

CHAPTER TEN

(U) THE FBI'S INVESTIGATION OF WEN HO LEE AND SYLVIA LEE:
APRIL 1997 TO JUNE 1997

Question Presented:

Question One: (U) During this period of time, was the investigation pursued competently and aggressively?

A. (U) Introduction

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(S) On April 4, 1997, SA [REDACTED] received a telephone call from [REDACTED] at DOE's Albuquerque Operations Office. [REDACTED] called SA [REDACTED] to tell him that [REDACTED] and [REDACTED] wanted to come out to New Mexico to see him. [REDACTED]

[REDACTED] of course, was the DOE investigator who had written the Administrative Inquiry. SA [REDACTED] told [REDACTED] he thought "it was a good idea to have a meeting at this point." (AQI 5588)

(S) While it is not clear why SA [REDACTED] thought it was a good idea to have such a meeting, it is clear why [REDACTED] wanted the meeting. He had come to the conclusion that between May 1996 and April 1997, the FBI had done nothing on the case. [REDACTED] "I was just trying to get them to do anything." Increasing the "tempo" of the investigation would be a "start." (Id.) [REDACTED] boss, Notra Trulock, was similarly frustrated. His information was that SA [REDACTED] "hadn't done anything" and he "wasn't happy." His view was that the FBI hadn't done "squat," and that it had been "pretty dilatory." (Trulock 10/12/99) He told the AGRT he sent [REDACTED] and [REDACTED] out to Albuquerque to find out, "What in the hell's going on?" (Id.)

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(S/RD/NF) Several days before SA [REDACTED] received that telephone call from [REDACTED] he obtained some startling information from [REDACTED] who had gotten it

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from the [REDACTED] Lee was about to begin work on a new project which would directly involve advanced work on the W-88. SA [REDACTED] sent an EC to SSA [REDACTED] which read in part as follows:

(S/RD/NF) [REDACTED]

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(FBI 799) SSA [REDACTED] instructed SA [REDACTED] to interview [REDACTED] He did so on April 10, 1997 and found out that Lee

(S/RD/NF) [REDACTED]

[REDACTED] They would simulate this weapon on a computer to test it.

(S/RD/NF) [REDACTED]

[REDACTED] LEE had ease of access, and this code could have been in his face every day. LEE had a need to know during this time period. LEE was an expert regarding this code.

(S/RD/NF) [REDACTED]

[REDACTED] The code would be in his face again. LEE would have a need to know once again.

(FBI 803) With that bleak prospect as background, the meeting with [REDACTED] and [REDACTED] was set for April 15, 1997.

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B. (U) The April 15, 1997 meeting

(S) DOE might have been distressed at the FBI's listless pace but, if NSD was similarly distressed, it wasn't showing it. On April 16, 1997, SC Dillard briefed HPSCI and SSCI on the "Kindred Spirit" investigation. (FBI 6413, 823) In preparation for that briefing, [REDACTED] prepared a paper for SC Dillard which read in part as follows: b1

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(S) In conclusion, we are almost half way through our anticipated two year investigation and are about where we expected to be.

(FBI 5513) The paper went on to state that the FBI "anticipate[s] making a successful application for electronic surveillance in June or possibly July."⁶⁷⁷

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(S) On April 15, 1997, SA [REDACTED] and his supervisor, SSA [REDACTED] met at LANL with [REDACTED] LANL [REDACTED] and the [REDACTED] b1

(S) If the purpose of the meeting was to goad the FBI into *immediate* action, it worked. And the instrument used by DOE was one provided by Wen Ho Lee himself, a visitor request form. Four days earlier, Wen Ho Lee had submitted to his supervisor a request to sponsor a four month internship by a PRC national [REDACTED] then a graduate student at [REDACTED] (FBI 850) According to SA [REDACTED] the first thing that happened at the meeting was that [REDACTED] "threw down [this] paper on [the] desk." [REDACTED] 9/12/99). It was the visitor request form for [REDACTED] "Isn't this enough for FISA?" (Id.) b1

(S) The visitor request form specified what [REDACTED] would be working on - "unclassified 2D Lagrangian Code to help our current research work on code

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⁶⁷⁷(S) That same optimistic prediction was communicated directly by SSA [REDACTED] to SA [REDACTED]. See SA [REDACTED] notes concerning an April 11, 1997 telephone conversation with SSA [REDACTED] "[will] get us any kind of elec[tronic] surveillance we want: phones, car, office etc." (AQI 5383)

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development" - and [REDACTED] attempted to explain to the counterintelligence personnel assembled at the meeting precisely what that meant. [REDACTED]

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[REDACTED] (FBI 845) SA [REDACTED] left the meeting with a similar understanding: [REDACTED] stated that there were no unclassified 2D Lagrangian Codes." (FBI 851)

(S/NF) [REDACTED]

[REDACTED]

(S) By the close of the meeting, several decisions had been made: First, it "was agreed that Lee Wen-Ho would not be restricted as far as his normal duties at the lab are concerned." (FBI 851) Second, Lee's new assignment would go into effect as planned. (Id.) Given Lee's prior work in this area, it "would be suspicious not to ask him" to work on the new project.⁶⁷⁹ [REDACTED] Third, Lee's immediate supervisor, [REDACTED] would be "read into the case" so that he could be asked to monitor Lee's activities. (FBI 851) Finally, the FBI would check out this PRC national, [REDACTED] (Id.)

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⁶⁷⁸ (S) [REDACTED] came away with a much different impression as to what [REDACTED] was saying. He told the AGRT that [REDACTED] said that [REDACTED] visit to the laboratory would not compromise classified information. [REDACTED]

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⁶⁷⁹ (S) The April 15, 1997 decision to keep Lee in his normal duties, and not restrict his access, represents another key decision point when the FBI and DOE failed properly to address matters related to Lee's continuing access to classified nuclear weapons information. See Chapter 18. It should be noted, however, that [REDACTED] sent an e-mail to [REDACTED] on April 23, 1997, which stated in part that the FBI wanted [REDACTED] to use a ruse to preclude Lee's team from starting work on the new project until FISA coverage was in place. (DOE 59)

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(S/NF) The most significant consequence of the meeting, however, occurred a week later when [REDACTED] went over to FBI-HQ to meet with UC [REDACTED] and SSA [REDACTED]. The FBI agreed immediately to begin preparation of a FISA application. (FBI 847) As [REDACTED] wrote in a memorandum to [REDACTED] and Notra Trulock:

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(S/NF) Technical surveillance coverage would, from an investigative standpoint, be an optimum technique especially when SUBJECT was hosting a PRC citizen during the period of time he would be working on.

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[REDACTED] Such activity would monitor not only SUBJECT's activities at work but also monitor any discussions SUBJECT may have in his residence with the PRC visitor.

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(FBI 847) Or, as SSA [REDACTED] put it to SSA [REDACTED] "This is our chance to catch Lee." (AQI 5388)

C. (S) Discussion of the [REDACTED]

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(S) First, what should be said at the outset is that SA [REDACTED] understanding of [REDACTED]

[REDACTED] Thus, it is possible that a student could be brought into LANL to work with a scientist like Wen Ho Lee on Lagrangian codes and not be the recipient of classified information.⁶⁰⁰

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(S) That does not mean that the FBI was not properly concerned about Wen Ho Lee's efforts to bring into LANL a PRC national for an extended visit.

(S/NF) First, the fact [REDACTED]

[REDACTED] did not mean that this was actually going to

⁶⁰⁰ (S/NF) Indeed, Wen Ho Lee and [REDACTED] would ultimately co-author a paper that references Lagrangian codes. (FBI 1977) DOE's Office of Counterintelligence ascertained from LANL that the paper was unclassified. (FBI 2202, 2204)

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happen and that [REDACTED] would not be the recipient of classified information. After all, Wen Ho Lee did not work at Nabisco or Ford. [REDACTED]

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[REDACTED] Moreover, Lee "was considered [to be] an 'expert' in this area." (FBI 846)

[REDACTED] Indeed, according to a note made by SA [REDACTED] on April 25, 1997, Lee's colleagues within X Division objected to the PRC student working on the project listed on Lee's visitor request form, and a "totally unrelated" project was selected instead.⁶¹¹ (AQI 5571)

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(S/NF) Second, even if it turned out [REDACTED] that did not mean that Lee did not intend to use [REDACTED] as a conduit, even perhaps an unwitting conduit, for communication with the PRC. The FBI knew that [REDACTED]

[REDACTED] Here, Lee was seeking to bring one of those scientists, albeit still a graduate student, into LANL for four months of work.

(S) The [REDACTED] did not, *by itself*, prove an intent to commit espionage. It was, however, a bonafide part of that calculation and it did warrant and it did receive *immediate* attention. As SSA [REDACTED] said in a note to SSA [REDACTED] accompanying his first FISA draft: "[W]e must move very fast." (AQI 5388)

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⁶¹¹ (S/NF) On April 28, 1997, [REDACTED] was interviewed again by the FBI: [REDACTED] stated that "[o]ther members of X Division" had requested that [REDACTED] "not be allowed to work in sensitive areas at LANL." (AQ 5210) Even though the information [REDACTED]

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[REDACTED] "This is information that we want to keep away from our enemies." (AQI 5210)

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⁶¹² (S/NF) As of June 1997, when the FBI submitted the LHM in support of a FISA application to OIPR, the FBI was unable to establish any such connection. (AQI 1225, 1264, 4547, 4548, 4546, 1283)

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(u) D. (S) Preparation for a FISA application

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(u) (S) On April 22, 1997, [REDACTED] met with UC [REDACTED] and SSA [REDACTED] and they agreed immediately to begin preparation for a FISA application. Three days later, SSA [REDACTED] gave SA [REDACTED] a list of additional information he needed (AQ 5568) and, on April 29, 1997, SSA [REDACTED] sent to SSA [REDACTED] a first "rough draft" of justification for a FISA. (AQI 5387-5408)

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(S) The time period of April 1997 to June 1997 was the time period in which the FISA application was prepared. Given the FBI's obvious interest in capturing private communications between [REDACTED] and Wen Ho Lee, it was critical that the FBI move fast. [REDACTED] was scheduled to be at LANL from May 1, 1997 to September 1, 1997 and it was already the end of April. (FBI 850)

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(u) (S) Unfortunately, and to the detriment of the FISA application, the FBI did not use this time effectively.

(S/NF) First, the FBI should have gone back to the two most critical areas of information germane to the FISA application and conducted a comprehensive review of everything it had. One of those areas was Wen Ho Lee's involvement [REDACTED]. As will become clear in Chapter 11, significant and substantial information from the full investigation of Wen Ho Lee conducted from 1982-1984 was omitted from the FISA submission.

(S/NF) Second, and even more unfortunate, was the FBI's failure to recall and incorporate into the FISA submission either of the two most incriminating items of information concerning [REDACTED]. This alone may have cost the FBI its FISA. See Chapter 11.

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(S) Third, it was obvious from SSA [REDACTED] very first draft of the FISA LHM that the FBI's failure to conduct any investigation of [REDACTED]

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named in the Administrative Inquiry might pose a problem for OIPR.⁶³ It is true that the FBI's case against Lee was not based on the exclusion of other suspects. But it required no particular powers of prescience to recognize that OIPR might read the application that way. See Chapter 11. A *little* investigation here could have gone a *long* way toward strengthening the FISA application.

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(S) Fourth, FBI-AQ spent a very significant amount of time on a pursuit that SSA [REDACTED] would ultimately, and inexplicably, abandon: a request for FISA coverage of Lee's office and home computers.⁶⁴ This is not to say that the FBI should not have been seeking such FISA coverage. It absolutely should have been seeking such coverage. *Indeed, if it sought nothing else, it should have been seeking to obtain access to Wen Ho Lee's computer activities.* It is to say that SSA [REDACTED] in his single-minded pursuit of communications between Wen Ho Lee and his PRC student [REDACTED] ultimately cast b1 aside a request for computer monitoring. See SA [REDACTED] note dated June 5, 1997: "He just wants to get up on the phones right now."⁶⁵ (AQI 5348) If that was to be SSA

⁶³ (S) The first draft, for example, contained the following statement [REDACTED]

[REDACTED] (AQI 5393) b1

(U) (S) Initially, both NSD and FBI-AQ wanted computer coverage to be included in the FISA application. (AQI 5568, 5572, 5367, 5363, 5555, 5566, 5564, 5357, 5353, 5354) FBI-AQ went to considerable efforts to identify the various types of computers to which Lee had access, at work and at home, including conducting interviews that concerned Wen Ho Lee's work with computers. (AQI 1279, 1273, 5575, 1322, 1367, FBI 960)

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(U) (S) SA [REDACTED] note goes on to say that SSA [REDACTED] told him it would take too long to request national security letters to determine Lee's on line provider for his home computer. This makes no sense at all as a rationale for not including computer searches and monitoring in the FISA application. First, even if Lee had internet access other than through the LANL node itself, the FBI did not need to know it to conduct a productive *physical* search of Lee's computer. Second, what possible relevance did Lee's on-line provider at *home* have to a FISA search and monitoring of his *office* computer systems and files? It is obvious that despite the various FD-302's that indicated that Lee had

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[REDACTED] ultimate decision, it is too bad it was not his *initial* one. A substantial amount of effort went to waste, effort that undoubtedly could have been spent on bolstering the FBI's submission to OIPR.

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(S) On June 5, 1997, [REDACTED] sent its completed LHM in support of a FISA application to NSLU for its review. The prior two months had been NSD's and FBI-AQ's window of opportunity to craft a FISA application with sufficient meat on the bone that it would, if not sail through OIPR, at least make it through alive. That this did not happen, in the final analysis, was the fault and the responsibility of OIPR. But the seeds of that failure were planted right here.

"unlimited" access to computers, had access to the "crux of the research," and was "quite sophisticated on [LANL's] main frame computer," see AQI 1324, and 1279, SSA [REDACTED] simply never got the significance of gaining access to Lee's computers. Not in 1996, when he advised SA [REDACTED] that a FISA order was required to surveil Lee's computer, and then promptly dropped the matter. (FBI 720) And not in 1997, when he failed to seek a FISA order for that precise purpose.

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