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• (S/NF) SSA [REDACTED] should have caused a thorough examination of both the DOE AI and the underlying predicate for the AI. At least, he should have insisted on examining - or having SA [REDACTED] examine - the "walk-in" document, which FBI-HQ received from the CIA on [REDACTED] but which FBI-HQ never showed to the case agent actually responsible for the investigation.¹⁴⁴ This bears repetition: SA [REDACTED] who was the first case agent and the agent responsible for the case for most of a year, never saw the "walk-in" document [REDACTED] and in FBI-HQ's decision to open a full investigation on Wen Ho Lee. [REDACTED] 8/12/99) Nor did SSA [REDACTED] recall ever seeing the "walk-in" document. [REDACTED] 6/22/99)

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(u)
(S/NF) It is not as if SSA [REDACTED] did not have an inkling that the predicate for the investigation was in some doubt. On August 22, 1995, SA [REDACTED] had sent FBI-HQ a teletype - approved by SSA [REDACTED] - which read, in part, as follows:

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(S/NF) [REDACTED]

¹⁴⁴ (u) (S/NF) While the document could not leave Washington (FBI 418) or go to Albuquerque, no such constraints prevented the case agent from leaving Albuquerque and going to Washington.

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(AQI 2944) Similarly, on October 10, 1995, SA [REDACTED] sent another teletype to FBI-HQ - again approved by SSA [REDACTED] which expressed similar reservations:

(u)
(S) (S/NF) 1. The damage assessment report is complete, and somewhat of a consensus was reached. The report was provided to Notra Trulock at DOE-HQ, who in turn gave it to DOE-OCI.

(S) (S/NF) 2. [REDACTED]

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(S) (S/NF) 3. [REDACTED]

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(AQI 2964) The possibility that the compromise might have occurred somewhere other than at LANL was reinforced in a December 13, 1995 teletype from SA [REDACTED] (who participated in the conduct of the AI) to FBI-HQ and FBI-AQ. SA [REDACTED] specifically named Lawrence Livermore, Sandia, DOE-HQ and Pantex as other facilities with [REDACTED] b1 involvement. (AQI 2986)

(u)
(S) (S/NF) Thus, SSA [REDACTED] had reason to question both the predicate for the investigation and the AI's conclusion focusing exclusively on Wen Ho Lee and his wife. Instead, FBI-AQ uncritically and unreservedly accepted the AI as if it were found truth.¹⁸⁵

¹⁸⁵ (u)
(S) FBI-AQ, at FBI-HQ's direction, did send leads to the Washington Field Office of the FBI to interview a few of the individuals involved in the analytical process leading up to the AI. But these interviews were conducted by WFO personnel without the "Q" clearances necessary for the receipt of Restricted Data and without necessary background knowledge. Nevertheless, even these interviews should have given SSA [REDACTED] pause. See the interview of [REDACTED] (AQI 1046). DOE b6, b7C

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- (U) (S) SSA [REDACTED] and the agents he supervised failed to recognize or appreciate the significance of Wen Ho Lee's continuing access to highly classified material.¹⁶⁶ For the reasons stated in Chapter 18, this is a failure on the part of both the FBI and DOE. The FBI's insistence that Lee's access not be restricted while the investigation was ongoing,¹⁶⁷ as well as the failure of both DOE and the FBI to recognize the profound difference between Lee's *assigned* tasks and Lee's *actual* access, or to appreciate just how much damage Lee could do from his own computer work station without ever stepping into the LANL vault, are failures with potentially grave consequences. SSA [REDACTED] is by no means the only responsible party, or even the most significant responsible party, but he, like SA [REDACTED] and like SSA [REDACTED] does bear a measure of responsibility for this failure.

(U) SSA [REDACTED] did take a number of steps in the right direction and they should be noted as well:

- (U) SSA [REDACTED] appropriately recognized that SA [REDACTED] would not be able to handle the Wen Ho Lee investigation by himself. He was instrumental in seeking and securing the assignment of SA [REDACTED] and SA [REDACTED] to the Division and certainly cannot be held responsible for ASAC Dick's inappropriate decision to divert the agents to other assignments.
- (U) (S) SSA [REDACTED] made substantial efforts to insure that SA [REDACTED] was moving aggressively and in the right direction. This included innumerable meetings to keep SA [REDACTED] on track.¹⁶⁸ In addition, SSA [REDACTED] attended critical

¹⁶⁶ (U) (S) One dramatic consequence of this failure was the fact that Lee remained in a position which permitted him to download onto tape extraordinarily sensitive material in 1997.

¹⁶⁷ (U) (S) As discussed in Chapter 18, Director Freeh revoked that insistence on August 12, 1997.

¹⁶⁸ (U) For example, SA [REDACTED] notes indicate meetings with SSA [REDACTED] on the Lee investigation in April 1997 on the 15th, 17th, 28th and 29th; and in May 1997 on the

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meetings and interviews on the case. See, e.g., a meeting with DOE officials at LANL on April 15, 1997 (AQI 5028), and the interview of [REDACTED] (AQI 1272).

(U) Moreover, the AGRT would be remiss if it did not note that SSA [REDACTED] had a wide array of other responsibilities. In addition to supervising the Wen Ho Lee investigation, SSA [REDACTED] supervised the rest of the National Foreign Intelligence Program, which included of course the *other* very significant FCI case referenced above, and numerous other matters.¹⁸⁹ Moreover, SSA [REDACTED] also had responsibility for the Santa Fe RA (until January 1997) and for FBI-AQ's Drug Program (until July 1, 1997), including the creation and supervision of a multi-agency drug task force that ultimately involved numerous FBI agents, an IRS agent and a DEA agent. [REDACTED] 12/1/99; AQI 6298) Moreover, because SSA [REDACTED] was in Albuquerque and SA [REDACTED] was in Santa Fe, they did not have the benefit of the frequent informal and casual communications that are so beneficial to the guidance of a case.

(U) Nevertheless, this investigation was SSA [REDACTED] responsibility. Whatever limitations the case agents brought to the case, whatever the logistical difficulties of supervision, whatever other matters commanded his time, it was SSA [REDACTED] obligation to insure that this important case was advanced appropriately and aggressively. That did not happen and the immediate case supervisor must obviously bear significant responsibility for that failure.

b. (U) SSA [REDACTED]

(S) SSA [REDACTED] supervised the Wen Ho Lee investigation from September 1997, when he took over SSA [REDACTED] and became the National Foreign

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2nd, 13th and 19th. (AQI 5028, 5375, 5362, 5367, 5408, 5355, 5356) These are undoubtedly only a small sampling of the numerous meetings which SSA [REDACTED] held with SA [REDACTED] concerning the investigation.

¹⁸⁹ (S) SAC Kneir told the AGRT that SSA [REDACTED] spent a very substantial amount of time on this other high priority FCI case. (Kneir 10/6/99)

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Intelligence Program coordinator, until October 1998, when he left Albuquerque to become LEGAT in Tokyo.¹⁹⁰ [REDACTED] 8/12/97, 12/7/99) SSA [REDACTED] background in the FBI was not FCI work; his assignment for the two years prior to taking over SSA [REDACTED] National Foreign Intelligence Program responsibilities was as FBI-AQ's White Collar Crime Squad supervisor.¹⁹¹ (Id.)

(8) SSA [REDACTED] tenure as supervisor of the case was marked by one significant accomplishment, and one alone - the [REDACTED] - and that itself 61 can only be characterized as an accomplishment because of a fortuitous event that took place at the end of the operation. See Chapter 14. That, in a nutshell, is what was right and what was wrong about SSA [REDACTED] tenure as supervisor.

(U) SSA [REDACTED] took over the squad just after the FISA application had been rejected by OIPR. He told the AGRT that he recognized that, in the wake of the FISA rejection, FBI-AQ needed to have an alternative investigative plan. He said he discussed this with both SAC Weber and SA [REDACTED] 12/7/99) Nevertheless, there is no evidence that FBI-AQ took substantial steps to design and execute such a plan.¹⁹²

¹⁹⁰ (U) SSA [REDACTED] like SSA [REDACTED] had other significant responsibilities beyond the National Foreign Intelligence Program. For example, SSA [REDACTED] was in charge of the Evidence Response Team from September 29, 1997 forward. (FBI 15915) SSA [REDACTED] was also FBI-AQ's coordinator in preparation for its 1998 inspection. [REDACTED] 12/7/99) Even as to his assignment as coordinator of the National Foreign Intelligence Program, SSA [REDACTED] had responsibilities beyond that of FCI. The NFIP Coordinator, for example, was also responsible for Domestic Terrorism ("DT") and International Terrorism ("IT").

¹⁹¹ (U) SSA [REDACTED] joined the Albuquerque Division in April 1995 and immediately became the White Collar Crime program coordinator. (Id.) He was responsible for the White Collar Crime squad from April 24, 1995 through September 28, 1997, at which point he took over the National Foreign Intelligence Program and SSA [REDACTED] squad. (FBI 15915)

¹⁹² (U) There are a few discussions with SSA [REDACTED] as to possible investigative options, see, e.g., AQI 5331, but that is all.

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(U) It is not that there was *no* alternative investigative plan. SSA [REDACTED] had written such a plan but it spent an unacceptable four months working its way out of FBI-HQ. In that four month period, the most consistent theme in SA [REDACTED] handwritten notes to his work file, or in other FBI-AQ files, is this: Where's the plan?¹⁹³

(U) There is something obviously and fundamentally wrong in the management of a case when the field office agent and his supervisor must wait, or are required to wait, for FBI-HQ to tell it how to conduct its case.¹⁹⁴ After the FISA application was rejected, SSA [REDACTED] had two options open to him, neither of which he took: He could have sent a communication to FBI-HQ formally advising FBI-HQ as to what FBI-AQ intended to do with the case, which at the very least would have expedited a response from FBI-HQ; or, if he determined that FBI-AQ did need guidance or instruction from FBI-HQ, he could have escalated the matter up to his SAC, James Weber, when the investigative plan was not forthcoming. Instead, the matter simply languished and four months of investigative time was lost.

(S) ^{cut} (S) The most remarkable point that must be made about the four month delay while FBI-AQ waited for the FBI-HQ teletype is the reaction of FBI-AQ personnel when

¹⁹³ (U) FBI-AQ's long wait for "the plan" is the subject matter of SA [REDACTED] notes dated August 13, 1997, August 19, 1997, August 22, 1997, August 27, 1997, August 28, 1997, September 2, 1997, September 5, 1997, September 12, 1997, September 24, 1997, September 29, 1997, October 1, 1997, October 15, 1997, October 20, 1997 and December 12, 1997. See Section "H(4)(e)(iv)" of this chapter.

¹⁹⁴ (U) UC [REDACTED] recognized this, even though it was his unit that generated the investigative plan for FBI-AQ. He said the December 19, 1997 teletype, containing the investigative plan, was "unusual. [When you have to] start putting [a] spoon in [the] field office mouth its pretty damn embarrassing." [REDACTED] 12/29/99) SSA [REDACTED] told the AGRT he wrote the teletype because FBI-AQ was "screwing up and sitting on a time bomb." He added that in a "normal investigation [I] wouldn't be telling the field what to do." [REDACTED] 12/15/99)

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they received it: They largely ignored it,¹⁹⁵ including one of the few items listed in the teletype that was *mandatory, i.e.*, was to open preliminary inquiries on [REDACTED] besides Wen Ho Lee and Sylvia Lee who were identified in the AI as potential suspects. (AQI 01560) This was not done. Indeed, the preliminary inquiries still remained unopened a year later.¹⁹⁶ Significantly, SSA [REDACTED] did order SA [REDACTED] to open the preliminary inquiries (AQI 5503), but he never pursued it with SA [REDACTED] when he failed to do so - even during their periodic file reviews. [REDACTED] 9/12/99) See Chapter 14. b1

(S/NF) SSA [REDACTED] principal priority in connection with the Lee investigation should have been to move it forward aggressively and appropriately *and with dispatch*. Yet virtually nothing happened on the case between August and December 1997. As to the time period of January to August 1998, the [REDACTED] was planned and *did* take place¹⁹⁷ but it took far too long to plan and execute¹⁹⁸ b1

¹⁹⁵ (U) According to SA [REDACTED] SAC Weber - who told the AGRT he did not remember even seeing the teletype (Weber 10/28/99) - viewed the teletype as condescending, and that the teletype made it look like FBI-HQ was running the case [REDACTED] 9/12/99) - which, of course, it was.

(W) ¹⁹⁶ (S) The preliminary inquiries were finally opened in March 1999 [REDACTED] 9/10/99), 15 months after FBI-HQ had ordered them opened.

¹⁹⁷ (S) SSA [REDACTED] actually missed both [REDACTED] [REDACTED] described SSA [REDACTED] absence as "embarrassing." [REDACTED] 12/15/97) As to the February 5, 1998 meeting, however, the scheduling of the meeting was largely out of SSA [REDACTED] control. b1

(AQI 1591, 4835) SSA [REDACTED] had other responsibilities that kept him from attending this meeting. (According to SA [REDACTED] SSA [REDACTED] was in training at Quantico. [REDACTED] 9/12/99; AQ 4835)) As to SSA [REDACTED] absence [REDACTED] b1
[REDACTED] this was certainly unfortunate and should never have happened. The [REDACTED] was a year in the making and *all* of the FBI's hopes were pinned on it. The FBI-AQ SSA responsible for the case *should* have been present for the

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and both the planning and the execution were flawed in multiple serious respects. See Chapter 14. And, finally, from August 1998 until October 1998, when SSA [REDACTED] left the Albuquerque Division, the investigation continued to move at glacial speed. In the month of September 1998, for example, almost nothing took place in the investigation. One significant interview was conducted¹⁹⁹ and SA [REDACTED] continued to pursue the possibility that Lee was engaged in [REDACTED] a possibility that was in fact without merit.²⁰⁰ And that is it. | b1

(U) Another significant matter was SSA [REDACTED] failure to instruct SA [REDACTED] to reopen and reexamine the whole issue of gaining access to Wen Ho Lee's computer

[REDACTED] It is not that there was no one around to fill SSA [REDACTED] shoes during the [REDACTED] SSA [REDACTED] was his principal relief supervisor and she was in charge in his absence. [REDACTED] (8/12/99) SSA [REDACTED] however, had not been briefed on the significance of the case, [REDACTED] [REDACTED] had not been involved in the planning of this [REDACTED] (9/10/99) SSA [REDACTED] did have legitimate time-sensitive personal reasons to be away during the week of the [REDACTED] and his departure was approved. [REDACTED] (12/7/99) But if he knew he would have to be away, the [REDACTED] should have been slightly advanced or slightly delayed. After all, it was the FBI - not Wen Ho Lee - that controlled the [REDACTED] Indeed, SSA [REDACTED] had specifically approved the scheduling [REDACTED] (AQI 4901) | b1

¹⁹⁸ (U) This was a point that Director Freeh emphasized in his interview with the AGRT. (Freeh 11/11/99)

¹⁹⁹ (U) A LANL scientist, by the name of [REDACTED] was interviewed on September 11, 1998. (AQI 1900) | 006
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²⁰⁰ (U) (S/NF) SSA [REDACTED] told the AGRT that criticizing FBI-AQ for pursuing the [REDACTED] (12/7/99) [REDACTED] | b1
allegations never warranted the attention that FBI-AQ gave it.

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files following the FISA denial. After all, back in November 1996, SA [REDACTED] had indicated that Lee's X Division had not yet gone through the on-line registration system - a system that might constitute a waiver.²⁰¹ It was now almost two years later and yet no one had checked back with LANL to determine if X Division personnel - including Lee - had now been registered on line. If they had done so, they would have learned that X Division was fully registered by the spring of 1997.²⁰² See Chapter 9.

(U) (S/NF) Finally, some of the same criticisms that can be lodged against SSA [REDACTED] - a failure to examine the underlying predicate for the AI, a failure to review the "walk-in" document, a failure to analyze the merits of the AI (as ASAC Lueckenhoff would soon do) - must also be attributed to SSA [REDACTED]. SA [REDACTED] told the AGRT that he could not have questioned the validity of the AI because the investigation was already "like a train going 120 miles an hour." [REDACTED] (9/12/99) Putting aside the fact that whatever else this investigation was, it was *not* "like a train going 120 miles an hour," FBI-AQ most certainly should have questioned the validity of the AI and its predicate. The failure to do so is attributable to *both* the case agents responsible for the case, SA [REDACTED] and SA [REDACTED] and their immediate supervisors, SSA [REDACTED] and SSA [REDACTED].

²⁰¹ (U) SSA [REDACTED] told the AGRT that while he did review the Lee case file, he does not recall seeing SA [REDACTED] November 1996 documents concerning the computer search issue. [REDACTED] (12/7/99)

²⁰² (U) SSA [REDACTED] told the AGRT that, because of the handling of several other cases, it was his assumption that a search warrant was required to search Lee's office computer and he further assumed that there were no banners on the LANL computers or waivers signed by Lee. [REDACTED] (12/7/99) Neither assumption was correct.

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H. (U) Were supervisory personnel in FBI Headquarters' National Security Division appropriately engaged in providing guidance and direction to the field and in ensuring that the case was pursued aggressively and with the proper commitment of resources?

1. (U) Introduction²⁰³

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(U) Much that went *right* in this investigation - but also a great deal that went *wrong* - is attributable to the handling of this case within NSD. That the case got as far as it got is a testament principally to the tenacity and persistence of NSD and, in particular, to SSA [REDACTED]. That the case was a catalogue of missed opportunities and misunderstandings is also, unfortunately, a testament to NSD and SSA [REDACTED]. Without NSD's active involvement and prodding, there would have been no case and, if there had been a case, it would have sputtered to an end long ago. With NSD's involvement, however, came a series of misjudgments and other problems that nearly crippled the investigation.

2. (U) NSD Personnel

(U) The personnel who had some involvement, or were in a position to have some involvement, in the Lee investigation were as follows:

Assistant Director, NSD	Robert Bryant	(1993 to 3/97)
	John Lewis	(3/97 to 9/98)
	Neil Gallagher	(11/98 to 3/99) ²⁰⁴

²⁰³ (U) See FBI-HQ organization chart at end of this Chapter.

²⁰⁴ (U) AD Gallagher remains in this position. Between AD Lewis and AD Gallagher, Larry Torrence served briefly in an acting capacity.

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Deputy Assistant Director for CI

John Lewis (1994 to 3/97)
Larry Torrence (10/97 to 11/98)²⁰⁵
Sheila Horan (1/99 to 3/99)²⁰⁶

(S) Section Chief, [REDACTED] b1

Jerry Doyle (1994 to 11/96)
Steve Dillard (1/97 to 9/98)
Chuck Middleton (11/98 to 3/99)²⁰⁷

(S) Unit Chief, [REDACTED] b1

[REDACTED] (1994 to 3/99)²⁰⁸

Supervisory Special Agent

[REDACTED] (1994 to 3/99)²⁰⁹

3. (U) What went right at NSD

(W) (S) Much did go right at NSD, and that fact is largely attributable to the effort put into this investigation by SSA [REDACTED]

- (S/NF) In 1994, SSA [REDACTED] provided support for FBI-AQ's preliminary inquiry concerning Wen Ho Lee. Specifically, he caused various FBI assets

²⁰⁵ (U) Between DAD Lewis and DAD Torrence, several individuals served in the post in an acting capacity, including John O'Connor, Ray Mislock and DAD Torrence.

²⁰⁶ (U) DAD Horan remains in this position. Between DAD Torrence and DAD Horan, Tim Caruso served in an acting capacity for a brief period of time.

(S) ²⁰⁷ (U) SC Middleton remains as the chief of [REDACTED]. In addition, it should be noted that William Doherty was the acting chief of the section for two brief time periods. b1

(S) ²⁰⁸ (U) UC [REDACTED] remains the chief of [REDACTED]. b1

(S) ²⁰⁹ (U) Again, as stated earlier in this chapter, the date March 1999 is used because it is the end date of the time period covered by this report. [REDACTED] remained an SSA in the [REDACTED] Unit until his retirement. b1

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b1 | to be questioned about Lee and [REDACTED]

See Chapter 5.

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- (S/NF) In late 1995, SSA [REDACTED] facilitated the assignment of SA [REDACTED] to assist DOE in the conduct of the Administrative Inquiry and took steps to insure that FBI-AQ was included in a sensitive DOE briefing which SA [REDACTED] received. He took other steps as well to insure that FBI-AQ was kept "in the loop." (AQI 2970) [REDACTED]

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(FBI 376, 396, 466; AQI 851)

- (U) Immediately following the opening of the full investigation at FBI-AQ, SSA [REDACTED] gave SA [REDACTED] explicit guidance as to how to conduct the investigation. (AQI 954)

- (U) SSA [REDACTED] along with SC Doyle, traveled to FBI-AQ in July 1996 to give the Division additional guidance on investigative strategy and to evaluate the need for additional FBI resources. (AQI 957) He then assisted in shepherding the request for the two additional agents through FBI-HQ and in notifying FBI-AQ that the request for additional agents had been approved. (AQI 984)

- (S) SSA [REDACTED] drafted the original [REDACTED] for the full counterintelligence investigation (FBI 591) and obtained OIPR's approval of the full investigation on Wen Ho Lee. (AQI 1017)

- (U) (S) SSA [REDACTED] handled the processing of numerous national security letters for bank and credit card records associated with the Lees. See, e.g., AQI 1033, 1099, 1106.

- (U) (S) At FBI-AQ's request (AQI 1096), SSA [REDACTED] drafted the application for mail cover authorization, which was ultimately approved by the Attorney General. (FBI 728, 737)

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~~TOP SECRET~~ [REDACTED]

- (U) SSA [REDACTED] personally wrote the FISA LHM that was submitted to OIPR on July 1, 1997, and worked closely with OIPR to revise the application several times.²¹⁰ (FBI 13185)
- (U) After the FISA application was rejected, SSA [REDACTED] drafted a new investigative plan for FBI-AQ, which eventually worked its way out of FBI-HQ and into the hands of SSA [REDACTED] and SA [REDACTED] (AQI 1560)
- (S) SSA [REDACTED] was substantially involved in the planning for the [REDACTED] [REDACTED] (AQI 1620), obtaining FBI-HQ's approval for the operation (FBI 1246), and assisting FBI-AQ [REDACTED] (FBI 1246) After the [REDACTED] it was SSA [REDACTED] persistence that ultimately expedited [REDACTED] (AQI 4775)

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(U) In an investigation that suffered from innumerable changes in personnel, uneven talent, and various other difficulties, SSA [REDACTED] was a consistent source of commitment and hard work. He was also, however, responsible for several serious errors that fundamentally and adversely affected the investigation.

4. (U) What went wrong at NSD

(U) Because NSD micro-managed this investigation, decisions that normally would be made in the field were, instead, made at FBI-HQ. And several of those decisions were wrong, with material adverse consequence for the investigation.

²¹⁰ (S) Unfortunately, this was *also* one of the most significant matters that went wrong in the investigation. While OIPR is principally responsible for its rejection of the FISA application, SSA [REDACTED] made this rejection *much* more likely by failing to include critical incriminating information in either the FISA LHM or the supplemental inserts he drafted.

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a. (U) NSD's unreasonable reluctance in 1995 to become involved in the investigation

(U) In the time period of June 1995 to September 1995, NSD should have become far more directly engaged and involved in this investigation. Its reluctance to do so went beyond the appropriate bounds of healthy skepticism or due deference to DOE's expertise. *Given the nature of the underlying allegation, and given the FBI's preeminent role in the investigation of espionage, NSD should have done more.*

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(u) (S//NF) As early as June 28, 1995, SSA [REDACTED] received information from DOE that

b1 | (S//RD//NF) [REDACTED]

(FBI 336) A similar message came into NSD from FBI-AQ:

(S//RD//NF) Notra Trulock, Director, Office of Energy Intelligence, Department of Energy (DOE), Washington, D.C., visited LANL on June 28, 1995. The purpose of his visit was to advise Dr. Siegfried Hecker that [REDACTED]

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(AQI 2933) NSD clearly understood that Trulock had concluded as of July 1995 that the

b1 | (S//RD//NF) [REDACTED]

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(FBI 344) We do not suggest that this was necessarily enough for the FBI to open a full Unknown Subject ("UNSUB") investigation in July or August 1995.²¹¹ After all, DOE had not yet formally communicated its final judgment on the matter [REDACTED]

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[REDACTED] (FBI 362) [REDACTED] (FBI 352) [REDACTED]

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(SARF) [REDACTED]

²¹¹ (SARF) This is particularly true given the fact that DOE was sending NSD mixed messages. [REDACTED]

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[REDACTED] See UC [REDACTED] handwritten notes of a July 12, 1995 meeting with DAD Lewis, SC Doyle, UC [REDACTED] and Trulock and Ken Baker from DOE. (FBI 11834, 21512, 21513) See also this statement in an FBI briefing paper, also dated July 12, 1995 [REDACTED]

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[REDACTED] and that there was at present no need for the FBI to become involved. [REDACTED] agrees." (FBI 344) FBI-AQ was hearing a similar message and passing it on to NSD: [REDACTED]

(AQI 2944) SSA [REDACTED] view as of July 5, 1995 was that "there was insufficient evidence to warrant the initiation of an FBI full field investigation." (DOE 3486) SC Doyle said that the FBI did not want to precipitously press the panic button. (Doyle 10/19/99)

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~~TOP SECRET~~ [REDACTED]

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(AQI 2947) SSA [REDACTED] put his position even more bluntly in a memorandum to the file he wrote on August 4, 1995: "the most prudent course would be to do nothing so as to not compromise [FBI] contacts and so as not to set leads on an investigation that is not yet open."²¹² (FBI 13046) (emphasis added)

(S//NF//RD) Prudence, in fact, dictated just the opposite course of action. [REDACTED]

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[REDACTED] NSD should have sought access to the walk-in document - the document which NSD knew underlay this allegation - immediately upon learning of its existence. Whatever the CIA's obligation may have been to notify the FBI of the existence of the walk-in document, by [REDACTED] the FBI did know of its existence and yet was still unwilling aggressively to seek it out.

(S//NF//RD) The consequence of this decision was significant. Had NSD obtained the walk-in document [REDACTED]

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²¹² (S) Technically, the investigation was open. FBI-HQ had instructed FBI-AQ to open and assign the "Kindred Spirit" investigation on July 20, 1995 and it was opened and assigned to SA [REDACTED] on July 24, 1995. (AQI 2935) Although the opening of the case file was largely an administrative matter designed to accumulate in one location the growing pile of relevant documents [REDACTED] 6/22/99), it was nonetheless an open file.

²¹³ (S//NF) [REDACTED]

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(FBI 3255)

²¹⁴ (S//NF//RD) [REDACTED]

(FBI 21512, 21513, 11834)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U) (S/NF) The FBI's unwillingness to seek out the walk-in document for itself²¹⁵ was consistent with the FBI's general reluctance to become involved in this matter.²¹⁶

b. (U) NSD's undue deference to DOE

(U) *From the beginning of the FBI's involvement in this matter, the FBI showed an uncharacteristic willingness to defer to the judgment of another agency on a matter central to its jurisdiction, i.e., the investigation of allegations of espionage.*

(U) In the time period of July 1995 through October 1995, NSD repeatedly expressed the position that it was DOE – not the FBI – that needed to decide if espionage had been committed – and it even looked to DOE to identify a subject.²¹⁷

²¹⁵ (S/NF/RO) [REDACTED]

– NSD *did* receive the walk-in document. (FBI 417, 12393)

The FBI's subsequent failure to make productive use of it – [REDACTED]

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tell SA [REDACTED]

SSA [REDACTED]

would later [REDACTED]

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And, if "rocket scientists" were what SSA [REDACTED] needed to make sense of the walk-in document, there were more than a few of them at DOE.

(U) ²¹⁶ (S/NF) For example, on July 13, 1995, Notra Trulock met with DAD John Lewis and asked that the FBI join DOE's damage assessment/administrative inquiry team, referring to what would come to be known as the Kindred Spirit Analytical Group ("KSAG"). According to the FBI's own record of this meeting, "FBI-HQ declined until such time as DOE had a prima facie case of espionage." (AQI 2935)

(U) ²¹⁷ (S) See, e.g., the following:

(U) (S) From a July 12, 1995 FBI briefing memorandum (FBI 344)

(U) (S) [The director of LANL] thought the FBI should be brought into this

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~~TOP SECRET~~ [REDACTED]

(u)
(S) Whatever argument can be made for the FBI staying on the sidelines of this investigation prior to September 1995, the FBI should have asserted "primary investigative jurisdiction"²¹⁸ after it received DOE's September 25, 1995 letter. This letter, which was designed to enlist FBI support of DOE's AI, read in part:

[investigation], but no request for assistance was made to Santa Fe FBI. FBIHQ advised Santa Fe to stay out of this until DOE decided it had a prima facie case of espionage.

(u)
(S) From a July 20, 1995 airtel from FBI-HQ to FBI-AQ (AQI 2935)

(u)
(S) Trulock asked that the FBI join DOE's damage assessment/administrative inquiry team, but FBIHQ declined until such time as DOE had a prima facie case of espionage.

(u)
(S) From an August 4, 1995 memorandum to the file, reflecting a telephone conversation between SSA [REDACTED] and SA [REDACTED] (FBI 13046)

(S) (S/NF) If DOE thinks an espionage case is founded, we can then pursue an investigation [REDACTED] | b1

(u)
(S) From an October 12, 1995 communication from FBI-HQ to FBI-AQ (FBI 3255):

(u)
(S) DOE has not requested the FBI conduct an investigation.

(u)
(S) From a November 3, 1995 briefing memo from SC Doyle to AD Bryant (FBI 400):

(u)
(S/NF) [A]t present this is a DOE investigation with FBI and CIA assistance, but should a subject be identified, the FBI would be responsible for the espionage investigation.

(u)
²¹⁸ (S) See the discussion of the DOE-FBI Memorandum of Understanding in Chapter 7.

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(S//NF//RB) [REDACTED]

(FBI 13045) At this point, the FBI should have asserted its jurisdiction and taken over this investigation.²¹⁹

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(U) Nor is it a sufficient response to say that the FBI *did* detail SA [REDACTED] to support the DOE AI. SA [REDACTED] involvement in the AI was quite limited; indeed, he dropped out of the AI process more than two months before it was complete²²⁰ and never even saw the final version of the AI. In any case, there is an obvious world of difference between a *DOE inquiry* supported by the FBI and an *FBI investigation* supported by DOE. One preeminent distinction, of course, is that the ultimate judgment in a DOE AI is controlled by DOE, not by the FBI, a distinction with great significance in *this* investigation. See Chapter 7.

(U) (S//NF) By September 1995, the analytical portion of DOE's work was complete and the message communicated to the FBI was that it was "highly probable" that classified nuclear weapons design information *had* been "illegally" acquired by the PRC. In other words, DOE had made *precisely* the judgment that SSA [REDACTED] had repeatedly said the FBI was waiting for: a judgment that espionage had been committed. Now the issue was a traditional "whodunit." A suspect or group of suspects needed to be identified. This issue of culpability - which was the *sole* subject matter of the DOE AI - *did* require special expertise. But that expertise did not reside in DOE; it lay in the FBI.²²¹

²¹⁹ (U) Deputy Director Bryant told the AGRT that, upon reflection, the FBI probably should have taken over the investigation at this time. (Bryant 11/15/99)

²²⁰ (U) SA [REDACTED] received another assignment that rendered him unavailable.

²²¹ (U) (S) AD Gallagher emphasized this point to the AGRT. He stated that one of the lessons learned from the Wen Ho Lee investigation is that if the FBI is going to inherit an investigation involving a matrix - an effort to narrow a list of suspects by examining pertinent criteria - it needs to be involved in the creation of the matrix. An office with experience in UNSUB espionage investigations, like the Washington Field

(U) The FBI's unwillingness to assume primary investigative jurisdiction was consequential, to say the least. It led to the creation of an AI that was flawed in multiple, material respects. See Chapter 7.

(U)
(S) The deference shown to DOE in connection with the AI was only one example, albeit an extraordinarily significant one, of the FBI showing undue deference to DOE. There were, unfortunately, other such examples:

- (S/NF) Even after the FBI had launched its full investigation of Wen Ho Lee, the FBI deferred to DOE the determination as to whether the predicate for the investigation was in jeopardy after [REDACTED]

[REDACTED] (FBI 11725, 20307, 662, 663, 668) That the FBI needed to discuss this matter with DOE is indisputable; it is equally clear, however, that the FBI - even after opening its full investigation and submitting its [REDACTED] to OIPR - was still according to DOE almost preemptive control over the predicate for an FBI investigation.

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- (S/NF) [REDACTED]
[REDACTED]
[REDACTED] What was necessary was a thorough evaluation of the predicate underlying the investigation itself.²²² [REDACTED]

Office, should have created the matrix. (Gallagher 10/28/99)

²²² (U)
(S) SSA [REDACTED] did order FBI-AQ to interview DOE scientists (AQI 957) but this was not done to test the predicate but, rather, to document it should there ultimately be a prosecution. SSA [REDACTED] told SA [REDACTED] that the scientists needed to be interviewed, or an October 31, 1995 DOE briefing written up, in the event of a trial. He told SA [REDACTED] that "if we get lucky, this thing is going to trial." [REDACTED] 12/15/99) This point was emphasized to DOE as well, which was told on or about August 19, 1996

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[REDACTED]

- (2) (S) NSD acceded to DOE's decision to interview and polygraph Lee in December 1998. According to a memorandum AD Gallagher wrote to Director Freeh prior to the interview and polygraph, NSD had "no objection" to DOE's decision. (FBI 07652, 07721, 01408) *It should have objected.*²²⁴ Permitting Wackenhut to conduct the polygraph of the

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that an FBI agent would soon be coming to DOE to meet with someone to take a statement. [REDACTED] an analyst who worked for Trulock, conveyed this message from the FBI: "Caution was given not to say anything that one would not be comfortable testifying on a witness stand." (FBI 674)

²²³ (S/REF/NT) That the FBI needed to thoroughly examine the predicate should have been obvious even absent any red flags suggesting that the predicate was in doubt. But here, there were substantial red flags, including: (1)

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[REDACTED]

(AQI 2944); (2) [REDACTED]

[REDACTED] (3) [REDACTED]

(FBI 694); (4) the FBI's skepticism about Notra Trulock's perception of Chinese espionage efforts; see, e.g., [REDACTED]

[REDACTED] (FBI 20768); and (5) the CIA's September 1997 assessment of the Chinese nuclear weapons program, which NSD received but whose significance NSD never appreciated. See Chapters 6 and 13. (FBI 12360)

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²²⁴ (S) It must be emphasized that NSD was not alone in failing to object to DOE's decision. FBI-AQ did not object either. Although SSA [REDACTED] did object to DOE doing the polygraph [REDACTED] 9/10/99), and the case agent, SA [REDACTED] was

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principal subject of a multi-year FBI investigation concerning an allegation of incalculable significance was clearly a mistake, and not an insignificant one either. See Chapter 17.²²⁵

c. (U) NSD should have recognized the flaws of the AI

(U) SSA [REDACTED] and UC [REDACTED] read the DOE AI "cover to cover" and a copy went to SC Doyle as well.²²⁶ [REDACTED] (12/15/99) There is no reason why these NSD officials in *May 1996* could not have done what ASAC Lueckenhoff did in *December*

"shocked" to learn that DOE was going to do it and that it was a "done deal" [REDACTED] 9/7/99), SAC Kitchen registered no objection and it was SAC Kitchen, of course, who spoke for the Division. (Kitchen 9/10/99; Curran 2/9/00) SAC Kitchen told the AGRT that he had heard that Wackenhut was pretty good and Ed Curran vouched for them. (Kitchen 9/10/99) Director Freeh told the AGRT that the FBI – not DOE – should have done the first interview and polygraph of Wen Ho Lee. (Freeh 11/11/99)

²²⁵ (8) Nor is it rendered any less a mistake by the speculative possibility that Lee might be more receptive to being approached by DOE than by the FBI. Just the opposite might have been true. After all, after the [REDACTED] had specifically told Lee that he was going to report the matter to "the local FBI for their possible follow-up." (FBI 1350) An FBI approach could have been linked to [REDACTED] comment to Wen Ho Lee. Moreover, given the highly classified and sensitive nature of the work conducted at LANL, the FBI's presence at LANL was not unusual. Indeed, SA [REDACTED] told the AGRT that he would routinely stand outside the LANL entrance early in the morning so that LANL personnel would know that the FBI was on site that day. [REDACTED] (8/12/99) Moreover, as SSA [REDACTED] told the AGRT, having DOE do the interview and polygraph of Lee would not necessarily have been of less concern to Lee than having the FBI do it. DOE, after all, "could take his job." [REDACTED] (9/10/99) See Chapter 15.

²²⁶ (U) SC Doyle said he "probably" read it. (Doyle 10/19/99)

~~TOP SECRET~~ [REDACTED]

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1998: recognized that, in its singular focus on Wen Ho Lee, in its selection criteria for suspects, and in its evaluation of other potential venues of compromise, it was a deeply flawed product. ²²⁷ See Chapter 7.

(U)
(S) This is not to say that the AI's information on Wen Ho Lee, when combined with what the FBI already knew about Wen Ho Lee from its 1994-1995 preliminary inquiry, see Chapter 5, did not warrant the opening of a full investigation on Lee. It most certainly did.²²⁸ Rather, it is to say that the AI did a patently inadequate job in identifying the full range of *other* potential suspects, a consequence in part of its misperception and mischaracterization of the predicate for the investigation. NSD should have taken the AI, *at most*, as its point of departure, rather than as its point of arrival.

(S/R/D) [REDACTED]

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(S/R/D) NSD's failure appropriately to react to the AI is particularly troubling given the fact that SA [REDACTED] explicitly advised NSD that it needed to do more than simply open an investigation on Wen Ho Lee. One of his last acts as a participant in the AI process was to give FBI-HQ a piece of important advice: He told SSA [REDACTED] that

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²²⁷ (U) Whatever presumption of validity NSD gave to the AI because of SA [REDACTED] involvement in it, they *also* knew that SA [REDACTED] had been reassigned two months before the AI's completion. They knew or should have known that the final AI report could not fairly be described as SA [REDACTED] work product but, rather, that it was a DOE document created by DOE personnel based on DOE assumptions. Indeed, SA [REDACTED] never even read the final AI report. See Chapter 7.

²²⁸ (S/R/D/NF) Indeed, a full investigation on Lee was long overdue and, as discussed in Chapter 5, the preliminary inquiry should have been converted into a full investigation [REDACTED]

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the FBI should open two matters: a full investigation on Wen Ho Lee and a full investigation on an Unknown Subject ("UNSUB").²²⁹ [REDACTED] (12/14/99) [REDACTED]

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[REDACTED] Had this advice been adopted, some of the inadequacies of the AI would have been addressed in a timely fashion by the FBI itself.²²¹ Instead, there was just one consequence of the AI: the opening of a full investigation on Wen Ho Lee and his wife, Sylvia.²²² Much more needed to be done.

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²²⁹ (U) SA [REDACTED] told the AGRT that he told SA [REDACTED] that the UNSUB investigation was a "slam dunk" and, if he was the responsible supervisor, he would also open a full investigation on Wen Ho Lee. [REDACTED] (12/14/99)

²³⁰ (U) SSA [REDACTED] did not recall receiving a recommendation from SA [REDACTED] to either open the case as an UNSUB or to conduct additional investigation at other locations or involving other suspects. [REDACTED] (12/15/99) It is reasonable to conclude, however, that SA [REDACTED] advice was communicated to SSA [REDACTED] since it is consistent with SA [REDACTED] written plan for additional investigative activity that needed to be conducted. (FBI 15868) See Chapter 7.

²³¹ (S/NF) The former Section Chief of [REDACTED] Steve Dillard, told the AGRT that, in hindsight, an UNSUB case should have been opened when the FBI learned of the loss of weapons design information. (Dillard 8/6/99) b1

(U)
²³² (S) FBI-HQ did not instruct FBI-AQ to open the preliminary inquiries on the other LANL personnel until its December 1997 teletype to FBI-AQ and, then, it was in response to OIPR's concerns about the failure to investigate the other individuals named in the AI [REDACTED] (7/23/99), rather than in response to FBI-HQ's own reading of the AI. That may explain why FBI-HQ did nothing (until 1999) when FBI-AQ ignored the instruction to open the preliminary inquiries.

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~~TOP SECRET~~ [REDACTED]

d. (U) NSD personnel never appropriately addressed its problems with FBI-AQ's handling of the investigation

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(S)
(U) SSA [REDACTED] told the AGRT that the investigation was a "disaster" in the field and that FBI-AQ "f***ed" the case up. [REDACTED] 7/23/99; [REDACTED] 7/28/99) UC [REDACTED] had his own concerns with the management of the case out in FBI-AQ. He told the AGRT that he "wasn't impressed" by SA [REDACTED] [REDACTED] that dealings with him were "disappointing." [REDACTED] 12/29/99) The [REDACTED] unit, however, never availed itself of a variety of available mechanisms to complain about FBI-AQ's handling of the case. b1

(U)
(S/NF) This issue goes substantially beyond the failure of either SSA [REDACTED] or UC [REDACTED] to complain about the two agent diversion issue. There were a host of other deficiencies in the handling of this investigation by Albuquerque Division, including SA [REDACTED] inadequacy, SA [REDACTED] limitations, the sluggish pace of the investigation, the clear absence of initiative and self-direction, and FBI-AQ's pursuit of unproductive detours (e.g., the [REDACTED] allegations). There was *much* to complain about and yet, prior to b1 October 31, 1998, when UC [REDACTED] and SSA [REDACTED] did complain to ASAC Lueckenhoff, there were few complaints.

(U)
(S) The opportunities to complain *were* present:

(U) First, the unit could have insisted on insuring that SAC Weber and SAC Kitchen were briefed on problems in the case before they assumed their new duties in Albuquerque. Neither were briefed. (Weber 10/28/99; Kitchen 9/10/99)

(U) Second, at any point, the unit or section chief could have picked up the telephone and complained to ASAC Dick or SAC Weber about the handling of the case at the field office level. This was not done either. (Weber 10/28/99; Dick 7/29/99) Nor is there any indication that complaints were communicated to SAC Kitchen prior to his hearing from ASAC Lueckenhoff in November 1998 about NSD's concerns. (Kitchen 9/10/99) And, while it does appear that SSA [REDACTED] did initially complain to SSA [REDACTED]

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about SA [REDACTED] sluggish pace (FBI 11620, 13040), there is no indication that [REDACTED] ever addressed its concerns about the investigation with SSA [REDACTED] successor, SSA [REDACTED] during the year that SSA [REDACTED] was in charge of the investigation.²³³

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(S) Third, the unit could have availed itself of the inspection process, which FBI-AQ underwent in August 1998, to register its complaints about FBI-AQ's handling of this case. [REDACTED] was required to complete questionnaires (called "interrogatories") concerning FBI-AQ's handling of its National Foreign Intelligence Program investigations. Those interrogatories were completed and then incorporated into [REDACTED] overall response. In [REDACTED] final response, there is not a single reference to problems with FBI-AQ's handling of the "Kindred Spirit" investigation. (FBI 16267 to 16378) This is obviously because [REDACTED] contribution to the final interrogatories also omits any reference to, or complaint about, FBI-AQ's handling of the "Kindred Spirit" investigation.²³⁴ (FBI 21846 to 21858) This is a particular failure on the part of NSD since the interrogatories explicitly asked questions that presented [REDACTED] an exceptional opportunity to express their concerns.²³⁵

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(U)
233 (S) SSA [REDACTED] told the AGRT that he spoke with SSA [REDACTED] and UC [REDACTED] numerous times and they never mentioned that they were dissatisfied with FBI-AQ's handling of the "Kindred Spirit" investigation. [REDACTED] (12/7/99)

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(U)
234 (S) There is some reason to believe that UC [REDACTED] intended SSA [REDACTED] to make some reference to the Kindred Spirit investigation for inclusion in the interrogatories (FBI 21847) but there is no reason to conclude that such a reference would have addressed FBI-AQ's deficiencies in the handling of the matter. In any case, it was not done.

(U)
235 (S) See, e.g. the following interrogatories:

(S) Interrogatory number L3: "(S) Are the field division's objectives realistic in terms of the perceived threat and the present capabilities of the division?" The response to the question was: "(U) Albuquerque's objectives in handling matters within the purview of [REDACTED] Unit are realistic and consistent with the division's capabilities." (FBI 21849)

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(S) SSA [REDACTED] told the AGRT that interrogatories are not, in reality, used as an opportunity to complain about a field office: "We're never allowed to be candid in interrogatories." [REDACTED] 12/15/99) If true, if the FBI "culture" does not encourage, indeed require, that FBI-HQ personnel be blunt and candid in interrogatories, this essentially eviscerates the value of the interrogatories. The issue is not whether the inspectors who examined FBI-AQ should have picked up problems with the "Kindred Spirit" investigation on their own.²³⁶ The issue is [REDACTED] failure to avail itself of an institutional mechanism - the inspection process - which is specifically designed by the FBI to insure that *all* significant problems in a field office are identified and addressed in an inspection. b1

(S) Finally, the [REDACTED] unit could have complained up its own chain of command, if necessary all the way to the Director, concerning FBI-AQ's handling of the case. b1
While UC [REDACTED] and SSA [REDACTED] did communicate their concerns to their Section

(u) (S) Interrogatory number II.1.c: (u) (S) Identify any known FIS [Foreign Intelligence Service] threat or issue threat where results have been limited and additional attention is required." The response to the question was: "(S) None known to [REDACTED] Unit." (FBI 21850-21851)

(u) (S) Interrogatory number II.8: (u) (S) Are there any specific investigative, administrative and/or organizational problems detected by NSD in this division which require specific inquiry or consideration during this inspection?" The answer provided was: "(S) None known to [REDACTED] Unit." (FBI 21857)

(u) (S) Interrogatory number II.9: (u) (S) Is there a need for the assigned Assistant Inspector to personally contact specific personnel in NSD prior to the beginning of this inspection? If so, provide the name(s) and extension(s)." The response to the question was: "(S) None known to [REDACTED] Unit." (FBI 21858)

²³⁶ (S) According to Deputy Director Bryant, the inspectors *should* have identified problems with the "Kindred Spirit" investigation even if [REDACTED] did not complain. Nevertheless, said Deputy Director Bryant, it would have been appropriate for [REDACTED] to tell the inspectors prior to the inspection of its problems with FBI-AQ's handling of the case. (Bryant 11/15/99)

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Chiefs, Doyle²³⁷ and Dillard,²³⁸ there is no evidence that [REDACTED] problems with FBI-AQ were communicated by NSD personnel to Director Freeh,²³⁹ Deputy Director Bryant,²⁴⁰ AD Lewis²⁴¹ or DAD Larry Torrence.²⁴² b1

(S)
(U) If [REDACTED] solution to the problem with FBI-AQ was *not* to complain, what was it? The answer is evident throughout the documentary record of the case: SSA [REDACTED] in effect, *became* the direct supervisor and, at times, the case agent, for the Wen b1

(S)
(S) Specifically, in October and November 1996, there were several communications between SSA [REDACTED] and SC Doyle and between UC [REDACTED] and SC Doyle concerning SA [REDACTED] lack of vigor. (FBI 706, 13042, 705, 711, 11850-52)

(S)
(S) SC Dillard told the AGRT that after his arrival as the Section Chief of [REDACTED] in January 1997, UC [REDACTED] and SSA [REDACTED] briefed him on problems in the case, specifically that the case had languished and moved too slowly because of an inept case agent. SC Dillard offered to call SAC Weber but was told that the case had just been reassigned [to SA [REDACTED] and that a call was unnecessary. He never did talk to SAC Weber about the investigation. (Dillard 8/6/99) See also FBI 11620, 13040. b1

²³⁹ (U) On this point, Director Freeh told the AGRT that no one raised questions or problems about the Lee investigation to him. (Freeh 11/11/99)

(S)
²⁴⁰ (S) Deputy Director Bryant told the AGRT that FBI-HQ upper management's knowledge of the "Kindred Spirit" investigation was too limited.

(S)
²⁴¹ (S) AD Lewis did tell the AGRT that he was aware of complaints that FBI-AQ was not aggressively pursuing the case but those complaints came from Notra Trulock, not from within NSD. AD Lewis said that SC Dillard told him he was taking care of it. (Lewis 7/6/99) It is not clear when Trulock complained to AD Lewis. Trulock "offered" to call Lewis back in November 1996 about the lack of action or progress on the case, (FBI 715) but Lewis' reference to SC Dillard - who served as Section Chief of [REDACTED] from January 1997 through August 1998 (Dillard 8/6/99) - would suggest that Trulock's complaint occurred at a later point in time. b1

²⁴² (U) DAD Torrence told the AGRT he was never apprised that FBI-AQ was not properly conducting the investigation. (Torrence 7/30/99)

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Ho Lee investigation. Until December 1998, there was hardly a decision made in this case that was not initiated by SSA [REDACTED] or approved by SSA [REDACTED].²⁴³ As SA [REDACTED] said: "There was always a question: Whose running this case? Headquarters or AQ? In [REDACTED] mind, this was a Headquarters case and he thought he was making the decisions." [REDACTED] 9/12/97) SSA [REDACTED] not only controlled the strategic and investigative direction of the case but he controlled the minutia of it as well.²⁴⁴ The problem with this micro-management is that: (1) SSA [REDACTED] was 1600 miles away and could never provide the day-to-day intense supervision, or have the detailed knowledge, the case required;²⁴⁵ (2) SSA [REDACTED] of course, had multiple other responsibilities;²⁴⁶ (3) No field office wanted FBI-HQ to be telling it how to run its case;²⁴⁷ and (4) To use

²⁴³ (U) According to SSA [REDACTED] by December 1998 he was no longer in control of the case. The case was being directed at a much more senior level. [REDACTED] 7/28/99)

²⁴⁴ (S) For example, SSA [REDACTED] became deeply involved in such questions as [REDACTED] 9/10/99), whether the field office could conduct specific interviews of LANL personnel (FBI 702, AQI 1056, 13041), and a variety of issues concerning FBI-AQ's difficulties in obtaining necessary background records. (AQI 1064, FBI 13041; [REDACTED] 7/23/99 and 12/15/99)

²⁴⁵ (S/NF) One very significant adverse consequence of this fact was that several key aspects of the [REDACTED] essentially got lost in connection with the preparation of the FISA application. See Chapter 11. 6/

²⁴⁶ (U) SSA [REDACTED] himself, described his involvement in the Lee investigation as a "total anomaly." [REDACTED] 7/23/99) SSA [REDACTED] was an FBI-HQ program manager and he did not normally handle individual cases on a day to day basis. (Id.)

²⁴⁷ (U) This point was illustrated by SAC Weber's reaction to SSA [REDACTED] December 1997 teletype concerning the investigative direction of the case. According to SA [REDACTED] SSA [REDACTED] told him that SAC Weber viewed the teletype as "condescending" and that the teletype made it look as if FBI-HQ was running the case. [REDACTED] 9/10/99)

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the current vernacular, this micro-management of a field office case presented an ongoing issue of who "owned" the problem of the Wen Ho Lee investigation. To the extent that FBI-HQ controlled the investigation, it undermined FBI-AQ's responsibility for, and authority over, the conduct of the case.

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(U) Consequently, and not a little bit ironically, some of the very problems which SSA [REDACTED] attributes *solely* to FBI-AQ's mismanagement of the case are, in fact, attributable, *at least in part*, to the problematic relationship between FBI-HQ and FBI-AQ, which persisted until late 1998.

c. (U) NSD contributed to some of the delays in the investigation

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(U) The unfortunate delays that characterized this investigation are principally attributable to the Albuquerque Division. Having said that, NSD must also bear part of the responsibility for the languid pace of this investigation. Despite SSA [REDACTED] considerable efforts on behalf of the investigation at various points in time, these delays are indicative of the fact that the case never had the priority within NSD that it warranted prior to December 1998.

i. (U) July 1995 to May 1996

(U) From the beginning, FBI-AQ was more anxious to get involved and moving on this investigation than NSD was to have it get involved.

(S/AF/RD) [REDACTED] (FBI) | b1
14597) SSA [REDACTED] declined. (FBI 357; AQI 2947)

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(U) (S) On October 10, 1995, FBI-AQ asked NSD to contact the Office of Counterintelligence at DOE to ask whether investigation was warranted. (AQI 2964) SSA [REDACTED] response was to advise FBI-AQ that DOE had not yet requested that the FBI conduct an investigation and that SA [REDACTED] was being detailed to assist DOE with its AI. (FBI 386)

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(u)
(S) On February 7, 1996, FBI-AQ asked that [REDACTED] and SA [REDACTED] come to DOE b6 b7c
FBI-AQ's offices to brief the SAC, ASAC and SSA [REDACTED] on the investigation when they
were in New Mexico reviewing records as part of the AI. (AQI 857) SSA [REDACTED]
internal FBI-HQ response was to note that the briefing would take place but that he was
concerned that FBI-AQ "might persist in the belief that this is their case - which it is
not." (FBI 463) (emphasis in original)

(U) Thus, repeatedly, FBI-AQ attempted to deal itself into this investigation but
NSD resisted both the Albuquerque Division's and its own involvement in it. That
resistance, of course, continued until the AI was complete and the Lee investigation was
opened in FBI-AQ. Had the FBI taken over the investigation in September 1995 - as it
should have - FBI-AQ could have gotten a nine month head start.

(u)
(S) Moreover, NSD should *never* have taken SA [REDACTED] off the AI until it was b6 b7c
complete and delivered. On March 18, 1996, [REDACTED] sent a memorandum to Trulock DOE b6 b7c
indicating that he and SA [REDACTED] would be going to Lawrence Livermore National
Laboratory ("LLNL") in early April 1996 to conduct the LLNL portion of its review of
documents in support of the AI. (DOE 2449) One week later, on March 26, 1996, [REDACTED]
was writing Trulock again, but this time to tell him that SA [REDACTED] was no longer
available and that the LLNL trip ought to proceed without him. (DOE 2450)

(U) Assigning SA [REDACTED] to a new project *before* the AI was complete - indeed,
while DOE was still in the process of reviewing records - obviously undermined the
FBI's ability to insure that the AI would be a product that the FBI could rely upon as a
basis for further investigation. The AI's deficiencies that ASAC Lueckenhoff was
grappling with in December 1998 might have been avoided had SA [REDACTED] continued to
be involved in the AI up until it was finalized and delivered to the FBI.

ii. (U) June 1996

(u)
(S) Shortly after the full investigation was opened on Wen Ho Lee, SSA [REDACTED]
and SA [REDACTED] had several telephone conversations in which SSA [REDACTED] gave SA
[REDACTED] his investigative plan. On June 12, 1996, he told SA [REDACTED] not to do
"any additional work on this matter" until SSA [REDACTED] and SC Doyle came out to FBI-

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AQ in early July for their on-site visit. (AQI 954) It is difficult to understand SSA [REDACTED] rationale for telling FBI-AQ to stand down for what turned out to be more than a month.²⁴⁸

iii. (U) August 1996

(u)

(S/N) On July 31, 1996, SSA [REDACTED] ordered FBI-AQ to "temporarily suspend" its investigative activity in light of [REDACTED] (AQI 992) and that suspension continued until it was lifted on August 20, 1996. (FBI 663) The investigation did not actually resume until August 30, 1996. (AQI 1014)

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(u)

(S/N) Had SSA [REDACTED] taken certain steps at an earlier point in time, this suspension would have been unnecessary. Even absent such steps, the wisdom of shutting down an investigation that was just developing (a bit of) a head of steam was questionable.

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(S/N) To understand this issue it is first necessary to appreciate when SSA

[REDACTED] first became aware of a problem with the walk-in document. [REDACTED]

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[REDACTED] (FBI 602) SSA [REDACTED] was advised on May 16, 1996 - even before he received the DOE AI - that there was a problem with the source of the walk-in document. [REDACTED]

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[REDACTED]

(FBI 485)

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²⁴⁸ (U) Although SC Doyle and SSA [REDACTED] visited the field office and LANL on July 1, 1996 and July 2, 1996, SA [REDACTED] active work on the case did not resume until July 16, 1996. (AQI 961)

(u)

(S/NF) Thus, at the time FBI-HQ instructed FBI-AQ to open the Lee full investigation, it already knew that the *bona fides* of the source of "a major basis" for the Lee investigation (AQI 992) was in doubt. These doubts should have - and could have²⁴⁹ - been resolved *before* the full investigation was opened; they should not have necessitated the suspension of an ongoing investigation.

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(S/NF) Moreover, SSA [REDACTED] contributed to this problem by drafting and submitting to OIPR a [REDACTED] seeking approval of the full investigation of Wen-Ho Lee and Sylvia Lee that failed to make *any* reference [REDACTED] even though by this time he knew that the Agency's concerns had already prompted it to [REDACTED]

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²⁵⁰ (FBI 485) This matter *should* have been addressed in the [REDACTED] and SSA [REDACTED] failure to do so clearly contributed to his judgment that the investigation needed to be suspended out of an "excess of caution" [REDACTED] 12/15/99) pending review of the issue with DOE and OIPR.²⁵¹ Had SSA

²⁴⁹ (S/NF) In part, they could have been resolved in May 1996 because the FBI was already being told that even if the *bona fides* of the source was in doubt, the *bona fides* of the source's *information* concerning the [REDACTED] was not. On May 23, 1996, [REDACTED]

(FBI 488)

(FBI 668)

²⁵⁰ (S/NF)

(FBI 485)

²⁵¹ (u) (S/NF) An FBI briefing memo dated August 1, 1996 makes this point clearly:

(u) (S) Although enough credible information to justify our investigation may now exist, it is necessary that we ask DOE to revisit its September, 1995, conclusion before we continue. It is also necessary that the basis for this investigation be discussed with OIPR before we again proceed.

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[REDACTED] apprised OIPR of this matter *prior* to its approval of the [REDACTED] which occurred on July 31, 1996 (FBI 672), the investigation could have proceeded with no suspension at all.²⁵²

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(U)
~~(S//NF)~~ In an investigation where momentum was both scarce and fleeting, the August suspension was unfortunate and, more significantly, avoidable.

iv. (U) August 1997 to December 1997

(U) From August 12, 1997, when OIPR denied the FISA application, until December 19, 1997, when NSD transmitted an investigative plan to FBI-AQ, the investigation was essentially stalled. This delay was avoidable for a variety of reasons.

(U) First, and at its most basic level, it was avoidable because FBI-AQ should have been submitting an investigative plan to FBI-HQ, *not the other way around*. It was, after all, a field office case. And, for all of FBI-AQ's problems, it was not as if the field office was incapable of submitting such a plan. It should have been instructed to do so.

(U) Second, it was avoidable because many of the same items in the December 19, 1997 teletype were addressed in an August 11, 1997 telephone call between SA [REDACTED]

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(FBI 609)

²⁵² (U)
~~(S//NF)~~ As to the perceived need to have DOE review the predicate in light of the CIA's reservations, this *also* could have and should have been addressed *prior* to the opening of the full investigation, [REDACTED]

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~~TOP SECRET~~ [REDACTED]

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and SSA [REDACTED]²⁵³ (AQI 5331) FBI-AQ could have been working on their "To Do" list in August 1997 instead of in January 1998.²⁵⁴

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(S) Third, there is really no excuse for the four months it took for this teletype to work its way out of FBI-HQ. The AGRT recognizes, of course, that the section during this period of time had other very significant matters on its plate, in particular, the CAMPCON and JAGGED EDGE campaign financing investigations. SC Dillard told the AGRT that these two investigations required innumerable meetings and that an enormous amount of time was spent preparing for and attending briefings.²⁵⁵ Moreover, the [REDACTED] unit during this time period was also significantly involved in matters ancillary to the Wen Ho Lee investigation.²⁵⁶ Nevertheless, the only way to interpret the four

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²⁵³ (U) SA [REDACTED] notes of this telephone conversation list seven of the 14 items ultimately covered in the December 19, 1997 teletype, including such significant matters as the need to pursue further investigation of Lee's PRC intern and the need to interview the Lees' former supervisors. (Compare these notes, at AQI 5331, to the December 19, 1997 teletype, at AQI 1560.)

²⁵⁴ (U) Even if FBI-HQ insisted on providing FBI-AQ a formal investigative plan and, therefore, needed one to be prepared, it was prepared no later than September 24, 1997 and probably several weeks before that date. (FBI 1105) Thus, by the end of September at the latest, FBI-AQ could have had the plan in hand.

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²⁵⁵ (S) SC Dillard told the AGRT that in the year and a half that he was Section Chief of the [REDACTED] section, he either testified or attended 120-130 briefings. (Dillard 8/6/99) In addition, SC Dillard said that, for much of 1997, the position of Deputy Assistant Director in the National Security Division was vacant, resulting in Section Chiefs having to handle briefings and testimony that normally would be handled by the Deputy Assistant Director. (Id.)

²⁵⁶ (U) In particular, the unit was involved in laying the groundwork for what would ultimately become PDD-61 reforming Counterintelligence at DOE, as well as in various NSC briefings on matters related to Chinese espionage, as well as in a CIA analysis of the state of Chinese nuclear weapons development.

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~~TOP SECRET~~ [REDACTED]

months of delay it took this teletype to work its way out of FBI-HQ is to conclude that it was simply not a priority matter.²⁵⁷

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(8) How did it take four months to get this teletype out of FBI-HQ? The records indicate the following: (1) SSA [REDACTED] sent the draft teletype up his chain of command some time prior to September 24, 1997 (FBI 1105); (2) On September 24, 1997, SSA [REDACTED] gave another version to SC Dillard and SC Dillard was told that "we had to keep it moving" (FBI 1105); (3) On October 6, 1997, SC Dillard sent it back to the unit with instructions to insert [REDACTED] as an additional investigative option (FBI 12013); (4) By October 15, 1997, it was back on SC Dillard's desk with the [REDACTED] inserted (AQI 5524); and (5) On December 4, 1997, it is redated and resubmitted to SC Dillard,²⁵⁸ and finally approved for dissemination on or about December 19, 1997. b1

²⁵⁷ (S) Certainly, that was the implicit message communicated to FBI-AQ in its numerous frustrating efforts to find out what was holding up the investigative plan. See, e.g., SA [REDACTED] notes on the following dates: 8/13/97 (conversation with SSA [REDACTED] "new plan of attack" to be sent to Director for his approval; SA [REDACTED] should "sit tight" and would have the plan by "Monday" (AQI 5326)); 8/27/97 ("have not received communication from [REDACTED]." (AQI 5320)); 9/5/97 (SSA [REDACTED] wants Seventh Floor approval before giving him instructions on potentially alerting investigative steps (AQI 5118)); 9/29/97 (conversation with SSA [REDACTED] "It will be sent to [SA [REDACTED] in the near future, once it is approved. There is a lot in there for me to do." (AQI 5535)); 10/1/97 ("communication" is awaiting section chief's approval (AQI 5531)); 10/15/97 (SSA [REDACTED] has rewritten teletype; SC Dillard has looked at it and had SSA [REDACTED] add [REDACTED] now on SC Dillard's desk again (AQI 5524)); 10/23/97 (teletype coming after upper management approves it (AQI 5552)); and 12/12/97 (SSA [REDACTED] says outgoing communication is "hung up on upper mgr's desk" (AQI 5514)). b1

²⁵⁸ (S) It is not clear what caused the resubmission and redating of the teletype. A note is appended to the draft teletype that reads as follows: "Redated 3rd time 12/4/97 + given to SWD [Steven W. Dillard]. SWD told JRK [REDACTED] he can't find last print of this commo." (FBI 1105)

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(S) It is certainly true that the unit and section did believe it was necessary to communicate to upper management that the investigation was about to take a riskier course of action, one that might alert Wen Ho Lee to the fact that he was under investigation. But that message was explicitly communicated to Director Freeh on August 14, 1997 - just two days after OIPR rejected the FISA application.²⁵⁹ It was reinforced in a second note that SC Dillard sent to AD John Lewis on September 12, 1997.²⁶⁰ Thus, as of September 12, 1997 - if not as of August 14, 1997 - there was no impediment to [REDACTED] immediately issuing its investigative plan to FBI-AQ. It just was not done. It was, said UC [REDACTED] "bureaucratic dithering" that caused the delay. [REDACTED]

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7/19/99)

²⁵⁹ (U) (S) On August 14, 1997, AD John Lewis sent a note to Director Freeh that read in part as follows:

(U) (S) Up to this point in our investigation, we have been focusing on obtaining justification for elsur [electronic surveillance], while at the same time limiting ourselves to non-alerting investigative steps so as to not let the subjects know they are under suspicion. 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.

(FBI 13331)

²⁶⁰ (U) (S) The note reads in part as follows:

(U) (S) 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 co-workers and associates, trash coverage, physical surveillance and [REDACTED]

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(FBI 130203) (emphasis in original)

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v. (U) February 1998 to April 1998

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(S) For the reasons set forth in Section "f," below, NSD contributed materially to the delay in the execution of the [REDACTED] the Special Agent identified by FBI-AQ, by FBI San Francisco and by FBI-HQ, as the best man for the job. This cost the investigation at least two months but, as further described in Section "f," it cost the investigation far more than that.

vi. (U) September 1998 to December 1998

(S) For the reasons set forth in Section "h(ii)," below, NSD should have made a substantial and serious effort in September 1998 to persuade OIPR that, in light of the [REDACTED] it now had sufficient probable cause to proceed with a FISA application. A substantial and serious effort was *never* made, see below; what was eventually made was an insubstantial and casual effort but even that did not take place until December 1998.

(S) Had an application been made and been approved in September 1998 or even in October 1998, the FBI could have had electronic surveillance of Lee in November 1998 when Lee made the decision to make a second trip that year to Taiwan. (FBI 1405)

(S) The primary purpose of the [REDACTED] from the beginning was to gain support for a renewed FISA application.²⁶¹ While the actual execution of the [REDACTED] was certainly not everything FBI-AQ and NSD had hoped it would be, it did

²⁶¹ (S) See EC from NSD to FBI-AQ and other locations, dated April 13, 1998, approving FBI-AQ's [REDACTED]

(S) 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.

(AQI 1694)

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substantially and materially advance the case for a FISA order. See Chapters 14 and 16. Given this, NSD should have submitted an application for a FISA order *immediately upon receipt of sufficient information from FBI-AQ as to the execution of the operation.*

(S) NSD had *sufficient* information to take that step upon receipt of [REDACTED]

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[REDACTED] (FBI 7494)

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(u) (S) It is not an adequate response to say that NSD was unimpressed by SA [REDACTED] submission. *At the time of its receipt* it appears that NSD was impressed. Four days after receiving SA [REDACTED] material, SSA [REDACTED] drafted a briefing paper that went from DAD Torrence to Director Freeh. It read in part:

(S) At present, AQ is awaiting [REDACTED]

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[REDACTED] before deciding what next to do. Upon receipt [REDACTED] will present the details to DOJ/OIPR and again ask for an electronic surveillance application to the Foreign Intelligence Surveillance Court.

(FBI 7650) (emphasis added). Thus, as of September 1, 1998 at least, NSD believed the [REDACTED] to have been sufficiently successful to warrant advising the Director that they would be returning to OIPR and renewing the effort for a FISA order.

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(u) (S) Nor was the Director of the FBI the only senior government official given that same message. So was Secretary of Energy Bill Richardson. On September 2, 1998, Ed

²⁶² (S) While it is true [REDACTED]

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[REDACTED] it was certainly sufficient to serve as the basis for a FISA application. FD-302s are used routinely as a basis for drafting affidavits and other legal pleadings.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

Curran, Director of DOE's Office of Counterintelligence, sent Secretary Richardson a memorandum on the status of the "Kindred Spirit" investigation. It read in part:

(S) The FBI advised that they intend to pursue the investigation by applying to the Foreign Intelligence Surveillance Court for electronic surveillance of Wen Ho Lee, to attempt to determine [REDACTED]

(DOE 2384) Yet it would be almost four full months before the FBI actually took *any* step in the direction of a FISA application.²⁶³

(S) The contention that NSD was poised at OIPR's doorstep, just waiting [REDACTED] is not at all persuasive. If NSD was waiting [REDACTED] it was doing so with uncharacteristic patience. [REDACTED]

[REDACTED] That there were steps that *could* have been taken - that there were a variety of ways that FBI-HQ could have imposed its priorities on an agent in the field - is almost too obvious to warrant mention. Moreover [REDACTED] did not prevent SSA [REDACTED] from actually *rejecting* FBI-AQ's request for a FISA application on December 10, 1998 on the grounds that it lacked sufficient justification.²⁶⁴ (AQI 2002)

²⁶³ (U) (S) That step, when finally taken by SSA [REDACTED] on December 22, 1998, could hardly have been less enthusiastic. See Section "h(ii)," below, and Chapter 16.

²⁶⁴ (S) It is clear that the EC rejecting FBI-AQ's FISA request was *drafted* even before FBI-HQ received [REDACTED]

[REDACTED] (AQI 2002) It appears that FBI-HQ received [REDACTED] some time between December 11, 1998 and December 13, 1998. UC [REDACTED] read [REDACTED] on December 13, 1998 (FBI 11954) and his initials on the EC

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