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CHAPTER SEVENTEEN

(U)
(S) THE FBI'S INVESTIGATION OF WEN HO LEE AND SYLVIA LEE:
DECEMBER 1998 TO MARCH 1999

Questions presented:

Question One: (U) What were the consequences of having DOE, rather than the FBI, conduct the interview and polygraph of Wen Ho Lee on December 23, 1998?

Question Two: (U)
(S) Did DOE impose a 30-day deadline on the FBI for a resolution of the investigation?

Question Three: (U)
(S) Why did it take so long for FBI-AQ to obtain copies of the polygraph charts? What were the consequences of its failure to obtain the charts earlier?

Question Four: (U) Was the January 17, 1999 FBI interview of Wen Ho Lee appropriately conducted and documented?

Question Five: (U)
(S/NF) Why did FBI-AQ write the January 22, 1999 Electronic Communication ("EC") to FBI-HQ with a "SAC Analysis" that, in effect, cleared Wen Ho Lee of the W-88 allegations?

Question Six: (U)
(S) Was the FBI polygraph of February 10, 1999, and the FBI interview of March 5, 1999, and the FBI interrogation of March 7, 1999, appropriately conducted?

A. (U) Introduction

(U) On December 23, 1998, the first of ten events would occur that would effectively bring to an end the counterintelligence investigation of Wen Ho Lee.

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(U) First, there was the DOE interview and polygraph of Wen Ho Lee on December 23, 1998.

(U) Second, there was DOE's suspension of Wen Ho Lee's access to classified information on December 24, 1998.

(U) ~~(S)~~ Third, there was DOE's setting of what amounted to a 30-day deadline for a resolution of the investigation, and the FBI's acquiescence in that deadline.

(U) ~~(S)~~ Fourth, there was FBI-AQ's significant failure to obtain the polygraph charts of the December 23, 1998 polygraph examination in a timely fashion. Although FBI-AQ would tell FBI-HQ that this was the fault of DOE, it was not.

(U) Fifth, there was the interview of Lee by the FBI on January 17, 1999, and the resulting signed statement by Lee executed on January 21, 1999.

b1 | ~~(S/AFK/D)~~ Sixth, there was the EC from FBI-AQ to FBI-HQ, dated January 22, 1999, [REDACTED]

(U) ~~(S)~~ Seventh, there was the FBI-HQ's Polygraph Unit's review on February 2, 1999, of the DOE polygraph charts and its conclusion that the FBI would *not* have "passed" Wen Ho Lee.

(U) ~~(S)~~ Eighth, there was the second polygraph of Wen Ho Lee on February 10, 1999, by the FBI, and the judgment of the FBI polygrapher that Lee was deceptive.

(U) ~~(S)~~ Ninth, there was the interview of March 5, 1999 and the interrogation of March 7, 1999, the first of which was well-planned and well-executed, and the second of which was neither.

(U) Tenth, and most significantly, there was Wen Ho Lee's execution of a consent to search form on March 5, 1999. The resulting search led to the discovery of Lee's misconduct involving LANL's most sensitive computer files and, ultimately, to Lee's prosecution.

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B. (U) The December 23, 1998 interview and polygraph of Wen Ho Lee

(U) In Chapter 15, this report describes how DOE - instead of the FBI - came to interview and polygraph Wen Ho Lee on December 23, 1998. This chapter describes the consequences of that decision.

(U) The interview of Lee, as Ed Curran had intended, was not thorough or comprehensive. (AQI 49-52) It was used largely as a means by which [REDACTED] and [REDACTED], could hand Lee off to the Wackenhut polygraphers, [REDACTED]

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(S//NF) In the interview with the polygraphers that preceded the administration of the examination, Lee did, however, make a significant disclosure, one that would demonstrate [REDACTED]

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[REDACTED] was every bit as significant as the FBI had thought it to be.

[REDACTED] (Id.) [REDACTED] (Id.) [REDACTED]

(S//NF) After the polygraph, Lee was interviewed again by [REDACTED], and [REDACTED] provided further details concerning a PRC contact that, as [REDACTED] report would note, [REDACTED] had not reported "to anyone at LANL," nor included in [REDACTED] trip report. (AQI 50) [REDACTED] stated that [REDACTED] believed the contact occurred on his 1988 trip and involved [REDACTED]. According to [REDACTED] report [REDACTED]

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(AQI 51)

(U) (S) The Wackenhut polygrapher asked Lee four relevant questions:

- (U) A. (S) Have you ever committed espionage against the United States?
- (U) B. (S) Have you ever provided any classified weapons data to any unauthorized person?

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(u)
C. (S) Have you had any contact with anyone to commit espionage against the United States?

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D. (S) Have you ever had personal contact with anyone you know who has committed espionage against the United States?

(DOE 3525-3526) Lee answered all four questions "No" and the Wackenhut polygraphers concluded that Lee "was not deceptive when answering the questions listed above." (DOE 3526)

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(S) Later, the FBI - and even DOE's own Office of Counterintelligence Polygraph Program Manager - would conclude that this judgment was a mistake. It would not be the last one made in this final four month period.

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(S) The misreading of the polygraph results, however, was only one of the reasons why the FBI should have been in charge of this proceeding. There were other reasons as well:

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(S) First, the value of a polygraph often lies in the pre-test or post-test interviews done by the polygrapher. The significance of such interviews cannot be overstated. The most relevant illustration of this fact is to examine just how much information FBI polygrapher [REDACTED] elicited from Wen Ho Lee in connection with the February 10, 1999 polygraph. (AQI 160-164; FBI 11497-11505)

(U) Second, the questions asked by the polygrapher to Wen Ho Lee were certainly problematic. Three of the four questions used the word "espionage," a legal term that, as ASAC Lueckenhoff told the AGRT, was "confusing" in the context of a polygraph examination.⁴⁴ (Lueckenhoff 9/12/99)

⁴⁴ (U) One indication that the use of the word "espionage" may have seriously compromised the value of the polygraph was Wen Ho Lee's subsequent statement on January 17, 1999 concerning what he perceived himself to have been asked on December 23, 1998. Lee stated: [REDACTED]

[REDACTED] (FBI 1488) (emphasis added) That is a particularly

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(S//NF) Third, [REDACTED] post-test interview of Lee, particularly given Lee's admission to the polygrapher that [REDACTED] attempted to elicit classified information from him, could have been a far more detailed exploration of the facts. We do not say this to criticize [REDACTED]. What he obtained from Lee was valuable, just as what he obtained from Lee after the [REDACTED] was valuable. We say it to illustrate that this was a critical stage in an FBI investigation, and it should have been the FBI conducting the interview.⁴⁹

C. (U) The suspension of Wen Ho Lee's access to classified material

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(S//NF) On December 24, 1998, almost five years after SA [REDACTED] had opened the PI arising out of [REDACTED] the United States Government finally took action to prevent Lee's continuing access to classified information. Ironically, it was after Wen Ho Lee passed, or at least supposedly passed, a polygraph.

(U) Ed Curran, according to SAC Kitchen, was certain that would not happen. He told SAC Kitchen: "He will not pass. I guarantee it."⁵⁰ (Kitchen 9/10/99)⁵¹ SAC

narrow reading of the word "espionage."

⁴⁹ (S) It should be emphasized here that the FBI agents on site at LANL during the events of December 23, 1998, SA [REDACTED] and SA [REDACTED] could certainly have intervened at any time. FBI-AQ decided, however, that if Lee passed the polygraph, the FBI would not question him at this point.

⁵⁰ (S) One indication of Curran's confidence in this prediction is that, in his December 21, 1998 memorandum to Secretary Richardson, he only presented two possibilities that "may occur" after Lee was offered a polygraph: either he would refuse to take the polygraph and DOE would pull his clearance and take steps to terminate his employment, or he would agree to take the polygraph, not "pass" it, and his clearances would be pulled and termination proceedings initiated. (DOE 3570)

⁵¹ (U) Curran was correct in this prediction, but that would, unfortunately, not be determined for another six weeks. See discussion below.

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Kitchen passed that message onto SSA [REDACTED] who was now in charge of the FCI squad. [REDACTED] 9/10/99)

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(S) The FBI had arranged to be present in another room at LANL during the polygraph of Lee. The plan was for the FBI to do a full counterintelligence interview of Wen Ho Lee if he "flunked" the polygraph. [REDACTED] 9/7/99) SA [REDACTED] was there with SA [REDACTED] who was not "happy" to find himself on the verge of having to conduct a critical subject interview in a major espionage case with "zero amount of time" for preparation. [REDACTED] 8/18/99) SA [REDACTED] had originally wanted SA [REDACTED] to go out to LANL with her but, according to SA [REDACTED] SA [REDACTED] said he "would not do it" for fear of being sued by Lee.⁵²

(U) After SA [REDACTED] arrived at LANL for the December 23, 1998 polygraph, she and SA [REDACTED] became concerned about what exactly was supposed to happen if Lee passed the polygraph. [REDACTED] 9/7/99) SA [REDACTED] said they got Curran on the telephone and he said "it's not going to happen." (Id.)

(U) After the polygraph examination was over, SA [REDACTED] and SA [REDACTED] talked to the polygrapher and were told that Lee had not only passed the polygraph but "blew it away." [REDACTED] 8/18/99) SA [REDACTED] said the polygrapher "convinced me we were barking up the wrong tree." (Id.) Curran said that "everyone" was in "a state of shock" that Wen Ho Lee had passed the examination. (Curran 2/9/00) SAC Kitchen asked him: "What are you going to do now, big guy?" (Kitchen 9/10/99) At DOE HQ, Curran and his staff were asking themselves the same question: "Our reaction, when we heard he passed is 'What the hell do we do now?'" [REDACTED] 2/23/00)

(U) What Curran was going to do was remove Wen Ho Lee's access anyway, and give the FBI thirty days to "resolve" the case. (Kitchen 9/10/99) On December 24, 1998, [REDACTED] and [REDACTED] met with Lee and told him that "DOE still had some issues regarding DOE b6, b7c

⁵² (U) SA [REDACTED] told the AGRT that he did have concerns about being sued but it was in connection with the January 17, 1999 interview of Lee, not the December 23, 1998 interview and polygraph. "I thought going out to interview Lee" after he passed the polygraph "was like giving my card and begging him to sue me." [REDACTED] 9/12/99)

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him to be resolved" and he would "temporarily" be assigned to T Division - where he would not have access to classified information - "until these issues could be resolved." (AQI 51)

D. (U) The 30-day deadline

(U) It is important to understand what this 30-day deadline was, *and was not*.

(u) (S) First, it must be recognized at the outset of this discussion that, in removing Wen Ho Lee from access to classified information, DOE was finally taking to heart Director Frech's admonishment to DOE - communicated almost a year-and-a-half earlier - to take off the "table" the FBI's investigative interest in Wen Ho Lee in connection with DOE's determination as to whether to remove Lee from continuing access to classified information.

(U) Second, the decision to remove him from access - regardless of whether he passed the polygraph - was absolutely the correct decision, and one that should have been arrived at *years* earlier. See Chapter 18.

(u) (S) Third, DOE's 30-day deadline was principally a deadline it *set for itself*, not the FBI. At the end of that period, DOE would either terminate Lee or restore him to access.⁶³³ What the FBI did with *its* investigation of Lee was ultimately up to the FBI, not DOE. That is not to say that such a deadline would not *impact* on the FBI's investigation; it would. It is to say that Director Frech's statement to DOE to "take that right off the table" worked *both* ways. DOE could do what it pleased, *but so could the FBI*.

(u) (S) Fourth, this is clearly *not* how the deadline was interpreted at FBI-AQ. It was taken as a 30-day "deadline" which "Curran came up with" and which "drove what the Bureau did."⁶³⁴ [REDACTED] 9/7/99) SSA [REDACTED] told the AGRT that DOE "was setting

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⁶³³ (u) (S) Curran noted to the AGRT that the 30-day period was extended for two weeks, at the request of the FBI. (Curran 2/9/00)

⁶³⁴ (U) See also SSA [REDACTED] note concerning a telephone call between UC [REDACTED] and Curran on December 29, 1998: "Ed will call Dave Kitchen today. I must call

an artificial deadline and pushing us into an interview [with Lee]. We could have used more time. It wasn't proper for him [Curran] to force us into this 30-day deadline." (Id.) Even SAC Kitchen provided support for the view that this was a deadline imposed on the FBI. He told the AGRT that, after Lee took the December 23, 1998 polygraph, Curran called and said "they were moving him out and FBI had 30 days to resolve [the] case" before they "got rid of" him. (Kitchen 9/10/99)

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(S) Finally, FBI-AQ clearly viewed the deadline as an effort to get the FBI to gather evidence that DOE could use to fire Lee, and it did not like it. "They wanted to fire him and they wanted our information to fire him [with]." (Lueckenhoff 9/12/99) "After the DOE interview, we were pushed pretty hard to do interviews with Lee," said SSA [redacted]. She was "concerned that they were going to use the information to fire him." [redacted] 9/10/99) In fact, SA [redacted] was not the only one worried about being sued - so was SSA [redacted] who discussed the possibility with both the SAC and ASAC. (Id.) Her view was that the January 17, 1999 interview was done so that "Curran could fire Wen Ho Lee." (Id.)

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(S) It was entirely appropriate for DOE to set for *itself* a 30-day deadline to make a final decision on Wen Ho Lee. It was not appropriate for the FBI to accept that as a deadline on its *own* investigation, and that is certainly what happened.

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E. (S) The FBI's failure to obtain the polygraph charts

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(S) On January 22, 1999, SA [redacted] picked up from DOE's Albuquerque Operations Office a copy of the polygraph charts generated during the December 23, 1998 polygraph of Wen Ho Lee. (AQI 5438; DOE 32) They were immediately forwarded to FBI-HQ for review by the FBI's Polygraph Unit. (FBI 1512) Unfortunately, it was too late to undo one particular act, further described below.

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(S) How is it that it took a full month for the FBI to acquire this critical material?

[SSA [redacted] first. Advise him @ some sort of 30 day window." (FBI 1429)

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(S) According to FBI-AQ, it was DOE's fault. On February 26, 1999, FBI-AQ faxed to DAD Horan a status report concerning the status of the Wen Ho Lee investigation. In part, that memorandum gave the following explanation as to how it was that the FBI did not acquire the charts:

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(S) [Following the polygraph, the] FBI personnel present immediately requested the polygraph charts and documentation relating to the polygraph in order to have it reviewed by FBIHQ. DOE's initial response to this request, as per Ed Curran, DOE Counterintelligence Office, was to not allow the FBI access to the tapes and charts, only the numerical results of the polygraph.

(FBI 1590) This is not correct.⁴⁵⁵ *The reason that FBI-AQ did not obtain the charts in a timely fashion is that FBI-AQ failed aggressively to seek them out. They were sitting in the DOE Albuquerque Operations Office the whole time.*

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(S) SA [REDACTED] states that, after the polygraph, she made a verbal request for copies of "everything," including the charts, the numerical scores and the video of the polygraph. She made the request to [REDACTED] and [REDACTED] the Wackenhut polygraphers. She states that she was told at the time she could not have the charts because copies would first have to be made. [REDACTED] 1/3/00) [REDACTED] told the AGRT that he does not recall SA [REDACTED] making a request for the charts or the polygraph report. [REDACTED] 1/10/00) [REDACTED] recalls that SA [REDACTED] was not familiar with DOE's procedures for the processing of polygraph results and [REDACTED] explained to her that a report would be prepared and sent to DOE and reviewed for quality control purposes. [REDACTED] 1/7/00)

⁴⁵⁵ (U) FBI-HQ has now conceded this fact to Curran. In a letter dated January 4, 2000 from AD Gallagher to Curran, AD Gallagher writes: "With respect to the attribution to you by name, I can find no FBI employee who can confirm such a statement. It may be that someone in DOE used your name, but even that is not certain. Any indication that you personally made a statement preventing the FBI access to the polygraph charts is inaccurate." (DOE 3572)

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(S) Even if SA [REDACTED] asked for each and every piece of paper associated with the polygraph, it was a request that was made orally and it was not aggressively pursued. SA [REDACTED] did speak with [REDACTED] in January. She told the AGRT that [REDACTED] agreed to DOE b6, b7c make some calls and then called her back to tell her the material had been sent to Washington and Ed Curran had them.⁵⁵⁶

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(S) If that is what [REDACTED] told SA [REDACTED] it was inaccurate information. The tapes and charts of the polygraph were sitting in Albuquerque and it should not have been impossible for SA [REDACTED] to find that out. She told the AGRT that she did not speak with either [REDACTED] or [REDACTED] as to the location of the polygraph material and, most significantly, she did not speak to the Albuquerque Operations Office's [REDACTED] [REDACTED] about the matter. [REDACTED] (1/3/00) That is unfortunate because when someone from FBI-AQ, specifically SSA [REDACTED] did finally call [REDACTED] the polygraph charts and tapes were produced almost immediately.⁵⁵⁷

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(S) FBI-AQ's failure promptly to obtain the polygraph charts delayed by more than a month the FBI's discovery that Wen Ho Lee had not only *not* blown away the polygraph, he had not even passed it. And that was consequential for four reasons:

(S) First, it led the FBI to focus only slightly on Lee's very significant admissions about his 1988 hotel room encounter with [REDACTED]. That was unfortunate. [REDACTED] had been at the center of the FBI's 1997 application for a FISA order. Now Lee had admitted, as [REDACTED] put it, that he had been "pitched" by [REDACTED] in 1988. [REDACTED] (9/13/99)

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⁵⁵⁶ (U) [REDACTED] recalls having conversations with SA [REDACTED] concerning this matter but does not recall telephoning anyone about it. [REDACTED] (1/19/00)

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⁵⁵⁷ (S) [REDACTED] said that when SSA [REDACTED] called to ask for the polygraph material, [REDACTED] called [REDACTED] DOE's Office of Counterintelligence [REDACTED] (1/18/00) [REDACTED] called Curran to ask if the material could be released to the FBI. According to [REDACTED] Curran was "angry" to find out that the FBI did not already have the material and told [REDACTED] to give the FBI everything it wanted. [REDACTED] (1/11/00)

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[REDACTED]
This was the kind of information that, had it been available in August 1997, could have made a big difference to the resolution of the FBI's FISA request.

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(S) Nor was FISA coverage a long-abandoned aspiration. Indeed, SA [REDACTED] had submitted a request for FISA coverage just the previous month. For that matter, SSA [REDACTED] had been to see Dave Ryan *the previous day*.

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(S) Second, it almost led the FBI to close the case against Wen Ho Lee without even conducting its own interview of him. SAC Kitchen said he met in January with ASAC Lueckenhoff, SSA [REDACTED], SSA [REDACTED], SA [REDACTED] and SA [REDACTED] to decide "where do we go from here." (Kitchen 9/10/99) He said that his staff suggested closing the case, that "this is not the guy." SAC Kitchen says he asked: "What about interviewing the guy?" He said it was the "unanimous" opinion of his staff against an interview but that, as SAC, he was the "tiebreaker." He viewed it as "preposterous" to close a three year investigation of a subject without even interviewing him. (Id.)

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(S) Third, it led SA [REDACTED] and SA [REDACTED] when they did interview Lee on January 17, 1999, to view the interview as something you do as the final step before you close the case. In fact, SA [REDACTED] was even viewing Lee [REDACTED] (8/18/99) SA [REDACTED] described the interview with Lee as "a very congenial chat." It was "very colored" by the "assumption" that "he had passed" the polygraph. When SA [REDACTED] later found out that he had *not* passed the polygraph, he said he was "not a happy camper." He felt "duped." (Id.)

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(S/NF) Finally, it led to the creation of SA [REDACTED] January 22, 1998 EC, written at the direction of SAC Kitchen and containing a "SAC Analysis" that essentially cleared Wen Ho Lee of the W-88 allegations. Had SA [REDACTED] known that Lee had not passed the polygraph, "he would never have written" the EC. (Id.)

F. (U) The January 17, 1999 interview and January 21, 1999 signed statement of Wen Ho Lee

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(U) On January 17, 1999, SA [REDACTED] and SA [REDACTED] interviewed Wen Ho Lee. This interview represented the *first* time since SA [REDACTED] opened a PI on Wen Ho Lee in April 1994 that the FBI had interviewed Lee.

(S/NF) [REDACTED] After conducting the interview, SA [REDACTED] and SA [REDACTED] prepared a lengthy FD-302. When SAC Kitchen saw it, he determined that he wanted a signed statement from Lee, rather than an FD-302. SA [REDACTED] was "upset." [REDACTED] 8/18/99) First, the FD-302 that was drafted was "much more far reaching" than the ultimate statement that Lee would sign. Second, he had never taken a signed sworn statement of innocence before.⁵⁵⁸ And, third, "now he has to go back to Wen Ho Lee and convince him that this is the way we do it and have him sign it."⁵⁵⁹ (Id.)

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(S) The AGRT has obtained from SA [REDACTED] a copy of her draft FD-302. (FBI 15851-15864). SA [REDACTED] recovered it from a computer in the Santa Fe RA and provided it to the AGRT. It is slightly more detailed than the statement signed by Lee and slightly more inculpatory,⁵⁶⁰ but not in any material respect.

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(S) ⁵⁵⁸ As SSA [REDACTED] said, sworn statements are usually taken when the subject has admitted something to his detriment. [REDACTED] 9/9/99) SSA [REDACTED] would have preferred staying with a FD-302. (Id.)

(U) ⁵⁵⁹ SA [REDACTED] had to go back to Lee with another agent, SA [REDACTED] who would subsequently become the case agent when SA [REDACTED] SA [REDACTED] had previously scheduled annual leave and did not even know that a signed statement had been taken from Lee in lieu of the FD-302 until she got back from leave on February 1, 1999. [REDACTED] 9/7/99)

(S) ⁵⁶⁰ (S) For example, the FD-302 contains the following statement concerning Lee's [REDACTED] see Chapter 11:
"Lee stated [REDACTED]"

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(S) It is clear that SAC Kitchen insisted on a signed statement by Lee because he intended to use it to support closure of the case. SAC Kitchen told the AGRT that it was "very important we close this out on good paper." (Kitchen 9/10/99)

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G. (S) The January 22, 1999 communication from FBI-AQ to NSD

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(S) On January 22, 1999, FBI-AQ sent NSD an EC that, to say the least, was unusual. It essentially cleared the subject of an ongoing espionage investigation.

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(S) The EC had several purposes. First, it transmitted to FBI-HQ the long-missing polygraph charts so that the FBI Polygraph Unit could review them and "confirm the determination made by DOE examiners." (FBI 1516) Second, it provided FBI-HQ a copy of Lee's signed statement, dated January 21, 1999. And, finally, and most significantly, it contained a section entitled "SAC Analysis."

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(S) Although the EC is described as having been drafted by SA [REDACTED] he characterized himself as an "innocent bystander" in the production of the document. [REDACTED] 8/18/99) He said he was "told" to do the SAC analysis by SSA [REDACTED] but that it was SAC Kitchen who "wanted it written."⁶¹ (Id.) SA [REDACTED] stated that he drafted the EC but did not finalize it. He said that SSA [REDACTED] told him to give her the disk containing the draft EC and she would "finish it off." He said "it could have been significantly changed" after he gave it to her. [REDACTED] 8/18/99)

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(S) SSA [REDACTED] told the AGRT that she was not in agreement on sending the EC out because they had not yet had the polygraph results subjected to "quality control." [REDACTED] 9/10/99) She "didn't see [a] need to do [a] communication at that time." She does not think, however, that she expressed that sentiment. (Id.)

[REDACTED] That statement was scratched out of the executed statement he signed. (FBI 1486) | 61

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(S) SSA [REDACTED] agreed with this: "[REDACTED] was] directed to write it up." SAC Kitchen had "decided he wanted it written." [REDACTED] 9/10/99)

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(S) Nevertheless, SA [REDACTED] believed that SA [REDACTED] who was on annual leave when the communication containing the SAC Analysis went out, would not have disagreed with the judgments contained in the analysis and he "would have been aghast if she had reacted to this by saying it's not what we thought." (Id.) "[The] consensus was he passed polygraph and there was not much there." The FBI was "looking at scaling back on Wen Ho Lee and looking at other alternatives." (Id.) SAC Kitchen summarized the "genesis" of the EC as follows: It was "to let HQ know that we don't see [a] smoking gun." (Kitchen 9/10/99)

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(S) Unfortunately, the SAC Analysis went *substantially* beyond that, see FBI 1512-1516:

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(S) First, it appropriately notes that "it is possible the selection criteria originally used to identify Wen Ho and Sylvia Lee as the primary suspects in this matter may have been too restrictive." In particular, it suggests that the focus on travel to the PRC as a selection criteria may have been "misleading."

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(S) Second, it dismisses the significance of Lee's contact [REDACTED]

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[REDACTED] "If they were co-conspirators in a plot to pass the W-88 material, such activity would have come to light during the course of the polygraph examination."⁸⁶²

(S)

(S) There are several obvious problems with this analysis. As to the current polygraph, it had not, as SSA [REDACTED] noted, been subjected to quality control. Indeed, that was one of the purposes of the EC, i.e., to forward it to the Polygraph Unit for such quality control. [REDACTED]

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The EC also reflects an apparent unawareness that before Lee "passed" the 1984 polygraph [REDACTED] about the *very same matter* that was scratched out in the January 21, 1999 statement [REDACTED]

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(S/NF) Third, it suggests [REDACTED]

[REDACTED]

(S/NF) Fourth, it notes that, [REDACTED]

[REDACTED]

(S/NF) The only basis upon which the SAC could have reached this judgment was the self-serving declarations of Lee himself. Not only was there no reason to accept his declarations, there was reason to reject it. [REDACTED]

[REDACTED]

(Lueckenhoff 9/12/99)

(S/NF) The SAC Analysis addresses several other matters: the fact that Lee and [REDACTED] were publishing an unclassified paper, thereby suggesting an innocent relationship, and the lack of evidence to establish Lee's "motivation to pass the W-88 information." It concludes with the following statement:

(U) (S) Inasmuch as Wen Ho Lee has been cooperative, passed the DOE polygraph and provided a signed sworn statement, FBI-AQ has no reason to

(S/NF) There are two things wrong with this analysis: [REDACTED]

[REDACTED] Given what we now know about the AI, see Chapters 6 and 7, and given what SAC Kitchen apparently suspected even in January 1999, that is a questionable assumption, to say the least.

believe Lee is being deceptive. Based on FBI-AQ's investigation it does not appear that Lee is the individual responsible for passing the W-88 information.

(FBI 1515) (emphasis added)

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(S) This judgment was both premature and unjustified. It can only be described as a "rush" job that had the sole virtue of meeting Curran's 30-day deadline. It was predicated on the dubious presumption that Lee was telling the truth, and on what would turn out to be the equally dubious proposition that DOE's polygraph results were valid.

(S) Moreover, if such a SAC Analysis was going to be created, the FBI should have already made a firm and final decision to close the case. That was not done, nor should it have been done at this time. After all, the most basic investigative work on the case had still not been completed or, in many cases, not even begun. Sylvia Lee, the other half of this full investigation, had not been interviewed. Wen Ho Lee had been interviewed but not remotely in the kind of detail the matter required.⁶⁴ Lee's computer files had not been searched. [REDACTED] had not been interviewed. Nor had interviews been conducted of the numerous former co-workers and supervisors of Wen Ho Lee and Sylvia Lee. What this case required was thorough investigation, not closure.

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H. (S) The FBI Polygraph Unit's review of the DOE polygraph

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(S) Even before the FBI Polygraph Unit had reviewed the polygraph charts, DOE had developed some reservations about the conclusion reached by its contract polygraphers that there was "No Deception Indicated." On or about January 28, 1999, [REDACTED], the DOE OCI [REDACTED], contacted Curran to tell him he had a problem with the polygraph. (Curran 2/9/00; [REDACTED] 1/11/00) According to Curran, [REDACTED] told him: "Ed, the guy's not a spy, he's got good scores

DOE
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⁶⁴ (U) That would be remedied in March 1999. See the 394 page transcript of the March 5, 1999 interview of Wen Ho Lee. (AQI 422-816)

but there's one question we need to call him back on."⁶⁵ Curran told [REDACTED] that "we're not doing that. It's the FBI's case."⁶⁶ (Id.) For the record, however, [REDACTED] made a report stating that "the initial NDI [No Deception Indicated] opinion could not be duplicated or substantiated" and that [REDACTED] was "unable to render an opinion pertaining to the truthfulness of the examinee's answers to the relevant questions of this test."⁶⁷ (DOE 21)

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(S) On February 2, 1999, the FBI Polygraph Unit finally had an opportunity to review the charts of the DOE polygraph. Its conclusion was that "[s]ubject did not pass

⁶⁵ (U) [REDACTED] made a similar point in an e-mail to Curran: "There is no doubt that he was not involved in committing espionage against the US or that he has not provided any classified weapons data, but I am really uncomfortable with the contact issues. * * * I have been in touch with [REDACTED] . . . [REDACTED] . . . and four instructors at the DOD Polygraph Institute. After discussion of these concerns, we all agree that I should recommend to you that this person be re-tested on the 'contact' issue." (DOE 2301)

⁶⁶ (U) [REDACTED] e-mail, which is undated, has an addendum indicating [REDACTED] discussed the matter with Curran on January 28, 1999: "Spoke with Ed Curran in person and he indicated that the FBI has reviewed our test, charts and video tapes. They saw no reason to conduct additional testing or re-testing and consequently Ed told me that if we didn't have to, we shouldn't. We don't have to and won't." (DOE 2302) Curran told the AGRT that SAC Kitchen was "very satisfied" with the results of the DOE polygraph and that he told [REDACTED] that "it is an FBI case and we'll go with their conclusion." (Curran 8/31/99)

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(S) Although this report is undated, it contains a reference to a discussion which [REDACTED] and SSA [REDACTED] (an FBI detailee to OCI) had with the FBI's polygraph unit, and the statement that "[i]t was agreed that an FBI Polygraph Examiner would conduct the additional testing." (DOE 22) This would suggest that the report was written some time between February 2, 1999 (when the Polygraph Unit first became involved in this matter) and February 10, 1999 (when Lee was polygraphed by SA [REDACTED])

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the exam." (FBI 1530) Unit Chief [REDACTED] told SSA [REDACTED] that the subject "seemed to be inconclusive if not deceptive" in his answers to the polygraph."

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(S) At the same time that the Polygraph Unit was examining Lee's charts, DOE was preparing to return Lee to his position in X Division and his access to classified information. On February 2, 1999, Curran sent a memorandum to Secretary Richardson advising him that Wen Ho Lee "will be returned to his former duties in X Division, LANL." (DOE 2311) Consistent with this, Rush Inlow, the Deputy Manager of the Albuquerque Operations Office signed a memorandum to the Director of LANL, advising him that "[e]ffective immediately, the Department of Energy's request for temporary reassignment of Mr. Lee has ended. You may return him to his normally assigned duties." (DOE 3540)

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(S) Just to be sure, however, Curran placed a call to SC Middleton to advise SC Middleton that DOE was "going to put him back in access." (Curran 8/31/99) He asked SC Middleton: "Is there anything I need to know?" Middleton said it was his [Curran's] decision. Curran responded that he knew it was his decision but was there "anything" he needed to know before he made that decision. According to Curran, SC Middleton said "no." Two hours later, however, SC Middleton called back and said, "There's a problem."

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(S) The unit was careful to emphasize that it "cannot officially evaluate the results of any outside exam because the FBI had no control over the quality of the exam." (FBI 1529)

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(S) In particular, UC [REDACTED] was concerned about Lee's response to the third question [REDACTED] and the fourth question [REDACTED].

(S) (u) Curran cited the following reasons for this: (1) the FBI "was unable to develop any sufficient evidence" to support a FISA application; (2) the [REDACTED] was "unsuccessful"; (3) the DOE interview and polygraph of Lee "developed no incriminating information"; (4) Lee was judged "not deceptive" in the DOE polygraph; and (5) Lee was interviewed "in detail" by the FBI and "[n]othing derogatory developed." (DOE 2311)

We got some really bad news. This is terrible. Quality Control said he failed and needs further testing." (Id.)

(u)

(S) Curran's initial reaction was to send DOE staff out to LANL to test Lee again: "That guy is not going to get back in there until this is resolved." (Id.) The FBI, however, told him to "cease and desist." (Id.) SC Middleton told Curran: "We'll do it." (Middleton 8/3/99)

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I. (S) The February 10, 1999 FBI polygraph of Wen Ho Lee

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(S) On February 10, 1999, an FBI-HQ polygrapher, SA [REDACTED] demonstrated just how important it was to have the FBI, rather than DOE or Wackenhut, be in charge of the polygraph of the subject of an espionage investigation. In both the pre-test and post-test interviews of Wen Ho Lee, as well as in the design and execution of the polygraph itself, SA [REDACTED] demonstrated a clear understanding of the purposes, goals and challenge of this polygraph.

(u)

(S) Lee was found to be "inconclusive" as to two of the questions posed by SA [REDACTED]⁷¹ and "deceptive" as to the other two.⁷² Moreover, in the post-test interview of Lee, [REDACTED]

[REDACTED]

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⁷¹ (S) The two "inconclusive" results arose from these questions: [REDACTED]

[REDACTED]

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⁷² (S) The two "deceptive" results arose from these questions: (1) [REDACTED]

[REDACTED] (2) [REDACTED]

[REDACTED]

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(S/NF) Second,

[REDACTED]

(U)

(S) Third, Lee told SA [REDACTED] that he

[REDACTED]

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J. (U) The March 5, 1999 interview and the March 7, 1999 interrogation of Wen Ho Lee

(U)

(S) On March 5, 1999, Wen Ho Lee consented to a search of his LANL office and, thereby, set into motion a chain of events that would ultimately lead to his indictment. Although the March 5, 1999 interview would go on all day, and take up almost 400 transcript pages, its most significant accomplishment was Wen Ho Lee's execution of consent to search forms at the beginning of the interview. (AQI 434-446; FBI 1599)

(U)

(S) Nevertheless, the March 5, 1999 interview of Lee was a success in other respects. It had become apparent to the FBI after SA [REDACTED] polygraph that it was necessary to have a detailed and comprehensive interview of Lee, one in which the FBI

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

[REDACTED] (1) [REDACTED] (2) [REDACTED] (FBI)

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had the support of a nuclear weapons expert. That was the intent of the March 5, 1999 interview and it was largely achieved.⁸⁷⁴

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(S) The March 7, 1999 encounter between the FBI and Wen Ho Lee was another matter. As described in Chapter 4, it was intended by SAC Kitchen to be a highly confrontational interrogation that would leave Lee "with a sense of despair." (Kitchen 9/10/99) Toward that end, it is hard to identify any stone left unturned in this troubling interrogation.⁸⁷⁵

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(S) LANL CCIO [REDACTED] believes that key issues, which should have been raised during the March 5, 1999 interview, were not raised, and that the agents were not as prepared as they should have been. [REDACTED] 9/13/99) The March 5, 1999 interview was not perfect. But it demonstrated genuine planning and foresight, and it was conducted in a competent and professional manner.

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(S) See, e.g., the following excerpts:

- (u)
(S) AQI 4035: "You are, you are going to be an unemployed nuclear scientist. You are going to be a nuclear scientist without a clearance! Where is a nuclear scientist without a clearance gonna get a job?"
- (u)
(S) AQI 4036: "Do you, do you really think you're gonna have a retirement? Do you really think that you're going to be able to collect anything? * * * They're going to garnish your wages!"
- (u)
(S) AQI 4037: "When somebody comes knocking on your door, WEN HO * * * they're not going to give you anything other than your Advice of Rights and a pair of handcuffs! That's all you're going to get!"
- (u)
(S) AQI 4037: "And now, what are you going to tell your friends? And what are you going to tell your family? What are you going to tell your wife and your son. What's going to happen to your son in college? * * * When he hears on the news. Instead of an article like that [referring to the March 6, 1999 New York Times article identifying "an American scientist" at LANL as a suspect in the theft of nuclear secrets, see FBI 16829] in the

front page of the paper. It says ' WEN HO LEE arrested for espionage.'
What's that going to do?"

- ~~(S)~~^(U) AQI 4046: "They're [reporters] going to find your son. At Case Western University. * * * And they are going to say, you know your father is a spy?"
- ~~(S)~~^(U) AQI 4050: "You're gonna learn real quick [about the law] when they come and they knock on your door and they put a pair of handcuffs on you WEN HO!"
- ~~(S)~~^(U) AQI 4050: "This situation can't get any worse."
- ~~(S)~~^(U) AQI 4052: "Don't you think they're going to go knocking on your door here pretty soon. If they don't knock on your door with a pair of handcuffs. * * * They're, they're going to knock on your door with another polygraph person to polygraph SYLVIA. * * * And then what's that gonna look like to the kids? What's your son going to think when your, your wife gets polygraphed?"
- ~~(S)~~^(U) AQI 4068: "Do you know who the ROSENBERGs are? * * * The ROSENBERGs are the only people that never cooperated with the Federal Government in an espionage case. You know what happened to them? They electrocuted them, WEN HO. * * * they didn't care whether they professed their innocence all day long. They electrocuted them."
- ~~(S)~~^(U) AQI 4068-4069: "Okay, ALDRICH AMES. You know ALDRICH AMES? He's going to rot in jail! * * * He's going to rot in jail, WEN HO. * * * He's going to rot in jail."
- ~~(S)~~^(U) AQI 4069: "Okay? JOHN WALKER! Okay, he's another one. He was arrested for espionage. Okay? Do you want to go down in history? Whether you're professing your innocence like the ROSENBERGs to the day that they take you to the electric chair?"

~~TOP SECRET~~ [REDACTED]

Lee may or may not have been left "with a sense of despair," but that was obviously not the *ultimate* goal of the interrogation. Rather, what SAC Kitchen was seeking was a confession, or at least admissions. Neither happened. As stated in Chapter 4, SAC Kitchen did many things right after he took over FBI-AQ in August 1998. This certainly was not among them.

K. (U) Conclusion

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(S) When Wen Ho Lee signed the consent to search forms on March 5, 1999, he essentially converted this investigation from one primarily focused on counterintelligence concerns to one focused on whether Lee had violated the criminal laws of the United States.

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(S) AQI 4071: "And your kids are going to have to deal with the rest of their lives, people coming up to them saying. Hey, isn't that your dad that WEN HO LEE guy what got arrested up at the laboratory?"
 - (u)
(S) AQI 4077: "The ROSENBERGs professed their innocence. The ROSENBERGs weren't concerned either. * * * The ROSENBERGs are dead."
 - (u)
(S) AQI 4092: "You could live another 20 years. * * * But the problem is, it's going to be bad."
 - (u)
(S) AQI 4092-4093: "Your kids are going to have to live with this, okay. * * * You're going to have to live with it. Your wife is going to have to live with it. This is going to eat away, at them like a cancer. Just like the cancer that you had, but all the way"
 - (u)
(S) AQI 4094: "I just hope your kids can live with it, WEN HO."
 - (u)
(S) AQI 4095: "I see no job. I see no clearance. I see no way to pay your bills. I see no way to keep your son in school. I see your family falling a part. All because of this."

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U)
(S) It had taken five years of almost continuous investigation to get to this point. This last four month time period included some of the brightest moments in an investigation not long on bright moments, including the FBI's February 1999 polygraph of Lee and the March 5, 1999 interview of Lee. It also included some of the more unfortunate events in this investigation, including the January 22, 1999 EC and the March 7, 1999 interrogation. Nevertheless, on the whole, it was a productive time for the Wen Ho Lee investigation, one that led, ultimately, to the discovery of Lee's illicit activity with LANL's most sensitive computer files.

(U) What most distinguished this period in the investigation was that the case finally received the attention it deserved and required, both from NSD and from senior management at FBI-AQ. That this attention was, in large measure, a consequence of intense Congressional scrutiny, media interest, and DOE's impatience, should not detract from the FBI's accomplishments during this time period.

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(S) Henceforth, the investigation would be driven by the imperatives of a complex criminal prosecution. In the coming months, the FBI would also continue the difficult process of grappling with the flawed predicate and imperfect assumptions that, years earlier, started it on this circuitous path to Lee's office door.

(U)
(S) In March 1999, as a result of the execution of the consent forms, events began to turn in the FBI's favor. That Lee's misconduct *might* have been discovered *anyway* after Lee was fired should not, and does not, diminish the significance and wisdom of the FBI obtaining Lee's consent to search.

(U) So very much went wrong in this investigation. Here, something very much went right.

~~TOP SECRET~~ [REDACTED]