

A. (U) Introduction

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(6) On or about December 19, 1997, FBI-AQ received a "special" teletype from FBI-HQ. 12/15/99) It was the long-awaited investigative plan that NSD had promised by mid-August. The teletype represented a solid and substantial effort to address the deficiencies and gaps in this investigation. Although it suffered from the FBI's continuing unwillingness to take actions that might conceivably alert Wen Ho Lee, it recognized that *some* risks would have to be taken and it represented a *potential* breakthrough in this investigation. The story of this chapter should have been FBI-AQ's

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determined and aggressive efforts to pursue the investigative strategy laid out in the teletype. Instead, FBI-AQ essentially ignored the teletype except for one item, that FBI-AQ was already committed to execute.

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(8) From December 1997 to August 1998, FBI-AQ proceeded to focus virtually all of its energy and effort on the second second of the FBI-AQ's decision to undertake the form reasonable. First, FBI-AQ should not have focused on the was far from reasonable. First, FBI-AQ should not have focused on the second, FBI-AQ should have actually planned the Second, FBI-AQ should have actually planned the did do, i.e., plan a basic "scenario" or "premise, the second second be and the second second be abasic "scenario" or "premise, the second second be and the second second be abasic "scenario" or "premise, the second second be and the second second be abasic "scenario" or "premise, the second second be abasic "scenario" and then

leave almost everything else to chance.

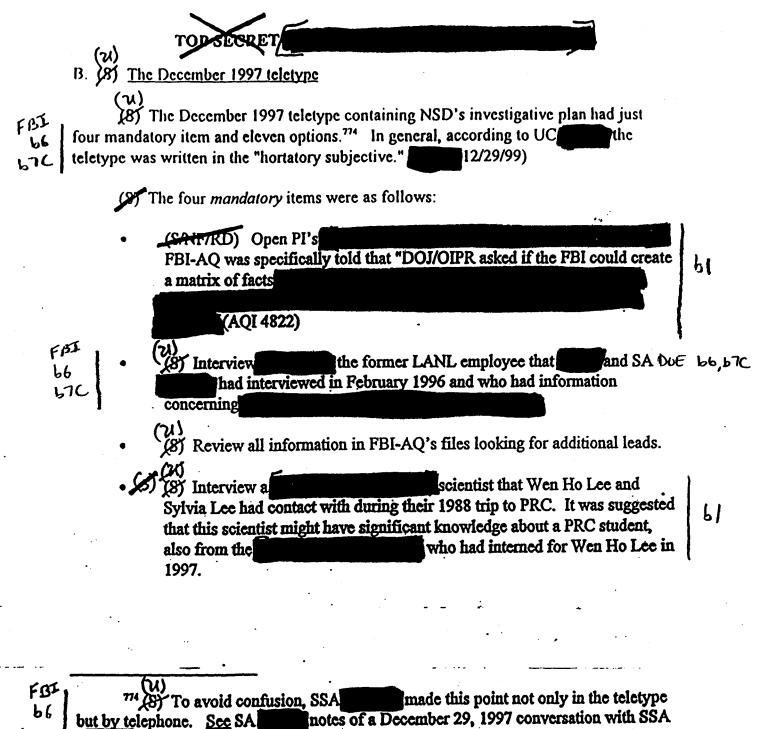
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(5) The failure to consider the most obvious contingencies associated with this must be characterized as reckless. Until the events of 1999, the represented the single most substantial initiative by FBI-AQ in the life of the Wen Ho Lee investigation, and it was essentially unscripted. The execution of the was also fundamentally flawed, although this was largely the product of its poor planning, rather than

(2)" Despite all this, the second second principally as a consequence of a fortuitous event, can be described as a "partial success." (12/99) In an b6 investigation that never experienced an embarrassment of riches, a "partial success" was b7C about as good as it was going to get. And, for its purposes - to gain sufficient justification for the submission of another FISA application - it was enough.

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but by telephone. See SA state notes of a December 29, 1997 conversation with State of the second state of

	(u) TOPSECRET
	(8) The eleven discretionary items were as follows:
	 (21) (23) Consider interviews of other U.S. scientists with whom the Lees had contact during their two trips to the PRC. (21)
bl	• (8) Consider requesting, the second sources who might be able to provide useful information about the PRC student intern.
	• (8) Consider an interview of the PRC student intern.
	 (21) (28) Consider interviews of every supervisor that Wen Ho Lee and Sylvia Lee had at LANL, especially during the superiod of suspected compromise.
	 (W) (B) Consider interviews of co-workers of the Lees.
	• (u) • (S) Consider interviews of "selected and likely" individuals identified through the mail cover and telephone toll records.
	 (U) (S) Consider an interview of an individual who previously reported observing a strange satellite dish set up at the Lees' residence.
	 (W) (B) Consider both a trash cover of the Lees' residence and a trash cover of Wen Ho Lee's office.
	 (W) (S) Consider discreet physical surveillance of the Lees.
	• (8) Consider interviewing any individuals who previously provided derogatory information about the subjects.
	• (8) Consider
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(21)
 (8) FBI-AQ treated the teletype as if it had never been sent - and was insulted that it had been sent. SA finite told the AGRT that SSA finite told him that SAC Weber had found the teletype to be "condescending," and SA finite took that to mean that the SAC's position was "we didn't need Headquarters to tell us how to run this case."
 (9/12/99) SA finite stated that, "When I heard that comment, I consciously or unconsciously felt that Weber didn't think [the] teletype was important."⁷⁷⁵ (Id.)

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(1) (8) As to the mandatory items, all four of them were disregarded. The PI's, in fact, were not opened until March 12, 1999 (FBI 1646), and that was only done after FBI-AQ was given explicit instructions from AD Gallagher to open them by close of business that day. See Chapter 4.

(S) The failure to open the PI's was consequential. FBI-AQ was told explicitly in the December 1997 teletype that this mandatory item was being driven by DOJ/OIPR – the office that would have to approve a new FISA submission.⁷⁷⁶ The failure to open and close these PI's undermined the FISA submission that FBI-AQ would, in fact, make in November 1998. SAME was ordered to open the PI's by his immediate supervisor, SSAME and that order was given to SAME within a day or two of FBI-AQ's receipt of the teletype. (AQI 5503) SAME told the AGRT that he "got busy" with the and "put it on the back burner." Interplays 12/99)

(8) Significantly, according to SA the neither SSA the provide of SA the second second

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775 (S) SAC Weber told the AGRT that he has no recollection of the teletype. (Weber 10/28/99) However, SA the has a note, dated December 22, 1997, which states that SSA the has told him that SSA the has told him that SSA the teletype. (AQI 5503)

(AOI 4821)

⁷⁷⁶ (SARD) See this excerpt from the teletype: "The attorneys at DOJ/OIPR suggested

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F155 66 57C never ask[ed] me about it." (<u>Id</u>.) SSA **Concerned Concerned States and State**

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(3) The PI's were only one of the mandatory items that was ignored. The PI's were only one of the mandatory items that was ignored. The pi's were only one of the mandatory items that was ignored. The pi's were only one of the mandatory items that was ignored. The pi's were only one of the mandatory items that was ignored. The pi's was to be interviewed by FBI-AQ. As to this item, however, FBI-AQ did not even get her address until September 11, 1998⁷⁷⁷ (AQI 5423) and, even then, it took no immediate action to interview her. As to the instruction to interview the provided the picture of the picture

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(S) As to the discretionary items, there was a similar lack of compliance. Discretion does, of course, contemplate that some items will be pursued and others not pursued. It does not contemplate that the teletype would be essentially ignored, and that is what happened:

(1) (2) As to the interviews of other United States scientists named in the Lees' trip reports, it was neither done nor, as far as the AGRT can tell, even considered. This was potentially a very productive lead. After all, the compromise allegation was focused

TI CEY SA were unimpressive and unproductive. He efforts to find relied principally on LANL to find her. (See, e.g., AQ 5349) That was a mistake. Although LANL CI personnel did eventually give the FBI an address for that was more than a year after it promised to "redouble" its efforts to find her. (AQI 5321, 5423) were no better. SA had been looking for The FBI's own efforts to find off and on, and with no particular zeal, since April 1997, when SSA first told to consider interviewing her. (AQ 5377; see also AQI 5342) By May 1997, SA and, yet, he still relied upon LANL's CCIO knew that was SÅ to get her address. (AQI 5349)

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m (S) The scientist, in fact, would not be interviewed by the FBI until July 1999. 4/12/00)

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on and the Lees had made two trips to the PRC during that period of time. Nevertheless, the lead was not pursued. SA attempted to justify this failure by stating that the scientists had already been debriefed by LANL CI officers, "with no unusual activity noted."⁷⁷⁹ (AQI 1990) We presume that SA attempted to make referring to the usual debrief of scientists occurring after each foreign trip. If so, this response is far less than persuasive. What SSA attempted to ascertain specific information that would bear on whether the Lees had committed espionage during those trips. That "no unusual activity" was noted during these debriefs is as irrelevant as the fact that "no unusual activity" was referenced in Wen Ho Lee's own post-travel trip reports.

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(2) (8) As to the interview of the pRC student intern, FBI-AQ did request that the proposed by FBI-HQ. (AQI 6124) (AQI 61

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(u) (3) (3) As to the interviews of former supervisors and co-workers of Wen Ho Lee, this request was also ignored. The FBI did talk, and continued to talk, to certain *current* supervisors, and that was both necessary and productive. This request, however, was

⁷⁷⁹ (S) As recounted in Chapter 4, SA was instructed by SAC Kitchen to draft an EC to FBI-HQ explaining its compliance with the December 1997 teletype. This placed SA work that SA work that SA when the uncomfortable position of defending the work that SA

⁷²⁰ (8) was interviewed on March 24, 1999 and March 26, 1999. (FBI 1971)

⁷¹¹ (2) FBI-AQ did acquire information about the back in April 1997 (AQI 1268, 1225), and did seek additional information from the second of the formation of of the form

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intended to gather specific information which might be particularly germane to the allegation upon which the entire investigation was predicated. SA the statempted to justify FBI-AQ's non-compliance with this request by asserting that "[f]ollowing discussions with LANL Counterintelligence Officers and Supervisors who are assisting in this matter, it was determined that following through with this recommendation would alert individuals to the interest in subject and potentially damage all the discretion which has been utilized to date." (AQI 1992)

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(U) (8) We recognize that SA **Sector** was attempting to reconstruct events in which she was not personally involved but this explanation is quite troubling. As painfully cautious as the December 1997 teletype was in its aversion to taking risk, it recognized that some risk would have to be taken. *Indeed, that is the premise of the teletype*. For FBI-AQ, as a blanket matter, simply to dismiss such an important pursuit is completely at odds with the purpose and aim of the teletype.⁷¹²

(4) (8) As to the interviews of selected individuals identified through telephone
 toll records and the mail cover, this item was also not pursued. Since the mail cover was

⁷⁸² (SATF) It was particularly inappropriate for FBI-AQ categorically to dismiss the notion of interviewing former supervisors and co-workers in light of FBI-AQ's receipt on February 6, 1998 of a memorandum by LANL entitled:

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- obtain a copy of a It also references a statement made by a DOE

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(FBI 1214) SA forwarded the memorandum to SSA with the statement that FBI-AQ "found this document to be very insightful." (FBI 1213) SSA bootiously did as well. He called SA and told him: "This is exactly what we need." (AQI 5475) There were "good leads here" that needed "follow up!" (FBI 1213) That included interviewing the LANL personnel mentioned in the memorandum. (AQI 5475) And yet, those interviews did not occur – even though certain of the interviewees were *already* aware of the FBI's investigative interest in the Lees.

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FBI 66 67C initiated, leads were periodically sent out to gather information concerning the identity of particular return addressees. But that is as far as it went

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(Art (5) (8) As to the trash cover and physical surveillance, neither of these options were pursued. SA did cite the incidental surveillance associated with the but that was hardly what FBI-HQ had in mind. As to the suggestion of a residential trash cover, SA said that "Albuquerque Division has determined that a residential trash cover is not a practical option." (AQI 1992) The AGRT, however, has not seen any documentation that the feasibility of such a trash cover was ever seriously said in her November 19, 1998 EC evaluated. As to an office trash cover, SA that, as of three days earlier, a feasibility study was underway. Unfortunately, a year's worth of Wen Ho Lee's office trash was already long gone.

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(8) There is only one significant item in the December 1997 teletype that was seriously pursued,⁷¹³ but it was not in response to the teletype. FBI-AQ obviously but it had decided on the operation before it received 61 pursued the the teletype. 784

723 (SAVF) A second item was pursued but we would not describe it as significant. FBI-AQ did pursue an interview with an individual who had spotted a strange looking satellite dish on Wen Ho Lee's property. But FBI-AQ needed no encouragement from FBI-HQ on this issue; indeed, it was the reverse. As far back as March 1995, FBI-AQ had tried unsuccessfully to interest FBI-HQ in the possibility that Wen Ho Lee had (AQI 2923) Ultimately, this Ы engaged in emerged as the "burping" telephone issue, a suggestion by an individual that Lee might be communicating on a routine basis with a satellite and that the communication was causing interference on the individual's cordless telephone. When a LANL asset purported to identify a significant pattern in the "burps," this became a near GBI An FBI physicist and section chief, Carl Young, has preoccupation for SA 67C determined that there was no merit to the asset's claim of a pattern linking the "burps" tosatellite orbits. What appeared to be a pattern was, in fact, an artifact of completely circular reasoning. (Young 1/12/00)

14 (8) Indeed, FBI-AQ's EC requesting approval of the dated two days before the December 19, 1997 teletype (PBI 220), although it is not

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(b) The December 1997 teletype was by no means perfect. It did not touch on many of the issues that *ought* to have been investigated, as further described in this report. But it represented a genuine plan to advance the investigation. That it was essentially ignored by FBI-AQ is unfortunate. FBI-AQ blamed this on its planning of the **barrent**

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particularly dubious excuse.

C. (S) Wen Ho Lee's March 1998 trip to Taiwan

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(4)
 (5) SA Section Claim that FBI-AQ did not interview former supervisors out of fear of alerting Wen Ho Lee is particularly ironic in light of what happened in March 1998 as a direct consequence of the FBI being so restrictive in whom it made aware of the investigation that it essentially blind-folded itself.

(24) (8) On March 15, 1998, Wen Ho Lee – the principal subject of a lengthy FBI espionage investigation – left the country without either DOE counterintelligence personnel or FBI counterintelligence personnel even knowing about it. Remarkably, Wen Ho Lee, as required, sought and obtained DOE pre-approval for the trip and, yet, this still did not cause notice to be made to counterintelligence personnel. (FBI 1275, AQI 5488, 5492, 1664)

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 (S) This was, in the first instance, a communications failure between LANL X
 Division personnel and LANL counterintelligence personnel. But it was one caused by the ground rules which the FBI had itself set. See Chapter 18. It did lead to some recriminations within DOE.⁷²⁶ Ultimately, however, it was the FBI that was responsible

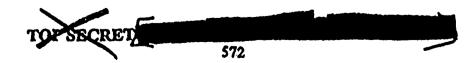
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signed by SSA

until December 19th. (FBI 1161)

785 (8) See SA EC: "Due to Albuquerque Division's pursuit and_ subsequent approval by FBIHQ for the subsequence of FBIHQ's 6/ suggestions were held in abeyance" (AQI 1991)

DOE b6, b7C 766 (C) The sent an e-mail to counterintelligence personnel in New Mexico: "Am somewhat surprised and for that matter embarrassed that this office, OCI and local FBI were not informed of travel prior to its execution. As this case is a priority concern,



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for this incredible failure to create a mechanism that guaranteed that the subject of a critical espionage investigation could not fly off to a foreign country without the FBI even being notified.

(2) (24) (

(U) The FBI, in its zeal to avoid any conceivable alerting conduct, held this investigation so close to its vest that not only could information not get out, it couldn't get in.

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D. (8) The

L (U) <u>A brief chronology</u>

(2) The first reference to running the second second against Wen Ho Lee is on August 19, 1997, in a note made by SC Dillard concerning a meeting with the The note lists "considering a some of three options for further investigation."⁷⁶⁷ (FBI 6424) The

assumed you had established close and continued contact with SUBJECT's supervisor. * * Travel to Taiwan obviously could have significance in this case." (DOE 55) LANL wrote back that LANL's counterintelligence office did not receive notice of the trip until Wen Ho Lee had already left the country. State said that the reason they weren't notified was that the investigation was so closely held. "[P]erhaps our joint decision on who to involve in this case was too restrictive." (DOE 2389)

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(FBI 6425) The other two options were "Revisit FISA" and

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to the second clearly belong to SC Dillard, who insisted that it be included as an option in the December 1997 teletype. ⁷¹⁹ (7/28/99) FBI-AQ knew as carly as October 1997 that was on its way. On October 15, 1997, SSA (1997, SSA) (1997, that SC Dillard had added (1997) to the teletype. (AQ 5524) (8) FBI-AQ's immediate reaction to the possibility of the (1997), swas not positive. SA (1997) (AQ 5527) (8) By early December, FBI-AQ's attitude toward changed. The reason was case saw an opportunity to premise	issue came up	again the next day	in a meeting with the	e Attorney Genera	al. ⁷¹⁸ Birth rights
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5524) (8) FBI-AQ's immediate reaction to the possibility of the former, was not positive. SA and SSA talked about it and they saw no "logical opening" (AQI 5527) (8) By early December, FBI-AQ's attitude toward changed. The reason was PBI agents involved in the					lober 15, 1997,
 (8) FBI-AQ's immediate reaction to the possibility of the second system of the positive. SA and SSA talked about it and they saw no "logical opening" (AQI 5527) (8) By early December, FBI-AQ's attitude toward had changed. The reason was PBI agents involved in the possibility of the possibil		old SA that S	C Dillard had added	to t	he teletype. (AQ)
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	(8) By c changed. The r	early December, FI	(AQI 5527) BI-AQ's attitude tow	ard	had

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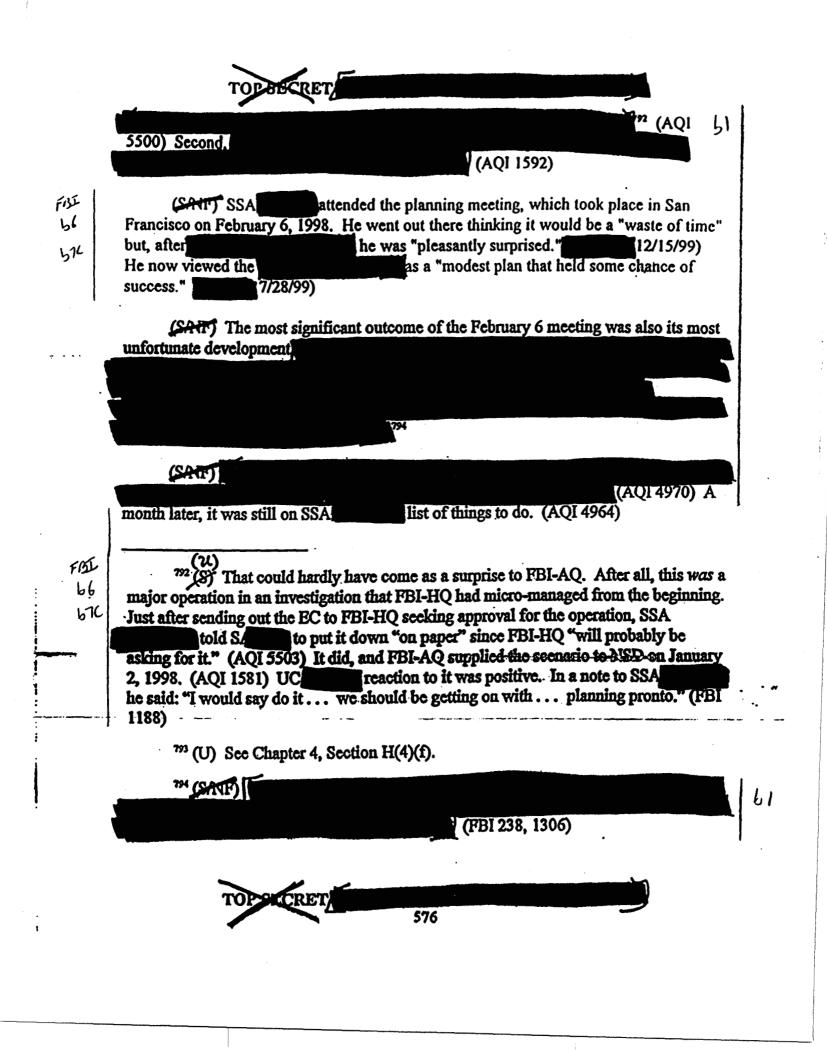
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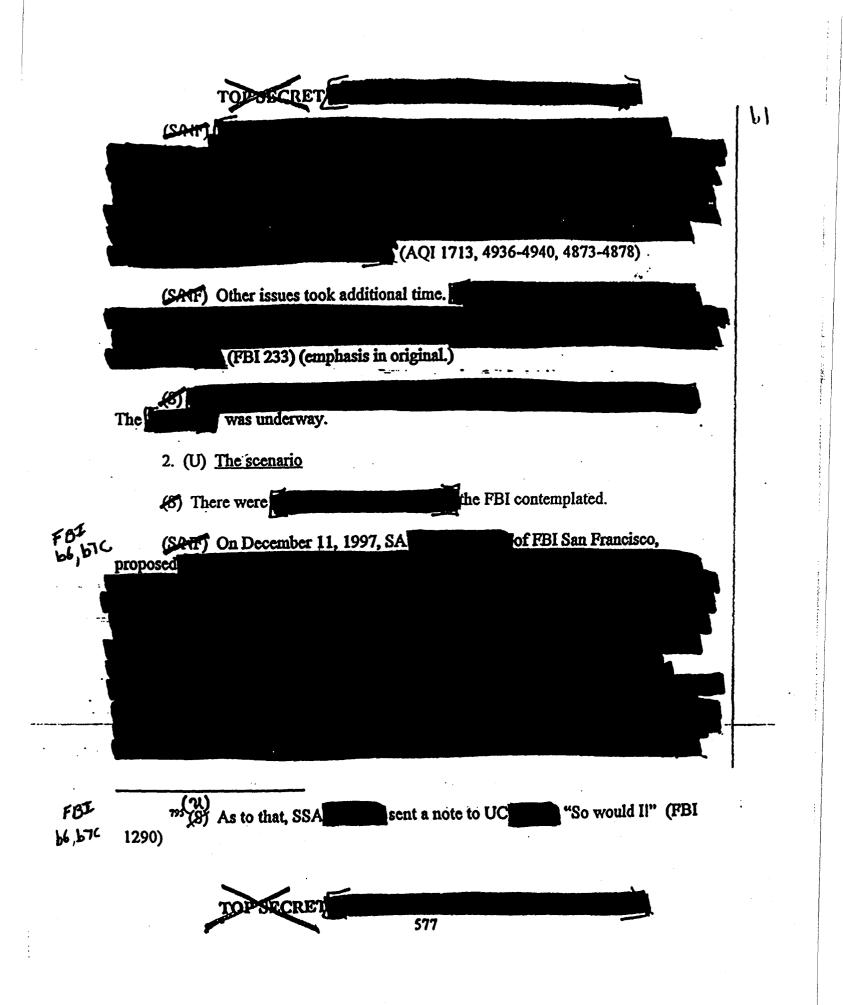
⁷²¹ (SANF) The issue came up on August 20, 1997 after the Attorney General and the Deputy Attorney General were briefed by Notra Trulock on PRC efforts to penetrate the national laboratories. AD John Lewis and SC Steve Dillard were both present at the briefing. After Trulock left, there was a brief follow-up meeting with the FBI. According to the handwritten notes of Dan Seikaly, three "action" items were discussed. The first item was "Review FISA application," which would ultimately lead to Seikaly's review of the June 1997 Wen Ho Lee/Sylvia Lee FISA application. The second item was "Consider and the third item is "Reconvene after CIA for analysis," an apparent reference to a CIA assessment that was then underway to provide an independent review for the NSC of Notra Trulock's assertions about the PRC's nuclear weapons program. (DAG 1303)

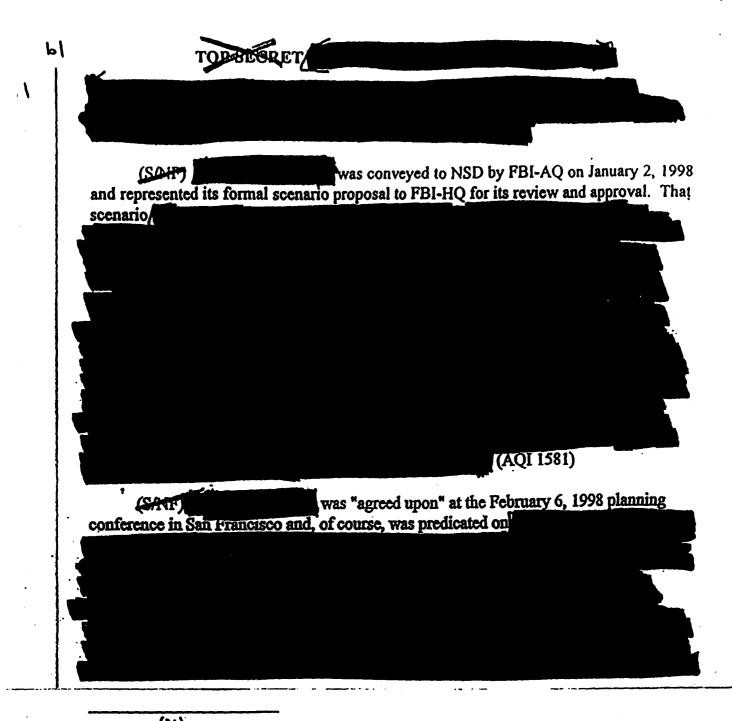
789 (8) See also FBI 12013, a note by UC that reads, in part, as follows: "SWD wants to FBI 66,670 790 (AQI 1854) 574

TOPSECRET FBL (8) SSA told SAC Weber that it was "an opportune time to make an approach to the subject." (AQI 5513) SA described it as an "ideal opportunity" for 66 (AQI 5510) Even SSA who would later characterize 670 as a "dumb idea"⁷⁹¹ 7/28/99), told SA from December 12, the 1997 that he viewed it as a "good idea at this time." (AQI 5514) (SAVF) By December 16, 1997, SSA and, as described in Chapter 4. 51 (AQI 5508; FBI 12002) (8) The next day, SA drafted an EC to FBI-HQ seeking approval to run the "It is believed by the Albuquerque Division and by many of the recipients of this communication that presents an opportunity for (FBI 1166) (SAVF) FBI-AQ thought the could be run almost immediately. On December 19, 1997, an FBI San Francisco Division supervisor called SSA to report (AQI 5502) (B) That prediction would only turn out to be eight months off the mark. Delays began immediately. First, SSA told FBI-AQ that it could not approve the 61 791 (8) SSA was not the only one who would later characterize the as "dumb." DOB's Ed Curran would also call it "dumb" and describe it as "pie in the sky" and "doomed to failure." (Curran 8/31/99) It did not help any that FBI-AQ froze out the two counterintelligence officers - one who was himself a current FBI agent and the other who was a retired FBI agent - that Curran sent out to Santa Fe to monitor

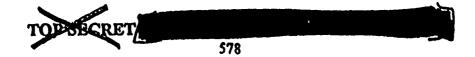
the operation. As described below, they had an excellent suggestion, which FBI-AQ ignored.







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 (8) See also AQI 4978-4986, SA notes of the San Francisco
 (8) See also AQI 4978-4986, SA notes of the San Francisco
 (9) See also AQI 4978-4986, SA notes of the San Francisco
 (1) "Show
 (2) that they are "currently engaged in clandestine intelligence activity." (AQI 4985)



(AQI 1621)

on April 13, 1998, provided the following

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the official scenario approved by FBI-HQ

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(FBI 12470)

(SATE)_Finally_the scenario_was refined slightly

(AQI 4873-4878)

3. (S) What was wrong with the planning of the

(6) It must first be said that none of the scenarios were so inherently preposterous that they could not have moded. The likelihood of success in any finance is limited. After all

(<u>Id</u>.)

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Nevertheless, a carefully designed and well-planned held out at least the potential for success, and perhaps more. The problem here is that was so poorly planned as to be the equivalent of an impromptu performance. Given what the FBI had invested in this case, and given the importance of the underlying allegations, the lack of planning of is nothing short of astonishing. As one FBI agent, who was actually involved in the execution of the said: "[It was] so poorly planned it was unbelievable." 9/7/99) Here are just some of the problems:

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(1) () Not a single one of the scenarios - which changed over time but never evolved or matured - was anything other than a starting point for serious planning. Instead, the scenarios were the serious planning,

(2) And so on. As SA was] no preparation for anything." 46,670

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said, there was "no 'what if' planning * * * [there 9/7/99)

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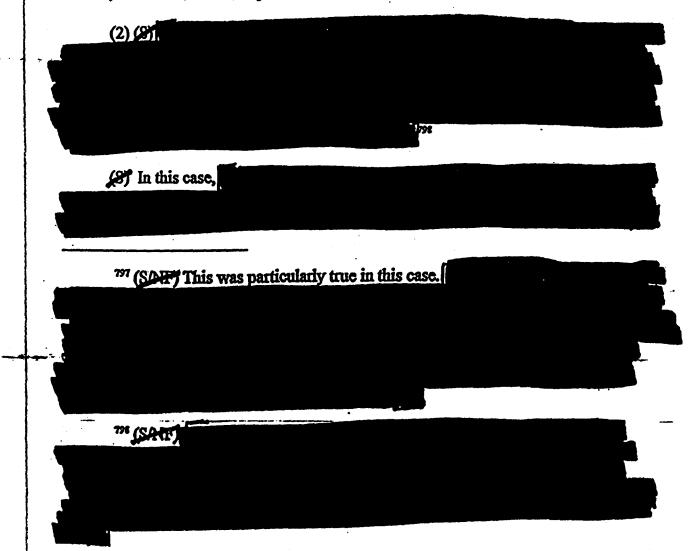
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and the scenario had been discussed, see AQI 4873-4878, but there is no indication of a thorough and comprehensive review of all the permutations which might arise.

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"critical critical juncture [in a counterintelligence investigation] and if you don't have every detail planned it is doomed to failure." (Curran 2/9/00) Here, it was not a question of every detail but, rather, a question of any detail.



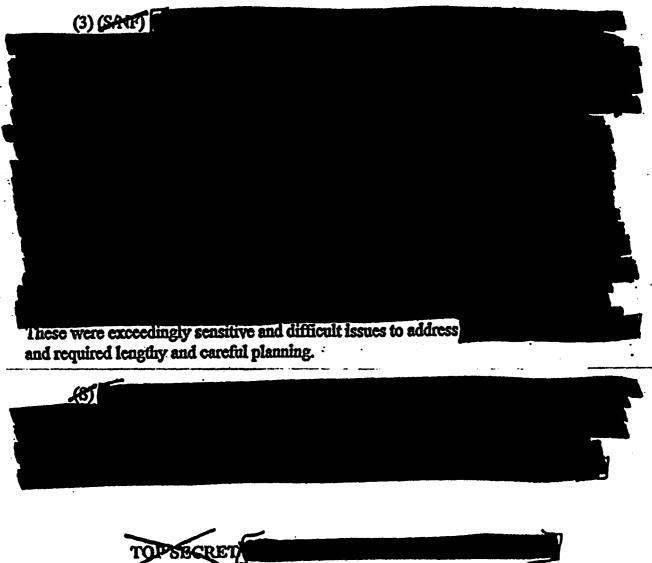
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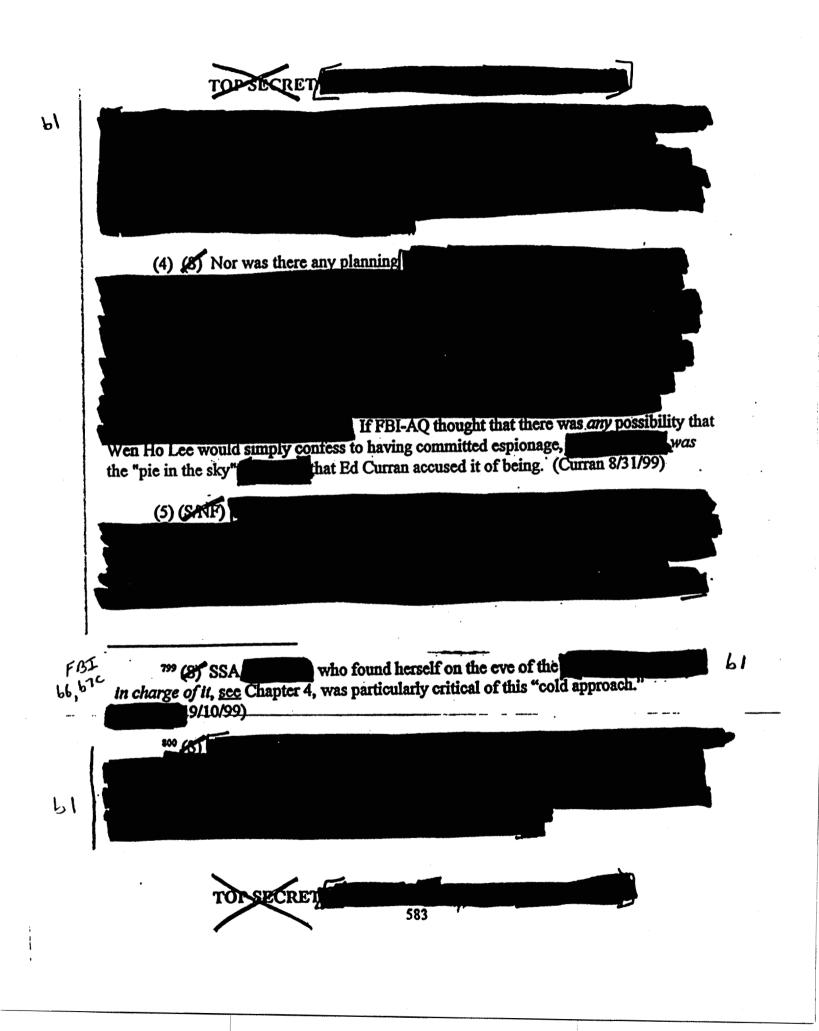
TOD BECRET And so on.

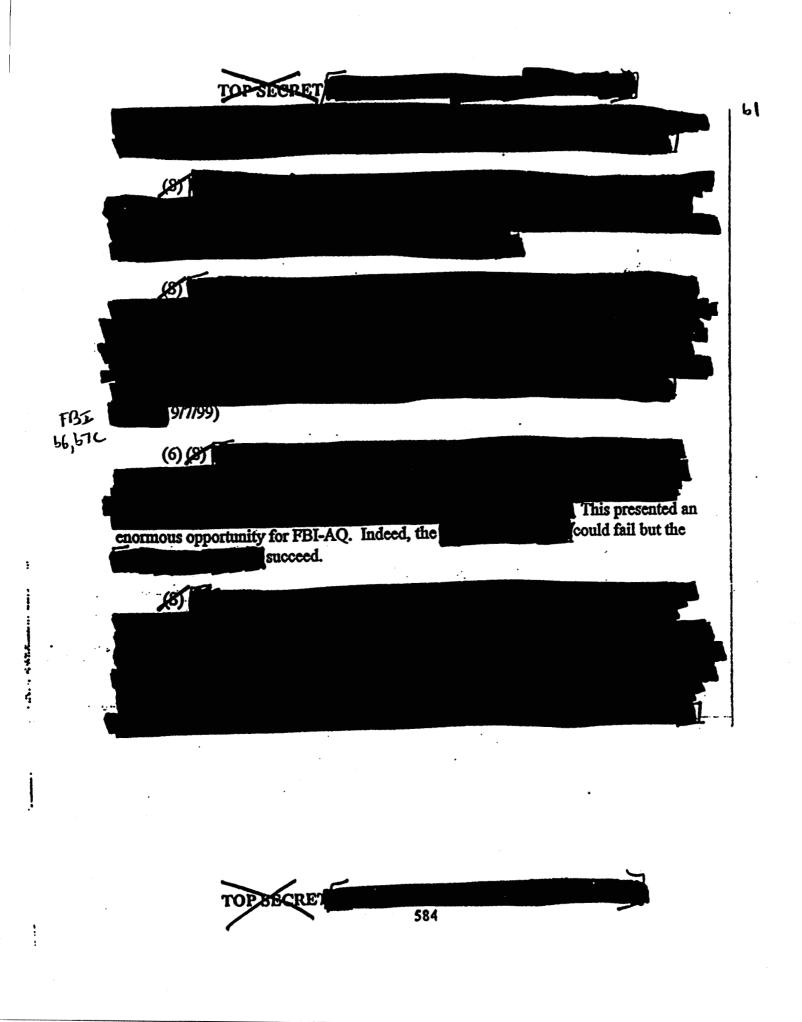
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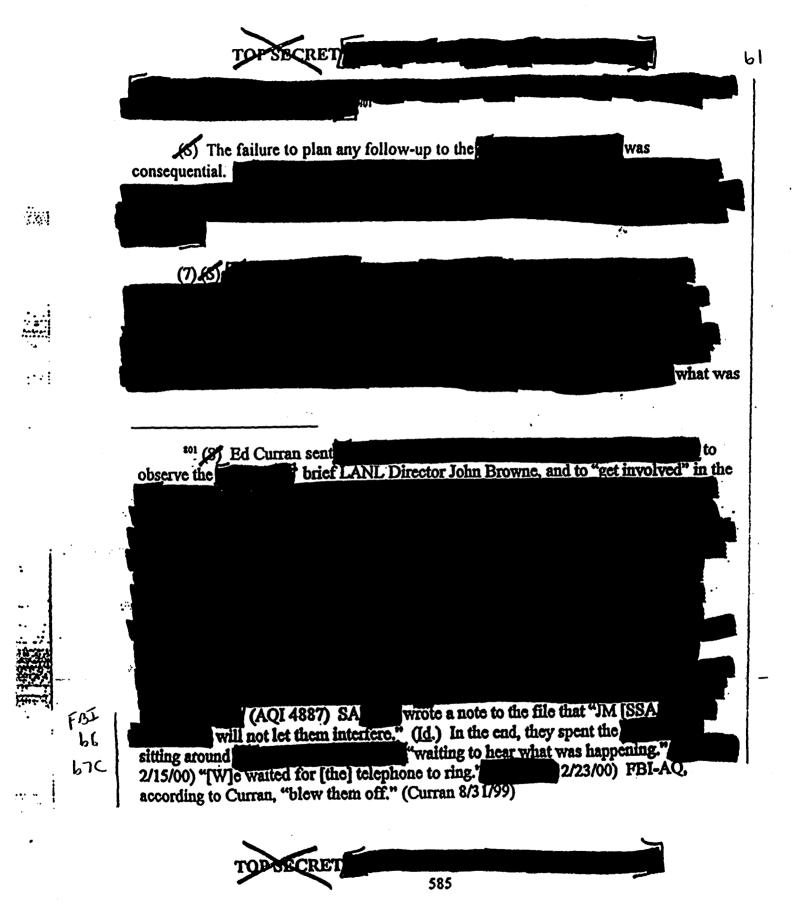
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Each of these questions needed to be scoped out in advance and answers carefully planned. They were not.





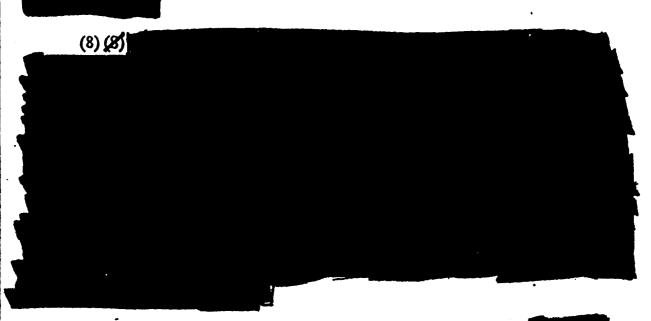




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FBI-AQ planning to do?¹⁰² Who knows. It had no plan of action for this eventuality. Even if there was insufficient basis to arrest Wen Ho Lee, there were a variety of other actions that the FBI might have taken

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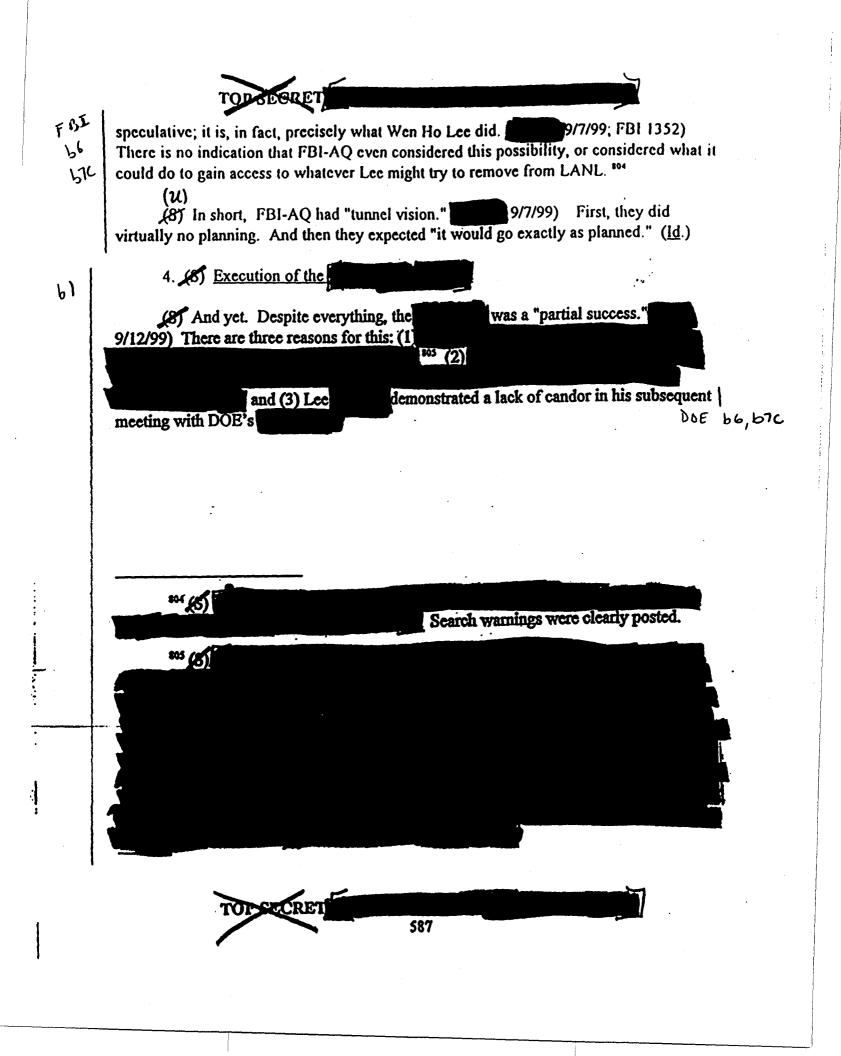
(8) Unfortunately, the FBI did not have FISA coverage during the and, therefore,

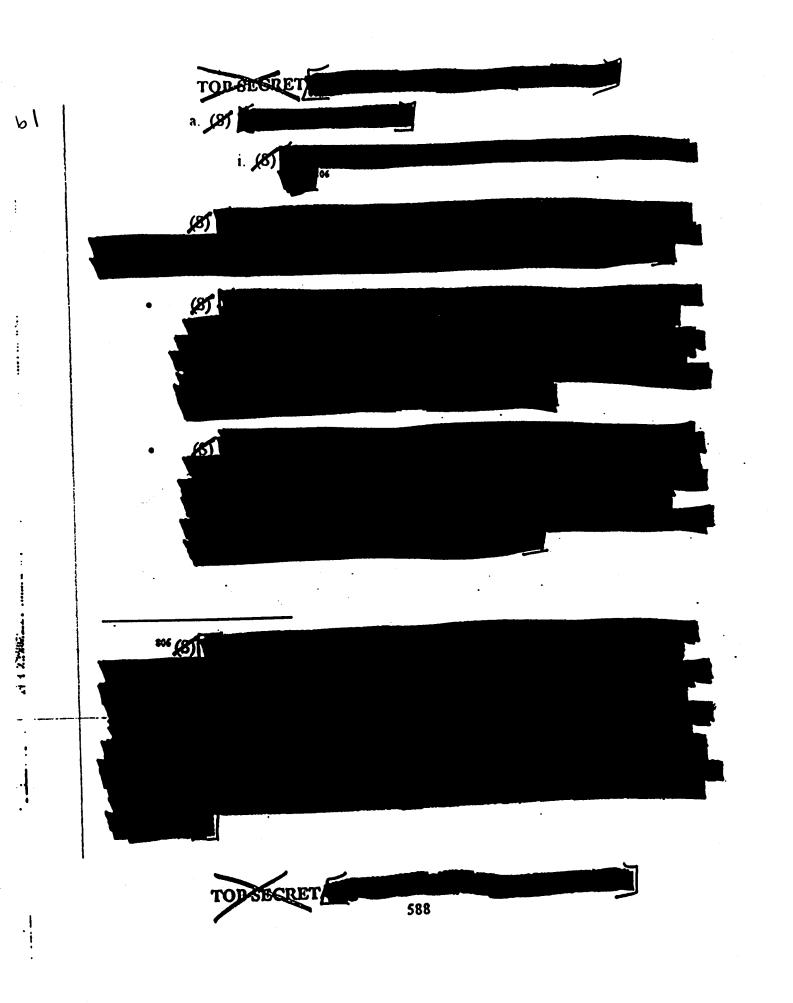
But what it could do, it did not do.

(9) (3) There was no consideration of all the other reasonably foresceable contingencies that might occur. That is hardly

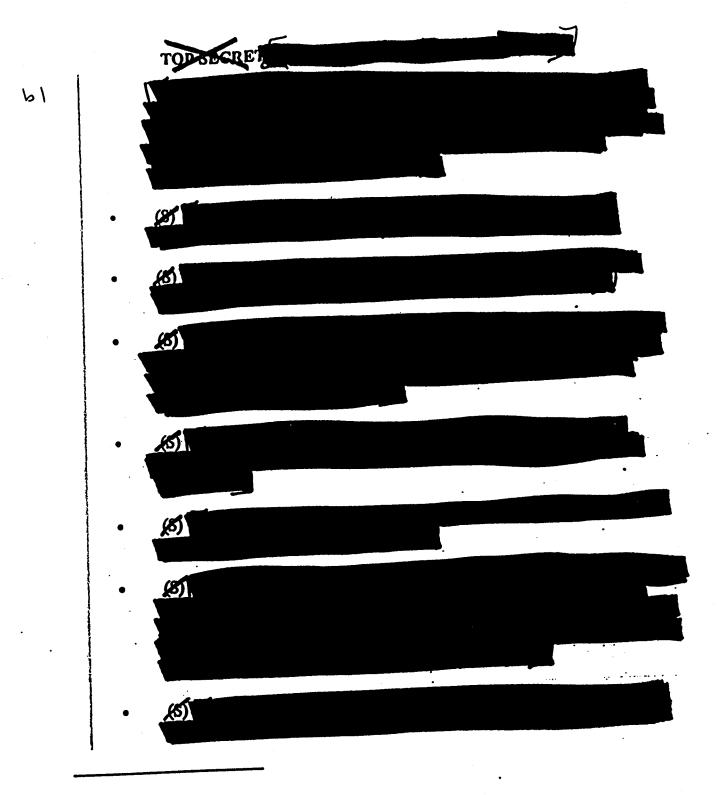
⁸⁰² (85) ⁸⁰³(55) But, without surveillance, how was FBI-AQ to know if surveillance was necessary?

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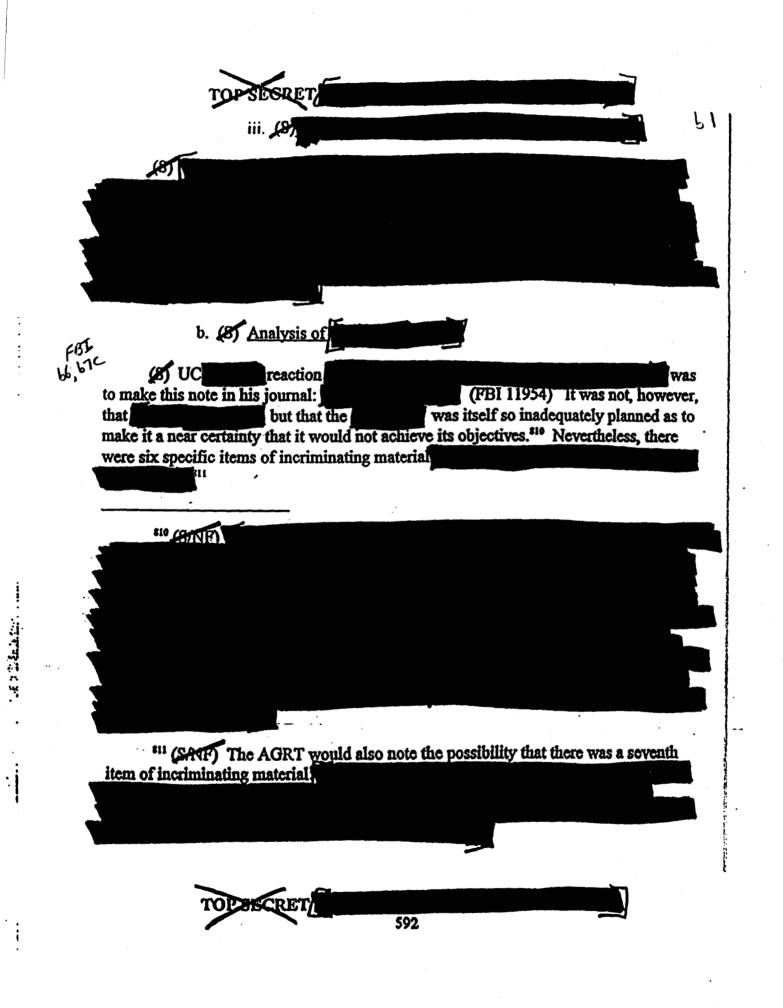


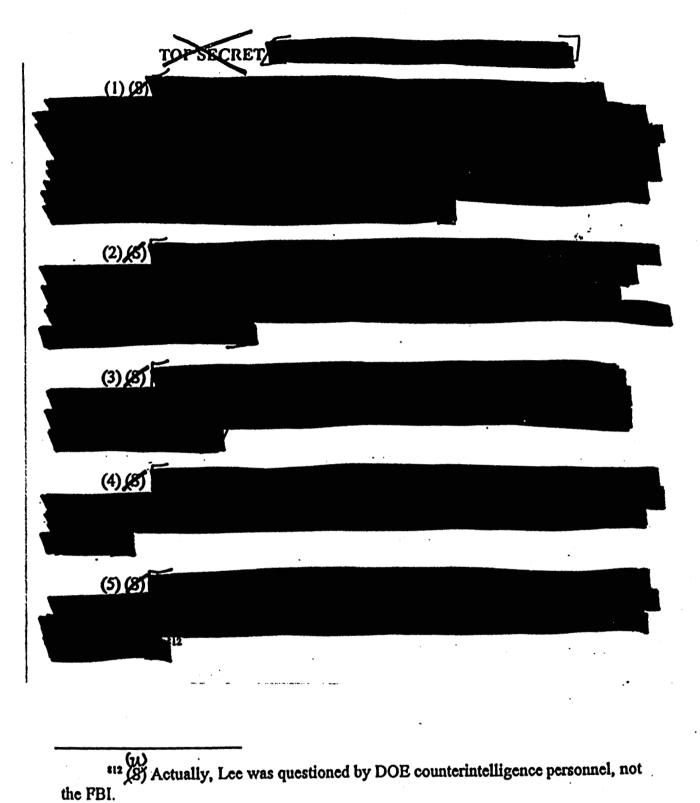
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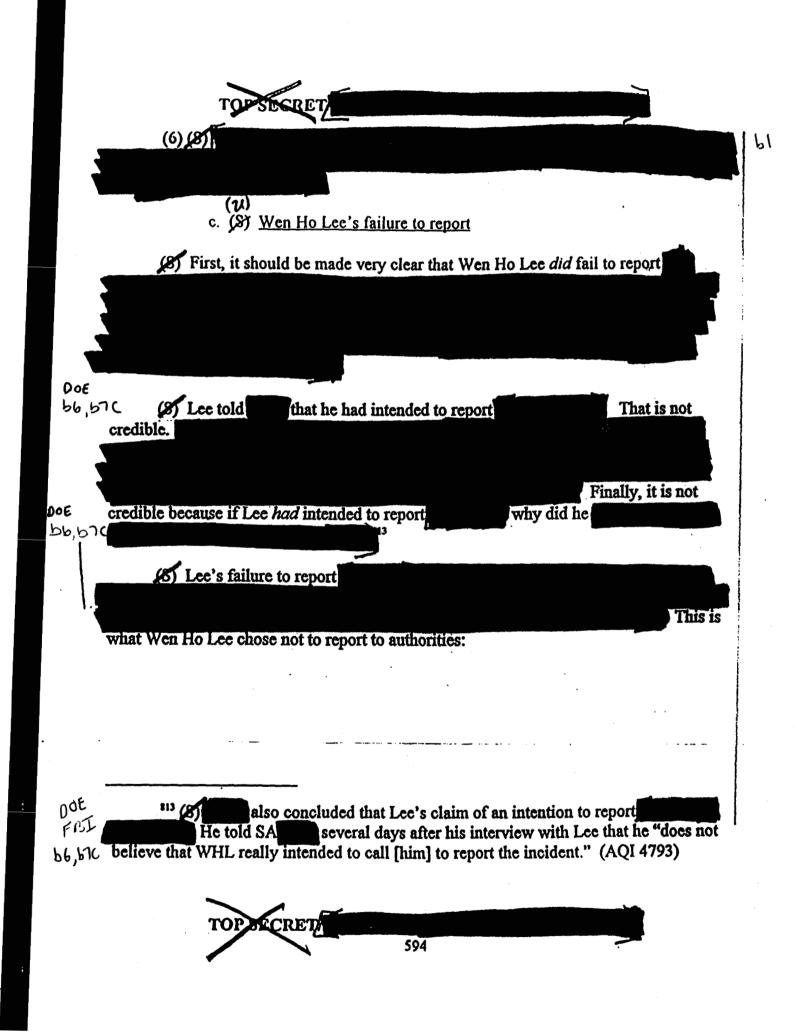


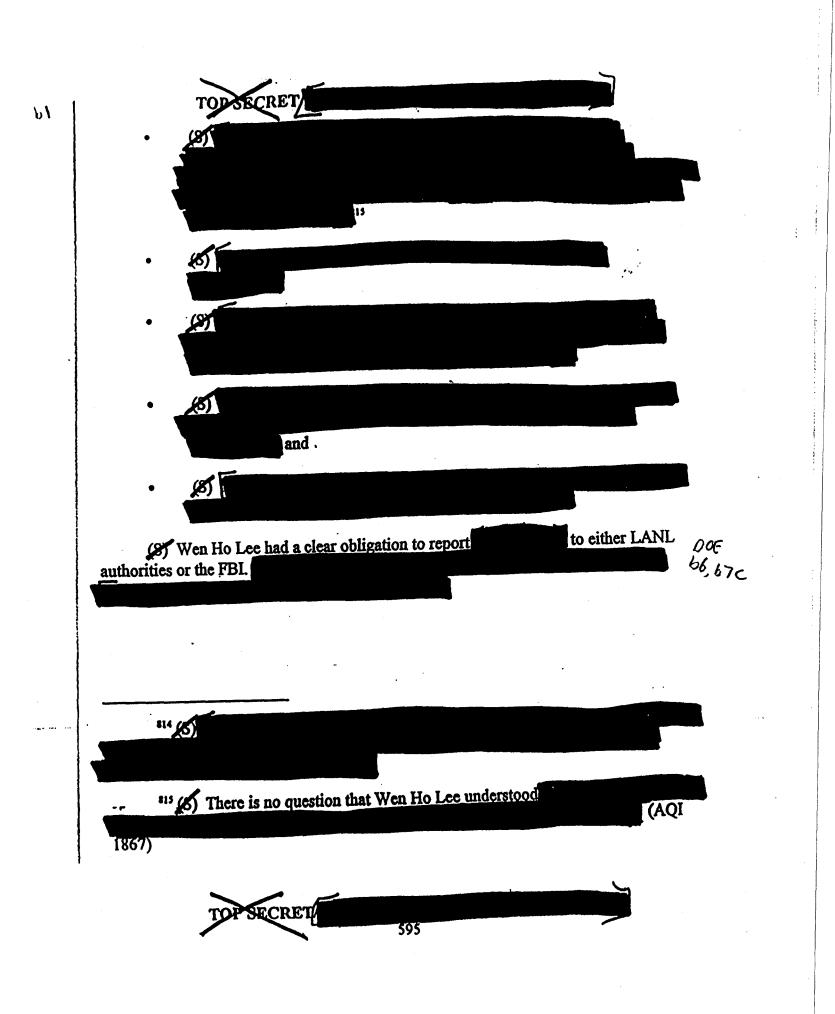


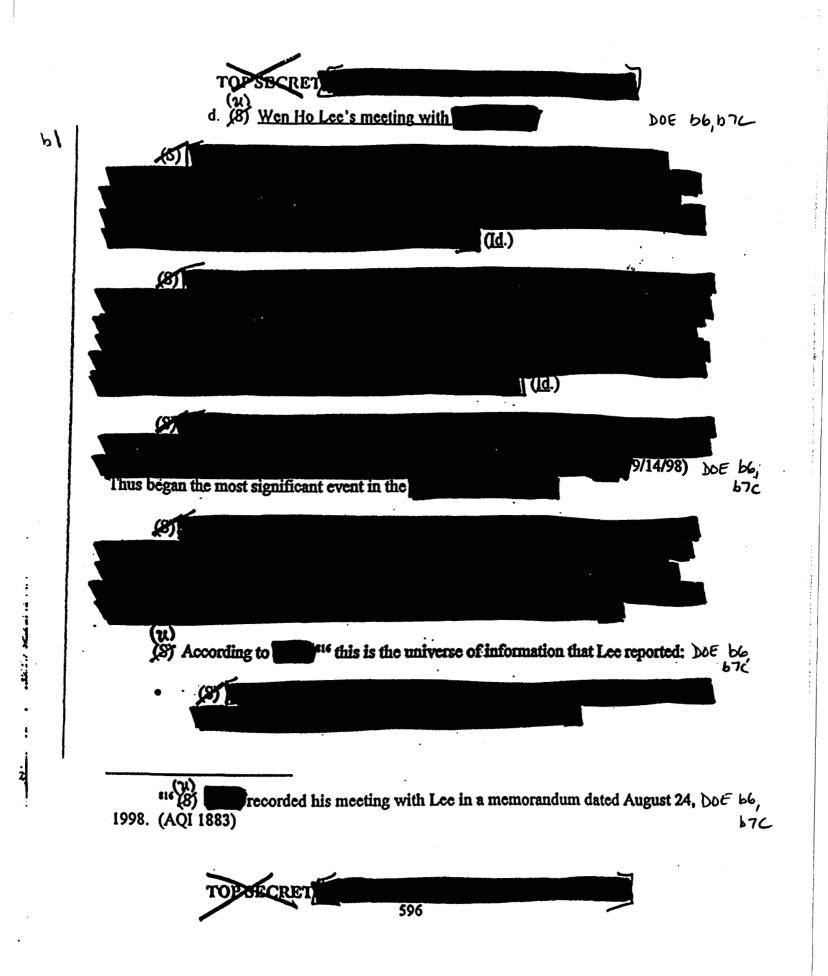
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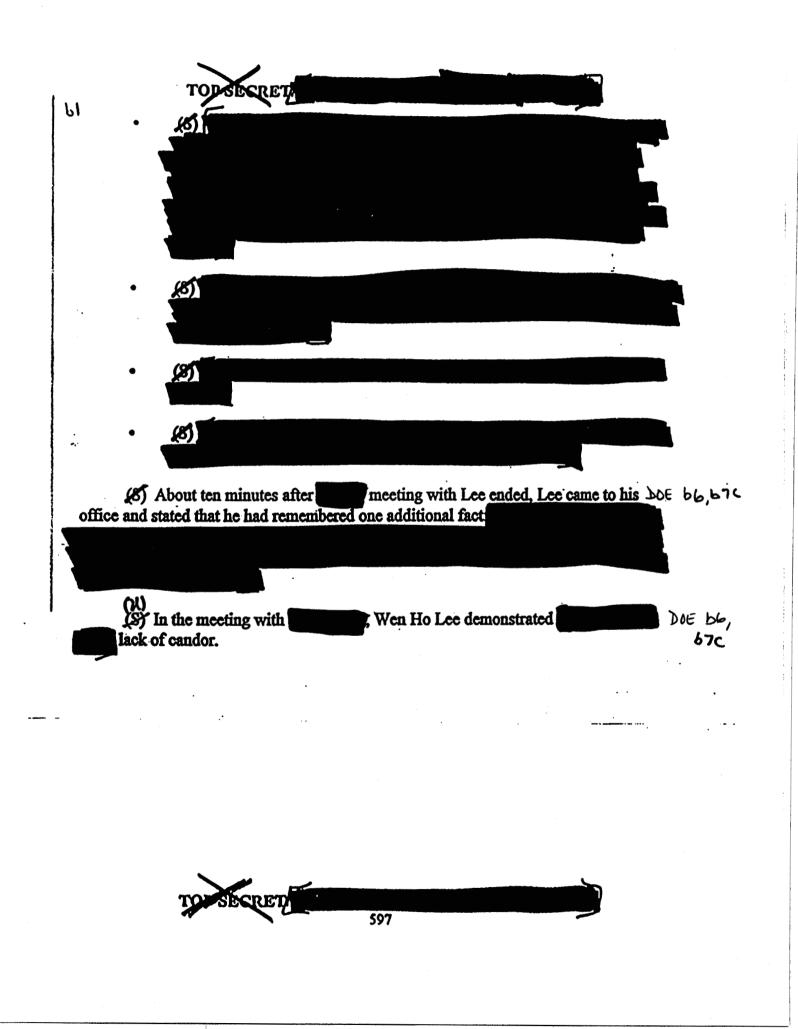
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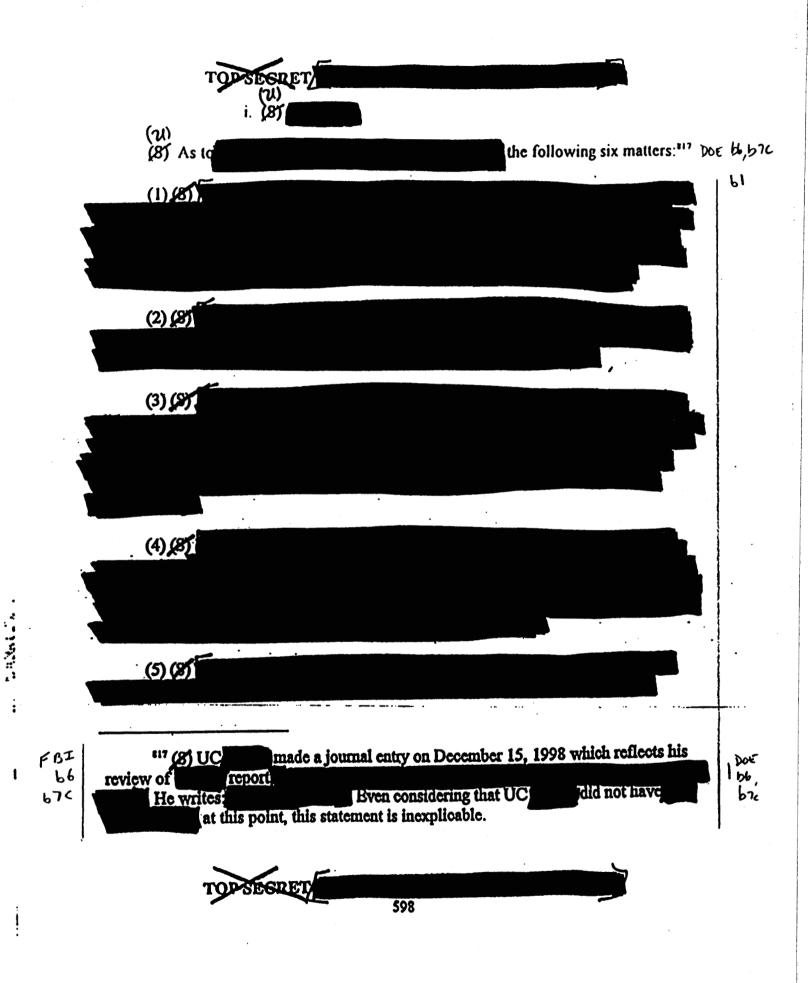
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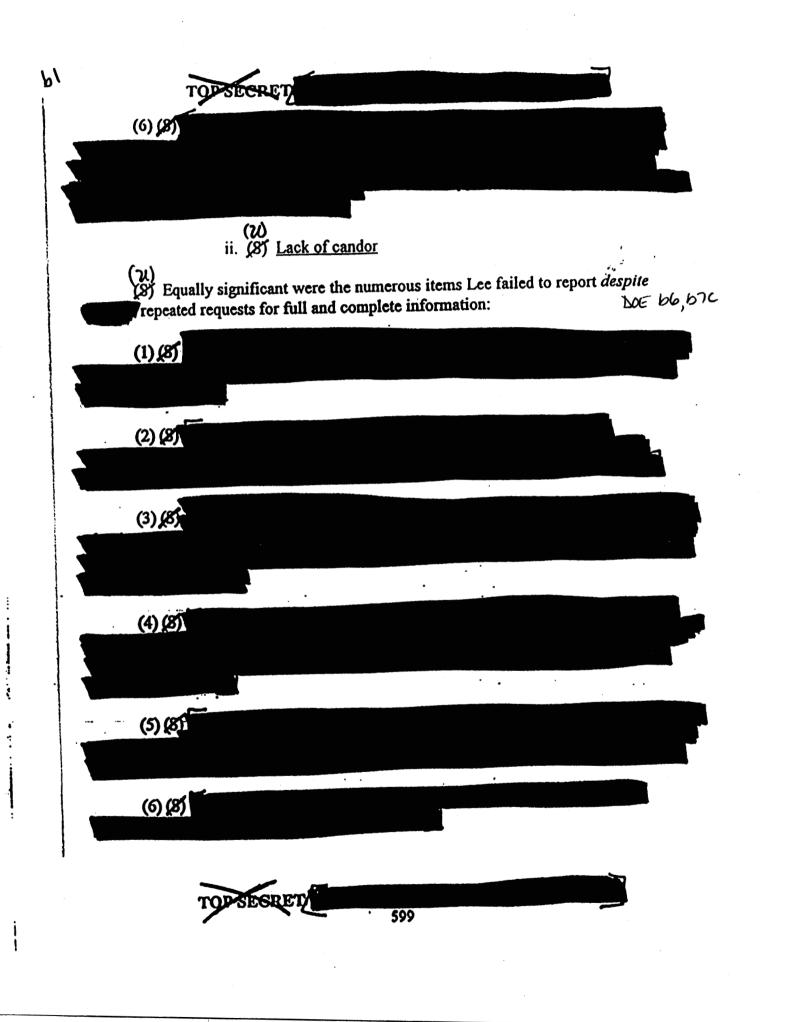


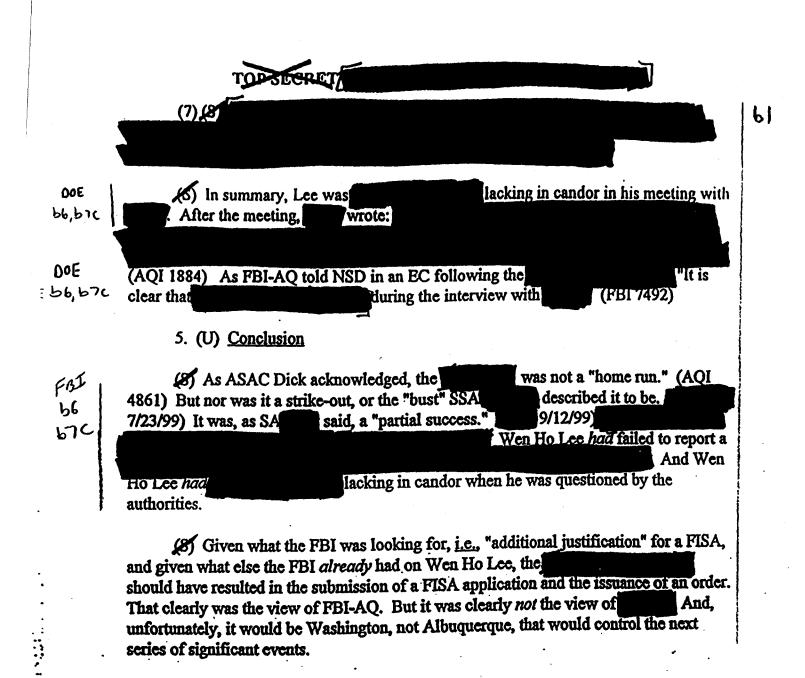












TOPSECRET