

~~TOP SECRET~~ [REDACTED]

CHAPTER ONE

(U) INTRODUCTION, EXECUTIVE SUMMARY, MISSION STATEMENT, METHODOLOGY, AND ACKNOWLEDGMENTS

A. (U) Introduction

~~(S)~~ From 1982 to 1984, from 1994 to 1995, and from 1996 to 1999, Wen Ho Lee was the subject of Federal Bureau of Investigation ("FBI") counterintelligence investigations. The first of these investigations was competently, professionally and ably conducted. The others were not.

~~(S)~~ This report is the record of the FBI's investigations of Wen Ho Lee over the course of these two decades. For one critical time period, it is also the record of the Department of Justice's own direct and substantial involvement in the Wen Ho Lee investigation, an involvement that, like the investigation from which it arose, was mishandled. Because this is a report about a matter arising out of an allegation presented by the Department of Energy ("DOE"), this report is also, naturally, the record of the interaction between the FBI and DOE. Among the most disturbing judgments reached by the Attorney General's Review Team ("AGRT") are those concerning significant and material misrepresentations made by DOE personnel to the FBI at the initiation of this investigation.

(U) The primary focus of this report is on the investigation of Wen Ho Lee conducted between 1996 and 1999. This was an investigation that from its first moments, indeed from its very first moments, went awry and never, in any real sense, recovered its equilibrium. It was an investigation riven with problems, and entirely unable to make its own breaks. While the handling of this investigation was principally an FBI responsibility and, hence, the *mishandling* of this investigation was principally an FBI failure, the Department of Justice, too, failed in *its* responsibilities, and did so on a matter of grave consequence.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U) Some of the problems we have identified in this report are specific to the Wen Ho Lee investigation and are not likely to reoccur. Some of the problems, however, are certain to reoccur if they are not recognized and remediated, and we have made numerous recommendations intended to address these structural and procedural flaws.

(U)
(S/NF) The Wen Ho Lee investigation involved allegations of espionage as significant as any the United States Government is likely to face. It required an appropriate, aggressive and effective response. It did not get such a response from any of the departments and agencies whose conduct we have examined, and the gravity of this failure may yet not be fully known. If there is a lesson to be learned from this, and we certainly believe there is, it is at least this: We must do better.

B. (U) Executive Summary

(U) What follows is a brief outline of the contents of this report.

CHAPTER ONE

(U) This chapter contains the introduction to this report, an Executive Summary, the AGRT's Mission Statement, the eleven questions posed by the President's Foreign Intelligence Advisory Board, the methodology of the AGRT's work, and certain acknowledgments.

CHAPTER TWO

(U)
(S) This chapter describes the 1982-1984 investigation of Wen Ho Lee, an investigation that the AGRT finds to have been competently, professionally and aggressively pursued. However, the FBI failed formally to advise DOE of specific derogatory information concerning Wen Ho Lee which was acquired in the course of that investigation, and which might have led DOE to revoke Lee's security clearance.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

CHAPTER THREE

b1 | ~~(S/NF)~~ This chapter describes [REDACTED]

CHAPTER FOUR

~~(u)~~
~~(S)~~ This chapter consists of a comprehensive overview of the FBI's handling of the Wen Ho Lee investigation from 1994 to 1999, both within the National Security Division ("NSD") and at FBI Albuquerque Division ("FBI-AQ").

~~(u)~~
~~(S/NF)~~ This chapter concludes that the FBI's counterintelligence investigation of Wen Ho Lee, in virtually every material respect, was deeply and fundamentally flawed. Among the matters addressed in this chapter are the following: (1) The Wen Ho Lee investigation was never a high priority matter within either NSD or FBI-AQ. Indeed, for much of the investigation, it was the single lowest priority in FBI-AQ's National Foreign Intelligence Program, which was, itself, the fourth lowest priority of the Division. (2) The choice of the first two case agents responsible for this investigation was problematic and unfortunate. Although each agent can be credited with some accomplishments, neither agent was the proper choice for a case of this magnitude, importance and inherent complexity. (3) The investigation was never accorded the resources which the underlying allegations warranted and should have dictated. (4) Two agents were sent by FBI Headquarters to FBI-AQ specifically to support the Wen Ho Lee investigation. FBI-AQ diverted both agents to other assignments. (5) Frequent, unnecessary and inappropriate delays characterized the Wen Ho Lee investigation. While FBI-AQ is principally responsible for these delays, NSD is accountable for several unfortunate and avoidable delays. (6) At every level of management at FBI-AQ from May 1996 to August 1998, there was a failure to provide proper supervision to the case and its case agents. The SAC responsible for the investigation for a substantial period of time had so little involvement in the investigation that he was not even aware of the underlying predicate until long after he left FBI-AQ. Both of the Supervisory Special Agents responsible for the direct supervision of the case failed to supervise the case or the agents effectively or properly. (7) NSD, too, bears a major share of responsibility for the inadequacies of this

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

investigation. Initially, it demonstrated an unreasonable reluctance to become involved in the investigation. When it did become involved, NSD inappropriately deferred to the judgment of DOE on matters that lay at the core of the FBI's own investigative responsibilities. As the investigation proceeded, NSD became keenly aware of FBI-AQ's poor handling of the case, yet it took no effective measures to fix the problem, even when it was given an explicit opportunity to do so. Instead, it simply attempted to run the case from FBI Headquarters, an approach that was unmanageable from the start and which would severely handicap the investigation. In this chapter, the AGRT identifies nine respects in which NSD failed appropriately to advance and manage this investigation.

CHAPTER FIVE

(U)
(S) This chapter describes FBI-AQ's inadequate handling of the preliminary inquiry on Wen Ho Lee in 1994 and 1995, a missed opportunity of critical significance.

CHAPTER SIX

~~(S/RD/NF/OC)~~ This chapter describes: (1) the operations of the Kindred Spirit Analytical Group ("KSAG"), a scientific panel convened by DOE in 1995 to assess certain developments in the PRC's nuclear weapons program; (2) KSAG's judgment that a limited compromise of United States Government classified nuclear weapons data had been established; (3) [REDACTED]

b1 | [REDACTED] (4) the FBI's failure properly to investigate the predicate for itself; and (5) the Central Intelligence Agency's ("CIA") September 1997 assessment which might have, but unfortunately did not, lead the FBI to recognize that there was a fundamental problem with its understanding of the predicate for the Wen Ho Lee investigation.

CHAPTER SEVEN

(U)
(S) This chapter examines the DOE Administrative Inquiry, an inquiry that culminated in the issuance of a formal report to the FBI which launched the full investigation of Wen Ho and Sylvia Lee.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

~~(S/NF/RD/OC)~~ [REDACTED]

b1

The AGRT further concludes that misleading representations were made in this report which invited the FBI to focus its investigative attention exclusively on Wen Ho and Sylvia Lee. The AGRT also concludes that the FBI contributed materially to the problems with the Administrative Inquiry by its failure properly to investigate either the predicate for the investigation or the means by which the Administrative Inquiry came to judge Wen Ho and Sylvia Lee as "the most logical suspects." Finally, the AGRT concludes that recent allegations of racial bias in the selection of Wen Ho and Sylvia Lee are without merit.

CHAPTER EIGHT

~~(S)~~ ^(U) This chapter examines the first ten months of the full investigation of Wen Ho Lee, and concludes that three mistakes were made immediately that would have dramatic and unfortunate consequences for the FBI's investigation. The first was the choice of case agent. The second was the assignment of this important and complex matter to just one agent who could not even give it his undivided attention. The third was the initiation of a problematic and, at times, dysfunctional relationship between NSD and FBI-AQ as to who was in charge of the Wen Ho Lee investigation.

CHAPTER NINE

~~(S)~~ ^(U) This chapter examines the FBI's profoundly consequential, and potentially catastrophic, failure to gain access to Wen Ho Lee's computer files in 1996, or even earlier. This chapter concludes that: (1) Lee's computer files could have been searched by the FBI at any point in 1996 through 1998, or even in 1994 or 1995 in connection with the preliminary inquiry. (2) Lee had no justifiable expectation of privacy that precluded such a search. (3) The FBI's failure to act was a product of missed opportunities, bad communication between DOE and the FBI, worse communication within the FBI itself,

~~TOP SECRET~~ [REDACTED]

inadequate and inaccurate legal advice rendered to the field, undue caution and lack of aggressiveness on the part of FBI-AQ, and a complete failure to recognize the critical importance of Lee's work with, and access to, highly classified computer software and systems.

(U)
(S) The AGRT concludes that this failure permitted Wen Ho Lee's computer misconduct to go unrecognized for years after it should have been uncovered; it permitted critical nuclear weapons secrets to remain unprotected on LANL's open computer systems; and it permitted Lee to download in 1997 some of our nation's most prized nuclear weapons secrets.

CHAPTER TEN

(U)
(S) This chapter describes the months leading up to the submission of a FISA letterhead memorandum to OIPR, a time during which the FBI assembled critical information for its submission but failed to assemble or acquire other information that could have fundamentally altered OIPR's perception of the application's legal sufficiency.

CHAPTER ELEVEN

(U) This chapter describes the FBI's unsuccessful efforts in the time period of June 1997 to August 1997 to persuade OIPR that it had established a sufficient factual basis for a FISA order in the Wen Ho Lee investigation.

(S) The AGRT concludes: (1) OIPR was wrong: Draft #3, as the final FISA draft would come to be called, did establish probable cause; it should have resulted in the submission of a FISA application to the FISA Court and the issuance of a FISA order. (2) Draft #3, however, repeated DOE's significant misrepresentations to the FBI concerning the predicate and, therefore, knowing what we know today, Draft #3 could not be submitted to any court. (3) A major factor contributing to OIPR's rejection of the application was the FBI's failure to plead exceptionally important information, known to the FBI, which would have substantially strengthened the application. This included the omission of two facts concerning a critical 1994 incident that, alone, might have

~~TOP SECRET~~ [REDACTED]

b1 persuaded OIPR that the application was legally sufficient. (4) None of the arguments against probable cause, individually or collectively, were sufficient to justify OIPR's rejection of the application. (5) A contributing factor in OIPR's rejection of the application was OIPR's unduly constrained view of what constitutes "currency." (6) The FBI did not withhold any material exculpatory information from OIPR. In particular, it properly described [REDACTED] (7) OIPR's destruction of records was inappropriate, unwarranted and harmful.

CHAPTER TWELVE

(U) This chapter describes the Department of Justice's August 1997 handling of the FBI's "appeal" of the adverse decision by OIPR on the Wen Ho Lee FISA application.

(U) (S) The AGRT concludes the following: (1) The review of the application should not have been assigned to an Associate Deputy Attorney General who, despite his other considerable qualifications and expertise, had almost no prior experience with FISA applications. (2) The Attorney General and the ADAG had significantly different understandings as to the purpose and goal of the undertaking. (3) The ADAG should have met with the FBI, and not just with OIPR, before determining that OIPR's evaluation of the application was correct. (4) The ADAG reached the wrong judgment. The application did meet the probable cause standard. (5) The ADAG should have reported his findings to the Attorney General, who was never advised that the ADAG had decided the matter against the FBI. (6) There was no reason for the FBI to "re-appeal" this matter. It had done so once, to no avail, and it did not know the Attorney General was unaware of the ADAG's resolution of the matter.

CHAPTER THIRTEEN

(U) (S) This chapter describes the aftermath of OIPR's rejection of the FISA application, including an unfortunate four month delay while NSD contemplated a new investigative plan, and the acutely demoralizing effect that the FISA rejection had on FBI-AQ.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U)
(S/NF/OC) This chapter also examines an exceptional opportunity provided to the FBI in September 1997 by the CIA to recognize DOE's fundamental mischaracterization of the predicate, and the FBI's failure to appreciate or act upon this opportunity.

(U)
(S) Finally, this chapter describes Director Freeh's explicit admonishment to DOE, communicated on August 12, 1997 to DOE's Deputy Secretary, that the FBI's investigation of Wen Ho Lee should not in any respect influence or control DOE in its determination as to Wen Ho Lee's continuing access to classified nuclear weapons secrets. Director Freeh's "take that right off the table" statement to DOE was, essentially, ignored by DOE for a year-and-a-half.

CHAPTER FOURTEEN

(U) This chapter describes the events of December 1997 to August 1998, with particular focus on two significant events.

(U)
(S) First, there was the arrival at FBI-AQ of a December 1997 teletype containing NSD's new investigative plan, and FBI-AQ's nearly complete failure to comply with any aspect of the plan, including its several mandatory requirements.

(S) Second, there was the planning and execution of the [REDACTED].
The AGRT concludes the following: (1) There was an astonishing lack of planning in connection with the [REDACTED] converting it into an improvised and impromptu performance. The most basic aspects of the [REDACTED] went essentially unplanned and unscripted. (2) Nevertheless, [REDACTED] The AGRT concludes that it yielded 19 separate items in support of probable cause, [REDACTED]

b1
The [REDACTED] should have resulted in a serious effort by NSD to secure a FISA order. As Chapter 16 indicates, it did not.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

CHAPTER FIFTEEN

b1 | ~~(S/NF)~~ This chapter describes the events of August 1998 to December 1998, a time period principally characterized by the FBI's inability to [REDACTED] This [REDACTED] This inexcusable failure delayed by months NSD's consideration of whether to submit a new FISA application.

b1 | ~~(S)~~ In addition, it was during this time period that DOE's Office of Counterintelligence determined that DOE and its contract polygrapher would interview and polygraph Wen Ho Lee when he returned from Taiwan. DOE's frustration with the pace of the investigation, and its determination to have a final resolution of the Wen Ho Lee matter, was understandable, but NSD and FBI-AQ should never have acquiesced in this decision. [REDACTED]

CHAPTER SIXTEEN

(U) This chapter describes the FBI's second approach to OIPR concerning a FISA order in the Wen Ho Lee investigation.

b1 | ~~(S)~~ The AGRT concludes the following: (1) The [REDACTED] as stated above, warranted a serious and substantial effort on the part of NSD to procure a FISA order and it warranted the issuance of such an order. (2) FBI-AQ agreed with that assessment and submitted to NSD a formal request for a FISA order. (3) Unfortunately, the [REDACTED] unit disagreed with that assessment and viewed the [REDACTED] as a "bust." (4) The [REDACTED] unit did speak with an attorney from OIPR about the [REDACTED] but in no respect was it a genuine effort to obtain a FISA order. In fact, by the time a brief and casual conversation with OIPR took place, NSD had already rejected FBI-AQ's request for an order and had conveyed its rejection to FBI-AQ. The [REDACTED] Supervisory Special Agent ("SSA") who contacted OIPR had one purpose and it was not to persuade

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

b1 | OIPR of the merits of the [REDACTED]. Rather, it was to obtain OIPR's endorsement of the decision that NSD had already made, that the [REDACTED] did not warrant a FISA order. In a meeting which lasted mere minutes, the SSA did not tell the OIPR attorney much more than that [REDACTED] had failed. Naturally, inevitably, the OIPR attorney agreed that there was no basis for revisiting the FISA issue. Thus was lost the FBI's very last opportunity to obtain a FISA order that was likely to be productive. The next day, Lee was interviewed and polygraphed.

CHAPTER SEVENTEEN

~~(S/NF/RD/OC)~~ This chapter examines the significant time period of December 1998 to March 1999. The AGRT concludes the following: (1) In four consequential respects, the December 23, 1998 interview and polygraph of Wen Ho Lee by DOE and Wackenhut demonstrated precisely why the FBI, not DOE, should have been in charge of this proceeding. The most significant of these consequences was Wackenhut's misinterpretation of its own polygraph, which was subsequently repudiated by both DOE's own OCI Polygraph Program Manager, and by the FBI. (2) In addition, during this time period, DOE set what amounted to a 30-day deadline for a resolution of the Wen Ho Lee matter. [REDACTED]

b1 | [REDACTED] (3) A major contributing factor in the creation of this communication was FBI-AQ's erroneous belief that Lee had "passed" the December 23rd polygraph. FBI-AQ did not know that Lee had not "passed" the polygraph because the FBI Polygraph Unit could not make that assessment until after it received the polygraph charts to review. Although FBI-AQ would assert that DOE was to blame for the tardy production of these charts, FBI-AQ was, itself, principally responsible for the FBI not getting the charts at an earlier point in time. (4) When the FBI, itself, did finally polygraph Lee, on February 10, 1999, it did so in a competent and professional manner that illustrated just how important it was to have had the FBI be in control of this process in the first place. (5) The March 5, 1999 FBI interview of Wen Ho Lee was also done in a competent and professional manner, with the assistance of a knowledgeable scientist. Most significantly, at the beginning of this interview, Lee signed a consent form to search his office, a uniquely important event in the life of this investigation, and one that ultimately would lead to Lee's prosecution. (6) The March 7,

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

1999 FBI interrogation of Wen Ho Lee, intended by FBI-AQ to leave Lee "in despair," contained inappropriate and threatening references to electrocution and other matters.

CHAPTER EIGHTEEN

~~(S)~~ ^(U) This chapter addresses one critical issue, the complete failure of the United States Government to restrict Wen Ho Lee's access to sensitive and classified nuclear weapons secrets throughout the course of the full investigation.

~~(S)~~ ^(U) The AGRT concludes the following: (1) Initially, the FBI insisted on Lee retaining his current access to classified information in order to avoid engaging in any conduct which might conceivably alert Lee to the existence of the investigation. In taking this position, the FBI did not consider or seriously explore alternatives to maintaining Lee's access, nor did it acquire any genuine understanding of the risk the United States was taking by keeping Lee in access. (2) On August 12, 1997, Director Frech clearly and explicitly told DOE that it must take any considerations associated with the FBI's investigation of Wen Ho Lee "right off the table." DOE ignored this admonishment and did not alter Lee's access to classified information in any respect until DOE's Ed Curran learned of it and promptly addressed the issue in December 1998.

~~(S)~~ ^(U) The AGRT concludes that there were four major contributing factors to the FBI's and DOE's failure properly and appropriately to address the access issue: first, there was the FBI's reflexive and inaccurate presumption that Lee must remain in access for the FBI to make its case; second, there was DOE's and the FBI's failure to work together to come up with non-alerting alternatives that would have limited Lee's access; third, there was the fact that the FBI and DOE repeatedly made the mistake of focusing on Lee's current work, rather than Lee's current access, a mistake of incalculable significance, as the FBI and DOE would eventually discover; and, fourth, there was a failure to recognize that the need to restrict Lee's access was even more critical than in other counterintelligence cases because the FBI had no surveillance or FISA coverage of Lee's activities. Thus, Wen Ho Lee, the principal subject of an espionage investigation alleging the theft of nuclear weapons secrets, was given both unrestricted access and unmonitored access to additional nuclear weapons secrets.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U)
(S/NF) The FBI's and DOE's failure to address this issue was consequential; indeed, it may have been catastrophic. For almost the entire course of the FBI's full investigation, Lee had unrestricted access to the X Division's vault, a repository of 50,000 classified documents, including documents classified at the Secret Restricted Data level. He had unrestricted access to the X Division's classified computer systems, which contained the "crown jewels" of America's nuclear arsenal. And, in 1997, he created Tape N, one of the most significant downloads of critical nuclear weapons secrets.

CHAPTER NINETEEN

(U)
(S) This chapter addresses the FBI's failure to comply with the mandatory Criminal Division notification requirements of the Attorney General's Procedures for Contacts Between the FBI and the Criminal Division Concerning Foreign Intelligence and Foreign Counterintelligence Investigations, signed by the Attorney General on July 19, 1995.

~~(S/NF/RO/OC)~~ Throughout the course of its investigation, one of the FBI's goals was the criminal prosecution of Wen Ho Lee. The FBI made numerous decisions that would materially affect a potential criminal prosecution, yet the head of the Internal Security Section was not advised of even the existence of the investigation. [REDACTED]

b1 [REDACTED]
Additional reminders of the obligation to notify the Criminal Division came in May 1996, with the receipt of the DOE Administrative Inquiry, again in July 1996, with the FBI's submission of its initial letterhead memorandum to OIPR, and again in June 1997, with the FBI's submission of its FISA letterhead memorandum. Each of these events should have triggered notification to the Criminal Division.

(U)
(S) The AGRT also concludes that OIPR failed in its obligation to notify the Criminal Division concerning the existence of the Wen Ho Lee investigation. OIPR, unlike the FBI, was not under a *mandatory* notification obligation because there was no

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

FISA coverage in place. Nevertheless, it clearly should have recognized the importance of insuring that the Criminal Division was apprised of the existence of this critical investigation.

(U)
(S) The AGRT further concludes that the FBI's failure to notify the Criminal Division was in part a manifestation of a much larger issue, the problematic relationship among the FBI, OIPR and the Criminal Division on matters related to the sharing of intelligence information. That relationship, described in this report by various knowledgeable individuals as "dysfunctional" and "broken," is discussed in the Chapter 20.

(U)
(S) The failure to notify the Criminal Division was consequential in a number of respects. This chapter describes six significant issues in the Wen Ho Lee investigation concerning which the FBI should have consulted the Criminal Division, not only because they affected a potential criminal prosecution but because the Criminal Division could have offered valuable advice.

CHAPTER TWENTY

(U)
(S) This chapter describes the long-term dysfunctional relationship among the Criminal Division, the FBI and OIPR in matters related to intelligence sharing. This is a problem that preceded the Attorney General's July 19, 1995 memorandum; indeed, the memorandum was intended to address the problem. Unfortunately, the memorandum did not succeed in this respect, largely because of OIPR's imposition of unjustified and unwarranted limitations on contacts between the FBI and the Criminal Division. As a result of these limitations, the FBI has come to view contact with the Criminal Division as both unproductive and dangerous: unproductive because of the constraints OIPR has placed on the advice the Criminal Division may provide, and dangerous because of the perception, again fostered by OIPR, that communication with the Criminal Division may jeopardize an anticipated or ongoing FISA.

(U)
(S) It was inevitable that at some point, and in some case, the Department's failure to resolve this problem would adversely and materially affect a specific investigation.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

Unfortunately, that point came in the midst of a critical investigation concerning the compromise of nuclear weapons secrets.

(U)
(S) In October 1999, at the request of the Attorney General, the AGRT proposed to the Attorney General three interim recommendations to address that portion of this problem that relates to the notification and briefing of the Criminal Division about ongoing foreign counterintelligence ("FCI") investigations. The Attorney General responded in January 2000 with a memorandum that measurably expands the extent of notification to the Criminal Division concerning ongoing FCI investigations.

(U)
(S) In this report, the AGRT makes five additional recommendations designed to address the other half of the problem, i.e., the scope of advice that the Criminal Division may provide to the FBI in connection with ongoing FCI investigations with criminal prosecution potential. In addition, the AGRT is providing to the Attorney General a draft of a proposed memorandum which would replace the July 19, 1995 memorandum. It incorporates the substance of the recommendations we propose.

CHAPTER TWENTY-ONE

(U)
(S) The AGRT makes 42 recommendations for the consideration of the Department of Justice and the Federal Bureau of Investigation ("FBI"). These include the eight recommendations, described above, as well as five other recommendations, Recommendations 9-13, which, because they concern ongoing counterintelligence matters, are provided under separate cover. It was a part of our mission to identify "any structural or procedural flaws associated with the handling of national security investigations within the Department of Justice, and among DOJ components, which may have contributed to difficulties in the handling of this matter." These recommendations address the structural and procedural flaws which we have identified.

C. (U) Mission Statement

(U) On May 17, 1999, the Attorney General's Review Team on the Handling of the Los Alamos National Laboratory Investigation was officially constituted and assigned

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

its mission. See Letter from Gary G. Grindler, Principal Associate Deputy Attorney General, to Randy I. Bellows, Senior Litigation Counsel, dated May 17, 1999.

(U) The Mission Statement of the AGRT reads as follows:

(U) The Attorney General's Review Team on the Handling of the Los Alamos National Laboratory Investigation is hereby established. The Review Team shall conduct a review of the Lee Wen Ho investigation and shall report to the Deputy Attorney General and the Attorney General.

(U) The purpose of this review is twofold:

~~(U)~~
~~(S)~~ *First, the Review Team should ascertain the precise facts and circumstances associated with the Department of Justice's and Federal Bureau of Investigation's involvement in the Lee Wen Ho ("Lee") investigation during the time period of 1982 - 1999. This review may include but is not limited to the following matters:*

- ~~(U)~~
~~(S)~~ *the circumstances associated with the initial investigation of Lee in the 1982 - 1984 time period;*
- ~~(U)~~
~~(S)~~ *the investigation of, and contacts with, Lee and his wife, Sylvia Lee, in the time period of 1985 - 1991;*
- ~~(U)~~
~~(S)~~ *the investigative and analytical activities arising out of the suspected unauthorized disclosure to the PRC of nuclear weapon design information;*
- ~~(U)~~
~~(S)~~ *the circumstances associated with consideration as to whether to monitor or search Lee's computer at the Los Alamos National Laboratory;*
- ~~(U)~~
~~(S)~~ *the communications between the FBI and OIPR concerning the FBI's effort to obtain FISA coverage, and OIPR's determination not to approve a submission to the Foreign Intelligence Surveillance Court;*

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

- (U) ~~(S)~~ the internal DOJ review of OIPR's determination not to approve a FISA submission;
- b1 ~~(S)~~ the events of 1998 - 1999, including the [REDACTED] the interview of Lee and the polygraph examination of Lee, and associated interaction between DOJ components and the FBI.

(U) Second, the Review Team should to the extent possible identify any structural or procedural flaws associated with the handling of national security investigations within the Department of Justice, and among DOJ components, which may have contributed to difficulties in the handling of this matter.

(U) The Review team should maintain sufficient contact with the Criminal Division, the United States Attorney for the District of New Mexico, and the FBI to ensure that the Review Team's investigation does not compromise or adversely affect the ongoing criminal investigation involving Lee Wen Ho or his wife, Sylvia Lee.

(U) On June 15, 1999, following the issuance of the report Science At Its Best/Security At Its Worst: A Report on Security Problems at the U.S. Department of Energy by the President's Foreign Intelligence Advisory Board ("PFIAB"), the AGRT was also assigned eleven questions that appear at pages 31 and 34 of PFIAB's report. These questions read as follows:¹

(U) PFIAB Question #1: *Whether the FBI committed sufficient resources, including agents with appropriate expertise, and demonstrated a sense of urgency commensurate with an apparent compromise of classified U.S. nuclear weapons information. See Chapter 4.*

(U) PFIAB Question #2: *Whether the DOJ Office of Intelligence Policy and Review (OIPR) applied an inappropriately high standard to the FBI's request for electronic surveillance under the Foreign Intelligence Surveillance Act (FISA). See Chapter 11.*

¹(U) After each question, the chapter which is responsive to the question is listed.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U) PFLAB Question #3: *Whether the FBI provided to DOJ OIPR all U.S. Government information relevant to an appropriate evaluation of the FBI's FISA request. See Chapter 11.*

(U) PFLAB Question #4: *Why the FBI's FISA request did not include a request to monitor or search the subject's workplace computer systems, particularly since an attorney in the FBI's General Counsel's Office had provided an opinion in 1996 that such monitoring or searching in this case would require FISA authorization. See Chapter 9.*

(U) PFLAB Question #5: *Why the FBI did not learn until recently that in 1995 the subject had executed a series of waivers authorizing monitoring of his workplace computer systems. See Chapter 9.*

(U) PFLAB Question #6: *Whether the FBI adequately raised to the Attorney General the FBI's concerns over the declination of the FISA request. See Chapter 12.*

(U) PFLAB Question #7: *Whether communications regarding the subject's job tenure broke down between DOE, FBI, and Los Alamos. See Chapter 18.*

(U) PFLAB Question #8: *Whether the DOJ OIPR maintained appropriate records concerning FISA requests that were declined. See Chapter 11.*

(U) PFLAB QUESTION #9: *Whether the FBI appropriately relied on technical opinions provided by the DOE? See Chapters 6 and 7.*

(U) PFLAB Question #10: *Why DOE, rather than the FBI, conducted the first polygraph examination in this case when the case was an open FBI investigation. See Chapter 15.*

~~TOP SECRET~~ [REDACTED]

D. (U) Methodology

(U) The AGRT was constituted as a joint effort by the Department of Justice and the FBI to conduct a comprehensive examination of the Wen Ho Lee investigation.

(U) Toward that end, the Attorney General appointed Randy I. Bellows, Senior Litigation Counsel in the Office of the United States Attorney for the Eastern District of Virginia, to lead the AGRT. Two other attorneys were appointed to the AGRT, Ronald L. Walutes, Jr., Assistant United States Attorney for the District of Columbia, and James P. Gillis, Senior Trial Attorney in the Fraud Section of the Criminal Division of the Department of Justice. In addition, the FBI designated Supervisory Special Agent [REDACTED] to serve on the AGRT, and three Special Agents from the Washington Field Office of the FBI were assigned to the AGRT under SSA [REDACTED] direction. They were SA [REDACTED] (Ret.), SA [REDACTED] and SA [REDACTED].²

FBI
b7C
b6

(U) There were two principal components to the AGRT's work.

(U) First, documents were sought and obtained from a wide variety of sources. In total, there were 163 separate productions of document. Principally, the AGRT received documents from FBI Headquarters, FBI-AQ, OIPR, the Offices of the Attorney General and the Deputy Attorney General, DOE Headquarters, and the CIA. Almost all documents received by the AGRT were Bates stamped, and totaled approximately 42,000 pages. This included 22,000 pages of documents from FBI Headquarters alone, and an additional 6,700 pages of documents from FBI-AQ. In addition, the AGRT reviewed approximately 8,000 pages of documents at FBI San Francisco Division, the CIA and elsewhere.

(U) The documents obtained by the AGRT were indexed, catalogued, and analyzed, and often led to requests for additional documents. All told, FBI Headquarters

²(U) It should be noted that SA [REDACTED], SA [REDACTED] and SA [REDACTED] were not responsible for the writing of this report. At the time this report was drafted, SA [REDACTED] had retired and SA [REDACTED] and SA [REDACTED] had returned to their normal duty stations.

FBI
b7C
b6

~~TOP SECRET~~ [REDACTED]

produced documents to the AGRT on 47 separate occasions; DOE Headquarters produced documents to the AGRT on 44 separate occasions.

(U) Second, the AGRT conducted extensive interviews of individuals with relevant knowledge. No one we sought to interview refused our request to be interviewed; some individuals with critical knowledge were interviewed repeatedly. In the course of this inquiry, the AGRT interviewed the Attorney General, the Deputy Attorney General, the Director of the FBI, the Deputy Director of the FBI, the Secretary of Energy, a former Secretary of Energy, two prior Deputy Secretaries of Energy, and a wide array of other senior officials. In total, the AGRT conducted approximately 170 interviews.

(U) For the purpose of reviewing records and conducting interviews, members of the AGRT made nine trips, consisting of four trips to New Mexico, and one trip each to California, New York, Colorado, Florida and Mississippi.

E. (U) Acknowledgments

b1
(S)
(U) This report could not have been written without the consistent and extensive assistance provided by the FBI, both at Headquarters and in Albuquerque. The cooperation we have received from the FBI has been extraordinary, and it has extended throughout the course of the AGRT's work. We particularly wish to express our appreciation for the ongoing assistance provided by the [REDACTED] section, NSD itself, the FBI's Office of General Counsel, the Offices of the Director, Deputy Director and Assistant Director, and the agents and supervisors of FBI-AQ.

(U) We also wish to express our appreciation to the consistent support we have received from the Offices of the Attorney General and Deputy Attorney General. Each office provided the AGRT unrestricted access to review pertinent documents and supported the AGRT in the resolution of the myriad administrative issues which arise in a review of this nature.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U) We also express our appreciation to the CIA's Office of General Counsel for its assistance throughout this process, and to DOE's Office of General Counsel, which processed our numerous requests for DOE documents.

(U) We also wish to note with deep appreciation the uniquely valuable contribution made by the FBI Special Agents assigned to the work of the AGRT. SSA [REDACTED] knowledge of counterintelligence work, his extensive experience in the investigation of espionage cases, and the high degree of respect and trust invested in him at all levels within the FBI, proved absolutely critical to our ability to identify and obtain necessary records and information. SA [REDACTED] provided the AGRT with great insight into DOE operations and devoted many hours of hard work toward the completion of this mission. SA [REDACTED] and SA [REDACTED] participated in the conduct of innumerable interviews, reviewed thousands of documents, and assisted in numerous other ways in the completion of our work.

FBI
b7C
b6

(U) We also wish to express the appreciation of the AGRT to United States Attorney Helen F. Fahey for allowing the AGRT to base its operations out of the offices of the United States Attorney for the Eastern District of Virginia, and for permitting us to draw upon the staff of this office for assistance on frequent occasions.

(U) We especially acknowledge the critical role played in the completion of the work of the AGRT by [REDACTED] a Fraud Section paralegal. [REDACTED] devoted literally hundreds of hours at night and on weekends to the achievement of our objectives. Among her many accomplishments, [REDACTED] was responsible for creating an organizational structure for the indexing, cataloguing, management, analysis and retrieval of our documents. [REDACTED] dedication, hard work, and excellence has also played a critical role in the preparation and assembly of this lengthy report and appendix. We also express our appreciation to Joshua R. Hochberg, Chief of the Fraud Section, for permitting [REDACTED] detail to this project.

1
CRM
b6

(U) We also wish to acknowledge the dedication, hard work and commitment to excellence demonstrated by [REDACTED] the AGRT's sole secretary. [REDACTED] has made an invaluable contribution to our work. We express our appreciation to John Vall, of DOJ's Justice and Management Division, for permitting [REDACTED] to

OIP
b6

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

undertake this detail. We also express our appreciation to [REDACTED] a United States Attorney's Office secretary, for her exceptional assistance and hard work in the final production of this report.

OIP
66

(U) Finally, we wish to express our deep appreciation to United States Attorney Helen F. Fahey, United States Attorney Wilma A. Lewis, and Fraud Section Chief Joshua R. Hochberg for permitting this one-year detail of Mr. Bellows, Mr. Walutes and Mr. Gillis.

F. (U) Several notes about this report

- (U) The Bates numbers used in this report are principally from the following sources:

FBI = FBI Headquarters, including the National Security Division
AQI = FBI Albuquerque Division
AGO = Office of the Attorney General
OIPR = Office of Intelligence Policy and Review
DOE = Department of Energy
EAT = Central Intelligence Agency
DAG = Office of the Deputy Attorney General
SF = FBI San Francisco Division
[REDACTED] = [REDACTED] DOE

DOE
b6, b7c

- (U) The AGRT has relied extensively on its interview reports and hand-written notes made during the course of interviews. Interviews are identified by the last name of the interviewee followed by the date of the interview.
- (U) The four principal sources of classified documents in this report are the FBI, DOJ, DOE and CIA. The Points of Contact for these offices for classification matters are as follows:

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

b1
FBI Charles Middleton, Section Chief 202-324-[REDACTED]
DOJ Associate Deputy Attorney General Craig Iscoe 202-514-6753
DOE Joseph Mahaley, Director of the Office of Security 202-586-6591
CIA [REDACTED] Office of General Counsel [REDACTED]

FBI
b7C
b6

- (U) In general, when this report refers to FBI personnel, it uses the position that the individual held at the time of the event in question. Thus, the same individual may be referred to as "Assistant Director" and "Deputy Assistant Director" in different chapters of the report, or even within the same chapter. Similarly, when reference is made to FBI personnel who have left the Bureau or retired, they are referred to by the title they held while they were in the FBI.
- (U) The AGRT has prepared a Key Document Appendix to accompany this report. Due to the sensitivity of the contents of this Appendix, we recommend that this Appendix not be disseminated outside the Department of Justice and the FBI. Not every document referenced in this report is included in the Appendix. Some documents have been excluded due to their particular sensitivity, their voluminous nature, or their minimal relevance.

~~TOP SECRET~~ [REDACTED]