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## CHAPTER FOUR

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

#### (U) Questions Presented:

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

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

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

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

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

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

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

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

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

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

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A. (U) Introduction

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

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

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

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(S) Between April 1994 - when the preliminary inquiry against Lee was opened - and December 1998 - when Lee was interviewed and polygraphed by DOE personnel - this case proceeded at a pace that can only be described as languid, if not torpid, and that pace was itself periodically disrupted by dead-stop-in-the-water delays that, in an important counterintelligence investigation, can only be characterized as maddening and inexplicable.<sup>61</sup>

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

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<sup>61</sup>(U) This failure to treat the case with urgency and priority changed in December 1998 only because DOE - out of frustration with an FBI investigation that often seemed frozen in place, and out of concern that it take immediate steps to remove Lee from access to classified material - took two extraordinary actions: First, DOE decided that DOE would interview and polygraph the long-term subject of an FBI counterintelligence investigation. As will be discussed in a later chapter, this was done with FBI senior management's full knowledge and acquiescence and represents an error in judgment by FBI senior management that had significant collateral consequences. Second, DOE removed Wen Ho Lee from his job in X Division and set what the FBI interpreted as a 30-day deadline for a resolution of the Wen Ho Lee investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1. (U) SA [REDACTED]

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

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

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

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

a. (U) The 1992 Inspection

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

[REDACTED] Specifically, the inspectors found the following:

(U)  
(S) [REDACTED]

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

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

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

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

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

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

[REDACTED] (FBI 21664, 21675, 21673)

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

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

[REDACTED] (FBI 21683)

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

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

[REDACTED] (FBI 21676)

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

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

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

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

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

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

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

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

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(U) Tom Kneir, the FBI-AQ SAC at the time the Wen Ho Lee full investigation was opened in May 1996, was also aware of problems with SA [REDACTED] and, in fact, was the ASAC during SA [REDACTED] 1992 inspection difficulties.<sup>75</sup> SAC Kneir, who is now the SAC of the Jacksonville Division, told the AGRT that he had previously had conversations with SSA [REDACTED] about SA [REDACTED] job performance and had met with SA [REDACTED] (Kneir 10/6/99)

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

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

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

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

opinion [REDACTED]

[REDACTED] 12/1/99)

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

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

(FBI 21681)

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

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

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

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

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

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

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

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

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

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

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c. (U) Consequences

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

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

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

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

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

~~TOP SECRET~~ [REDACTED]

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

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

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

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

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

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

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

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(S/PT) [REDACTED]

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

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

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

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

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

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

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

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

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

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~~TOP SECRET~~ [REDACTED]

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

2. (U) SA [REDACTED]

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

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

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

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

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

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

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

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

\* \* \*

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

(AQI 6602)

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

[REDACTED] 2/28/00)

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

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~~TOP SECRET~~ [REDACTED]

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

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

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

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

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

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

~~TOP SECRET~~ [REDACTED]

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

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

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

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

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



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

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

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

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

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

12/7/99) As it turned out,

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

~~TOP SECRET~~ [REDACTED]

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

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

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(u)

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

(u)

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

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b1 [REDACTED] and other matters." [REDACTED] (9/12/99) Other suggestions in the December 1997 teletype were also not pursued.<sup>24</sup>

- (U) SA [REDACTED] like SA [REDACTED] received information that should have informed him of the critical importance of gaining access to Wen Ho Lee's computer files, yet he failed to take appropriate steps to gain such access.<sup>25</sup> This was a failure of profound significance, particularly in light of the fact that Lee's downloading activity was anything but a matter of ancient history. SA [REDACTED] should have, but did not, ascertain the current status of banners and waivers on the LANL systems to which Wen Ho Lee had access. [REDACTED] (9/12/99) Had he done so - had he even asked relevant questions to the very witnesses, such as [REDACTED] and [REDACTED] who he was <sup>DOE b6, b7C</sup> already interviewing - he could have discovered that X Division had in its

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

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

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

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

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

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

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[REDACTED] Had he done so, the FBI

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

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

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

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

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

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

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

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

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

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

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

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

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

3. (U) SA [REDACTED]

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

(U)

(S) First, as to the positive:

(U)

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

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

~~TOP SECRET~~ [REDACTED]

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

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

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

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

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

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

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

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

~~TOP SECRET~~ [REDACTED]



~~TOP SECRET~~ [REDACTED]

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

4. (U) Conclusion

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

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

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

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

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

D. (U) The diversion of two agents

1. (U) Introduction

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

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

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

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

2. (U) The diversion

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

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

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

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

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

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

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

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

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

(U)

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

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

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

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

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

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

ATTN: ASAC Dick

FBI  
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Ron -

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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