

(8) Simply put, if NSD had really been convinced that a FISA order was warranted, it had enough to pursue it without [REDACTED] before going to OIPR, it could have forced the production of them in a matter of days.<sup>263</sup>

(8) What is *obvious* here is that NSD did not go to OIPR until December 1998 *not* because it did not have [REDACTED] but because it did not believe it had the facts. SSA [REDACTED] despite what Director Freeh and Secretary Richardson were told, viewed the [REDACTED] as a "bust." [REDACTED] (12/15/99) This perception of the [REDACTED] and its aftermath, a perception which the AGRT believes to be inaccurate, is what really accounts for this unfortunate delay.

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rejecting FBI-AQ's FISA request bear the same date. (FBI 1406) Given that UC [REDACTED] journal for December 13, 1998 says, in part, "EC to AQ," it is at least possible that the EC, although dated December 10, 1998, did not actually leave FBI-HQ until after UC [REDACTED] and SSA [REDACTED] had received and reviewed [REDACTED]

<sup>265</sup> (8) A second ground cited for the several months delay in presenting this matter to OIPR is FBI-HQ's failure to receive the report made by [REDACTED] [REDACTED] is critical to the AGRT's finding that the [REDACTED] warranted the submission of a FISA application. While it is true that FBI-HQ did not get an actual copy of [REDACTED] report until December 15, 1998 (FBI 1350) - and then apparently from DOE, not FBI-AQ (FBI 11952) - this argument is completely without merit. The contents of [REDACTED] report were fully communicated to FBI-HQ in SA [REDACTED] August 28, 1998 EC (FBI 7487) and, then, fully communicated again in SA [REDACTED] FBI-AQ's November 10, 1999 EC seeking a FISA order. (FBI 1381) Indeed, the November 10<sup>th</sup> EC quotes 9 of the 11 paragraphs in [REDACTED] report *in their entirety*. It appears that UC [REDACTED] recognized this himself. His notes of a December 15, 1998 meeting with DOE refer to [REDACTED] report and states that it is "almost verbatim to AQ's EC." (FBI 11950, 21563)

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DOE b6, b7C

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~~TOP SECRET~~ [REDACTED]

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f. (S) NSD's failure to contest [REDACTED]  
[REDACTED]

(S) That the Wen Ho Lee investigation was not accorded the priority it deserved within FBI-HQ was acutely illustrated by NSD's handling of the single most important issue [REDACTED]  
[REDACTED]

(12/15/99) FBI 66, 67C

i. (S) Initial planning for the [REDACTED]

(S) [REDACTED]  
[REDACTED]  
[REDACTED]

(AQI 5510)

(S) [REDACTED]  
[REDACTED]

ii. (S) [REDACTED]  
[REDACTED]

(S) [REDACTED]  
[REDACTED]

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61

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (FBI 1212)

(S/NF)

[REDACTED]  
[REDACTED]  
[REDACTED] 7/28/99; [REDACTED] 12/15/99

FBI  
b6, b7c

(S/NF)

[REDACTED]  
[REDACTED]

<sup>266</sup> (S/NF)

[REDACTED] (AQI 5506)

<sup>267</sup> (S/NF)

[REDACTED] (FBI 1209) For the reasons detailed below, this EC was never sent out.

<sup>268</sup> (S/NF)

[REDACTED] (AQI 1620)

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~~TOP SECRET~~ [REDACTED]

(S)

iii. (S) A problem arises

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(S) [REDACTED]

(AQI 4835)

(S) [REDACTED]

(AQI 1620)

(S) [REDACTED]

(AQI 1620)

269

(S) [REDACTED]

(FBI 1209)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

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iv. (S/NF) NSD's response to [REDACTED] concerns

(S) [REDACTED] (Id.)

(S/NF) [REDACTED]  
[REDACTED]  
[REDACTED] (FBI 1209)

(u) (S/NF) Within days, FBI-AQ learned that SC Dillard had serious concerns about making the representation that SSA [REDACTED] proposed to make on behalf of NSD. On February 19, 1998, SSA [REDACTED] told SA [REDACTED] that his EC was "delayed" because SC Dillard was "not ready to approve situation yet." According to SA [REDACTED] notes:

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(S/NF) [REDACTED]

(AQI 5599) [REDACTED] (AQI 5599)

(S/NF) [REDACTED]

<sup>270</sup> (u) (S) Although this EC is drafted in language that suggests that the matter had already been reviewed and approved by the Assistant Director, John Lewis, the EC never left FBI-HQ and was never approved by AD Lewis.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

v. (S/NF) [REDACTED]

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(S/NF) [REDACTED]

(AQI 4970)

(S/NF) On March 24, 1998, SA [REDACTED] raised the matter again with SSA [REDACTED] and then drafted an internal memorandum for the file:

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(S/NF) [REDACTED]

<sup>271</sup> (S/NF) [REDACTED]

<sup>272</sup> (S/NF) [REDACTED]

(AQI 4969, 4966)

~~TOP SECRET~~ [REDACTED]

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[REDACTED]

FBI  
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(AQI 1665) NSD accepted this decision and did not appeal or contest CID's veto. [REDACTED] 3/22/00) Indeed, according to UC [REDACTED] the matter was not even elevated to the AD or DAD level *within* NSD. SC Dillard confirmed that this matter was not raised with either of his NSD's supervisors, DAD Larry Torrence or AD John Lewis, or outside the Division. (Dillard 3/23/00) The message went out to the Albuquerque Division [REDACTED] (FBI 232)

vi. (S) The search [REDACTED]

(S/NF)

[REDACTED]

FBI  
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According to a note written by SA [REDACTED] based on a March 24, 1998 telephone conversation with SSA [REDACTED] "It is on his list of things to do."<sup>273</sup> (AQI 4964)

(S)

[REDACTED] (AQI 1690, 4953)

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b7c

<sup>273</sup> (S) SSA [REDACTED] had discussed the matter with SSA [REDACTED] on March 5, 1998 and was advised by SSA [REDACTED] that he was busy with a FISA application in an unrelated matter and, therefore, according to SA [REDACTED] notes, he "hasn't done anything about [REDACTED]" (AQI 4968)

<sup>274</sup> (S/NF)

[REDACTED]

~~TOP SECRET~~ [REDACTED]

vii. (U) Discussion

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(S/NP) [REDACTED]

[REDACTED]

(S/NP) Given that fact, it is clear that NSD should not have simply accepted CID's refusal [REDACTED]

[REDACTED]

(S/NP) [REDACTED]

[REDACTED]

FBI  
b6, b7C

[REDACTED] (12/15/99)

273 (S/NP) [REDACTED]

[REDACTED] (AQI 5507, 5508)

~~TOP SECRET~~ [REDACTED]



(S/NF)

[REDACTED] If this case had been given the priority it deserved, NSD would not have accepted "no" for an answer and would have elevated this matter to a level where the competing interests of CID and NSD could have been resolved.

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(u)

(S/NF) SSA [REDACTED] told the AGRT that Director Freeh was deeply interested in opening a LEGAT in Beijing. [REDACTED] 12/15/99) But SSA [REDACTED] also knew that Director Freeh - as he told FBI-AQ in his December 19, 1997 teletype - "has personally been briefed on this [the Wen Ho Lee] case three times in the last four months" and that the case was being cited as a "central example" by the intelligence community of "its assessment of and response to counterintelligence problems at the nuclear weapons labs." (AQI 1560)

FBI  
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(S/NF) Moreover, the stark choice that SC Dillard was apparently concerned about - [REDACTED] - was, at multiple levels, the worst case scenario, if for no other reason than (1) [REDACTED] (2) [REDACTED]

(3)

(AQI 1620) and (4) [REDACTED]

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[REDACTED] Yes, there were potential consequences but the Director or Deputy Director might well have determined them to be too speculative, or the Lee investigation too important. [REDACTED]

[REDACTED] But that decision was never reached because it was never presented.

(S/NF) Finally, this must be said: NSD permitted CID's admittedly legitimate concerns about [REDACTED] sensitivities to undermine a critical FBI investigation about [REDACTED]

FBI  
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<sup>276</sup> (S/NF) This statement comes from SA [REDACTED] February 19, 1998 notes of a telephone conversation with SSA [REDACTED] apparently reporting on SC Dillard's position. [REDACTED] According to UC [REDACTED] daily journal, SSA [REDACTED] was scheduled to meet with SC Dillard that day to discuss the [REDACTED] (FBI 11992, 20330)

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~~TOP SECRET~~ [REDACTED]

*espionage*. The equities of *that* equation ought to have propelled this decision to the head of the line, or at least a good deal farther down the line than it went. The results *might* have been the same but, then again, the results might have been precisely what SSA [REDACTED] had sought from the beginning: [REDACTED] (AQI 4971) If, as a result, a price ultimately had to be paid for that decision, it was surely some consolation that what was at issue was one of the gravest and most consequential purported acts of espionage ever investigated by the FBI. Some price, after all, would inevitably have to be paid in the pursuit of the truth of these allegations.

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(u)  
g. (S) NSD's problematic handling of matters related to FISA

(u)  
i. (S) June 1997

(u)  
(S) Chapters 11 and 12 examine in detail the handling of the FISA application by NSD, by OIPR, and by senior officials in the Department of Justice. For purposes of this section, which is focused on NSD, it is sufficient to note that the Letterhead Memorandum ("LHM") submitted by NSD in support of a FISA application and SSA [REDACTED] supplemental inserts did not contain all the inculpatory information which the FBI already knew, or could have known, or should have known. See Chapter 11.

(u)  
ii. (S) December 1998

(S) On December 22, 1998, SSA [REDACTED] had a five minute meeting with an OIPR attorney, Dave Ryan, ostensibly to ascertain whether OIPR thought the [REDACTED] warranted the submission of a new FISA application in the Wen Ho Lee investigation.

(S) For the reasons set forth in detail in Chapter 16, NSD failed to make either a serious or a substantial case for a FISA application to OIPR in December 1998. As is further described in Chapters 14 and 16, there *was* such a case to be made, and it *did* warrant a submission to the FISA Court, largely arising out of the partial, but nevertheless significant, success of the [REDACTED]

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(S) SSA [REDACTED] however, along with various supervisors at NSD, thought the [REDACTED] to be a failure, and his presentation to OIPR on December 22, 1998 b1 reflected his own conviction that no FISA order was warranted. Indeed, SSA [REDACTED] was so convinced of this fact that two weeks *before* he met with Ryan, he formally rejected FBI-AQ's request for a FISA. That Ryan would endorse this judgment on December 22 was a foregone conclusion *given the way in which it was presented to him.*

(S) Would OIPR have approved the submission of an application? Given its reservations in July and August 1997, and given the fact that the [REDACTED] b1 was only partially successful, it is quite possible it would not have. What can be said is that, due to the casual, cursory and dismissive way in which the issue was presented to OIPR in December 1998 – a presentation that really was intended not to procure FISA but to procure an endorsement of a rejection that was already *literally* signed, sealed and delivered – it was inevitable that FISA coverage would again be denied.

h. (U) NSD's mishandling of the computer issue

(U) The FBI's failure to recognize the importance of gaining access to Wen Ho Lee's computer files during the entire time frame of this investigation prior to March 1999 is a failure of incalculable and potentially catastrophic significance. This failure occurred because each of the three FBI entities involved in the making of decisions concerning this matter – FBI-AQ, NSD and the National Security Law Unit ("NSLU") – made serious mistakes. Those mistakes are documented in detail in Chapter 9 and will not be repeated here.

(U) It is sufficient here to state the following: When a case is micro-managed from FBI-HQ, as this one most certainly was, FBI-HQ must bear responsibility for the decisions it makes that would normally be made in the field. In this case, it was NSD that determined the investigative strategy and investigative priorities of the case. That may well have been the "total anomaly" that SSA [REDACTED] said it was [REDACTED] (7/23/99), but it was nevertheless the reality of the Wen Ho Lee investigation.

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(U) It was NSD that both figuratively *and literally* gave FBI-AQ its "To Do" list. See, e.g., SSA [REDACTED] instructions to FBI-AQ on June 10, 1996 (AQI 954), July 2, 1996 (AQI 957), and December 19, 1997 (AQI 1560). It was NSD that in every

significant respect was making the core and, in some cases, the most peripheral decisions of this investigation and, therefore, it is NSD that must be held responsible for failing to recognize the importance of gaining access to Wen Ho Lee's computer files.

(U) It is not as if NSD was not apprised again and again and again of the significance of Wen Ho Lee's computer work.<sup>277</sup> See Chapter 9. Nor is it as if NSD was unaware of the possibility that alternatives to a search warrant might well exist through which the FBI could gain lawful access to Wen Ho Lee's computer files. (FBI 716) Yet these alternatives were not pursued.

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(U)  
(S) It is true that the NSLU gave inadequate and erroneous legal advice to NSD, but that is only half the story. According to NSLU attorney [REDACTED] his advice to the Wen Ho Lee investigation was that *either a banner or a court order* was required to conduct a search of Wen Ho Lee's computer files. [REDACTED] 7/16/99) That advice was wrong for a variety of reasons detailed in Chapter 9, but at least it left open the possibility that something other than a court order could be used to pry open Wen Ho Lee's computer files. However, when SSA [REDACTED] communicated the NSLU's advice to FBI-AQ, the banner option dropped out entirely and FBI-AQ was left with the complete mis-impression that it was FISA or *nothing*. (FBI 720, 13211) The consequences of this miscommunication were dramatic: FBI-AQ essentially gave up on gaining access to Wen Ho Lee's computer except through FISA. And when the FISA request was rejected – which did not even contain a computer search request – the computer search issue essentially dropped off the map.

(U)  
(S) In short, what the FBI discovered in 1999 could have been discovered in 1998, 1997, 1996 or even earlier. The implications flowing from this finding are enormously significant, not least because the FBI could have been monitoring Lee's illicit computer activities while he was *in the midst* of those illicit computer activities.

(U)  
(S) While it is true that NSD did not get *everything* that FBI-AQ had, including the significant FD-302's of the first interviews of Wen Ho Lee's [REDACTED] in December 1996, NSD had numerous other indications of Wen Ho Lee's sensitive work with computers. See, e.g., the [REDACTED] interview reports of April 1997 and May 1997, transmitted to SSA [REDACTED] on May 15, 1997. (FBI 910)

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b7c

~~TOP SECRET~~ [REDACTED]

That this did not happen is surely not *all* NSD's fault but, just as surely, NSD must bear a substantial measure of responsibility.

- i. <sup>(u)</sup>~~(S)~~ NSD's exclusive focus on FISA and its unreasonable reluctance to take other critical actions

<sup>(u)</sup>~~(S)~~ There is little doubt that there is no tool so powerful in a counterintelligence investigation as the ability to conduct electronic surveillance ("ELSUR") and microphone surveillance ("MISUR") pursuant to FISA. That said, the Wen Ho Lee investigation illustrates the considerable risk that the FBI runs when it so focuses on obtaining FISA coverage that it virtually ignores other valuable investigative techniques. This would be true even where FISA coverage is authorized, but even more so where it is rejected.

- i. <sup>(u)</sup>~~(S)~~ The exclusive focus on FISA

<sup>(S)</sup> From the beginning of the full investigation of Wen Ho Lee – indeed, from before the beginning<sup>278</sup> – virtually all NSD could think about was obtaining FISA coverage on Wen Ho Lee.<sup>279</sup> As SSA [REDACTED] told the AGRT: "From Day One I told

<sup>(u)</sup>~~(S/NF)~~ Even before the full investigation was opened, NSD was telling DOE to expect a FISA submission in 30-60 days. See Memorandum from Notra Trulock to Joan Rohlfing, entitled "Action Plan and Next Steps," dated May 25, 1996. (DOE 1844)

<sup>(u)</sup>~~(S)~~ See, e.g., FBI records dated 7/1/96 (SSA [REDACTED] tells SA [REDACTED] that "he would be interested in any information that would get FISA coverage.") (AQL954); 7/10/96 (Briefing memorandum on the "Kindred Spirit" investigation: "The short term objective is to collect enough probable cause to persuade the Foreign Intelligence Surveillance court that the Lees should be subjected to electronic surveillance, which is critical in cases of this type.") (FBI 583); 10/9/96 (Memorandum from SSA [REDACTED] to SC Doyle: "The present thrust of the investigation is still to obtain justification for ELSUR coverage.") (FBI 706); 1/23/97 (Briefing memorandum on the "Kindred Spirit" investigation: "The present objective of this investigation is to uncover enough probable cause to support a request for electronic surveillance.") (FBI 745); 1/30/97 (Briefing memorandum on the "Kindred Spirit" investigation: "The use of long periods of

~~TOP SECRET~~ [REDACTED]

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~~TOP SECRET~~ [REDACTED]

FBI  
b6  
b7c

AQ we would need FISA." [REDACTED] 7/23/99) Remarkably, the exclusive focus on obtaining FISA coverage did not change even after OIPR rejected NSD's FISA application.<sup>210</sup> Indeed, even when NSD supposedly went to "Plan B" (AQI 5326) - the

electronic surveillance is always . . . necessary. . . . [T]he first half of this investigation is aimed at collecting enough probable cause to persuade the Foreign Intelligence Surveillance Court to authorize use of electronic surveillance against the LEEs, and if indicated, clandestine physical searches of their residence, papers, and property." (FBI 751); 4/14/97 ("During the last eleven months . . . we have focused on locating and obtaining information about LEE and Sylvia that will allow us to seek electronic surveillance authority from the Foreign Intelligence Surveillance Court. Typically, an investigation of this type is only successfully concluded in one of two ways: Catching the subject in the commission of a clandestine act of espionage; or obtaining a confession. Electronic surveillance is always a necessary precondition to either of these two conclusions.") (FBI 6403); 4/21/97 (A briefing memorandum concerning a Congressional briefing: "It was mentioned that the next significant investigative milestone in this investigation would be the initiation of FISC-authorized coverage of the subject's home and work telephones, fax, computers, and other appropriate elsur and fisur coverage.") (FBI 823)

<sup>210</sup> (S) See this statement by AD John Lewis to Director Freeh on August 14, 1997, two days after OIPR rejected NSD's FISA application: "Since our initial elsur application has been rejected, we now intend to pursue a more aggressive but risky course which will include interviews of coworkers, former supervisors, and associates. Such steps could produce sufficient elsur justification while at the same time uncovering information about the subjects that will be needed for their eventual interrogation." (FBI 13331) See also this note to AD Lewis from SC Dillard, dated September 12, 1997: "This is to advise that we will now direct the Albuquerque Division to expand the scope of this investigation to include potentially alerting leads such as interviews of coworkers and associates, trash coverage, physical surveillance, and recruitment of assets. It is hoped that this more aggressive investigation will produce information to justify a renewed application for electronic surveillance." (FBI 13023) (emphasis in original)

~~TOP SECRET~~ [REDACTED]

December 19, 1997 teletype – the goal remained unchanged: FISA.<sup>211</sup> Even the [REDACTED] - FBI-AQ's one true initiative from 1996 to 1998 – was viewed by FBI-HQ as having one primary objective: getting support for a FISA.<sup>212</sup>

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(S) The goal of obtaining FISA coverage so dominated the FBI's thinking that it even altered the FBI's internal description of the case. Rather than opening it as a "65 case" – espionage – it was opened as a [REDACTED] case" – counterintelligence. SSA [REDACTED] told SA [REDACTED] that it "will not become a 65 matter until the very last minute because it would be hard to go to the FISA court under this category at this point. To do so would make this case look to[o] criminal in nature."<sup>213</sup> (AQI 954)

ii. (U) Consequences

(U)  
(S) The AGRT does not take issue with the value of FISA. Even a cursory review of recent espionage prosecutions demonstrates that FISA is a unique tool in the arsenal of a counterintelligence investigation. What the AGRT does take issue with is a situation, such as in the Wen Ho Lee investigation, where the focus on FISA is so myopic and exclusive that it leads the investigators to ignore *other* vital investigative techniques and,

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<sup>211</sup> (U)  
(S) See AQI 1560: "An immediate goal is still to obtain sufficient justification for ELSUR coverage . . . ."

<sup>212</sup> (U)  
(S) See AQI 1694: "The objective of the operation is to obtain the additional justification needed for approval of electronic surveillance of subjects, but evidence supporting prosecution will be pursued if an opportunity arises."

<sup>213</sup> (U)  
(S) SSA [REDACTED] actually confirmed this reasoning to the AGRT. He stated: "We have to say with a straight face that we are requesting a FISA for FCI purposes. If you have a 65 [espionage] investigation, it is not much of a leap to say you are getting information for criminal purposes." He added: "If you put a 65 label on it, it's a lot easier to say it's [the FISA application's] a sham." [REDACTED] 12/15/99) SSA [REDACTED] did not seem to appreciate that mis-characterizing a case in order to support the claim that the purpose of a FISA request was for FCI purposes, rather than criminal purposes, would itself be a "sham."

even worse, to decline taking important and critical actions out of fear that it will alert the suspect.

(U)  
(S) There were several significant investigative techniques which were essentially preempted or neglected by the exclusive focus on FISA. Five examples will suffice:

(U)  
a. (S) Failure to conduct a comprehensive financial analysis

(U)  
(S) A comprehensive review of Wen Ho Lee's and Sylvia Lee's finances to determine whether there were unexplained sources of income was never done. Financial records were sought,<sup>244</sup> and were received,<sup>245</sup> but a rigorous, thorough and expert analysis of these records was never made. FBI-AQ made a start in this direction through the scheduling of various bank records and the identification of unexplained deposits (AQI 4367), and SA [REDACTED] did demonstrate some interest in this regard (AQI 5591), but the follow-up was spotty and incomplete. In an espionage investigation, [REDACTED] but, in this case, SSA [REDACTED] saw the gathering of Wen Ho Lee's records as having one purpose: [REDACTED] (AQI 1218) Indeed, at one point, he bluntly told SA [REDACTED] that, while an analysis of income versus spending was okay, the main purpose in getting Lee's records was [REDACTED] (AQI 5385)

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(U)  
b. (S) Failure to conduct selective interviews

(U)  
(S) Interviews of current and former supervisors, and current and former co-workers, were largely ignored.<sup>246</sup> Between June 1996, when the full investigation was

<sup>244</sup> (U) See, e.g., AQI 1099, 1106, 1102, 1164, 1194, 1453, 1465, 1471, 1479, 1492 and 1486.

<sup>245</sup> (U) See, e.g., AQI 1169, 4480.

(U)  
<sup>246</sup> (S) In part, this was certainly attributable to SSA [REDACTED] position that conducting interviews in a counterintelligence investigation was a "definite no-no" and could "screw" up a case. [REDACTED] 12/15/99



opened, and April 1997, when the preparation of a FISA application and certain other developments made it virtually impossible *not* to interview a few supervisors, the FBI did not pursue what could have and should have been one of the most important sources of information about the Lees. In that time period, it conducted just two interviews of supervisors/co-workers, that of [REDACTED].<sup>217</sup>

DOE b6, b7c

(U) (S) Far more interviews *should* have been done and, with care, far more interviews could have been done without tipping off Wen Ho Lee to the FBI's interest in him. For example, former supervisors should have been identified and interviewed, along with selective interviews of former co-workers. Such interviews could have been done without alerting Wen Ho Lee.<sup>218</sup>

(U) (S) There were two serious consequences of the FBI's failure to conduct such interviews:

(S) First, the FBI never really understood or probed the true nature of Wen Ho Lee's employment, and the extent to which Wen Ho Lee's work depended on computer activities. [REDACTED]

[REDACTED] (AQI 3809) Two years later, SA [REDACTED] was in no better position than he was in March 1994 to understand what he had been told, what it meant, and how this information might focus his investigation. Given that the underlying allegation in this case was that Wen Ho Lee used his employment to gain access to classified information which he then passed to the PRC, the lack of interest in the nature and substance of that employment was inexplicable.

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<sup>217</sup> (U) (S) So focused had the FBI become on obtaining FISA coverage that these two interviews (AQI 1143, 1147, 1151, 1153, 1155) – which contained critical information about Wen Ho Lee's computer activities – were never sent to NSD and NSD was given to understand that "no useful information" had been obtained from them. (FBI 745)

<sup>218</sup> (U) (S) For example, SA [REDACTED] used a bit of misdirection when he and [REDACTED] interviewed a [REDACTED] in February 1996 as part of the DOB AI. (FBI 2851)

DOE  
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(U) (S/NP) This failure to interview supervisors and co-workers was consistent with the FBI's general reluctance to wrestle with what was really at issue in this case. No effort was made, for example, to review Wen Ho Lee's work product over the course of his employment at LANL. No effort was made to study his published papers<sup>289</sup> or to interview other American scientists who traveled with Wen Ho Lee to the PRC in 1986 and 1988.<sup>290</sup> No effort was made to interview at LANL the nuclear weapons designers who had been involved in the Kindred Spirit Analytical Group that had advised DOE on the significance of the walk-in document. This is not to say that the FBI needed to become intimately familiar with nuclear physics or needed to understand the precise mechanics of a [REDACTED] or needed to understand the intricate details of the codes developed by Wen Ho Lee. It is to say that sending SSA [REDACTED] to a five-day course in nuclear weapons was just not enough. (AQI 2993)

FBI  
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(S/NP/RD) The FBI's failure to undertake this effort was consequential: It left the FBI completely dependent on DOE's flawed representation of the predicate, an error whose significance can hardly be minimized. See Chapter 6. It left the FBI without an appreciation of the central role that computers played in Wen Ho Lee's work, resulting in such peculiarities as the FBI seeking FISA authority to tap Wen Ho Lee's telephone but not his office computer.

[REDACTED]

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<sup>289</sup> (S) (U) On one occasion, it should be noted, there was an effort to see if Wen Ho Lee and [REDACTED] co-authored any papers. They had not. (AQI 1541)

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<sup>290</sup> (S) (U) This was suggested in NSD's December 19, 1997 teletype. (AQI 1560) It should have been a part of NSD's original instructions to FBI-AQ. Of course, since FBI-AQ did not pursue this suggestion in 1998 there is some question as to whether it would have been any more enthusiastic about it in 1996.

~~TOP SECRET~~ [REDACTED]

(U)  
(S) The second major consequence of the FBI's failure to conduct these interviews was that it prevented the FBI from figuring out that scientists within X Division had no "expectation of privacy," that each scientist - including Wen Ho Lee - had signed waivers on file, that there were banners in the X Division, and that the information provided by [REDACTED] to SA [REDACTED] was far from the whole story. Thus, these interviews would have told the FBI, first, that gaining access to Wen Ho Lee's computer files was critical and, second, that the FBI *could* gain access to those files without a warrant. The second part would no doubt have required reconsideration of the matter by NSLU but there is little doubt what result NSLU - in the face of Wen Ho Lee's signed waiver *and* the X Division banners - would have reached.

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c. (S) Failure to conduct trash covers

(U)  
(S) Trash covers - *i.e.*, the surreptitious recovery of Wen Ho Lee's office and home trash - was never done. This required no FISA authority and yet it was never done. It is clear that SSA [REDACTED] thought about it (FBI 582), but it was never pursued - even though it could have advanced the investigation *by months*.<sup>291</sup> A trash cover was suggested in the December 1997 teletype (AQI 1560), but it should have been pursued a year-and-a-half earlier when it could have had a dramatic effect on the FBI's learning curve concerning the Lees.<sup>292</sup>

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<sup>291</sup> (U)  
(S) For example, instead of the FBI depending on a mail cover to identify the Lees' banking relationships - a process that took five months from initiation to implementation - the FBI could have perused Lee's trash and would likely have had such information in a matter of days.

<sup>292</sup> (U)  
(S) This is not to suggest that a trash cover was implemented pursuant to the December 19, 1997 teletype. It was not. (AQI 1990) Moreover, whatever problems there might have been in conducting a non-alerting trash cover in Wen Ho Lee's residential neighborhood - and FBI-AQ suggested in November 1998 that a residential trash cover was not "a feasible option" (AQI 1990) - there is simply no reason why a trash cover should not have been implemented at Lee's office.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

d. <sup>(U)</sup> ~~(S)~~ Failure to conduct physical surveillance

<sup>(U)</sup> ~~(S)~~ Nor was any effort made to conduct regular or even episodic physical surveillance of Wen Ho Lee, which certainly could have been conducted by the FBI without alerting him.<sup>293</sup> And if, in order to accomplish this, FBI-AQ needed to periodically import a surveillance team from elsewhere within the FBI, that certainly could have been accomplished. Nor was there any effort to conduct surveillance of Wen Ho Lee during his two overseas trips to Taiwan in March and December 1998.<sup>294</sup>

e. (U) Failure to develop a plan or strategy for the interview of Wen Ho Lee

(U) So focused was the FBI on FISA that, remarkably, the Albuquerque Division never developed a plan or strategy to interview Wen Ho Lee.

~~(S)~~ <sup>(U)</sup> A subject interview in an FCI investigation may be an event planned months and even years in advance. Or an agent may find out *today* that a significant and unanticipated development has created a requirement, or an opportunity, to conduct an interview with the subject of the investigation *tomorrow*. FBI-AQ's lack of preparation for *either* eventuality was astonishing. Even after the FISA application was rejected, no effort was made to prepare for an interview of Wen Ho Lee. There was talk about it, (AQI 5527), just no actual preparation. Nor did this change when the [REDACTED] was being planned. If ever a situation was ripe for a pretextual interview of a subject, it was [REDACTED]

<sup>(U)</sup> ~~(S)~~ On a few occasions, FBI-AQ did drive by Wen Ho Lee's residence. See, e.g., AQI 1334.

<sup>(U)</sup> ~~(S)~~ While the FBI did not learn of the March 1998 trip until after Wen Ho Lee had left the United States, it did learn of it in time to mount a surveillance effort *if it had it been inclined to do so*. Wen Ho Lee was in Taiwan from March 15, 1998 until April 30, 1998 (FBI 1275) and the FBI learned of the trip on or about March 23, 1998. (AQI 5492, 1664) As to the December 1998 trip, the FBI knew about this trip before Wen Ho Lee left. (FBI 1405)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

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contacted Wen Ho Lee. Even after the [REDACTED] was over and DOE's [REDACTED] told Wen Ho Lee that the FBI might be contacting him about the purported contact from the PRC, the FBI failed to prepare or conduct such an interview.

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(U) As late as December 1998, two and a half years into this investigation, FBI-AQ was still wholly unprepared to do an interview of Wen Ho Lee. This was one of the reasons why the long-term subject of a critical espionage investigation found himself on December 23, 1998 across a table from a DOE contract counterintelligence officer and a Wackenhut polygrapher, instead of the FBI. SAC Kitchen had told DOE's Curran that FBI-AQ was not able to do a subject interview and needed more time.<sup>295</sup> That was unfortunate. It was not as if Curran was demanding that DOE, and only DOE, interview Wen Ho Lee. If SAC Kitchen had said the FBI was going to do the interview and polygraph of Lee on December 23, 1998, Curran told the AGRT, "I would have kissed his feet. Please do it." (Curran 2/9/00)

(U) To be fair, the FBI's failure to plan for an interview of Wen Ho Lee at any time prior to 1999 cannot be solely attributed to an unreasonable or exclusive focus on FISA. There were too many other problems with the FBI's handling of this case to associate this failure with just one cause. Nor can it be solely attributed to FBI-AQ. NSD, after all, was driving this train; NSD was making the "To Do" lists and setting the terms of the investigation. And planning for a subject interview was not on any of these lists.<sup>296</sup>

(U)  
<sup>295</sup> (S) Both Curran and Director Freeh were told that the additional time was necessary to interview certain of Lee's co-workers, who had not previously been interviewed to avoid alerting Lee. (Curran 2/9/00; FBI 7721) These interviews could have, and should have, been done a year or more before and, in fact, were listed as options in the December 19, 1997 teletype. (AQI 1560)

(U)  
<sup>296</sup> (S) Indeed, the possibility of a subject interview was explicitly *excepted* from the December 19, 1997 teletype. (FBI 1156) SSA [REDACTED] general view was that a "rash subject interview can kill [an] espionage case." [REDACTED] 12/15/99) That is certainly true but the failure to plan for such an eventuality made it all the more like that the interview, when it did take place, would be "rash."

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~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

iii. (S) <sup>(u)</sup> Concerns about alerting the Lees

<sup>(u)</sup>  
~~(S)~~ A principal reason *why* the FBI did not pursue these other investigative techniques was an overarching, nearly paralytic, concern that its conduct not alert Wen Ho Lee to the existence of the investigation. This fear of doing anything that could conceivably have alerted Wen Ho Lee to the FBI's interest in him had such a vice-like grip on NSD's calculus that in the Fall of 1997 - after telling Director Freeh that NSD would now pursue "a more aggressive but risky course" (FBI 13331) and "a more overt investigation" (FBI 1175) and telling AD Lewis that NSD would now direct FBI-AQ to "expand the scope of this investigation to include potentially alerting leads" (FBI 13023) (emphasis in original) - the FBI actually took only the most tentative and hesitant steps in this direction. Its December 19, 1997 teletype - the document that was supposed to lay out this new aggressive and risky strategy - contains warning after warning to avoid just such risks.<sup>297</sup>

<sup>(u)</sup>  
~~(S)~~ The notion that the FBI should avoid alerting the subject of an espionage investigation is both correct and unremarkable. The value of a FISA is obviously diminished or eliminated entirely if the subject is aware of the FBI's investigative interest

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<sup>(u)</sup>  
<sup>297</sup> ~~(S)~~ See, e.g., the following statements in the December 19, 1997 teletype: (1) "[S]ince ELSUR will only be valuable if the subjects do not know they are under investigation, AQ must use its best judgment and first hand knowledge of the lab to pursue the most promising but most discreet leads first." (2) In connection with a suggestion to interview a particular scientist: "[T]his interview . . . should be aborted if there are any indications [that the scientist] might be hostile or indiscreet." (3) In connection with another suggestion to interview scientists with whom Wen Ho Lee had contact: "AQ should be very cautious if it decides to conduct any such interviews, and should avoid doing the interviews if there is a risk of alerting the subjects." (4) In connection with a suggestion to interview Lee's former supervisors: "AQ should us caution in deciding to do such interviews, and avoid alerting subjects." (5) "AQ should consider discreet, repeat, discreet, physical surveillance of subjects." (6) "Leads to other divisions should be coordinated so as to evaluate and minimize beforehand the risk of alerting the subjects to the existence of our investigation."

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

in him. And FISA aside, there is a risk in virtually every espionage case that the subject, if alerted, will decide to take up residence in another country.

(U)  
(S) Thus, there is nothing wrong with the FBI being *concerned* about engaging in alerting conduct. The problem in the Wen Ho Lee investigation is that the FBI went way beyond *mere concern* about alerting conduct. The need to avoid at all cost any conduct that could remotely be alerting became *the* mantra of the investigation, *the* value that trumped all other values.<sup>298</sup> This is despite the fact that there were ways in which the FBI could have substantially minimized the risk of alerting Wen Ho Lee.<sup>299</sup>

(U)  
(S) The categorical refusal to do anything that could conceivably be alerting led the FBI into several serious errors:

(U)  
(S/NF) First, until August 12, 1997, it caused the FBI essentially to *insist* on DOE not altering Wen Ho Lee's access, work status, or clearances in any respect, despite the significant danger that this posed to the national security. See Chapter 18.

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DOE b6, b7C  
<sup>298</sup> (S) The [REDACTED] does represent a willingness to undertake *some* slight risk of alerting the subject, but the FBI reverted back to its non-alerting mode immediately afterward, declining to move forward with an interview of Wen Ho Lee despite the fact that [REDACTED] told Wen Ho Lee on August 19, 1998 that he was going to notify the "local FBI for their possible follow-up." (AQI 1883)

FBI  
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<sup>299</sup> (S/NF) LANL is, after all, one of the nation's premier nuclear weapons facilities. Its scientists know that they have access to the nation's most sensitive secrets and that the FBI is a routine presence at the laboratory. Thus, the mere fact that the FBI was on-site or asking questions would not, in and of itself, alert Lee to anything. Moreover, every LANL scientist also knew that he must periodically undergo a background investigation. In 1983, the FBI [REDACTED]

[REDACTED] with the FBI's full investigation of Wen Ho Lee arising out of his contact [REDACTED] (FBI 10794) The FBI-HQ supervisor involved in the 1983 matter had been Larry Torrence who, 14 years later, would re-enter the Wen Ho Lee investigation as John Lewis' replacement as NSD's Deputy Assistant Director for Counterintelligence. b1

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(u)  
(S) Second, it led the FBI to avoid productive and valuable investigative techniques, such as supervisor/co-worker interviews, surveillance, and trash covers, as described above. In part, the FBI's avoidance of these techniques was a product of its exclusive focus on FISA but in part it was a product of the FBI's intense concern that almost anything it did could alert Lee and thus render a FISA less productive.

(u)  
(S) And, third, it kept the FBI from discovering the truth of the "expectation of privacy" issue as it applied to the X Division. As is discussed in Chapter 9, SA [REDACTED] was just *one interview away* from discovering that his understanding of the computer issue was erroneous.<sup>300</sup> He did not conduct the interview<sup>301</sup> and [REDACTED] did not get interviewed by the FBI until 1999.<sup>302</sup>

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<sup>300</sup> (u)  
(S) That interview was with [REDACTED]. It was [REDACTED] who could have provided SA [REDACTED] the critical information that Wen Ho Lee had in fact executed a computer waiver form. See Chapter 9. On December 9, 1996, [REDACTED] told SA [REDACTED] that "should the FBI need assistance" in connection with computer issues, [REDACTED] for X Division. (AQI 1143)

<sup>301</sup> (u)  
(S) Given NSD's concerns about alerting Wen Ho Lee, *any* interview became the subject of literally months of deliberation. On August 30, 1996, a LANL counterintelligence officer advised SA [REDACTED] that he had learned that SC Doyle had approved the interviews of two of Wen Ho Lee's supervisors, [REDACTED] (AQI 1015) A month later, on September 25, 1996, SA [REDACTED] obtained verification from NSD that it had in fact approved the interviews of [REDACTED] (FBI 702) Two months later, on November 22, 1996, SSA [REDACTED] had a telephone call with SSA [REDACTED] in which he learned that SSA [REDACTED] had "reservations" about the [REDACTED] interviews going forward. (FBI 719) Finally, on December 9, 1996 and December 20, 1996, the interviews took place (AQI 1151, 1155), *almost four months after they were first referenced.*

<sup>302</sup> (u)  
(S) Although it was [REDACTED] who could have told SA [REDACTED] definitively and specifically that Wen Ho Lee had a signed waiver on file, either [REDACTED] could have told SA [REDACTED] that *all* X Division scientists had to sign such waivers to gain computer access. See Chapter 9.

~~TOP SECRET~~ [REDACTED]



~~TOP SECRET~~ [REDACTED]

I. (U) The impact of FBI personnel changes on the investigation

(U) Between the end of May 1996 and the end of March 1999, there were more than 30 changes in personnel at FBI-AQ and FBI-HQ that had a direct or potential impact on the Wen Ho Lee investigation.<sup>303</sup>

<sup>303</sup> (U) The only consistent FBI presence in this case was Director Freeh, UC [REDACTED] and SSA [REDACTED]. Beyond these three positions, changes in personnel occurred with remarkable rapidity (Note: "A" signifies that the individual served in an acting capacity):

FBI-AQ

SAC: Kneir, Dick (A), Weber, Dick (A), Kitchen

ASAC: Dick, Coffey (A), Tabman (A), Parrish (A), Lueckenhoff

NFIP Manager: Kneir, Dick, Lueckenhoff

NFIP Coordinator and FCI Squad Supervisor: [REDACTED]

Santa Fe RA Supervisor: [REDACTED]

Case Agent for the Wen Ho Lee Investigation: [REDACTED]

FBI-HQ

Deputy Director: Kennedy, Esposito, Bryant

Assistant Director, NSD: Bryant, Lewis, Torrence (A), Gallagher

DAD for CI, NSD: Lewis, Torrence (A), Mislack (A), O'Connor (A), Torrence, Caruso (A), Horan

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FBI  
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(U) Both FBI-AQ and FBI-HQ personnel understood the effect this had on the investigation. SSA [REDACTED] who became the supervisor of the Wen Ho Lee investigation in November 1998, characterized the frequent changes of leadership at FBI-AQ as a "revolving door." [REDACTED] (9/9/99) SSA [REDACTED] said "No one sticks around long enough to understand [the] situation." [REDACTED] (7/28/99)

(U)  
(S) These frequent changes in personnel had numerous adverse affects on the investigation. For example:

(1) (S) However flawed SA [REDACTED] handling of the case might have been, his transfer to FBI-HQ deprived the investigation of its historical memory, which included SA [REDACTED] handling of the preliminary inquiry on Wen Ho Lee. All SA [REDACTED] knew about the case was what he read in the case file, and such limited information as he acquired himself. The nuances of [REDACTED] - which SA [REDACTED] understood because he drafted a critical teletype on the subject back in March 1994 - were lost on SA [REDACTED] and, as it turned out, on SSA [REDACTED] as well, with unfortunate consequences for the FISA application. Similarly, it was SA [REDACTED] who came to Washington for the October 31, 1995 briefing - the only briefing the case agents ever received on the predicate for the investigation. And it was SA [REDACTED] who was the original recipient of information from [REDACTED] related to access to Wen Ho Lee's DOE b6, e-mail - not that he did a remotely adequate job with that information.<sup>304</sup> b7c

(U)  
(S) SSA [REDACTED] departure from the investigation was equally significant. SSA [REDACTED] was a veteran FCI supervisor who had supervised SA [REDACTED] during a portion of the preliminary inquiry and during all of SA [REDACTED] service as case agent of the full Wen Ho Lee investigation. He was replaced by a supervisor whose background was not in FCI work and who had only minimal previous involvement in the Wen Ho Lee investigation. SSA [REDACTED] departure from the case deprived the

(S) Section Chief, [REDACTED] Doyle, [REDACTED] (A), Dillard, [REDACTED] (A), Middleton b1

<sup>304</sup> (U)  
(S) This is not intended to suggest that the Wen Ho Lee investigation did not benefit, on the whole, from SA [REDACTED] departure and SA [REDACTED] arrival. It did benefit. It is only to acknowledge that it also suffered.

~~TOP SECRET~~ [REDACTED]

investigation of both FCI experience as well as his detailed first-hand knowledge of the case.

(U)

(3) (8) The departure of SAC Kneir and the arrival of SAC Weber had an adverse affect on the case, caused in part by FBI-HQ's inexplicable failure to brief SAC Weber on the fact that the Division he was about to take over was responsible for one of the nation's most important and significant espionage investigations. Among other consequences of SAC Kneir's departure was the fact that SAC Kneir, who had personally solicited FBI-HQ for the two additional agents, almost certainly would not have permitted their diversion by ASAC Dick. SAC Weber, on the other hand, was not even aware of the issue until 1999. (Weber 10/28/99)

(4) (U) At FBI-HQ, the most consequential changes in management were at the Section Chief and Deputy Assistant Director level. There were ten different individuals who served in just these two leadership positions between May 1996 and March 1999. NSD's problems in the handling of this case are by no means *solely* attributable to these changes in management but they were certainly a contributing factor.

(U) It is important to make clear the limitations of this issue. In any large organization, particularly one with the diverse and challenging mission of the FBI, there will always be very significant changes in personnel. Some of those changes represent the natural and inevitable consequence of having talented personnel in responsible positions: over time, they will be promoted to positions with even greater responsibility. For the most part, the changes in personnel listed above reflect this upward mobility and, in a number of cases, this upward mobility did still keep an individual in an oversight capacity over the Wen Ho Lee investigation.

(U) Nevertheless, two points should be made: First, it does not appear that the importance of maintaining continuity in the Wen Ho Lee investigation was *ever* considered as a factor in determining whether to proceed with any particular change in personnel.<sup>305</sup> Second, *it should have been a factor* - even if not a determinative one - in

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<sup>305</sup> (U) This conclusion is based on two considerations: the frequency with which certain positions changed hands and the clear evidence at both NSD and FBI-AQ that the

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at least some of the personnel changes listed above, particularly those at the level where the incumbent had a direct and routine impact on the handling of the case.

J. (U) Communication problems within the FBI

(U)  
(S) The AGRT has identified two significant problems in the nature, frequency and substance of communications between senior officials within NSD and Director Freeh:

(U)  
(S) First, Director Freeh should have been briefed at a *much* earlier point in time. Both Congress and the National Security Council received *detailed* briefings on the FBI's "Kindred Spirit" investigation *before* Director Freeh himself received such a briefing. Indeed, even the Attorney General received a memorandum describing the case *before* Director Freeh.

(U) Second, when Director Freeh *was* briefed on the case, NSD failed to advise the Director on certain critical matters that, had he been so advised, could have made a difference.

(U)  
(S) On the positive side, the AGRT has also determined that, after the Director identified DOE's general counterintelligence problems as an issue requiring his special attention, NSD effectively and thoroughly briefed and supported the Director on this issue, ultimately resulting in PDD-61. Moreover, although NSD was late in initiating "Kindred Spirit" briefings of the Director, once it began to apprise the Director of developments in the case, it did so routinely and in considerable detail.

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b7C Wen Ho Lee investigation was not a priority matter at any point prior to December 1998. It should be noted, however, that, with the exception of the records associated with SA [REDACTED] promotion to FBI-HQ in 1997, the AGRT has not examined the selection documents involving any of the other individuals listed in this section.

1. (U) The knowledge of senior NSD officials

(U)  
(S) From its very beginning, NSD officials - at the most senior level - were briefed on the "Kindred Spirit" investigation, and participated in determining its direction. See, e.g., the various notes and briefing papers for the period July 1995 to March 1997.<sup>306</sup>

<sup>306</sup> (S/NF/RD) On July 13, 1995, Trulock met with DAD Lewis and briefed him on DOE's concerns. (AQI 2936, FBI 11762) The briefing by Trulock was preceded a day earlier by a briefing memorandum which, although not addressed to DAD Lewis, was almost certainly prepared for Lewis' review before the Trulock meeting. (FBI 13047)

b1

[REDACTED]

(FBI 11834, 20353)

(S/NF) On July 18, 1995, Ken Baker, the Acting Director of DOE's Office of Nonproliferation and National Security ("NN"), wrote DAD Lewis to request access to [REDACTED] information in connection with the "Kindred Spirit" investigation. (AQI 2938)

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(U)  
(S/NF) On August 14, 1995, there *may* have been a meeting with Trulock, DAD Lewis, and SSA [REDACTED]. The only proof of this is a handwritten note by SSA [REDACTED] dated September 18, 1995, in which he references a telephone call from the CIA which, in turn, references an August 14, 1995 Trulock/Lewis meeting. [REDACTED]

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[REDACTED]

(FBI 364)

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(U)  
(S/NF) On September 6, 1995, the "Kindred Spirit" investigation was briefed to AD Bryant by DAD Lewis, SC Doyle, and SSA Schmidt. There is a reference in SSA [REDACTED] notes of this meeting to two statements made by AD Bryant: (1) "How come we didn't jump on this case weeks ago?" and (2) "Maybe we should have been more proactive @ this & have prevented the Chinese from stealing this in the first place."

(FBI 365)

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(u)  
(S) On September 13, 1995, Trulock met with DAD Lewis and SC Doyle. Trulock was seeking the FBI's help and SC Doyle told him to send over a letter from DOE "setting forth predication for this case" and also told him that the FBI was thinking of bringing SA [REDACTED] up from Tampa "to work this special." (FBI 378)

(u)  
(S) On September 25, 1995, Ken Baker of DOE sent a letter to AD Bryant requesting the assignment of an FBI agent to DOE's Counterintelligence Division to assist in an Administrative Inquiry "to determine the facts and circumstances relative to the loss of the [REDACTED] information." (AQI 2960, FBI 13045)

(S) [REDACTED]

[REDACTED] (AQI 2981, FBI 400)

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FBI  
b6, b7c

(u)  
(S) On December 21, 1995, SC Doyle sent AD Bryant another briefing memorandum on the investigation, including providing AD Bryant information about the [REDACTED] acquired by SSA [REDACTED] when he attended a course on Nuclear, Biological and Chemical Proliferation at the Defense Nuclear Weapons School, Kirtland Air Force Base in late November 1995. (FBI 391)

(u)  
(S) On January 29, 1996, SC Doyle sent AD Bryant a third briefing memorandum on the investigation, including reference to SA [REDACTED] work on the DOE AI, and other matters related to the investigation.

(u)  
(S) On April 18, 1996, DAD Lewis and Trulock had another meeting, which was preceded by a briefing which DAD Lewis received from SC Doyle. (FBI 16609) The only reference which the AGRT has been able to obtain concerning this meeting is an FBI summary document entitled "Meetings Re DOE/Kindred Spirit" which indicates that the meeting with Trulock also included SC Doyle and SA [REDACTED] and that the subject of the meeting was "China Case." (FBI 16609) The AGRT cannot confirm this meeting took place.

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In all that time, however, the AGRT has not identified a single briefing paper addressed to Director Frech.<sup>307</sup>

(U) (S) On May 22, 1996, Deputy Secretary of Energy Charles Curtis met with DAD Lewis, according to a DOE IG report of interview of Secretary Curtis. (DOE 1675) Trulock wrote a memorandum dated May 25, 1996 to Deputy Secretary Curtis which makes reference to "our May 22 meeting with John Lewis, FBI." (DOE 4351)

FBI  
b6, b7C | (S) On January 24, 1997, Trulock, and other DOE personnel (Ken Baker and [REDACTED] met with DAD Lewis, SC Dillard, UC [REDACTED] and SSA [REDACTED] b1 (FBI 7629) This meeting was preceded by a briefing paper to DAD Lewis on the status of the investigation. (FBI 745) It was followed by another briefing memorandum which indicated that the principal purpose of the meeting was to discuss DO's request for FBI assistance in its counterintelligence program. The "Kindred Spirit" investigation was discussed after DAD Lewis left.

(S/PD/NF) On March 19, 1997, Lewis, who had become Assistant Director upon Bryant's promotion to Deputy Director, received a letter from Randy Beers, Special Assistant to the President and Senior Director for Intelligence Programs, of the NSC. In the letter, Beers states that he had disclosed to the director of the SSCI staff "the existence of an FBI counterintelligence operation in response to a direct question." (FBI 790) AD Lewis was then provided a briefing memorandum which stated that "It is not certain to what investigation he may have been referring. [REDACTED]

b1 | [REDACTED] Subjects have been identified and our investigation has been ongoing for a year." (FBI 794)

<sup>307</sup> (U) Copies of some of the documents referenced in the preceding footnote were located in Director Frech's files provided to the AGRT. See memoranda dated November 3, 1995 (FBI 16560), December 21, 1995 (FBI 16563), January 29, 1996 (FBI 16556, 16565), January 29, 1997 (FBI 16590), March 24, 1997 (FBI 16593) and April 28, 1997 (FBI 16882). This does not indicate, however, that Director Frech was provided these documents *at the time of their creation*. Rather, it means only that Director Frech received these documents *at some point in time*, the most likely time being 1999 when, as a result of intense Congressional scrutiny, Director Frech was

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2. (U) Information provided to Director Freeh

(U) Given the extraordinary nature of the underlying allegation, it is baffling that Director Freeh was not briefed far earlier than he was on the status of the investigation. There is little doubt that such briefings could have caused the FBI to address more aggressively the problems identified in this report.<sup>308</sup>

(U) When did Director Freeh first learn about the case? The documents obtained by AGRT indicate that the first written and oral briefing received by the Director on this investigation was on or about July 31, 1997.<sup>309</sup> This is consistent with what Director

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provided a substantial amount of material relevant to the investigation. (Parkinson 3/28/00) When the AGRT says, therefore, that Director Freeh was not briefed orally or in writing until July 1997, see below, this finding is based on the record of briefings either *addressed* to Director Freeh or *known* to have been given to Director Freeh.

<sup>308</sup> (U) Director Freeh made this precise point to the AGRT. He indicated that if he had been briefed on this case at an earlier point in time, and given more information about it, he would have reacted to it sooner and more aggressively. (Freeh 11/11/99)

<sup>309</sup> (SAR/DNF) There is a brief reference to the "Kindred Spirit" investigation in an April 14, 1997 briefing memorandum to Director Freeh, but the reference is in the context of a broader FBI review of various situations in which information was provided to NSC staff members but not transmitted to key policy makers. "Kindred Spirit" was cited as one of several examples in which information was communicated to the NSC staff but not briefed up within the NSC. The memorandum noted that on March 25, 1997, an NSC staff member contacted SC Dillard and advised SC Dillard that the staff member had been asked by National Security Advisor Sandy Berger to brief Berger on any cases in which the staff member had received briefings that were not forwarded to key policy makers. The staff member told SC Dillard that he had previously received a briefing from AD Bryant and DAD Lewis concerning [REDACTED]

[REDACTED] UC [REDACTED] was then instructed to rebrief the staff member and he did so that same day. The briefing included the following: [REDACTED]

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~~TOP SECRET~~ [REDACTED]

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Freeh has told the AGRT.<sup>310</sup> On or about July 31, 1997, it appears that Director Freeh received a one page briefing memorandum on the investigation (FBI 1063) and was briefed on the case by SSA [REDACTED]<sup>311</sup> (FBI 12031)

(U) It is worth belaboring this point a bit since there is some confusion in the record as to when the Director was first briefed on the case:

- <sup>(U)</sup>~~(S)~~ On May 25, 1996, Trulock wrote a memorandum to Deputy Secretary Curtis which Trulock entitled "Action Plan and Next Steps." In that memorandum, which references a May 22, 1996 meeting between Trulock, Secretary Curtis and DAD Lewis, it notes that "Director Freeh has been briefed on this case." (DOE 4351) The AGRT has obtained no documentary verification that such a briefing took place.<sup>312</sup>

b1  
[REDACTED]  
(FBI 7633)

<sup>310</sup> (U) Director Freeh told the AGRT that he first became aware of the investigation in June or July 1997. (Freeh 11/11/99)

<sup>(U)</sup>~~(S)~~<sup>311</sup> The impetus for the briefing and the memorandum may have been to prepare Director Freeh for a meeting with National Security Advisor Sandy Berger on July 31, 1997, at which the "Kindred Spirit" investigation was discussed. (FBI 18197; Freeh 11/11/99) Alternatively, the memorandum may have been requested in preparation for an August 1, 1997 briefing AD Lewis was due to receive from Notra Trulock. (FBI 1026; Gallantin 11/23/99; Trulock 10/12/99)

<sup>312</sup> (U) Deputy Secretary Curtis also expressed the belief that Director Freeh had been briefed in the 1995/1996 time period, but his belief was third-hand. Secretary Curtis told the AGRT that he had a "specific memory" that he was told by either Trulock

~~TOP SECRET~~ [REDACTED]

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(u)  
(S) On December 27, 1996, a memorandum went from the Office of Director Freeh to OIPR for transmittal to the Attorney General. (AGO 139, OIPR 68) The memorandum was in support of the Wen Ho Lee mail cover and states explicitly the predicate for the investigation.<sup>313</sup> This would suggest that Director Freeh had been briefed at or before the time he signed this memorandum, *but it is clear that Director Freeh did not sign the memorandum.* Rather, the memorandum was initialed for Director Freeh by DAD Lewis.<sup>314</sup> (AGO 139) The memorandum seeking a mail cover was then forwarded to the Attorney General with OIPR's summary and endorsement (OIPR 64), and the Attorney General then authorized the mail cover. (AGO 138, FBI 290) The Attorney General told the AGRT that she read OIPR's cover memorandum, which set out the predicate for the investigation based on Director Freeh's memorandum.<sup>315</sup> (Reno 11/30/99) This leads to the following odd result: the Attorney General received a

or Baker that DAD Lewis had been briefed and that DAD Lewis had informed the Director. (Curtis 1/14/00)

<sup>313</sup> (S//~~RF~~) Director Freeh's memorandum states in part: [REDACTED]

[REDACTED] (AGO 138)

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<sup>314</sup> (S//~~RF~~) Director Freeh states that he has no recollection of ever seeing the mail cover documents. (Freeh 11/11/99)

<sup>315</sup> (S//~~RF~~) OIPR's cover memorandum to the Attorney General read in part as follows: [REDACTED]

[REDACTED] (OIPR 64)

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~~TOP SECRET~~ [REDACTED]

written briefing on the FBI's Wen Ho Lee investigation before the Director did.

- (u) (S) The FBI's own chronology states that Director Freeh was actually first briefed in June 1997, not July 1997, and that two notes were created in connection with these briefings.<sup>316</sup> The AGRT cannot confirm *any* briefings of Director Freeh on the Wen Ho Lee investigation that took place in June and the two notes do not support the conclusion that Director Freeh was briefed in June 1997. In fact, the first of the two notes (FBI 1063) appears to have been created on July 30, 1997.<sup>317</sup>

(U) Therefore, the AGRT concludes that the correct date for the Director's first written and oral briefings on the Wen Ho Lee investigation is on or about July 31, 1997.

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<sup>316</sup> (u) (S) (NF) The notes are related to each other. The first note is a general briefing paper on the Wen Ho Lee investigation. (FBI 1063) Director Freeh placed a handwritten note at the bottom of the paper, asking three questions of AD Lewis: "What was done in 1982 to work the Lee case? When/how was it closed? Did DOE know @ it?" (FBI 1063) The second note is a response to Director Freeh's three questions. (FBI 1062)

b1 <sup>317</sup> (S) This conclusion is based on a review of a computer disk provided to the AGRT by [REDACTED] containing various memoranda related to the "Kindred Spirit" investigation. (FBI 11371A) One of those memorandum bears the file name "Spirit" and is identical to the first of the two memoranda. (FBI 11372A, FBI 20046) Its file date is July 30, 1997. (Id.) While that does not *conclusively* establish a *creation* date of July 30<sup>th</sup>, it does suggest it, and it is consistent with the fact that SSA [REDACTED] formal briefing of Director Freeh took place the next day, July 31, 1997. It is also consistent with the fact that Director Freeh had a copy of the "Spirit" memorandum with him when he met with Sandy Berger the next day (FBI 11779, 18197; Freeh 11/11/99) and made handwritten notations concerning this meeting on it. (FBI 18208)

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~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U) After July 1997, Director Freeh received numerous additional briefings on the Wen Ho Lee investigation.<sup>318</sup>

<sup>(u)</sup>  
~~(S/NF)~~ See the following memoranda, which excludes notes dealing exclusively with the DOE counterintelligence reform initiative:

<sup>(u)</sup>  
~~(S)~~ On August 5, 1997, Director Freeh was scheduled to meet with Deputy Director Esposito, SC Dillard, UC [REDACTED] and SSA [REDACTED] concerning the "Kindred Spirit" investigation. (FBI 16610) Based on a note that the Director wrote on August 5, 1997, the AGRT concludes the meeting took place. (FBI 12479)

<sup>(u)</sup>  
~~(S/NF)~~ On August 12, 1997, Director Freeh was briefed by Notra Trulock on the general issue of Chinese attempts to acquire United States Government nuclear secrets. The "Kindred Spirit" case was discussed during this meeting. (FBI 12505, 21286, 11781, 20311, 21813)

<sup>(u)</sup>  
~~(S)~~ On August 14, 1997, FBI records indicate a briefing memorandum to Director Freeh from AD Lewis concerning OIPR's rejection of the FBI's FISA application on Wen Ho and Sylvia Lee. AD Lewis advises the Director that "we did not have as much information to justify an elsur request as we might have wished" and OIPR had made "a real effort to find a way for an application to go forward." (FBI 1060) Now that the application had been rejected, the Director was told, the FBI would "pursue a more aggressive but risky course which will include interviews of coworkers, former supervisors, and associates."

<sup>(u)</sup>  
~~(S)~~ On September 11, 1997, FBI records indicate a briefing memorandum to Director Freeh from SC Dillard concerning a September 5, 1997 FBI briefing to NSC staff at which the "Kindred Spirit" investigation discussed "at length." (FBI 1085, 20916) Attached to SC Dillard's memorandum was a time line on the "Kindred Spirit" investigation prepared for the NSC by UC [REDACTED] (FBI 1086, 13024, 12395, 20919)

~~(S)~~ On September 18, 1997, Director Freeh met with AD Lewis, Bob Bucknam, Michael Waguespack, SSA [REDACTED] and [REDACTED] 61  
While the purpose of the meeting was to discuss the DOE CI reform initiative, the "Kindred Spirit" investigation was discussed in some detail. (FBI 12312) Director

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Freeh asked several questions at the meeting related to the "Kindred Spirit" investigation and, on September 22, 1997, SC Dillard provided a memorandum to AD Lewis responding to those questions. (FBI 1100)

b1 (S) Also on September 18, 1997, Director Freeh was provided a briefing package by [REDACTED] which contained a CIA assessment of China's nuclear weapons program done at the request of the NSC. (FBI 12316-12349, excluding CIA assessment.) See Chapters 6 and 13.

(u) (S) On September 24, 1997, FBI records indicate a briefing memorandum to Director Freeh from AD Lewis, which was entitled "Update on Department of Energy Initiatives," and which made an indirect reference to the "Kindred Spirit" investigation. (FBI 1117)

(u) (S) On or prior to October 15, 1997, Director Freeh received a set of Talking Points for use in a meeting with CIA Director Tenet and DOE Secretary Pena, which also made reference to the "Kindred Spirit" investigation. (FBI 20942)

(u) (S) On January 8, 1998, FBI records indicate an update memorandum to Director Freeh from AD Lewis on the status of the "Kindred Spirit" investigation in connection with a briefing that Berger had asked CIA Director Tenet to provide. (FBI 1175)

b1 (S) On September 1, 1998, FBI records indicate a briefing memorandum to Director Freeh from DAD Torrence which reported on the [REDACTED] and promised a new submission to the FISA Court after NSD received the [REDACTED] (FBI 13011)

b1 (S) On November 6, 1998, FBI records indicate a briefing memorandum, created in connection with a briefing by SC Middleton to the NSC which took place on November 10, 1998. (FBI 7724, 19993) A copy of this memorandum, which laid out the events of the [REDACTED] was attached to the December 18, 1998 memorandum described below.

(S) On December 18, 1998, FBI records indicate a briefing memorandum to Director Freeh from AD Gallagher advising him (1) to expect a call from Secretary Richardson concerning the Secretary's interest in having the Lee matter "resolved as quickly as possible"; (2) DOE wanted to interview and polygraph Lee and NSD had told DOE "it had no objection"; (3) FBI-AQ was being instructed to prepare for a full  
b1 interrogation of Lee; and (4) FBI-AQ had been advised that the [REDACTED] did not justify a FISA order. (FBI 7652, 1408, 7721)

(S) On December 24, 1998, FBI records indicate a briefing memorandum to Director Freeh from AD Gallagher advising that Lee had been interviewed the previous day and had "passed" DOE's polygraph, but that DOE was suspending his access for a 30-day period. (FBI 1427, 7654)

(S) On January 12, 1999, FBI records indicate a briefing memorandum to Director Freeh from AD Gallagher advising, among other matters, that DOE wanted to fire Wen Ho Lee. (FBI 1467)

(S) On January 29, 1999, FBI records indicate a briefing memorandum to Director Freeh from AD Gallagher advising him of Lee's January 17, 1999 FBI interview, his signed statement, that Lee passed the DOE polygraph with "very positive measurements" and that DOE was now going to come up with a "list of present and former employees that will be larger than [REDACTED] identified as possible suspects." (FBI 1531, 7658)  
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(S) On February 17, 1999, FBI records indicate a briefing memorandum to Director Freeh drafted by SSA [REDACTED] indicating that Lee was polygraphed twice by the FBI on February 10, 1999 and was "inconclusive" on the first examination and "deception indicated" on the second exam. The memorandum also indicated that, based on admissions by Wen Ho Lee concerning disclosures he made to the PRC during his 1986 and 1988 trips, DOE "will probably revoke Lee's security clearance." The memorandum concluded: "Lee's statements show [REDACTED]"  
FBI b6, b7C  
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[REDACTED] (FBI 12999, 7717)

This is not to say that Director Freeh received *all* notes generated within the FBI after he began receiving briefings on the case.<sup>319</sup> It is to say that beginning in July 1997 the Director was routinely advised of developments in the case.<sup>320</sup>

3. (U) Where the briefings failed

(U) Several critical issues were never briefed to Director Freeh *but should have been*.

(S) First, none of the briefing memoranda ever make it clear to the Director that FBI-AQ's handling of the investigation was seriously deficient. [REDACTED] was firmly convinced that FBI-AQ was "screwing up and sitting on a time bomb" [REDACTED]

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(U) (S/NF) Finally, on March 10 or 16, 1999, CIA Director Tenet sent Director Freeh a copy of the same September 1997 CIA assessment of China's nuclear warhead program that had been provided to Director Freeh on September 18, 1997. (FBI 17206)

(U) (S) From the time Director Freeh was first briefed on the case in July 1997 until Wen Ho Lee was fired on March 9, 1999, there were innumerable briefing papers generated within the FBI that did not go to the Director and would not have been expected to go to the Director. These briefing memorandums were created for various purposes, including Congressional briefings, NSC briefings, and briefings within NSD. See, e.g., briefing papers dated: December 31, 1997 (FBI 1160), April 30, 1998 (FBI 6417), May 5, 1998 (FBI 11655), June 1, 1998 (FBI 1312), June 17, 1998 (FBI 13016), July 22, 1998 (FBI 13015), July 29, 1998 (FBI 1339), October 29, 1998 (FBI 1373), November 6, 1998 (FBI 7724), January 21, 1999 (FBI 1493), February 22, 1999 (FBI 1575) and February 26, 1999 (FBI 1589, 5331).

<sup>320</sup> (S) The fact that the Director received only one update note between October 15, 1997 and September 1, 1998 is not attributable to a failure to brief but, rather, to a failure to investigate on the part of FBI-AQ. There were no updates because there was nothing to update, other than FBI-AQ's ongoing planning of the [REDACTED]

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12/15/99), yet that message never reached Director Freeh.<sup>321</sup> While the reasons for this are *understandable*,<sup>322</sup> that does not make them *acceptable*. Director Freeh, properly briefed, could have brought to bear on the Wen Ho Lee investigation the full weight of NSD's expertise – just as *was* eventually done in the spring of 1999.<sup>323</sup> To be clear, the AGRT is not suggesting that Deputy Director Bryant or AD Lewis intentionally chose not to brief the Director on the truth of FBI-AQ's inadequate investigative efforts. They themselves had not been briefed on how bad things were in Albuquerque.

(S/NP) Second, prior to 1999, Director Freeh was never briefed on the serious and consequential difference of opinion as to the scope of the compromise at issue. Merely providing the Director a copy of the CIA's September 1997 assessment, as was done on September 18, 1997, was surely not enough, if for no other reason than the fact that Director Freeh had *not* been given a copy of DOE's AI as well. If [REDACTED] – which was b1 the recipient of both documents and which *had* been responsible for this investigation for several years – did not appreciate the discrepancy between the two documents, it is hard to imagine how the Director could have done so.<sup>324</sup>

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<sup>321</sup> (U) Director Freeh told the AGRT that he was never advised of problems with the Lee investigation. (Freeh 11/11/99)

<sup>322</sup> (S) In connection with [REDACTED] failure to raise FBI-AQ's deficiencies in the b1 inspection interrogatories, SSA [REDACTED] pointed to the reluctance to "dime out colleagues, dime out [an] office," particularly where "it's in writing." [REDACTED] 12/15/99)

<sup>323</sup> (U) As to FBI-AQ's diversion of two agents, it is unlikely this issue would ever have reached Director Freeh because it would have first been necessary to elevate it to senior NSD management. Once that was done, either AD Bryant or DAD Lewis would no doubt have *conclusively* and *categorically* resolved this issue – and not the way FBI-AQ had resolved it.

<sup>324</sup> (S) That Director Freeh would have been keenly interested in this issue is beyond question. Indeed, he asked members of his staff specifically on September 18, 1997 whether it was their "position that the evidence supports the conclusions Notra Trulock made in his presentation [to Director Freeh on August 12, 1997.]" (FBI 12312)

~~TOP SECRET~~ [REDACTED]



(U) Third, the single matter that could have fundamentally transformed the Wen Ho Lee investigation - the need to gain access to Wen Ho Lee's computer files - was never briefed to Director Freeh because it was never recognized by NSD, or FBI-AQ for that matter, to be an issue of particularly significant consequence. See Chapter 9. Would it have made a difference? That is impossible to say, of course, but what can be said is that FBI-AQ, NSD and NSLU each responded inadequately to this issue and each would have benefitted from an instruction to conduct a thorough review and vetting of the matter. There are no guarantees where such a review would have led, but it certainly *might* have led to the discovery of the X Division's banners, it *might* have led to the discovery of Wen Ho Lee's signed waivers, and it might have led to an NSLU reconsideration of its advice to NSD which, although it did have the virtue of simplicity, was nevertheless erroneous. As Director Freeh told the AGRT in reference to the FBI's acceptance of DOE's representations about the lack of banners: "We should have pressed the issue, we should have gotten into the weeds on it." (Freeh 11/11/99)

(S/AD) Finally, there is the matter of NSD's failure to formally brief *any* aspect of the "Kindred Spirit" investigation to Director Freeh until late July 1997 - [REDACTED] b1

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The Director was told by one participant in this meeting "that generally it did" [REDACTED]

(Id.)

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[REDACTED]

(U) The failure to brief Director Freeh at an earlier point in time was consequential. Had Director Freeh been briefed at the *beginning* of the investigation, rather than two years into it, he could have insured it was given the priority it deserved. Many of the problems identified in this report are direct bi-products of the lack of priority given this investigation at FBI-AQ and within NSD and that lack of priority might have been avoided had the Director been a participant in decision making about this case in 1995, 1996 or the first half of 1997.

~~(S)~~  
(U) By the time Director Freeh was finally briefed on the case, it was in trouble, and the prognosis for the case seemed grim.<sup>325</sup> So much had *already* gone wrong - in

<sup>325</sup> (U) When former Deputy Director Bryant was interviewed by the AGRT, he stated that FBI-HQ's upper management's knowledge of the "Kindred Spirit" investigation from 1995 to 1997 was too limited. He said the significance of the investigation was not elevated to managers on the "Seventh Floor" [the executive level] of the FBI building. (Bryant 11/15/99) The AGRT understands this to be a reference not only to the lack of briefings between NSD and the Director/Deputy Director but to a lack of briefings within NSD itself.

<sup>326</sup> (U)  
(S) A member of the NSC's staff was briefed on the "Kindred Spirit" investigation on March 25, 1997 by UC [REDACTED]. The same individual had previously been briefed on the investigation by AD Bryant. (FBI 7633, 798, 805, 12076, 20338)

<sup>327</sup> (U)  
(S) SC Dillard and UC [REDACTED] provided a detailed briefing on the "Kindred Spirit" investigation to HPSCI and SSCI staff on April 16, 1997. (FBI 6413, 6403, 823)

<sup>328</sup> (U)  
(S) *Just how grim* became apparent to SA [REDACTED] through a voice mail message he received from SSA [REDACTED] on August 12, 1997. SSA [REDACTED] was reporting on Director Freeh's meeting that day with Notra Trulock and DOE Deputy Secretary Betsy Moler. According to SSA [REDACTED] Director Freeh told the DOE officials that the Wen Ho Lee investigation should not be used as an excuse for DOE to fail to address its

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how the case was handled and supervised in Albuquerque, in the problematic relationship between [REDACTED] and FBI-AQ, in NSD's and FBI-AQ's continuing failure to grasp the importance of gaining access to Wen Ho Lee's computer files, in the drafting of the FISA application itself - that only radical changes in the handling of the case would likely have significantly altered its prognosis by this point in time. Such changes were warranted but, given what Director Freeh was being told, that after a full year of investigation there was not even enough evidence to convince OIPR of *probable cause*, it is not surprising that such changes were not even contemplated.<sup>329</sup>

4. (U) Where the briefings succeeded

(U)  
(S) First, NSD played a critical supporting role in assisting Director Freeh in addressing *at a structural level* DOE's counterintelligence problems. From August 1997 forward, an enormous amount of FBI resources and effort was dedicated, at the Director's instructions, to designing, implementing and executing a plan to reform DOE's

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general counterintelligence problems and its specific security concerns about Wen Ho Lee. According to SSA [REDACTED] Director Freeh told DOE: "This case is off the table and the case is dead." (AQI 5325) In fact, Director Freeh appears only to have told DOE that the Lee investigation was of "lesser importance" than stemming the flow of sensitive information from the DOE laboratories and that the case "pales in comparison" to DOE's need to move forward to preserve United States Government information. See AGRT review of FBI SSA [REDACTED] notes of August 12, 1997 meeting. (NSC 001-004)

<sup>329</sup> (U)  
(S) Nor was Director Freeh given any cause to blame the current state of affairs on the way in which the FBI had conducted its investigation or the way in which OIPR had handled the FISA application. What Director Freeh was being told back in August 1997 is that there was a deficiency in the facts, not in the investigators or attorneys handling this matter. As AD Lewis put it in a memo to the Director, "[W]e did not have as much information to justify our elsur [electronic surveillance] request as we might have wished." (FBI 1060)

counterintelligence program.<sup>330</sup> While the Director is not *solely* responsible for PDD-61,<sup>331</sup> it is clear that he was the driving force behind the reform of counterintelligence at DOE.<sup>332</sup> NSD played a critical role in keeping Director Freeh regularly advised of developments in the reform initiative and in insuring that the Director had the information he needed to do the job.

(U) Second, once NSD *did* begin briefing the Director on the Wen Ho Lee investigation, it do so regularly and in significant detail, although somewhat more

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<sup>330</sup> (U) (S) This is not meant to suggest that the FBI was uninvolved in this issue prior to August 1997. It had been involved in this issue for years. See, e.g., the FBI's April 1997 report titled "DOE's CI Activities: An FBI Assessment." (DOE 4397)

<sup>331</sup> (U) (S) DCI Tenet, for example, also played a substantial role in the effort to reform counterintelligence within DOE, as did the NSC.

<sup>332</sup> (U) (S) Director Freeh mobilized his staff to address the DOE counterintelligence issues. (FBI 12479) He made it clear that he was prepared to do "whatever it takes" to address the problems in the DOE laboratories. (FBI 20768) He bluntly told DOE in August 1997 that the Wen Ho Lee investigation could no longer be a factor in DOE's addressing security concerns at the laboratory. (NSC 004, FBI 21286, 21813-21816) He made the same point again in October 1997 in a meeting with Secretary Pena. (FBI 18751; Webb 1/6/00; Freeh 11/11/99) He repeatedly briefed or caused his deputies to brief the National Security Advisor on developments in the DOE counterintelligence reform effort. (FBI 20808, 12197, 20647, 21302, 20608, 20597) He selected a senior FBI official, Ed Curran, to be the chief of counterintelligence at DOE and then took necessary steps to make it possible for him to take on this responsibility. (FBI 20643, 20439, 21036) He and DCI Tenet met with, and wrote to, DOE Secretary Pena concerning the reform initiative. (FBI 20942, 20666, 16988) He received numerous notes from his staff addressing a variety of issues related to the initiative. (FBI 21395, 21347, 20600, 21343) He helped resolve a number of contested issues. (FBI 20451, 21279, 20453, 20447) Even after PDD-61 was signed by the President, he continued to be involved in insuring that the initiative was properly executed and implemented. See, e.g., the Director's meeting with DOE laboratory directors on March 30, 1998. (FBI 7176, 20415, 7178)

~~TOP SECRET~~ [REDACTED]

optimistically than the track record of FBI-AQ's handling of the Wen Ho Lee investigation might have warranted."<sup>333</sup>

K. <sup>(u)</sup>~~(S)~~ NSD's failure to recognize and address the danger posed by Wen Ho Lee's continuing access to nuclear weapons secrets

<sup>(u)</sup>~~(S)~~ Chapter 18 describes in detail the array of serious misjudgments and unfortunate mis-communications by both the FBI and DOE that resulted in Wen Ho Lee retaining his access to nuclear weapons secrets until December 24, 1998. It is sufficient to note here that NSD played a significant role – from the beginning<sup>334</sup> – causing DOE to retain Wen Ho Lee in a position where he continued to pose a danger to the national security.

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<sup>333</sup> <sup>(u)</sup>~~(S)~~ For example, the Director was told on August 14, 1997 by AD Lewis that, following OIPR's rejection of the FISA application, the FBI would now pursue a "more aggressive but risky course" of conducting interviews of coworkers, former supervisors, and associates. (FBI 1060) With a very few exceptions, that did not happen.

<sup>334</sup> <sup>(u)</sup>~~(S)~~ See, e.g., this FBI briefing memorandum, dated January 30, 1997, containing a chronology of events related to the "Kindred Spirit" investigation:

<sup>(u)</sup>~~(S)~~ 7/2-3/96: FBI-HQ personnel travel to Albuquerque to confer with the Special Agent in Charge and Assistant Special Agent in Charge. All then meet with the Director of Los Alamos and his staff to brief him on the FBI's proposed investigation and to ask for cooperation: *The LEEs must not be alerted to the investigation and Lee Wen Ho must continue to have his normal access.*

(FBI 751) (emphasis added).

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~~UNCLASSIFIED~~

FBI HEADQUARTERS

Director

1993-present - Louis J. Freeh

ASSISTANT DIRECTOR  
NSD

DEPUTY ASSISTANT DIRECTOR  
FOR COUNTERINTELLIGENCE

DEPUTY DIRECTOR

02/94-12/94 Dave Binney  
01/95-07/95 Larry Potts  
08/95-02/97 Weldon Kennedy  
03/97-10/97 Wm Esposito  
10/97-11/99 Robert Bryant  
12/99-pres Thomas Pickard

11/93-03/97 Robert Bryant  
03/97-09/98 John Lewis  
09/98-11/98 Larry Torrence (Acting)  
11/98-pres Neil Gallagher

11/94-03/97 John Lewis  
04/97-06/97 Larry Torrence (Acting)  
Ray Mislock (Acting)  
John O'Connor (Acting)  
10/97-11/98 Larry Torrence  
11/98-12/98 Tim Caruso (Acting)  
01/99-pres Sheila Horan

SECTION CHIEF <sup>b1</sup> [REDACTED] (S)

UNIT CHIEF <sup>b1</sup> [REDACTED] (S)

SUPERVISORY SPECIAL AGENT

09/94-11/96 Jerry Doyle  
11/96-12/96 [REDACTED] (Acting)  
01/97-09/98 Steve Dillard  
09/98-10/98 [REDACTED] (Acting)  
11/98-pres Charles Middleton

06/92-10/94 [REDACTED] FBI  
10/94-pres [REDACTED] b6  
b7C

1994 -7/99 [REDACTED] FBI  
08/99-pres [REDACTED] b6  
b7C

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b6  
b7C

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FBI ALBUQUERQUE DIVISION

SPECIAL AGENT IN CHARGE

06/91-12/95 Bernardo Perez  
12/95-08/96 Tom Kneir  
08/96-10/96 Ron Dick (Acting)  
10/96-05/98 Jim Weber  
05/98-08/98 Ron Dick (Acting)  
08/98-pres Dave Kitchen

ASST SPECIAL AGENT IN CHARGE

08/91-12/95 Tom Kneir  
01/96-05/96 John Louden  
06/96-09/98 Ron Dick  
09/98 Frank Coffey (Acting)  
10/98 Mike Tabman (Acting)  
11/98 Greg Parrish (Acting)  
12/98-pres William Lueckenhoff

NFIP PROGRAM MANAGER

2/95-5/96 John Louden  
5/96-6/96 Tom Kneir  
6/96-9/98 Ron Dick  
12/98-pres William Lueckenhoff

SUPERVISORY SPECIAL AGENT

FBI SQUAD

(and NFIP Coordinator)

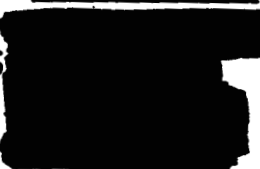
07/90-07/97  
09/97-10/98  
11/98 (2 wks)  
11/98-pres



SUPERVISORY SPECIAL AGENT

SANTA FE RA

4/94-2/95  
3/95-12/96  
1/97-9/97  
12/97-pres



FBI  
b6  
b7c

CASE AGENT

05/96-02/97  
02/97-03/97  
04/97-11/98  
11/98-03/99  
03/99-pres



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