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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*.¹¹⁵ 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.¹¹⁶

¹¹⁵(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.

¹¹⁶(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.¹¹⁷ 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.¹¹⁸

(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.¹¹⁹ 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

¹¹⁷(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)

¹¹⁸(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)

¹¹⁹(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;¹²⁰ (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;¹²¹ and (3) the statement of former Albuquerque Division SAC Tom Kneir.¹²²

¹²⁰(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)

¹²¹(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.

¹²²(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.¹²³

(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)

¹²³(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.¹²⁴ 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

¹²⁴(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.¹²⁵ (FBI 16005, FBI 16006, AQI 05675, AQI 05623)

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

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(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.¹²⁶ 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)

¹²⁶(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.

¹²⁷(S)

[REDACTED] (AQI 06296)

¹²⁸(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.¹²⁹ But even as it was seeking more personnel

¹²⁹(S) [REDACTED]

[REDACTED] (FBI 01894).

(u)
¹³⁰(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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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.¹³¹

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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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)

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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.¹²²

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(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."¹³³ (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)
¹³²(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)

¹³³(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.¹³⁴ (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

¹³⁴(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 LANL¹³⁵ 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 1996.¹³⁶ (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.

¹³⁵(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).

¹³⁶(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, 1997.¹³⁷ (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.¹³⁸

(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.¹³⁹ (See Section (H)(4)(F), below.)

(u)

¹³⁷(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)

(u)

¹³⁸(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)

¹³⁹(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)

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(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.¹⁴⁰ 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

¹⁴⁰(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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"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 1997.¹⁴¹ (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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(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.

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

1. (U) Introduction¹⁴²

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

¹⁴¹(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.

¹⁴²(U) See FBI-AQ organization chart at end of Chapter.

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(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 ¹⁴³ 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 ¹⁴⁴	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 ¹⁴⁵	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

¹⁴³(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.

¹⁴⁴(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.

¹⁴⁵(U) Will Lueckenhoff remains the ASAC of FBI-AQ.

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Lee investigation was first assigned to [REDACTED] and then to [REDACTED]¹⁴⁶ 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]¹⁴⁷

(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.

¹⁴⁶(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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¹⁴⁷(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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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.¹⁴ 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]

¹⁴(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)

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(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,¹⁴⁹ or he should have taken alternative steps to insure that the case was in the best possible hands.¹⁵⁰

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

¹⁴⁹(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.

¹⁵⁰(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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investigation during an almost two year period of time.¹⁵¹ 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.¹⁵² 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-

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

¹⁵²(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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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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- (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.¹⁵³ (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.¹⁵⁴ (*Id.*)

¹⁵³(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.

¹⁵⁴(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.¹⁵⁵ 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

¹⁵⁵ (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.¹⁵⁶ (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.¹⁵⁷

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¹⁵⁶(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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¹⁵⁷(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.¹⁵⁸

(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.

(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.¹⁵⁹ (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

b1 (S)¹⁵⁹ (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.¹⁶⁰ 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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¹⁶⁰(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.¹⁶¹ 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.¹⁶² 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.¹⁶³ See

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¹⁶¹(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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¹⁶²(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)

¹⁶³(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.

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(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)

(U)

(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.¹⁶⁵

(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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¹⁶⁵(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.¹⁶⁶

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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

¹⁶⁶(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.¹⁶⁷ (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

¹⁶⁷(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.*¹⁶⁶ 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."¹⁶⁷ [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.¹⁷⁰ 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])

¹⁶⁸(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)¹⁶⁹ (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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¹⁷¹(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 8/3/99¹⁷¹) 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.¹⁷³ 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 1999.¹⁷⁴

¹⁷¹(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)

(U)
¹⁷²(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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(S)
¹⁷³(S/RD) 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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(U)
¹⁷⁴(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.¹⁷⁵ 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].¹⁷⁶

¹⁷⁵ (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)

¹⁷⁶ (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.¹⁷⁷ 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."¹⁷⁸

- (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

¹⁷⁷(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-AQ 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)

¹⁷⁸(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."¹⁷⁹
(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.¹⁸⁰

¹⁷⁹(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)¹⁸⁰ (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.¹¹¹ 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)

¹¹¹ (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.¹²² 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.¹²³

(U)
¹²² (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)

¹²³ (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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