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CHAPTER SEVEN

(U) THE DEPARTMENT OF ENERGY'S ADMINISTRATIVE INQUIRY: SEPTEMBER 1995 TO MAY 1996

Questions Presented:

Question One: (U) Should the FBI have asserted "primary investigative jurisdiction" on this matter in September 1995?

Question Two: (U) Did the FBI unduly defer to DOE?

Question Three: (U) What was the purpose of the Administrative Inquiry ("AI")?

Question Four: (U) What investigation was conducted in support of the AI?

Question Five: ^(U) ~~(S/NF)~~ How did the AI's investigators' misunderstanding of the predicate affect the AI?

Question Six: (U) What contribution did the FBI make to the AI?

Question Seven: (U) How were various drafts of the AI altered, and toward what end?

Question Eight: (U) Did the AI report transmitted to the FBI accurately reflect the predicate for the investigation?

Question Nine: (U) Did the AI report transmitted to the FBI make premature and unwarranted judgments concerning Wen Ho Lee and Sylvia Lee that invited and encouraged the FBI to focus exclusively on the Lees?

Question Ten: (U) Was a full investigation on Wen Ho Lee warranted?

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Question Eleven: (U) Did the FBI's own failure to conduct a full and thorough investigation contribute to and magnify the defects of the AI?

Question Twelve: (U) Was the Administrative Inquiry report's selection of Wen Ho Lee the product of racial bias?

(U) *PFIAB QUESTION #9: Whether the FBI appropriately relied on technical opinions provided by the DOE?*

A. (U) Introduction

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~~(S/RF/NF)~~ DOE conducted the initial investigation into China's acquisition of classified information concerning the W-88 warhead design. This investigation, called an Administrative Inquiry ("AI"), culminated in a forty-one page written report with four attachments. Completed on May 28, 1996, the report was provided to the FBI "for your information/action."⁴⁹⁸

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~~(S/RF/NF)~~ The AI represented a woefully inadequate investigation into the "facts and circumstances relative to the loss of the W-88 weapons design information." (FBI 00375) The final report was so poorly written and organized that this alone made it difficult to evaluate and comprehend. More significantly, it contained very serious deficiencies, including numerous inconsistent and contradictory statements as well as unsubstantiated assertions. Other deficiencies lay just beneath the surface; even a cursory investigation - had it been done by the FBI - would have revealed them.

~~(S/RF/NF)~~ Principal among these deficiencies was the very foundation of the investigation itself, the predicate. [REDACTED]

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⁴⁹⁸ (U) See AQI 00886, DOE 02406: "Hand carried [and] Delivered to [REDACTED] [on] 5/28/96."

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was blatantly inaccurate. It was true that a working group of nuclear weapons experts had been assembled by the Director of the Office of Energy Intelligence ("OEI") "to conduct an in-depth review" of the matter. And it was also true that this group, called the Kindred Spirit Analytical Group ("KSAG"), was composed of highly qualified nuclear weapons designers with access to [REDACTED]

b1 [REDACTED] The working group's concise and limited conclusions were never shared with the FBI. Instead, the FBI was misled.

(SAR) By mischaracterizing the predicate, DOE compromised and undermined the FBI's own investigative efforts. This is not to say that Wen Ho Lee did not warrant investigation [REDACTED]

b1 [REDACTED] He did. Rather, it is to say that the mischaracterization of the predicate in the AI caused the FBI to ignore and exclude numerous other possible subjects and numerous other possible venues which might have been the source of the far more limited compromise definitively established by KSAG.

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(S) The final report transmitted to the FBI was the product of an editing process that ultimately converted the AI from a broad identification of potential suspects to a virtual indictment of the Lees. These editing changes materially altered the scope, tone and conclusion of the report and made it that much more likely that the FBI would focus solely on the Lees. Remarkably, the FBI agent detailed to support the AI did not participate in, nor review the changes made to the AI, during the final two months before DOE delivered it to the FBI even though his name appears on the final AI as one of the two "Case Officers" for the AI. Although this editing process deleted numerous avenues for additional investigation, certain leads did survive the final edit. The FBI ignored them, embracing instead the AI's grandiose claim that Wen Ho Lee was "the only individual identified during this inquiry who had the opportunity, motivation and LEGITIMATE access." Upon receipt of the final AI report, the only "action" taken by the FBI was to open and conduct a full investigation on Wen Ho Lee and his wife, Sylvia

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Lee. Until December 1998, no one within the FBI questioned the AI's assumptions, content or conclusion. With one exception, no further investigation was conducted, or even contemplated, by FBI Headquarters or by the case agent in the field.⁴⁹⁹

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(S) The FBI's own lack of investigative interest in looking beyond Wen Ho Lee and Sylvia Lee magnified each of the AI's defects. Mistakes made during the AI were not corrected during the subsequent FBI investigation. Locations ignored during the DOE AI were also ignored by the FBI. Individuals missed by the AI were also missed by the FBI. With the exception of Wen Ho and Sylvia Lee, employees identified in the final AI report as having both access and travel to China were not investigated. Leads identified, however fleetingly in the AI report, were not pursued by the FBI.

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(S) The AI undertaken by DOE should have *at a minimum*: (1) repeated KSAG's concise and limited assessment of the compromise; (2) identified the universe of locations which received the limited information known to have been compromised; and (3) collated visitation and travel records for those locations within DOE's umbrella. This was not done. Instead, DOE mischaracterized the predicate and then settled on Wen Ho Lee as the "most logical suspect." When the AI report was given to the FBI, it did not encourage and facilitate a broad and thorough FCI investigation but, rather, it focused the FBI in on the Lees. The FBI compounded this error by never critically examining the investigative steps leading to the selection of the Lees or the exclusion of others.

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(S) Recent assertions of impropriety in the conduct of the AI have been made by [REDACTED] claimed that the AI was not a vigorous counterintelligence inquiry, but a mechanism to summarily finger a Chinese American. *The AGRT has found no evidence of racial bias.* [REDACTED] claim is particularly ironic [REDACTED] To the extent that [REDACTED]

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(S) That one exception was a December 1997 instruction from NSD to FBI-AQ to open preliminary inquiries ("PIs") on [REDACTED] mentioned in the AI. FBI-AQ ignored the instruction and FBI-HQ did not insist on the opening of the PIs until March 1999.

complaint is really an attack on the AI's lack of rigor in its assembly of a list of possible suspects, that is certainly a claim with merit. Wen Ho and Sylvia Lee should never have been the *sole* suspects upon which the AI ultimately focused.

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~~(S/NF)~~ The AI should have been a *sieve* resulting in the identification of a number of suspects. Instead, it ended up as a *funnel* from which only Wen Ho and Sylvia Lee emerged. That was not because they were of Chinese heritage but, rather, because, one, other suspects and locations of potential compromise were improvidently and improperly rejected, and, two, Wen Ho Lee came to the attention of DOE already "tagged" as a prime candidate for suspicion. Indeed, Wen Ho Lee's name first appears in DOE's "Kindred Spirit" records in June 1995 - long before the AI even began. This is not to say that the results of the AI were preordained. A knowledgeable and experienced FBI agent had been involved in the early phase of the AI and there is nothing to suggest that he viewed the AI as designed to achieve a particular result. It is to say that the AI did not *need* to be preordained. Given its slap-dash quality, its flawed rationales, its complete mischaracterization of the predicate, and its queer mash of intense review of some pertinent records and complete ignorance of other venues of compromise, once Wen Ho Lee was "tagged" with the patina of suspicion, the AI was all but over. He would be "*it*."

B. (U) The FBI's undue deference to DOE

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~~(S/NF)~~ The decision to conduct an AI was separate and distinct from the decision to have KSAG assess the Chinese nuclear weapons program. KSAG's assessment .. addressed the larger issue of whether the Chinese had compromised classified information, while the AI focused on the possible locations and sources of any compromise. Both decisions were discussed with the FBI. The FBI deferred to DOE in both instances.

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(S//NF) The FBI's willingness to defer to DOE as to the *initial* assessment of [REDACTED] was reasonable. KSAG, composed of representatives from within DOE, the Central Intelligence Agency ("CIA") and the Defense Intelligence Agency ("DIA") was clearly better positioned than the FBI to initially assess any compromise.⁵⁰⁰

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(S//NF) The AI, however, was a very different matter. The FBI's deference to DOE in the conduct of the AI was unfortunate and inexplicable. Unlike the deliberations of KSAG, which required expertise unique to DOE, the AI was essentially a foreign counterintelligence investigation, a matter which required expertise peculiarly within the expertise of the FBI.

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(S//RD//NF) There is no evidence of any debate within the FBI addressing the wisdom of deferring to DOE. DOE announced its intention to conduct an AI and sought an FBI detailee to support its inquiry. The FBI concurred in DOE's decision and detailed SA [REDACTED] to the AI. SA [REDACTED] maintained minimal contact with FBI-HQ. Essentially, the FBI simply awaited DOE's anointing of a suspect. [REDACTED]

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[REDACTED] Remarkably, the FBI even closed its own preliminary inquiry on Wen Ho Lee in deference to DOE's AI.

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(S//NF) This does not mean that the FBI should not have monitored KSAG's work. It should have. It was invited to do so, and it declined.

1. (U) Notification to the FBI of the decision to conduct an Administrative Inquiry

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(S) The decision to conduct an AI originated within DOE.⁵⁰¹ DOE's decision to conduct an AI was made with the full knowledge and consent of the FBI.⁵⁰²

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(S) It is unclear who initially formulated the plan to conduct the AI within DOE. [REDACTED] wrote an investigative plan dated June 28, 1995. [REDACTED] 8/4/99; [REDACTED] 8/10/99) [REDACTED] identified [REDACTED] as someone who familiarized [REDACTED] with the need to conduct an internal inquiry. [REDACTED] drafted [REDACTED] September 25, 1995 letter to the FBI formally notifying them of the AI's initiation. (Baker 2/2/00) Deputy Secretary Curtis recalled directing the initiation of the AI in November 1995, but this appears to have been more of a formality since the AI was already underway at that point. (Curtis 1/14/00)

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(S) The two agencies had previously defined their respective counterintelligence responsibilities. The Memorandum of Understanding (MOU) between DOE and the FBI, dated October 1992, controlled the coordination and conduct of counterintelligence activities. (FBI 20757 to FBI 20761) The MOU defined and coordinated responsibilities "between the agencies regarding alleged or suspected counterintelligence activities" and thereby established "an efficient and expeditious channel of information [which] should better protect United States national security." (Id. at 57)

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(S) The MOU imposed on DOE a requirement that the FBI be promptly notified: "At the time a DOE administrative investigation discloses information or allegations of possible intelligence activity or unauthorized contact on the part of DOE personnel with a foreign power, the matter will be promptly referred to the FBI. If the FBI declines primary investigative jurisdiction, DOE may elect to continue to pursue necessary leads as appropriate to resolve the allegation or facilitate administrative sanctions." Id. at 60.

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(S/RF) The FBI received numerous notifications from DOE of its concern [REDACTED]

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DOE 66, 67c [REDACTED] DOE was concerned that it not violate any notification requirement with respect to the FBI.⁵⁰³ (Trulock 10/12/99); [REDACTED] 8/4/99); [REDACTED] 8/10/99); (Curtis 1/14/00)

(S) (u) (S/RF) The FBI received at least three notifications of DOE's suspicions prior to the AI's initiation.⁵⁰⁴ First, in July 1995, DOE briefed the FBI of its concern and provided a copy of its proposed investigative plan. Second, on September 25, 1995, DOE informed the FBI that the KSAG working group had concluded to a [REDACTED]

b1 [REDACTED] The same letter announces DOE's intention to conduct an AI and asks for the FBI's support in the form of a detailed agent. Third, on October 31, 1995, the FBI was briefed on the particulars of KSAG's assessment and was given a presentation outlining the AI.

(u) (S) The FBI could have assumed "primary investigative jurisdiction" at any point during these notifications. Instead, the FBI simply requested that it be kept apprised of developments and deferred any decision until the AI was concluded. In part, this was due

(u) (S)⁵⁰³ The notification requirement on DOE is imposed by both the MOU and statute. Section 811 of the Intelligence Authorization Act for 1995, entitled Coordination of Counterintelligence Activities, requires that the FBI be immediately notified of any compromise of classified information. Section 811 (c)(1)(A) states: "the Federal Bureau of Investigation is advised immediately of any information, regardless of its origin, which indicates that classified information is being, or may have been, disclosed in an unauthorized manner to a foreign power or an agent of a foreign power. . . ." This ongoing obligation also requires that the FBI be informed of all actions undertaken with respect to the compromise: "[F]ollowing a report made pursuant to subparagraph (A), the Federal Bureau of Investigation is consulted with respect to all subsequent actions which may be undertaken by the department or agency concerned to determine the source of such loss or compromise. . . ." Section 811 (c)(1)(B). DOE complied with this provision.

(u) (S)⁵⁰⁴ There may have been an additional notification. The OEI Kindred Spirit chronology includes an entry reflecting a meeting between DAD John Lewis and Trulock on June 23, 1995, that cannot be confirmed from the FBI's records.

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[REDACTED] (See Lewis 7/6/99) At one point, DAD Lewis was reported to have observed that [REDACTED]

[REDACTED] DAD Lewis approved detailing a FBI agent to participate in the AI and deferred further action until the final report's production. (Lewis 7/6/99)

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a. (S) DOE's first notification of the compromise to the FBI

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(S/NF) OEI first notified the FBI of its preliminary concern and investigative plan in July 1995. On July 6, 1995, [REDACTED] CID, OEI, briefed SSA [REDACTED] on Kindred Spirit. OEI's investigative plan, dated June 28, 1995, was provided to the FBI either in advance of, or in conjunction with, this briefing. According to a DOE memorandum, "SSA [REDACTED] completely supported OEI's initial requirement to conduct a Damage Assessment to determine, to the extent possible, that the Peoples' Republic of China ("PRC"), had access to US warhead design information or that there was at least, a high probability that they had accessed said information. SSA [REDACTED] stated that at this point, there was insufficient evidence to warrant the initiation of an FBI full field investigation." (DOE 03487) SSA [REDACTED] requested the FBI be kept informed "of any significant developments." (DOE 03487) OEI's investigative plan articulated its intention to adopt a two-pronged approach to whether the Chinese had compromised classified nuclear weapons information. The first prong involved assembling a working group composed of weapons design experts to review and evaluate the intelligence and to provide an assessment of the Chinese nuclear weapons program.⁵⁰⁶ The second prong

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⁵⁰⁵(S/NF) [REDACTED]

The CIA did not provide

the FBI a copy of the walk-in document until [REDACTED] It is possible, however, that SSA [REDACTED] might have seen a copy of the walk-in document before its formal release to the FBI. He says he did. ([REDACTED] 12/15/99)

⁵⁰⁶(S/NF) A copy of OEI's investigative plan was in the FBI's files. This copy is signed by [REDACTED] and bears the handwritten date, June 28, 1995. SSA [REDACTED] made two comments on this plan. The first comment concerns [REDACTED] characterization of the

involved conducting an AI to define the universe of possible suspects within DOE.⁵⁰⁷ This prong would pursue leads "for the purpose of narrowing the scope of the inquiry to specific laboratories, periods of time and personnel who would have logically been involved in the weapons design development." (DOE 03206)

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(S/NP/RD) On July 13, 1995, Kenneth Baker, Acting Director, Office of Nonproliferation and National Security, and Trulock briefed DAD Lewis and SC [REDACTED] on DOE's preliminary assessment that the Chinese had penetrated DOE. This meeting followed [REDACTED] earlier briefing of SSA [REDACTED]. "Trulock advised that he was

working group's comprehensive review of the intelligence: "I would limit the scope or it will take too long. We only need, at least initially, a warm gun barrel." FBI 00336. The second comment concerns [REDACTED] suggestion [REDACTED]

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[REDACTED] Id. [REDACTED] 12/15/99)-FOI b6, b7c

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⁵⁰⁷(S/NP) The [REDACTED] stressed that OEI never undertook to examine agencies or facilities outside DOE's umbrella due to their lack of jurisdiction and authority. ([REDACTED] 8/4, 10/99) See also AI at 4; FBI 00528 ("the initial scope of this inquiry would be to identify PRC visitors/assignees to LANL/LLNL and other DOE locations/facilities which worked on the W-88, [REDACTED]). Nevertheless, the FBI depended upon DOE to identify those agencies or facilities, outside the AI's scope, which received the compromised information. Without further notification, the FBI could not undertake that portion of any future investigation. ([REDACTED] 12/15/99) The final AI report identified some, but certainly not all, DOE locations where a compromise might have occurred. Locations under the DOE umbrella, such as DOE Headquarters and the Albuquerque Operations Office, are listed as having the necessary information in the final AI report. (AI at 4 and 7; FBI-00528, FBI-00531) Beyond a recognition that sufficient records may not exist for DOE Headquarters, the AI failed to investigate these DOE locations. Other DOE venues, such as Pantex and SNL, previously identified as within the scope of the AI, are not mentioned in the final report. See DOE-02412 and DOE-02413 ("Identify all LANL, LLNL, & Pantex Personnel"); DOE-02423 ("PANTEX should be looked at also, but propose to do that (if deemed necessary) in early Jan 96"). No list of non-DOE venues was provided to the FBI. ([REDACTED] 12/15/99)

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[REDACTED] (AQI 02936) Trulock asked the FBI to participate in the OEI's evaluation of the matter by joining "DOE's damage assessment/administrative inquiry team." The FBI declined to participate at this stage of the DOE review.⁵⁰⁸ "FBI-HQ declined until such time as DOE had a prima facie case of espionage." (AQI 02937)

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b. (S) DOE's second notification of the compromise to the FBI

(S) (u) (S/NF) DOE's second notification to the FBI occurred on September 25, 1995. A DOE letter, drafted by Trulock⁵⁰⁹ and signed by Baker, announced the completion of the KSAG working group's evaluation: [REDACTED]

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[REDACTED] (FBI 00375) The letter also announced the initiation of an AI by DOE "to determine the facts and circumstances relative to the loss of the W-88 weapons design information." (Id.) DOE requested that the FBI temporarily assign an agent to DOE to "assist in the conduct of this preliminary investigation" and due to DOE's own "limited investigative authority." (Id.)

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(S/NF) The FBI did not - but should have - asserted primary investigative jurisdiction at this time, given DOE's explicit representation that the Chinese had compromised classified warhead design information.⁵¹⁰

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⁵⁰⁸ (S/NF) This decision would have significant consequences. FBI participation in KSAG, if only as an observer, would have permitted it to form its own judgment as to KSAG's assessment of the compromise.

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⁵⁰⁹ (U) (Baker 2/2/00; [REDACTED] 1/13/00) See also DOE 02410.

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⁵¹⁰ (S)

[REDACTED] There is no evidence DOE ever requested that the FBI assume control over the investigation, and DOE's letter does not make such a request of the FBI.

(S) OEI was not prepared to wait for the FBI's approval before beginning their AI, and OEI initiated the AI before receiving any response from the FBI.⁵¹¹

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c. (S) DOE's third notification of the compromise to the FBI

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(S) DOE's third notification to the FBI occurred on October 31, 1995, when OEI briefed the FBI on the investigation's predicate. OEI also outlined the plan for the AI to the FBI at this meeting. (DOE 03479) OEI anticipated its plan would be acceptable to the FBI because "it included only those basic steps necessary to meet Attorney General guidelines for an '811 referral' threshold to the FBI." [REDACTED] DOE IG Interview 5/18/99 (DOE 2500) Deputy Secretary Curtis, [REDACTED] [REDACTED] was informed "that the FBI has been briefed on the information and is on board." (DOE 03337 to DOE 03339 at 39; Curtis 1/14/00)

2. (U) Discussion

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(S/NF) FBI's deference to DOE was a mistake. Once DOE made the initial determination that classified information had been compromised to the Chinese, a determination readily supported by the walk-in document, the FBI should have asserted primary investigative jurisdiction and taken over the matter. *It is impossible to identify any significant respect in which the investigation conducted during the AI was advantaged by having it done by DOE, rather than by the FBI.* The OEI had a single investigator, [REDACTED], and limited investigative authority.⁵¹² Had the FBI taken over the

⁵¹¹ (u) (S) OEI's investigator [REDACTED], sought permission to begin the AI without the FBI if necessary. "I am awaiting the FBI's approval to detail Supervisory Special Agent (SSA) [REDACTED] to assist this office on [Kindred Spirit]. I don't believe it is in our best interest to wait out the FBI decision on this matter." (DOE 02421) "I propose we actually begin the inquiry . . . on or about November 1, 1995, with or without the FBI detailee." OEI approved [REDACTED] request to begin without the FBI. (Id.)

⁵¹² (u) (S) [REDACTED] himself, agrees with the assessment that the FBI should have opened its case in September 1995. Indeed, he viewed the subsequent Administrative Inquiry as a mechanism to get the FBI to do just that: "If they won't open a case on it,

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investigation, that investigator's institutional knowledge would have certainly been available to support it. Rather than [REDACTED] the FBI should have asserted primary jurisdiction and, in September 1995, begun to interview KSAG members and develop an investigative plan of its own. By deferring its jurisdiction, the FBI permitted others to control the investigation from the outset. That control permitted OEI to define the focus of the initial investigation and thereby define the subsequent FBI investigation.⁵¹³

C. (U) The purpose of the Administrative Inquiry

~~(S/TD)~~ Considerable confusion surrounds the AI's purpose. This confusion is largely responsible for the difference between what was planned and what was finally accomplished. The AI was originally described as a preliminary investigation limited to a discreet review and collation of the DOE records. It became a vehicle to select a single target who was claimed to be "the only individual identified during this inquiry who had, opportunity, motivation and LEGITIMATE access."⁵¹⁴ AI at 38; FBI 00562. What began

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then I'll drag them into it." [REDACTED] 10/25/99)

⁵¹³ (U) [REDACTED] believes only OEI was capable of conducting this preliminary inquiry. He claimed that any investigation by the FBI within DOE would have been immediately alerting. [REDACTED] 8/4/99) This concern is overblown. Had the FBI assumed primary jurisdiction for this investigation, [REDACTED] would have undoubtedly supported it within DOE. Any investigation that the FBI could not safely undertake itself, it could have had [REDACTED] perform. The counterintelligence officers at the national laboratories work with the FBI on an ongoing basis and one more inquiry would not have been inherently alerting. See [REDACTED] interviews.

⁵¹⁴ (S) This is an empty statement lacking significant support in the AI report. Access and opportunity were shared by anyone with a "Q" clearance who participated in the W-88's design and traveled to China [REDACTED] Wen Ho Lee (b)(1) was not the only person who fit this profile. As to motive, the AI speculatively suggests that Wen Ho Lee's motive to pass the W-88 information to the PRC was to "enhance" his "stature" in the "eyes of high ranking PRC personnel." (AI at 37; FBI 561) This hardly narrows the class of potential suspects. Anyone who betrays this

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[REDACTED]

1. (U) The FBI's understanding of the AI's purpose

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(S/NF) The AI's purpose was first described to the FBI as an effort to develop "logical leads" to "narrow[] the scope of the inquiry to specific laboratories, periods of time and personnel who would have logically been involved in the weapons design development." (DOE 03206) The OEI's investigative plan, shared with the FBI by July 6, 1995, explained: "[a] critical element of this inquiry is the identification of personnel who worked on the various aspects of the design." (DOE 03206) The plan included comparing these employees against travel records to China. "Once [DOE] has identified a potential list of suspects, reviews of the suspects' foreign travel history, personnel security information, foreign contacts, etc., will be discreetly conducted and documented." (DOE 03207) The FBI understood the AI's purpose as the identification of DOE employees with access to the compromised information and a comparison of that list against their travel records and security files. In July 1995, the AI was described as a mechanical, discreet file review within DOE.

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(S/NF) The AI began on September 25, 1995. (AI at 2; FBI 00526) In its letter to the FBI, DOE described the AI as a preliminary investigation with the broad purpose of "determin[ing] the facts and circumstances relative to the loss of the W-88 weapons design information." (FBI 00375) This description articulates a much different and broader purpose than originally described to the FBI two months earlier. There is no evidence that the shift in DOE's articulated purpose for the AI triggered any discussion within the FBI.

(S/NF/RD) The final description of the AI's purpose to the FBI occurred on October 31, 1995. The OEI briefed the FBI using a slide presentation to outline the AI. (DOE 2411-2417) One slide [REDACTED]

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[REDACTED] (Id. at 12.) This slide identifies locations where the compromise may have occurred including: "LANL, LLNL, Pantex &

country will likely gain favor in the country that benefits from the betrayal.

HQ DOE." (Id.) The slide entitled "Investigative Plan - Initial Approach" identifies three tasks to be performed at each location: "Identify all PRC visitors to LANL, LLNL & Pantex; Identify all LANL, LLNL & Pantex Personnel with access to W-88; [and] Identify all LANL, LLNL & Pantex Personnel who traveled to PRC." The slide entitled "Link Analysis" suggests an effort to link PRC personnel with laboratory personnel. These slides suggest just four locations within DOE where the compromise might have occurred."³¹³ (Id.)

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(S/NF/RD) SA [REDACTED] summarized his understanding of the AI's purpose in early 1996. "[T]he 'KINDRED SPIRIT' investigation was begun [REDACTED]

[REDACTED] FBI-19296. SA [REDACTED] focus during the AI was on locations where a compromise of classified information may have occurred. He wrote a four-page investigative plan after returning from the last trip he made in support of the AI which outlined the future investigation he believed the FBI needed to conduct. SA [REDACTED] plan demonstrates his own belief that a broad investigation into the compromise was required *after* the conclusion of the AI. That, however, would not happen.

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2. (U) OEI's understanding of the AI's purpose

(U) The confusion over the AI process extended to OEI. [REDACTED]

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(U) [REDACTED] exercised care during the AI to emphasize the preliminary nature of the inquiry. He stressed this point each time he was interviewed by the AGRT. [REDACTED]

³¹³ (U) [REDACTED] These four locations include Pantex, but the AI never examined Pantex. The investigators never visited that location nor is Pantex mentioned in the final AI report.

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8/4/99, 8/10/99, 10/25/99) In preliminary documents, [REDACTED] was careful to avoid eliminating other suspects during this preliminary inquiry.⁵¹⁶ [REDACTED] drafted an ambitious investigative plan and anticipated assembling lists of employees for the FBI's review and examination. He believed that the AI was the first step in what would become a far more extensive investigation by the FBI. [REDACTED] (8/4/99 and 8/10/99) In one interview with the AGRT, he expressed frustration as to the extent to which the AI has been portrayed as being more than it was intended to be: "It was just a stupid Administrative Inquiry."⁵¹⁷ [REDACTED] (8/10/99)

(u)
(S) The AI process [REDACTED]

[REDACTED]

(S) (U)

[REDACTED]
17/13/00:

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⁵¹⁶ (u)
(S) See, e.g., [REDACTED] signed AI report at 84; DOE 00151 ("This by no means excludes any other DOE personnel as being possible suspects in this matter. The investigative team must conduct records reviews etc., at several other locations before this inquiry is concluded").

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(S) [REDACTED] also described the AI as "just the 'opener,'" "the first card," a "nothing," "just preliminary" and "shallow." [REDACTED] (8/10/99)

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(S/NF) That may explain why he erroneously sought the CIA's permission, instead of the FBI's, to proceed with the AI. (DOE 3440)

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D. (U) The Administrative Inquiry's investigation

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(S) The AI spanned eight months from start to finish. Within those eight months only four trips were taken by one or both investigators. Two of the trips were made by [REDACTED] alone and two were jointly made by [REDACTED] and SA [REDACTED]⁵¹⁹

1. (U) Interviews conducted during the AI

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(S/NF) Both investigators were sensitive that the AI not impair a subsequent full investigation by the FBI. The decision to conduct a discreet AI caused the investigators to severely limit their interviews at the national laboratories. This limitation resulted in avoiding the very scientists capable of explaining the broad dissemination of nuclear design information. These interviews would have caused the investigators to re-examine

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⁵¹⁹ (S/NF/RD)

The first trip was to LANL and the Albuquerque Operations Office ("AL") on November 6 to November 9, 1995. This three-day trip was made by [REDACTED] alone to request the collection of relevant records at LANL and AL in anticipation to a future trip by both [REDACTED] and SA [REDACTED] (DAG 00808 to DAG 00809) From December 4 to December 7, 1995, a second three-day trip occurred, this time by both [REDACTED] and SA [REDACTED] to LLNL and the Oakland Operations Office ("OK") for the same purpose. (DOE-02436 to DOE 02437; FBI 00408 to FBI 00413) The third trip, spanning two weeks from February 13, 1996 to February 22, 1996, was also made by both [REDACTED] and SA [REDACTED] to LANL and AL to review LANL's records. They spent the first week at LANL generating a list of seventy employees who had traveled to the PRC and a shorter list of [REDACTED] who also had access to the W-88. The b1 investigators then went to AL to review the security files for these employees identified at LANL. (DOE 03467) The final trip made in support of the AI, to conduct a similar records review at LLNL, was made by [REDACTED] alone on April 9, 1996 through April 18, 1996. (DOE 03467) In addition to these four trips, SA [REDACTED] traveled to Washington, D.C. twice in support of the AI. The first trip by SA [REDACTED] occurred on October 31, 1995, to attend the OEI briefing on the KSAG working group's assessment and OEI's slide presentation outlining the AI. The second and final trip occurred on December 19, 1995, when SA [REDACTED] reviewed the intelligence reporting in the basement SCIF in the Forrestal Building.

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the underlying predicate. [REDACTED] justified the AI's limitations generally and, in particular, the failure to examine Defense Programs and DOE Headquarters, by asserting that any investigation would have been immediately alerting. [REDACTED] 8/4/99) DOE would later state that "no inquiries were made at Defense Programs elements or DOE Headquarters, to preserve the limited knowledge of the inquiry. This was agreed to by DOE and the FBI at the early planning discussions." (FBI 19238) ⁵²⁰

(U)
~~(S)~~ It is unclear why the presence of the two investigators at LANL and LLNL was any less alerting than their presence at other components under the DOE umbrella. The investigators should have obtained a list of the nuclear weapons experts who had participated in KSAG in support of the AI. These experts were already "alerted" to the compromise, having reviewed the intelligence reporting. [REDACTED] attended portions of KSAG's meetings and could easily have obtained a list of those in attendance. There would have been multiple benefits from having these experts, each knowledgeable about the compromise's scope, serve as resources to guide the AI. These experts would have been available to respond to the investigator's questions at LANL, LLNL and SNL. By failing to identify these experts and seek them out, the investigators relied exclusively upon [REDACTED] to inform their inquiry, ⁵²¹ which was a mistake.

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(U)
⁵²⁰(S) This recollection fails to explain the omission, from the AI report transmitted to the FBI, of SA [REDACTED] comment that "[t]o complete the investigation, it will be necessary to review W88 information at DOEHQ, DOE Albuquerque Ops Office, LLNL, SNL, and Rocky Flats, to determine what information was available and when. It would also be desirable to confirm that Pantex received no information about the W-88 within the time frame of this case." [REDACTED]

The result was a final report which failed to explicitly alert the FBI to the investigation that was not conducted by OEL.

⁵²¹(U) This error was repeated by the case agent when the FBI opened its own investigation on the Lees.

(2)

(S) Because the investigators conducted a discreet AI, few people were interviewed. The Contract Counterintelligence Officers ("CCIOs") at LANL, AL, LLNL, and OK supported the inquiry at each facility. The CCIOs at LANL and LLNL each suggested that the investigators speak with scientists associated with their respective offices. At LLNL this scientist was [REDACTED]. At LANL this scientist was [REDACTED].

DOE
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(b)(7)(C)

[REDACTED] These were the only scientific resources utilized by the investigators beyond [REDACTED]. The only other individual interviewed by the investigators during the eight-month AI was [REDACTED]. This interview occurred on the suggestion of [REDACTED] at LANL. Beyond these three interviews, the investigators' entire effort consisted of a records review for two weeks at LANL and two weeks at LLNL.

a. (U) [REDACTED]

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(b)(7)(C)

(S/NF/RO/OC) In the first week of December 1995, [REDACTED] and SA [REDACTED] met with CCIO's [REDACTED] at LLNL. The investigators identified records they wanted assembled for their review during a future trip⁵²² and discussed their investigative plan. (DAG 00808) [REDACTED]

b1

[REDACTED] (FBI 678) During solo second trip in April 1996, he tasked [REDACTED] to locate documents at LLNL that could have been the source of the compromise at that location. [REDACTED] reviewed LLNL's files [REDACTED]

(b)(6)

DOE
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(b)(7)(C)

⁵²²(S/NF) [REDACTED] would make this return trip without SA [REDACTED]. SA [REDACTED] had undertaken a new assignment and was unavailable. On April 9, 1996, [REDACTED] alone interviewed [REDACTED] to obtain the "salient information" captured in the AI. (See AI at (1) 18; FBI 00542) [REDACTED]

b1

[REDACTED] (AI at 39) This assumption incorporated a number of serious errors, discussed in Chapter 6.

[REDACTED]

(b)(1)

24

b. (U) [REDACTED]

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(u)
(S) [REDACTED] met with the AI's investigators at LANL on February 14, 1996. [REDACTED], LANL, was concerned that the investigators lacked a good grasp of the broad dissemination of data associated with a warhead's development. [REDACTED] arranged this meeting to educate both SA [REDACTED] and [REDACTED] on the wide dissemination of design information during the development of the W-88. [REDACTED] own sense was that the investigators were focused on too narrow a group of locations where a compromise might have occurred. [REDACTED] 9/15/99) [REDACTED] was generally familiar with both the W-88 and LANL's archives. [REDACTED] depended entirely on the investigators to describe the compromise's scope which was unfortunate since the investigators, in turn, were depending on the inaccurate October 31, 1995 DOE briefing to the FBI. (See Chapter 6.)

(S/AFAD) [REDACTED]

(b)(1)

DOE
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(u)
(S) 523 The scope of this search was problematic since [REDACTED] only searched a single vault for the "A" Division at LLNL. There are numerous other vaults at LLNL with W-88 documents. When interviewed, [REDACTED] estimated there could be over a hundred thousand documents in LLNL's vaults. He only examined one vault and never represented to [REDACTED] that there were no other W-88 documents at LLNL. He was asked to conduct a discreet search, which he conducted in the vault he thought most likely to have the material. [REDACTED]

(u)
(S/AFAD) 524 The true consequences of that error must await the conclusion of the FBI's current investigative efforts.

(b)(1)

DOE
(b)(6)
(b)(7)(C)

[REDACTED] notes reflect: [REDACTED] in the design and test phase, 5-6 years proceed. There is a large number of people [who] have access to development. There is also the engineering group. At these stages the documents would be voluminous." [REDACTED] 00407-00408 at 7.) This observation, however, was never included in any draft of the AI report which the AGRT has reviewed. [REDACTED] briefed the investigators [REDACTED]
[REDACTED]

FBI
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(SAMP/RO) Prior to [REDACTED] briefing, the investigators met with [REDACTED] (Santa Fe RA) on February 13, 1996. SA [REDACTED] notes of this meeting suggest [REDACTED] repeated OEI's inaccurate predicate at LANL. He told the investigators [REDACTED]
[REDACTED] (FBI 15869)

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DOE
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(b)(7)(C)

(SAMP/RO) The next day the investigators used this briefing to describe the compromise's scope to [REDACTED] was advised that information [REDACTED]
[REDACTED] (FBI 02851) (SA [REDACTED] written

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⁵²⁵(SAMP/RO) SA [REDACTED] notes list [REDACTED] LANL, and [REDACTED] SNL, as familiar with the W-88's background. The investigators did not speak with either individual during the AI. Neither [REDACTED] were interviewed by the FBI until 1999, despite SA [REDACTED] presence at this meeting. Both men, when interviewed by the AGRT in 1999, lamented that they had not been sought out earlier in the investigation by the FBI. When the FBI did interview [REDACTED] in 1999, it fundamentally altered the FBI's understanding of the compromise's scope. [REDACTED] as chair of KSAG, also would have dramatically impacted the FBI's understanding of the predicate. At a minimum, [REDACTED] would have alerted the FBI [REDACTED]
[REDACTED]

DOE
(b)(6)
(b)(7)(C)

report of this interview). This inaccurate statement was included verbatim in the final AI report. (AI at 5; FBI 00529) [REDACTED] relied upon the investigators' inaccurate description of the compromise's scope to guide his comments on the data's dissemination. [REDACTED]

(U)
(S/NF)

[REDACTED] obtained for the investigators a list of the test shots involved in the development of the W-88. [REDACTED] confirmed that the list of test shots in the AI²⁶ appeared to contain the shots he provided the investigators.

DOE
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[REDACTED] obtained and assembled the names of the lead engineer, primary designer, secondary designer, radio chemists and others involved with each shot. He generated a lot of names. [REDACTED] firmly believes Sandia National Laboratory ("SNL") was within the scope of any compromise of the W-88, regardless of how the compromise was defined. He recalls telling the investigators that SNL would have access to all the design information as SNL weaponized the W-88 and would have become a repository for nuclear weapon data after the weapon's development. [REDACTED]²⁷

DOE
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(b)(7)(C)

(S/NF) Had [REDACTED] been accurately briefed on the walk-in document's content, he could have begun to identify to the AI's investigators the large number of [REDACTED]

DOE, FBI
(b)(6)
(b)(7)(C)

²⁶(U) Like [REDACTED] was never shown the AI nor asked to review his interview for accuracy. There was no scientific review of the final AI report.

²⁷(S/NF) This recollection conflicts with the investigators' notes of the [REDACTED] interview. (FBI 15870: [REDACTED] 00406) SA [REDACTED] written report of this interview states: [REDACTED] was asked which other US Government agencies, facilities, or contractors would have had access to information about the W-88 [REDACTED] (b)(1)

[REDACTED] He said that, in addition to LANL, information about the W88 might have gone to the following elements: [REDACTED]

b1

[REDACTED] (FBI 02852) The investigators did ultimately include SNL among the other venues requiring further investigation. The final edit, however, eliminated these locations from the AI report transmitted to the FBI.

documents that would have had this information. [redacted] ^{DOE b6, b7c} could have discussed the

b1

[redacted] His opinion would have been markedly different had the scope of the compromise been accurately described to him. He recalled explaining to the investigators [redacted]

b1

[redacted] Locations which he discounted, based upon his erroneous understanding of the scope of the compromise, would not have been excluded if he had understood the compromise to have been more limited in scope. [redacted] (11/10/99)

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FBI b6, b7c
b7D, b7E

c. (U) [redacted]

(21)
(8) On February 15, 1996, the investigators interviewed [redacted] in [redacted]. Their interview was conducted under the ruse [redacted]

[redacted] Because many records were unavailable [redacted] suggested the investigators contact [redacted]. The investigators asked [redacted] whether any LANL employee became close with the Chinese visitors.

(FBI 02857 to FBI 02858) The investigators did not pursue specific questions concerning [redacted] out of concern that such questions could be alerting.⁵²⁹

⁵²⁸ (S/NP/CD) [redacted]

b1

[redacted] (AI at 6) (FBI 00530; FBI 02851)

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⁵²⁹ (21)
(8) SA [redacted] never interviewed [redacted] after receiving the final AI report.

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2. (U) Records reviewed during the AI

(U)
(S) The AI examined LANL and LLNL to identify all personnel who "had direct access to KINDRED SPIRIT information" and to review personnel security files and "all pertinent visitor and travel information." (DOE 02423) [REDACTED] and SA [REDACTED] traveled to LANL and LLNL to review these assembled records. The final AI report's structure reflects this investigation.³³⁰ Although other locations are mentioned within the final AI report, they were not subject to a records review during the AI. This narrow focus during the AI has proven to be a major failure of this preliminary investigation into the compromise of classified information to the Chinese.

(U)
(S) Throughout the AI investigation there is evidence that the investigators recognized the possibility that other locations within the DOE umbrella might have been the source of the compromise to the Chinese.³³¹ The suggestion, communicated to the FBI, that Pantex and SNL would be examined during the AI is misleading. The final AI report makes no mention of either Pantex or SNL. Other locations are mentioned, such as

(U)
(S)³³⁰ The report is divided into two substantive sections entitled: "AI conducted at Los Alamos National Laboratories & Albuquerque Operations Office, NM" (AI at 5; FBI 00529) and "AI conducted at Lawrence Livermore National Laboratories, CA." (AI at 18; FBI 00542)

(U)
(S)³³¹ "I believe PANTEX should be looked at also, but propose to do that (if deemed necessary) in early Jan 96." (DOE 02423; see also DOE 02411 to DOE 02417; DOE 03479 to DOE 03485) [REDACTED] was advised that [REDACTED] and [REDACTED] would identify all personnel at the aforementioned locations [LANL, SNL and AL] that had direct access to the compromised system during the time period in question. We will subsequently review personnel security files of the individuals identified and document all information obtained." (DOE 02438) DOE would later defend the AI in part by stating that "[t]he review at Albuquerque included SNL and Rocky Flats." (FBI 19236) There is no evidence that this occurred. The final AI report explicitly states that no Rocky Flats records existed to be reviewed at AL. (AI at 36; FBI 00560) The final AI report states that at AL the investigators "reviewed all available personnel security files regarding LANL personnel . . . who had access to weapons data." (AI at 9; FBI 00533) (emphasis added).

~~TOP SECRET~~ [REDACTED]

DOE HQ and Rocky Flats, but only to note the absence of records. (AI at 5 and 36) (FBI 00529; FBI 00560)

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(u)

(S) The investigators visited DOE's regional offices in conjunction with their trips to LANL and LLNL. These visits, however, were only to obtain files for LANL and LLNL employees and not to review any other facilities within the respective regions. The counterintelligence officer for the Albuquerque Operations Office noted that in advance of the investigators' visit he received a list of approximately twenty-five people for whom [REDACTED] wanted to review the personnel security files at AL. See DOE IG's report of the [REDACTED] interviews conducted on June 16, 1999 and July 13, 1999. (DOE 02881 to DOE 02882) The investigators were not reviewing the regional office's files for every DOE location, but only for a group of LANL employees. [REDACTED] recalled [REDACTED] discussing the need to review SNL and Pantex, but [REDACTED] does not believe that review ever occurred. [REDACTED] 9/10/99) The investigators' notes, provided to the AGRT by [REDACTED] do not reflect the review of anyone employed at SNL, Pantex or Rocky Flats. [REDACTED] 00001-00418)

E. (U) SA [REDACTED] contribution to the AI

(S/NF) The detailed FBI agent, selected by FBI Headquarters, was SA [REDACTED]. SA [REDACTED] is a senior FCI agent who had been assigned to the FBI field office [REDACTED]. SA [REDACTED] a former [REDACTED] managing the [REDACTED] program, has extensive experience in this area and was well suited for this investigation. [REDACTED]

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[REDACTED] SA [REDACTED] is an experienced, professional agent very familiar with the long-term investigations necessary in the foreign counterintelligence field. Although he devoted only weeks to this inquiry, his insights surpassed those of agents who devoted years to this investigation. SA [REDACTED] was the only FBI agent to review the underlying intelligence reporting and devise a broad investigative plan to investigate the compromise to the Chinese.

(u)

(S) SA [REDACTED] understood his detail to DOE as assisting DOE in determining whether there was sufficient justification to open a full investigation in this matter. [REDACTED] 7/22/99) In support of that mission, SA [REDACTED] drafted a thoughtful and

thorough plan for the AI which he believed ought to be done. He sent it to FBI-HQ on December 13, 1995.

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(u)
(S/NF) SA [REDACTED] December 1995 AI plan envisioned a broad examination of the contacts between DOE and the Chinese. Rather than narrow any future investigation by the FBI, he sought to use the AI to create a depository of known facts upon which the FBI could build. The AI's "investigation would be developed along the following approach: (1) Catalog [REDACTED]

(2) Catalog [REDACTED]

(3) Catalog [REDACTED]

(4) Catalog [REDACTED]

(5) Build a time-line [REDACTED]

(6)

Catalog areas of research indicated by item five; (7) Look for matches between [REDACTED] in item five and items two, three, and four." (FBI 00408 to FBI 00413) SA [REDACTED] understood this investigation would not be "solved" by the AI. Instead, he anticipated developing resources for the anticipated full investigation.

(u)
(S) The final AI was both more restrictive in its investigative efforts and more expansive in its accusatory reach.

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(u)
(S/NF) Unquestionably, SA [REDACTED] most significant contribution to this investigation was not his December 1995 AI plan but his creation of a second plan, on or about March 4, 1996, for the investigation that he knew had to occur *after* the AI was completed. This plan represents the only substantial FBI effort prior to 1999 to outline a logical and comprehensive program for addressing and resolving the concerns triggered by the walk-in document.

(u)
(S/NF) SA [REDACTED] comprehensive investigative plan was shared with DOE. It was first edited by [REDACTED] included in [REDACTED] signed AI, and then deleted from the AI that was transmitted to the FBI, [REDACTED] SA [REDACTED] investigative plan was also

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shared with the FBI.³³² Copies of SA [REDACTED] investigative plan were not located in the FBI's files at Headquarters or FBI-AQ. Whether or not SA [REDACTED] or SSA [REDACTED] actually received SA [REDACTED] investigative plan, this much is certainly clear: after the full FCI investigation was initiated on the Lees, neither agent ever debriefed SA [REDACTED] on his work on, or his judgments concerning, the AI. [REDACTED] 7/22/99; [REDACTED] 12/14/99)

(U) SA [REDACTED] investigative plan was completed by March 4, 1996. SA [REDACTED] first shared his plan with his FCI supervisor in Tampa, Florida. SSA [REDACTED] an experienced supervisory agent, approved the plan and directed SA [REDACTED] to forward it to both FBI Headquarters and Albuquerque. By routing slip dated March 4, 1996, SSA [REDACTED] "this looks like a viable game plan. Please ensure FBIHQs and AQ are apprised of it."³³³ FBI 15868.

(S/NF/RD) SA [REDACTED] investigative plan was structured around five questions:

b1

"(1) [REDACTED] . . . (2) When and where was the information available in the United States? . . . (3) When did the Chinese obtain the information? . . . (4) Who had access to the information in the US? . . . [and] (5) Who had opportunity/motivation to provide the information to the Chinese?" (FBI-19296 to FBI-19299) These questions intelligently frame an investigative plan to examine the compromise of classified information to the Chinese. [REDACTED]

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³³²(5) SA [REDACTED] recalls providing his plan directly to SA [REDACTED] in Sante Fe as the presumptive case agent and to SSA [REDACTED] as the [REDACTED] supervisory agent. Both SA [REDACTED] and SSA [REDACTED] do not recall receiving the investigative plan. The FBI has, however, recently discovered a misfiled copy of a draft of the AI report which includes much of SA [REDACTED] investigative plan. Also, on September 8, 1998, SC [REDACTED] received a copy of the investigative plan directly from SA [REDACTED] (FBI 2850)

³³³(8) Ironically, in 1999, when the FBI sent significant FCI resources to the Albuquerque field office to investigate this case, the Supervisory Special Agent placed in charge of this effort was SSA [REDACTED]

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b1

[REDACTED] Had it been followed, OEI's mischaracterization of KSAG's conclusions might have been discovered years ago.

1. (U) Question #1

(S//NF) SA [REDACTED] first question asked [REDACTED] SA [REDACTED] clearly anticipated the answer would be negative. The OEI briefing had claimed [REDACTED]

See Chapter 6. Nevertheless, SA [REDACTED] believed that formal interviews of the experts was a prudent initial step for any full investigation.³³⁴

(U) (S) SA [REDACTED] first question was incorporated verbatim into [REDACTED] signed AI report, marked "Pending," with one exception. [REDACTED] omitted SA [REDACTED] language recommending formal interviews of the experts. In the end, [REDACTED]

2. (U) Question #2

(S//NF) SA [REDACTED] second question asked *where* the compromised information was available. Again relying on the OEI's inaccurate briefing, and believing [REDACTED] SA [REDACTED] spoke to a broad as opposed to narrow compromise. Still, he believed the [REDACTED] window could be further narrowed during the FBI's full investigation. "To determine the specific date of the information that was passed (and therefore to be able to estimate when the information most likely was passed), it will be necessary to create a time-line [REDACTED]"

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³³⁴(S//NF) SA [REDACTED] wrote: [REDACTED]

[REDACTED] (FBI 19296)

(b)(7)

[REDACTED] Once this time-line is available, it must be compared with the sensitive source information to narrow the focus, if possible, on those persons who might have passed the information to the Chinese." (FBI 19296-97) Had this investigation been done, it would have caused the FBI to review the intelligence reporting and interview the nuclear design experts. Such an examination might have led the FBI to discover that it had been misinformed of KSAG's conclusions. This second section, absent certain material,³³⁵ was included in [REDACTED] signed AI report, marked "Pending," with one minor editorial change. (DOE 00149) The section was deleted in its entirety in the final AI report transmitted to the FBI.

3. (U) Question #3

(U)
~~(S/NF)~~ SA [REDACTED] third question sought to identify *when* the Chinese received the compromised information. He thought the FBI should identify the Chinese "elements and personnel" who worked on the Chinese warhead and obtain far more detailed information about the walk-in document.

(U)
~~(S/NF)~~ [REDACTED] signed AI report repeats SA [REDACTED] third question, but omits his language identifying the need for additional investigation.³³⁶ (DOE 00149) While a

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³³⁵ ~~(S/NF)~~ SA [REDACTED] wrote: [REDACTED]
[REDACTED]
[REDACTED] (FBI 19297)

³³⁶ ~~(S/NF)~~ SA [REDACTED] wrote: [REDACTED]
[REDACTED]
[REDACTED] (FBI 19297)

portion of SA [REDACTED] statement survived the final edit, see AI at 4 (FBI 00528), it is meaningless without this language. The value of SA [REDACTED] third question, had it been pursued by the FBI's full investigation, is that it would have ultimately revealed the inaccurate predicate briefed to the FBI and incorporated in the final AI report.

4. (U) Question #4

(U)
(S) The fourth question represents SA [REDACTED] most significant investigative insight. Recognizing its importance, SA [REDACTED] devoted almost half of his plan to identifying the leads he believed still needed to be pursued. This question asked *who* had access to the information in the United States. In six paragraphs, SA [REDACTED] set leads to "complete the investigation." These leads called for investigation at LLNL, DOE-HQ, SNL, DOE Albuquerque, Rocky Flats and PANTEX to determine what W-88 information these entities had and when they had it. (FBI 19298, 19299) Every one of SA [REDACTED] recommendations for further investigation was deleted from the AI transmitted to the FBI.⁵³⁷

5. (U) Question #5

(U)
(S) The final question posed by SA [REDACTED] in his investigative plan asked who had the *opportunity and motive* to compromise the nuclear weapons information. He discussed possible scenarios involving the method of transfer to the Chinese of the compromised information. He concluded: "To complete this investigation, review specific persons who meet this criterion, per information from the facilities listed above." FBI-19299. The criterion identified are access and contact with the Chinese - either through contact with Chinese visitors or through travel to China. SA [REDACTED] investigative plan thereby explicitly anticipated that suspects might be selected from *all of the facilities his investigative plan covered*, including PANTEX, SNL, Rocky Flats and

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⁵³⁷ (U)
(S) [REDACTED] traveled to LLNL in April 1996 where he reviewed records and interviewed [REDACTED] also spoke with [REDACTED] at Rocky Flats and [REDACTED] at AL. Incredibly, [REDACTED] believed he had covered many of SA [REDACTED] leads, thereby justifying their deletion for the AI report. [REDACTED] 10/25/99) [REDACTED] effort to cover these leads was entirely inadequate.

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DOE HQ, as well as LLNL and LANL, of course. In [REDACTED] signed AI, the "opportunity and motive" question remains, but SA [REDACTED] language is removed. In the AI transmitted to the FBI, both are deleted.

(u)

(S) SA [REDACTED] would never see the final AI, which identified the Lees as "the most logical suspects." [REDACTED] 7/22/99; [REDACTED] 12/14/99; [REDACTED] 8/10/99; [REDACTED] 10/26/99) Shortly after writing his investigative plan, SA [REDACTED] was given a new assignment by FBI-HQ and did no further work on the AI. He would not be told that his investigative plan was virtually ignored at DOE, at FBI-HQ, and at FBI-AQ.

(u)

F. (S) The draft AI reports and the two complete AI reports

(u)

(S) The final AI report was an OEI product. It was substantially modified within the OEI after an early draft was shown to SA [REDACTED]. SA [REDACTED] never reviewed, approved, or even received a copy of the AI report transmitted to the FBI. His investigative plan was deleted. When interviewed by the AGRT, SA [REDACTED] was surprised by assertions made in the final AI report. [REDACTED] 12/14/99) The OEI listed SA [REDACTED] name on the face of the final report, yet failed to afford him the opportunity to sign off on the final version.

(U) There are five versions of the AI report known to exist.⁵³⁸

(u)

(S) They consist of: (1) a draft AI report given to SSA [REDACTED] at FBI [REDACTED] (b)(6) (b)(7)(C) DOE Headquarters on March 13, 1996, (2) a draft AI report sent to [REDACTED] LLNL's CCIO, by SA [REDACTED] on March 22, 1996, (3) a draft AI report retrieved from a computer disk provided to the AGRT by [REDACTED] under the file name [REDACTED] (4) a complete AI report, signed by [REDACTED] misdated May 28, 1996, and marked "PENDING," and (5) a second complete AI report, unsigned, marked "CLOSED," also dated May 28, 1996, which was the AI formally transmitted to the FBI. Each of these copies is different, although the second and third versions are almost identical. The first three draft AI reports are all incomplete on their face and do not purport to represent a final product.

⁵³⁸ (U) No additional drafts have been located and produced to the AGRT, nor any copies of the drafts containing the final edits.

~~TOP SECRET~~ [REDACTED]

1 (U) The draft AI report on March 13, 1996

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(b)(7)(C)

(S) The first draft AI report was written by [REDACTED] and provided to [REDACTED] and SSA [REDACTED]. SSA [REDACTED] received this draft on March 13, 1996. (FBI 21768)³³⁹ This first draft included a preamble, interviews of [REDACTED] an edited version of SA [REDACTED] investigative plan, a list of Chinese visitors to LANL during [REDACTED] a long list of seventy LANL employees who traveled to the PRC during [REDACTED] and a short list of [REDACTED] employees including notes from their security files. This first unfinished draft was over forty pages long. Although this first draft AI report was written before any records were reviewed at LLNL, a trip to LLNL had clearly been contemplated.³⁴⁰ Nevertheless, [REDACTED] cover note to SA [REDACTED] suggests the investigative work on the AI is complete. The note states: "[N]eed any additional comments you want to make. Once you complete your review/changes, please send it back to [REDACTED] who will give it to me. I'll throw [sic] a synopsis on it; a lead page and distribution." [REDACTED] 00420)

(b)(1)

2. (U) The draft AI report on March 22, 1996

FBI
DOE

(b)(6)
(b)(7)(C)

(S) On March 22, 1996, SA [REDACTED] sent by facsimile a copy of the unfinished draft AI report to [REDACTED] at LLNL. This second draft states: "At this early point in the inquiry, some LANL employees appear more suspect in this matter than others." This is followed by two additional pages that were absent in the first draft AI report. These additional pages state that no DOE employees are excluded as possible suspects and that the "investigative team must conduct records reviews etc., at several other locations

³³⁹ (U) The cover sheets to [REDACTED] and SA [REDACTED] are dated March 14, 1996. (DOE 02448 and [REDACTED] 00418) Although only the copy given to SSA [REDACTED] has been recovered, [REDACTED] confirmed that the copies given to [REDACTED] and SA [REDACTED] were identical. [REDACTED] 2/22/00)

FBI
DOE

(b)(6)
(b)(7)(C)

³⁴⁰ (U) A trip to LLNL was discussed in December 1995, when the investigators asked [REDACTED] to assemble records for such a review. It is unclear what the status of that trip was on March 14, 1996, when [REDACTED] forwarded this draft AI report to SA [REDACTED]

before this inquiry is concluded."³⁴¹ (DOE 03615) (emphasis added). The second draft AI report then names Wen Ho Lee, Sylvia Lee and [REDACTED] as suspects (b)(1)

3. (U) The draft AI report retrieved from [REDACTED] computer disk

(u)

(S) The third unfinished draft AI report came from a computer disk used by [REDACTED] and SA [REDACTED] to revise the AI. The disk included two computer files. The first file is labeled [REDACTED] and includes a draft of the AI essentially identical to the draft sent by SA [REDACTED] to LLNL's CCIO, [REDACTED]. The second file contains the AI report which [REDACTED] signed and which was marked "Pending."

DOE
(b)(6)
(b)(7)(C)

4. (U) The complete AI report, marked "Pending," and signed by [REDACTED]

(U) The last two versions of the AI report are complete reports which include a cover page, a synopsis and a distribution list. Both completed versions are dated May 28, 1996.³⁴² The earlier of these two completed AI reports is marked "PENDING" and the final AI report is marked "CLOSED." The AI report marked "PENDING" represents the conclusion of the preliminary investigation within DOE, according to [REDACTED] did not anticipate [REDACTED] 8/10/99; [REDACTED] 10/25/99) The AI report marked "PENDING" is the only report actually signed by [REDACTED]

(u)

³⁴¹(S) This exact sentence is repeated by [REDACTED] in his signed AI report, marked "Pending." [REDACTED] In the AI transmitted to the FBI, the qualification that no DOE employees were excluded was left in, but the suggestion that the review at LANL was only an "initial 'scrub' of LANL personnel" was deleted. (DOE 3615, 151; FBI 560)

³⁴²(U) [REDACTED] believes he dated stamped both completed versions by accident. [REDACTED] cannot determine when he completed the signed version, but it obviously preceded the [REDACTED] transmitted to the FBI. [REDACTED] 10/25/99)

FBI, DOE
b6, b7c

~~TOP SECRET~~ [REDACTED]

(U)
(S) The signed AI report is eighty-nine pages long and includes lists of Chinese visitors and employee travel to China for both LANL and LLNL.⁵⁴³ The final AI report, marked "CLOSED," is forty-one pages long with four attachments.⁵⁴⁴ (FBI 00525-FBI 00577) After [REDACTED] signed the AI [REDACTED]

(U)
(S) SA [REDACTED] made his last changes to the AI report in March 1996. [REDACTED] then traveled to LLNL where he completed the records review and interviewed [REDACTED] DOE b6 b7c [REDACTED] added this material to the AI report, signed it as final and [REDACTED] signed AI report included both the Lees and [REDACTED] (discussed below) as (b)(1) suspects, although [REDACTED] focused primarily on the Lees.⁵⁴⁵ (DOE 152)

⁵⁴³(U) The inclusion of LLNL indicates that this fourth version was written after [REDACTED] return from LLNL, thereby dating it as having been written sometime between April 18, 1996 and May 28, 1996.

⁵⁴⁴(U) The four attachments are lists of Chinese visitors to LANL and LLNL and travel to China by LANL and LLNL employees. In [REDACTED] signed AI, they are incorporated into the body of the report. This change accounts for much of the difference in the length of the two reports.

(U)
⁵⁴⁵(S) The signed AI, marked "Pending," reads in part as follows: "[I]t is the opinion of the writer that Wen Ho Lee is the only individual identified during this inquiry who had, opportunity, motivation and LEGITIMATE access to both the W-88 weapons system information and the information reportedly received by the aforementioned sensitive source." (DOE 00155) This statement would also appear in the AI report transmitted to the FBI.

~~TOP SECRET~~ [REDACTED]

5. (U) The complete AI report, marked "Closed," and transmitted to the FBI³⁴⁶

FBI
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b6, b7C

(U) [REDACTED]

[REDACTED] to the FBI on May 28, 1996. Although it bears both [REDACTED] and SA [REDACTED] names, it is signed by neither.³⁴⁷

(U)
(S)

[REDACTED]

346 (S/NF)

[REDACTED]

b1

DOE | ³⁴⁷ (S/NF) [REDACTED] attributes no significance to this omission. [REDACTED] 10/25/99

b6, b7C

DOE
FBI
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b1

[REDACTED]

a. (U) The removal of the investigative plan

(u)
(S)

[REDACTED] could not explain this removal. [REDACTED] 10/25/99) This deletion created the inaccurate perception that the AI had exhausted leads at locations that were never ever visited, such as Pantex and SNL, and that the review was more thorough than it actually was at those locations that were visited. [REDACTED] had begun the elimination of SA [REDACTED] investigative plan by largely excluding SA [REDACTED] various lists of things to do in his signed AI, marked "Pending." [REDACTED] By removing the plan, OEI oversold the AI as a more thorough and comprehensive document than it actually was.

(u)
(S)

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SA [REDACTED] was aware of the selection of the Lees and [REDACTED] as suspects in the March 1996 AI drafts. The focus on these three individuals was premature, but occurred within the context of a draft AI report including his investigative plan. This focus was certainly less problematic. Even [REDACTED] signed AI report, concluding that Wen Ho Lee was the *only* individual identified during the AI with opportunity, motive and legitimate access, while certainly overstated, does not trigger the problem caused by the removal of SA [REDACTED] investigative plan from the AI report. It is the removal of the investigative plan that makes the selection of one suspect particularly misleading and inappropriate.

b. (u)
(S) The Lees' selection as "the most logical suspects"

(S) [REDACTED] signed AI report, marked "Pending," explicitly cautioned that no DOE personnel were excluded as "possible suspects in this matter. The investigative team must conduct records reviews etc., at several other locations before this inquiry is concluded." [REDACTED]

b1

[REDACTED] DOE 00151. Although the AI report that went to the FBI states that [REDACTED]

no DOE personnel are excluded as possible suspects, the additional language discussing the additional reviews that must occur at several other locations was removed. In its place, the following appears: "However, based upon a review of all information gathered during this inquiry, Wen Ho LEE and his wife, Sylvia appear the most logical suspects.

[REDACTED] ³⁴⁸ (AI at 36) (FBI 00560)

~~(S)~~ ~~(S)~~
c. ~~(S)~~ The removal of [REDACTED] name

~~(S)~~ ~~(S)~~ The AI transmitted to the FBI removed [REDACTED] from the list of preliminary suspects. Instead, [REDACTED] is listed as an anomaly "not believed to be directly related to this inquiry." (AI at 40) (FBI 00564) There was no subsequent investigative activity during the AI to justify or explain [REDACTED] removal from the suspect class and the final AI report does not reflect any basis for removing [REDACTED] from the investigator's "initial 'scrub' of LANL personnel." (DOE 00151) Without further investigative input, [REDACTED] was summarily excluded as a suspect, leaving the Lees as the only highlighted suspects in the final report. There is no explanation why [REDACTED] thought to have had access for half a year, was not equally capable of compromising the classified information. The point here is not to suggest that [REDACTED] may be responsible for the compromise at issue. Indeed, it was recently established that [REDACTED] did not even accept [REDACTED] "Q" clearance and, therefore, did not have the access which the AI thought [REDACTED] had. [REDACTED] 9/16/99) Rather, the point here is that by excluding [REDACTED] for no *legitimate* reason, it appears that [REDACTED] was excluded for an *illegitimate* reason: to make the case against the Lees look stronger.³⁴⁹

b1

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b6, b7C

~~(U)~~
³⁴⁸ (U) Like the other edits, we attribute this change [REDACTED] 10/25/99)

However, it must be noted that the first time the phrase "the most logical suspect" appears is not in the AI report transmitted to the FBI but in a May 2, 1996 memo from [REDACTED] (DOE 2407)

~~(U)~~
³⁴⁹ (S) One other point that should be made about the signed [REDACTED] AI and the final AI delivered to the FBI concerns Rocky Flats, a possible location of the compromise. The AI report transmitted to the FBI discusses an unsuccessful effort to

G (U) Consequences

FBI
DOE
b6, b7c

(u)
(8) Despite serious deficiencies in DOE's final AI report, it was accepted *without reservation* by the FBI. SSA [REDACTED], who had received the unfinished draft containing much of SA [REDACTED] investigative plan, never reacted to those suggestions. There is no evidence anyone within the FBI ever sought clarification or further input from SA [REDACTED] after the full FCI investigation was opened, and only the final AI [REDACTED] to SSA [REDACTED] was disseminated to the field. (See AQI 887-954) OEI's selection of the Lees was simply accepted by the FBI.³⁵⁰ The FBI instituted a full investigation on the Lees on May 30, 1996. No other investigation was instituted, or even contemplated.

(u)
(8) The selection and focus on just one suspect [and his wife] was wrong. It is not that Wen Ho Lee should not have been a suspect. It was that Wen Ho Lee should not have been the *only* suspect.

(S/P) After all, the case against Wen Ho Lee could hardly be termed overwhelming. [REDACTED] acknowledged this himself in a memo he sent to [REDACTED] seven weeks before the AI was delivered to the FBI: [REDACTED]

b1

[REDACTED] 416-417) [REDACTED] added: "At this point in this investigation, we have not examined all available data, conducted all necessary interviews etc., to rule out or identify

FBI
DOE
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b7c

obtain travel and visitor records for the Rocky Flats Field Office ("RF"). There is no recommendation that further investigation occur at that location. (AI at 36; FBI 00560) SA [REDACTED] recommendation for future investigative steps at Rocky Flats was included in [REDACTED] signed AI report but [REDACTED]

b1

³⁵⁰(8) The AI report was accepted and relied upon by the FBI without reservation or criticism until ASAC Will Lueckenhoff arrived in Albuquerque and raised serious concerns over the document. ASAC Lueckenhoff read the AI report and concluded it was "a piece of junk." The field [REDACTED] could easily be three hundred suspects. (Lueckenhoff 9/12/99)

additional/possible suspects. It is therefore, premature to draw any conclusion, based solely on circumstantial evidence thus far obtained, that Mr. & Mrs. Lee are in fact, the perpetrators of the compromise."⁵⁵¹ (Id.)

(S/N) A full investigation of Wen Ho Lee was warranted. There were substantial reasons - reasons known to DOE during the AI - to make Lee a subject of appropriate suspicion: (1) He had significant contact in the early 1980's [REDACTED] (2) He had traveled twice to the PRC, where he had contact with PRC nuclear scientists; (3) He did have access [REDACTED] (4) SA [REDACTED] knew he was already the subject of an ongoing FBI preliminary inquiry; (5) His wife, Sylvia, had insinuated herself as a host for various PRC delegations; and (6) [REDACTED]

(b)(1)

Moreover,

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⁵⁵¹ (S/N) [REDACTED] reservations were soon allayed. After writing the memorandum to [REDACTED] dated April 5, 1996, which merely characterizes the Lees as "logical suspects," [REDACTED] went off to LLNL to conduct his review of records and to meet with [REDACTED]. It was during this trip that the consequence of the mischaracterization of the predicate would become excruciatingly apparent. [REDACTED]

DOE
(b)(6)
(b)(7)(C)

(b)(1)

[REDACTED] (FBI 559) The answer he provided [REDACTED] was March 1990 - [REDACTED] (FBI 560) [REDACTED] actually thought he was answering a different question. See Chapter 6.) Thus, through this one terrible misunderstanding as to the essential nature of the predicate, an entire national laboratory and all its employees were excluded. [REDACTED] returned to Washington and, two weeks later, wrote a new memorandum to [REDACTED] this time characterizing Wen Ho Lee as the "most logical suspect." (DOE 2407)

Wen Ho Lee's name had surfaced repeatedly during the course of the AI. See Section "G" of this chapter.⁵²²

(u)
(8) But Wen Ho Lee should never have been the *only* suspect. To suggest otherwise is to accept [REDACTED] erroneous statement, in both the signed AI, marked "Pending," and in the AI transmitted to the FBI, that DOE had "exhausted all logical 'leads' regarding this inquiry" that it was legally permitted to accomplish. (AI at 38; FBI 562) This was not only wrong but misleading. Coupled with [REDACTED] of SA [REDACTED] investigative plan, the message communicated to the FBI was that the FBI need look no further within DOE for a suspect. Wen Ho Lee was its man. That the FBI should never have accepted this message, *as is*, does not excuse the fact that it was given in the first place.

FBI
DOE
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⁵²² (S/NF) It had surfaced, but apparently not sufficiently for the AI investigators to be explicitly informed by the FBI [REDACTED] b1
[REDACTED] There were hints of this. For example, on July 5, 1995, LLNL [REDACTED] told [REDACTED] that former FBI SA [REDACTED] had interviewed [REDACTED] several times about [REDACTED] (DOE 3208) [REDACTED] [REDACTED] 10/25/99) [REDACTED] and he says he didn't know it. (Id.) DOE's Ed Curran says it was "outrageous" that the AI investigators had not been informed of this. (Curran 8/31/99)

(S/NF) Certainly, the investigators should have been told about this, and SA [REDACTED] - who was quite familiar with [REDACTED] and was also familiar with the work SA [REDACTED] and [REDACTED] were doing on the AI - should have been the one to tell them. Nevertheless, [REDACTED] it is hard to imagine that it would have made much of a difference. Had [REDACTED] occurred at the *behest* of the FBI, that would obviously be of significance. But it was just the reverse [REDACTED]

(S/NF/RD) The exclusive focus on Lee was only one of the problems with the AI. The other was its mischaracterization of the predicate. KSAG's written assessment, dated September 8, 1995, was reaffirmed on May 17, 1996 during a briefing to Deputy Secretary Curtis [REDACTED] KSAG identified [REDACTED]

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[REDACTED] Yet that is precisely how the compromise is characterized in the AI transmitted to the FBI - just 11 day after the KSAG briefing to Curtis. (FBI 526) [REDACTED]

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This inaccuracy led to fundamental errors in the focus of the AI. [REDACTED]

[REDACTED] That question would have yielded a far broader array of potential suspects.

(u)

(S/NF) The investigators who conducted the AI were not aware of the inaccurate predicate relied upon during their inquiry. [REDACTED] of the inaccurate predicate contained in the final AI report. [REDACTED]

006
b6, b7C

That begs the question.

[REDACTED] The AI represented a formal communication to the FBI of both predicate and suspect. The FBI was not present during KSAG's evaluation of the intelligence, nor did [REDACTED] The FBI had been briefed [REDACTED]

553 (u)
(S)

scope of the compromise on October 31, 1995, but that briefing was just as misleading as the AI itself. See Chapter 6.

(21)
~~(S/AF)~~ But to say that DOE misled the FBI as to the predicate, and to say that DOE improperly focused its conclusion only on Wen Ho Lee, is only to describe half the problem. The other half was the FBI's unfortunate and unwarranted acceptance of DOE's description of the predicate, and its unhesitating and unquestioning acceptance of DOE's identification of Lee as "the most logical suspect."

DOE
bb
b7c

(21)
~~(S)~~ Fundamental to any investigation is a solid understanding and appreciation of its predicate. The predicate is the foundation for any subsequent investigation. The FBI failed to confirm, or even make a serious effort to record, the predicate after receiving the final AI report. The three interviews that took place in September 1996, [REDACTED] [REDACTED] were not remotely sufficient for a case of this magnitude. There were references in [REDACTED] FD-302 that, if pursued, could have led the FBI to the discovery of the problem with the predicate. They were not pursued. Similarly, the FBI was aware of [REDACTED] KSAG, and [REDACTED] another KSAG member, yet it never interviewed them. The FBI failed to ask for any written report that might have been generated at the conclusion of KSAG's review even though it knew by September 1996 that the KSAG had generated a set of "bullets" summarizing its conclusions.⁵⁵⁴ In the same manner, the FBI uncritically accepted DOE's identification of Wen Ho Lee as *the* suspect. This act of deference to DOE is even more inexplicable than its acceptance of DOE's characterization of the predicate. After all, questions concerning the predicate required outside expert assistance. On matters related to the identification of a suspect in a counterintelligence investigation, the FBI was the expert.

~~(S/AF)~~ The AI, in short, was a deeply flawed product, whose shortcomings went unrecognized and unaddressed due to the FBI's own inadequate investigation. Had either the FBI or DOE done what it should have done, the FBI could have been investigating in the year 1996 what it is now investigating in the year 2000: the

⁵⁵⁴ (21)
~~(S/AF)~~ The bullets were explicitly referenced in a "Kindred Spirit" chronology created by DOE and given to the FBI on September 16, 1996. (FBI 674)

b1

[REDACTED] As to that, Wen Ho Lee was an appropriate subject of investigation. But, surely, he was not the only one.

H. (U) The recent racial and ethnic allegations against the Administrative Inquiry

(U) Allegations of racial bias have been made in the media to explain the AI reports' selection of Wen Ho Lee. These allegations have been largely, although not exclusively, attributed to Robert Vrooman former Contract Counterintelligence Officer (CCIO) for LANL.⁵⁵⁵ Vrooman's allegation is that Wen Ho Lee was targeted based on his ethnicity.⁵⁵⁶

(u)

~~(S/NF)~~ The AI is based upon a flawed predicate and it *does* make a premature selection of Wen Ho Lee as the sole suspect. The lack of a methodical and thorough investigation into the compromise of classified information creates a vacuum that invites

⁵⁵⁵ (U) See Far Eastern Economic Review, "Wen Ho Lee: A Witchhunt?" January 20, 2000 ("Vrooman . . . said Lee was singled out because of his ethnicity"); Washington Post, "The Federal Page," December 20, 1999 ("Vrooman said federal investigators targeted Lee . . . largely because he was a Chinese American"); Chicago Sun-Times, "Ousted Nuke Expert in Legal Limbo," September 23, 1999 ("Vrooman . . . stated publicly that Lee was unfairly singled out because of racial bias.").

~~(S)~~
~~(U)~~
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DOE b6
FBI b7c

b1

[REDACTED]

such allegations. The situation is made worse by a poorly written final report with numerous inconsistent statements as well as unsubstantiated assertions. It is very difficult to defend such a woefully inadequate and cursory investigation. Nevertheless, the AGRT has seen no evidence that the selection of Wen Ho Lee was based upon an investigation of Chinese Americans to the exclusion of any other group of potential suspects. The AI had many serious problems. Racism was not among them.

I. (U) How Wen Ho Lee came to be identified as a suspect

(U) It is obviously critical to the resolution of an accusation of "ethnic targeting" to examine just how it was that Wen Ho Lee came to be suspected in the first place.

DOE
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(S/NF) The first reference to Wen Ho Lee's name in OEI's "Kindred Spirit" paperwork is on June 6, 1995, just days after Trulock received the memorandum from [REDACTED] that set KSAG into motion. Lee's name appears on a handwritten note⁵³⁷ which appears to have been made in connection with a meeting that day between Trulock, [REDACTED] (DOE 1865, 2038, 1850-1852) A number of other names are listed on the note. These names are not restricted to Chinese surnames. (DOE 1854)

DOE
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(S/NF) The second recorded reference to Wen Ho Lee's name was during a STU III telephone conversation between [REDACTED] and LLNL [REDACTED] on July 5, 1995. [REDACTED] identified four names in this conversation relevant to compromises to the PRC. These names included [REDACTED] and Wen Ho Lee. Listed under [REDACTED] summarized [REDACTED] information:

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(S/NF) Friend of [REDACTED] activities. [REDACTED] visited [REDACTED] on numerous occasions at LLNL. [REDACTED] was assigned to LANL in weapons design work. Trips took place in early 1980-81. [REDACTED] had numerous

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⁵³⁷ (U) Neither [REDACTED] nor [REDACTED] could identify whose handwriting is on the note. [REDACTED] (2/23/00)

DOE
FBI
b6, b7c

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~~TOP SECRET~~ [REDACTED]

personal contacts with PRC national on a fairly frequent basis, also with Taiwanese persons. His wife Sylvia Lee also had frequent contacts with PRC Nationals and seemed to be a magnet for PRC post Doc's assigned to LANL, where she worked in ES&H related fields - no weapons work. SA [REDACTED]

[REDACTED]

DOE-03208.

(u)
(S/NF) This document is extremely significant. By tying Wen Ho Lee to the subject of a prior FBI counterintelligence investigation, it became inevitable that Wen Ho Lee would always be at or near the top of the suspect list.

(u)
(S/NF) On or before October 31, 1995, if not before, SA [REDACTED] also became aware that Wen Ho Lee was the subject of an ongoing preliminary inquiry being conducted by SA [REDACTED]. Indeed, SSA [REDACTED] and SA [REDACTED] asked SA [REDACTED] to avoid interviewing Wen Ho Lee because he might be a suspect in the AI.⁵⁵⁸

(S/NF) In December 1995, Wen Ho Lee's name came up again, this time from LLNL scientist [REDACTED]. During SA [REDACTED] and [REDACTED] December 1995 trip to LLNL, [REDACTED] shared his own mental list of problem employees with the investigators. When interviewed in 1999, [REDACTED] could only recall providing the investigators Wen Ho Lee's name. He raised this name, and maybe others, because of Lee's contacts with [REDACTED].

⁵⁵⁸ (u)
(S) SA [REDACTED] wrote a memo to the file concerning this communication: "Lee could be the subject at some point of Albuquerque case 'Kindred Spirit'.... Because of this possibility, SA [REDACTED] requested that no interviews of Lee be conducted at this time. It is noted that SA [REDACTED] will be conducting a review, along with DOE-OCI, in efforts to identify a 'Kindred Spirit' subject. Once SA [REDACTED] completes his review, Albuquerque will make a determination as to future investigation of Lee." (AQI 02978 to AQI 02979)

~~TOP SECRET~~ [REDACTED]

FBI, OAK
b6, b7c

~~TOP SECRET~~ [REDACTED]

(S/NP) In February 1996, Wen Ho Lee's name came up again and this time, not a little bit ironically, from [REDACTED] [REDACTED] recalls that at some point during SA [REDACTED] and [REDACTED] trip to LANL in February 1996 for the purpose of reviewing LANL employee records, [REDACTED] mentioned the Lees and [REDACTED] to SA [REDACTED] and b1 [REDACTED]. He recalled they were very interested in the information. [REDACTED] said he mentioned the Lees after seeing their names on two lists that the investigators were compiling concerning LANL employees who had traveled to China and those who had significant contact with Chinese visitors to LANL. "I saw the Lees on the list. He should have been on the list. I was probably responsible for Lee's name coming up." [REDACTED] (9/15/99) [REDACTED] conceded that the Lees were the only names he raised with SA [REDACTED]. He did not identify any other LANL employee or share information concerning any other name on either list. The specific information shared concerning the Lees involved [REDACTED]

[REDACTED] and the 1982 contact between Wen Ho Lee and [REDACTED] b1 [REDACTED] (9/15/99)⁵⁶⁰

(S/NP) In short, Wen Ho Lee's name came to the AI's investigators' attention repeatedly and it did so *not* because he was a Chinese American but for two principal reasons: (1) Wen Ho Lee's involvement with [REDACTED] and (2) the existence of an ongoing PI on Lee.

⁵⁵⁹ (S) This is corroborated in part by [REDACTED] and SA [REDACTED] notes of the February 13, 1996 meeting at LANL. [REDACTED] (00409; FBI 15869) Both sets of notes identify Wen Ho Lee and his wife Sylvia Lee. [REDACTED] notes record that [REDACTED] [REDACTED] (00409)

b1 ⁵⁶⁰ (S/NP/RD) [REDACTED] claims he had a second meeting with [REDACTED] the same day [REDACTED] thought it might have been a joke, which is how he took it at the time since he took no action after hearing the comment. [REDACTED] (9/15/99) [REDACTED] denies ever making this comment. [REDACTED] (10/25/99)

~~TOP SECRET~~ [REDACTED]

DOE b6
b7c

~~TOP SECRET~~ [REDACTED]

(u)
2. (S) [REDACTED] June 1995 investigative plan

(u)
(S/NF) At first blush, the claim of ethnic targeting might appear to find support in an investigative plan written by [REDACTED] in June 1995. In part the plan reads as follows:

(u)
(S/NF) An initial consideration will be to identify those US citizens, of Chinese heritage, who worked directly or peripherally with the design development. (NOTE: This is a logical starting point based upon the Intelligence Community's evaluation that the PRC targets and utilizes ethnic Chinese for espionage rather than persons of non-Chinese origin.)

(DOE 03206)

(u)
(S/NF) There are two reasons, however, why this memorandum does not support an allegation of racial bias: First, [REDACTED] proposal was never implemented. The AGRT is not aware of any review having been conducted that focused exclusively on Chinese Americans. Second, to the extent that [REDACTED] was simply acknowledging the fact that the PRC specifically targets ethnic Chinese for espionage purposes, that point was consistent with the view of veteran FCI investigators.⁵⁶¹ [REDACTED] 2/23/00; [REDACTED] DOE b6 b7c

(U) The AGRT would also note the existence of a "Note to File" dated November 15, 1995, concerning a [REDACTED] Deputy Secretary Charles Curtis on China's Nuclear Weapons Program. It contains the following statement: "Curtis noted that there are seven Chinese restaurants in Los Alamos." We have no idea what this statement means, why it is in this memorandum, or whether it was even said. Curtis does not recall saying it. (Curtis 4/11/00) We do not read it so to suggest that DOE intended to focus its inquiry on ethnic Chinese.

⁵⁶¹ (u)
(S/NF) Even [REDACTED] conceded that he understood that the PRC targeted Chinese Americans. [REDACTED] 9/15/99

~~TOP SECRET~~ [REDACTED]

3. (U) The AI's acquisition of names

FBI, DOE
b6, b7C

(U) The manner in which [REDACTED] and SA [REDACTED] acquired their universe of potential suspects is also indicative of a lack of targeting of ethnic Chinese. Records were collect based upon those with access to W-88 information, those who traveled to the PRC and those who hosted PRC visitors. Under the protocol established to guide the inquiry, the investigators reviewed every file. No group of files was ever assembled consisting of only Chinese American employees. Nor were the records subjected to a filter to extract Chinese Americans. [REDACTED] and SA [REDACTED] explained that while they were familiar with the PRC's propensity to target ethnic Chinese, they did not exclude anyone from their preliminary review. (See [REDACTED] 2/23/00; [REDACTED])

DOE
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b7C

4. (S) The final AI report transmitted to the FBI

(S) (S) The final report includes suspect lists generated at LANL and LLNL. Together these lists identify thirty-two individuals. The composition of these lists do not suggest that the AI improperly focused upon Chinese Americans. While the lists do not give an individual's race, they do include each individual's place of birth. Other identified factors are race neutral, such as clearance level, marital status, dates of employment and such. [REDACTED]

(b)(1)

b1

[REDACTED] Of the twenty LLNL employees also identified in the body of the report, six were born in China (including one United States citizen born to United States State Department employees), one in Taiwan, one in Hong Kong, one in Germany, one in Japan, one in Canada and the remaining nine in the United States. Significant investigative themes are prominent among the identified factors given for each listed employee, such as employment problems, divorce, security infractions, failed polygraph examinations, possible prior affiliation with the Communist Party and extensive foreign travel and foreign connections.

DOE
b6
b7C

(S) [REDACTED] did advise the AGRT of his particular concern that the AI's short list of [REDACTED] excluded persons who, in [REDACTED] opinion, should have been included. The only name [REDACTED] could identify when interviewed by the AGRT was [REDACTED]. He described [REDACTED] as a [REDACTED] in that [REDACTED]

(b)(1)

DOE
b6
b7c

[REDACTED]

FBI
DOE
b6
b7c

(8) It is not clear to the AGRT why [REDACTED] did not make the list [REDACTED] b1
But this much can certainly be said: (1) [REDACTED] is listed in one of the AI attachments as a LANL employee who [REDACTED] and had "[m]oderate access to weapons data." (DOE 91); and (2) Given the numerous and substantial inadequacies of the AI, and its many gaps, the omission of a particular name can hardly be attributed to racial bias.

5. (U) Other indications of a lack of racial bias

(U) The AGRT has conducted numerous interviews of individuals who had contact with SA [REDACTED] and [REDACTED] during their work on the AI. None indicated evidence of racial bias.⁵⁶³

(U) The investigators themselves, [REDACTED] and SA [REDACTED] denied [REDACTED] SA [REDACTED] noted that he never observed any such behavior on [REDACTED] behalf and felt the work in support of the AI was done in a professional manner.

[REDACTED] 12/14/99)

based upon his efforts to deflect attention from his [REDACTED]

⁵⁶² (SAR/7RD)

emphasized that [REDACTED]

b1

He believes that Wen Ho Lee might have [REDACTED]

⁵⁶³ (U) These interviews included those of [REDACTED]

FBI, DOE
b6
b7c

Doc
FBI 66, b7c

~~TOP SECRET~~ [REDACTED]

[REDACTED]

~~(S)~~ ~~(S)~~ (S) Finally we would note that the AGRT interviewed SA [REDACTED] the agent assigned to conduct the preliminary inquiries on the other [REDACTED] b1 identified in the body of the AI report. SA [REDACTED] is an experienced agent with [REDACTED] in the FBI including time on both the Inspection Staff and Administrative Summary Unit which adjudicates Office of Professional Responsibility misconduct investigations. SA [REDACTED] indicated that he is not aware of, nor has he seen any evidence of, ethnic bias in the selection of [REDACTED] ⁵⁶⁴

b1

FBI
66, b7c 1

⁵⁶⁴ (2) (S) SA [REDACTED] own criticism of the AI report's selection of [REDACTED] b1 stems from the report's presumption that a "Q" clearance and employment within a LANL division automatically means the subject had actual access to classified information on the W-88. This assumption is inaccurate.

~~TOP SECRET~~ [REDACTED]