CHAPTER TWENTY-ONE

(U) RECOMMENDATIONS

Questions Presented:

Question One: (U) In light of the problems identified by the AGRT in this report that relate to *general structural or procedural matters*, what recommendations does the AGRT make for the consideration of the Department of Justice and its components, including the FBI?

Question Two: (U) In light of the problems identified by the AGRT in this report that relate to the *specific allegations at issue*, what recommendations does the AGRT make for the consideration of the Department of Justice and its components, including the FBI?

The final PFIAB Question:

> *(U) Whether additional cases should be opened to investigate whether the apparent disclosures may have arisen out of organizations other than Los Alamos lab.*

(U) Recommendations

1-8. (U) Recommendations 1-8 address the sharing of intelligence information among OIPR, the FBI and the Criminal Division and the appropriate scope of advice the Criminal Division may render in FCI investigations. These recommendations appear in Chapter 20.

9-13. (U) (S//NF) Recommendations 9-13 specifically address PFIAB's question concerning the need for additional investigative activity. Due to the sensitivity of these recommendations, and the fact that they concern ongoing investigative matters, they are provided under separate cover to the Attorney General and Deputy Attorney General, pursuant to letter dated May 12, 2000.

(U) (S/NF) In general, however, two points should be made here: First, additional investigative activity is required in several key areas. Second, the FBI has clearly recognized this requirement and appears to be addressing these matters competently, aggressively and with the commitment of appropriate resources.

14. (U) (S) **The intelligence community, led by the FBI, needs to develop and implement a formal policy for the handling of espionage and counterintelligence investigations when they involve individuals with continuing access to classified information.**

(U) (S) One of the most serious and consequential problems identified by the AGRT was the failure by both the FBI and DOE appropriately and promptly to restrict Wen Ho Lee's continuing access to classified information concerning nuclear weapons. Matters of this nature are among the most sensitive and controversial dilemmas confronting a counterintelligence investigation. They involve a complex calculus: What danger is posed by continuing access? How alerting would be the removal or restriction of an individual's access? What alternatives exist to maintaining a subject's continuing access? In the Wen Ho Lee investigation, these matters were never seriously considered. Instead, until August 1997, there was a virtually reflexive insistence on the part of the FBI that continuing access be maintained.

(U) (S) Where there is FISA coverage in place, and a subject's activities can be closely monitored, the necessity of restricting or controlling the subject's access to classified material may be less critical. However, where there is no FISA coverage in place, and alternative means of monitoring an individual's activities are insufficient or unavailable, the presumption ought to be that some limitation on continuing access to classified information should be imposed. There may be situations where this is impossible without alerting the subject to the existence of the investigation. In most situations, however, the "victim" agency and the FBI ought to be able to devise a strategy for accomplishing this objective.

(U) (S) The intelligence community, led by the FBI, needs to review this matter and to develop formal standards applicable in all counterintelligence or espionage investigations. These are decisions too important to be left to *ad hoc* evaluations by particular case agents or their supervisors. This review should involve representatives of the FBI, CIA, DOE, DOD, DOJ and other entities that both possess classified information and have counterintelligence responsibilities.

15. (U) NSD should establish a policy as to the types of matters about which it will normally consult the Criminal Division.

(U) Recommendations 1-8 propose a substantial expansion in the nature and scope of advice that the Criminal Division may provide to the FBI in counterintelligence investigations with potential for criminal prosecution. The recommendations also propose steps that should substantially increase the Criminal Division's awareness of pending counterintelligence matters that reasonably indicate the commission of crime. These recommendations do not, however, address a critical associated issue: When should the FBI seek advice? And on what matters?

(S) While Recommendations 1-8 permit the Criminal Division to offer advice, ***solicited or not***, **it is important for the FBI to establish a general policy as to the matters about which it will typically seek advice, rather than leave this to *ad hoc* decision making.** b1 **Certain matters – such as [redacted] critical witness interviews, the planning of a subject interview, the choice of "feed" material, the acquisition of testimony in foreign proceedings, and whether enough evidence has been accumulated to proceed with prosecution – would particularly benefit from consultation with the Criminal Division, especially given the impact of these decisions on any ultimate prosecution. In addition, the Computer Crime & Intellectual Property Section is a valuable resource that the FBI should have used in the Wen Ho Lee investigation and which should be consulted, as appropriate, in future investigations.**

(U) NSD should establish guidelines for its consultation with the Criminal Division which are designed to foster and encourage such communications.

16. (U) (S) Following the closing of a full investigation of any individual with continuing access to classified information, the FBI, except in extraordinary situations, should explicitly and formally advise the employer of the individual, and the authority issuing the individual's security clearance, of any adverse information developed in the course of the investigation.

(U) (S) As Chapter 2 makes clear, the FBI failed to advise DOE explicitly and formally of adverse information it had developed in the course of the 1982-1984 full investigation of Wen Ho Lee. This information was of *such* significance that, if fully and promptly reported to DOE at the time the full investigation was closed in March 1984, it might have

cost Wen Ho Lee his security clearance and consequently his employment at a national nuclear weapons laboratory.

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(S) When the FBI closes a full investigation, the need to maintain the confidentiality of the investigation, while not eliminated, is certainly reduced. Moreover, the fact that a full investigation is closed does not mean that the FBI has discovered nothing of significance for purposes of *administrative action* that the United States Government may take to limit or prevent the individual's continuing access to classified information.

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(S) The AGRT recommends that NSD reexamine its existing dissemination policy to insure that adverse information acquired in the course of any investigation is appropriately and formally disseminated at the conclusion of the investigation.

17. (U) When an agency such as DOE has reasonable grounds for suspecting that an employee is guilty of work-related misconduct, Executive Order 12333 should not be applied to prohibit the agency from conducting self-protective, work-related searches authorized by O'Connor v. Ortega, simply because there has been a referral to the FBI or simply because there is an ongoing FCI investigation.

(U) As discussed in Chapter 9, DOE refrained from taking certain self-protective measures concerning Wen Ho Lee because of its belief that it was prohibited from doing so by Executive Order 12333. As discussed in that chapter, this appears to have been an unnecessarily restrictive interpretation of Executive Order 12333. A thorough reassessment of the effect of the order on an agency's ability to take such self-protective actions, and the understanding of the order by the affected agencies' security components, should be conducted. Where necessary, curative orders and memoranda should be issued to make it clear that where the agency has reasonable grounds for suspecting misconduct, it may undertake searches of the kind approved in O'Connor, notwithstanding the existence of an FCI investigation. This is not to suggest that the agency could act as an alter ego of the FBI to conduct searches for the benefit of a criminal or FCI investigation. However, when an agency has valid reasons to be concerned about an employee's continued employment or access to classified information, Executive Order 12333 should not be read to prohibit the kind of work-related searches that O'Connor has said the Constitution permits. Consideration should also be given to promulgating formal procedures which ensure that

such work-related searches are coordinated with the FBI so as not to interfere with ongoing investigations, while at the same time ensuring that the essential purpose of the search remains work-related.

18. (U) The Department needs formal procedures for determining which Foreign Counterintelligence and Foreign Intelligence investigations should be brought to the attention of the Attorney General and Deputy Attorney General.

(U) In the past, decisions as to what intelligence matters required briefing to the AG and DAG have been made on an *ad hoc* basis, depending in large part on the person holding the position of Counsel for Intelligence Policy. The Department needs explicit guidelines that describe what matters require such briefings.

19. (S) Within OIPR, all matters related to a particular investigation – mail covers [redacted] annual LHMs, FISA applications and FISA renewals – should go to the same attorney.

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(S) In the Wen Ho Lee investigation, there was no effort to have OIPR's work done by a single attorney. Thus, the mail cover application was handled by one attorney, the 1997 Annual LHM by a second attorney, and the FISA application by a third attorney. This undermines OIPR's ability to do its job effectively and efficiently, particularly in difficult cases, and it reinforces the impression that OIPR is an assembly line operation not requiring any special grounding in the facts of a particular matter. The logistics involved in insuring that the *same* matter goes to the *same* attorney would be minimal and the benefits considerable.

20. (U) A formal policy should be adopted that requires notification to the Attorney General of all FISA rejections by OIPR.

(U) Formal procedures need to be drafted and implemented that require that the Attorney General be promptly notified in every case involving a rejection of a FISA application.

(U) The Attorney General needs to be aware when her Counsel for Intelligence Policy rejects a request for a FISA order, first, because of the potential impact of that

decision on a particular FCI or FI investigation; second, because she may wish to review the matter; and, third, because it is essential that the Attorney General be made aware of the standards used by OIPR in its evaluation of FISA applications.

(U) A formal policy requiring notification to the Attorney General of all rejections should also define the term "rejection." For example, if OIPR tells the FBI it needs more information on a particular matter, and it is contemplated that the FBI will come back a few days later with that additional information, this surely does not constitute a rejection. On the other hand, when OIPR tells the FBI it does not have sufficient evidence to support a FISA application despite the FBI's effort to bolster the application, that should be defined as a rejection.

21. (U) A formal appeals process, by which the FBI can seek review of adverse decisions by OIPR on FISA requests, should be implemented.

(U) The AGRT found that the manner in which the FISA appeal was handled in the Wen Ho Lee case contributed to the failure to conduct a meaningful review of OIPR's decision. The FISA was reviewed by an attorney who was inexperienced in the evaluation of FISA applications and who did not understand what it was the Attorney General expected him to do. A formal appellate mechanism needs to be implemented which would meet several criteria.

(U) First, any review must be conducted by a DOJ official with substantial experience in the evaluation of FISA applications and, preferably, with substantial prior exposure to the FISA Court. If, at any given time, such experience does not exist among senior DOJ officials who might be designated to review an application, individuals can be brought in from other DOJ components, who do have the prior experience and exposure.

(U) Second, the purpose of the review should not be the equivalent of that performed by a Court of Appeals. In other words, legal sufficiency is only one element of the review. The other element of the review, intended by the Attorney General in the Wen Ho Lee investigation, was to attempt to resolve the matter to the satisfaction of both the FBI and OIPR. In the Wen Ho Lee case, that meant a fresh and thorough consideration of what additional information might be mustered or procured to support a probable cause finding.

(U) Third, an *essential* element of any review must be that the reviewer consult with both OIPR and the FBI.

(U) Finally, the Attorney General must be apprised of the results of the review and the FBI should be provided an opportunity to make a presentation directly to her in support of its assertion that a FISA submission is warranted.

22. (U) DOJ needs to reevaluate OIPR's practice concerning issues of "currency."

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(S) As Chapter 11 makes clear, OIPR's views as to "currency" has been a key matter of contention between it and the FBI. There are several types of cases, including those of "illegals," "sleepers," and "dormant" agents, where a FISA order may or may not be approved depending on OIPR's view of what constitutes present engagement in clandestine intelligence gathering activity. It is clear to the AGRT that, in some cases, conduct far older than six months ought to qualify as "current" for purposes of the FISA statute. It is also clear that the FBI believes that OIPR's views as to "currency" have cost it FISA orders in the past that the FBI believes to have been warranted. We recommend that the "currency" standard be reevaluated by the Department of Justice.

23. (U) The FBI should assess the adequacy of its initial training, and ongoing training, for agents assigned to work FCI cases.

(S) Some of the problems identified in this report could have been ameliorated through training. Certainly, [redacted] Given the fact that the AGRT has not conducted a study of the FBI's ongoing training programs for FCI agents, we cannot make specific recommendations in this area beyond suggesting that the FBI evaluate whether its training program for FCI agents provides sufficient, appropriate and continuing training in such areas as [redacted] intelligence collection techniques (e.g., mail covers, trash covers, interviews, national security letters, and financial investigations), FISA submissions, interactions with OIPR and the Criminal Division, and espionage prosecutions.

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24. (U) In every FCI investigation where the FBI Office of Origin is a small field office, a formal evaluation should be undertaken by NSD at the initiation of the case to determine if the office has the resources to aggressively and competently address the requirements of the investigation.

(U) FBI-AQ was clearly not staffed to handle a critical and demanding FCI investigation. While an initial effort to address that problem was made – ultimately resulting in the diversion of two first office agents – there was no follow-up of subsequent review. Had this problem been properly addressed and resolved at the initiation of the investigation, many of the problems identified in this report would almost certainly have been avoided.

25. (U) NSD and FBI-AQ should reexamine whether the Albuquerque Division presently has sufficient resources to address the basic and ongoing counterintelligence requirements of this office.

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(S) Throughout the Wen Ho Lee investigation, FBI-AQ had far too few agents properly to address the basic counterintelligence demands of an office responsible for two of our national nuclear weapons laboratories, as well as sensitive military and industrial facilities. The Wen Ho Lee investigation imposed upon an already understaffed FCI program the obligation to staff a major espionage investigation. As stated in this report, significant additional resources have been provided to FBI-AQ in the past year. The FBI should examine whether FBI-AQ now has sufficient resources to meet each of its NFIP requirements.

26. (U) The FBI should consider a requirement that all agents working FCI cases have both some experience handling criminal matters and general training concerning espionage prosecutions.

(U) Almost every espionage case involves at least the possibility of an eventual criminal prosecution. Although the AGRT has recommended substantially increasing the extent to which the Criminal Division may render advice in counterintelligence investigations, there is obviously no substitute for the agents actually assigned to the case having significant familiarity with the demands of a criminal prosecution.

(S) Agents handling major espionage investigations routinely make decisions that have the potential dramatically to affect – and possibly even preclude – a subsequent criminal prosecution, including decisions related to [redacted] the planning for subject interviews, the use of certain sensitive investigative techniques, the planning for witness interviews, decisions made concerning continuing sensitive access permitted the subject of espionage investigations, the use of behavioral analysis, etc. Those decisions are often made with little consideration as to how they will subsequently affect any criminal prosecution.

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(U) Similarly, there is limited consideration given to the possibility and, as to certain matters, the probability, that sensitive investigative techniques or resources may have to be disclosed in a prosecution. This could be required in the discovery process associated with a criminal prosecution or may even be required at trial.

(U) We recommend that the FBI consider a requirement that all agents working FCI matters have at least some experience in the investigation and prosecution of criminal matters. We also recommend that all FCI agents receive training in the prosecution of espionage cases, including training concerning potential defenses in an espionage prosecution, as well as the special discovery problems, under Rule 16, Brady, Giglio, and the Jencks Act, presented by espionage prosecutions.

27. (U) The FBI should evaluate whether a formal element of consideration in the transfer or promotion of agents should be whether such transfer or promotion will have an adverse impact on a pending matter of critical importance.

(U) In Chapter 4, the AGRT identified the innumerable personnel changes in both FBI-AQ and FBI-HQ as a factor that adversely impacted the investigation. In these frequent changes in personnel, it does not appear that the effect on the Wen Ho Lee investigation was ever considered. Promotions and transfers obviously should reflect the interests and desires of the individual. Principally, however, they must reflect the needs of the organization, particularly in a law enforcement organization like the FBI. One way in which to recognize this fact is formally to incorporate into each transfer or promotion decision a consideration of its impact on pending investigations of critical importance. It may be that forms such as the FD-638 should be modified to require that the SAC or ASAC or equivalent individual at Headquarters indicate whether the requested transfer or

promotion will have an adverse impact on a pending matter of critical importance. If the answer to that question is "Yes," the supervisor should be further required to indicate what steps have been taken to ameliorate that impact in the event of such transfer or promotion. This would not, necessarily, prevent such transfers or promotions even when it may adversely impact on a pending matter of critical importance. It would insure, however, that this impact was addressed.

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28. (S) No [redacted] should be undertaken without formal approval from an NSD review committee similar to that required of other [redacted]

(S) In the past, the FBI has implemented [redacted] that were brilliant in their design and flawless in their execution. The Wen Ho Lee investigation was not among them. Its [redacted] was poorly planned in *every* significant respect. [redacted] suggests that there is something wrong in the manner in which [redacted] are considered and approved within the FBI.

(S) We recommend the establishment of a permanent committee within NSD that would review and approve all [redacted] before they are implemented in the field. The membership of the committee should include agents with substantial experience [redacted]

(S) It is clear that one of the problems experienced [redacted] without an appreciation for how to accomplish that mission. The FBI certainly has a number of senior agents with a wealth of experience [redacted] This recommendation is intended to create a mechanism and a requirement that agents [redacted] draw upon that hard-earned experience and knowledge.

29. (S) Before a full espionage investigation is approved, [redacted] NSD should formally consider whether the case is of such critical importance that it warrants the creation of a special task force. Even where NSD determines that no special task force is warranted, consideration should always be given to whether the office has the resources effectively and aggressively to handle the investigation.

(S) FBI-AQ did not have [redacted] Given the importance of the case, NSD should have considered at the beginning of the investigation the creation of a special task force to handle the matter. The FBI should consider the creation of a mechanism that would require such consideration at the time a full espionage investigation is authorized. Alternatives, such as the temporary detailing of experienced agents or the specialty transfer of experienced agents, should also be considered at this time.

30. (U) In any case where a request is made by a field office to provide specific additional agent support to an investigation, FBI-HQ must insure that the additional support that is provided is in fact used for that purpose. Two mechanisms to achieve this would be, first, explicit designation on transfer orders that the agents are being provided to support a particular investigation and, second, a requirement that, within 30 days of the agents' arrival, the field office must submit a report to FBI-HQ describing specifically how the additional support is being employed to support that investigation.

(U) This report describes how FBI-AQ diverted two agents whom NSD had arranged to be transferred to Albuquerque Division to assist on the Wen Ho Lee investigation. That diversion might not have occurred if their orders had explicitly stated that they were being sent to FBI-AQ to support this particular investigation and if FBI-AQ was required to account for them to FBI-HQ.

31. (U) The FBI and the CIA should review their mutual understanding of the circumstances triggering a notification obligation pursuant to Section 811 of the Intelligence Authorization Act for 1995.

(U) (S/NF) The AGRT believes that the CIA should have formally notified the FBI of the existence and possible significance of the "walk-in" document as soon as the CIA translated it. Its failure to do so suggests this matter should promptly be reviewed.

32. (U) The FBI should consider what steps should be taken to insure that all FBI-HQ personnel completing inspection interrogatories disclose information indicative of problems within a Division.

(U) The August 1998 inspection of Albuquerque Division represented a missed opportunity by the FBI to identify and address the specific and generic problems that contributed to FBI-AQ's poor handling of the Wen Ho Lee investigation. In part, the FBI missed this significant opportunity because personnel within NSD failed appropriately to respond to inspection interrogatories that were intended to elicit such information. It is clear from the AGRT's interviews that NSD's failure to advise the Inspection Division of FBI-AQ's inadequate handling of the Wen Ho Lee investigation was a reflection of a perception that the FBI "culture" did not encourage or expect such disclosures.

(U) The FBI's inspection process is an internal mechanism for evaluation and remediation, of which the FBI is justly proud. If the FBI "culture" discourages "full disclosure" in the interrogatories or interviews associated with the inspection process, that "culture" needs to be altered. All FBI personnel should be advised that the FBI will not tolerate anything other than "full disclosure" in the inspection process.

33. (U) The FBI should consider a requirement that any supervisor of a squad responsible for an office's National Foreign Intelligence Program have substantial FCI experience.

(U) Experience alone would not have prevented the problems which FBI-AQ encountered in the Wen Ho Lee investigation. There were, for example, two principal supervisors of the Wen Ho Lee investigation, one with substantial FCI experience and one without substantial FCI experience. As to *both*, there were substantial problems in the management of the case.

(U) Nevertheless, FCI work is so specialized, and the consequences of even a single wrong step so extreme, that to put a supervisor in charge of a squad handling FCI work where that supervisor is not himself or herself very experienced in the handling of such cases is an invitation to the types of problems experienced in the Wen Ho Lee investigation. In some cases, an office may be so small that there is no alternative but to have FCI work supervised by an SSA without substantial FCI experience. In general, however, FCI work should be supervised by FCI-trained supervisors.

34. (U) NSD should create mechanisms that will insure that FCI investigations are handled with urgency and dispatch.

(U) The Wen Ho Lee investigation suffered from a persistent lack of urgency and virtually no deadlines, despite DOE's periodic complaints to the FBI about lack of progress. We recognize that it *may* take years to develop a counterintelligence or espionage investigation. But to say that is not also to say that it *must* take years.

(U) In a criminal investigation, there are generally external deadlines or factors that force a case forward. Those factors may include publicity, court proceedings, the grand jury's imminent expiration, or the threat posed by a subject remaining at large. In an FCI investigation, in contrast, there is, or at least ought to be, no publicity, and there are certainly no grand jury proceedings or court dates to impose deadlines on the progress of the case.

(U) The absence of external deadlines does not mean that an FCI investigation cannot be subject to any deadlines. *They just must be imposed from within.* The Wen Ho Lee investigation would have benefitted enormously from the imposition of deadlines designed to advance the case toward a conclusion.

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(S) We recommend that NSD create a set of general benchmarks and schedules by which a case's progress can be measured and evaluated. There are certain typical events that occur in full investigations: an investigative plan is devised, national security letters are issued, requests for mail covers submitted, other investigative techniques, such as trash covers, are undertaken, FISA applications are made, etc. There is no reason why NSD, as a matter of policy, cannot establish its expectations as to when these events typically ought to be accomplished.

(U) We recognize that the problems experienced in the Wen Ho Lee investigation cannot necessarily be extrapolated to *all* FCI investigations. We also recognize that, in many other FCI investigations, the agents are so experienced and competent that the problems described in this report just do not arise. Finally, we recognize that there are some mechanisms already in place that do address these issues, such as periodic file reviews, SSA supervision, and the establishment of goals and objectives for the NFIP Program.

(U) Nevertheless, *each* of these procedures were in place in the Wen Ho Lee investigation but did not materially advance the case toward a resolution. Therefore, we recommend that this matter be reviewed by NSD.

35. (U) All FCI agents responsible for liaison with DOE's national laboratories should receive thorough familiarization with the security measures in place at the laboratory, and the essential nature of its work.

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(S) In the Wen Ho Lee investigation, one of the serious impediments to an effective and efficient investigation of the case by FBI-AQ was its failure to understand or appreciate the various security measures that were in place at the laboratory and available to any FCI investigation. This led FBI-AQ largely to ignore a variety of tools that were available to gain information concerning Wen Ho Lee's computer usage. See Chapter 9. It also prevented the case agent from developing a full understanding of the various means by which a weapon's design can be compromised.

(U) We recommend that all FCI agents with counterintelligence responsibilities at the national laboratories have basic training in the subject matter handled at that particular laboratory and the specific security measures that are in place at the laboratory to monitor and prevent inappropriate or unauthorized access to classified material.

36. (U) The initial draft of a FISA LHM should be written in the field.

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(S) Among the many problems identified with the handling of FISA-related matters in the Wen Ho Lee investigation was the fact that the FISA LHM was written by NSD instead of by FBI-AQ. In the Wen Ho Lee investigation, this may have been unavoidable given the fact that SA [redacted] was new to the case and FBI-AQ's handling of the investigation had been inadequate from the beginning. Nevertheless, it should be avoided. In the Wen Ho Lee investigation, the FISA LHM prepared by NSD contained significant

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omissions of fact that might have been avoided had the application been prepared by the case agent himself.

(U) Except in rare cases, FISA LHM's ought to be initially drafted by the case agent, subject to review by the cognizant NSD section.

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37. (S) **The initial investigative plan of every FCI investigation should inquire into whether information relevant to the investigation may be contained in any computer system or database.**

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(S) As the Wen Ho Lee investigation demonstrates, valuable information may be obtained from computer systems to which the subject of an investigation may have access. Consideration of the computer as a possible source of information in an FCI investigation should become as routine as the consideration now given to mail and trash covers, obtaining toll records, NSLs for credit information, and other routine investigative techniques.

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38. (S) **The FBI should require the predicate for any FCI referral to be in writing and include all supporting material.**

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(S/NF) DOE's October 31, 1995 briefing to the FBI played a critical role in the FBI's misunderstanding as to the predicate for the Wen Ho Lee investigation. Because the FBI never received KSAG's "bullets," the FBI was left to rely principally upon this oral briefing.

(U) In the future, the FBI should require a written and detailed description of the predicate from any agency making an FCI referral. Ideally, the FBI will have participated in the evaluation that generates an FCI referral, but in every case the FBI should insist that the predicate be described as precisely as possible, and in writing, so as to avoid inaccurate, incomplete and misleading information forming the basis for any FCI investigation. The referral should be sufficient on its face to explain that a crime has been committed, the precise information that has been compromised, its classification level, and the approximate time period when the loss occurred.

(U) 39. (S) After receiving a written FCI referral, the FBI should immediately interview those individuals who assessed the compromise at issue. These individuals should generally be available to serve as resources for the FBI investigation.

(U) (S//NF) It is remarkable and certainly unfortunate that the case agent in the Wen Ho Lee investigation never acquired a list of experts who evaluated the compromise forming the predicate for the Wen Ho Lee investigation. In particular, he should have known the identities of at least each LANL scientist who participated in the DOE evaluation of the compromise. At LANL, this included the chairman of KSAG and several nuclear weapons designers who were already familiar with the intelligence information involved. None of the KSAG weapons designers were ever interviewed directly by the case agent. The experts should all have been interviewed at the time the FBI initiated its investigation. Only through such interviews could the FBI have become sufficiently familiar with the precise nature of the compromise, any reasonable leads that flowed from the experts' evaluation, and establish contacts to guide the future investigation.

(U) 40. (S) The FBI should assert primary investigative jurisdiction early in any FCI investigation involving the alleged compromise of United States nuclear weapons design information.

(U) (S) The FBI should have taken over the Wen Ho Lee investigation by September 1995 when it received a formal notice of compromise from DOE. Instead, the FBI deferred jurisdiction to DOE and permitted DOE to conduct the Administrative Inquiry, to the detriment of the FBI and its subsequent investigation.

(U) 41. (S) When the FBI receives an FCI referral involving foreign intelligence information, the FBI should affirmatively seek out the intelligence community's assessment of that intelligence information.

(U) This was not done in the instant case, and the investigation was materially undermined as a consequence.

(U) See Chapters 6 and 7.

42. (U) The FBI should request an "after action" report from every agent detailed to another agency to ensure all useful information is captured from that detail. The agent should be fully debriefed by the agents responsible for any subsequent investigation.

(U) (S) When the FBI details an agent in support of another agency's investigation into FCI matters, the FBI should thoroughly debrief that agent upon the conclusion of the detail. In the Wen Ho Lee investigation, the detailed Special Agent [redacted] was neither debriefed nor did his informal effort to set out a plan for further investigation receive the attention it deserved.

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(U) A note concerning these recommendations

(U) The AGRT's investigation has focused on the FBI's and DOJ's handling of *one* matter, the Los Alamos National Laboratory investigation concerning Wen Ho Lee. We were not asked to conduct, and we have not conducted, a comprehensive review as to how the FBI is meeting its *general* responsibilities to combat the foreign intelligence threat posed by the PRC, or as to how the FBI is meeting its *general* responsibilities to conduct FCI investigations involving the national laboratories. These are obviously critical subjects that have been evaluated and studied in the past and must continue to be evaluated and studied. They are, however, beyond the scope of *our* mission, and we can not and, therefore, do not make recommendations in this area.