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FINAL REPORT

**ATTORNEY GENERAL'S REVIEW TEAM
ON THE HANDLING OF THE
LOS ALAMOS NATIONAL LABORATORY INVESTIGATION**



VOLUME IV

CHAPTERS THIRTEEN - TWENTY-ONE

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CHAPTER THIRTEEN

(U) THE FBI'S FULL COUNTERINTELLIGENCE INVESTIGATION OF WEN HO LEE AND SYLVIA LEE: AUGUST 1997 TO DECEMBER 1997

Questions Presented:

Question One: (U) Was the investigation pursued appropriately and aggressively during this period of time?

Question Two: (U) Did FBI-AQ begin to address the concerns articulated by OIPR?

Question Three: (U) What was FBI-HQ doing during this period of time to address or advance the investigation?

A. (U) Introduction

(U) In Washington, D.C., the months of August 1997 to December 1997 were consumed with productive and energetic activity on matters related to, and ancillary to, the Wen Ho Lee investigation. In Albuquerque, however, the investigation entered its longest period of inactivity. It was almost as if FBI-AQ, having heard (erroneously) that the Director had said "the case is dead" (AQI 5325), did not want to do anything that might suggest otherwise.

B. (U) FBI-HQ

(U) These were busy months at FBI-HQ.

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(S) On August 1, 1997, Notra Trulock, apparently at the request of the National Security Advisor,⁷⁶² briefed John Lewis on his perception of the PRC's nuclear weapons program and the PRC's attempts to penetrate the national laboratories. Four days later, AD Lewis met with Director Freeh, Deputy Director Esposito, SC Dillard, UC [REDACTED] and SSA [REDACTED] to discuss the problems at the national laboratories. (FBI 16610)

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(S) The Director's immediate reaction was to instruct his staff to prepare a "white paper" addressing the entire DOE counterintelligence problem and, in consultation with the CIA and DOE, to come up with recommendations for change. (FBI 12479)

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1. (S) The "take that right off the table" meeting of August 12, 1997.

(S) On August 12, 1997, there were two dramatic developments in the Wen Ho Lee investigation. One has already been discussed in Chapter 11, the OIPR meeting with [REDACTED] personnel. The other was Director Freeh's meeting with Notra Trulock and Deputy Secretary of Energy Betsy Moler.⁷⁶³

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⁷⁶² (S/NF) UC [REDACTED] sent SC Dillard a note, dated July 7, 1997, indicating that Trulock had briefed Sandy Berger on the PRC nuclear weapons issue and Berger wanted AD Lewis briefed as soon as possible. (FBI 13029) See also a routing slip from UC [REDACTED] to AD Lewis, indicating that Trulock would be contacting AD Lewis to provide "a threat assessment briefing re PRC and the labs." (FBI 1026)

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⁷⁶³ (S) The AGRT has six records documenting this meeting: (1) the AGRT's own notes of the notes made by a meeting attendee, SSA [REDACTED] (NSC 002-003); (2) the AGRT's notes of an August 21, 1997 memorandum from [REDACTED] to [REDACTED] of the NSC, summarizing Trulock's briefing to Director Freeh (NSC 004-006); (3) [REDACTED] but was told about it by SSA [REDACTED] (FBI 21286); (4) UC [REDACTED] handwritten notes of the meeting, and his typed version of the same notes (FBI 21813); (5) SSA [REDACTED] handwritten notes, dated September 18, 1997, but clearly describing the August 12, 1997 meeting. (FBI 12505); and (6) SA [REDACTED] notes of a voice mail message he received from SSA [REDACTED] on August 12, 1997. (AQI 5325)

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(u) (S/NF) The purpose of the Trulock/Moler meeting was for Director Freeh to hear for himself Trulock's PRC nuclear weapons briefing, [REDACTED] to dub Trulock's [REDACTED] (FBI 12312) After Trulock's presentation, Director Freeh made two key points to the DOE representatives:⁷⁶⁴

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(1) (u) (S) In conjunction with the FBI, DOE needed to "start writing furiously and quickly" a counterintelligence plan. (FBI 21816) According to SSA [REDACTED] notes, DOE needed "immediately [to] come up with plan to rectify Lab's procedures which are causing problems." (FBI 12505) There was an urgent need for DOE "to move forward to preserve our information." (NSC 003) As SSA [REDACTED] wrote in her memorandum of the meeting: "Freeh recommended that DOE quickly and 'furiously' develop a plan to stop [the] erosion of 20 years." (NSC 004)

(2) (u) (S) After Deputy Secretary Moler made the comment that DOE had not pulled Wen Ho Lee's access to classified information at the request of the FBI, Director Freeh explicitly told the DOE representatives to "take that right off the table."⁷⁶⁵ (FBI 12506) The FBI's investigation of Wen Ho Lee should no longer be "a factor in any DOE action"

b1 ⁷⁶⁴ (S) There is no question that Trulock and Deputy Secretary Moler were at this meeting. There is, however, some question as to whether Ken Baker, the Acting Director of DOE's Office of Nonproliferation and Nuclear Security ("NN") was at this meeting. [REDACTED] notes, and [REDACTED] notes of what she was told by [REDACTED] both reflect that Ken Baker was at the meeting. SSA [REDACTED] told the AGRT that Baker was definitely at the meeting. [REDACTED] 2/9/00) UC [REDACTED] notes also reflect that Baker was at the meeting and UC [REDACTED] recalls "without a doubt" that Baker was at the meeting. [REDACTED] 2/9/00) Baker, however, states unequivocally that he was not at this meeting. (Baker 2/2/00)

b1 ⁷⁶⁵ (S) The phrase "take that right off the table" appears in SSA [REDACTED] notes. (FBI 12506) Variations of it appear in SA [REDACTED] notes of SSA [REDACTED] August 12, 1997 voice mail (AQI 5325) ("This case is off the table"), SSA [REDACTED] memorandum (NSC 004) (Freeh "took the FBI case off the table"), and [REDACTED] notes (FBI 21286) ("Take that off the table"). Trulock's recollection is that Director Freeh said "to take FBI investigative interest off the table in determining what to do with Wen Ho Lee." (Trulock 10/12/99)

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and the "FBI case pales in comparison with DOE's need to stem [the] flow of information out of the labs." (NSC 004) Although Director Frech did not explicitly order or instruct DOE to remove Wen Ho Lee's access to classified information, the Director's statements made it clear that DOE could now take *precisely* this action in its effort to enhance security at the national laboratories.⁷⁶⁶

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(S) It is significant that Director Frech – less than two weeks after first being briefed about the Wen Ho Lee investigation, see Chapter 4 – recognized and properly addressed what neither the FBI nor DOE had either recognized or properly addressed in more than a year: *Wen Ho Lee's continuing access to sensitive nuclear weapons secrets was a problem that needed fixing immediately.*

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(S) Director Frech's message should have resulted in immediate and effective action by DOE to remove Wen Ho Lee from access to classified information. That it did not, that Wen Ho Lee remained in a position to cause *further* damage to United States' national security for more than an additional year, is certainly the fault and responsibility

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⁷⁶⁶ (S) Trulock understood the Director to be suggesting that DOE take just such action: "What I took away was that he was saying you need to take Wen Ho Lee out of access to nuclear weapons information." (Trulock 10/12/99) Deputy Secretary Moler, on the other hand, heard what the Director had to say but did not necessarily appreciate its implications for DOE. She told the AGRT: "I do remember him commenting that we no longer needed to keep the suspect in a 'no alert' status at the request of the FBI." But, she emphasized, "He did not tell us – did not give us specific direction – to take him out." (Moler 3/8/00) See Chapter 18.

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of DOE, although the FBI did continue to make minor contributions to this problem.⁷⁶⁷
See Chapter 18.

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(S) In the coming months, Director Freeh and his staff would devote enormous energy to bringing to fruition a fundamental change in DOE's approach to counterintelligence. Director Freeh, along with DCI Tenet, would play a critical role in bringing about this reform, in selecting Ed Curran to be the first director of DOE's Office of Counterintelligence, in securing Secretary Pena's support for counterintelligence reform, in obtaining guidance from the National Counterintelligence Policy Board, and in working with the NSC to draft and implement PDD-61.

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(S) In two respects, however, the Fall of 1997 represented substantial missed opportunities for FBI-HQ to address significant issues in the Wen Ho Lee investigation.

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(S) For example, given the critical importance of this matter, and given the fact that this represented a fundamental change in the FBI's position as to Wen Ho Lee's access status, NSD should have followed up Director Freeh's *verbal* statement with a *written* one. It can be argued, however, that when the Director of the FBI makes a point of this *significance*, and makes it this *explicitly*, to a Deputy Secretary of Energy, no writing should be necessary. By September 18, 1997, however, the FBI understood that a writing might be necessary and a draft of a memorandum from AD Lewis to Trulock -- reiterating the FBI's change in position -- ~~was~~, in fact, prepared and circulated within the FBI. (FBI 20914, AQI 5531) What prompted the creation of the letter is unclear but it may have been related to a question which Director Freeh asked his staff that same day as to whether DOE had acted yet to restrict Lee's access. (FBI 1117) The Director was subsequently advised by AD Lewis that "no specific preemptive plan [had been] implemented." (*Id.*) Nevertheless, the letter to Trulock was never sent out. (FBI 12507) AD Lewis did tell Director Freeh, however, that NSD would remind DOE of Director Freeh's statement and that the point would also be reiterated in "Talking Points" for an October 15, 1997 meeting among the Director, DCI Tenet and Secretary Pena. (FBI 1117) Both these pledges were fulfilled. (FBI 1125, 20942)

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(u) (S/NF) 2. The September 1997 CIA report

(S/NF) [REDACTED] unit was handed, and then fumbled, an extraordinary opportunity to discover the fact that DOE's Administrative Inquiry fundamentally mischaracterized the predicate for the investigation. b1

(S/NF) [REDACTED]

(FBI 526)

(S/DA/FOC) On September 11, 1997, the CIA faxed to the FBI, for passage to UC [REDACTED] a report on the PRC's nuclear weapons program. The report had been requested by the National Security Advisor in order to obtain an independent assessment of Trulock's briefings to senior policy makers. [REDACTED]

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(FBI 12363, 12360, 12361) See Chapter 6.

(u) (S/NF) This could have and should have caused the FBI to reexamine the predicate for the entire Wen Ho Lee investigation. That the CIA disagreed with DOE did not necessarily prove that DOE was wrong. It did, however, clearly indicate a fundamental disagreement within the intelligence community on a matter central to an ongoing and critical espionage investigation.

(S/NF) UC [REDACTED] understood that there was a disagreement, even if he did not understand the precise contours of it.⁷⁴⁴ On August 29, 1997, he and SSA [REDACTED] had gone out to the CIA for a meeting with the CIA analysts and Notra Trulock to go over their "difference in points of view." [REDACTED] 12/29/99) The meeting [REDACTED] and Trulock followed it up with a letter [REDACTED]

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⁷⁴⁴ (u) (S/NF) UC [REDACTED] told the AGRT that he "always felt that it was never within his competence" to evaluate the substance of the disagreement between the CIA and Trulock. He understood it to have something to do with "indigenous development." [REDACTED] 12/29/99)

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to DCI Tenet [REDACTED] (FBI 12388, EAT 384) UC [REDACTED] described the meeting as "fairly robust" [REDACTED] (12/29/99) and an FBI memorandum, written the same day by [REDACTED] referred to its "atmospherics." (FBI 12432) UC [REDACTED] knew, as he told the AGRT, that it had "become clear that there was a solid good faith disagreement on [REDACTED] (12/29/99). He, therefore, should have recognized what flowed from that understanding: *if [REDACTED] was wrong, so, too, might be the premise of the Wen Ho Lee investigation that [REDACTED]*

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(S//NF) UC [REDACTED] was in that very exclusive group of individuals who were actual recipients of both the AI and the CIA assessment. He was also the unit chief of the FBI unit charged with supervising the investigation initiated pursuant to that AI. Given the fact that these two documents were clearly at odds on an issue basic to the Wen Ho Lee investigation, i.e. [REDACTED]

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UC [REDACTED] had an obligation to pursue this matter and to cause a reevaluation of the predicate for the Wen Ho Lee investigation.

(u) (S/NF) Had he done so, and had the FBI as a consequence begun interviewing KSAG participants, the FBI would have discovered in 1997 what it ultimately discovered in 1999: the AI misrepresented the findings of KSAG. Instead, the CIA's report had no impact within the FBI. It was like it never happened.

3. (u) (S) The December 1997 teletype

(u) (S) NSD contributed materially to the sluggish pace of this investigation by taking more than four months to send its revised investigative plan to FBI-AQ after the FISA application was rejected. See Chapter 4.

(u) (S) That FBI-AQ should not have needed NSD to give it an investigative plan, that FBI-AQ should not have put its investigation on hold while waiting for such a plan, is beside the point. FBI-AQ was told by SSA [REDACTED] to "sit tight" and a "new plan of attack" would be coming by "Monday" [August 18, 1997]. (AQI 5326) "Monday"

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stretched into days, then weeks, and then months, with NSD continuously sending reassuring messages to FBI-AQ that issuance of the plan was imminent. See SSA [REDACTED] seven messages to SA [REDACTED] recounted in Chapter 4, Section H(4)(c)(iv).

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(S) We do not question that the [REDACTED] section had other substantial matters on its mind. UC [REDACTED] for example, told the AGRT that, during this period of time, SC Dillard was "up to his eyeballs" in matters related to the campaign financing investigation. [REDACTED] 12/29/99) That still cannot justify the four month delay in the issuance of the teletype, particularly where: (1) many of the items in the teletype were discussed with FBI-AQ as early as August 11, 1997 (AQI 5331); (2) the Director of the FBI was told on August 14, 1997 that a "more aggressive" approach was forthcoming (FBI 13331); (3) the key elements of the plan were outlined to AD Lewis by September 12, 1997 (FBI 13023); (4) the Director continued to inquire as to the status of the case⁷⁶⁹ (FBI 11631); and (5) a draft of the investigative plan was on SC Dillard's desk on or about September 24, 1997. (FBI 1105) b1

(S) The AGRT recognizes that some delay in the issuance of the investigative plan may have been unavoidable. For example, on October 6, 1997, SC Dillard sent the investigative plan back to [REDACTED] so that SSA [REDACTED] could insert [REDACTED] into it. (FBI 1105, 12013) But, by October 15, 1997, the plan was back "on his [SC Dillard's] desk again." (AQI 5524) b1

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(S) It should not have taken yet another two months to work its way out of NSD. Given the languid pace at which FBI-AQ had handled this investigation since June 1996, another substantial and unnecessary delay, this time *gratis* FBI-HQ, was not precisely what the case required.

⁷⁶⁹(S) On September 18, 1997, Director Frech asked SSA [REDACTED] a supervisor in UC [REDACTED] unit, about the status of the "Kindred Spirit" case. According to a memorandum SSA [REDACTED] wrote at the time: "The Director and [AD] Lewis brought up the Kindred Spirit case and asked me if there were any new developments. I said that there was nothing new." (FBI 11631) Of course, *one* of the reasons there was "nothing new" is because NSD's teletype had not yet gone out.

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C. (U) FBI-AQ

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(S) OIPR's rejection of the FBI's FISA application had an acutely demoralizing affect on FBI-AQ.

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(S) For more than a year, FBI-AQ's investigation had been designed to achieve the goal of obtaining FISA coverage. [REDACTED] 6/22/99; [REDACTED] 9/12/99) Indeed, the day before SA [REDACTED] learned that the FISA application had been rejected, he and a technically trained agent had been out to LANL to work out the final logistics for tapping Wen Ho Lee's office telephone. (AQI 1452) Even linguists had been requested and approved to translate the FISA "take." (AQI 5364, 1277, 5346) On August 12, 1997, however, SA [REDACTED] found out there would be no FISA "take," at least not "at this time." (AQI 5551) SSA [REDACTED] left a voice message with SA [REDACTED] as follows: "FISA application is not going forward for the moment." (AQI 5325)

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(S) It is clear from the record that FBI-AQ was completely unprepared for this rejection, disagreed with it [REDACTED] 9/12/99), and had no fall-back plan. Despite SSA [REDACTED] warning to SA [REDACTED] in July 1997, that getting the FISA approved might "possibly" not be a "lead pipe cinch" (AQI 5341), the notion that OIPR might actually reject the application was not seriously considered. SSA [REDACTED] reaction was one of "surprise." [REDACTED] 6/22/99) ASAC Dick found the rejection "frustrating." (Dick 7/29/99) SA [REDACTED] was "shocked." [REDACTED] 9/12/99)

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(S) After the rejection was conveyed to FBI-AQ, the investigation lost what little momentum it had. After the FISA was rejected, SA [REDACTED] said, the "Kindred Spirit" case "did not have [the] same priority." [REDACTED] 9/12/99) It "knocked the wind out." (Id.) The case agent continued to send out national security letters and receive responses, the mail cover was renewed, a few records checks were conducted, [REDACTED] leads were followed, and [REDACTED] the FCI agent who replaced SA [REDACTED] in the Santa Fe RA, was given the FISA application to read. (AQI 5149, 5147, 1479, 5319, 5318, 5317, 5214, 5514) Essentially, though, the investigation was adrift, simply waiting for the teletype and SSA [REDACTED] "Plan B." (AQI 05326)

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(S) In late September 1997, SSA [REDACTED] took over supervision of the case from SSA [REDACTED] and told SA [REDACTED] that, in light of the FISA rejection, an alternative

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investigative plan had to be developed and a teletype sent to FBI-HQ detailing the investigative steps that FBI-AQ intended to take. [REDACTED] (12/7/99) Such a teletype, however, was never sent.⁷⁷⁰

(S) There was one very productive step which FBI-AQ could have taken on its own, and which would have directly addressed a principal concern expressed by OIPR in its rejection of the FISA application: the opening preliminary inquiries [REDACTED] FBI-AQ was told repeatedly that the FBI's failure to investigate [REDACTED] was one of the grounds for the rejection of the FISA application.⁷⁷¹ In August 1997, FBI-AQ could have opened preliminary

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⁷⁷⁰ (S) A teletype containing an "alternative investigative plan" was eventually sent, of course, but it was from FBI-HQ to FBI-AQ, not the other way around. Nevertheless, SSA [REDACTED] viewed the teletype as simply reflecting FBI-AQ's own proposals. In an e-mail he sent to SAC Weber and ASAC Dick on December 19, 1997, he advised that SSA [REDACTED] had called to say that SC Dillard had approved "various investigative proposals that we had submitted to FBIHQ three months ago." (AQI 5502) The AGRT has seen no evidence of any such submission of investigative proposals to FBI-HQ. There was a telephone call between SA [REDACTED] and SSA [REDACTED] on August 11, 1997 in which the two agents discussed various investigative options. (AQI 5331) There is also an October 21, 1997 handwritten note by SA [REDACTED] reflecting a meeting with SSA [REDACTED] in which certain investigative options are described, including: (1) acquiring more financial records; (2) set a lead for the LEGAT covering Beijing concerning the PRC intern that Wen Ho Lee had supervised; (3) interview Wen Ho Lee concerning the activities of the intern; and (4) prepare for a confrontational interview of Wen Ho Lee. (AQI 5527) SSA [REDACTED] was supposed to "get [REDACTED] approval" for these proposals. It is unknown if he ever did. None of these suggestions are incorporated into the December 1997 teletype. (FBI 11855)

⁷⁷¹ (S) See, e.g., SA [REDACTED] memorandum to SAC Weber, ASAC Dick, and SA [REDACTED] with a routing slip dated August 19, 1997: "On 8-13-97, [REDACTED] advised that DOJ cited the following reasons (at least in part) for their decision not to go forward: [1] [REDACTED] were never totally eliminated as suspects." (AQI 5554); see also SA [REDACTED] handwritten note concerning a telephone call with SSA [REDACTED] on August 13, 1997:

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b1 inquiries ("PIs") [REDACTED] conducted the limited investigations permitted under a PI and, if warranted, closed them. If a subsequent request for FISA coverage was ever going to be made by FBI-AQ, and one ultimately was, OIPR's concerns needed to be addressed - even if FBI-AQ disagreed with OIPR's reasoning. These concerns were not addressed in 1997. Indeed, they were not even addressed in 1998 when FBI-AQ ignored a "mandatory" instruction from FBI-HQ to open the PI's.⁷⁷² (AQI 01560, 5500)

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(S) In early December 1997, the investigation sputtered back to life. For the previous three months, it had been adrift and directionless. [REDACTED] (AQI 1854) would change that. It would give the investigation of Wen Ho Lee both purpose and mission. The [REDACTED] had begun.

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b1 [REDACTED] Might have to investigate [REDACTED] (To show why they are not suspects.)" (AQI 5326)

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⁷⁷² (S) That instruction was contained in the December 19, 1997 teletype. SSA [REDACTED] told SA [REDACTED] to open the PI's. (AQI 5503) SA [REDACTED] did not do so. Instead, he put it on the "back burner." [REDACTED] 9/12/99)

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