened on May 30, 1996, is occasionally referred to in this report by its DOE and FBI code name, "Kindred Spirit." Technically, however, the FBI's "Kindred Spirit" code name pre-dates the opening of the Lee full investigation. In July 1995, FBI-HQ instructed FBI-AQ to open a file on the possible loss of nuclear technology to the PRC, and assigned it the code name "Kindred Spirit," which was the code name then being used by DOE for the same matter. (FBI 338; AQI 12935) The file was not opened, however, to do work on the case but, rather, as an administrative device to accumulate in one location the various

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(U) SA [REDACTED] was the first case agent on the Wen Ho Lee investigation and he had this critical responsibility for almost a year. The FBI's determination that this investigation should be assigned to SA [REDACTED] constituted a decision point of major significance. Therefore, as an initial matter, the AGRT examined whether that was an appropriate and wise decision. *The conclusion is inescapable that SA [REDACTED] should never have been assigned a case of this magnitude.* While that is a harsh judgment, it is warranted by FBI-AQ's difficult history with SA [REDACTED]. His assignment as case agent of the Wen Ho Lee investigation represents a management and supervisory failure by FBI-AQ that had long term and profound consequences for the advancement and resolution of the investigation.

a. (U) The 1992 Inspection

(U)  
(S) FBI-AQ was inspected by the FBI-HO inspection staff in June 1992. The review of SA [REDACTED] work resulted in [REDACTED]

[REDACTED] Specifically, the inspectors found the following:

(U)  
(S) [REDACTED]

(FBI 21644) (emphasis in original). Among the inspector's findings, see FBI 21627, were the following:

documents which the FBI was acquiring in connection with DOE's administrative and analytical inquiries. No work was done on the matter until Wen Ho Lee and Sylvia Lee were formally named as the subjects of the "Kindred Spirit" investigation and their names added to the caption of the "Kindred Spirit" file.

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- (u) (S) that SA [redacted]
- (u) (S) that SA [redacted]
- (u) (S) that on one major investigative matter [redacted]
- (u) (S) that due to SA [redacted]
- (u) (S) that in one matter SA [redacted]
- (u) (S) that as to numerous other matters, SA [redacted]

(u) (S) Moreover, SA [redacted] supervisor in 1992, SSA [redacted] who, significantly, would also be his supervisor in the "Kindred Spirit" investigation [redacted]

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(U)  
(S) The inspectors ordered FBI-AQ to prepare a new Performance Appraisal Report ("PAR") [REDACTED]

[REDACTED] (FBI 21662, 21628) The new report [REDACTED]

[REDACTED] (FBI 21664, 21675, 21673)

(U)  
(S) As a result [REDACTED]

[REDACTED] (FBI 21669, 21680, 21681) In effect, [REDACTED] (12/1/99) At the end of [REDACTED]

[REDACTED] (FBI 21683)

(U)  
(S) The PAR was signed by SSA [REDACTED] who supervised the Santa Fe Resident Agency, but according to the inspection report it was based on information provided by SSA [REDACTED] (FBI 21628)

(U)  
(S) The available ratings were (1) Exceptional; (2) Superior; (3) Fully Successful; (4) Minimally Acceptable; and (5) Unacceptable. Specifically, [REDACTED]

[REDACTED] (FBI 21676)

(U) That FBI-AQ [REDACTED] does not mean, however, that FBI-AQ now had full confidence in him. This is illustrated by an incident that took place following FBI-AQ's submission to FBI-HQ of SA [REDACTED] PAR. FBI-HQ sought documentation from FBI-AQ to support this rating. FBI-AQ initially declined to provide this documentation, asserting that it could jeopardize ongoing classified investigations in which SA [REDACTED] was engaged. (FBI 21685) FBI-HQ persisted and FBI-AQ sent in an addendum supporting SA [REDACTED] rating. (FBI 21687) SA [REDACTED] asked that FBI-HQ also be provided SA [REDACTED] own self-evaluation. FBI-AQ forwarded it to FBI-HQ with [REDACTED]

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(U) Thereafter, SA [REDACTED] was consistently rated [REDACTED] See FBI 21698 (1993 rating)<sup>72</sup>; FBI 21702 (1994 rating); FBI 21707 (1995 rating); FBI 21712 (1996 rating); and FBI 21718 (1997 rating). These ratings, however, are not consistent with what the AGRT was told by knowledgeable FBI personnel concerning SA [REDACTED] actual performance:

(U) SSA [REDACTED] who had substantial contact with SA [REDACTED] during the year in which SA [REDACTED] was the Wen Ho Lee case agent, described SA [REDACTED] as [REDACTED] (7/23/99) In a subsequent interview, SSA [REDACTED] added that SA [REDACTED] would often [REDACTED] (12/15/99)

(U) SSA [REDACTED] who was not only SA [REDACTED] supervisor but the rating official who in 1996 and 1997 [REDACTED] characterized SA [REDACTED] as [REDACTED] (6/22/99, 12/1/99) The most fulsome praise SSA [REDACTED] could muster about SA [REDACTED] was that he was not the worst agent with whom SSA [REDACTED] had ever worked.<sup>74</sup> [REDACTED] (12/1/99)

the specific disclaimer that SA [REDACTED] self-evaluation "do[es] not reflect the opinion or the rating of the reviewing officials and [REDACTED] (FBI 21687). (emphasis in original)

<sup>72</sup>(U) There are two ratings in 1993. The July 1, 1993 rating rates him [REDACTED] (FBI 21698) However, one dated July 12, 1993 rates him [REDACTED] (FBI 21700)

<sup>73</sup>(U) AD Neil Gallagher would later describe SA [REDACTED] (Gallagher 10/28/99)

<sup>74</sup>(U) SSA [REDACTED] also gave the AGRT some insight as to how an agent - who he viewed [REDACTED] He said that, in his

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(U) Tom Kneir, the FBI-AQ SAC at the time the Wen Ho Lee full investigation was opened in May 1996, was also aware of problems with SA [REDACTED] and, in fact, was the ASAC during SA [REDACTED] 1992 inspection difficulties." SAC Kneir, who is now the SAC of the Jacksonville Division, told the AGRT that he had previously had conversations with SSA [REDACTED] about SA [REDACTED] job performance and had met with SA [REDACTED] (Kneir 10/6/99)

(u)  
(s) While [REDACTED] somewhat dated, there were far more recent events that should have given FBI-AQ grave reservations about assigning the full investigation of Wen Ho Lee to SA [REDACTED]. Specifically, there was the preliminary inquiry of Wen Ho Lee. SA [REDACTED] work on the preliminary inquiry, as fully set out in Chapter 5, was so demonstrably inadequate [REDACTED]

[REDACTED] that this alone should have warranted the assignment of the full investigation to another agent.

b. (U) Why SA [REDACTED] was assigned the Wen Ho Lee investigation

(u)  
(s) How is it that FBI-AQ came to assign one of the nation's most important and significant espionage investigations to an agent whose own immediate supervisor characterized [REDACTED]

opinion [REDACTED]

[REDACTED] (12/1/99)

<sup>75</sup>(U) SAC Kneir was the senior FBI-AQ official involved in reviewing SA [REDACTED] February 1992 PAR, as well as the June 1992 revised PAR [REDACTED]

[REDACTED] (FBI 21662, 21664) He also signed off on the memorandum documenting the meeting with SA [REDACTED] to advise [REDACTED]

(FBI 21681)

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[REDACTED] There were five reasons, each of which were rational but none of which recognized the magnitude of the case:

(U) First, Wen Ho Lee worked at LANL and SA [REDACTED] was the FBI's liaison with LANL. To assign this significant case to anyone *other* than SA [REDACTED] would have been a clear vote of "no confidence" in SA [REDACTED] a step FBI-AQ was obviously unwilling to take.

(S)  
(U) Second, at least from a geographical point of view, the case was logically assigned to the Santa Fe RA, the closest FBI office to LANL. And SA [REDACTED] was the [REDACTED] agent assigned to the Santa Fe RA.

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(S)  
(S) Third, SA [REDACTED] had been the case agent on the preliminary inquiry of Wen Ho Lee and, therefore, was familiar with Lee and with at least some of the predicate for the FBI's investigative interest in Lee.

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(S) Fourth, SA [REDACTED] was assigned this case because there was really not much alternative, at least not within Albuquerque Division. FBI-AQ, as further discussed below [REDACTED] and no one other than SA [REDACTED] worked out of the Santa Fe RA. It is not true, however, that there was *no* alternative. While [REDACTED] SA [REDACTED] was already involved in another very high priority FCI case, the other agent, SA [REDACTED] would have been a logical alternative to SA [REDACTED] and should have been seriously considered. Moreover, SA [REDACTED] was *already* responsible for [REDACTED] matters in the Albuquerque Division. No one, however, raised with him the possibility of his becoming the "Kindred Spirit" case agent, even though former FBI-AQ SAC Kneir says it was considered.<sup>76</sup> [REDACTED] 2/2/00; Kneir 10/6/99)

<sup>76</sup>(U) SA [REDACTED] retired on August 1, 1997 and, therefore, even if he had been seriously considered, FBI-AQ might appropriately have had reservations about assigning a significant, long term investigation like Wen Ho Lee to an agent who might only be around for another year.

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(U) Finally, the question as to why the case was assigned to SA [REDACTED] assumes that there was a point in time where there was a serious deliberative process as to whom to assign the case. There was not. *If a case was to be opened with Albuquerque Division as the Office of Origin (the "OO") and with LANL as the principal focus,*" it was going to be assigned to SA [REDACTED]" Assigning it to someone else was never seriously contemplated."

"(U) While the Administrative Inquiry was underway, it was *not* a "given" that the case would ultimately be assigned to Albuquerque Division. In fact, in one handwritten note, SSA [REDACTED] groused about a February 1996 request from FBI-AQ to be briefed by SA [REDACTED] and [REDACTED], DOE OCI, when they came out to New Mexico to conduct portions of the Administrative Inquiry. SSA [REDACTED] said that the FBI-AQ SAC would receive the requested briefing but that SSA [REDACTED] was "concerned AQ might persist in the belief that this is their case – which it is not." (FBI 463) (emphasis in original)

(U)  
"(S/NF) Thus, SA [REDACTED] remained the point of contact for the investigation throughout the Administrative Inquiry. On October 12, 1995, SSA [REDACTED] told SA [REDACTED] that he should be part of an October 31, 1995 "Kindred Spirit" briefing at DOE Headquarters as well as future briefings and the efforts to be undertaken during the Administrative Inquiry. (AQI 2970) SA [REDACTED] then attended the October 31, 1995 briefing at DOE Headquarter concerning DOE's "Kindred Spirit" analysis. (AQI 2984; FBI 400) On February 13, 1996, SA [REDACTED] met with SA [REDACTED] and [REDACTED] at LANL to discuss the Administrative Inquiry. (AQI 866) SA [REDACTED] also remained the point of contact for the receipt by Albuquerque Division of sensitive reporting related to the investigation. (AQI 863; FBI 482)

"(U) SSA [REDACTED] did state that at the beginning of the full investigation of Lee, SSA [REDACTED] and SSA [REDACTED] discussed assigning the Wen Ho Lee investigation to someone other than SA [REDACTED] but there is no indication that this was seriously considered. [REDACTED] 12/1/99) Similarly, FBI-AQ SAC Kneir states that he suggested to SSA [REDACTED] that the Lee investigation be assigned to SA [REDACTED] but there is no indication that this was pursued either. (Kneir 10/6/99)

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c. (U) Consequences

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(U) What were the consequences of assigning this case to SA [REDACTED] and then having him work the case by himself?

(U)  
(S) Predictably, the consequences were unfortunate. It is not that SA [REDACTED] did nothing on the case during his June 1996 to March 1997 tenure as "Kindred Spirit" case agent. He did a number of positive things: He caused the issuance of national security letters to obtain financial and telephone records concerning the Lees; he interviewed two of Lee's X Division supervisors; he obtained LANL telephone records for Lee's office; he obtained and duplicated for FBI-HQ certain files related to Lee; he worked on the logistics associated with setting up a mail cover on Lee; and he requested that a sensitive FBI source be interviewed concerning his knowledge of the allegations against Lee.

(U)  
(S) That said, what SA [REDACTED] did *not* do is far more significant than what he did do:

- ~~(S/NFRD)~~ He did not challenge or test the predicate for the investigation itself, even to satisfy himself that it had merit and was well-tethered to the known facts. [REDACTED]

b1. |

(U)  
(S) In part, this is an FBI-HQ's failing as well. The full investigation of Wen Ho Lee was opened at FBI-HQ's instructions based on its unquestioning acceptance of the judgments in DOE's Administrative Inquiry.

~~TOP SECRET~~ [REDACTED]

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- (U) He did not aggressively pursue and advance the investigation." What best characterized the investigation during SA [REDACTED] tenure was unremitting delay. While not all the delay was attributable to SA [REDACTED] much of it was. This is discussed below.

(U)  
(S) This was the subject of great frustration at FBI-HQ. See, e.g., SSA [REDACTED] October 9, 1996 memo to Section Chief Jerry Doyle: SA [REDACTED] has not been too vigorous" (FBI 705) and the return note from UC [REDACTED] "[Investigation] does not appear to be going too well." (FBI 13042) The situation had not materially changed the following month, and there are two notes in the FBI's files, one dated November 21, 1996 indicating that Notra Trulock, DOE's head of the Office of Intelligence, "knows [REDACTED] (FBI 715) and a note the following date from SSA [REDACTED] to Unit Chief [REDACTED] that there "[s]till seems to be a real lack of urgency here!" (FBI 5794)

(U)  
(S) For example, no work took place on the case between May 30, 1996 and July 2, 1996, which SA [REDACTED] attributed at the time to a June 12, 1996 instruction he received from SSA [REDACTED] to not do any additional work on the investigation until SSA [REDACTED] and Section Chief Jerry Doyle came out to Albuquerque Division for a meeting on July 2, 1996. (AQI 954)

(S/NF) Another month of investigative time was lost (from approximately August 1, 1996 to August 30, 1996) when SSA [REDACTED] ordered a stand-down in the FBI's investigation while an evaluation was conducted to determine the implications of a CIA determination that the person who provided the CIA the "walk-in document," see Chapter 6, [REDACTED] For the reasons stated below, this delay was avoidable.

(U)  
(S) Other delays, if not unavoidable entirely, are inherent in a counterintelligence investigation that may involve activities in the field, at Headquarters, at the Department of Justice and, in some cases, at outside agencies. For example, FBI-AQ requested FBI-HQ on November 25, 1996 to obtain authorization for a mail cover on Wen Ho Lee. (AQI 1096). (A mail cover does not involve the opening of mail but, rather, the duplication or copying of information appearing on envelopes.) Because this required a memo from the Director of the FBI to the Attorney General, a memo from OIPR to the

~~TOP SECRET~~ [REDACTED]

(u)  
(S) He failed to grasp the fact that in the investigation of a nuclear weapons scientist whose daily business was to write computer codes - [REDACTED]

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[REDACTED] there was not a single thing more important than gaining access to Wen Ho Lee's computer files. This truth was not some elusive gossamer thread just beyond SA [REDACTED] grasp: rather, it was staring him in the face from his own interview write-ups. For example, on December 9, 1996, SA [REDACTED] interviewed [REDACTED] LANL's [REDACTED] [REDACTED] told SA [REDACTED] that

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(S/PT) [REDACTED]

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(AQI 1151) Similarly, SA [REDACTED] interviewed [REDACTED], X [REDACTED] on December 20, 1996, and [REDACTED] made similarly revealing statements about Wen Ho Lee and computers. See, for example, this statement:

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(u)  
(S) Lee is a code developer in Group HM of X division. Group HM is the Hydrodynamics Methods group. Lee writes software computer codes used to design nuclear weapons.

(S)(AQI 1155) The importance of statements such as these should have been evident to any agent but especially to SA [REDACTED] who, as further

Attorney General, a memo from the Attorney General back to the Director of the FBI, a memo from the Director of the FBI to the United States Postal Service, and a logistical operation to set up the mail cover and to clear the Postal Service employees who will be conducting the mail cover operation, it was not until April 11, 1997 that FBI-AQ received its first photocopy of an envelope. (AQI 5081, 5091)

described in Chapter 5, was the recipient of information back in [REDACTED]

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(U) From a counterintelligence point of view, the computer files could have been a gold mine. And, yet, although SA [REDACTED] put these words on paper, they never seemed to register with him.<sup>43</sup>

- (U) SA [REDACTED] failure to appreciate the importance of Wen Ho Lee's computer files was bad enough. Far worse was his failure to send to FBI-HQ - as he had promised (AQI 1071, FBI 716) - copies of certain documents that could have been critical to the FBI's National Security Law Unit's ("NSLU") understanding as to whether Lee's computer files could be searched without a FISA order. At a minimum, the submission of these documents to NSLU could have led to the initiation of additional inquiries which might have led to the discovery of the waivers Wen Ho Lee had already executed and which were then sitting in X Division's files. Instead, SA [REDACTED] obtained the documents from LANL on November 12, 1996 and simply stuck them in the FBI-AQ case file. (AQI 1079) See Chapter 9.

(U)  
(S) The significance of this error cannot be overstated. Had the FBI gained access to Wen Ho Lee's computer files back in the time period of November 1996, it would have become aware years earlier of the very conduct that is the subject of the pending Indictment. Equally significant, the FBI could have been monitoring Lee's computer in 1997 when he downloaded material from the X Division's classified computer system to "Tape N," as that tape is characterized in the Indictment of Lee.

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(U)  
(S) One proof of this is that, although SA [REDACTED] was in routine communication with FBI-HQ, he never shared with FBI-HQ the interviews of [REDACTED] or that of [REDACTED]. Even worse, the message FBI-HQ was given was that "[n]o useful information [was] obtained" in either the [REDACTED] or [REDACTED] interviews. (FBI 745)

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~~TOP SECRET~~ [REDACTED]

(u) (8) SA [REDACTED] was the case agent during the critical first year of the "Kindred Spirit" investigation. His failure to pursue the investigation aggressively, and the material mistakes he made, undermined the FBI's chance to bring the case to a successful resolution, and diminished DOE's confidence in the FBI's handling of the matter. That such a result was predictable, or at least probable, given SA [REDACTED] prior performance and his inadequate work on the preliminary inquiry, renders this a substantial and avoidable failure on the part of FBI-AQ's management.

2. (U) SA [REDACTED]

(U) SA [REDACTED] was a significant improvement over SA [REDACTED] as the Wen Ho Lee case agent. Having said that, he also was not an appropriate choice to be the sole agent running a major espionage investigation that required initiative, aggressiveness and speed.

(U) SA [REDACTED] who entered on duty with the FBI on [REDACTED] joined the Albuquerque Division on April 24, 1995, and was assigned to the Farmington, New Mexico, Resident Agency.<sup>44</sup> (FBI 16127; [REDACTED] 9/12/99) SA [REDACTED] stay in Farmington did not work out and he was transferred to work in Albuquerque.<sup>45</sup> Immediately upon his

<sup>44</sup>(U) For the previous 10 years, SA [REDACTED] had been stationed in the San Francisco Division where he was assigned to work FCI matters.

<sup>45</sup>(U) SSA [REDACTED] stated that SA [REDACTED] was transferred because [REDACTED] [REDACTED] (12/1/99) James Weber, who was the SAC at the time of SA [REDACTED] transfer from Farmington, said the same thing, i.e., that SA [REDACTED] (Weber 10/28/99) SSA [REDACTED] stated that SA [REDACTED] [REDACTED] (8/12/99, 12/7/99) SSA [REDACTED] stated that SA [REDACTED] was transferred out of the Farmington RA because [REDACTED]

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

arrival in Albuquerque on January 27, 1997, he was advised by ASAC Ronald Dick and by SSA [REDACTED] (that he would be working on the Wen Ho Lee investigation."<sup>66</sup> [REDACTED] 9/12/99; AQ 5596) Initially, SA [REDACTED] was advised that he would be the "co-case" agent with SA [REDACTED] but it became apparent almost immediately that SA [REDACTED] was leaving Albuquerque Division for his FBI-HQ posting and that SA [REDACTED] would not be working the case with SA [REDACTED] but by himself."<sup>67</sup>

[REDACTED] 9/9/99) In FBI-AO's August 13, 1996 justification memo to FBI-HQ seeking permission to transfer SA [REDACTED] from Farmington, SSA [REDACTED] stated the following:

(U) The work in the FRA [Farmington RA] is almost exclusively crime on Indian reservation matters.

\* \* \*

(U) To prepare SA [REDACTED] for this assignment, he has been afforded both formal and on the job training in these matters. SA [REDACTED] has displayed a tremendous attitude and willingness to learn the minimum skills necessary to independently complete his assignments. However, he has not been able to successfully grasp these skills so as to be a competent investigator and primary case agent of Indian reservation crimes. This has resulted in additional burdens for the other FBI Agents assigned to the FRA and leadership concerns by the Bureau of Indian Affairs, as well as other state and local law enforcement officials.

(AQI 6602)

<sup>(S)</sup>  
<sup>(S)</sup> SA [REDACTED] states that he first became aware of the fact that he would be assigned to the squad that handled FCI work, [REDACTED] in early December 1996 and was also told at that time that he would be working with SA [REDACTED] on a major case. 61

[REDACTED] 2/28/00)

<sup>67</sup>(U) On March 30, 1997, SA [REDACTED] formally requested that the case be transferred to SA [REDACTED] (AQ 1212)

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~~TOP SECRET~~ [REDACTED]

(S) (U) SSA [REDACTED] who was the supervisor of Albuquerque Division's [REDACTED] b1 which included the National Foreign Intelligence Program ("NFIP"), was displeased and dissatisfied with the assignment of SA [REDACTED] to the Wen Ho Lee investigation. As SSA [REDACTED] told the AGRT: SA [REDACTED] being just one agent, was not the number of agents he wanted on the case; SA [REDACTED] being stationed in Albuquerque rather than Santa Fe, was not located where he needed the help, and SA [REDACTED] was not the particular agent that SSA [REDACTED] wanted on the case. He told the AGRT that he complained to ASAC Dick that [REDACTED] instead of the two new agents which SSA [REDACTED] had been seeking." [REDACTED] 12/1/99)

(U) Nevertheless, SA [REDACTED] became the Wen Ho Lee case agent and served as the case agent from April 1997 to November 1998.

(U) SA [REDACTED] brought certain assets to the Wen Ho Lee investigation but, unfortunately, even greater liabilities.

(U) (S) In the asset column were the following:

- (U) SA [REDACTED] was a hardworking agent who would receive his marching orders, meticulously carry them out, and then meticulously document the fact that he had carried them out.
- (U) (S) SA [REDACTED] accomplished a number of significant tasks: he conducted important interviews of Lee's X Division supervisors; he provided necessary background information to SSA [REDACTED] for preparation of the FISA application; he requested issuance of national security letters; he initiated certain indices checks and financial record reviews; he kept LANL counterintelligence personnel apprised of the status of the investigation; and he kept SSA [REDACTED] advised routinely on developments in the case.
- (S) SA [REDACTED] was instrumental in the planning and execution of the [REDACTED] b1 [REDACTED] Although the operation was deeply flawed, particularly in [REDACTED]

"(U) The "two agent" issue is the subject of the next section.

~~TOP SECRET~~ [REDACTED]

its lack of planning, it was in fact a partial success that should have resulted in the submission of a FISA application.

(U) Unfortunately, given what was required to advance *this* investigation, the liability column outweighs the asset column. These liabilities included the following:

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- (U) SA [REDACTED] demonstrated little aggressiveness and almost no initiative. Given the extent to which this case was being run and managed from FBI-HQ, the case required an agent who would "pick up the baton" after SA [REDACTED] left [REDACTED] (12/7/99), and aggressively move the case forward. SA [REDACTED] was not that agent.<sup>89</sup> This lack of aggressiveness and initiative hurt the investigation in many ways.<sup>90</sup>
- (U) SA [REDACTED] deferred decision-making to FBI-HQ to the point of paralysis. Thus, virtually nothing happened on the investigation from August 1997, when the FISA application was rejected by OIPR, to December 1997, when a teletype finally arrived from FBI-HQ telling FBI-AQ what to do on the case. The four month delay in getting the teletype out of FBI-HQ was the

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<sup>89</sup>(U) SSA [REDACTED] described SA [REDACTED]  
 [REDACTED]  
 8/12/99) In a subsequent interview, SSA [REDACTED] described SSA [REDACTED]  
 [REDACTED] (12/7/99)

<sup>90</sup>(S/NF) For example, it ultimately led DOE Headquarters to instruct its own personnel to interview and polygraph Wen Ho Lee, leading to significant problems, as detailed in Chapter 17. For another example, FBI-AQ developed no plan for monitoring Lee's activities if he chose to travel abroad during the course of the investigation and, consequently, missed golden opportunities when Lee made trips to Taiwan in March 1998 and again in December 1998.

fault of FBI-HQ, not FBI-AQ. But FBI-AQ should never have let itself be placed, or let itself remain, in a position where its work on an important counterintelligence investigation was essentially stalled for months by FBI-HQ's failure to treat this issue as a priority matter.

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(8) SA [REDACTED] though meticulous and methodical, was also very, very slow. In a case that, at best, had never done more than sputter along, this was not what the investigation required. For example, the [REDACTED] took an unacceptably long time to plan and execute, particularly given how poorly planned it actually was.<sup>91</sup> As is fully described in this chapter and Chapter 14, some of the problems in planning the [REDACTED] were beyond FBI-AQ's control but many of them were not. There were

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<sup>91</sup>(8) The [REDACTED]

[REDACTED] (FBI 6424) In FBI-AQ's defense, it should be noted that the first reference to [REDACTED] in FBI-AQ's files is not until two months after the first Headquarters reference and the reference is not sanguine about the possibility of [REDACTED]

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See SA [REDACTED] note of October 21, 1997 recounting a meeting with his supervisor, SSA [REDACTED] in which they agreed that there was no "logical opening" to conduct [REDACTED] at that time. (AQI 5527) By December 1997, however, FBI-AQ was fully committed to [REDACTED] yet it still took another eight months to get it operational. The [REDACTED] might not have happened even then but for the fact that FBI-AQ was facing inspection in 1998 and SSA [REDACTED] was insistent that the [REDACTED] be done prior to the inspection. [REDACTED]

12/7/99) As it turned out,

[REDACTED] (The inspection ran from August 10 - 21, 1998. (FBI 15920))

also completely inappropriate investigative delays and even mishaps.<sup>92</sup> See Chapter 4, Section F(3), below.

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(S) SA [REDACTED] as to certain matters, did not undertake to accomplish important assignments at all. For example, on December 19, 1997, FBI-HQ directed FBI-AQ *immediately* to open preliminary inquiries on [REDACTED] who were named as persons of interest in DOE's "Kindred Spirit" Administrative Inquiry. (FBI 11855) SA [REDACTED] was explicitly instructed three days later by his supervisor, SSA [REDACTED] to open the preliminary inquiries. (AQI 5503) SA [REDACTED] did not do so. When asked about this by the AGRT, [REDACTED] said he had been too busy planning the [REDACTED]

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(u)

(S) For example, having gone to considerable effort to procure a mail cover on Wen Ho Lee's mail, FBI-AQ managed to let its renewal lapse, with the consequent result that the FBI - after obtaining the authority of the Attorney General herself for the mail cover - did not have the mail cover in place from June 13, 1997 to September 8, 1997. (AQI 5151, 5317; FBI 1083)

(u)

(S/NF) For another example, Wen Ho Lee left the country to go to Taiwan on March 15, 1998. (AQI 5492) Despite the fact that Lee filed the appropriate paperwork with LANL on March 2, 1998 seeking authorization to make the trip, and despite the fact that the trip was approved by LANL on March 10, 1998 (FBI 1275; AQI 1687, 5488, 5491), the FBI was unaware of the trip until March 23, 1998 (AQI 5492), eight days after he left the country. It is clearly unacceptable for the subject of a major, multi-year FBI counterintelligence investigation to leave the country - particularly to travel to a sensitive country with whom Lee had prior suspicious contacts, see Chapter 2 - without the FBI knowing about it. While DOE deserves much of the blame for not having a procedure in place that would have guaranteed that DOE counterintelligence was made aware of the trip so that it could notify the FBI, the Albuquerque Division should have insisted and assured itself that such a procedure was in place. This was a missed opportunity at multiple levels.

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~~TOP SECRET~~ [REDACTED]

b1 [REDACTED] and other matters." [REDACTED] 9/12/99) Other suggestions in the December 1997 teletype were also not pursued."<sup>4</sup>

- (U) SA [REDACTED] like SA [REDACTED] received information that should have informed him of the critical importance of gaining access to Wen Ho Lee's computer files, yet he failed to take appropriate steps to gain such access."<sup>5</sup> This was a failure of profound significance, particularly in light of the fact that Lee's downloading activity was anything but a matter of ancient history. SA [REDACTED] should have, but did not, ascertain the current status of banners and waivers on the LANL systems to which Wen Ho Lee had access. [REDACTED] 9/12/99) Had he done so - had he even asked relevant questions to the very witnesses, such as [REDACTED] and [REDACTED] who he was <sup>DOE b6, b7C</sup> already interviewing - he could have discovered that X Division had in its

<sup>(U)</sup>  
<sup>(S)</sup> The preliminary inquiries were in fact not opened until March 12, 1999 (AQI 374; FBI 1646) and, then, only at the specific instruction of AD Gallagher to open the preliminary inquiries immediately, that is to say, by "close of business" *that day*. [REDACTED] 9/10/99; Kitchen 9/10/99; Gallagher 10/28/99; Middleton 8/3/99)

<sup>(S)</sup> In November 1998, SA [REDACTED] was placed in the uncomfortable position of explaining to FBI-HQ *why* FBI-AQ - in essence, *why* SA [REDACTED] - had failed to comply with many aspects of the December 1997 teletype. The best she could come up with was the statement that a number of the proposals in the teletype were "field in abeyance" while FBI-AQ planned the [REDACTED] (AQI 1990) The other proposals, however, were not in conflict with the [REDACTED] and could have proceeded at the same time the [REDACTED] was being planned.

<sup>(U)</sup>  
<sup>(S)</sup> SA [REDACTED] conducted interviews, specifically of [REDACTED] and [REDACTED] that clearly apprised him of the significance of computers in connection with Lee's work and access. (AQI 5047, 1324; FBI 890) At times, it did seem as if he understood the issue. In his May 6, 1997 interview of [REDACTED] he specifically focused on Lee's ability to download information from a main frame computer to a disk and his ability to access data from his home. (FBI 890) On April 29, 1997, he wrote himself the following note: "[H]as he [Lee] attempted to access areas of computer which he is not authorized to access." (AQI 5367)

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own files signed waivers by Wen Ho Lee and that, even absent the waivers, Wen Ho Lee had no expectation of privacy.

(U) (S/NF) While his failure to pursue this matter may be comprehensible during the April 1997 to August 1997 time period, when FISA coverage was being pursued, it is not understandable *after* the FISA application was rejected.<sup>96</sup> At that point, the *only* way to have gained access to Lee's computer files was through either a consent search or through a determination that Lee had no expectation of privacy.<sup>97</sup>

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(S/NF) SA [REDACTED] like SA [REDACTED] never genuinely explored the predication for the case.<sup>98</sup> He was under no more obligation to accept the predicate given to the FBI by DOE than was SA [REDACTED]. He could have, and should have, at least received an intelligence briefing, and reviewed the pertinent records [REDACTED]

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[REDACTED] Had he done so, the FBI

<sup>96</sup>(U) Even if SA [REDACTED] believed that a new FISA application might eventually be submitted, he certainly knew that, at least for the immediate future, FISA coverage was dead and other investigative approaches had to be considered.

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(S) Nor is it an explanation that SA [REDACTED] relied on his review of the case file and on SSA [REDACTED] November 14, 1996 communication to Albuquerque Division that the National Security Law Unit advised SSA [REDACTED] that a FISA order was required to surveil the subject's computer. (AQI 1087; FBI 720) That same file also contains a communication by SA [REDACTED] to the file stating that, as of November 12, 1996, Lee's division had not yet gone on line with an electronic notice of monitoring system. (AQI 01079) Long before he learned that the FISA application had been rejected, and *certainly afterwards*, SA [REDACTED] should have ascertained whether the on-line system had gone into effect, and the current status of banners and waivers on the LANL system.

(U) (S) Unlike SA [REDACTED] SA [REDACTED] at least had received a briefing on the predication for the case. (See AQI 2984 concerning the October 31, 1995 briefing of SA [REDACTED] SA [REDACTED] and SSA [REDACTED] at DOE Headquarters.)

~~TOP SECRET~~ [REDACTED]

might have learned two years earlier than it did that there were fundamental problems with both the predicate and the exclusive focus on Lee.

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(U) Similarly, SA [REDACTED] never did anything more than make a superficial examination of the nature of Lee's work and the true nature of his access to classified material, even though SA [REDACTED] had available to him several knowledgeable individuals who could have given him chapter and verse on these topics, and even though these individuals - [REDACTED] and [REDACTED] all of X Division - had already been interviewed or were being interviewed by the FBI.

~~(S/NF/PD)~~ Such an examination was not a matter of mere academic curiosity but, rather, a necessity in *this* investigation. [REDACTED]

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[REDACTED] It would seem self-evident that in order to acquire evidence of that compromise, the FBI needed more than FISA coverage or a [REDACTED]

[REDACTED] A thorough examination of these issues - and a review of Lee's work product during his tenure at LANL - could have substantially advanced the investigation and might have led to the identification of important witnesses, some of whom surely could have been interviewed without alerting Lee, and the setting of important leads.

~~(S/NF/PD)~~ [REDACTED]

[REDACTED] The answer, obviously, is that FBI-AQ was counting on overhearing some incriminating admission through FISA coverage or, after the FISA application was rejected, catching Wen Ho Lee

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

b1 "in the act" of committing espionage or making incriminating admissions during the course of the [REDACTED]. Those were tantalizing possibilities, but that was all they were, possibilities.

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(U) In summary, SA [REDACTED] was an improvement over SA [REDACTED] and he did make significant contributions to the investigation. Moreover, it is readily apparent that he tried, in good faith, to comply with the instructions he received from FBI-HQ and his Albuquerque Division supervisor." However, he was far from what the case required, which was an aggressive, very experienced counterintelligence agent, with a strategic plan for bringing the investigation to a successful resolution, and with the confidence, the determination and the mettle to actually run the case, rather than merely run leads for FBI-HQ. That this is not what the case received is not SA [REDACTED] fault but, rather, that of FBI-AQ management, which chose to assign this major counterintelligence investigation to just one agent and to make that agent SA [REDACTED]

3. (U) SA [REDACTED]

(U) SA [REDACTED] was the Wen Ho Lee case agent from November 6, 1998 to March 9, 1999, when [REDACTED]. Given her short tenure, and the other factors cited above, it would be unfair to generalize about her service as case agent in this matter. However, a number of positive comments, and several negative ones, can be made about her tenure as case agent:

(U)

(S) First, as to the positive:

(U)

- (S) Upon being instructed by FBI-AQ management to prepare a new request for a FISA order, she did an excellent job pulling together the disparate evidence supporting an assertion that Wen Ho Lee was an agent of a foreign power. While FBI-HQ essentially dismissed it, and it did have problems, it also had within it the genuine basis for a FISA application.

"(U) It should be noted, here, that SA [REDACTED] like SA [REDACTED] was not able to work on the Wen Ho Lee investigation exclusively and was periodically pulled off to work on other matters, such as bank robberies and drug surveillance. (FBI 16127, 1374)

~~TOP SECRET~~ [REDACTED]

- (U) She conducted a competent and professional, if not especially revealing, interview of Wen Ho Lee on January 17, 1999, and again on March 5, 1999.
- (U) She deserves substantial credit for obtaining permission from Lee on March 5, 1999 to search his LANL office. It is this consent search that ultimately led to the discovery of Lee's illicit activities concerning LANL's classified computer files.

(U) As to the negative, the following can be said:

- (U) (S/NF) She devoted far too much attention to the fundamentally flawed notion that Wen Ho Lee was possibly engaged in [REDACTED]. In doing so, she relied far too much on one asset's analysis of the implications of the periodic "burping" of the cordless telephone owned by [REDACTED]. That analysis - which purported to delineate a pattern consistent with the possibility that [REDACTED] - has now been reviewed by an FBI-HQ expert and determined to be meritless.

• (U) Despite considerable prior experience with computer searches, and despite her clear recognition of the importance of gaining access to Lee's computer files, she failed to pursue this matter aggressively. See Chapter 9.

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• (U) Nor did SA [REDACTED] aggressively pursue obtaining the charts of DOE's polygraph of Wen Ho Lee on December 23, 1998. FBI-AQ's failure to obtain these charts for a full month, which was erroneously attributed by FBI-AQ to DOE intransigence (FBI 1589), had significant adverse consequences for the investigation.

• (U) SA [REDACTED] March 7, 1999 interview of Wen Ho Lee involved an inappropriate use of threats, including the threat of death by

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electrocution.<sup>100</sup> It must be said, however, that this was certainly not SA [REDACTED] idea. Rather, she was instructed by SAC Kitchen to advise Lee of the case of Julius and Ethel Rosenberg and the deadly consequence of not

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<sup>100</sup>(U) Among other references to the Rosenbergs, SA [REDACTED] asked Lee if he "wanted to go down in history . . . professing your innocence like the Rosenbergs to the day they take you to the electric chair." (AQI 4015 at 56) The March 7, 1999 interrogation of Lee was filled with other references intended to break down Lee's defenses, including telling Lee that, unless he cooperated, he would have no job, no security clearance, no money to pay bills, newspapers would be saying he had been arrested for espionage, his child would be questioned by reporters, his situation would eat away at him worse than his bout with cancer, his family would fall apart, his kids were going to have to live with the knowledge that he had been arrested for espionage, his wife would be polygraphed, and so on. (AQI 4015) After the interview, which SAC Kitchen watched on closed circuit television from a nearby room, he told SA [REDACTED] she had done a good job; SA [REDACTED] however, felt "sick" about it. [REDACTED] 9/7/99) See Chapter 17.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

cooperating with the Government. An FBI Special Agent who threatens a subject with death by electrocution may place any resulting confession at risk<sup>101</sup> and may be in violation of FBI policy.<sup>102</sup>

4. (U) Conclusion

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(S)  
(U) Excepting SA [REDACTED] who was not on the case long enough for the AGRT to make a meaningful judgment, the FBI did not assign the "right" agents to the Wen Ho Lee investigation. This significant error in judgment - which, of course, affected virtually every other aspect of the investigation - is attributable to FBI-AQ management, although FBI-HQ's National Security Division (in particular, the [REDACTED] section) was well aware of the problem.

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(U) The failure to assign the "right" agents to the case was, however, only a part of the personnel problem with this investigation. There was also the matter that is the

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<sup>101</sup>(U) The AGRT makes no finding as to whether the threat of death by electrocution, particularly when combined with other statements made by the FBI during the March 7, 1999 interview, would render any confession made by the subject involuntary. Given that there was *no* confession, the matter is largely academic. It is sufficient to state that such statements by the FBI would have unnecessarily placed a confession at risk. See, generally, Weidner v. Thieret, 866 F.2d 958 (7<sup>th</sup> Cir. 1989), (habeas petitioner entitled to hearing on issue of whether his confession was coerced where petitioner, who had brain damage, was threatened with electric chair if he did not make a statement), Murphy v. Walwright, 372 F.2d 942 (5<sup>th</sup> Cir. 1967) (threat regarding horrors of dying in electric chair required remand to determine if guilty plea coerced). But see Wilcox v. Ford, 813 F.2d 1140 (11<sup>th</sup> Cir. 1987), Green v. Scully, 850 F.2d 894 (2d Cir. 1988).

<sup>102</sup>(U) Section 7-2.1 of the FBI's Legal Handbook for Special Agents states: "It is the policy of the FBI that no attempt be made to obtain a statement by force, threats, or promises." (FBI 21859) But see O'Ferrell v. United States, 968 F.Supp. 1519, 1538 (M.D. Ala. 1997) (holding that a threat of the electric chair did not violate Section 7-2.1 because electrocution would be the product of a judicial proceeding and not be inflicted on the defendant by the FBI.)

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subject of the next section, i.e., the failure by both FBI-AQ and FBI-HQ to provide to the case agents the additional help they needed and which FBI management knew they required.

D. (U) The diversion of two agents

1. (U) Introduction

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(U) On or about November 1, 1996, two new FBI Special Agents arrived at the Albuquerque Division. They were [REDACTED] and [REDACTED] and they had just graduated from the New Agents Class at Quantico.<sup>103</sup> This was their first office assignment and SA [REDACTED] was immediately assigned to a gang task force and fugitive squad and SA [REDACTED] was immediately assigned to the Farmington, New Mexico, Resident Agency ("Farmington RA") to work crimes on Indian reservations. [REDACTED] 2/8/00; [REDACTED] 2/16/00; AQI 6325)

(S)  
(U) Assigning agents to work gang cases or crimes on Indian reservations is, of course, entirely appropriate and proper. The only problem with *this* assignment was that these agents were specifically assigned to Albuquerque Division for the purpose of supporting the Wen Ho Lee investigation. As FBI-HQ [REDACTED] Unit Chief [REDACTED] said: "Bodies were asked for, bodies were provided and bodies were diverted."<sup>104</sup> [REDACTED] 12/29/99)

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<sup>103</sup>(U) SA [REDACTED] remains an FBI agent; SA [REDACTED] resigned from the FBI on November 30, 1997.

<sup>104</sup>(U) According to UC [REDACTED] he made this statement in an October 1999 briefing he gave to FBI-AQ ASAC Will Lueckenhoff. (Id.)

2. (U) The diversion

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(U) In June 1996, SSA [REDACTED] and SSA [REDACTED] realized they had a problem. Given the scope of the Wen Ho Lee investigation, and given the fact that the case was assigned to SA [REDACTED] they knew they had to get him help. According to SSA [REDACTED] they knew he would not be able to handle the investigation by himself.<sup>105</sup> [REDACTED] 12/1/99)

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(S) Detailing another agent from the Albuquerque Division to work on the Wen Ho Lee investigation was not at all a promising option. [REDACTED]

[REDACTED] Assigning [REDACTED] to the case was not a practical, and perhaps not even a possible, solution to the problem.<sup>106</sup>

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(U) SSA [REDACTED] and SSA [REDACTED] considered a number of options, including transferring senior agents to Albuquerque Division as their "OP" (Office of Preference) or, as it is now called, their "PRL" (Personnel Resource List) transfer. But they recognized that they might not get the agent they wanted since such transfers were based on seniority and, in any case, it might be months before they could get anyone transferred in through an OP transfer. [REDACTED] 12/1/99) They decided instead to seek the assignment of brand new agents to Albuquerque Division. This might or might not have meant that these two *particular* agents would work the Wen Ho Lee investigation. They might be

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<sup>105</sup>(U) SSA [REDACTED] added that "to be fair, not many [agents] could have handled it alone, given the scope of the investigation."

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<sup>106</sup>(S/AF) [REDACTED] in the Albuquerque Division is the subject of a later section of this chapter. It is sufficient to note here that [REDACTED]

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assigned to work the case themselves or be used as "back-fill" to replace two experienced agents from other squads who would be transferred from their own case responsibilities to the Wen Ho Lee investigation.<sup>107</sup>

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(S) The section chief ("SC") of [REDACTED] Jeremiah Doyle, decided that he needed to make a trip out to Albuquerque to discuss the case with the field office and to assess for himself its staffing requirements. On July 2, 1996, SC Doyle and SSA [REDACTED] met in Albuquerque Division with SAC Thomas Kneir, ASAC Ronald Dick, SSA [REDACTED] and SA [REDACTED]. SAC Kneir made it clear to SC Doyle that there were not enough resources in the Santa Fe RA to work a case of this magnitude. SC Doyle also met with SA [REDACTED] and concluded that he would need "a lot of support." (Doyle 10/19/99)

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(S) SC Doyle states that he came back to FBI-HQ and asked for the temporary duty assignment ("TDY") of [REDACTED] but ultimately settled for the transfer of two permanent agents to support the case.<sup>108</sup> (Doyle 10/19/99) On July 25, 1996, Robert Bryant, who was then the Assistant Director of the National Security Division, requested that the FBI's Personnel Division "favorably consider overstaffing the Albuquerque Division NFIP [National Foreign Intelligence Program] by two Special Agents to support" the "Kindred Spirit" investigation. (FBI-03265) In support of this request, AD Bryant stated:

(U)

(S) \* \* \* This will be a major investigation which may last two years or more. \* \* \* Albuquerque requested that additional Special Agents be made

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<sup>107</sup>(S) Both former FBI-AQ SAC Kneir and [REDACTED] Section Chief Chuck Middleton stated that they would have expected the new agents to be used as "back-fill." (Kneir 10/6/99; Middleton 8/3/99) But SSA [REDACTED] told the AGRT that it was his intention to actually put the new agents on the Wen Ho Lee investigation, rather than use them as "back-fill." He assumed that there would be a lot of basic "leg work," physical surveillance and record checks that two "FOAs" (First Office Agents) could handle.

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<sup>108</sup>(U) The case file at FBI-HQ does not reflect the request for five agents and it is not clear whether this request was ever committed to paper. What was committed to paper was the request for two agents.

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available to work this high impact case. \* \* \* Because Albuquerque's staffing levels have already been set for the next FY 1997 the most expeditious means of addressing Albuquerque's needs is to overstaff the Division through new agent and Personnel Resource List transfers. Any combination of new or experienced Special Agents would be acceptable; but agents with an FCI background and or Mandarin language ability would best suit the anticipated requirements of captioned investigation.

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(FBI 3266) The request to "overstaff" the Division by two agents to support the Lee investigation was approved<sup>109</sup> (FBI 20354, 21841) and SSA [REDACTED] sent a copy of the memorandum to FBI-AQ's ASAC Ronald Dick (AQI 985), with a cover note that read as follows:

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(S) RE: KINDRED SPIRIT  
FCI [REDACTED] (DOE)  
OO: AQ

ATTN: ASAC Dick

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Ron -

Here are two extra bodies. I'll follow progress with [REDACTED] in SATU [Special Agents Transfer Unit]  
[REDACTED]

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<sup>109</sup>(U) FBI records indicate that AD Bryant's memo was approved by the Office of Deputy Director Weldon Kennedy. (FBI 21842) After receiving it, a Personnel Division official spoke with SC Doyle and ascertained that over staffing FBI-AQ with two agents from the new agents class "would be satisfactory." (FBI 21842) On July 29, 1996, the order was issued: "Up AQ by 2 - new SA's from Quantico OK." (FBI 21841)

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(AQI 984)<sup>110</sup> The orders were then cut assigning SA [REDACTED] and SA [REDACTED] to the Albuquerque Division,<sup>111</sup> and the agents arrived in New Mexico on or about November 1, 1996.<sup>112</sup>

(U) The decision to assign SA [REDACTED] and SA [REDACTED] to matters *unrelated* to the Wen Ho Lee investigation was made by ASAC Dick [REDACTED] 8/16/99: [REDACTED] 12/1/99), and ASAC Dick sent a memo to all FBI-AQ employees on October 24, 1996 advising them of the assignment of each of the new agents coming into the Division. The memorandum reflects the assignment of SA [REDACTED] to Squad 7 (which included the gang

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<sup>110</sup>(U) According to SSA [REDACTED] ASAC Dick was deeply involved in obtaining approval from FBI-HQ for the two new agents and discussed the matter with the National Security Division and the Special Agent Transfer Unit. According to SSA [REDACTED] once ASAC Dick had been advised that the request for the two agents had been approved, he told SSA [REDACTED] that "we got your two SA's" and gave SSA [REDACTED] their names.

(6x)  
<sup>111</sup>(S) Both SA [REDACTED] and SA [REDACTED] orders assigning them to FBI-AQ were dated August 16, 1996 [REDACTED] 002, FBI 21844), a little over two weeks after FBI-HQ's approved the overstaffing of FBI-AQ by two agents. (FBI 21841) While several other new agents were also assigned to Albuquerque Division in August 1996 and September 1996, there is no question that SA [REDACTED] and SA [REDACTED] were *the* two agents assigned to FBI-AQ as a result of the overstaffing decision. See, e.g. the entry for 7/25/96 in the FBI's Wen Ho Lee chronology at FBI 07917 (boldface in original): "NSD requests Personnel Division overstaff AQ with two new agents to assist in this investigation, per AQ SAC's verbal request on 7/2/96. SATU designates new Special Agents [REDACTED] and [REDACTED]. See also the interview of SSA [REDACTED] (12/1/97) (which makes clear that his confrontation with ASAC Dick concerning the diversion of the two agents was prompted by the arrival of SA [REDACTED] and SA [REDACTED] in the Division.)

<sup>112</sup>(U) By the time the agents arrived, SAC Kneir had left the Albuquerque Division. ASAC Dick was the Acting SAC from August 1996 to October 1996, when the new SAC, James Weber, arrived. SAC Weber arrived at Albuquerque Division on or about October 15, 1996. (Weber 10/28/99)

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(task force and fugitive squad) and SA [REDACTED] to the Farmington RA.<sup>13</sup> (AQI 6325) While the decision to assign these agents to work unrelated to the Wen Ho Lee investigation was not *announced* until October 24, 1996, it was clearly *made* much earlier. For example SA [REDACTED] orders assigning him to the Farmington RA were dated September 17, 1996. [REDACTED] 0003)

(u)  
(S) SSA [REDACTED] states that, around the time of SA [REDACTED] and SA [REDACTED] arrival, i.e., early November 1996, ASAC Dick called SSA [REDACTED] into his office and told him that he thought the two new agents could be better used in other program areas.<sup>14</sup> SSA [REDACTED] states that he asked ASAC Dick: "What am I supposed to do about Kindred Spirit?" ASAC Dick responded that he would assign SA [REDACTED] to SSA [REDACTED] squad for the time being. SSA [REDACTED] asked ASAC Dick if SA [REDACTED] was going to be assigned to the Santa Fe RA, where SA [REDACTED] was then working. ASAC Dick said no, that SA [REDACTED] would be stationed in the Albuquerque office. SSA [REDACTED] said he was not pleased and clearly articulated his unhappiness to ASAC Dick. Specifically, he recalls telling ASAC Dick: [REDACTED] but ASAC Dick's reaction was "that's the way it's going to be." ASAC Dick said that if, in the future, SSA [REDACTED] needed more people, they could make additional changes and that, in the meantime, SA [REDACTED] could help out on "Kindred Spirit" if necessary. [REDACTED] 12/1/99)

<sup>15</sup> (u)  
(S) The memo also reflects the transfer of two [REDACTED] SSA [REDACTED] squad, but *neither* was assigned to FCI. SA [REDACTED] was initially assigned to drug intelligence and then to domestic terrorism; former SA [REDACTED] worked international terrorism matters. [REDACTED] 2/24/00) | 61

(u)  
(S) It is not entirely clear how or when SSA [REDACTED] first learned that the agents would not be assigned to the "Kindred Spirit" investigation. SA [REDACTED] stated that he told SSA [REDACTED] about the matter after learning from SSA [REDACTED] that the agents had already arrived. Since SA [REDACTED] obviously knew that the agents were not working the "Kindred Spirit" case, he called SSA [REDACTED] to complain. [REDACTED] 8/12/99) SSA [REDACTED] said that he had received a "heads up" from SSA [REDACTED] that the agents were coming but he did not know that they were not being assigned to the "Kindred Spirit" investigation until ASAC Dick told him so. [REDACTED] 12/1/99)

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(U) The fact that SA [REDACTED] was sent to Farmington and SA [REDACTED] was sent from Farmington might lead one to conclude that FBI-AQ was doing precisely what former SAC Kneir said it should have done: assigning additional agents to the Wen Ho Lee investigation by transferring experienced agents onto the Wen Ho Lee investigation and using the new agents as "back-fill." That view, however, cannot withstand scrutiny. SA [REDACTED] was used as "back-fill" for SA [REDACTED] but it had *nothing* to do with putting *additional* resources on the Wen Ho Lee case.

(U) To understand this, it is necessary to examine *why* - and more importantly - *when* FBI-AQ decided to bring SA [REDACTED] from Farmington. This report has already explained the "why," see Chapter 4, Section (C)(2): [REDACTED]

[REDACTED] (AQI 6602) A transfer was necessary to "enhance the productivity of the F[armington] RA." (AQI 6603) In other words, SA [REDACTED] was transferred from Farmington to Albuquerque not to solve an Albuquerque problem (the Wen Ho Lee case) but, rather, to solve a Farmington one [REDACTED]

(U) The timing of the decision, - the "when" part of this analysis, - is equally significant. FBI-AQ's request for permission to bring SA [REDACTED] from Farmington was sent to FBI-HQ on May 7, 1996 (AQI 6607), *i.e.*, *almost a month before the Wen Ho Lee full investigation was even opened*. This, alone, establishes that the decision to transfer SA [REDACTED] to Albuquerque had nothing to do with the Lee investigation. If more proof was needed, however, SA [REDACTED] supplies it himself. He told the AGRT that, after it was determined that he would be transferred in from Farmington, he was given two options as to his squad assignment: one was to go to a violent crimes squad and the other was to go to a white collar crime squad. Neither FCI work, in general, nor the Wen Ho Lee case, in particular, was presented to him as an option. [REDACTED] 2/28/00)

(U) Of course, for FBI-AQ to solve its Farmington problem, it was obviously not enough for FBI-AQ merely to transfer SA [REDACTED] from Farmington. It had to replace him in the Farmington RA with another agent. FBI-AQ obviously recognized this need: In an August 13, 1996 memorandum to FBI-HQ supporting the transfer of SA [REDACTED] to Albuquerque, FBI-AQ stated that an agent needed to be sent to Farmington to replace SA

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[REDACTED] specifically an agent "who has investigative skills or potential to independently address Indian reservation crimes." (AQ 6603)

(U) The agent ASAC Dick settled upon to solve the *Farmington* problem was one of the two new agents that FBI-HQ sent to FBI-AQ to solve the *Wen Ho Lee* problem: SA [REDACTED]. Thus, it is true that SA [REDACTED] was "back-fill" for SA [REDACTED] but it had nothing to do with the *Wen Ho Lee* investigation.

(U) SA [REDACTED] did, of course, come *eventually* to be assigned to the *Wen Ho Lee* investigation. But that was not until November 1996 – at least six months after FBI-AQ first requested FBI-HQ's permission to transfer SA [REDACTED] from *Farmington*.<sup>115</sup> More significantly, by the time FBI-AQ decided to put SA [REDACTED] on the *Wen Ho Lee* investigation, FBI-AQ's management either knew – or was about to find out – that the problem with the *Wen Ho Lee* case was not how to put a *second* agent on the case but the possibility that there might soon be *no* agent on the case.<sup>116</sup>

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<sup>115</sup>(U) Although SA [REDACTED] was not told he would be working specifically on the *Wen Ho Lee* investigation until on or about January 30, 1997, when he was told by SSA [REDACTED] that he would be "co-case agent" on the *Wen Ho Lee* investigation [REDACTED] 9/12/99; AQI 5596), he did know prior to this date that he would be going to SSA [REDACTED] squad and would be working a case with SA [REDACTED]. He states that he was advised of this in early December 1996 [REDACTED] 2/28/00), although the documentary record suggests that he may be a week or two off. SA [REDACTED] transfer orders, signed by SA [REDACTED] on November 25, 1996, contain a handwritten notation that a copy of the orders went to SSA [REDACTED] (AQI 6600). This indicates that at least by this date – November 25, 1996 – the decision had been made to assign SA [REDACTED] to SSA [REDACTED] squad and to the *Lee* investigation.

<sup>116</sup>(U) At least by November 26, 1996, which was the date on which SA [REDACTED] signed his FD-638s ("Supervisory Vacancy Request Forms") (FBI 21591, 21594), FBI-AQ knew for a certainty that SA [REDACTED] was attempting to leave the Division. SAC Weber, in fact, initialed a paragraph in the FD-638 forms recommending SA [REDACTED] for the promotion. (Id.)

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(U) SA [REDACTED] assignment to the Wen Ho Lee case, therefore, cannot fairly be characterized as an effort to put two agents on the case but, rather, as an effort to insure that there was at least one agent on the case. Even if the decision to put SA [REDACTED] on the Wen Ho Lee investigation predated by a few weeks FBI-AQ's awareness of SA [REDACTED] efforts to leave the Division, thereby supporting the claim that FBI-AQ, at least briefly, intended to put two agents on the case, it is of little moment. Regardless of what FBI-AQ knew in *early* November 1996, it certainly knew by *late* November 1996 that SA [REDACTED] was attempting to leave the Division and by approximately the end of January 1997 that SA [REDACTED] had succeeded in his efforts.<sup>117</sup> It knew, in other words, that putting SA [REDACTED] on the Wen Ho Lee investigation would simply be replacing one agent with another, not adding one agent to the other.<sup>118</sup>

(U) The AGRT questioned ASAC Ron Dick about this matter, in the hope that he would shed light on his decision to divert these agents from the Wen Ho Lee investigation.<sup>119</sup> That did not happen. Rather, ASAC Dick told the AGRT that he did not know that the two agents had been sent to FBI-AQ specifically to work on the Wen Ho Lee investigation. In fact, he told the AGRT that when the AGRT asked him about this matter in July 1999 that was the "first time" he had heard that the agents had been sent out specifically to work on the Wen Ho Lee investigation. This statement, however, is not consistent with: (1) the July 25, 1996 paperwork, including the note from SSA

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<sup>117</sup>(U) SA [REDACTED] was selected for the Headquarters position on or about January 22, 1997 (FBI 21576) and the Notification of Transfer was issued January 28, 1997 (FBI 21574)

<sup>118</sup>(U) Of course, even if FBI-AQ had intended to put two agents on the case, these two agents, for the reasons described in this chapter, were not the *right* two agents to staff this case. FBI Assistant Director Neil Gallagher told the AGRT that SA [REDACTED] was a little stronger than SA [REDACTED] but SA [REDACTED] had his own problems and that, if you added them together, you got "a third of an agent." (Gallagher 10/28/99)

<sup>119</sup>(U) Dick left Albuquerque Division in September 1998 to become a section chief at FBI-HQ in the National Infrastructure Protection Center. (Dick 7/29/99)

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[REDACTED] to ASAC Dick;<sup>120</sup> (2) the statement of SSA [REDACTED] that ASAC Dick was very involved in the process of obtaining these agents to support the Wen Ho Lee investigation and the decision not to assign them to the Wen Ho Lee investigation;<sup>121</sup> and (3) the statement of former Albuquerque Division SAC Tom Kneir.<sup>122</sup>

<sup>120</sup>(U) SSA [REDACTED] note to ASAC Dick – “Here are two extra bodies” – with the accompanying memorandum from Robert Bryant supporting the overstaffing of two agents to support the Lee investigation, was not only addressed to ASAC Dick but actually seen by ASAC Dick. Albuquerque Division’s copy of the document bears ASAC Dick’s initials. (AQI 6335)

<sup>121</sup>(U) SC Dick said that if SA [REDACTED] and SA [REDACTED] orders had specifically stated that they were being assigned to FBI-AQ to support the Wen Ho Lee investigation, he would have so assigned them. (Dick 7/29/99) That misses the point: whether or not the orders contained this explicit statement – and the orders did not [REDACTED] 2/8/00; [REDACTED] 2/16/00 [REDACTED] 0003) – the issue is not what was in the orders but what did FBI-AQ know as to how these two agents had come to be assigned to the Albuquerque Division. If FBI-AQ knew that the agents had been obtained specifically to support the Lee investigation – *and there is no question it did know this* – then FBI-AQ was obligated to use them directly or as “back-fill” for this purpose. The failure to do so cannot be excused by pointing to the fact that the agents’ orders did not explicitly mandate their assignment to the Lee investigation. In any case, the issue here obviously is not so much that *these* two new agents were not used to support the case but that *no* two new agents were used to support the case. Therefore, the key point is that FBI-AQ knew their overstaffing request had been approved and that “two extra bodies” (AQI 6335) were headed their way.

<sup>122</sup>(U) SAC Kneir told the AGRT that, during SC Doyle’s July 2-3, 1996 visit to New Mexico, he asked SC Doyle for an additional two agents to be assigned to the Santa Fe RA *specifically* to work the Lee case and that ASAC Dick was privy to his conversations with SC Doyle about this matter. (SAC Kneir had transferred from Albuquerque Division by the time the new agents arrived and, thus, would be unaware of their diversion. His replacement, James Weber, arrived in Albuquerque at or about the same time as the two new agents and stated that he was unaware that SC Doyle had obtained the two agents to support the Wen Ho Lee investigation.) (Kneir 10/6/99;

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3. (U) National Security Division's ("NSD") reaction to the diversion

(S)  
(U) What did NSD do when it learned of the diversion of the two agents? The answer is that NSD did absolutely nothing about it, and this is attributable to the [REDACTED] b1 unit's decision *not* to advise FBI senior management of FBI-AQ's diversion of the agents.

(U) After SSA [REDACTED] found out that ASAC Dick had decided that the two agents would not be assigned to the Wen Ho Lee investigation, he called SSA [REDACTED] to tell him. SSA [REDACTED] states that SSA [REDACTED] was "livid." [REDACTED] 12/1/99)

(U) SSA [REDACTED] upset at the diversion, went to his immediate supervisor, UC [REDACTED] and reported it to him. [REDACTED] 12/15/99) UC [REDACTED] stated that he felt "snookered" by FBI-AQ and that it "soured" UC [REDACTED] and SSA [REDACTED] on any future requests they might have received from FBI-AQ. [REDACTED] 12/29/99)

(U) UC [REDACTED] however, did not take steps to insure that upper management within FBI-HQ were notified of the diversion, even though it was upper management - principally, AD Bryant - who had formally requested the assignment of the agents in the first place.<sup>123</sup>

(U) UC [REDACTED] stated that it would have been "impolitic" to advise AD Bryant of the diversion. He said the "culture" of the FBI is "very intolerant" of that kind of reporting and that a field office has a great deal of "autonomy" as to how it assigns its personnel. The "diversion of two bodies," he said, was not a "felony" act, and happened "all the time." In order for him to "drop [a] dime" on FBI-AQ the conduct would have had to have been "illegal, immoral, fattening or contrary to public policy." [REDACTED] 12/29/99)

Weber 10/28/99)

<sup>123</sup>(U) AD Bryant told the AGRT he was not told of the diversion. (Bryant 11/15/99)

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(U) SSA [redacted] expressed similar sentiments. In processing the request for two additional agents, no one at FBI-HQ discounted the possibility that FBI-AQ would "rip us off" and simply use the Lee investigation as an excuse to get more agents. When SSA [redacted] told UC [redacted] that this in fact had happened, UC [redacted] advice to SSA [redacted] was not to "stir the beans" because it would have been inappropriate to "mess with a SAC's decision." [redacted] (12/15/99) SSA [redacted] also said that you don't get ahead in the FBI "if you stab SACs in the back." (Id.)

(U) UC [redacted] does say he *may* have told his immediate supervisor, SC Doyle, about the diversion, but he was not sure, and SC Doyle told the AGRT that he was *not* told of the diversion. [redacted] (12/29/99; Doyle 10/19/99)

4. (U) Conclusion

(U) While it may be true, as SSA [redacted] stated, that no one at FBI-HQ was "shocked" by the diversion [redacted] (12/15/99), it was irresponsible of FBI-AQ to divert the agents from a critical counterintelligence investigation.<sup>124</sup> In particular, as SA [redacted] told the AGRT, it was a "miserable injustice" to SA [redacted] to deprive him of this additional support. [redacted] (8/18/99) Whether the agents would have been used to directly support the case, or as "back-fill" for more experienced agents, they represented a potentially invaluable source of additional manpower for an investigation that was proceeding at a snail's pace.

(S)  
(U) It was also clearly wrong of the [redacted] unit not to advise senior FBI-HQ management of the diversion. First, UC [redacted] failure to "drop [a] dime" on FBI-AQ insured that the two diverted agents would remain diverted. Second, it had the effect of perpetuating senior management's mis-perception that they had, in fact, solved the manpower problem in the Wen Ho Lee case with the addition of two new agents. b1

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<sup>124</sup>(U) As Chuck Middleton told the AGRT, SACs are "pretty autonomous" but what happened here was a "problem." (Middleton 8/3/99) "It was incumbent on management to plug them into this case." (Id.)

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(U) "Impolitic" as it may have been, this matter should have been briefed up to senior management by the unit or section. What FBI-AQ did was wrong and neither UC [REDACTED] nor SSA [REDACTED] was under any obligation to avert their gaze from this wrong. If they were unwilling to buck the FBI "culture" by insisting that AD Bryant be advised of the diversion, at the very least they should have called ASAC Dick to warn him that unless *he* rectified the situation, *they* would. Yet neither SSA [REDACTED] nor UC [REDACTED] even spoke to ASAC Dick about this matter. [REDACTED] 12/15/99 [REDACTED] 12/29/99)

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~~(S)~~ FBI-AQ's diversion of agents, and [REDACTED] toleration of that diversion, disaffected the Wen Ho Lee investigation. It made it that much more likely that FBI-AQ would be unable properly and expeditiously to bring the investigation to a successful conclusion.

E. (U) Were foreign counterintelligence investigations a high priority in the Albuquerque Division?

~~(U)~~  
~~(S)~~ To appreciate the lack of priority given the Wen Ho Lee investigation, one must first understand the lack of priority given to the overall foreign counterintelligence ("FCI") program by the Albuquerque Division during the years of the Lee full investigation, 1996-1998.

~~(U)~~  
~~(S)~~ In each of the years 1996, 1997, and 1998, the highest priority in Albuquerque Division was the Violent Crime/Major Offenders Program, a reflection of FBI-AQ's responsibility for criminal investigation of crimes committed on Indian reservations. The second priority was the Organized Crime/Drugs Program. The third priority was the White Collar Crime Program. And the fourth priority was the National Foreign Intelligence Program ("NFIP"), which included foreign counterintelligence investigations.<sup>125</sup> (FBI 16005, FBI 16006, AQI 05675, AQI 05623)

~~(U)~~  
<sup>125</sup>~~(S)~~ As far back as 1992, this was the order of priorities. (FBI 16136)

(u)

(8) Given the extent to which New Mexico was a "target-rich environment" (FBI 1911), the placement of the NFIP so low on the priority list is inexplicable.<sup>126</sup> New Mexico is not only the home of two of the nation's leading nuclear weapons laboratories, Los Alamos National Laboratory and Sandia National Laboratory; it is also the location of several Department of Defense research facilities, Holloman Air Force Base, White Sands Missile Range, and a number of private corporations with their own sensitive technologies.

(8) The consequence of FBI-AQ consistently placing NFIP fourth on its priority list is that, when it came to the allocation of agents within Albuquerque Division, FCI work consistently received the short end of the stick. For example,

[REDACTED]

(u)

<sup>126</sup>(8) FBI-HQ was well aware, of course, of the lack of priority accorded to the NFIP in the Albuquerque Division. The office priorities are reflected in each of FBI-AQ's Annual Field Office Reports ("AFOR"), see, e.g., AQI 05668 (1997 AFOR), AQI 05605 (1998 AFOR), as well as in the periodic inspection reports, see, e.g., FBI 16130 (1995 Inspection Report) and FBI 15952 (1998 Inspection Report), and in other documents as well.

<sup>127</sup>(S)

06296)

[REDACTED] (AQI

<sup>128</sup>(S)

[REDACTED]

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[REDACTED]  
(FBI 1894; see also AQI 06363)

(u)  
(S) FBI-AQ *consistently and repeatedly* attempted to get more support for its FCI work, but these requests were *consistently and repeatedly* undermined by the mixed message which FBI-AQ was sending to FBI-HQ.

(S) For example [REDACTED]

[REDACTED] (AQI 05644)

Its justifications for these increases demonstrate that FBI-AQ clearly understood the challenge it confronted in its FCI activity.<sup>129</sup> But even as it was seeking more personnel

<sup>129</sup>(S) [REDACTED]

[REDACTED] (FBI 01894)

(u)  
<sup>130</sup>(S) For example, in its 1998 AFOR, the Albuquerque Division provided this justification for increased support:

(S) The enhancement [REDACTED] is necessary to respond to the Counter Intelligence (CI) initiative that has been mandated for the Dept. of Energy by Presidential Decision Directive 61. The DOE is ordered to implement new CI initiatives at all of its national laboratories and to immediately reinforce and improve their current CI practices. Two of the five national laboratories are located in the State of New Mexico, Sandia National Laboratories and Los Alamos National Laboratory. The AQ Division needs [REDACTED] in order to investigate attacks upon the critical infrastructure at the national labs and to monitor the activities of foreign visitors; foreign representatives who are assigned to the labs, and to monitor and interview the U.S. personnel that have access to U.S. Weapons and technology at these facilities. The ability to use its

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~~TOP SECRET~~ [REDACTED]

for FCI work, it was *simultaneously* advising FBI-HQ that FCI was neither the first, second or third priorities of the Division. (AQI 05670; AQI 05623) Indeed, even the *enhancement* requests for FCI were not the Division's highest priority. In both years, it trailed the Division's enhancement request for more personnel in the Violent Crimes and Major Offenders programs. (AQI 05670; AQI 05623) Not surprisingly, in both years, the requests for enhancements were rejected by FBI-HQ. (FBI 1894)

(u)  
(S) This is the context in which the Wen Ho Lee investigation must be understood. It was an FCI investigation in a Division which viewed FCI work as a low priority and which had far too few agents to meaningfully address the foreign intelligence threat at the national laboratories and in the rest of this "target-rich" environment.<sup>131</sup>

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intelligence infrastructure to target DOE weapons and technology could result in serious ramifications for the U.S.

\* \* \*

(S) As stated in the 1997 FBI Albuquerque Field Office Report, the current level of resources is insufficient to adequately detect and counter foreign intelligence service activities within the Division. Given the target rich environment, the increasing number of visitors to sensitive facilities, and an anticipated increase in the FBI's counterintelligence responsibilities at the National Labs, Albuquerque believes [REDACTED] would be adequate to address the threat.

(AQI 05624, 05644)

(S) Although this is beyond the time period scrutinized by the AGRT, it should be noted that the FCI situation in Albuquerque Division significantly changed after March 1999. In the Division's March 31, 1999 request to FBI-HQ for additional agents for FCI work, referred to above, [REDACTED] (FBI 1894; AQI 6374) FBI-AQ cited the Wen Ho Lee investigation and related matters in support of this justification. The National Security Division reviewed the request and recommended [REDACTED]

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~~TOP SECRET~~ [REDACTED]

F. (U) Was the case pursued aggressively and given the priority it deserved? Were there unnecessary delays?

1. (U) Introduction

(S/NF/RD) One might have assumed that given the momentous and stunning nature of the predicate for the Wen Ho Lee investigation - [REDACTED]

b1 [REDACTED] - that at least the case would be one of the highest priorities *within* the Division's National Foreign Intelligence Program ("NFIP"). Unfortunately, it was not. Indeed, at various points in 1996 and 1997, the Wen Ho Lee investigation had the dubious distinction of being listed within FBI-AQ's internal records as the *single lowest priority* case within NFIP, a program that was itself the fourth lowest priority of the Division. With this provenance, it is not difficult to understand why there were unnecessary delays. It would have been surprising if there were not.

2. (U) Prioritization of the Wen Ho Lee investigation

(U)  
(S/NF) At the outset, it should be noted that FBI-AQ, throughout the entire life of the Wen Ho Lee investigation, had another, highly sensitive, highly important, ongoing

b1 [REDACTED]  
(AQI 6378) Subsequently, FBI-AQ obtained FBI-HQ's permission to convert one of the extra agents into a supervisory slot to support the Wen Ho Lee investigation. (AQI 6419, 6421) The National Foreign Intelligence Program also rose in priority in 1999, moving from fourth place to second place. (Kitchen 2/17/00)

~~TOP SECRET~~ [REDACTED]

FBI investigation that was almost always the Division's highest FCI priority. The Division's best FCI trained agent was assigned to this matter and substantial resources were devoted to it.<sup>132</sup>

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(u)  
(S/NF) On September 13, 1996, a few short months after FBI-AQ had formally opened the full investigation of Wen Ho Lee, the NFIP coordinator, SSA [REDACTED] set out his squad's priorities in an internal FBI-AQ memorandum entitled "Strategic Plan - Fiscal Year 1997." (FBI 16118) The first goal was to bring to "successful completion" the FCI investigation referenced in the preceding paragraph. The second goal was "to identify individuals and organizations involved in domestic/international terrorism." (FBI 16121) The third and final goal listed was "to continue to expand the scope of the Division NSTL [National Security Threat List] countries." Id. There were ten objectives listed under this goal and the *last* objective of the *last* goal was to "develop" the "Kindred Spirit" investigation "to be able to ascertain the viability of criminal prosecution."<sup>133</sup> (Id.)

(u)  
(S) Almost a year later, on July 1, 1997 - the very day that SSA [REDACTED] and UC [REDACTED] hand-walked the first FISA draft application to OIPR in order to communicate to OIPR the critical importance of the Wen Ho Lee investigation [REDACTED] 7/23/99) - SSA [REDACTED] drafted another internal memorandum, described as a "Review of FY 1997 Goals and Objectives" (FBI 16057), and, again, the Wen Ho Lee investigation came in dead

(u)  
<sup>132</sup>(S/NF) See, e.g., SSA [REDACTED] reference to this matter in a memorandum dated June 29, 1998, describing the Division's NFIP priorities: "Albuquerque has dedicated enormous financial and human resources to this investigation . . ." (AQI 06444)

<sup>133</sup>(S/NF) To be clear this does not mean that there were nine other "cases" ahead of the Wen Ho Lee investigation. Indeed, *none* of the other objectives listed were specific "cases"; rather, they were programmatic missions [REDACTED]

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last. (FBI 16057) Indeed, the description of the objective - "Develop the Kindred Spirit investigation to ascertain the viability of prosecution" - had remained virtually unchanged.

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(U)  
(S) Three months later, in October 1997, there was some slight improvement - at least on paper - in the Wen Ho Lee investigation's status. In SSA [REDACTED] "Review of FY 1998 Goals and Objectives," the Wen Ho Lee investigation had risen to the second objective of the second goal.<sup>134</sup> (FBI 16263, 16264) By June 1998, the Wen Ho Lee investigation was described as one of FBI-AQ's "major [FCI] cases" (AQI 06452); however, it was still lumped in as simply one among FBI-AQ's "other espionage investigations" and it still trailed behind such other higher priorities as "issue threat" and "country threat" investigations. (AQI 06448)

(U) One could argue that these programmatic type memoranda do not necessarily reflect the priority *actually* given a case. In the case of the Wen Ho Lee investigation, however, these memoranda are right on the money: the Lee investigation was never a priority before December 1998.

(U) The most significant indication of this, of course, is the fact that, prior to 1999, FBI-AQ never put more than one agent on the case full-time; indeed, strictly speaking, it never even put one agent on the case "full-time" since both SA [REDACTED] and SA [REDACTED] had other responsibilities, including general ongoing liaison responsibilities

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<sup>134</sup>(S/AF) The first goal is, once again, the other FCI investigation referred to above and the second goal is described as "Develop at least ten additional NSTL [National Security Threat List] country threat and issue threat investigations and bring to fruition outstanding NSTL investigations currently being conducted by [REDACTED] personnel." (FBI 16263) b1

with LANL<sup>135</sup> and occasional non-FCI work such as drug surveillance, bank robberies, and the like.

(U) And then, of course, there were the delays. Nothing better illustrates the lack of priority given this case than delays that were so ubiquitous that, in many respects, they constitute the case's most recognizable characteristic.

3. (U) Delays

(U) This case was marked by delays from the very beginning. As stated above, some of the delays are attributable to FBI-HQ. Most, however, are entirely attributable to FBI-AQ.

(U) For example, on June 10, 1996, SSA [REDACTED] advised SA [REDACTED] of certain material which SA [REDACTED] needed to obtain and analyze, such as Lee's travel records (AQI 954), a request that should have taken days to accomplish. The records were not actually obtained until November 1996 and December 1996.<sup>136</sup> (AQI 1080, 1112)

(U) Similarly, it took SA [REDACTED] several months to obtain Wen Ho Lee's and Sylvia Lee's LANL personnel files. (AQI 954, AQI 1028) It took him additional weeks to obtain access to the Lees' DOE security files (AQI 1064, 1066), both projects that should have taken a few days.

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<sup>135</sup>(U) SA [REDACTED] was FBI-AQ's LANL liaison throughout his tenure in the Santa Fe RA. SA [REDACTED] was the LANL liaison between the time SA [REDACTED] left Santa Fe (end of March 1997) and the time SA [REDACTED] arrived to replace him (end of October 1997).

<sup>136</sup>(U) At one point, SSA [REDACTED] noted that SSA [REDACTED] had complained to him that LANL personnel were "dragging their feet" on the production of such records. (FBI 5794) If true, it was surely an obstacle that could have been overcome through communication with individuals at LANL already privy to the existence of the investigation.

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Even more startling were the months and months of delay in obtaining credit card records on Wen Ho Lee, a basic item in any serious FCI investigation. SA [REDACTED] was instructed to obtain such material on July 2, 1996 (AQI 957), but he did not actually obtain Lee's Diners Club records until January 31, 1997.<sup>137</sup> (AQI 1169) Other credit card records had still not been obtained at the time SA [REDACTED] left the Santa Fe RA for his new FBI-HQ's assignment.<sup>138</sup>

(S)

The case fared better under SA [REDACTED] but was still characterized by numerous unreasonable delays. For example, the [REDACTED] should never have taken a year from conception to execution - regardless of the impediments placed in the way of the [REDACTED] by FBI-HQ.<sup>139</sup> (See Section (H)(4)(F), below.)

(u)

<sup>137</sup>(S)

Some delay in procuring such financial information was unavoidable. For example, FBI-AQ requested on November 25, 1996 that Diners Club be served with a national security letter requiring production of the Diners Club records. (AQI 1102) FBI-AQ is not responsible for the two months delay in the actual receipt of the records. But FBI-AQ is certainly responsible for the incredible four month delay (from July 1996 to November 1996) in learning that LANL employees were issued corporate Diners Club cards, and acting upon that knowledge. (AQI 1102)

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<sup>138</sup>(S)

For example, a National Security letter seeking credit card records from Chase Manhattan Bank ("Chase") was not even requested until March 17, 1997. (AQI 1194; FBI 829) And it was not until March 26, 1999 - more than two years later - that FBI-AQ realized that it had never gotten a response from the New York Field Office, which was responsible for serving the letter on Chase, or from Chase itself. (AQI 4440)

<sup>139</sup>(S)

The [REDACTED] acutely illustrates the lack of priority placed on this investigation both at FBI-AQ and at FBI-Headquarters. Roadblocks that materially delayed, or threatened to delay, the [REDACTED] ranged from matters of the greatest moment [REDACTED]

(AQI 4883, 4887, 4879, 4880)

~~TOP SECRET~~ [REDACTED]

(S) The [REDACTED] itself produced one of the most remarkable delays in the entire investigation, and a consequential one at that. [REDACTED]

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[REDACTED] See Chapter 15. While part of the blame for this is the almost absurd difficulty SA [REDACTED] experienced [REDACTED]

[REDACTED] should have been an immediate FBI priority and, when it was not accomplished immediately, senior management should have been asked to intervene.<sup>140</sup> See Chapter 15.

(u)

(S) For another example, it took FBI-AQ more than nine months to locate a former LANL employee, [REDACTED] who was viewed as a potentially valuable source of information. FBI-AQ was directed in December 1997 by FBI-HQ to interview [REDACTED] and this lead was suggested even earlier. (FBI 11855; AQI 1560; AQI 5377) FBI-AQ was unable to locate [REDACTED] address until September 11, 1998 - and that was only because a LANL contract counterintelligence officer came up with it. (AQI 5423) The FBI's own efforts to find [REDACTED] while not non-existent, were less than impressive. See, e.g., AQI 1651 (checking New Mexico white pages). See Chapter 14.

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(S) And there is more: (1) FBI-AQ lost a month-and-a-half in obtaining foreign telephone subscriber information when it sent the request in to Headquarters in an

<sup>140</sup>(S) FBI-AQ's failure to insist on immediate production [REDACTED] is no more explicable than FBI-HQ's failure to intervene when [REDACTED] was not forthcoming. After all, it was FBI-HQ that was repeatedly stating that it was waiting for [REDACTED] before approaching OIPR again concerning the FISA application. See, e.g., the note to Director Freeh from NSD Acting Assistant Director Larry Torrence, dated September 1, 1998 ("Upon receipt [REDACTED] will present the details to DOJ/OIPR and again ask for FISA.") (FBI 13011) Senior personnel at FBI-HQ - particularly at the Deputy Assistant Director or Section Chief level - could have taken steps to make sure that [REDACTED] was produced *in days*, rather than in the four months it took to produce [REDACTED] But they were never asked to intervene by the [REDACTED] unit.

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~~TOP SECRET~~ [REDACTED]

b1 "improper" format. (FBI 817, FBI 900, FBI 961) (2) FBI-AQ essentially stopped working on the case entirely in August 1997, after the FISA application was rejected, and did not begin working on the case again in earnest until December 1997.<sup>141</sup> (3) After the [REDACTED] in August 1998, FBI-AQ again went into hibernation. Other than pursuing the "burping" telephone issue, see Chapter 14, there is almost no activity on the case before SA [REDACTED] was replaced as case agent by SA [REDACTED] in early November 1998.

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b6 (U) The delays described in this section were symptomatic of an investigation that, in its first three years of existence, was never accorded the priority it deserved. FBI-AQ - by assigning just one full-time agent to the case at a time, by selecting, first, SA [REDACTED] and, second, SA [REDACTED] to be that full-time agent, and by not actually letting either of them work the case exclusively and full-time - virtually guaranteed that case progress would be sporadic or non-existent.

G. (U) Were supervisory personnel in the FBI's Albuquerque Division appropriately engaged in directing and managing the case?

1. (U) Introduction<sup>142</sup>

(U) Like any investigation in a field office at the FBI, there were multiple levels of *potential* supervision for the Wen Ho Lee investigation.

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<sup>141</sup>(U) Responsibility for this delay must be shared with FBI-HQ, which promised, again and again, a teletype setting forth an investigative strategy following OIPR's rejection of the FISA application. But FBI-HQ is only partially responsible for this four month break in the investigation. FBI-AQ, which could have done a host of things to advance the investigation in the fall of 1997, instead just waited. While there were occasional signs of activity, such as SA [REDACTED] continued issuance of requests for national security letters, the investigation remained stalled until the arrival of the December 19, 1997 FBI-HQ teletype.

<sup>142</sup>(U) See FBI-AQ organization chart at end of Chapter.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U) At the most senior level, there was the Special Agent in Charge. During the pertinent time period of the full investigation, the SACs in charge of the Albuquerque Division were as follows:

May 1996 <sup>143</sup> to August 1996	Thomas Kneir
August 1996 to October 1996	Ronald Dick (Acting)
October 1996 to May 1998	James Weber
May 1998 to August 1998	Ronald Dick (Acting)
August 1998 to March 1999 <sup>144</sup>	Dave Kitchen

(U) One level down was the Assistant Special Agent in Charge, who also served as the National Foreign Intelligence Program manager. During the pertinent time period, the ASACs were as follows:

June 1996 to September 1998	Ronald Dick
September 1998 to November 1998	Frank Coffey (Acting)
	Mike Tabman (Acting)
	Greg Parrish (Acting)
November 1998 to March 1999 <sup>145</sup>	Will Lueckenhoff

(S)  
(U) Of course, neither the SAC nor the ASAC was responsible for the direct or immediate supervision of investigations. That was typically done by the Supervisory Special Agent responsible for the squad to which the case was assigned. The Wen Ho

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<sup>143</sup>(U) SAC Kneir was actually the SAC of FBI-AQ from December 1995 forward. The AGRT uses the date May 1996 because it represents the start date of the full investigation of Wen Ho Lee.

<sup>144</sup>(U) SAC Kitchen remains the SAC of FBI-AQ, although he is scheduled to retire at the end of May 2000. The AGRT uses the date March 1999 because it represents the end date of the AGRT's review period.

<sup>145</sup>(U) Will Lueckenhoff remains the ASAC of FBI-AQ.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

Lee investigation was first assigned to [REDACTED] and then to [REDACTED]<sup>146</sup> During the pertinent time period, the SSAs responsible for supervising the Wen Ho Lee investigation were as follows:

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May 1996 to September 1997  
September 1997 to October 1998  
November 1998 to March 1999

[REDACTED]<sup>147</sup>

(U) This, then, was the management team responsible for the supervision of the Wen Ho Lee counterintelligence investigation from the date it opened, May 30, 1996, until the date of the final interview with Wen Ho Lee, March 7, 1999. Not surprisingly, these individuals played a critical role in the few successes, and the more than a few failures, which the investigation experienced during these three years. This was an investigation that desperately needed aggressive, consistent and creative supervision. In general, and with some notable exceptions, it did not get it.

<sup>146</sup>(S) For National Foreign Intelligence Program purposes, these were actually the same squad. Prior to July 1, 1997, [REDACTED] consisted of both the drug program and the National Foreign Intelligence Program. As of July 1, 1997, [REDACTED] National Foreign Intelligence Program responsibilities were moved to [REDACTED] SSA [REDACTED] who supervised [REDACTED] remained as National Foreign Intelligence Program coordinator and became [REDACTED] supervisor. (AQI 6438)

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<sup>147</sup>(S) SSA [REDACTED] was the SSA who replaced SSA [REDACTED] as the National Foreign Intelligence Program coordinator and supervisor of [REDACTED] (SA [REDACTED] served for about two weeks as the squad's supervisor between SSA [REDACTED] departure and SSA [REDACTED] appointment as squad supervisor.) SSA [REDACTED] was not, however, the official supervisor of the Wen Ho Lee investigation, although she remained involved in the case as part of her program coordinator responsibilities. As of November 1998, direct supervision of the case became the responsibility of [REDACTED] the SSA in charge of the Santa Fe RA. SAC Kitchen wanted all Santa Fe RA Special Agents - including its FCI agent, [REDACTED] supervised by the Santa Fe RA squad supervisor and, therefore, when SA [REDACTED] took over as case agent, SSA [REDACTED] took over as case supervisor. (Kitchen 9/10/99; [REDACTED] 9/10/99)

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~~TOP SECRET~~ [REDACTED]

2. (U) Supervision at the SAC and ASAC level

a. (U) SAC Kneir

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(U) SAC Kneir was the SAC of FBI-AQ when the full investigation of Wen Ho Lee was opened. It is difficult to evaluate his involvement in the Wen Ho Lee investigation because he was, as a practical matter, on his way out of Albuquerque Division just as the case was coming into the Division.<sup>14</sup> This much, however, can be said. One of the principal missions of a SAC is to insure there are sufficient resources to accomplish the prime objectives of his Division. SAC Kneir recognized that this case required a commitment of substantial resources and that SA [REDACTED] would quickly be overwhelmed by the demands of the investigation. (Kneir 10/6/99) Thus, SAC Kneir participated actively in the effort to persuade FBI-HQ (in particular, SC Doyle) to assign two additional agents to the case. SAC Kneir contemplated that the two additional agents would be assigned to the Santa Fe RA because that is where the case was located. (Id.) Of course, that never happened but this can certainly not be attributed to SAC Kneir. He was long gone by the time SA [REDACTED] and SA [REDACTED] arrived in Albuquerque Division.

(U) There is one respect, however, in which SAC Kneir can be criticized and that is for permitting the case to be assigned to SA [REDACTED] in the first place.

(U) SAC Kneir understood that this case was a high priority matter, a fact that was underscored by SC Doyle's visit to Albuquerque, an event that SAC Kneir recognized to be unusual. (Id.) During that visit, SC Doyle made clear to SAC Kneir that the Wen Ho Lee investigation was a "[high] impact case." (Doyle 10/19/99). SAC Kneir also was acutely aware of the fact that SA [REDACTED] had experienced serious problems within the Division. After all, it was SAC Kneir who, as ASAC, had [REDACTED]

<sup>14</sup>(U) SAC Kneir left FBI-AQ in August 1996 to become Deputy Assistant Director of Criminal Division at FBI-HQ. (Kneir 10/6/99) However, he was out of the Division almost a full month earlier in a temporary duty assignment in Atlanta in connection with the 1996 Summer Olympics. (Id.) Thus, his involvement in the Wen Ho Lee investigation was necessarily very limited.

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[REDACTED] (FBI 21681) And SAC Kneir had also heard complaints about SA [REDACTED] lack of participation in the non-FCI work of the Santa Fe RA. (Kneir 10/6/99)

(u)

(S) To give a case of *this* magnitude and priority to an agent with *this* history was, quite simply, a big mistake. SAC Kneir obviously recognized the problem; in fact, he suggested to SSA [REDACTED] that he assign the investigation to another agent, SA [REDACTED] but this did not happen. SAC Kneir should have insisted on that assignment,<sup>149</sup> or he should have taken alternative steps to insure that the case was in the best possible hands.<sup>150</sup>

b. (U) SAC Weber

(U) SAC James Weber was responsible for FBI-AQ from October 1996 to May 1998 and, thus, was the senior on-site FBI official responsible for the Wen Ho Lee

<sup>149</sup>(U) Given that SA [REDACTED] retired on August 1, 1997, he also might not have been the right choice for a case that obviously required continuity. But if the choice was between assigning the case to an agent who would quickly be overwhelmed without help or to an agent who could at least start the case off appropriately and aggressively, SAC Kneir should have gone with the latter, and begun the search for an experienced FCI agent to take over the case when SA [REDACTED] retired. In the end, and somewhat ironically, SA [REDACTED] outlasted SA [REDACTED] retiring four months *after* SA [REDACTED] left the Division.

<sup>150</sup>(U) The "best" hands for the case belonged almost certainly to SA [REDACTED] the third FCI agent in the Division, along with SA [REDACTED] and SA [REDACTED]. SA [REDACTED] however, was deeply engaged in the other high priority FCI matter referred to above and, therefore, may not have been an option. That does not mean there were *no* other options. FBI-AQ could have sought to persuade FBI-HQ to transfer in a single experienced FCI agent, instead of the two First Office Agents that were assigned to the Division. Or SA [REDACTED] could have been assigned to the case. Or SA [REDACTED] could have been assigned on a part-time basis to assist on the case. (SA [REDACTED] told the AGRT that more resources, including himself, should have been assigned to the investigation. [REDACTED] 8/18/99))

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~~TOP SECRET~~ [REDACTED]

investigation during an almost two year period of time.<sup>151</sup> Unfortunately, SAC Weber was never truly engaged in insuring that the case was pursued aggressively and appropriately. Although FBI-HQ contributed substantially to SAC Weber's lack of engagement in this investigation, as is detailed below, a SAC is ultimately responsible for the cases in his Division and SAC Weber should have made himself far better informed, and become far more involved, in this extraordinarily important matter.

(U) To understand SAC Weber's role in this investigation, several points must initially be emphasized:

- (U) SAC Weber's background and training was in criminal investigations, not in FCI. That does not mean that he should not have been selected to be SAC of an office with two very high priority FCI investigations. It does mean that FBI-HQ needed to take special measures to insure that SAC Weber was appropriately briefed and prepared to take over the management of these two investigations. Instead, just the opposite occurred.
- (U) SAC Weber was *never* briefed at FBI-HQ about the Wen Ho Lee case before undertaking his assignment as SAC. (Weber 10/28/99) This is as remarkable and inexplicable as any other finding in the AGRT's inquiry.<sup>152</sup> SAC Weber was briefed about the other high priority FCI matter; indeed, he had to take a polygraph before he was made privy to the details of the investigation. (Id.) As to the Lee case, however, he received no Headquarters briefing. This would be incredible even if SAC Weber was being transferred from one field office within the FBI to another field office within the FBI, and made only a "pit stop" at FBI-HQ before reporting to his new duty station. But SAC Weber was stationed at FBI-

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<sup>151</sup>(U) At the time of his interview with the AGRT, Weber was the Deputy Assistant Director of the International Operations Branch at FBI-HQ.

<sup>152</sup>(U) FBI-HQ's personnel routinely brief new SACs and ASACs on the important matters within their divisions before they assume their field office duties.

[REDACTED] 12/29/99)

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~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

HQ at the time he was designated to become FBI-AQ's SAC. He was serving as Special Assistant to the Deputy Director and, in that capacity, he had contact *every day* with John Lewis, who was then the Deputy Assistant Director of the National Security Division. (*Id.*) According to SAC Weber, DAD Lewis discussed with him the *other* high priority FCI case but *never* the Wen Ho Lee investigation.

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b7C

- (U) Nor did other knowledgeable persons at FBI-HQ brief SAC Weber on the investigation. Not SSA [REDACTED] not UC [REDACTED] and not SC Steve Dillard. [REDACTED] 12/15/99; [REDACTED] 12/29/99; Dillard 8/6/99)
- (U) Nor did outgoing SAC Kneir brief incoming SAC Weber on the important ongoing matters in the Albuquerque Division, which of course *should* have occurred. Both men attributed the failure to communicate to the fact that SAC Kneir left FBI-AQ several months before SAC Weber arrived.<sup>153</sup> (Kneir 10/6/99; Weber 10/28/99)

(U) The failure to brief SAC Weber *before* he arrived in FBI-AQ was compounded, dramatically, by the failure to brief SAC Weber on problems with the handling of the case *after* he arrived in FBI-AQ. SAC Weber told the AGRT that no one at FBI-HQ *ever* contacted him after his arrival in Albuquerque Division to complain about the Division's handling of the Wen Ho-Lee investigation. (Weber 10/28/99) As frustrated as FBI-HQ was with the pace and substance of the investigation, no one from FBI-HQ called the one person who had the authority and the responsibility for insuring that the case was handled appropriately.<sup>154</sup> (*Id.*)

<sup>153</sup>(U) This is not an especially persuasive explanation since SAC Kneir left Albuquerque to take a job at FBI-HQ and, therefore, at least for some period of time, was stationed in the same building as SAC Weber.

<sup>154</sup>(U) For example, SAC Weber stated that the first time he heard about the "two agent" diversion issue was a few weeks before he was interviewed in October 1999 by the AGRT. (*Id.*)

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(S//NF/RD) The failure to brief SAC Weber had one consequence almost too fantastic to believe: SAC Weber - the Special Agent in charge of the Division handling the Wen Ho Lee investigation from October 1996 to May 1998 - told the AGRT that he did not know the predicate for the Wen Ho Lee investigation until the spring of 1999, when he heard of it in a meeting at FBI-HQ. (Id.) SAC Weber said that when he heard what Wen Ho Lee was accused of - [REDACTED]

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[REDACTED] (Id.)

(U) There is obviously no excuse for such an abysmal failure in communication. While FBI-HQ clearly failed in its obligation to communicate the seriousness of the case to SAC Weber, so too SAC Weber clearly failed to discover for himself the seriousness of the case during the almost two years he ran the Division that was responsible for it.

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(S) It was not as if the case had been hidden from him: Upon his arrival, SAC Weber was provided with a set of briefing books, prepared by ASAC Dick, which included descriptions of all of FBI-AQ's significant investigations, including the Wen Ho Lee investigation. (Id.) Shortly after his arrival, he met with SSA [REDACTED] who also briefed him on the case and, in November 1996, he paid a visit to LANL, where he met SA [REDACTED] (Id.) In addition, the Wen Ho Lee investigation, by its code name, was referenced in numerous FBI-AQ documents concerning the priorities of the National Foreign Intelligence Program.<sup>155</sup> Moreover, SAC Weber stated that he was aware of various significant events in the case, such as Wen Ho Lee's request to LANL for approval of a PRC student intern, and the FISA denial, although he states that he never

<sup>155</sup> (S) See, for example, an October 6, 1997 memorandum from SSA [REDACTED] to SAC Weber and ASAC Dick consisting of a "Review of FY 1998 Goals and Objectives - National Foreign Intelligence Program" (FBI 16262) and a July 1, 1997 memorandum of a similar nature. (FBI 16057)

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read the FISA application or had any input into it. (Weber 10/28/99) He also stated that he was never advised by SSA [REDACTED] that FBI-AQ was taking "hits" from FBI-HQ about the pace of the investigation.<sup>156</sup> (Id.)

(U) This investigation - both because of its importance and because it was not being handled appropriately or aggressively - required the consistent and substantive attention and involvement of the SAC. That it did not get it cannot be blamed solely, or even primarily, on FBI-HQ's failure to brief. A SAC is given enormous authority and autonomy, and it is his or her responsibility to understand and appreciate the importance of, and problems concerning, cases within the Division. In this case, that did not happen. Indeed, it did not happen even when FBI-HQ took the extraordinary step of sending a detailed teletype to the personal attention of the SAC emphasizing the importance of the case, the interest of the Director of the FBI in the case, the national security implications of the case, and the specific steps that needed to be taken to advance the case toward a successful resolution.<sup>157</sup>

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<sup>(U)</sup>  
<sup>156</sup>(S) SAC Weber was told of LANL's concerns about the pace of the investigation. According to [REDACTED] he and Sig Hecker, Director of LANL, met with SAC Weber and ASAC Dick on January 3, 1997 and, among other matters, discussed their concerns about the "Kindred Spirit" case. According to [REDACTED] SAC Weber and ASAC Dick assured them the pace of the investigation would pick up. [REDACTED] 9/15/97) SAC Weber told the AGRT that his recollection is that there was no discussion at the meeting concerning the Lee investigation. (Weber 10/28/99)

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<sup>157</sup>(U) This teletype was sent to the personal attention of the SAC but it does not bear SAC Weber's initials indicating that it was actually transmitted to him to review. (AQI 01560) SAC Weber told the AGRT that he does not recall ever reading it. (Weber 10/28/99) The only documentary indication in the record that SAC Weber knew of the existence of this teletype is a December 22, 1997 handwritten note by SA [REDACTED] reflecting a conversation with SSA [REDACTED] which SA [REDACTED] documented as follows: "SAC talked to JM [SSA [REDACTED] re 12/19/97 TTY [teletype]." (AQI 5503) In addition, SA [REDACTED] stated that SSA [REDACTED] told him that SAC Weber viewed the teletype as "condescending." [REDACTED] 2/28/00)

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c. (U) SAC Kitchen.

i. (U) Introduction

(U) David Kitchen reported to Albuquerque Division as its new SAC on August 3, 1998. Although he replaced James Weber as SAC, Weber had actually left the Division in May 1998 and Ron Dick was serving as the Acting SAC at the time Kitchen arrived at FBI-AQ.

(U) (S/NF) Just as SAC Weber had arrived in Albuquerque Division with no prior awareness of the Wen Ho Lee investigation, so did SAC Kitchen. He indicated that he first became aware of the existence of the investigation in a brief conversation with SA [REDACTED] as to the types of cases in which SA [REDACTED] was engaged. (Kitchen 9/10/99) *It is worth repeating again that the National Security Division at FBI-HQ should have insured that FBI-AQ's incoming SACs were fully briefed on the importance of this investigation.* Such briefings, or the absence of such briefings, undeniably and obviously convey a message to a field office about Headquarters' perception of a case's importance, particularly when other cases - such as FBI-AQ's other high priority FCI case - are briefed.<sup>158</sup>

(U) Between August 1998 and the beginning of November 1998, there is no indication of any significant involvement by SAC Kitchen in the Wen Ho Lee investigation. It was simply "not on his scope." (Kitchen 9/10/99) That changed dramatically in November 1998 and even more so in December 1998 and thereafter.

(U) (S/NF) SAC Weber was at least briefed on the other high priority FCI case. SAC Kitchen received no FBI-HQ briefings before his arrival in Albuquerque on any case. In part, this may have been attributable to the need for SAC Kitchen to get to work immediately. An inspection of Albuquerque Division was about to get underway and ASAC Dick was in the process of leaving the Albuquerque Division for his new job at FBI-HQ.

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ii. (U) The Lueckenhoff briefing

(U) Nothing better illustrates the impact that a Headquarters briefing *could* have had on FBI-AQ's handling of the Wen Ho Lee investigation than the dramatic impact that a Headquarters briefing on October 31, 1998 *did* have on FBI-AQ's handling of the investigation.

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(U) As stated above, before an ASAC, or a SAC for that matter, takes on the responsibilities of his new assignment, he or she is expected to receive FBI-HQ briefings on pertinent matters in his Division. Given the frequency with which ASACs and SACs change assignments, these briefings can be a "pain." [REDACTED] (12/29/99) In the case of Will Lueckenhoff, however - FBI-AQ's incoming ASAC - UC [REDACTED] specifically sought to do the briefing himself so that he and SSA [REDACTED] could clearly communicate to ASAC Lueckenhoff the importance of the Wen Ho Lee investigation and their frustration with FBI-AQ's handling of it.

(U) UC [REDACTED] and SSA [REDACTED] told ASAC Lueckenhoff that they were concerned about lack of case progress. [REDACTED] (12/29/99) Lueckenhoff states that SSA [REDACTED] and UC [REDACTED] told him about the importance of the case, that it was "big," that insufficient manpower had been dedicated to it, that FBI-AQ had not handled the case properly, and that the Cox Committee was interested in the Wen Ho Lee investigation and the case had to move forward.<sup>159</sup> (Lueckenhoff 9/12/99) UC [REDACTED] also told Lueckenhoff about the diversion of the two agents by FBI-AQ back in 1996. [REDACTED] (12/29/99)

(U) Even though ASAC Lueckenhoff was not due to report to Albuquerque Division until early December, he immediately called SAC Kitchen to advise him that FBI-HQ was concerned about the slow progress on the Wen Ho Lee investigation and had

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(S)<sup>159</sup> (S) According to Lueckenhoff, they also complained that preliminary inquiries on [REDACTED] identified in the DOB Administrative Inquiry had never been opened by FBI-AQ and that the Department of Justice's Office of Intelligence Policy and Review had cited the need to conduct the preliminary inquiries in order to support a FISA application on the Lees. (Lueckenhoff 9/12/99)

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problems with the agent assigned to the case. (Lueckenhoff 9/12/99) According to SAC Kitchen, ASAC Lueckenhoff told him: "We've got a problem." (Kitchen 9/10/99)

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(U) Within days, SAC Kitchen caused three significant actions to be taken to address the concerns expressed to ASAC Lueckenhoff: First, SA [REDACTED] was removed as case agent and the case was reassigned to SA [REDACTED] (Kitchen 9/10/99 [REDACTED] 9/7/99) Second, SA [REDACTED] was instructed by her supervisor, SSA [REDACTED] to draft a new b1 request for FISA coverage, incorporating the [REDACTED] and other matters. [REDACTED] 9/7/99) Third, SSA [REDACTED] instructed SA [REDACTED] to respond to the December 19, 1997 teletype containing FBI-HQ's instructions and guidance to FBI-AQ as to how to advance the Wen Ho Lee investigation, despite the fact that FBI-AQ had largely ignored it.

(U) SAC Kitchen's response to FBI-HQ's concerns was prompt, commendable and, with the exception of FBI-AQ's defensive response to the December 19, 1997 teletype, productive. Replacing SA [REDACTED] with SA [REDACTED] - who was described by the National Foreign Intelligence Program supervisor, [REDACTED] as a "stronger agent" than SA [REDACTED] and one who had more FCI experience [REDACTED] 9/10/99) - was an appropriate response to the "sputtering" [REDACTED] 12/29/99) and uninspired pace at which the case had moved.

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(U) As to SA [REDACTED] request for FISA coverage, it *should have* led FBI-HQ to actually submit a new FISA application to OIPR.<sup>160</sup> See Chapter 15. Instead, it never b1 made it out of the [REDACTED] unit. [REDACTED] 9/7/99; Kitchen 9/10/99)

(U) As to SA [REDACTED] defense of FBI-AQ's response to the December 19, 1997 teletype, it was far more spirited than the facts warranted. See Chapter 14. In truth, FBI-

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<sup>160</sup>(S) This is not to say that SA [REDACTED] FISA request was on the mark in all respects. Her focus on the possibility that Wen Ho Lee was engaged in [REDACTED] b1 [REDACTED] See Chapter 15. However, the [REDACTED] for the reasons stated in Chapters 14 and 16, *did* warrant a new FISA submission and, coupled with all the other facts supporting such an application, *did* warrant a FISA order.

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AQ's lack of responsiveness to the December 1997 teletype was indefensible.<sup>161</sup> Nevertheless, SA [REDACTED] was in the uncomfortable position of having to defend it. She told the AGRT: "I thought responding to it a year later was B.S." [REDACTED] 9/7/99)

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(S) SAC Kitchen's active involvement in the Wen Ho Lee investigation continued in December 1998 and January 1999. Unfortunately, it led to two significant errors in judgment. First, SAC Kitchen acceded to DOE's decision to interview and polygraph Wen Ho Lee in December.<sup>162</sup> See Chapter 15. Second, SAC Kitchen, pursuant to what he interpreted as a 30-day deadline set by DOE, caused SA [REDACTED] to create a January 22, 1999 communication that was, on its face, premature and that reflected an unjustified determination that the investigation against Wen Ho Lee should be terminated.<sup>163</sup> See

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<sup>161</sup>(S) In one respect, it should be noted, FBI-AQ was entirely responsive – and that was in connection with FBI-HQ's suggestion of [REDACTED]. But, as further described in Chapter 14, FBI-AQ had decided to do the [REDACTED] before it got the teletype, and was already deeply involved in planning it at the time the teletype was received.

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<sup>162</sup>(S) SAC Kitchen, however, was by no means the only senior FBI official who acceded to DOE's decision to conduct the interview and polygraph of Wen Ho Lee. As is further described in Chapter 15, AD Gallagher was well aware of DOE's intentions and, in fact, sent a memorandum to Director Freeh five days before the interview and polygraph which stated, in part, that the National Security Division had no objection to the DOE interview and polygraph of Lee. (FBI 07652, 07721)

(S/AFRD)

<sup>163</sup>(S/AFRD) The January 22, 1999 EC was premature because it was based in large part on an assumption that Wen Ho Lee had "passed" the December 23, 1998 polygraph administered by Wackenhut (DOE's contract polygraphers), an assumption that was unwarranted because the polygraph charts had not yet been reviewed by FBI-HQ's polygraph unit or, for that matter, even received at FBI-HQ. Indeed, it was this very January 22, 1999 EC by which FBI-AQ transmitted the charts. (FBI 1512, AQI 62) When FBI-HQ did review the charts, it determined that Lee was "inconclusive if not deceptive." (FBI 1529, AQI 145) SA [REDACTED] told the AGRT that the EC would not have been drafted had this been known. [REDACTED] 8/18/99) [REDACTED]

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Chapter 17. When SSA [REDACTED] received the communication, he told the AGRT, it "caught [him] cold." [REDACTED] (7/28/99)

(U) Significant steps were taken in the January to March 1999 time period. Wen Ho Lee was interviewed at length on January 17, 1999. This was entirely proper and it was done at SAC Kitchen's insistence. [REDACTED] (Kitchen 9/10/99) SAC Kitchen also was appropriately involved and engaged in the FBI polygraph of Wen Ho Lee that took place on February 10, 1999. SAC Kitchen was deeply involved in the March 5, 1999 interview of Lee and the confrontational interrogation of Lee that took place on March 7, 1999, which he actually witnessed from another room.

(U)

(S) The March 5, 1999 interview may not have been everything it could have been [REDACTED] was quite critical of SA [REDACTED] handling of the interview [REDACTED] (9/13/99) - but it still represents a serious and sensible effort to get at the truth. The March 7, 1999 interrogation, however, involved far more questionable judgments. It was intended by SAC Kitchen to be highly confrontational, to "get in his face" [REDACTED] (9/7/99), to leave Lee in "despair" (Kitchen 9/10/99), feeling that he had no place to go and his life was ruined [REDACTED] (9/7/99). It is

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[REDACTED] (FBI 1512, AQI 62), that judgment was not only premature but unjustified, in part because the FBI had still not gained access to Lee's computer files, in part because his reaction to the [REDACTED] was incriminating, and in part because he had admitted just weeks earlier (in his December 1998 interview with DOE officials) that he *did* have previously unreported contacts with PRC scientists -

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[REDACTED] (AQI 49-52)

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(S) SAC Kitchen also insisted that, instead of an FBI-302 documenting the interview, the agents obtain a signed sworn statement from Lee. [REDACTED] (8/18/99) SA [REDACTED] stated that in his entire 30-year career in the FBI as an FCI agent, he had never been requested before to have a subject of an investigation write a sworn statement of innocence. (Id.) It is clear that SAC Kitchen instructed that this be done as part of his effort to support the closing of the case; it is this judgment, rather than the decision to take a signed statement from Lee, with which the AGRT takes particular issue.

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debatable whether such a confrontational interview was appropriate. What is not debatable - what was clearly an error in judgment - was SAC Kitchen's insistence that SA [REDACTED] use the Rosenbergs - convicted spies who were electrocuted - as an example to Lee of what happened to individuals who refused to cooperate.<sup>165</sup>

(U) SAC Kitchen was the first FBI-AQ SAC that gave the Wen Ho Lee case the attention it warranted. SAC Kitchen's almost daily involvement in the case was undoubtedly, at least in part, a natural response to the intense media, Congressional, DOE and FBI-HQ interest the case began to generate in December 1998. He still deserves credit for insuring, albeit in 1999 rather than 1996, that the case was accorded the priority it deserved.

d. (U) ASAC Dick

(U) ASAC Dick arrived in Albuquerque Division in late June 1996 and left Albuquerque Division in August 1998. Thus, he was the ASAC - and the National Foreign Intelligence Program manager - for more than two years of the Wen Ho Lee investigation. In addition, for approximately five months during his tenure in Albuquerque Division (August 1996 to October 1996 and May 1998 to August 1998), he was the Acting SAC.

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<sup>165</sup>(U) SA [REDACTED] told the AGRT that SAC Kitchen was insistent that she tell Lee that the Rosenbergs had been executed for committing espionage [REDACTED] 9/7/99). SA [REDACTED] who participated in the interview with SA [REDACTED] corroborated this, stating that SAC Kitchen wanted SA [REDACTED] to tell Lee that the only people who have been executed - the Rosenbergs - had not cooperated. [REDACTED] 8/18/99) SSA [REDACTED] who was SA [REDACTED] supervisor, also corroborated this, telling the AGRT that it was SAC Kitchen's decision to have SA [REDACTED] refer to the Rosenbergs' having been executed. [REDACTED] 9/9/99) SAC Kitchen confirms that he wanted SA [REDACTED] to confront Lee with what happened to the Rosenbergs for their refusal to cooperate. (Kitchen 9/10/99) The March 7, 1999 interview is described further in Chapter 17.

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(S) (U) Despite ASAC Dick's presence and key position in the Division during these critical periods of time, he had almost nothing to do with the Wen Ho Lee investigation. A review of the Division's records on the investigation reflects that he attended the July 2, 1996 meeting at FBI-AQ with SC Doyle and SSA [REDACTED] (AQI 957) and that, a year later, in August 1997, he was advised of the rejection of the FISA request and other developments. (AQI 5322, 5553) In the following year, he received some slight

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b1 information about the [REDACTED] See Chapter 14. Although ASAC Dick told the AGRT that he read the agents' 90-day file reviews and kept in constant communication with SSA [REDACTED] (Dick 7/29/99), the absence of any significant reference to ASAC Dick throughout the record of this investigation is indicative of a failure on the part of ASAC Dick to appreciate the importance of the Wen Ho Lee investigation.

(S) (U) (D) This lack of recognition is particularly baffling given the fact that ASAC Dick - unlike SAC Weber and unlike SAC Kitchen - was briefed at FBI-HQ on the Wen Ho Lee investigation. On or about May 20, 1996, ASAC Dick was briefed on the investigation by the [REDACTED] unit prior to his assumption of duties as FBI-AQ's new ASAC.<sup>166</sup>

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[REDACTED]

(FBI 13044)

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(U) Moreover, ASAC Dick was a participant in the meetings that took place on July 2, 1996 and July 3, 1996 with SC Doyle and SSA [REDACTED] who traveled to Albuquerque to underscore the importance of the case and to insure that it had the proper resources. (AQI 957; Doyle 10/19/99; Kneir 10/6/99)

(U) Despite the Headquarters briefing and the visit from SC Doyle and SSA [REDACTED] and the obvious import of the underlying allegation itself, ASAC Dick simply did not view the case as an office priority. It was a priority within the FCI program, he told the AGRT, but it was *not* an office priority because FCI work itself was not a high

<sup>166</sup>(U) UC [REDACTED] records suggest that this briefing may have taken place, or at least was scheduled to take place, on May 15, 1996. (FBI 12103)

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priority within the Division. (Dick 7/29/99) It would not even have been among the top ten cases within the Division, he said.<sup>167</sup> (Id.)

(S/NF/RD) ASAC Dick was in a unique position to insure that the Wen Ho Lee case was investigated competently, thoroughly and aggressively - [REDACTED]

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[REDACTED]

ASAC Dick failed to make this a priority matter and his failure is particularly disturbing because he held the critical job of FBI-AQ's ASAC for more than the first two years of the Lee investigation. *In a case which suffered so frequently from a lack of continuity, here there was continuity, but to no effect.*

e. (U) ASAC Lueckenhoff

(U) Will Lueckenhoff arrived in Albuquerque Division in the first week of December 1998 to undertake his new assignment as the Division's ASAC, but even before he arrived he knew that the Wen Ho Lee investigation was a problem case. This message came through with abundant clarity in the briefing he received in late October 1998 from UC [REDACTED] and SSA [REDACTED] concerning their frustration with FBI-AQ's handling of the Wen Ho Lee investigation. As described above, ASAC Lueckenhoff acted immediately to address FBI-HQ's concerns, contacting SAC Kitchen the next day to tell him "we've got a problem" with the Lee investigation. (Kitchen 9/10/99)

(U) After ASAC Lueckenhoff arrived in Albuquerque Division, he immediately brought SSA [REDACTED] and SA [REDACTED] in to brief him on the case and became aware for the first time of the DOE AI which had been the genesis for the full investigation of Wen Ho Lee. He then did something which should have been done by every supervisor and

<sup>167</sup>(U) Obviously, the most explicit manifestation of ASAC Dick's perception that the case was not a high priority was his decision to divert the two new agents. As SSA [REDACTED] stated, it reflected his view as to the importance of the investigation. [REDACTED] (12/1/99)

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manager who had any significant involvement in this investigation: *He read the AI.*<sup>166</sup> And, upon reading it, he concluded that it was a "piece of junk" (Lueckenhoff 9/12/99) or, as he characterized it to UC [REDACTED] a "piece of crap."<sup>167</sup> [REDACTED] 12/29/99)

(U) ASAC Lueckenhoff thus became the first FBI agent in the three-and-a-half years since the FBI received the AI to give it a critical and thorough examination.<sup>170</sup> Nor did he keep his opinions to himself. He bluntly criticized the AI to FBI-HQ personnel, including SC Middleton, UC [REDACTED] and SSA [REDACTED] (Lueckenhoff 9/12/99 [REDACTED])

<sup>168</sup>(U) Given the fact that the AI was, after all, the basis for the Wen Ho Lee full investigation, this might appear to be an obvious and necessary step for any supervisor connected to this investigation. Nevertheless, not all supervisors read the AI. For example, SSA [REDACTED] stated that he had no recollection of ever seeing or reading the AI, even though he supervised the investigation for a year. [REDACTED] 8/12/99)

(S)<sup>169</sup> (24) (S/NF) ASAC Lueckenhoff's criticisms of the AI included the following: the criteria for selecting suspects was too narrow and exclusive; the AI was "contradictory"; the AI came to conclusions that were not "supportable"; the AI was not based on a complete set of travel records for the potential universe of suspects; the AI was unduly focused on persons with comprehensive access to W-88 classified information even though [REDACTED] and the AI's focus on the [REDACTED] time frame as the inner and outer boundaries of a potential compromise was questionable. (Lueckenhoff 9/12/99)

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<sup>171</sup>(U) That is not to say that other FBI agents did not read the AI. It is to say that, to the extent that other agents read the AI, they did not recognize or appreciate the problems with it. This included even the official recipient of the AI, SSA [REDACTED] SSA [REDACTED] reaction to reading the AI was that it was as thorough as it could have been given the short time frame in which it was conducted. Even after learning that the AI had problems, SSA [REDACTED] still defended it: "We were dealing with probabilities. You take your best shot." [REDACTED] 7/23/99) As to the case agents - SA [REDACTED] and SA [REDACTED] - neither agent ever questioned the AI or talked to SA [REDACTED] about it. [REDACTED] 8/12/99 [REDACTED] 9/12/99)

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12/29/99; Middleton 8/3/99<sup>171</sup>) and was a participant in a meeting with DOE personnel in mid-January 1999 in which these criticisms were echoed by SA [REDACTED] (Lueckenhoff 9/12/99)

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(S/RD) ASAC Lueckenhoff's recognition that there were substantial problems with the AI had several positive consequences. [REDACTED]

[REDACTED] It led FBI-AQ to seek out information that would assist FBI-AQ in determining the validity of the AI.<sup>173</sup> And, most significantly, it ultimately led to the sound judgment by the FBI that it needed to do a comprehensive review of the AI and its predicate. (DAG 01185)

(U) In short, ASAC Lueckenhoff deserves a substantial measure of credit for initiating the process by which the FBI began seriously to grapple with the substance and significance of the AI. While that review *should* have taken place in 1996, at least it *was* taking place in 1999.<sup>174</sup>

<sup>171</sup>(U) SC Middleton stated that ASAC Lueckenhoff came to FBI-HQ in January 1999 and told him that the AI was "faulty" and needed a "rescrub." (Middleton 8/3/99)

<sup>172</sup>(S) This was not an entirely unmitigated blessing. It contributed to SAC Kitchen's premature and unjustifiably categorical judgment in the January 22, 1999 EC that "it does not appear that Lee is the individual responsible for passing the W-88 information." (AQI 0062)

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<sup>173</sup>(S) See, e.g., a briefing SAC Kitchen received on March 18, 1999 from Sandia National Laboratory personnel concerning [REDACTED] (AGO 479; [REDACTED]) and interviews conducted at Sandia on August 20, 1999 with scientific personnel and others. (DAG 01185)

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<sup>174</sup>(S) See, e.g., ASAC Lueckenhoff's telephone call to UC [REDACTED] on January 6, 1999. UC [REDACTED] notes read in part: "WL [Will Lueckenhoff] wants us to know: \*\*\* There might be some notion that the criteria up-front is seriously flawed. \*\*\* Concern [with] what have we been doing for last 2 yrs." (FBI 11932, 20345)

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3. (U) Supervision at the Supervisory Special Agent level

(U) Until very late in the investigation, this matter had just two FBI-AQ supervisors, [REDACTED] and [REDACTED]. Although SSA [REDACTED] and SSA [REDACTED] did play a role in the supervision of this investigation in late 1998 and 1999, by this date events were no longer controlled, and some times not even influenced, by the SSA.<sup>175</sup> The key decisions that occurred after November 1998 - when SSA [REDACTED] became the official supervisor of the investigation and SSA [REDACTED] took over the National Foreign Intelligence Program - were not made by either SSA [REDACTED] or SSA [REDACTED].<sup>176</sup>

<sup>175</sup> (U) This was a natural consequence of the intense interest the Lee investigation was beginning to generate, including the Cox Committee's focus on the Lee investigation and DOE's determination to finally have Lee's status resolved. As to the Cox Committee, SC Middleton and UC [REDACTED] briefed the Committee staff on the case on November 16, 1998 (FBI 11553) and testified before the Committee, along with DOE and CIA witnesses, on December 16, 1998. (FBI 11553)

<sup>176</sup> (U) The most striking example of this was the FBI's decision to permit DOE to interview and polygraph Lee in December 1998, a critical encounter with the subject of a long-term espionage investigation which should have been conducted by the FBI, not DOE and its contract polygrapher, Wackenhut. The decision to have Lee interviewed and polygraphed by DOE was made by DOE's Director of the Office of Counterintelligence, Ed Curran. But Curran did not act in a vacuum. Both SAC Kitchen and National Security Division Assistant Director Neil Gallagher were well aware of DOE's intentions and interposed no objection. (Kitchen 9/10/99; Gallagher 10/28/99) SSA [REDACTED] however, was opposed to DOE conducting the polygraph and proposed to SAC Kitchen that the polygraph be conducted by an FBI polygrapher with a PRC background. But, according to SSA [REDACTED] FBI management had their "minds made up" to let DOE conduct the polygraph. [REDACTED] 9/10/99) As to SSA [REDACTED] who was the official case supervisor, he was neither consulted nor asked his opinion as to whether the polygraph should be done. He described it as an upper management decision. [REDACTED] 9/9/99)

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a. (U) SSA [REDACTED]

(U) SSA [REDACTED] served as the Supervisory Special Agent in charge of the squad that handled FCI matters from July 1990 to July 1997. During this period of time, he was also the National Foreign Intelligence Program coordinator and, therefore, was also responsible for Domestic Terrorism and International Terrorism program activities. [REDACTED] (6/22/99)

(U) In late 1996, SSA [REDACTED] was selected to be the Legal Attache ("LEGAT") in Brasilia, Brazil and was due to undertake this position in the Spring of 1997. However, this position was not filled and SSA [REDACTED] remained in Albuquerque until August 1998, when he became the LEGAT in Athens, Greece. [REDACTED] (12/1/99) As a practical matter, however, SSA [REDACTED] involvement in the Lee investigation ended in August 1997, when he went to Washington for several weeks of training. After his return, SSA [REDACTED] was appointed supervisor of the White Collar Crime Squad, and its supervisor, SSA [REDACTED] was appointed supervisor of SSA [REDACTED] squad. Thus, SSA [REDACTED] was the supervisor responsible for the Wen Ho Lee investigation from the time it was formally opened in late May 1996 until he left for training in August 1997. (Id.)

(8) SSA [REDACTED] was an experienced supervisor whose career had been devoted to FCI work and, in particular, to matters involving [REDACTED]. From that perspective, he was the ideal supervisor - a senior FBI agent with the training, the expertise and the judgment to manage a critically important espionage investigation involving [REDACTED]. Nevertheless, SSA [REDACTED] supervision of the Lee investigation was, in several material respects, deficient: b1

- (U) SSA [REDACTED] was the supervisor that selected SA [REDACTED] to be the case agent on the Lee investigation. No decision in an investigation is more important than the choice of case agent and, in this case, that choice was in error. It is true that SSA [REDACTED] options were limited, but they were not non-existent. If, in fact, the case could not have been assigned to SA [REDACTED] or SA [REDACTED] then SSA [REDACTED] should have fought for the permanent transfer to the Santa Fe RA of an experienced FCI agent to take

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on this responsibility.<sup>177</sup> Simply put, there were alternatives other than to assign one of the most significant and important espionage investigations in our nation to an agent who SSA [REDACTED] himself viewed as a "marginal performer."<sup>178</sup>

- (U) SSA [REDACTED] supervision of SA [REDACTED] was restrained and intermittent, when it needed to be intense and consistent. By October 1996, FBI-HQ was so frustrated with the pace of the investigation that it complained directly to SSA [REDACTED]. According to a memorandum SSA [REDACTED] wrote at the time: "SA [REDACTED] [sic] has not been too vigorous in pursuing this case" and SSA [REDACTED] "has moved to correct this problem by

<sup>177</sup>(U) SSA [REDACTED] states that at the beginning of the investigation he did discuss with SSA [REDACTED] the possibility of transferring two senior agents to the Division to work the case but decided that this would take too long and might result in the Division getting agents who had seniority but did not have substantial FCI training. [REDACTED] 12/1/99) Neither reason should have deterred SSA [REDACTED] from seeking the transfer of senior agents. First, even if it did take several months to get the *right* agent on site, it would certainly have been worth it. Second, FBI-AQ could have sought the "specialty transfer" of senior agents with FCI experience – which is precisely what it *did* seek in March 1997, when it attempted to replace SA [REDACTED] with a "Special Agent with as much NFIP experience as is practical." (AQI 6327), and again in July 1997, when it attempted to replace the retiring SA [REDACTED] with "a Special Agent with significant NFIP experience and training." (AQI 6338) In both cases, FBI-AO was successful in getting agents – SA [REDACTED] (to replace SA [REDACTED]) and SSA [REDACTED] (to replace SA [REDACTED]) – with significant FCI experience. (AQI 6341; [REDACTED] 9/7/99; [REDACTED] 9/10/99)

<sup>178</sup>(U) SSA [REDACTED] clearly recognized SA [REDACTED] limitations. When asked by the AGRT whether SSA [REDACTED] had recommended SA [REDACTED] for the FBI-HQ's supervisory position which he obtained in January 1997, SSA [REDACTED] stated that he did not and would never have recommended SA [REDACTED] for a supervisory position at FBI-HQ. [REDACTED] 12/1/99)

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assuming direct supervision of [redacted] (sic) as of two weeks ago."<sup>179</sup>  
(FBI 706) What is significant about this statement is that SSA [redacted] had  
been SA [redacted] direct supervisor *continuously* since March 1995.  
He supervised SA [redacted] in two capacities: first, since August 1990,  
SSA [redacted] had been the National Foreign Intelligence Program coordinator  
and, thus, had programmatic responsibilities for *all* FCI investigations (FBI  
16137); second, since April 1995, SSA [redacted] was also the supervisor of the  
Santa Fe RA and thus was the supervisor of every agent in the Santa Fe RA  
including, of course, SA [redacted] (6/22/99; AQI 6298, 6594) If  
SA [redacted] was not being sufficiently supervised *prior* to FBI-HQ's  
October 1996 intervention, the responsibility lay with SSA [redacted] and not  
with someone else.<sup>180</sup>

<sup>179</sup>(U) See also a memorandum from UC [redacted] to SSA [redacted] created on or  
about October 18, 1996, in which UC [redacted] notes that he spoke with SSA [redacted] about  
"the management of this case." UC [redacted] told SSA [redacted] to let SSA [redacted]  
commitment to assume direct supervision of the case "run its course for awhile. . . [redacted]  
seems to appreciate the problem." (FBI 705)

(S)<sup>180</sup> (S) SSA [redacted] also appears to have been reluctant to impose his will on SA  
[redacted] when it came to investigative strategy, preferring that FBI-HQ be the  
"heavy." [redacted] b1  
[redacted] (AQI 1144) SSA [redacted] on  
behalf of FBI-HQ, refused the "highly time consuming request" as being wholly  
unwarranted and noted in an internal administrative note that SSA [redacted] "agrees  
completely." (FBI 756, AQI 1178) If that was true - and it was true - then SSA [redacted]  
should never have let the lead go to FBI-HQ in the first place. According to UC [redacted]  
SSA [redacted] knew the request was "baloney" and "goofy" but let it go to FBI-HQ anyway.  
[redacted] 12/29/99) UC [redacted] was "livid" about the request. *Id.* SSA [redacted] conceded to  
the AGRT that the translation request was a "meaningless task." [redacted] 12/1/99) He  
described it as a "filler" task which SA [redacted] came up with to make it appear he  
was doing something on the case and to avoid tackling the investigative leads he should  
have been pursuing. But SSA [redacted] did not want to just "out [redacted] off short" and  
refuse to send the book to FBI-HQ because SA [redacted] would have gotten "huffy."

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- (U) SSA [REDACTED] permitted, or at least acceded to, FBI-HQ running the Lee investigation from Washington. As is discussed below, one of the significant problems in the management of this case was that it was a field office case being run by a supervisor 1600 miles away. Consequently, priorities and tasking for the case were being set in Washington rather than in Albuquerque and, on a matter as critical as the FISA application, the Albuquerque Division's role was reduced to that of proof-reader.<sup>111</sup> SSA [REDACTED] could have altered this dynamic through more intense supervision of SA [REDACTED] and by aggressively taking charge of the investigation. Instead it was FBI-HQ that controlled the investigation and determined its investigative priorities. See, e.g. SA [REDACTED] July 11, 1996 memorandum setting forth SSA [REDACTED] priorities for the investigation. (AQI 957)
- (U) (S) SSA [REDACTED] does not appear to have recognized the critical importance of this investigation or, if he did recognize it, to give it the priority it deserved. Thus, in both SSA [REDACTED] National Foreign Intelligence Program "Strategic Plan" for FY 1997, issued September 13, 1996, as well as in his "Review of FY 1997 Goals and Objectives" for the National Foreign Intelligence Program, issued July 1, 1997, the Lee investigation is listed as the *tenth* objective of the *third* goal of the Division's National Foreign Intelligence Program, i.e., the very last objective of the entire National Foreign Intelligence Program. (FBI 16118, 16057)

So SSA [REDACTED] discussed the matter with SSA [REDACTED] and let SSA [REDACTED] be the one who denied the request for translation. (Id.) SSA [REDACTED] characterized SSA [REDACTED] handling of the matter as follows: "This is a manager who isn't managing." [REDACTED] 7/23/99)

<sup>111</sup> (U) See, e.g., this statement by FBI-AQ concerning the Wen Ho Lee investigation, which was made as part of the interrogatories which FBI-AQ completed in anticipation of its 1998 inspection: "Most of the FISA request was written by FBI-HQ. AQ assisted by furnishing additional information and proof reading." (FBI 16235)

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(U)  
(S) SSA [REDACTED] initially recognized the importance of, and pursued, the issue of gaining access to Wen Ho Lee's computer files. See Chapter 9. However, after reviewing the matter with SSA [REDACTED] in November 1996, and being told by SSA [REDACTED] that a FISA warrant would be required, SSA [REDACTED] essentially dropped the issue. Indeed, it was so dropped that even when the FISA application was being prepared, SSA [REDACTED] did not insist on computer search authorization.<sup>122</sup> Nor did SSA [REDACTED] take any steps to insure that SA [REDACTED] aggressively pursued the gathering of information concerning matters related to waivers, banners and the like, even though there were clear signs in the case file itself that such a pursuit might be productive.<sup>123</sup>

<sup>122</sup> (U) (S) FBI-AQ clearly had *wanted* computer search authorization. See, e.g., SA [REDACTED] May 20, 1997 note to the file in which he states that FBI-AQ wants to include in the FISA application search authority for Lee's home and office computers, and other items. (AQ 5353, 5354) There is no record, however, that either SSA [REDACTED] or SA [REDACTED] complained when SSA [REDACTED] told SA [REDACTED] that he just "wants to get up on the phones right now" (AQ 5348) or when they reviewed the FISA draft application and observed that it did not contain computer search authority. (AQI 5255)

<sup>123</sup> (U) SA [REDACTED] placed into the case file several significant computer access-related documents from LANL (AQI 1079) that should have been, but were never, transmitted to either the National Security Division or the National Security Law Unit ("NSLU"). [REDACTED] 8/12/99) While FBI-HQ was not accountable for what was in FBI-AQ's case file, SSA [REDACTED] certainly was accountable for its contents. And in those files were both the LANL documents and SA [REDACTED] explicit promise to FBI-HQ that he would forward the LANL documents to FBI-HQ upon receipt so that the NSLU could determine whether the FBI could gain access to Lee's e-mail pursuant to LANL authority. SA [REDACTED] concedes that he "dropped" the "ball" by not forwarding the LANL documents to the NSLU [REDACTED] 8/12/99), but so did SSA [REDACTED] Had these documents been sent to the NSLU, it might have led to additional inquiries that would have uncovered Lee's signed waiver and it might have led the NSLU to reevaluate the "expectation of privacy" issue.

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- (S/NF) SSA [REDACTED] should have caused a thorough examination of both the DOE AI and the underlying predicate for the AI. At least, he should have insisted on examining - or having SA [REDACTED] examine - the "walk-in" document, which FBI-HQ received from the CIA on [REDACTED] but which FBI-HQ never showed to the case agent actually responsible for the investigation.<sup>144</sup> This bears repetition: SA [REDACTED] who was the first case agent and the agent responsible for the case for most of a year, never saw the "walk-in" document [REDACTED] and in FBI-HQ's decision to open a full investigation on Wen Ho Lee. [REDACTED] 8/12/99) Nor did SSA [REDACTED] recall ever seeing the "walk-in" document. [REDACTED] 6/22/99)

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(u)  
(S/NF) It is not as if SSA [REDACTED] did not have an inkling that the predicate for the investigation was in some doubt. On August 22, 1995, SA [REDACTED] had sent FBI-HQ a teletype - approved by SSA [REDACTED] - which read, in part, as follows:

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(S/NF) [REDACTED]

<sup>144</sup> (u) (S/NF) While the document could not leave Washington (FBI 418) or go to Albuquerque, no such constraints prevented the case agent from leaving Albuquerque and going to Washington.

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(AQI 2944) Similarly, on October 10, 1995, SA [REDACTED] sent another teletype to FBI-HQ - again approved by SSA [REDACTED] which expressed similar reservations:

(u)  
(S) (S/NF) 1. The damage assessment report is complete, and somewhat of a consensus was reached. The report was provided to Notra Trulock at DOE-HQ, who in turn gave it to DOE-OCI.

(S) (S/NF) 2. [REDACTED]

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(S) (S/NF) 3. [REDACTED]

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(AQI 2964) The possibility that the compromise might have occurred somewhere other than at LANL was reinforced in a December 13, 1995 teletype from SA [REDACTED] (who participated in the conduct of the AI) to FBI-HQ and FBI-AQ. SA [REDACTED] specifically named Lawrence Livermore, Sandia, DOE-HQ and Pantex as other facilities with [REDACTED] b1 involvement. (AQI 2986)

(u)  
(S) (S/NF) Thus, SSA [REDACTED] had reason to question both the predicate for the investigation and the AI's conclusion focusing exclusively on Wen Ho Lee and his wife. Instead, FBI-AQ uncritically and unreservedly accepted the AI as if it were found truth.<sup>185</sup>

<sup>185</sup> (u)  
(S) FBI-AQ, at FBI-HQ's direction, did send leads to the Washington Field Office of the FBI to interview a few of the individuals involved in the analytical process leading up to the AI. But these interviews were conducted by WFO personnel without the "Q" clearances necessary for the receipt of Restricted Data and without necessary background knowledge. Nevertheless, even these interviews should have given SSA [REDACTED] pause. See the interview of [REDACTED] (AQI 1046). DOE b6, b7C

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- (U) (S) SSA [REDACTED] and the agents he supervised failed to recognize or appreciate the significance of Wen Ho Lee's continuing access to highly classified material.<sup>166</sup> For the reasons stated in Chapter 18, this is a failure on the part of both the FBI and DOE. The FBI's insistence that Lee's access not be restricted while the investigation was ongoing,<sup>167</sup> as well as the failure of both DOE and the FBI to recognize the profound difference between Lee's *assigned* tasks and Lee's *actual* access, or to appreciate just how much damage Lee could do from his own computer work station without ever stepping into the LANL vault, are failures with potentially grave consequences. SSA [REDACTED] is by no means the only responsible party, or even the most significant responsible party, but he, like SA [REDACTED] and like SSA [REDACTED] does bear a measure of responsibility for this failure.

(U) SSA [REDACTED] did take a number of steps in the right direction and they should be noted as well:

- (U) SSA [REDACTED] appropriately recognized that SA [REDACTED] would not be able to handle the Wen Ho Lee investigation by himself. He was instrumental in seeking and securing the assignment of SA [REDACTED] and SA [REDACTED] to the Division and certainly cannot be held responsible for ASAC Dick's inappropriate decision to divert the agents to other assignments.
- (U) (S) SSA [REDACTED] made substantial efforts to insure that SA [REDACTED] was moving aggressively and in the right direction. This included innumerable meetings to keep SA [REDACTED] on track.<sup>168</sup> In addition, SSA [REDACTED] attended critical

<sup>166</sup> (U) (S) One dramatic consequence of this failure was the fact that Lee remained in a position which permitted him to download onto tape extraordinarily sensitive material in 1997.

<sup>167</sup> (U) (S) As discussed in Chapter 18, Director Freeh revoked that insistence on August 12, 1997.

<sup>168</sup> (U) For example, SA [REDACTED] notes indicate meetings with SSA [REDACTED] on the Lee investigation in April 1997 on the 15<sup>th</sup>, 17<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup>; and in May 1997 on the

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meetings and interviews on the case. See, e.g., a meeting with DOE officials at LANL on April 15, 1997 (AQI 5028), and the interview of [REDACTED] (AQI 1272).

(U) Moreover, the AGRT would be remiss if it did not note that SSA [REDACTED] had a wide array of other responsibilities. In addition to supervising the Wen Ho Lee investigation, SSA [REDACTED] supervised the rest of the National Foreign Intelligence Program, which included of course the *other* very significant FCI case referenced above, and numerous other matters.<sup>189</sup> Moreover, SSA [REDACTED] also had responsibility for the Santa Fe RA (until January 1997) and for FBI-AQ's Drug Program (until July 1, 1997), including the creation and supervision of a multi-agency drug task force that ultimately involved numerous FBI agents, an IRS agent and a DEA agent. [REDACTED] 12/1/99; AQI 6298) Moreover, because SSA [REDACTED] was in Albuquerque and SA [REDACTED] was in Santa Fe, they did not have the benefit of the frequent informal and casual communications that are so beneficial to the guidance of a case.

(U) Nevertheless, this investigation was SSA [REDACTED] responsibility. Whatever limitations the case agents brought to the case, whatever the logistical difficulties of supervision, whatever other matters commanded his time, it was SSA [REDACTED] obligation to insure that this important case was advanced appropriately and aggressively. That did not happen and the immediate case supervisor must obviously bear significant responsibility for that failure.

b. (U) SSA [REDACTED]

(S) SSA [REDACTED] supervised the Wen Ho Lee investigation from September 1997, when he took over SSA [REDACTED] and became the National Foreign [REDACTED] b1

2<sup>nd</sup>, 13<sup>th</sup> and 19<sup>th</sup>. (AQI 5028, 5375, 5362, 5367, 5408, 5355, 5356) These are undoubtedly only a small sampling of the numerous meetings which SSA [REDACTED] held with SA [REDACTED] concerning the investigation.

<sup>189</sup> (S) SAC Kneir told the AGRT that SSA [REDACTED] spent a very substantial amount of time on this other high priority FCI case. (Kneir 10/6/99)

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Intelligence Program coordinator, until October 1998, when he left Albuquerque to become LEGAT in Tokyo.<sup>190</sup> [REDACTED] 8/12/97, 12/7/99) SSA [REDACTED] background in the FBI was not FCI work; his assignment for the two years prior to taking over SSA [REDACTED] National Foreign Intelligence Program responsibilities was as FBI-AQ's White Collar Crime Squad supervisor.<sup>191</sup> (Id.)

(8) SSA [REDACTED] tenure as supervisor of the case was marked by one significant accomplishment, and one alone - the [REDACTED] - and that itself 61 can only be characterized as an accomplishment because of a fortuitous event that took place at the end of the operation. See Chapter 14. That, in a nutshell, is what was right and what was wrong about SSA [REDACTED] tenure as supervisor.

(U) SSA [REDACTED] took over the squad just after the FISA application had been rejected by OIPR. He told the AGRT that he recognized that, in the wake of the FISA rejection, FBI-AQ needed to have an alternative investigative plan. He said he discussed this with both SAC Weber and SA [REDACTED] 12/7/99) Nevertheless, there is no evidence that FBI-AQ took substantial steps to design and execute such a plan.<sup>192</sup>

<sup>190</sup> (U) SSA [REDACTED] like SSA [REDACTED] had other significant responsibilities beyond the National Foreign Intelligence Program. For example, SSA [REDACTED] was in charge of the Evidence Response Team from September 29, 1997 forward. (FBI 15915) SSA [REDACTED] was also FBI-AQ's coordinator in preparation for its 1998 inspection. [REDACTED] 12/7/99) Even as to his assignment as coordinator of the National Foreign Intelligence Program, SSA [REDACTED] had responsibilities beyond that of FCI. The NFIP Coordinator, for example, was also responsible for Domestic Terrorism ("DT") and International Terrorism ("IT").

<sup>191</sup> (U) SSA [REDACTED] joined the Albuquerque Division in April 1995 and immediately became the White Collar Crime program coordinator. (Id.) He was responsible for the White Collar Crime squad from April 24, 1995 through September 28, 1997, at which point he took over the National Foreign Intelligence Program and SSA [REDACTED] squad. (FBI 15915)

<sup>192</sup> (U) There are a few discussions with SSA [REDACTED] as to possible investigative options, see, e.g., AQI 5331, but that is all.

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(U) It is not that there was *no* alternative investigative plan. SSA [REDACTED] had written such a plan but it spent an unacceptable four months working its way out of FBI-HQ. In that four month period, the most consistent theme in SA [REDACTED] handwritten notes to his work file, or in other FBI-AQ files, is this: Where's the plan?<sup>193</sup>

(U) There is something obviously and fundamentally wrong in the management of a case when the field office agent and his supervisor must wait, or are required to wait, for FBI-HQ to tell it how to conduct its case.<sup>194</sup> After the FISA application was rejected, SSA [REDACTED] had two options open to him, neither of which he took: He could have sent a communication to FBI-HQ formally advising FBI-HQ as to what FBI-AQ intended to do with the case, which at the very least would have expedited a response from FBI-HQ; or, if he determined that FBI-AQ did need guidance or instruction from FBI-HQ, he could have escalated the matter up to his SAC, James Weber, when the investigative plan was not forthcoming. Instead, the matter simply languished and four months of investigative time was lost.

(S) <sup>cut</sup> (S) The most remarkable point that must be made about the four month delay while FBI-AQ waited for the FBI-HQ teletype is the reaction of FBI-AQ personnel when

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<sup>193</sup> (U) FBI-AQ's long wait for "the plan" is the subject matter of SA [REDACTED] notes dated August 13, 1997, August 19, 1997, August 22, 1997, August 27, 1997, August 28, 1997, September 2, 1997, September 5, 1997, September 12, 1997, September 24, 1997, September 29, 1997, October 1, 1997, October 15, 1997, October 20, 1997 and December 12, 1997. See Section "H(4)(e)(iv)" of this chapter.

<sup>194</sup> (U) UC [REDACTED] recognized this, even though it was his unit that generated the investigative plan for FBI-AQ. He said the December 19, 1997 teletype, containing the investigative plan, was "unusual. [When you have to] start putting [a] spoon in [the] field office mouth its pretty damn embarrassing." [REDACTED] 12/29/99) SSA [REDACTED] told the AGRT he wrote the teletype because FBI-AQ was "screwing up and sitting on a time bomb." He added that in a "normal investigation [I] wouldn't be telling the field what to do." [REDACTED] 12/15/99)

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they received it: They largely ignored it,<sup>195</sup> including one of the few items listed in the teletype that was *mandatory, i.e.*, was to open preliminary inquiries on [REDACTED] besides Wen Ho Lee and Sylvia Lee who were identified in the AI as potential suspects. (AQI 01560) This was not done. Indeed, the preliminary inquiries still remained unopened a year later.<sup>196</sup> Significantly, SSA [REDACTED] did order SA [REDACTED] to open the preliminary inquiries (AQI 5503), but he never pursued it with SA [REDACTED] when he failed to do so - even during their periodic file reviews. [REDACTED] 9/12/99) See Chapter 14. b1

(S/NF) SSA [REDACTED] principal priority in connection with the Lee investigation should have been to move it forward aggressively and appropriately *and with dispatch*. Yet virtually nothing happened on the case between August and December 1997. As to the time period of January to August 1998, the [REDACTED] was planned and *did* take place<sup>197</sup> but it took far too long to plan and execute<sup>198</sup> b1

<sup>195</sup> (U) According to SA [REDACTED] SAC Weber - who told the AGRT he did not remember even seeing the teletype (Weber 10/28/99) - viewed the teletype as condescending, and that the teletype made it look like FBI-HQ was running the case [REDACTED] 9/12/99) - which, of course, it was.

<sup>196</sup> (S) The preliminary inquiries were finally opened in March 1999 [REDACTED] 9/10/99), 15 months after FBI-HQ had ordered them opened.

<sup>197</sup> (S) SSA [REDACTED] actually missed both [REDACTED] [REDACTED] described SSA [REDACTED] absence as "embarrassing." [REDACTED] 12/15/97) As to the February 5, 1998 meeting, however, the scheduling of the meeting was largely out of SSA [REDACTED] control. b1

(AQI 1591, 4835) SSA [REDACTED] had other responsibilities that kept him from attending this meeting. (According to SA [REDACTED] SSA [REDACTED] was in training at Quantico. [REDACTED] 9/12/99; AQ 4835)) As to SSA [REDACTED] absence [REDACTED] b1  
[REDACTED] this was certainly unfortunate and should never have happened. The [REDACTED] was a year in the making and *all* of the FBI's hopes were pinned on it. The FBI-AQ SSA responsible for the case *should* have been present for the

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and both the planning and the execution were flawed in multiple serious respects. See Chapter 14. And, finally, from August 1998 until October 1998, when SSA [REDACTED] left the Albuquerque Division, the investigation continued to move at glacial speed. In the month of September 1998, for example, almost nothing took place in the investigation. One significant interview was conducted<sup>199</sup> and SA [REDACTED] continued to pursue the possibility that Lee was engaged in [REDACTED] a possibility that was in fact without merit.<sup>200</sup> And that is it. | b1

(U) Another significant matter was SSA [REDACTED] failure to instruct SA [REDACTED] to reopen and reexamine the whole issue of gaining access to Wen Ho Lee's computer

[REDACTED] It is not that there was no one around to fill SSA [REDACTED] shoes during the [REDACTED] SSA [REDACTED] was his principal relief supervisor and she was in charge in his absence. [REDACTED] (8/12/99) SSA [REDACTED] however, had not been briefed on the significance of the case, [REDACTED] had not been involved in the planning of this [REDACTED] (9/10/99) SSA [REDACTED] did have legitimate time-sensitive personal reasons to be away during the week of the [REDACTED] and his departure was approved. [REDACTED] (12/7/99) But if he knew he would have to be away, the [REDACTED] should have been slightly advanced or slightly delayed. After all, it was the FBI - not Wen Ho Lee - that controlled the [REDACTED] Indeed, SSA [REDACTED] had specifically approved the scheduling [REDACTED] (AQI 4901) | b1

<sup>198</sup> (U) This was a point that Director Freeh emphasized in his interview with the AGRT. (Freeh 11/11/99)

<sup>199</sup> (U) A LANL scientist, by the name of [REDACTED] was interviewed on September 11, 1998. (AQI 1900) | 006  
b6  
b7c

<sup>200</sup> (U) (S/NF) SSA [REDACTED] told the AGRT that criticizing FBI-AQ for pursuing the [REDACTED] (12/7/99) [REDACTED] | b1  
allegations never warranted the attention that FBI-AQ gave it.

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files following the FISA denial. After all, back in November 1996, SA [REDACTED] had indicated that Lee's X Division had not yet gone through the on-line registration system - a system that might constitute a waiver.<sup>201</sup> It was now almost two years later and yet no one had checked back with LANL to determine if X Division personnel - including Lee - had now been registered on line. If they had done so, they would have learned that X Division was fully registered by the spring of 1997.<sup>202</sup> See Chapter 9.

(U) (S/NF) Finally, some of the same criticisms that can be lodged against SSA [REDACTED] - a failure to examine the underlying predicate for the AI, a failure to review the "walk-in" document, a failure to analyze the merits of the AI (as ASAC Lueckenhoff would soon do) - must also be attributed to SSA [REDACTED]. SA [REDACTED] told the AGRT that he could not have questioned the validity of the AI because the investigation was already "like a train going 120 miles an hour." [REDACTED] (9/12/99) Putting aside the fact that whatever else this investigation was, it was *not* "like a train going 120 miles an hour," FBI-AQ most certainly should have questioned the validity of the AI and its predicate. The failure to do so is attributable to *both* the case agents responsible for the case, SA [REDACTED] and SA [REDACTED] and their immediate supervisors, SSA [REDACTED] and SSA [REDACTED].

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<sup>201</sup> (U) SSA [REDACTED] told the AGRT that while he did review the Lee case file, he does not recall seeing SA [REDACTED] November 1996 documents concerning the computer search issue. [REDACTED] (12/7/99)

<sup>202</sup> (U) SSA [REDACTED] told the AGRT that, because of the handling of several other cases, it was his assumption that a search warrant was required to search Lee's office computer and he further assumed that there were no banners on the LANL computers or waivers signed by Lee. [REDACTED] (12/7/99) Neither assumption was correct.

H. (U) Were supervisory personnel in FBI Headquarters' National Security Division appropriately engaged in providing guidance and direction to the field and in ensuring that the case was pursued aggressively and with the proper commitment of resources?

1. (U) Introduction<sup>203</sup>

(U) Much that went *right* in this investigation - but also a great deal that went *wrong* - is attributable to the handling of this case within NSD. That the case got as far as it got is a testament principally to the tenacity and persistence of NSD and, in particular, to SSA [REDACTED]. That the case was a catalogue of missed opportunities and misunderstandings is also, unfortunately, a testament to NSD and SSA [REDACTED]. Without NSD's active involvement and prodding, there would have been no case and, if there had been a case, it would have sputtered to an end long ago. With NSD's involvement, however, came a series of misjudgments and other problems that nearly crippled the investigation.

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2. (U) NSD Personnel

(U) The personnel who had some involvement, or were in a position to have some involvement, in the Lee investigation were as follows:

Assistant Director, NSD	Robert Bryant	(1993 to 3/97)
	John Lewis	(3/97 to 9/98)
	Neil Gallagher	(11/98 to 3/99) <sup>204</sup>

<sup>203</sup> (U) See FBI-HQ organization chart at end of this Chapter.

<sup>204</sup> (U) AD Gallagher remains in this position. Between AD Lewis and AD Gallagher, Larry Torrence served briefly in an acting capacity.

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Deputy Assistant Director for CI

John Lewis

(1994 to 3/97)

Larry Torrence

(10/97 to 11/98)<sup>205</sup>

Sheila Horan

(1/99 to 3/99)<sup>206</sup>

(S) Section Chief, [REDACTED] b1

Jerry Doyle

(1994 to 11/96)

Steve Dillard

(1/97 to 9/98)

Chuck Middleton

(11/98 to 3/99)<sup>207</sup>

(S) Unit Chief, [REDACTED] b1

[REDACTED]

(1994 to 3/99)<sup>208</sup>

Supervisory Special Agent

[REDACTED]

(1994 to 3/99)<sup>209</sup>

3. (U) What went right at NSD

(W) (S) Much did go right at NSD, and that fact is largely attributable to the effort put into this investigation by SSA [REDACTED]

- (S/NF) In 1994, SSA [REDACTED] provided support for FBI-AQ's preliminary inquiry concerning Wen Ho Lee. Specifically, he caused various FBI assets

<sup>205</sup> (U) Between DAD Lewis and DAD Torrence, several individuals served in the post in an acting capacity, including John O'Connor, Ray Mislock and DAD Torrence.

<sup>206</sup> (U) DAD Horan remains in this position. Between DAD Torrence and DAD Horan, Tim Caruso served in an acting capacity for a brief period of time.

(S) <sup>207</sup> (U) SC Middleton remains as the chief of [REDACTED]. In addition, it should be noted that William Doherty was the acting chief of the section for two brief time periods. b1

(S) <sup>208</sup> (U) UC [REDACTED] remains the chief of [REDACTED]. b1

(S) <sup>209</sup> (U) Again, as stated earlier in this chapter, the date March 1999 is used because it is the end date of the time period covered by this report. [REDACTED] remained an SSA in the [REDACTED] Unit until his retirement. b1

~~TOP SECRET~~ [REDACTED]

b1 | to be questioned about Lee and [REDACTED]

See Chapter 5.

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- (S/NF) In late 1995, SSA [REDACTED] facilitated the assignment of SA [REDACTED] to assist DOE in the conduct of the Administrative Inquiry and took steps to insure that FBI-AQ was included in a sensitive DOE briefing which SA [REDACTED] received. He took other steps as well to insure that FBI-AQ was kept "in the loop." (AQI 2970) [REDACTED]

b1 | [REDACTED]  
(FBI 376, 396, 466; AQI 851)

- (U) Immediately following the opening of the full investigation at FBI-AQ, SSA [REDACTED] gave SA [REDACTED] explicit guidance as to how to conduct the investigation. (AQI 954)

- (U) SSA [REDACTED] along with SC Doyle, traveled to FBI-AQ in July 1996 to give the Division additional guidance on investigative strategy and to evaluate the need for additional FBI resources. (AQI 957) He then assisted in shepherding the request for the two additional agents through FBI-HQ and in notifying FBI-AQ that the request for additional agents had been approved. (AQI 984)

- (S) SSA [REDACTED] drafted the original [REDACTED] for the full counterintelligence investigation (FBI 591) and obtained OIPR's approval of the full investigation on Wen Ho Lee. (AQI 1017)

- (U) (S) SSA [REDACTED] handled the processing of numerous national security letters for bank and credit card records associated with the Lees. See, e.g., AQI 1033, 1099, 1106.

- (U) (S) At FBI-AQ's request (AQI 1096), SSA [REDACTED] drafted the application for mail cover authorization, which was ultimately approved by the Attorney General. (FBI 728, 737)

~~TOP SECRET~~ [REDACTED]

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~~TOP SECRET~~ [REDACTED]

- (U) SSA [REDACTED] personally wrote the FISA LHM that was submitted to OIPR on July 1, 1997, and worked closely with OIPR to revise the application several times.<sup>210</sup> (FBI 13185)
- (U) After the FISA application was rejected, SSA [REDACTED] drafted a new investigative plan for FBI-AQ, which eventually worked its way out of FBI-HQ and into the hands of SSA [REDACTED] and SA [REDACTED] (AQI 1560)
- (S) SSA [REDACTED] was substantially involved in the planning for the [REDACTED] [REDACTED] (AQI 1620), obtaining FBI-HQ's approval for the operation (FBI 1246), and assisting FBI-AQ [REDACTED] (FBI 1246) After the [REDACTED] it was SSA [REDACTED] persistence that ultimately expedited [REDACTED] (AQI 4775)

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(U) In an investigation that suffered from innumerable changes in personnel, uneven talent, and various other difficulties, SSA [REDACTED] was a consistent source of commitment and hard work. He was also, however, responsible for several serious errors that fundamentally and adversely affected the investigation.

4. (U) What went wrong at NSD

(U) Because NSD micro-managed this investigation, decisions that normally would be made in the field were, instead, made at FBI-HQ. And several of those decisions were wrong, with material adverse consequence for the investigation.

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<sup>(21)</sup>  
<sup>210</sup> (S) Unfortunately, this was *also* one of the most significant matters that went wrong in the investigation. While OIPR is principally responsible for its rejection of the FISA application, SSA [REDACTED] made this rejection *much* more likely by failing to include critical incriminating information in either the FISA LHM or the supplemental inserts he drafted.

~~TOP SECRET~~ [REDACTED]

a. (U) NSD's unreasonable reluctance in 1995 to become involved in the investigation

(U) In the time period of June 1995 to September 1995, NSD should have become far more directly engaged and involved in this investigation. Its reluctance to do so went beyond the appropriate bounds of healthy skepticism or due deference to DOE's expertise. *Given the nature of the underlying allegation, and given the FBI's preeminent role in the investigation of espionage, NSD should have done more.*

FBI  
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(u) (S//NF) As early as June 28, 1995, SSA [REDACTED] received information from DOE that

b1 | (S//RD//NF) [REDACTED]

(FBI 336) A similar message came into NSD from FBI-AQ:

(S//RD//NF) Notra Trulock, Director, Office of Energy Intelligence, Department of Energy (DOE), Washington, D.C., visited LANL on June 28, 1995. The purpose of his visit was to advise Dr. Siegfried Hecker that [REDACTED]

b1

(AQI 2933) NSD clearly understood that Trulock had concluded as of July 1995 that the

b1 | (S//RD//NF) [REDACTED]

~~TOP SECRET~~ [REDACTED]

(FBI 344) We do not suggest that this was necessarily enough for the FBI to open a full Unknown Subject ("UNSUB") investigation in July or August 1995.<sup>211</sup> After all, DOE had not yet formally communicated its final judgment on the matter [REDACTED]

b1

[REDACTED] (FBI 362) [REDACTED] (FBI 352) [REDACTED]

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(SARF) [REDACTED]

<sup>211</sup> (SARF) This is particularly true given the fact that DOE was sending NSD mixed messages. [REDACTED]

b1

[REDACTED] See UC [REDACTED] handwritten notes of a July 12, 1995 meeting with DAD Lewis, SC Doyle, UC [REDACTED] and Trulock and Ken Baker from DOE. (FBI 11834, 21512, 21513) See also this statement in an FBI briefing paper, also dated July 12, 1995 [REDACTED]

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[REDACTED] and that there was at present no need for the FBI to become involved. [REDACTED] agrees." (FBI 344) FBI-AQ was hearing a similar message and passing it on to NSD: [REDACTED]

[REDACTED] (AQI 2944) SSA [REDACTED] view as of July 5, 1995 was that "there was insufficient evidence to warrant the initiation of an FBI full field investigation." (DOE 3486) SC Doyle said that the FBI did not want to precipitously press the panic button. (Doyle 10/19/99)

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~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

FBI  
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(AQI 2947) SSA [REDACTED] put his position even more bluntly in a memorandum to the file he wrote on August 4, 1995: "the most prudent course would be to do nothing so as to not compromise [FBI] contacts and so as not to set leads on an investigation that is not yet open."<sup>212</sup> (FBI 13046) (emphasis added)

(S//NF//RD) Prudence, in fact, dictated just the opposite course of action. [REDACTED]

b1

[REDACTED] NSD should have sought access to the walk-in document - the document which NSD knew underlay this allegation - immediately upon learning of its existence. Whatever the CIA's obligation may have been to notify the FBI of the existence of the walk-in document, by [REDACTED] the FBI did know of its existence and yet was still unwilling aggressively to seek it out.

(S//NF//RD) The consequence of this decision was significant. Had NSD obtained the walk-in document [REDACTED]

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<sup>212</sup> (S) Technically, the investigation was open. FBI-HQ had instructed FBI-AQ to open and assign the "Kindred Spirit" investigation on July 20, 1995 and it was opened and assigned to SA [REDACTED] on July 24, 1995. (AQI 2935) Although the opening of the case file was largely an administrative matter designed to accumulate in one location the growing pile of relevant documents [REDACTED] 6/22/99), it was nonetheless an open file.

<sup>213</sup> (S//NF) [REDACTED]

b1

(FBI 3255)

<sup>214</sup> (S//NF//RD) [REDACTED]

(FBI 21512, 21513, 11834)

~~TOP SECRET~~ [REDACTED]



~~TOP SECRET~~ [REDACTED]

(u)  
(S) Whatever argument can be made for the FBI staying on the sidelines of this investigation prior to September 1995, the FBI should have asserted "primary investigative jurisdiction"<sup>218</sup> after it received DOE's September 25, 1995 letter. This letter, which was designed to enlist FBI support of DOE's AI, read in part:

[investigation], but no request for assistance was made to Santa Fe FBI. FBIHQ advised Santa Fe to stay out of this until DOE decided it had a prima facie case of espionage.

(u)  
(S) From a July 20, 1995 airtel from FBI-HQ to FBI-AQ (AQI 2935)

(u)  
(S) Trulock asked that the FBI join DOE's damage assessment/administrative inquiry team, but FBIHQ declined until such time as DOE had a prima facie case of espionage.

(u)  
(S) From an August 4, 1995 memorandum to the file, reflecting a telephone conversation between SSA [REDACTED] and SA [REDACTED] (FBI 13046)

(S) (S/NF) If DOE thinks an espionage case is founded, we can then pursue an investigation [REDACTED] | b1

(u)  
(S) From an October 12, 1995 communication from FBI-HQ to FBI-AQ (FBI 3255):

(u)  
(S) DOE has not requested the FBI conduct an investigation.

(u)  
(S) From a November 3, 1995 briefing memo from SC Doyle to AD Bryant (FBI 400):

(u)  
(S/NF) [A]t present this is a DOE investigation with FBI and CIA assistance, but should a subject be identified, the FBI would be responsible for the espionage investigation.

(u)  
<sup>218</sup> (S) See the discussion of the DOE-FBI Memorandum of Understanding in Chapter 7.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

b1

(S//NF//RB) [REDACTED]

(FBI 13045) At this point, the FBI should have asserted its jurisdiction and taken over this investigation.<sup>219</sup>

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(U) Nor is it a sufficient response to say that the FBI *did* detail SA [REDACTED] to support the DOE AI. SA [REDACTED] involvement in the AI was quite limited; indeed, he dropped out of the AI process more than two months before it was complete<sup>220</sup> and never even saw the final version of the AI. In any case, there is an obvious world of difference between a *DOE inquiry* supported by the FBI and an *FBI investigation* supported by DOE. One preeminent distinction, of course, is that the ultimate judgment in a DOE AI is controlled by DOE, not by the FBI, a distinction with great significance in *this* investigation. See Chapter 7.

(U)  
(S//NF) By September 1995, the analytical portion of DOE's work was complete and the message communicated to the FBI was that it was "highly probable" that classified nuclear weapons design information *had* been "illegally" acquired by the PRC. In other words, DOE had made *precisely* the judgment that SSA [REDACTED] had repeatedly said the FBI was waiting for: a judgment that espionage had been committed. Now the issue was a traditional "whodunit." A suspect or group of suspects needed to be identified. This issue of culpability – which was the *sole* subject matter of the DOE AI – *did* require special expertise. But that expertise did not reside in DOE; it lay in the FBI.<sup>221</sup>

<sup>219</sup> (U) Deputy Director Bryant told the AGRT that, upon reflection, the FBI probably should have taken over the investigation at this time. (Bryant 11/15/99)

<sup>220</sup> (U) SA [REDACTED] received another assignment that rendered him unavailable.

(U)  
<sup>221</sup> (S) AD Gallagher emphasized this point to the AGRT. He stated that one of the lessons learned from the Wen Ho Lee investigation is that if the FBI is going to inherit an investigation involving a matrix – an effort to narrow a list of suspects by examining pertinent criteria – it needs to be involved in the creation of the matrix. An office with experience in UNSUB espionage investigations, like the Washington Field

~~TOP SECRET~~ [REDACTED]

(U) The FBI's unwillingness to assume primary investigative jurisdiction was consequential, to say the least. It led to the creation of an AI that was flawed in multiple, material respects. See Chapter 7.

(U)  
(S) The deference shown to DOE in connection with the AI was only one example, albeit an extraordinarily significant one, of the FBI showing undue deference to DOE. There were, unfortunately, other such examples:

- (S/NF) Even after the FBI had launched its full investigation of Wen Ho Lee, the FBI deferred to DOE the determination as to whether the predicate for the investigation was in jeopardy after [REDACTED]

[REDACTED] (FBI 11725, 20307, 662, 663, 668) That the FBI needed to discuss this matter with DOE is indisputable; it is equally clear, however, that the FBI - even after opening its full investigation and submitting its [REDACTED] to OIPR - was still according to DOE almost preemptive control over the predicate for an FBI investigation.

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- (S/NF) [REDACTED]  
[REDACTED]  
[REDACTED] What was necessary was a thorough evaluation of the predicate underlying the investigation itself.<sup>222</sup> [REDACTED]

Office, should have created the matrix. (Gallagher 10/28/99)

<sup>222</sup> (U)  
(S) SSA [REDACTED] did order FBI-AQ to interview DOE scientists (AQI 957) but this was not done to test the predicate but, rather, to document it should there ultimately be a prosecution. SSA [REDACTED] told SA [REDACTED] that the scientists needed to be interviewed, or an October 31, 1995 DOE briefing written up, in the event of a trial. He told SA [REDACTED] that "if we get lucky, this thing is going to trial." [REDACTED] 12/15/99) This point was emphasized to DOE as well, which was told on or about August 19, 1996

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[REDACTED]

- (2) (S) NSD acceded to DOE's decision to interview and polygraph Lee in December 1998. According to a memorandum AD Gallagher wrote to Director Freeh prior to the interview and polygraph, NSD had "no objection" to DOE's decision. (FBI 07652, 07721, 01408) *It should have objected.*<sup>224</sup> Permitting Wackenhut to conduct the polygraph of the

DOE  
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that an FBI agent would soon be coming to DOE to meet with someone to take a statement. [REDACTED] an analyst who worked for Trulock, conveyed this message from the FBI: "Caution was given not to say anything that one would not be comfortable testifying on a witness stand." (FBI 674)

<sup>223</sup> (S/REF/NT) That the FBI needed to thoroughly examine the predicate should have been obvious even absent any red flags suggesting that the predicate was in doubt. But here, there were substantial red flags, including: (1)

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[REDACTED]

(AQI 2944); (2)

[REDACTED]

(3)

[REDACTED]

(FBI 694); (4) the FBI's skepticism about Notra Trulock's perception of Chinese espionage efforts; see, e.g., [REDACTED]

[REDACTED] (FBI 20768); and (5) the CIA's September 1997 assessment of the Chinese nuclear weapons program, which NSD received but whose significance NSD never appreciated. See Chapters 6 and 13. (FBI 12360)

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<sup>224</sup> (S) It must be emphasized that NSD was not alone in failing to object to DOE's decision. FBI-AQ did not object either. Although SSA [REDACTED] did object to DOE doing the polygraph [REDACTED] 9/10/99), and the case agent, SA [REDACTED] was

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principal subject of a multi-year FBI investigation concerning an allegation of incalculable significance was clearly a mistake, and not an insignificant one either. See Chapter 17.<sup>225</sup>

c. (U) NSD should have recognized the flaws of the AI

(U) SSA [REDACTED] and UC [REDACTED] read the DOE AI "cover to cover" and a copy went to SC Doyle as well.<sup>226</sup> [REDACTED] (12/15/99) There is no reason why these NSD officials in *May 1996* could not have done what ASAC Lueckenhoff did in *December*

"shocked" to learn that DOE was going to do it and that it was a "done deal" [REDACTED] 9/7/99), SAC Kitchen registered no objection and it was SAC Kitchen, of course, who spoke for the Division. (Kitchen 9/10/99; Curran 2/9/00) SAC Kitchen told the AGRT that he had heard that Wackenhut was pretty good and Ed Curran vouched for them. (Kitchen 9/10/99) Director Freeh told the AGRT that the FBI – not DOE – should have done the first interview and polygraph of Wen Ho Lee. (Freeh 11/11/99)

<sup>225</sup> (8) Nor is it rendered any less a mistake by the speculative possibility that Lee might be more receptive to being approached by DOE than by the FBI. Just the opposite might have been true. After all, after the [REDACTED] [REDACTED] had specifically told Lee that he was going to report the matter to "the local FBI for their possible follow-up." (FBI 1350) An FBI approach could have been linked to [REDACTED] comment to Wen Ho Lee. Moreover, given the highly classified and sensitive nature of the work conducted at LANL, the FBI's presence at LANL was not unusual. Indeed, SA [REDACTED] told the AGRT that he would routinely stand outside the LANL entrance early in the morning so that LANL personnel would know that the FBI was on site that day. [REDACTED] (8/12/99) Moreover, as SSA [REDACTED] told the AGRT, having DOE do the interview and polygraph of Lee would not necessarily have been of less concern to Lee than having the FBI do it. DOE, after all, "could take his job." [REDACTED] (9/10/99) See Chapter 15.

<sup>226</sup> (U) SC Doyle said he "probably" read it. (Doyle 10/19/99)

~~TOP SECRET~~ [REDACTED]

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DOE  
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b1

1998: recognized that, in its singular focus on Wen Ho Lee, in its selection criteria for suspects, and in its evaluation of other potential venues of compromise, it was a deeply flawed product. <sup>227</sup> See Chapter 7.

(U)  
(S) This is not to say that the AI's information on Wen Ho Lee, when combined with what the FBI already knew about Wen Ho Lee from its 1994-1995 preliminary inquiry, see Chapter 5, did not warrant the opening of a full investigation on Lee. It most certainly did.<sup>228</sup> Rather, it is to say that the AI did a patently inadequate job in identifying the full range of *other* potential suspects, a consequence in part of its misperception and mischaracterization of the predicate for the investigation. NSD should have taken the AI, *at most*, as its point of departure, rather than as its point of arrival.

(S/RD) [REDACTED]

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(S/RD) NSD's failure appropriately to react to the AI is particularly troubling given the fact that SA [REDACTED] explicitly advised NSD that it needed to do more than simply open an investigation on Wen Ho Lee. One of his last acts as a participant in the AI process was to give FBI-HQ a piece of important advice: He told SSA [REDACTED] that

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<sup>227</sup> (U) Whatever presumption of validity NSD gave to the AI because of SA [REDACTED] involvement in it, they *also* knew that SA [REDACTED] had been reassigned two months before the AI's completion. They knew or should have known that the final AI report could not fairly be described as SA [REDACTED] work product but, rather, that it was a DOE document created by DOE personnel based on DOE assumptions. Indeed, SA [REDACTED] never even read the final AI report. See Chapter 7.

<sup>228</sup> (S/RD/NF) Indeed, a full investigation on Lee was long overdue and, as discussed in Chapter 5, the preliminary inquiry should have been converted into a full investigation [REDACTED]

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~~TOP SECRET~~ [REDACTED]

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the FBI should open two matters: a full investigation on Wen Ho Lee and a full investigation on an Unknown Subject ("UNSUB").<sup>229</sup> [REDACTED] (12/14/99) [REDACTED]

b1

[REDACTED] Had this advice been adopted, some of the inadequacies of the AI would have been addressed in a timely fashion by the FBI itself.<sup>221</sup> Instead, there was just one consequence of the AI: the opening of a full investigation on Wen Ho Lee and his wife, Sylvia.<sup>222</sup> Much more needed to be done.

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<sup>229</sup> (U) SA [REDACTED] told the AGRT that he told SA [REDACTED] that the UNSUB investigation was a "slam dunk" and, if he was the responsible supervisor, he would also open a full investigation on Wen Ho Lee. [REDACTED] (12/14/99)

<sup>230</sup> (U) SSA [REDACTED] did not recall receiving a recommendation from SA [REDACTED] to either open the case as an UNSUB or to conduct additional investigation at other locations or involving other suspects. [REDACTED] (12/15/99) It is reasonable to conclude, however, that SA [REDACTED] advice was communicated to SSA [REDACTED] since it is consistent with SA [REDACTED] written plan for additional investigative activity that needed to be conducted. (FBI 15868) See Chapter 7.

<sup>231</sup> (S/NF) The former Section Chief of [REDACTED] Steve Dillard, told the AGRT that, in hindsight, an UNSUB case should have been opened when the FBI learned of the loss of weapons design information. (Dillard 8/6/99) b1

(U)  
<sup>232</sup> (S) FBI-HQ did not instruct FBI-AQ to open the preliminary inquiries on the other LANL personnel until its December 1997 teletype to FBI-AQ and, then, it was in response to OIPR's concerns about the failure to investigate the other individuals named in the AI [REDACTED] (7/23/99), rather than in response to FBI-HQ's own reading of the AI. That may explain why FBI-HQ did nothing (until 1999) when FBI-AQ ignored the instruction to open the preliminary inquiries.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

d. (U) NSD personnel never appropriately addressed its problems with FBI-AQ's handling of the investigation

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(S)  
(U) SSA [REDACTED] told the AGRT that the investigation was a "disaster" in the field and that FBI-AQ "f\*\*\*ed" the case up. [REDACTED] 7/23/99; [REDACTED] 7/28/99) UC [REDACTED] had his own concerns with the management of the case out in FBI-AQ. He told the AGRT that he "wasn't impressed" by SA [REDACTED] [REDACTED] that dealings with him were "disappointing." [REDACTED] 12/29/99) The [REDACTED] unit, however, never availed itself of a variety of available mechanisms to complain about FBI-AQ's handling of the case. b1

(U)  
(S/NF) This issue goes substantially beyond the failure of either SSA [REDACTED] or UC [REDACTED] to complain about the two agent diversion issue. There were a host of other deficiencies in the handling of this investigation by Albuquerque Division, including SA [REDACTED] inadequacy, SA [REDACTED] limitations, the sluggish pace of the investigation, the clear absence of initiative and self-direction, and FBI-AQ's pursuit of unproductive detours (e.g., the [REDACTED] allegations). There was *much* to complain about and yet, prior to b1  
October 31, 1998, when UC [REDACTED] and SSA [REDACTED] did complain to ASAC Lueckenhoff, there were few complaints.

(U)  
(S) The opportunities to complain *were* present:

(U) First, the unit could have insisted on insuring that SAC Weber and SAC Kitchen were briefed on problems in the case before they assumed their new duties in Albuquerque. Neither were briefed. (Weber 10/28/99; Kitchen 9/10/99)

(U) Second, at any point, the unit or section chief could have picked up the telephone and complained to ASAC Dick or SAC Weber about the handling of the case at the field office level. This was not done either. (Weber 10/28/99; Dick 7/29/99) Nor is there any indication that complaints were communicated to SAC Kitchen prior to his hearing from ASAC Lueckenhoff in November 1998 about NSD's concerns. (Kitchen 9/10/99) And, while it does appear that SSA [REDACTED] did initially complain to SSA [REDACTED]

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~~TOP SECRET~~ [REDACTED]

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about SA [REDACTED] sluggish pace (FBI 11620, 13040), there is no indication that [REDACTED] ever addressed its concerns about the investigation with SSA [REDACTED] successor, SSA [REDACTED] during the year that SSA [REDACTED] was in charge of the investigation.<sup>233</sup> b1

(S) Third, the unit could have availed itself of the inspection process, which FBI-AQ underwent in August 1998, to register its complaints about FBI-AQ's handling of this case. [REDACTED] was required to complete questionnaires (called "interrogatories") concerning FBI-AQ's handling of its National Foreign Intelligence Program investigations. Those interrogatories were completed and then incorporated into [REDACTED] overall response. In [REDACTED] final response, there is not a single reference to problems with FBI-AQ's handling of the "Kindred Spirit" investigation. (FBI 16267 to 16378) This is obviously because [REDACTED] contribution to the final interrogatories also omits any reference to, or complaint about, FBI-AQ's handling of the "Kindred Spirit" investigation.<sup>234</sup> (FBI 21846 to 21858) This is a particular failure on the part of NSD since the interrogatories explicitly asked questions that presented [REDACTED] an exceptional opportunity to express their concerns.<sup>235</sup> b1

(U)  
233 (S) SSA [REDACTED] told the AGRT that he spoke with SSA [REDACTED] and UC [REDACTED] numerous times and they never mentioned that they were dissatisfied with FBI-AQ's handling of the "Kindred Spirit" investigation. [REDACTED] (12/7/99)

(U)  
234 (S) There is some reason to believe that UC [REDACTED] intended SSA [REDACTED] to make some reference to the Kindred Spirit investigation for inclusion in the interrogatories (FBI 21847) but there is no reason to conclude that such a reference would have addressed FBI-AQ's deficiencies in the handling of the matter. In any case, it was not done.

(U)  
235 (S) See, e.g. the following interrogatories:

(S) Interrogatory number L3: "(S) Are the field division's objectives realistic in terms of the perceived threat and the present capabilities of the division?" The response to the question was: "(U) Albuquerque's objectives in handling matters within the purview of [REDACTED] Unit are realistic and consistent with the division's capabilities." (FBI 21849) b1

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(S) SSA [REDACTED] told the AGRT that interrogatories are not, in reality, used as an opportunity to complain about a field office: "We're never allowed to be candid in interrogatories." [REDACTED] 12/15/99) If true, if the FBI "culture" does not encourage, indeed require, that FBI-HQ personnel be blunt and candid in interrogatories, this essentially eviscerates the value of the interrogatories. The issue is not whether the inspectors who examined FBI-AQ should have picked up problems with the "Kindred Spirit" investigation on their own.<sup>236</sup> The issue is [REDACTED] failure to avail itself of an institutional mechanism - the inspection process - which is specifically designed by the FBI to insure that *all* significant problems in a field office are identified and addressed in an inspection. b1

(S) Finally, the [REDACTED] unit could have complained up its own chain of command, if necessary all the way to the Director, concerning FBI-AQ's handling of the case. b1  
While UC [REDACTED] and SSA [REDACTED] did communicate their concerns to their Section

(u) (S) Interrogatory number II.1.c: (u) (S) Identify any known FIS [Foreign Intelligence Service] threat or issue threat where results have been limited and additional attention is required." The response to the question was: "(S) None known to [REDACTED] Unit." (FBI 21850-21851)

(u) (S) Interrogatory number II.8: (u) (S) Are there any specific investigative, administrative and/or organizational problems detected by NSD in this division which require specific inquiry or consideration during this inspection?" The answer provided was: "(S) None known to [REDACTED] Unit." (FBI 21857)

(u) (S) Interrogatory number II.9: (u) (S) Is there a need for the assigned Assistant Inspector to personally contact specific personnel in NSD prior to the beginning of this inspection? If so, provide the name(s) and extension(s)." The response to the question was: "(S) None known to [REDACTED] Unit." (FBI 21858)

<sup>236</sup> (S) According to Deputy Director Bryant, the inspectors *should* have identified problems with the "Kindred Spirit" investigation even if [REDACTED] did not complain. Nevertheless, said Deputy Director Bryant, it would have been appropriate for [REDACTED] to tell the inspectors prior to the inspection of its problems with FBI-AQ's handling of the case. (Bryant 11/15/99)

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Chiefs, Doyle<sup>237</sup> and Dillard,<sup>238</sup> there is no evidence that [REDACTED] problems with FBI-AQ were communicated by NSD personnel to Director Freeh,<sup>239</sup> Deputy Director Bryant,<sup>240</sup> AD Lewis<sup>241</sup> or DAD Larry Torrence.<sup>242</sup> b1

(S)  
(U) If [REDACTED] solution to the problem with FBI-AQ was *not* to complain, what was it? The answer is evident throughout the documentary record of the case: SSA [REDACTED] in effect, *became* the direct supervisor and, at times, the case agent, for the Wen b1

(S)  
(S) Specifically, in October and November 1996, there were several communications between SSA [REDACTED] and SC Doyle and between UC [REDACTED] and SC Doyle concerning SA [REDACTED] lack of vigor. (FBI 706, 13042, 705, 711, 11850-52)

(S)  
(S) SC Dillard told the AGRT that after his arrival as the Section Chief of [REDACTED] in January 1997, UC [REDACTED] and SSA [REDACTED] briefed him on problems in the case, specifically that the case had languished and moved too slowly because of an inept case agent. SC Dillard offered to call SAC Weber but was told that the case had just been reassigned [to SA [REDACTED] and that a call was unnecessary. He never did talk to SAC Weber about the investigation. (Dillard 8/6/99) See also FBI 11620, 13040. b1

<sup>239</sup> (U) On this point, Director Freeh told the AGRT that no one raised questions or problems about the Lee investigation to him. (Freeh 11/11/99)

(S)  
<sup>240</sup> (S) Deputy Director Bryant told the AGRT that FBI-HQ upper management's knowledge of the "Kindred Spirit" investigation was too limited.

(S)  
<sup>241</sup> (S) AD Lewis did tell the AGRT that he was aware of complaints that FBI-AQ was not aggressively pursuing the case but those complaints came from Notra Trulock, not from within NSD. AD Lewis said that SC Dillard told him he was taking care of it. (Lewis 7/6/99) It is not clear when Trulock complained to AD Lewis. Trulock "offered" to call Lewis back in November 1996 about the lack of action or progress on the case, (FBI 715) but Lewis' reference to SC Dillard - who served as Section Chief of [REDACTED] from January 1997 through August 1998 (Dillard 8/6/99) - would suggest that Trulock's complaint occurred at a later point in time. b1

<sup>242</sup> (U) DAD Torrence told the AGRT he was never apprised that FBI-AQ was not properly conducting the investigation. (Torrence 7/30/99)

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~~TOP SECRET~~ [REDACTED]

FBI  
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Ho Lee investigation. Until December 1998, there was hardly a decision made in this case that was not initiated by SSA [REDACTED] or approved by SSA [REDACTED].<sup>243</sup> As SA [REDACTED] said: "There was always a question: Whose running this case? Headquarters or AQ? In [REDACTED] mind, this was a Headquarters case and he thought he was making the decisions." [REDACTED] 9/12/97) SSA [REDACTED] not only controlled the strategic and investigative direction of the case but he controlled the minutia of it as well.<sup>244</sup> The problem with this micro-management is that: (1) SSA [REDACTED] was 1600 miles away and could never provide the day-to-day intense supervision, or have the detailed knowledge, the case required;<sup>245</sup> (2) SSA [REDACTED] of course, had multiple other responsibilities;<sup>246</sup> (3) No field office wanted FBI-HQ to be telling it how to run its case;<sup>247</sup> and (4) To use

<sup>243</sup> (U) According to SSA [REDACTED] by December 1998 he was no longer in control of the case. The case was being directed at a much more senior level. [REDACTED] 7/28/99)

<sup>244</sup> (S) For example, SSA [REDACTED] became deeply involved in such questions as [REDACTED] 9/10/99), whether the field office could conduct specific interviews of LANL personnel (FBI 702, AQI 1056, 13041), and a variety of issues concerning FBI-AQ's difficulties in obtaining necessary background records. (AQI 1064, FBI 13041; [REDACTED] 7/23/99 and 12/15/99)

<sup>245</sup> (S/NF) One very significant adverse consequence of this fact was that several key aspects of the [REDACTED] essentially got lost in connection with the preparation of the FISA application. See Chapter 11. 6/

<sup>246</sup> (U) SSA [REDACTED] himself, described his involvement in the Lee investigation as a "total anomaly." [REDACTED] 7/23/99) SSA [REDACTED] was an FBI-HQ program manager and he did not normally handle individual cases on a day to day basis. (Id.)

<sup>247</sup> (U) This point was illustrated by SAC Weber's reaction to SSA [REDACTED] December 1997 teletype concerning the investigative direction of the case. According to SA [REDACTED] SSA [REDACTED] told him that SAC Weber viewed the teletype as "condescending" and that the teletype made it look as if FBI-HQ was running the case. [REDACTED] 9/10/99)

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the current vernacular, this micro-management of a field office case presented an ongoing issue of who "owned" the problem of the Wen Ho Lee investigation. To the extent that FBI-HQ controlled the investigation, it undermined FBI-AQ's responsibility for, and authority over, the conduct of the case.

FBI  
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(U) Consequently, and not a little bit ironically, some of the very problems which SSA [REDACTED] attributes *solely* to FBI-AQ's mismanagement of the case are, in fact, attributable, *at least in part*, to the problematic relationship between FBI-HQ and FBI-AQ, which persisted until late 1998.

c. (U) NSD contributed to some of the delays in the investigation

FBI  
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b7C

(U) The unfortunate delays that characterized this investigation are principally attributable to the Albuquerque Division. Having said that, NSD must also bear part of the responsibility for the languid pace of this investigation. Despite SSA [REDACTED] considerable efforts on behalf of the investigation at various points in time, these delays are indicative of the fact that the case never had the priority within NSD that it warranted prior to December 1998.

i. (U) July 1995 to May 1996

(U) From the beginning, FBI-AQ was more anxious to get involved and moving on this investigation than NSD was to have it get involved.

(S/AF/RD) [REDACTED] (FBI) | b1  
14597) SSA [REDACTED] declined. (FBI 357; AQI 2947)

FBI  
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(U) (S) On October 10, 1995, FBI-AQ asked NSD to contact the Office of Counterintelligence at DOE to ask whether investigation was warranted. (AQI 2964) SSA [REDACTED] response was to advise FBI-AQ that DOE had not yet requested that the FBI conduct an investigation and that SA [REDACTED] was being detailed to assist DOE with its AI. (FBI 386)

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(u)  
(S) On February 7, 1996, FBI-AQ asked that [REDACTED] and SA [REDACTED] come to DOE b6 b7c  
FBI-AQ's offices to brief the SAC, ASAC and SSA [REDACTED] on the investigation when they  
were in New Mexico reviewing records as part of the AI. (AQI 857) SSA [REDACTED]  
internal FBI-HQ response was to note that the briefing would take place but that he was  
concerned that FBI-AQ "might persist in the belief that this is their case - which it is  
not." (FBI 463) (emphasis in original)

(U) Thus, repeatedly, FBI-AQ attempted to deal itself into this investigation but  
NSD resisted both the Albuquerque Division's and its own involvement in it. That  
resistance, of course, continued until the AI was complete and the Lee investigation was  
opened in FBI-AQ. Had the FBI taken over the investigation in September 1995 - as it  
should have - FBI-AQ could have gotten a nine month head start.

(u)  
(S) Moreover, NSD should *never* have taken SA [REDACTED] off the AI until it was b6 b7c  
complete and delivered. On March 18, 1996, [REDACTED] sent a memorandum to Trulock DOE b6 b7c  
indicating that he and SA [REDACTED] would be going to Lawrence Livermore National  
Laboratory ("LLNL") in early April 1996 to conduct the LLNL portion of its review of  
documents in support of the AI. (DOE 2449) One week later, on March 26, 1996, [REDACTED]  
was writing Trulock again, but this time to tell him that SA [REDACTED] was no longer  
available and that the LLNL trip ought to proceed without him. (DOE 2450)

(U) Assigning SA [REDACTED] to a new project *before* the AI was complete - indeed,  
while DOE was still in the process of reviewing records - obviously undermined the  
FBI's ability to insure that the AI would be a product that the FBI could rely upon as a  
basis for further investigation. The AI's deficiencies that ASAC Lueckenhoff was  
grappling with in December 1998 might have been avoided had SA [REDACTED] continued to  
be involved in the AI up until it was finalized and delivered to the FBI.

ii. (U) June 1996

(u)  
(S) Shortly after the full investigation was opened on Wen Ho Lee, SSA [REDACTED]  
and SA [REDACTED] had several telephone conversations in which SSA [REDACTED] gave SA  
[REDACTED] his investigative plan. On June 12, 1996, he told SA [REDACTED] not to do  
"any additional work on this matter" until SSA [REDACTED] and SC Doyle came out to FBI-

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FBI  
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AQ in early July for their on-site visit. (AQI 954) It is difficult to understand SSA [REDACTED] rationale for telling FBI-AQ to stand down for what turned out to be more than a month.<sup>248</sup>

iii. (U) August 1996

(u)

(S/N) On July 31, 1996, SSA [REDACTED] ordered FBI-AQ to "temporarily suspend" its investigative activity in light of [REDACTED] (AQI 992) and that suspension continued until it was lifted on August 20, 1996. (FBI 663) The investigation did not actually resume until August 30, 1996. (AQI 1014)

b1

(u)

(S/N) Had SSA [REDACTED] taken certain steps at an earlier point in time, this suspension would have been unnecessary. Even absent such steps, the wisdom of shutting down an investigation that was just developing (a bit of) a head of steam was questionable.

FBI  
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(S/N) To understand this issue it is first necessary to appreciate when SSA

[REDACTED] first became aware of a problem with the walk-in document. [REDACTED]

FBI  
b6, b7c

[REDACTED] (FBI 602) SSA [REDACTED] was advised on May 16, 1996 - even before he received the DOE AI - that there was a problem with the source of the walk-in document. [REDACTED]

b1

[REDACTED]

(FBI 485)

FBI  
b6  
b7c

<sup>248</sup> (U) Although SC Doyle and SSA [REDACTED] visited the field office and LANL on July 1, 1996 and July 2, 1996, SA [REDACTED] active work on the case did not resume until July 16, 1996. (AQI 961)

(u)

(S/NP) Thus, at the time FBI-HQ instructed FBI-AQ to open the Lee full investigation, it already knew that the *bona fides* of the source of "a major basis" for the Lee investigation (AQI 992) was in doubt. These doubts should have - and could have<sup>249</sup> - been resolved *before* the full investigation was opened; they should not have necessitated the suspension of an ongoing investigation.

FBI  
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b7c

(S/NP) Moreover, SSA [REDACTED] contributed to this problem by drafting and submitting to OIPR a [REDACTED] seeking approval of the full investigation of Wen-Ho Lee and Sylvia Lee that failed to make *any* reference [REDACTED] even though by this time he knew that the Agency's concerns had already prompted it to [REDACTED]

b1

[REDACTED]<sup>250</sup> (FBI 485) This matter *should* have been addressed in the [REDACTED] and SSA [REDACTED] failure to do so clearly contributed to his judgment that the investigation needed to be suspended out of an "excess of caution" [REDACTED] 12/15/99) pending review of the issue with DOE and OIPR.<sup>251</sup> Had SSA

<sup>249</sup> (S/NP) In part, they could have been resolved in May 1996 because the FBI was already being told that even if the *bona fides* of the source was in doubt, the *bona fides* of the source's information concerning the [REDACTED] was not. On May 23, 1996, [REDACTED]

(FBI 488)

(FBI 668)

<sup>250</sup> (S/NP)

(FBI 485)

<sup>251</sup> (u) (S/NP) An FBI briefing memo dated August 1, 1996 makes this point clearly:

(u) (S) Although enough credible information to justify our investigation may now exist, it is necessary that we ask DOE to revisit its September, 1995, conclusion before we continue. It is also necessary that the basis for this investigation be discussed with OIPR before we again proceed.

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[REDACTED] apprised OIPR of this matter *prior* to its approval of the [REDACTED] which occurred on July 31, 1996 (FBI 672), the investigation could have proceeded with no suspension at all.<sup>252</sup>

b1

(U) In an investigation where momentum was both scarce and fleeting, the August suspension was unfortunate and, more significantly, avoidable.

iv. (U) August 1997 to December 1997

(U) From August 12, 1997, when OIPR denied the FISA application, until December 19, 1997, when NSD transmitted an investigative plan to FBI-AQ, the investigation was essentially stalled. This delay was avoidable for a variety of reasons.

(U) First, and at its most basic level, it was avoidable because FBI-AQ should have been submitting an investigative plan to FBI-HQ, *not the other way around*. It was, after all, a field office case. And, for all of FBI-AQ's problems, it was not as if the field office was incapable of submitting such a plan. It should have been instructed to do so.

(U) Second, it was avoidable because many of the same items in the December 19, 1997 teletype were addressed in an August 11, 1997 telephone call between SA [REDACTED]

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b7C

(FBI 609)

<sup>252</sup> (U) As to the perceived need to have DOE review the predicate in light of the CIA's reservations, this *also* could have and should have been addressed *prior* to the opening of the full investigation, [REDACTED]

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FBI  
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and SSA [REDACTED]<sup>253</sup> (AQI 5331) FBI-AQ could have been working on their "To Do" list in August 1997 instead of in January 1998.<sup>254</sup>

b1

(S) Third, there is really no excuse for the four months it took for this teletype to work its way out of FBI-HQ. The AGRT recognizes, of course, that the section during this period of time had other very significant matters on its plate, in particular, the CAMPCON and JAGGED EDGE campaign financing investigations. SC Dillard told the AGRT that these two investigations required innumerable meetings and that an enormous amount of time was spent preparing for and attending briefings.<sup>255</sup> Moreover, the [REDACTED] unit during this time period was also significantly involved in matters ancillary to the Wen Ho Lee investigation.<sup>256</sup> Nevertheless, the only way to interpret the four

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<sup>253</sup> (U) SA [REDACTED] notes of this telephone conversation list seven of the 14 items ultimately covered in the December 19, 1997 teletype, including such significant matters as the need to pursue further investigation of Lee's PRC intern and the need to interview the Lees' former supervisors. (Compare these notes, at AQI 5331, to the December 19, 1997 teletype, at AQI 1560.)

<sup>254</sup> (U) Even if FBI-HQ insisted on providing FBI-AQ a formal investigative plan and, therefore, needed one to be prepared, it was prepared no later than September 24, 1997 and probably several weeks before that date. (FBI 1105) Thus, by the end of September at the latest, FBI-AQ could have had the plan in hand.

b1

<sup>255</sup> (S) SC Dillard told the AGRT that in the year and a half that he was Section Chief of the [REDACTED] section, he either testified or attended 120-130 briefings. (Dillard 8/6/99) In addition, SC Dillard said that, for much of 1997, the position of Deputy Assistant Director in the National Security Division was vacant, resulting in Section Chiefs having to handle briefings and testimony that normally would be handled by the Deputy Assistant Director. (Id.)

<sup>256</sup> (U) In particular, the unit was involved in laying the groundwork for what would ultimately become PDD-61 reforming Counterintelligence at DOE, as well as in various NSC briefings on matters related to Chinese espionage, as well as in a CIA analysis of the state of Chinese nuclear weapons development.

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months of delay it took this teletype to work its way out of FBI-HQ is to conclude that it was simply not a priority matter.<sup>257</sup>

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(8) How did it take four months to get this teletype out of FBI-HQ? The records indicate the following: (1) SSA [REDACTED] sent the draft teletype up his chain of command some time prior to September 24, 1997 (FBI 1105); (2) On September 24, 1997, SSA [REDACTED] gave another version to SC Dillard and SC Dillard was told that "we had to keep it moving" (FBI 1105); (3) On October 6, 1997, SC Dillard sent it back to the unit with instructions to insert [REDACTED] as an additional investigative option (FBI 12013); (4) By October 15, 1997, it was back on SC Dillard's desk with the [REDACTED] inserted (AQI 5524); and (5) On December 4, 1997, it is redated and resubmitted to SC Dillard,<sup>258</sup> and finally approved for dissemination on or about December 19, 1997. b1

<sup>257</sup> (S) Certainly, that was the implicit message communicated to FBI-AQ in its numerous frustrating efforts to find out what was holding up the investigative plan. See, e.g., SA [REDACTED] notes on the following dates: 8/13/97 (conversation with SSA [REDACTED] "new plan of attack" to be sent to Director for his approval; SA [REDACTED] should "sit tight" and would have the plan by "Monday" (AQI 5326)); 8/27/97 ("have not received communication from [REDACTED]." (AQI 5320)); 9/5/97 (SSA [REDACTED] wants Seventh Floor approval before giving him instructions on potentially alerting investigative steps (AQI 5118)); 9/29/97 (conversation with SSA [REDACTED] "It will be sent to [SA [REDACTED] in the near future, once it is approved. There is a lot in there for me to do." (AQI 5535)); 10/1/97 ("communication" is awaiting section chief's approval (AQI 5531)); 10/15/97 (SSA [REDACTED] has rewritten teletype; SC Dillard has looked at it and had SSA [REDACTED] add [REDACTED] now on SC Dillard's desk again (AQI 5524)); 10/23/97 (teletype coming after upper management approves it (AQI 5552)); and 12/12/97 (SSA [REDACTED] says outgoing communication is "hung up on upper mgr's desk" (AQI 5514)). b1

<sup>258</sup> (S) It is not clear what caused the resubmission and redating of the teletype. A note is appended to the draft teletype that reads as follows: "Redated 3<sup>rd</sup> time 12/4/97 + given to SWD [Steven W. Dillard]. SWD told JRK [REDACTED] he can't find last print of this commo." (FBI 1105)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(S) It is certainly true that the unit and section did believe it was necessary to communicate to upper management that the investigation was about to take a riskier course of action, one that might alert Wen Ho Lee to the fact that he was under investigation. But that message was explicitly communicated to Director Freeh on August 14, 1997 - just two days after OIPR rejected the FISA application.<sup>259</sup> It was reinforced in a second note that SC Dillard sent to AD John Lewis on September 12, 1997.<sup>260</sup> Thus, as of September 12, 1997 - if not as of August 14, 1997 - there was no impediment to [REDACTED] immediately issuing its investigative plan to FBI-AQ. It just was not done. It was, said UC [REDACTED] "bureaucratic dithering" that caused the delay. [REDACTED]

FBI  
b6, b7C

7/19/99)

<sup>259</sup> (U) (S) On August 14, 1997, AD John Lewis sent a note to Director Freeh that read in part as follows:

(U) (S) Up to this point in our investigation, we have been focusing on obtaining justification for elsur [electronic surveillance], while at the same time limiting ourselves to non-alerting investigative steps so as to not let the subjects know they are under suspicion. Since our initial elsur application has been rejected, we now intend to pursue a more aggressive but risky course which will include interviews of coworkers, former supervisors, and associates.

(FBI 13331)

<sup>260</sup> (U) (S) The note reads in part as follows:

(U) (S) This is to advise that we will now direct the Albuquerque Division to expand the scope of this investigation to include potentially alerting leads such as interviews of co-workers and associates, trash coverage, physical surveillance and [REDACTED]

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(FBI 130203) (emphasis in original)

~~TOP SECRET~~ [REDACTED]

v. (U) February 1998 to April 1998

b1  
(S) For the reasons set forth in Section "f," below, NSD contributed materially to the delay in the execution of the [REDACTED] the Special Agent identified by FBI-AQ, by FBI San Francisco and by FBI-HQ, as the best man for the job. This cost the investigation at least two months but, as further described in Section "f," it cost the investigation far more than that.

vi. (U) September 1998 to December 1998

(S) For the reasons set forth in Section "h(ii)," below, NSD should have made a substantial and serious effort in September 1998 to persuade OIPR that, in light of the [REDACTED] it now had sufficient probable cause to proceed with a FISA application. A substantial and serious effort was *never* made, see below; what was eventually made was an insubstantial and casual effort but even that did not take place until December 1998.

(S) Had an application been made and been approved in September 1998 or even in October 1998, the FBI could have had electronic surveillance of Lee in November 1998 when Lee made the decision to make a second trip that year to Taiwan. (FBI 1405)

(S) The primary purpose of the [REDACTED] from the beginning was to gain support for a renewed FISA application.<sup>261</sup> While the actual execution of the [REDACTED] was certainly not everything FBI-AQ and NSD had hoped it would be, it did

<sup>261</sup> (S) See EC from NSD to FBI-AQ and other locations, dated April 13, 1998, approving FBI-AQ's [REDACTED]

(S) The objective of the operation is to obtain the additional justification needed for approval of electronic surveillance of subjects, but evidence supporting prosecution will be pursued if an opportunity arises.

(AQI 1694)

~~TOP SECRET~~ [REDACTED]

substantially and materially advance the case for a FISA order. See Chapters 14 and 16. Given this, NSD should have submitted an application for a FISA order *immediately upon receipt of sufficient information from FBI-AQ as to the execution of the operation.*

(S) NSD had *sufficient* information to take that step upon receipt of [REDACTED]

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[REDACTED] (FBI 7494)

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(u) (S) It is not an adequate response to say that NSD was unimpressed by SA [REDACTED] submission. *At the time of its receipt* it appears that NSD was impressed. Four days after receiving SA [REDACTED] material, SSA [REDACTED] drafted a briefing paper that went from DAD Torrence to Director Freeh. It read in part:

(S) At present, AQ is awaiting [REDACTED]

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[REDACTED] before deciding what next to do. Upon receipt [REDACTED] will present the details to DOJ/OIPR and again ask for an electronic surveillance application to the Foreign Intelligence Surveillance Court.

(FBI 7650) (emphasis added). Thus, as of September 1, 1998 at least, NSD believed the [REDACTED] to have been sufficiently successful to warrant advising the Director that they would be returning to OIPR and renewing the effort for a FISA order.

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(u) (S) Nor was the Director of the FBI the only senior government official given that same message. So was Secretary of Energy Bill Richardson. On September 2, 1998, Ed

<sup>262</sup> (S) While it is true [REDACTED]

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[REDACTED] it was certainly sufficient to serve as the basis for a FISA application. FD-302s are used routinely as a basis for drafting affidavits and other legal pleadings.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

Curran, Director of DOE's Office of Counterintelligence, sent Secretary Richardson a memorandum on the status of the "Kindred Spirit" investigation. It read in part:

(S) The FBI advised that they intend to pursue the investigation by applying to the Foreign Intelligence Surveillance Court for electronic surveillance of Wen Ho Lee, to attempt to determine [REDACTED]

(DOE 2384) Yet it would be almost four full months before the FBI actually took any step in the direction of a FISA application.<sup>263</sup>

(S) The contention that NSD was poised at OIPR's doorstep, just waiting [REDACTED] is not at all persuasive. If NSD was waiting [REDACTED] it was doing so with uncharacteristic patience. [REDACTED]

[REDACTED] That there were steps that *could* have been taken - that there were a variety of ways that FBI-HQ could have imposed its priorities on an agent in the field - is almost too obvious to warrant mention. Moreover [REDACTED] did not prevent SSA [REDACTED] from actually *rejecting* FBI-AQ's request for a FISA application on December 10, 1998 on the grounds that it lacked sufficient justification.<sup>264</sup> (AQI 2002)

<sup>263</sup> (U) (S) That step, when finally taken by SSA [REDACTED] on December 22, 1998, could hardly have been less enthusiastic. See Section "h(ii)," below, and Chapter 16.

<sup>264</sup> (S) It is clear that the EC rejecting FBI-AQ's FISA request was *drafted* even before FBI-HQ received [REDACTED]

[REDACTED] (AQI 2002) It appears that FBI-HQ received [REDACTED] some time between December 11, 1998 and December 13, 1998. UC [REDACTED] read [REDACTED] on December 13, 1998 (FBI 11954) and his initials on the EC

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(8) Simply put, if NSD had really been convinced that a FISA order was warranted, it had enough to pursue it without [REDACTED] before going to OIPR, it could have forced the production of them in a matter of days.<sup>265</sup>

(8) What is *obvious* here is that NSD did not go to OIPR until December 1998 *not* because it did not have [REDACTED] but because it did not believe it had the facts. SSA [REDACTED] despite what Director Freeh and Secretary Richardson were told, viewed the [REDACTED] as a "bust." [REDACTED] (12/15/99) This perception of the [REDACTED] and its aftermath, a perception which the AGRT believes to be inaccurate, is what really accounts for this unfortunate delay.

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rejecting FBI-AQ's FISA request bear the same date. (FBI 1406) Given that UC [REDACTED] journal for December 13, 1998 says, in part, "EC to AQ," it is at least possible that the EC, although dated December 10, 1998, did not actually leave FBI-HQ until after UC [REDACTED] and SSA [REDACTED] had received and reviewed [REDACTED]

<sup>265</sup> (8) A second ground cited for the several months delay in presenting this matter to OIPR is FBI-HQ's failure to receive the report made by [REDACTED] [REDACTED] is critical to the AGRT's finding that the [REDACTED] warranted the submission of a FISA application. While it is true that FBI-HQ did not get an actual copy of [REDACTED] report until December 15, 1998 (FBI 1350) - and then apparently from DOE, not FBI-AQ (FBI 11952) - this argument is completely without merit. The contents of [REDACTED] report were fully communicated to FBI-HQ in SA [REDACTED] August 28, 1998 EC (FBI 7487) and, then, fully communicated again in SA [REDACTED] FBI-AQ's November 10, 1999 EC seeking a FISA order. (FBI 1381) Indeed, the November 10<sup>th</sup> EC quotes 9 of the 11 paragraphs in [REDACTED] report *in their entirety*. It appears that UC [REDACTED] recognized this himself. His notes of a December 15, 1998 meeting with DOE refer to [REDACTED] report and states that it is "almost verbatim to AQ's EC." (FBI 11950, 21563)

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DOE b6, b7C

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61

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (FBI 1212)

(S/NF)

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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] 7/28/99; [REDACTED] 12/15/99

(S/NF)

[REDACTED]  
[REDACTED]

<sup>266</sup> (S/NF)

(AQI 5506)

[REDACTED]  
[REDACTED]

<sup>267</sup> (S/NF)

(FBI 1209) For the reasons

detailed below, this EC was never sent out.

[REDACTED]  
[REDACTED]

<sup>268</sup> (S/NF)

(AQI 1620)

[REDACTED]  
[REDACTED]

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[REDACTED]

~~TOP SECRET~~ [REDACTED]

(u)

iii. (S) A problem arises

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(S/NF) [REDACTED]

(AQI 4835)

(S/NF) [REDACTED]

(AQI 1620)

(S/NF) [REDACTED]

(AQI 1620)

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(S/NF) [REDACTED]

(FBI 1209)

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~~TOP SECRET~~ [REDACTED]

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iv. (S/NF) NSD's response to [REDACTED] concerns

(S) [REDACTED] (Id.)

(S/NF) [REDACTED]  
[REDACTED]  
[REDACTED] (FBI 1209)

(u) (S/NF) Within days, FBI-AQ learned that SC Dillard had serious concerns about making the representation that SSA [REDACTED] proposed to make on behalf of NSD. On February 19, 1998, SSA [REDACTED] told SA [REDACTED] that his EC was "delayed" because SC Dillard was "not ready to approve situation yet." According to SA [REDACTED] notes:

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(S/NF) [REDACTED]

(AQI 5599) [REDACTED] (AQI 5599)

(S/NF) [REDACTED]

<sup>270</sup> (u) (S) Although this EC is drafted in language that suggests that the matter had already been reviewed and approved by the Assistant Director, John Lewis, the EC never left FBI-HQ and was never approved by AD Lewis.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

v. (S/NF) [REDACTED]

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(S/NF) [REDACTED]

(AQI 4970)

(S/NF) On March 24, 1998, SA [REDACTED] raised the matter again with SSA [REDACTED] and then drafted an internal memorandum for the file:

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(S/NF) [REDACTED]

271 (S/NF) [REDACTED]

272 (S/NF) [REDACTED]

(AQI 4969, 4966)

~~TOP SECRET~~ [REDACTED]

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[REDACTED]

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(AQI 1665) NSD accepted this decision and did not appeal or contest CID's veto. [REDACTED] 3/22/00) Indeed, according to UC [REDACTED] the matter was not even elevated to the AD or DAD level *within* NSD. SC Dillard confirmed that this matter was not raised with either of his NSD's supervisors, DAD Larry Torrence or AD John Lewis, or outside the Division. (Dillard 3/23/00) The message went out to the Albuquerque Division [REDACTED] (FBI 232)

vi. (S) The search [REDACTED]

(S/NF)

[REDACTED]

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According to a note written by SA [REDACTED] based on a March 24, 1998 telephone conversation with SSA [REDACTED] "It is on his list of things to do."<sup>273</sup> (AQI 4964)

(S)

[REDACTED]

(AQI 1690, 4953)

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<sup>273</sup> (S) SSA [REDACTED] had discussed the matter with SSA [REDACTED] on March 5, 1998 and was advised by SSA [REDACTED] that he was busy with a FISA application in an unrelated matter and, therefore, according to SA [REDACTED] notes, he "hasn't done anything about [REDACTED]" (AQI 4968)

<sup>274</sup> (S/NF)

[REDACTED]

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vii. (U) Discussion

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(S/NP) [REDACTED]

[REDACTED]

(S/NP) Given that fact, it is clear that NSD should not have simply accepted CID's refusal [REDACTED]

[REDACTED]

(S/NP) [REDACTED]

[REDACTED]

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[REDACTED] (12/15/99)

273 (S/NP) [REDACTED]

[REDACTED] (AQI 5507, 5508)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(S/NF) [REDACTED]

If this case had been given the priority it deserved, NSD would not have accepted "no" for an answer and would have elevated this matter to a level where the competing interests of CID and NSD could have been resolved.

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(u)

(S/NF) SSA [REDACTED] told the AGRT that Director Freeh was deeply interested in opening a LEGAT in Beijing. [REDACTED] 12/15/99) But SSA [REDACTED] also knew that Director Freeh - as he told FBI-AQ in his December 19, 1997 teletype - "has personally been briefed on this [the Wen Ho Lee] case three times in the last four months" and that the case was being cited as a "central example" by the intelligence community of "its assessment of and response to counterintelligence problems at the nuclear weapons labs." (AQI 1560)

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(S/NF) Moreover, the stark choice that SC Dillard was apparently concerned about - [REDACTED] - was, at multiple levels, the worst case scenario, if for no other reason than (1) [REDACTED] (2) [REDACTED]

(3) [REDACTED]

(AQI 1620) and (4) [REDACTED]

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Yes, there were potential consequences but the Director or Deputy Director might well have determined them to be too speculative, or the Lee investigation too important. [REDACTED]

But that decision was never reached because it was never presented.

(S/NF) Finally, this must be said: NSD permitted CID's admittedly legitimate concerns about [REDACTED] sensitivities to undermine a critical FBI investigation about [REDACTED]

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<sup>276</sup> (S/NF) This statement comes from SA [REDACTED] February 19, 1998 notes of a telephone conversation with SSA [REDACTED] apparently reporting on SC Dillard's position. According to UC [REDACTED] daily journal, SSA [REDACTED] was scheduled to meet with SC Dillard that day to discuss the [REDACTED] (FBI 11992, 20330)

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~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

*espionage*. The equities of *that* equation ought to have propelled this decision to the head of the line, or at least a good deal farther down the line than it went. The results *might* have been the same but, then again, the results might have been precisely what SSA [REDACTED] had sought from the beginning: [REDACTED] (AQI 4971) If, as a result, a price ultimately had to be paid for that decision, it was surely some consolation that what was at issue was one of the gravest and most consequential purported acts of espionage ever investigated by the FBI. Some price, after all, would inevitably have to be paid in the pursuit of the truth of these allegations.

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(u)  
g. (S) NSD's problematic handling of matters related to FISA

(u)  
i. (S) June 1997

(u)  
(S) Chapters 11 and 12 examine in detail the handling of the FISA application by NSD, by OIPR, and by senior officials in the Department of Justice. For purposes of this section, which is focused on NSD, it is sufficient to note that the Letterhead Memorandum ("LHM") submitted by NSD in support of a FISA application and SSA [REDACTED] supplemental inserts did not contain all the inculpatory information which the FBI already knew, or could have known, or should have known. See Chapter 11.

(u)  
ii. (S) December 1998

(S) On December 22, 1998, SSA [REDACTED] had a five minute meeting with an OIPR attorney, Dave Ryan, ostensibly to ascertain whether OIPR thought the [REDACTED] warranted the submission of a new FISA application in the Wen Ho Lee investigation.

(S) For the reasons set forth in detail in Chapter 16, NSD failed to make either a serious or a substantial case for a FISA application to OIPR in December 1998. As is further described in Chapters 14 and 16, there *was* such a case to be made, and it *did* warrant a submission to the FISA Court, largely arising out of the partial, but nevertheless significant, success of the [REDACTED]

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(S) SSA [REDACTED] however, along with various supervisors at NSD, thought the [REDACTED] to be a failure, and his presentation to OIPR on December 22, 1998 b1 reflected his own conviction that no FISA order was warranted. Indeed, SSA [REDACTED] was so convinced of this fact that two weeks *before* he met with Ryan, he formally rejected FBI-AQ's request for a FISA. That Ryan would endorse this judgment on December 22 was a foregone conclusion *given the way in which it was presented to him.*

(S) Would OIPR have approved the submission of an application? Given its reservations in July and August 1997, and given the fact that the [REDACTED] b1 was only partially successful, it is quite possible it would not have. What can be said is that, due to the casual, cursory and dismissive way in which the issue was presented to OIPR in December 1998 – a presentation that really was intended not to procure FISA but to procure an endorsement of a rejection that was already *literally* signed, sealed and delivered – it was inevitable that FISA coverage would again be denied.

h. (U) NSD's mishandling of the computer issue

(U) The FBI's failure to recognize the importance of gaining access to Wen Ho Lee's computer files during the entire time frame of this investigation prior to March 1999 is a failure of incalculable and potentially catastrophic significance. This failure occurred because each of the three FBI entities involved in the making of decisions concerning this matter – FBI-AQ, NSD and the National Security Law Unit ("NSLU") – made serious mistakes. Those mistakes are documented in detail in Chapter 9 and will not be repeated here.

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(U) It is sufficient here to state the following: When a case is micro-managed from FBI-HQ, as this one most certainly was, FBI-HQ must bear responsibility for the decisions it makes that would normally be made in the field. In this case, it was NSD that determined the investigative strategy and investigative priorities of the case. That may well have been the "total anomaly" that SSA [REDACTED] said it was [REDACTED] 7/23/99), but it was nevertheless the reality of the Wen Ho Lee investigation.

(U) It was NSD that both figuratively *and literally* gave FBI-AQ its "To Do" list. See, e.g., SSA [REDACTED] instructions to FBI-AQ on June 10, 1996 (AQI 954), July 2, 1996 (AQI 957), and December 19, 1997 (AQI 1560). It was NSD that in every

significant respect was making the core and, in some cases, the most peripheral decisions of this investigation and, therefore, it is NSD that must be held responsible for failing to recognize the importance of gaining access to Wen Ho Lee's computer files.

(U) It is not as if NSD was not apprised again and again and again of the significance of Wen Ho Lee's computer work.<sup>277</sup> See Chapter 9. Nor is it as if NSD was unaware of the possibility that alternatives to a search warrant might well exist through which the FBI could gain lawful access to Wen Ho Lee's computer files. (FBI 716) Yet these alternatives were not pursued.

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(U)  
(S) It is true that the NSLU gave inadequate and erroneous legal advice to NSD, but that is only half the story. According to NSLU attorney [REDACTED] his advice to the Wen Ho Lee investigation was that *either a banner or a court order* was required to conduct a search of Wen Ho Lee's computer files. [REDACTED] 7/16/99) That advice was wrong for a variety of reasons detailed in Chapter 9, but at least it left open the possibility that something other than a court order could be used to pry open Wen Ho Lee's computer files. However, when SSA [REDACTED] communicated the NSLU's advice to FBI-AQ, the banner option dropped out entirely and FBI-AQ was left with the complete mis-impression that it was FISA or *nothing*. (FBI 720, 13211) The consequences of this miscommunication were dramatic: FBI-AQ essentially gave up on gaining access to Wen Ho Lee's computer except through FISA. And when the FISA request was rejected – which did not even contain a computer search request – the computer search issue essentially dropped off the map.

(U)  
(S) In short, what the FBI discovered in 1999 could have been discovered in 1998, 1997, 1996 or even earlier. The implications flowing from this finding are enormously significant, not least because the FBI could have been monitoring Lee's illicit computer activities while he was *in the midst* of those illicit computer activities.

(U)  
(S) While it is true that NSD did not get *everything* that FBI-AQ had, including the significant FD-302's of the first interviews of Wen Ho Lee's [REDACTED] in December 1996, NSD had numerous other indications of Wen Ho Lee's sensitive work with computers. See, e.g., the [REDACTED] interview reports of April 1997 and May 1997, transmitted to SSA [REDACTED] on May 15, 1997. (FBI 910)

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~~TOP SECRET~~ [REDACTED]

That this did not happen is surely not *all* NSD's fault but, just as surely, NSD must bear a substantial measure of responsibility.

- i. <sup>(u)</sup>~~(S)~~ NSD's exclusive focus on FISA and its unreasonable reluctance to take other critical actions

<sup>(u)</sup>~~(S)~~ There is little doubt that there is no tool so powerful in a counterintelligence investigation as the ability to conduct electronic surveillance ("ELSUR") and microphone surveillance ("MISUR") pursuant to FISA. That said, the Wen Ho Lee investigation illustrates the considerable risk that the FBI runs when it so focuses on obtaining FISA coverage that it virtually ignores other valuable investigative techniques. This would be true even where FISA coverage is authorized, but even more so where it is rejected.

- i. <sup>(u)</sup>~~(S)~~ The exclusive focus on FISA

<sup>(S)</sup> From the beginning of the full investigation of Wen Ho Lee – indeed, from before the beginning<sup>278</sup> – virtually all NSD could think about was obtaining FISA coverage on Wen Ho Lee.<sup>279</sup> As SSA [REDACTED] told the AGRT: "From Day One I told

<sup>(u)</sup>~~(S/NF)~~ Even before the full investigation was opened, NSD was telling DOE to expect a FISA submission in 30-60 days. See Memorandum from Notra Trulock to Joan Rohlfing, entitled "Action Plan and Next Steps," dated May 25, 1996. (DOE 1844)

<sup>(u)</sup>~~(S)~~ See, e.g., FBI records dated 7/1/96 (SSA [REDACTED] tells SA [REDACTED] that "he would be interested in any information that would get FISA coverage.") (AQL954); 7/10/96 (Briefing memorandum on the "Kindred Spirit" investigation: "The short term objective is to collect enough probable cause to persuade the Foreign Intelligence Surveillance court that the Lees should be subjected to electronic surveillance, which is critical in cases of this type.") (FBI 583); 10/9/96 (Memorandum from SSA [REDACTED] to SC Doyle: "The present thrust of the investigation is still to obtain justification for ELSUR coverage.") (FBI 706); 1/23/97 (Briefing memorandum on the "Kindred Spirit" investigation: "The present objective of this investigation is to uncover enough probable cause to support a request for electronic surveillance.") (FBI 745); 1/30/97 (Briefing memorandum on the "Kindred Spirit" investigation: "The use of long periods of

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~~TOP SECRET~~ [REDACTED]

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AQ we would need FISA." [REDACTED] 7/23/99) Remarkably, the exclusive focus on obtaining FISA coverage did not change even after OIPR rejected NSD's FISA application.<sup>210</sup> Indeed, even when NSD supposedly went to "Plan B" (AQI 5326) - the

electronic surveillance is always . . . necessary. . . . [T]he first half of this investigation is aimed at collecting enough probable cause to persuade the Foreign Intelligence Surveillance Court to authorize use of electronic surveillance against the LEEs, and if indicated, clandestine physical searches of their residence, papers, and property." (FBI 751); 4/14/97 ("During the last eleven months . . . we have focused on locating and obtaining information about LEE and Sylvia that will allow us to seek electronic surveillance authority from the Foreign Intelligence Surveillance Court. Typically, an investigation of this type is only successfully concluded in one of two ways: Catching the subject in the commission of a clandestine act of espionage; or obtaining a confession. Electronic surveillance is always a necessary precondition to either of these two conclusions.") (FBI 6403); 4/21/97 (A briefing memorandum concerning a Congressional briefing: "It was mentioned that the next significant investigative milestone in this investigation would be the initiation of FISC-authorized coverage of the subject's home and work telephones, fax, computers, and other appropriate elsur and fisur coverage.") (FBI 823)

<sup>210</sup> (S) See this statement by AD John Lewis to Director Freeh on August 14, 1997, two days after OIPR rejected NSD's FISA application: "Since our initial elsur application has been rejected, we now intend to pursue a more aggressive but risky course which will include interviews of coworkers, former supervisors, and associates. Such steps could produce sufficient elsur justification while at the same time uncovering information about the subjects that will be needed for their eventual interrogation." (FBI 13331) See also this note to AD Lewis from SC Dillard, dated September 12, 1997: "This is to advise that we will now direct the Albuquerque Division to expand the scope of this investigation to include potentially alerting leads such as interviews of coworkers and associates, trash coverage, physical surveillance, and recruitment of assets. It is hoped that this more aggressive investigation will produce information to justify a renewed application for electronic surveillance." (FBI 13023) (emphasis in original)

~~TOP SECRET~~ [REDACTED]

December 19, 1997 teletype – the goal remained unchanged: FISA.<sup>211</sup> Even the [REDACTED] - FBI-AQ's one true initiative from 1996 to 1998 – was viewed by FBI-HQ as having one primary objective: getting support for a FISA.<sup>212</sup>

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(S) The goal of obtaining FISA coverage so dominated the FBI's thinking that it even altered the FBI's internal description of the case. Rather than opening it as a "65 case" – espionage – it was opened as a [REDACTED] case" – counterintelligence. SSA [REDACTED] told SA [REDACTED] that it "will not become a 65 matter until the very last minute because it would be hard to go to the FISA court under this category at this point. To do so would make this case look to[o] criminal in nature."<sup>213</sup> (AQI 954)

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ii. (U) Consequences

(U)  
(S) The AGRT does not take issue with the value of FISA. Even a cursory review of recent espionage prosecutions demonstrates that FISA is a unique tool in the arsenal of a counterintelligence investigation. What the AGRT does take issue with is a situation, such as in the Wen Ho Lee investigation, where the focus on FISA is so myopic and exclusive that it leads the investigators to ignore *other* vital investigative techniques and,

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<sup>211</sup> (U)  
(S) See AQI 1560: "An immediate goal is still to obtain sufficient justification for ELSUR coverage . . . ."

<sup>212</sup> (U)  
(S) See AQI 1694: "The objective of the operation is to obtain the additional justification needed for approval of electronic surveillance of subjects, but evidence supporting prosecution will be pursued if an opportunity arises."

<sup>213</sup> (U)  
(S) SSA [REDACTED] actually confirmed this reasoning to the AGRT. He stated: "We have to say with a straight face that we are requesting a FISA for FCI purposes. If you have a 65 [espionage] investigation, it is not much of a leap to say you are getting information for criminal purposes." He added: "If you put a 65 label on it, it's a lot easier to say it's [the FISA application's] a sham." [REDACTED] 12/15/99) SSA [REDACTED] did not seem to appreciate that mis-characterizing a case in order to support the claim that the purpose of a FISA request was for FCI purposes, rather than criminal purposes, would itself be a "sham."

even worse, to decline taking important and critical actions out of fear that it will alert the suspect.

(U)  
(S) There were several significant investigative techniques which were essentially preempted or neglected by the exclusive focus on FISA. Five examples will suffice:

(U)  
a. (S) Failure to conduct a comprehensive financial analysis

(U)  
(S) A comprehensive review of Wen Ho Lee's and Sylvia Lee's finances to determine whether there were unexplained sources of income was never done. Financial records were sought,<sup>244</sup> and were received,<sup>245</sup> but a rigorous, thorough and expert analysis of these records was never made. FBI-AQ made a start in this direction through the scheduling of various bank records and the identification of unexplained deposits (AQI 4367), and SA [REDACTED] did demonstrate some interest in this regard (AQI 5591), but the follow-up was spotty and incomplete. In an espionage investigation, [REDACTED] but, in this case, SSA [REDACTED] saw the gathering of Wen Ho Lee's records as having one purpose: [REDACTED] (AQI 1218) Indeed, at one point, he bluntly told SA [REDACTED] that, while an analysis of income versus spending was okay, the main purpose in getting Lee's records was [REDACTED] (AQI 5385)

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(U)  
b. (S) Failure to conduct selective interviews

(U)  
(S) Interviews of current and former supervisors, and current and former co-workers, were largely ignored.<sup>246</sup> Between June 1996, when the full investigation was

<sup>244</sup> (U) See, e.g., AQI 1099, 1106, 1102, 1164, 1194, 1453, 1465, 1471, 1479, 1492 and 1486.

<sup>245</sup> (U) See, e.g., AQI 1169, 4480.

(U)  
<sup>246</sup> (S) In part, this was certainly attributable to SSA [REDACTED] position that conducting interviews in a counterintelligence investigation was a "definite no-no" and could "screw" up a case. [REDACTED] 12/15/99

opened, and April 1997, when the preparation of a FISA application and certain other developments made it virtually impossible *not* to interview a few supervisors, the FBI did not pursue what could have and should have been one of the most important sources of information about the Lees. In that time period, it conducted just two interviews of supervisors/co-workers, that of [REDACTED].<sup>217</sup>

DOE b6, b7c

(U) (S) Far more interviews *should* have been done and, with care, far more interviews could have been done without tipping off Wen Ho Lee to the FBI's interest in him. For example, former supervisors should have been identified and interviewed, along with selective interviews of former co-workers. Such interviews could have been done without alerting Wen Ho Lee.<sup>218</sup>

(U) (S) There were two serious consequences of the FBI's failure to conduct such interviews:

(S) First, the FBI never really understood or probed the true nature of Wen Ho Lee's employment, and the extent to which Wen Ho Lee's work depended on computer activities. [REDACTED]

[REDACTED] (AQI 3809) Two years later, SA [REDACTED] was in no better position than he was in March 1994 to understand what he had been told, what it meant, and how this information might focus his investigation. Given that the underlying allegation in this case was that Wen Ho Lee used his employment to gain access to classified information which he then passed to the PRC, the lack of interest in the nature and substance of that employment was inexplicable.

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(U) (S) So focused had the FBI become on obtaining FISA coverage that these two interviews (AQI 1143, 1147, 1151, 1153, 1155) – which contained critical information about Wen Ho Lee's computer activities – were never sent to NSD and NSD was given to understand that "no useful information" had been obtained from them. (FBI 745)

(U) (S) For example, SA [REDACTED] used a bit of misdirection when he and [REDACTED] interviewed a [REDACTED] in February 1996 as part of the DOB AI. (FBI 2851)

DOE  
b6  
b7c

(U) (S/NP) This failure to interview supervisors and co-workers was consistent with the FBI's general reluctance to wrestle with what was really at issue in this case. No effort was made, for example, to review Wen Ho Lee's work product over the course of his employment at LANL. No effort was made to study his published papers<sup>289</sup> or to interview other American scientists who traveled with Wen Ho Lee to the PRC in 1986 and 1988.<sup>290</sup> No effort was made to interview at LANL the nuclear weapons designers who had been involved in the Kindred Spirit Analytical Group that had advised DOE on the significance of the walk-in document. This is not to say that the FBI needed to become intimately familiar with nuclear physics or needed to understand the precise mechanics of a [REDACTED] or needed to understand the intricate details of the codes developed by Wen Ho Lee. It is to say that sending SSA [REDACTED] to a five-day course in nuclear weapons was just not enough. (AQI 2993)

FBI  
b6, b7c

(S/NP/RD) The FBI's failure to undertake this effort was consequential: It left the FBI completely dependent on DOE's flawed representation of the predicate, an error whose significance can hardly be minimized. See Chapter 6. It left the FBI without an appreciation of the central role that computers played in Wen Ho Lee's work, resulting in such peculiarities as the FBI seeking FISA authority to tap Wen Ho Lee's telephone but not his office computer.

[REDACTED]

b1

<sup>289</sup> (S) (U) On one occasion, it should be noted, there was an effort to see if Wen Ho Lee and [REDACTED] co-authored any papers. They had not. (AQI 1541)

FBI  
b6  
b7c

<sup>290</sup> (S) (U) This was suggested in NSD's December 19, 1997 teletype. (AQI 1560) It should have been a part of NSD's original instructions to FBI-AQ. Of course, since FBI-AQ did not pursue this suggestion in 1998 there is some question as to whether it would have been any more enthusiastic about it in 1996.

~~TOP SECRET~~ [REDACTED]

(U)  
(S) The second major consequence of the FBI's failure to conduct these interviews was that it prevented the FBI from figuring out that scientists within X Division had no "expectation of privacy," that each scientist - including Wen Ho Lee - had signed waivers on file, that there were banners in the X Division, and that the information provided by [REDACTED] to SA [REDACTED] was far from the whole story. Thus, these interviews would have told the FBI, first, that gaining access to Wen Ho Lee's computer files was critical and, second, that the FBI *could* gain access to those files without a warrant. The second part would no doubt have required reconsideration of the matter by NSLU but there is little doubt what result NSLU - in the face of Wen Ho Lee's signed waiver *and* the X Division banners - would have reached.

FBI  
OOE  
b6  
b7c

c. (S) Failure to conduct trash covers

(U)  
(S) Trash covers - *i.e.*, the surreptitious recovery of Wen Ho Lee's office and home trash - was never done. This required no FISA authority and yet it was never done. It is clear that SSA [REDACTED] thought about it (FBI 582), but it was never pursued - even though it could have advanced the investigation *by months*.<sup>291</sup> A trash cover was suggested in the December 1997 teletype (AQI 1560), but it should have been pursued a year-and-a-half earlier when it could have had a dramatic effect on the FBI's learning curve concerning the Lees.<sup>292</sup>

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<sup>291</sup> (U)  
(S) For example, instead of the FBI depending on a mail cover to identify the Lees' banking relationships - a process that took five months from initiation to implementation - the FBI could have perused Lee's trash and would likely have had such information in a matter of days.

<sup>292</sup> (U)  
(S) This is not to suggest that a trash cover was implemented pursuant to the December 19, 1997 teletype. It was not. (AQI 1990) Moreover, whatever problems there might have been in conducting a non-alerting trash cover in Wen Ho Lee's residential neighborhood - and FBI-AQ suggested in November 1998 that a residential trash cover was not "a feasible option" (AQI 1990) - there is simply no reason why a trash cover should not have been implemented at Lee's office.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

d. <sup>(U)</sup> ~~(S)~~ Failure to conduct physical surveillance

<sup>(U)</sup> ~~(S)~~ Nor was any effort made to conduct regular or even episodic physical surveillance of Wen Ho Lee, which certainly could have been conducted by the FBI without alerting him.<sup>293</sup> And if, in order to accomplish this, FBI-AQ needed to periodically import a surveillance team from elsewhere within the FBI, that certainly could have been accomplished. Nor was there any effort to conduct surveillance of Wen Ho Lee during his two overseas trips to Taiwan in March and December 1998.<sup>294</sup>

e. (U) Failure to develop a plan or strategy for the interview of Wen Ho Lee

(U) So focused was the FBI on FISA that, remarkably, the Albuquerque Division never developed a plan or strategy to interview Wen Ho Lee.

<sup>(U)</sup> ~~(S)~~ A subject interview in an FCI investigation may be an event planned months and even years in advance. Or an agent may find out *today* that a significant and unanticipated development has created a requirement, or an opportunity, to conduct an interview with the subject of the investigation *tomorrow*. FBI-AQ's lack of preparation for *either* eventuality was astonishing. Even after the FISA application was rejected, no effort was made to prepare for an interview of Wen Ho Lee. There was talk about it, (AQI 5527), just no actual preparation. Nor did this change when the [REDACTED] was being planned. If ever a situation was ripe for a pretextual interview of a subject, it was [REDACTED]

<sup>(U)</sup> ~~(S)~~ On a few occasions, FBI-AQ did drive by Wen Ho Lee's residence. See, e.g., AQI 1334.

<sup>(U)</sup> ~~(S)~~ While the FBI did not learn of the March 1998 trip until after Wen Ho Lee had left the United States, it did learn of it in time to mount a surveillance effort *if it had it been inclined to do so*. Wen Ho Lee was in Taiwan from March 15, 1998 until April 30, 1998 (FBI 1275) and the FBI learned of the trip on or about March 23, 1998. (AQI 5492, 1664) As to the December 1998 trip, the FBI knew about this trip before Wen Ho Lee left. (FBI 1405)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

b1

contacted Wen Ho Lee. Even after the [REDACTED] was over and DOE's [REDACTED] told Wen Ho Lee that the FBI might be contacting him about the purported contact from the PRC, the FBI failed to prepare or conduct such an interview.

DOE  
b6,  
b7c

(U) As late as December 1998, two and a half years into this investigation, FBI-AQ was still wholly unprepared to do an interview of Wen Ho Lee. This was one of the reasons why the long-term subject of a critical espionage investigation found himself on December 23, 1998 across a table from a DOE contract counterintelligence officer and a Wackenhut polygrapher, instead of the FBI. SAC Kitchen had told DOE's Curran that FBI-AQ was not able to do a subject interview and needed more time.<sup>295</sup> That was unfortunate. It was not as if Curran was demanding that DOE, and only DOE, interview Wen Ho Lee. If SAC Kitchen had said the FBI was going to do the interview and polygraph of Lee on December 23, 1998, Curran told the AGRT, "I would have kissed his feet. Please do it." (Curran 2/9/00)

(U) To be fair, the FBI's failure to plan for an interview of Wen Ho Lee *at any time* prior to 1999 cannot be *solely* attributed to an unreasonable or exclusive focus on FISA. There were too many other problems with the FBI's handling of this case to associate this failure with just one cause. Nor can it be solely attributed to FBI-AQ. NSD, after all, was driving this train; NSD was making the "To Do" lists and setting the terms of the investigation. And planning for a subject interview was not on any of these lists.<sup>296</sup>

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(U)  
<sup>295</sup> (8) Both Curran and Director Freeh were told that the additional time was necessary to interview certain of Lee's co-workers, who had not previously been interviewed to avoid alerting Lee. (Curran 2/9/00; FBI 7721) These interviews could have, and should have, been done a year or more before and, in fact, were listed as options in the December 19, 1997 teletype. (AQI 1560)

(U)  
<sup>296</sup> (8) Indeed, the possibility of a subject interview was explicitly *excepted* from the December 19, 1997 teletype. (FBI 1156) SSA [REDACTED] general view was that a "rash subject interview can kill [an] espionage case." [REDACTED] 12/15/99) That is certainly true but the failure to plan for such an eventuality made it all the more like that the interview, when it did take place, would be "rash."

FBI  
b6  
b7c

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

iii. (S) <sup>(u)</sup> Concerns about alerting the Lees

<sup>(u)</sup>  
(S) A principal reason *why* the FBI did not pursue these other investigative techniques was an overarching, nearly paralytic, concern that its conduct not alert Wen Ho Lee to the existence of the investigation. This fear of doing anything that could conceivably have alerted Wen Ho Lee to the FBI's interest in him had such a vice-like grip on NSD's calculus that in the Fall of 1997 - after telling Director Freeh that NSD would now pursue "a more aggressive but risky course" (FBI 13331) and "a more overt investigation" (FBI 1175) and telling AD Lewis that NSD would now direct FBI-AQ to "expand the scope of this investigation to include potentially alerting leads" (FBI 13023) (emphasis in original) - the FBI actually took only the most tentative and hesitant steps in this direction. Its December 19, 1997 teletype - the document that was supposed to lay out this new aggressive and risky strategy - contains warning after warning to avoid just such risks.<sup>297</sup>

<sup>(u)</sup>  
(S) The notion that the FBI should avoid alerting the subject of an espionage investigation is both correct and unremarkable. The value of a FISA is obviously diminished or eliminated entirely if the subject is aware of the FBI's investigative interest

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<sup>(u)</sup>  
<sup>297</sup> (S) See, e.g., the following statements in the December 19, 1997 teletype: (1) "[S]ince ELSUR will only be valuable if the subjects do not know they are under investigation, AQ must use its best judgment and first hand knowledge of the lab to pursue the most promising but most discreet leads first." (2) In connection with a suggestion to interview a particular scientist: "[T]his interview . . . should be aborted if there are any indications [that the scientist] might be hostile or indiscreet." (3) In connection with another suggestion to interview scientists with whom Wen Ho Lee had contact: "AQ should be very cautious if it decides to conduct any such interviews, and should avoid doing the interviews if there is a risk of alerting the subjects." (4) In connection with a suggestion to interview Lee's former supervisors: "AQ should us caution in deciding to do such interviews, and avoid alerting subjects." (5) "AQ should consider discreet, repeat, discreet, physical surveillance of subjects." (6) "Leads to other divisions should be coordinated so as to evaluate and minimize beforehand the risk of alerting the subjects to the existence of our investigation."

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

in him. And FISA aside, there is a risk in virtually every espionage case that the subject, if alerted, will decide to take up residence in another country.

(U)  
(S) Thus, there is nothing wrong with the FBI being *concerned* about engaging in alerting conduct. The problem in the Wen Ho Lee investigation is that the FBI went way beyond *mere concern* about alerting conduct. The need to avoid at all cost any conduct that could remotely be alerting became *the* mantra of the investigation, *the* value that trumped all other values.<sup>298</sup> This is despite the fact that there were ways in which the FBI could have substantially minimized the risk of alerting Wen Ho Lee.<sup>299</sup>

(U)  
(S) The categorical refusal to do anything that could conceivably be alerting led the FBI into several serious errors:

(U)  
(S/NF) First, until August 12, 1997, it caused the FBI essentially to *insist* on DOE not altering Wen Ho Lee's access, work status, or clearances in any respect, despite the significant danger that this posed to the national security. See Chapter 18.

b1  
DOE b6, b7C  
<sup>298</sup> (S) The [REDACTED] does represent a willingness to undertake *some* slight risk of alerting the subject, but the FBI reverted back to its non-alerting mode immediately afterward, declining to move forward with an interview of Wen Ho Lee despite the fact that [REDACTED] told Wen Ho Lee on August 19, 1998 that he was going to notify the "local FBI for their possible follow-up." (AQI 1883)

FBI  
b7E  
<sup>299</sup> (S/NF) LANL is, after all, one of the nation's premier nuclear weapons facilities. Its scientists know that they have access to the nation's most sensitive secrets and that the FBI is a routine presence at the laboratory. Thus, the mere fact that the FBI was on-site or asking questions would not, in and of itself, alert Lee to anything. Moreover, every LANL scientist also knew that he must periodically undergo a background investigation. In 1983, the FBI [REDACTED]

[REDACTED] with the FBI's full investigation of Wen Ho Lee arising out of his contact [REDACTED] (FBI 10794) The FBI-HQ supervisor involved in the 1983 matter had been Larry Torrence who, 14 years later, would re-enter the Wen Ho Lee investigation as John Lewis' replacement as NSD's Deputy Assistant Director for Counterintelligence. b1

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(u)  
(S) Second, it led the FBI to avoid productive and valuable investigative techniques, such as supervisor/co-worker interviews, surveillance, and trash covers, as described above. In part, the FBI's avoidance of these techniques was a product of its exclusive focus on FISA but in part it was a product of the FBI's intense concern that almost anything it did could alert Lee and thus render a FISA less productive.

(u)  
(S) And, third, it kept the FBI from discovering the truth of the "expectation of privacy" issue as it applied to the X Division. As is discussed in Chapter 9, SA [REDACTED] was just *one interview away* from discovering that his understanding of the computer issue was erroneous.<sup>300</sup> He did not conduct the interview<sup>301</sup> and [REDACTED] did not get interviewed by the FBI until 1999.<sup>302</sup>

FISL  
b6  
b7C

DOE  
b6  
b7C

<sup>300</sup> (u)  
(S) That interview was with [REDACTED]. It was [REDACTED] who could have provided SA [REDACTED] the critical information that Wen Ho Lee had in fact executed a computer waiver form. See Chapter 9. On December 9, 1996, [REDACTED] told SA [REDACTED] that "should the FBI need assistance" in connection with computer issues, [REDACTED] for X Division. (AQI 1143)

<sup>301</sup> (u)  
(S) Given NSD's concerns about alerting Wen Ho Lee, *any* interview became the subject of literally months of deliberation. On August 30, 1996, a LANL counterintelligence officer advised SA [REDACTED] that he had learned that SC Doyle had approved the interviews of two of Wen Ho Lee's supervisors, [REDACTED] (AQI 1015) A month later, on September 25, 1996, SA [REDACTED] obtained verification from NSD that it had in fact approved the interviews of [REDACTED] (FBI 702) Two months later, on November 22, 1996, SSA [REDACTED] had a telephone call with SSA [REDACTED] in which he learned that SSA [REDACTED] had "reservations" about the [REDACTED] interviews going forward. (FBI 719) Finally, on December 9, 1996 and December 20, 1996, the interviews took place (AQI 1151, 1155), *almost four months after they were first referenced.*

<sup>302</sup> (u)  
(S) Although it was [REDACTED] who could have told SA [REDACTED] definitively and specifically that Wen Ho Lee had a signed waiver on file, either [REDACTED] could have told SA [REDACTED] that *all* X Division scientists had to sign such waivers to gain computer access. See Chapter 9.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

I. (U) The impact of FBI personnel changes on the investigation

(U) Between the end of May 1996 and the end of March 1999, there were more than 30 changes in personnel at FBI-AQ and FBI-HQ that had a direct or potential impact on the Wen Ho Lee investigation.<sup>303</sup>

<sup>303</sup> (U) The only consistent FBI presence in this case was Director Freeh, UC [REDACTED] and SSA [REDACTED]. Beyond these three positions, changes in personnel occurred with remarkable rapidity (Note: "A" signifies that the individual served in an acting capacity):

FBI-AQ

SAC: Kneir, Dick (A), Weber, Dick (A), Kitchen

ASAC: Dick, Coffey (A), Tabman (A), Parrish (A), Lueckenhoff

NFIP Manager: Kneir, Dick, Lueckenhoff

NFIP Coordinator and FCI Squad Supervisor: [REDACTED]

Santa Fe RA Supervisor: [REDACTED]

Case Agent for the Wen Ho Lee Investigation: [REDACTED]

FBI-HQ

Deputy Director: Kennedy, Esposito, Bryant

Assistant Director, NSD: Bryant, Lewis, Torrence (A), Gallagher

DAD for CI, NSD: Lewis, Torrence (A), Mislock (A), O'Connor (A), Torrence, Caruso (A), Horan

~~TOP SECRET~~ [REDACTED]

FBI  
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b7c

FBI  
b6  
b7c

(U) Both FBI-AQ and FBI-HQ personnel understood the effect this had on the investigation. SSA [REDACTED] who became the supervisor of the Wen Ho Lee investigation in November 1998, characterized the frequent changes of leadership at FBI-AQ as a "revolving door." [REDACTED] (9/9/99) SSA [REDACTED] said "No one sticks around long enough to understand [the] situation." [REDACTED] (7/28/99)

(U)  
(S) These frequent changes in personnel had numerous adverse affects on the investigation. For example:

(1) (S) However flawed SA [REDACTED] handling of the case might have been, his transfer to FBI-HQ deprived the investigation of its historical memory, which included SA [REDACTED] handling of the preliminary inquiry on Wen Ho Lee. All SA [REDACTED] knew about the case was what he read in the case file, and such limited information as he acquired himself. The nuances of [REDACTED] - which SA [REDACTED] understood because he drafted a critical teletype on the subject back in March 1994 - were lost on SA [REDACTED] and, as it turned out, on SSA [REDACTED] as well, with unfortunate consequences for the FISA application. Similarly, it was SA [REDACTED] who came to Washington for the October 31, 1995 briefing - the only briefing the case agents ever received on the predicate for the investigation. And it was SA [REDACTED] who was the original recipient of information from [REDACTED] related to access to Wen Ho Lee's DOE b6, e-mail - not that he did a remotely adequate job with that information.<sup>304</sup> b7c

(U)  
(S) SSA [REDACTED] departure from the investigation was equally significant. SSA [REDACTED] was a veteran FCI supervisor who had supervised SA [REDACTED] during a portion of the preliminary inquiry and during all of SA [REDACTED] service as case agent of the full Wen Ho Lee investigation. He was replaced by a supervisor whose background was not in FCI work and who had only minimal previous involvement in the Wen Ho Lee investigation. SSA [REDACTED] departure from the case deprived the

(S) Section Chief, [REDACTED] Doyle, [REDACTED] (A), Dillard, [REDACTED] (A), Middleton b1

<sup>304</sup> (U)  
(S) This is not intended to suggest that the Wen Ho Lee investigation did not benefit, on the whole, from SA [REDACTED] departure and SA [REDACTED] arrival. It did benefit. It is only to acknowledge that it also suffered.

~~TOP SECRET~~ [REDACTED]

investigation of both FCI experience as well as his detailed first-hand knowledge of the case.

(U)

(3) (8) The departure of SAC Kneir and the arrival of SAC Weber had an adverse affect on the case, caused in part by FBI-HQ's inexplicable failure to brief SAC Weber on the fact that the Division he was about to take over was responsible for one of the nation's most important and significant espionage investigations. Among other consequences of SAC Kneir's departure was the fact that SAC Kneir, who had personally solicited FBI-HQ for the two additional agents, almost certainly would not have permitted their diversion by ASAC Dick. SAC Weber, on the other hand, was not even aware of the issue until 1999. (Weber 10/28/99)

(4) (U) At FBI-HQ, the most consequential changes in management were at the Section Chief and Deputy Assistant Director level. There were ten different individuals who served in just these two leadership positions between May 1996 and March 1999. NSD's problems in the handling of this case are by no means *solely* attributable to these changes in management but they were certainly a contributing factor.

(U) It is important to make clear the limitations of this issue. In any large organization, particularly one with the diverse and challenging mission of the FBI, there will always be very significant changes in personnel. Some of those changes represent the natural and inevitable consequence of having talented personnel in responsible positions: over time, they will be promoted to positions with even greater responsibility. For the most part, the changes in personnel listed above reflect this upward mobility and, in a number of cases, this upward mobility did still keep an individual in an oversight capacity over the Wen Ho Lee investigation.

(U) Nevertheless, two points should be made: First, it does not appear that the importance of maintaining continuity in the Wen Ho Lee investigation was *ever* considered as a factor in determining whether to proceed with any particular change in personnel.<sup>305</sup> Second, *it should have been a factor* - even if not a determinative one - in

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<sup>305</sup> (U) This conclusion is based on two considerations: the frequency with which certain positions changed hands and the clear evidence at both NSD and FBI-AQ that the

~~TOP SECRET~~ [REDACTED]

at least some of the personnel changes listed above, particularly those at the level where the incumbent had a direct and routine impact on the handling of the case.

J. (U) Communication problems within the FBI

(U)  
(S) The AGRT has identified two significant problems in the nature, frequency and substance of communications between senior officials within NSD and Director Freeh:

(U)  
(S) First, Director Freeh should have been briefed at a *much* earlier point in time. Both Congress and the National Security Council received *detailed* briefings on the FBI's "Kindred Spirit" investigation *before* Director Freeh himself received such a briefing. Indeed, even the Attorney General received a memorandum describing the case *before* Director Freeh.

(U) Second, when Director Freeh *was* briefed on the case, NSD failed to advise the Director on certain critical matters that, had he been so advised, could have made a difference.

(U)  
(S) On the positive side, the AGRT has also determined that, after the Director identified DOE's general counterintelligence problems as an issue requiring his special attention, NSD effectively and thoroughly briefed and supported the Director on this issue, ultimately resulting in PDD-61. Moreover, although NSD was late in initiating "Kindred Spirit" briefings of the Director, once it began to apprise the Director of developments in the case, it did so routinely and in considerable detail.

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FBI  
b6  
b7C Wen Ho Lee investigation was not a priority matter at any point prior to December 1998. It should be noted, however, that, with the exception of the records associated with SA [REDACTED] promotion to FBI-HQ in 1997, the AGRT has not examined the selection documents involving any of the other individuals listed in this section.

1. (U) The knowledge of senior NSD officials

(u)  
(S) From its very beginning, NSD officials - at the most senior level - were briefed on the "Kindred Spirit" investigation, and participated in determining its direction. Sec. c.g., the various notes and briefing papers for the period July 1995 to March 1997.<sup>306</sup>

<sup>306</sup> (S/NF/RD) On July 13, 1995, Trulock met with DAD Lewis and briefed him on DOE's concerns. (AQI 2936, FBI 11762) The briefing by Trulock was preceded a day earlier by a briefing memorandum which, although not addressed to DAD Lewis, was almost certainly prepared for Lewis' review before the Trulock meeting. (FBI 13047)

b1

[REDACTED]

(FBI 11834, 20353)

(S/NF) On July 18, 1995, Ken Baker, the Acting Director of DOE's Office of Nonproliferation and National Security ("NN"), wrote DAD Lewis to request access to [REDACTED] information in connection with the "Kindred Spirit" investigation. (AQI 2938)

FBI  
b6  
b7C

(u)  
(S/NF) On August 14, 1995, there *may* have been a meeting with Trulock, DAD Lewis, and SSA [REDACTED]. The only proof of this is a handwritten note by SSA [REDACTED] dated September 18, 1995, in which he references a telephone call from the CIA which, in turn, references an August 14, 1995 Trulock/Lewis meeting. [REDACTED]

b1

[REDACTED]

(FBI 364)

FBI  
b6  
b7C

(u)  
(S/NF) On September 6, 1995, the "Kindred Spirit" investigation was briefed to AD Bryant by DAD Lewis, SC Doyle, and SSA Schmidt. There is a reference in SSA [REDACTED] notes of this meeting to two statements made by AD Bryant: (1) "How come we didn't jump on this case weeks ago?" and (2) "Maybe we should have been more proactive @ this & have prevented the Chinese from stealing this in the first place."

(FBI 365)

FBI  
b6, b7c

(u)  
(S) On September 13, 1995, Trulock met with DAD Lewis and SC Doyle. Trulock was seeking the FBI's help and SC Doyle told him to send over a letter from DOE "setting forth predication for this case" and also told him that the FBI was thinking of bringing SA [REDACTED] up from Tampa "to work this special." (FBI 378)

(u)  
(S) On September 25, 1995, Ken Baker of DOE sent a letter to AD Bryant requesting the assignment of an FBI agent to DOE's Counterintelligence Division to assist in an Administrative Inquiry "to determine the facts and circumstances relative to the loss of the [REDACTED] information." (AQI 2960, FBI 13045)

(S) [REDACTED]

[REDACTED] (AQI 2981, FBI 400)

b1

FBI  
b6, b7c

(u)  
(S) On December 21, 1995, SC Doyle sent AD Bryant another briefing memorandum on the investigation, including providing AD Bryant information about the [REDACTED] acquired by SSA [REDACTED] when he attended a course on Nuclear, Biological and Chemical Proliferation at the Defense Nuclear Weapons School, Kirtland Air Force Base in late November 1995. (FBI 391)

(u)  
(S) On January 29, 1996, SC Doyle sent AD Bryant a third briefing memorandum on the investigation, including reference to SA [REDACTED] work on the DOE AI, and other matters related to the investigation.

(u)  
(S) On April 18, 1996, DAD Lewis and Trulock had another meeting, which was preceded by a briefing which DAD Lewis received from SC Doyle. (FBI 16609) The only reference which the AGRT has been able to obtain concerning this meeting is an FBI summary document entitled "Meetings Re DOE/Kindred Spirit" which indicates that the meeting with Trulock also included SC Doyle and SA [REDACTED] and that the subject of the meeting was "China Case." (FBI 16609) The AGRT cannot confirm this meeting took place.

~~TOP SECRET~~ [REDACTED]

In all that time, however, the AGRT has not identified a single briefing paper addressed to Director Frech.<sup>307</sup>

(U) (S) On May 22, 1996, Deputy Secretary of Energy Charles Curtis met with DAD Lewis, according to a DOE IG report of interview of Secretary Curtis. (DOE 1675) Trulock wrote a memorandum dated May 25, 1996 to Deputy Secretary Curtis which makes reference to "our May 22 meeting with John Lewis, FBI." (DOE 4351)

FBI 66,67C | (S) On January 24, 1997, Trulock, and other DOE personnel (Ken Baker and [REDACTED] met with DAD Lewis, SC Dillard, UC [REDACTED] and SSA [REDACTED] b1 (FBI 7629) This meeting was preceded by a briefing paper to DAD Lewis on the status of the investigation. (FBI 745) It was followed by another briefing memorandum which indicated that the principal purpose of the meeting was to discuss DO's request for FBI assistance in its counterintelligence program. The "Kindred Spirit" investigation was discussed after DAD Lewis left.

(S/PD/NF) On March 19, 1997, Lewis, who had become Assistant Director upon Bryant's promotion to Deputy Director, received a letter from Randy Beers, Special Assistant to the President and Senior Director for Intelligence Programs, of the NSC. In the letter, Beers states that he had disclosed to the director of the SSCI staff "the existence of an FBI counterintelligence operation in response to a direct question." (FBI 790) AD Lewis was then provided a briefing memorandum which stated that "It is not certain to what investigation he may have been referring. [REDACTED]

b1 | [REDACTED] Subjects have been identified and our investigation has been ongoing for a year." (FBI 794)

<sup>307</sup> (U) Copies of some of the documents referenced in the preceding footnote were located in Director Frech's files provided to the AGRT. See memoranda dated November 3, 1995 (FBI 16560), December 21, 1995 (FBI 16563), January 29, 1996 (FBI 16556, 16565), January 29, 1997 (FBI 16590), March 24, 1997 (FBI 16593) and April 28, 1997 (FBI 16882). This does not indicate, however, that Director Frech was provided these documents *at the time of their creation*. Rather, it means only that Director Frech received these documents *at some point in time*, the most likely time being 1999 when, as a result of intense Congressional scrutiny, Director Frech was

~~TOP SECRET~~ [REDACTED]

2. (U) Information provided to Director Freeh

(U) Given the extraordinary nature of the underlying allegation, it is baffling that Director Freeh was not briefed far earlier than he was on the status of the investigation. There is little doubt that such briefings could have caused the FBI to address more aggressively the problems identified in this report.<sup>308</sup>

(U) When did Director Freeh first learn about the case? The documents obtained by AGRT indicate that the first written and oral briefing received by the Director on this investigation was on or about July 31, 1997.<sup>309</sup> This is consistent with what Director

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provided a substantial amount of material relevant to the investigation. (Parkinson 3/28/00) When the AGRT says, therefore, that Director Freeh was not briefed orally or in writing until July 1997, see below, this finding is based on the record of briefings either *addressed* to Director Freeh or *known* to have been given to Director Freeh.

<sup>308</sup> (U) Director Freeh made this precise point to the AGRT. He indicated that if he had been briefed on this case at an earlier point in time, and given more information about it, he would have reacted to it sooner and more aggressively. (Freeh 11/11/99)

<sup>309</sup> (SAR/DNF) There is a brief reference to the "Kindred Spirit" investigation in an April 14, 1997 briefing memorandum to Director Freeh, but the reference is in the context of a broader FBI review of various situations in which information was provided to NSC staff members but not transmitted to key policy makers. "Kindred Spirit" was cited as one of several examples in which information was communicated to the NSC staff but not briefed up within the NSC. The memorandum noted that on March 25, 1997, an NSC staff member contacted SC Dillard and advised SC Dillard that the staff member had been asked by National Security Advisor Sandy Berger to brief Berger on any cases in which the staff member had received briefings that were not forwarded to key policy makers. The staff member told SC Dillard that he had previously received a briefing from AD Bryant and DAD Lewis concerning [REDACTED]

[REDACTED] UC [REDACTED] was then instructed to rebrief the staff member and he did so that same day. The briefing included the following: [REDACTED]

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Freeh has told the AGRT.<sup>310</sup> On or about July 31, 1997, it appears that Director Freeh received a one page briefing memorandum on the investigation (FBI 1063) and was briefed on the case by SSA [REDACTED]<sup>311</sup> (FBI 12031)

(U) It is worth belaboring this point a bit since there is some confusion in the record as to when the Director was first briefed on the case:

- <sup>(U)</sup>~~(S)~~ On May 25, 1996, Trulock wrote a memorandum to Deputy Secretary Curtis which Trulock entitled "Action Plan and Next Steps." In that memorandum, which references a May 22, 1996 meeting between Trulock, Secretary Curtis and DAD Lewis, it notes that "Director Freeh has been briefed on this case." (DOE 4351) The AGRT has obtained no documentary verification that such a briefing took place.<sup>312</sup>

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[REDACTED]

(FBI 7633)

<sup>310</sup> (U) Director Freeh told the AGRT that he first became aware of the investigation in June or July 1997. (Freeh 11/11/99)

<sup>(U)</sup>~~(S)~~ The impetus for the briefing and the memorandum may have been to prepare Director Freeh for a meeting with National Security Advisor Sandy Berger on July 31, 1997, at which the "Kindred Spirit" investigation was discussed. (FBI 18197; Freeh 11/11/99) Alternatively, the memorandum may have been requested in preparation for an August 1, 1997 briefing AD Lewis was due to receive from Notra Trulock. (FBI 1026; Gallantin 11/23/99; Trulock 10/12/99)

<sup>312</sup> (U) Deputy Secretary Curtis also expressed the belief that Director Freeh had been briefed in the 1995/1996 time period, but his belief was third-hand. Secretary Curtis told the AGRT that he had a "specific memory" that he was told by either Trulock

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(u)  
(S) On December 27, 1996, a memorandum went from the Office of Director Freeh to OIPR for transmittal to the Attorney General. (AGO 139, OIPR 68) The memorandum was in support of the Wen Ho Lee mail cover and states explicitly the predicate for the investigation.<sup>313</sup> This would suggest that Director Freeh had been briefed at or before the time he signed this memorandum, *but it is clear that Director Freeh did not sign the memorandum.* Rather, the memorandum was initialed for Director Freeh by DAD Lewis.<sup>314</sup> (AGO 139) The memorandum seeking a mail cover was then forwarded to the Attorney General with OIPR's summary and endorsement (OIPR 64), and the Attorney General then authorized the mail cover. (AGO 138, FBI 290) The Attorney General told the AGRT that she read OIPR's cover memorandum, which set out the predicate for the investigation based on Director Freeh's memorandum.<sup>315</sup> (Reno 11/30/99) This leads to the following odd result: the Attorney General received a

or Baker that DAD Lewis had been briefed and that DAD Lewis had informed the Director. (Curtis 1/14/00)

<sup>313</sup> (S//~~RF~~) Director Freeh's memorandum states in part: [REDACTED]

[REDACTED] (AGO 138)

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<sup>314</sup> (S//~~RF~~) Director Freeh states that he has no recollection of ever seeing the mail cover documents. (Freeh 11/11/99)

<sup>315</sup> (S//~~RF~~) OIPR's cover memorandum to the Attorney General read in part as follows: [REDACTED]

[REDACTED] (OIPR 64)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

written briefing on the FBI's Wen Ho Lee investigation before the Director did.

- (u) (S) The FBI's own chronology states that Director Freeh was actually first briefed in June 1997, not July 1997, and that two notes were created in connection with these briefings.<sup>316</sup> The AGRT cannot confirm *any* briefings of Director Freeh on the Wen Ho Lee investigation that took place in June and the two notes do not support the conclusion that Director Freeh was briefed in June 1997. In fact, the first of the two notes (FBI 1063) appears to have been created on July 30, 1997.<sup>317</sup>

(U) Therefore, the AGRT concludes that the correct date for the Director's first written and oral briefings on the Wen Ho Lee investigation is on or about July 31, 1997.

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<sup>316</sup> (u) (S) (NF) The notes are related to each other. The first note is a general briefing paper on the Wen Ho Lee investigation. (FBI 1063) Director Freeh placed a handwritten note at the bottom of the paper, asking three questions of AD Lewis: "What was done in 1982 to work the Lee case? When/how was it closed? Did DOE know @ it?" (FBI 1063) The second note is a response to Director Freeh's three questions. (FBI 1062)

b1 <sup>317</sup> (S) This conclusion is based on a review of a computer disk provided to the AGRT by [REDACTED] containing various memoranda related to the "Kindred Spirit" investigation. (FBI 11371A) One of those memorandum bears the file name "Spirit" and is identical to the first of the two memoranda. (FBI 11372A, FBI 20046) Its file date is July 30, 1997. (Id.) While that does not *conclusively* establish a *creation* date of July 30<sup>a</sup>, it does suggest it, and it is consistent with the fact that SSA [REDACTED] formal briefing of Director Freeh took place the next day, July 31, 1997. It is also consistent with the fact that Director Freeh had a copy of the "Spirit" memorandum with him when he met with Sandy Berger the next day (FBI 11779, 18197; Freeh 11/11/99) and made handwritten notations concerning this meeting on it. (FBI 18208)

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~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U) After July 1997, Director Freeh received numerous additional briefings on the Wen Ho Lee investigation.<sup>318</sup>

<sup>(u)</sup>  
~~(S/NF)~~ See the following memoranda, which excludes notes dealing exclusively with the DOE counterintelligence reform initiative:

<sup>(u)</sup>  
~~(S)~~ On August 5, 1997, Director Freeh was scheduled to meet with Deputy Director Esposito, SC Dillard, UC [REDACTED] and SSA [REDACTED] concerning the "Kindred Spirit" investigation. (FBI 16610) Based on a note that the Director wrote on August 5, 1997, the AGRT concludes the meeting took place. (FBI 12479)

<sup>(u)</sup>  
~~(S/NF)~~ On August 12, 1997, Director Freeh was briefed by Notra Trulock on the general issue of Chinese attempts to acquire United States Government nuclear secrets. The "Kindred Spirit" case was discussed during this meeting. (FBI 12505, 21286, 11781, 20311, 21813)

<sup>(u)</sup>  
~~(S)~~ On August 14, 1997, FBI records indicate a briefing memorandum to Director Freeh from AD Lewis concerning OIPR's rejection of the FBI's FISA application on Wen Ho and Sylvia Lee. AD Lewis advises the Director that "we did not have as much information to justify an elsur request as we might have wished" and OIPR had made "a real effort to find a way for an application to go forward." (FBI 1060) Now that the application had been rejected, the Director was told, the FBI would "pursue a more aggressive but risky course which will include interviews of coworkers, former supervisors, and associates."

<sup>(u)</sup>  
~~(S)~~ On September 11, 1997, FBI records indicate a briefing memorandum to Director Freeh from SC Dillard concerning a September 5, 1997 FBI briefing to NSC staff at which the "Kindred Spirit" investigation discussed "at length." (FBI 1085, 20916) Attached to SC Dillard's memorandum was a time line on the "Kindred Spirit" investigation prepared for the NSC by UC [REDACTED] (FBI 1086, 13024, 12395, 20919)

~~(S)~~ On September 18, 1997, Director Freeh met with AD Lewis, Bob Bucknam, Michael Waguespack, SSA [REDACTED] and [REDACTED] 61  
While the purpose of the meeting was to discuss the DOE CI reform initiative, the "Kindred Spirit" investigation was discussed in some detail. (FBI 12312) Director

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Freeh asked several questions at the meeting related to the "Kindred Spirit" investigation and, on September 22, 1997, SC Dillard provided a memorandum to AD Lewis responding to those questions. (FBI 1100)

b1 (S) Also on September 18, 1997, Director Freeh was provided a briefing package by [REDACTED] which contained a CIA assessment of China's nuclear weapons program done at the request of the NSC. (FBI 12316-12349, excluding CIA assessment.) See Chapters 6 and 13.

(u) (S) On September 24, 1997, FBI records indicate a briefing memorandum to Director Freeh from AD Lewis, which was entitled "Update on Department of Energy Initiatives," and which made an indirect reference to the "Kindred Spirit" investigation. (FBI 1117)

(u) (S) On or prior to October 15, 1997, Director Freeh received a set of Talking Points for use in a meeting with CIA Director Tenet and DOE Secretary Pena, which also made reference to the "Kindred Spirit" investigation. (FBI 20942)

(u) (S) On January 8, 1998, FBI records indicate an update memorandum to Director Freeh from AD Lewis on the status of the "Kindred Spirit" investigation in connection with a briefing that Berger had asked CIA Director Tenet to provide. (FBI 1175)

b1 (S) On September 1, 1998, FBI records indicate a briefing memorandum to Director Freeh from DAD Torrence which reported on the [REDACTED] and promised a new submission to the FISA Court after NSD received the [REDACTED] (FBI 13011)

b1 (S) On November 6, 1998, FBI records indicate a briefing memorandum, created in connection with a briefing by SC Middleton to the NSC which took place on November 10, 1998. (FBI 7724, 19993) A copy of this memorandum, which laid out the events of the [REDACTED] was attached to the December 18, 1998 memorandum described below.

(S) On December 18, 1998, FBI records indicate a briefing memorandum to Director Freeh from AD Gallagher advising him (1) to expect a call from Secretary Richardson concerning the Secretary's interest in having the Lee matter "resolved as quickly as possible"; (2) DOE wanted to interview and polygraph Lee and NSD had told DOE "it had no objection"; (3) FBI-AQ was being instructed to prepare for a full  
b1 interrogation of Lee; and (4) FBI-AQ had been advised that the [REDACTED] did not justify a FISA order. (FBI 7652, 1408, 7721)

(S) On December 24, 1998, FBI records indicate a briefing memorandum to Director Freeh from AD Gallagher advising that Lee had been interviewed the previous day and had "passed" DOE's polygraph, but that DOE was suspending his access for a 30-day period. (FBI 1427, 7654)

(S) On January 12, 1999, FBI records indicate a briefing memorandum to Director Freeh from AD Gallagher advising, among other matters, that DOE wanted to fire Wen Ho Lee. (FBI 1467)

(S) On January 29, 1999, FBI records indicate a briefing memorandum to Director Freeh from AD Gallagher advising him of Lee's January 17, 1999 FBI interview, his signed statement, that Lee passed the DOE polygraph with "very positive measurements" and that DOE was now going to come up with a "list of present and former employees that will be larger than [REDACTED] identified as possible suspects." (FBI 1531, 7658)  
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(S) On February 17, 1999, FBI records indicate a briefing memorandum to Director Freeh drafted by SSA [REDACTED] indicating that Lee was polygraphed twice by the FBI on February 10, 1999 and was "inconclusive" on the first examination and "deception indicated" on the second exam. The memorandum also indicated that, based on admissions by Wen Ho Lee concerning disclosures he made to the PRC during his 1986 and 1988 trips, DOE "will probably revoke Lee's security clearance." The memorandum concluded: "Lee's statements show [REDACTED]"  
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(FBI 12999, 7717)

This is not to say that Director Freeh received *all* notes generated within the FBI after he began receiving briefings on the case.<sup>319</sup> It is to say that beginning in July 1997 the Director was routinely advised of developments in the case.<sup>320</sup>

3. (U) Where the briefings failed

(U) Several critical issues were never briefed to Director Freeh *but should have been*.

(S) First, none of the briefing memoranda ever make it clear to the Director that FBI-AQ's handling of the investigation was seriously deficient. [REDACTED] was firmly convinced that FBI-AQ was "screwing up and sitting on a time bomb" [REDACTED]

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(U) (S/NF) Finally, on March 10 or 16, 1999, CIA Director Tenet sent Director Freeh a copy of the same September 1997 CIA assessment of China's nuclear warhead program that had been provided to Director Freeh on September 18, 1997. (FBI 17206)

(U) (S) From the time Director Freeh was first briefed on the case in July 1997 until Wen Ho Lee was fired on March 9, 1999, there were innumerable briefing papers generated within the FBI that did not go to the Director and would not have been expected to go to the Director. These briefing memorandums were created for various purposes, including Congressional briefings, NSC briefings, and briefings within NSD. See, e.g., briefing papers dated: December 31, 1997 (FBI 1160), April 30, 1998 (FBI 6417), May 5, 1998 (FBI 11655), June 1, 1998 (FBI 1312), June 17, 1998 (FBI 13016), July 22, 1998 (FBI 13015), July 29, 1998 (FBI 1339), October 29, 1998 (FBI 1373), November 6, 1998 (FBI 7724), January 21, 1999 (FBI 1493), February 22, 1999 (FBI 1575) and February 26, 1999 (FBI 1589, 5331).

<sup>320</sup> (S) The fact that the Director received only one update note between October 15, 1997 and September 1, 1998 is not attributable to a failure to brief but, rather, to a failure to investigate on the part of FBI-AQ. There were no updates because there was nothing to update, other than FBI-AQ's ongoing planning of the [REDACTED]

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12/15/99), yet that message never reached Director Freeh.<sup>321</sup> While the reasons for this are *understandable*,<sup>322</sup> that does not make them *acceptable*. Director Freeh, properly briefed, could have brought to bear on the Wen Ho Lee investigation the full weight of NSD's expertise – just as *was* eventually done in the spring of 1999.<sup>323</sup> To be clear, the AGRT is not suggesting that Deputy Director Bryant or AD Lewis intentionally chose not to brief the Director on the truth of FBI-AQ's inadequate investigative efforts. They themselves had not been briefed on how bad things were in Albuquerque.

(S/NP) Second, prior to 1999, Director Freeh was never briefed on the serious and consequential difference of opinion as to the scope of the compromise at issue. Merely providing the Director a copy of the CIA's September 1997 assessment, as was done on September 18, 1997, was surely not enough, if for no other reason than the fact that Director Freeh had *not* been given a copy of DOE's AI as well. If [REDACTED] – which was b1 the recipient of both documents and which *had* been responsible for this investigation for several years – did not appreciate the discrepancy between the two documents, it is hard to imagine how the Director could have done so.<sup>324</sup>

<sup>321</sup> (U) Director Freeh told the AGRT that he was never advised of problems with the Lee investigation. (Freeh 11/11/99)

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<sup>323</sup> (U) As to FBI-AQ's diversion of two agents, it is unlikely this issue would ever have reached Director Freeh because it would have first been necessary to elevate it to senior NSD management. Once that was done, either AD Bryant or DAD Lewis would no doubt have *conclusively* and *categorically* resolved this issue – and not the way FBI-AQ had resolved it.

<sup>324</sup> (S) That Director Freeh would have been keenly interested in this issue is beyond question. Indeed, he asked members of his staff specifically on September 18, 1997 whether it was their "position that the evidence supports the conclusions Notra Trulock made in his presentation [to Director Freeh on August 12, 1997.]" (FBI 12312)

~~TOP SECRET~~ [REDACTED]

(U) Third, the single matter that could have fundamentally transformed the Wen Ho Lee investigation - the need to gain access to Wen Ho Lee's computer files - was never briefed to Director Freeh because it was never recognized by NSD, or FBI-AQ for that matter, to be an issue of particularly significant consequence. See Chapter 9. Would it have made a difference? That is impossible to say, of course, but what can be said is that FBI-AQ, NSD and NSLU each responded inadequately to this issue and each would have benefitted from an instruction to conduct a thorough review and vetting of the matter. There are no guarantees where such a review would have led, but it certainly *might* have led to the discovery of the X Division's banners, it *might* have led to the discovery of Wen Ho Lee's signed waivers, and it might have led to an NSLU reconsideration of its advice to NSD which, although it did have the virtue of simplicity, was nevertheless erroneous. As Director Freeh told the AGRT in reference to the FBI's acceptance of DOE's representations about the lack of banners: "We should have pressed the issue, we should have gotten into the weeds on it." (Freeh 11/11/99)

(S/AD) Finally, there is the matter of NSD's failure to formally brief *any* aspect of the "Kindred Spirit" investigation to Director Freeh until late July 1997 - [REDACTED] b1

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The Director was told by one participant in this meeting "that generally it did" [REDACTED]

(Id.)

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[REDACTED]

(U) The failure to brief Director Freeh at an earlier point in time was consequential. Had Director Freeh been briefed at the *beginning* of the investigation, rather than two years into it, he could have insured it was given the priority it deserved. Many of the problems identified in this report are direct bi-products of the lack of priority given this investigation at FBI-AQ and within NSD and that lack of priority might have been avoided had the Director been a participant in decision making about this case in 1995, 1996 or the first half of 1997.

~~(S)~~  
(U) By the time Director Freeh was finally briefed on the case, it was in trouble, and the prognosis for the case seemed grim.<sup>325</sup> So much had *already* gone wrong - in

<sup>325</sup> (U) When former Deputy Director Bryant was interviewed by the AGRT, he stated that FBI-HQ's upper management's knowledge of the "Kindred Spirit" investigation from 1995 to 1997 was too limited. He said the significance of the investigation was not elevated to managers on the "Seventh Floor" [the executive level] of the FBI building. (Bryant 11/15/99) The AGRT understands this to be a reference not only to the lack of briefings between NSD and the Director/Deputy Director but to a lack of briefings within NSD itself.

<sup>326</sup> (U)  
(S) A member of the NSC's staff was briefed on the "Kindred Spirit" investigation on March 25, 1997 by UC [REDACTED]. The same individual had previously been briefed on the investigation by AD Bryant. (FBI 7633, 798, 805, 12076, 20338)

<sup>327</sup> (U)  
(S) SC Dillard and UC [REDACTED] provided a detailed briefing on the "Kindred Spirit" investigation to HPSCI and SSCI staff on April 16, 1997. (FBI 6413, 6403, 823)

<sup>328</sup> (U)  
(S) *Just how grim* became apparent to SA [REDACTED] through a voice mail message he received from SSA [REDACTED] on August 12, 1997. SSA [REDACTED] was reporting on Director Freeh's meeting that day with Notra Trulock and DOE Deputy Secretary Betsy Moler. According to SSA [REDACTED] Director Freeh told the DOE officials that the Wen Ho Lee investigation should not be used as an excuse for DOE to fail to address its

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how the case was handled and supervised in Albuquerque, in the problematic relationship between [REDACTED] and FBI-AQ, in NSD's and FBI-AQ's continuing failure to grasp the importance of gaining access to Wen Ho Lee's computer files, in the drafting of the FISA application itself - that only radical changes in the handling of the case would likely have significantly altered its prognosis by this point in time. Such changes were warranted but, given what Director Freeh was being told, that after a full year of investigation there was not even enough evidence to convince OIPR of *probable cause*, it is not surprising that such changes were not even contemplated.<sup>329</sup>

4. (U) Where the briefings succeeded

(U)

(S) First, NSD played a critical supporting role in assisting Director Freeh in addressing *at a structural level* DOE's counterintelligence problems. From August 1997 forward, an enormous amount of FBI resources and effort was dedicated, at the Director's instructions, to designing, implementing and executing a plan to reform DOE's

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general counterintelligence problems and its specific security concerns about Wen Ho Lee. According to SSA [REDACTED] Director Freeh told DOE: "This case is off the table and the case is dead." (AQI 5325) In fact, Director Freeh appears only to have told DOE that the Lee investigation was of "lesser importance" than stemming the flow of sensitive information from the DOE laboratories and that the case "pales in comparison" to DOE's need to move forward to preserve United States Government information. See AGRT review of FBI SSA [REDACTED] notes of August 12, 1997 meeting. (NSC 001-004)

(U)

<sup>329</sup> (S) Nor was Director Freeh given any cause to blame the current state of affairs on the way in which the FBI had conducted its investigation or the way in which OIPR had handled the FISA application. What Director Freeh was being told back in August 1997 is that there was a deficiency in the facts, not in the investigators or attorneys handling this matter. As AD Lewis put it in a memo to the Director, "[W]e did not have as much information to justify our elsur [electronic surveillance] request as we might have wished." (FBI 1060)

counterintelligence program.<sup>330</sup> While the Director is not *solely* responsible for PDD-61,<sup>331</sup> it is clear that he was the driving force behind the reform of counterintelligence at DOE.<sup>332</sup> NSD played a critical role in keeping Director Freeh regularly advised of developments in the reform initiative and in insuring that the Director had the information he needed to do the job.

(U) Second, once NSD *did* begin briefing the Director on the Wen Ho Lee investigation, it do so regularly and in significant detail, although somewhat more

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<sup>330</sup> (U) (S) This is not meant to suggest that the FBI was uninvolved in this issue prior to August 1997. It had been involved in this issue for years. See, e.g., the FBI's April 1997 report titled "DOE's CI Activities: An FBI Assessment." (DOE 4397)

<sup>331</sup> (U) (S) DCI Tenet, for example, also played a substantial role in the effort to reform counterintelligence within DOE, as did the NSC.

<sup>332</sup> (U) (S) Director Freeh mobilized his staff to address the DOE counterintelligence issues. (FBI 12479) He made it clear that he was prepared to do "whatever it takes" to address the problems in the DOE laboratories. (FBI 20768) He bluntly told DOE in August 1997 that the Wen Ho Lee investigation could no longer be a factor in DOE's addressing security concerns at the laboratory. (NSC 004, FBI 21286, 21813-21816) He made the same point again in October 1997 in a meeting with Secretary Pena. (FBI 18751; Webb 1/6/00; Freeh 11/11/99) He repeatedly briefed or caused his deputies to brief the National Security Advisor on developments in the DOE counterintelligence reform effort. (FBI 20808, 12197, 20647, 21302, 20608, 20597) He selected a senior FBI official, Ed Curran, to be the chief of counterintelligence at DOE and then took necessary steps to make it possible for him to take on this responsibility. (FBI 20643, 20439, 21036) He and DCI Tenet met with, and wrote to, DOE Secretary Pena concerning the reform initiative. (FBI 20942, 20666, 16988) He received numerous notes from his staff addressing a variety of issues related to the initiative. (FBI 21395, 21347, 20600, 21343) He helped resolve a number of contested issues. (FBI 20451, 21279, 20453, 20447) Even after PDD-61 was signed by the President, he continued to be involved in insuring that the initiative was properly executed and implemented. See, e.g., the Director's meeting with DOE laboratory directors on March 30, 1998. (FBI 7176, 20415, 7178)

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optimistically than the track record of FBI-AQ's handling of the Wen Ho Lee investigation might have warranted."<sup>333</sup>

K. <sup>(u)</sup>~~(S)~~ NSD's failure to recognize and address the danger posed by Wen Ho Lee's continuing access to nuclear weapons secrets

<sup>(u)</sup>~~(S)~~ Chapter 18 describes in detail the array of serious misjudgments and unfortunate mis-communications by both the FBI and DOE that resulted in Wen Ho Lee retaining his access to nuclear weapons secrets until December 24, 1998. It is sufficient to note here that NSD played a significant role – from the beginning<sup>334</sup> – causing DOE to retain Wen Ho Lee in a position where he continued to pose a danger to the national security.

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<sup>(u)</sup>~~(S)~~<sup>333</sup> For example, the Director was told on August 14, 1997 by AD Lewis that, following OIPR's rejection of the FISA application, the FBI would now pursue a "more aggressive but risky course" of conducting interviews of coworkers, former supervisors, and associates. (FBI 1060) With a very few exceptions, that did not happen.

<sup>(u)</sup>~~(S)~~<sup>334</sup> See, e.g., this FBI briefing memorandum, dated January 30, 1997, containing a chronology of events related to the "Kindred Spirit" investigation:

<sup>(u)</sup>~~(S)~~ 7/2-3/96: FBI-HQ personnel travel to Albuquerque to confer with the Special Agent in Charge and Assistant Special Agent in Charge. All then meet with the Director of Los Alamos and his staff to brief him on the FBI's proposed investigation and to ask for cooperation: *The LEEs must not be alerted to the investigation and Lee Wen Ho must continue to have his normal access.*

(FBI 751) (emphasis added).

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FBI HEADQUARTERS

Director

1993-present - Louis J. Freeh

ASSISTANT DIRECTOR  
NSD

DEPUTY ASSISTANT DIRECTOR  
FOR COUNTERINTELLIGENCE

DEPUTY DIRECTOR

02/94-12/94 Dave Binney  
01/95-07/95 Larry Potts  
08/95-02/97 Weldon Kennedy  
03/97-10/97 Wm Esposito  
10/97-11/99 Robert Bryant  
12/99-pres Thomas Pickard

11/93-03/97 Robert Bryant  
03/97-09/98 John Lewis  
09/98-11/98 Larry Torrence (Acting)  
11/98-pres Neil Gallagher

11/94-03/97 John Lewis  
04/97-06/97 Larry Torrence (Acting)  
Ray Mislock (Acting)  
John O'Connor (Acting)  
10/97-11/98 Larry Torrence  
11/98-12/98 Tim Caruso (Acting)  
01/99-pres Sheila Horan

SECTION CHIEF [redacted] <sup>b1</sup> (S)

UNIT CHIEF [redacted] <sup>b1</sup> (S)

SUPERVISORY SPECIAL AGENT

09/94-11/96 Jerry Doyle  
11/96-12/96 [redacted] (Acting)  
01/97-09/98 Steve Dillard  
09/98-10/98 [redacted] (Acting)  
11/98-pres Charles Middleton

06/92-10/94 [redacted] FBI  
10/94-pres [redacted] b6  
b7C

1994 -7/99 [redacted] FBI  
08/99-pres [redacted] b6  
b7C

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FBI ALBUQUERQUE DIVISION

SPECIAL AGENT IN CHARGE

06/91-12/95 Bernardo Perez  
12/95-08/96 Tom Kneir  
08/96-10/96 Ron Dick (Acting)  
10/96-05/98 Jim Weber  
05/98-08/98 Ron Dick (Acting)  
08/98-pres Dave Kitchen

ASST SPECIAL AGENT IN CHARGE

08/91-12/95 Tom Kneir  
01/96-05/96 John Louden  
06/96-09/98 Ron Dick  
09/98 Frank Coffey (Acting)  
10/98 Mike Tabman (Acting)  
11/98 Greg Parrish (Acting)  
12/98-pres William Lueckenhoff

NFIP PROGRAM MANAGER

2/95-5/96 John Louden  
5/96-6/96 Tom Kneir  
6/96-9/98 Ron Dick  
12/98-pres William Lueckenhoff

SUPERVISORY SPECIAL AGENT

FBI SQUAD

(and NFIP Coordinator)

07/90-07/97  
09/97-10/98  
11/98 (2 wks)  
11/98-pres



SUPERVISORY SPECIAL AGENT

SANTA FE RA

4/94-2/95  
3/95-12/96  
1/97-9/97  
12/97-pres



FBI  
b6  
b7c

CASE AGENT

05/96-02/97  
02/97-03/97  
04/97-11/98  
11/98-03/99  
03/99-pres



FBI  
b6  
b7c

FBI  
b6  
b7c

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