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CHAPTER FOURTEEN

(U) THE FBI'S INVESTIGATION OF WEN HO LEE AND SYLVIA LEE:
DECEMBER 1997 TO AUGUST 1998

(U) Questions Presented:

Question One: ⁽²⁾~~(S)~~ Why did FBI-AQ largely ignore the December 19, 1997 teletype?

Question Two: ~~(S)~~ Was [REDACTED] warranted at this point in the investigation?

Question Three: ~~(S)~~ Was it appropriate for FBI-AQ to focus exclusively on the [REDACTED]?

Question Four: ~~(S)~~ Was the [REDACTED] well planned and well executed?

Question Five: ~~(S)~~ Was the [REDACTED] a success?

A. (U) Introduction

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

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

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(8) From December 1997 to August 1998, FBI-AQ proceeded to focus virtually all of its energy and effort on [REDACTED] FBI-AQ's decision to undertake the [REDACTED] was reasonable. Its handling of the matter thereafter, however, was far from reasonable. First, FBI-AQ should not have focused on the [REDACTED] to the exclusion of the remainder of the FBI-HQ's December 19, 1997 teletype. Second, FBI-AQ should have actually planned the [REDACTED] instead of what it did do, i.e., plan a basic "scenario" or "premise, [REDACTED]" and then leave almost everything else to chance.

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

(8) Despite all this, the [REDACTED] principally as a consequence of a fortuitous event, can be described as a "partial success." [REDACTED] 9/12/99) In an investigation that never experienced an embarrassment of riches, a "partial success" was about as good as it was going to get. And, for its purposes - to gain sufficient justification for the submission of another FISA application - *it was enough.*

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(S) B. The December 1997 teletype

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(S) The December 1997 teletype containing NSD's investigative plan had just four mandatory item and eleven options.⁷⁷⁴ In general, according to UC [REDACTED] the teletype was written in the "hortatory subjective." [REDACTED] 12/29/99)

(S) The four mandatory items were as follows:

- (S) (S) Open PI's [REDACTED] FBI-AQ was specifically told that "DOJ/OIPR asked if the FBI could create a matrix of facts [REDACTED]

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[REDACTED] (AQI 4822)

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(S) Interview [REDACTED] the former LANL employee that [REDACTED] and SA Doe b6, b7C [REDACTED] had interviewed in February 1996 and who had information concerning [REDACTED]

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(S) Review all information in FBI-AQ's files looking for additional leads.

- (S) (21)
(S) Interview a [REDACTED] scientist that Wen Ho Lee and Sylvia Lee had contact with during their 1988 trip to PRC. It was suggested that this scientist might have significant knowledge about a PRC student, also from the [REDACTED] who had interned for Wen Ho Lee in 1997.

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(S) ⁷⁷⁴ To avoid confusion, SSA [REDACTED] made this point not only in the teletype but by telephone. See SA [REDACTED] notes of a December 29, 1997 conversation with SSA [REDACTED] re his teletype dated 12/19/97: there are some leads that contain words like [suggest or consider]. These leads are optional. Or some leads contain the word [must]. These leads are mandatory." (AQI 5500)

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(S) The eleven *discretionary* items were as follows:

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- (S) Consider interviews of other U.S. scientists with whom the Lees had contact during their two trips to the PRC.

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- (S) Consider requesting [REDACTED] to interview individuals and sources who might be able to provide useful information about the PRC student intern.

- (S) Consider an interview of [REDACTED] the PRC student intern.

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- (S) Consider interviews of every supervisor that Wen Ho Lee and Sylvia Lee had at LANL, especially during the [REDACTED] period of suspected compromise.

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- (S) Consider interviews of co-workers of the Lees.

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- (S) Consider interviews of "selected and likely" individuals identified through the mail cover and telephone toll records.

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- (S) Consider an interview of an individual who previously reported observing a strange satellite dish set up at the Lees' residence.

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- (S) Consider both a trash cover of the Lees' residence and a trash cover of Wen Ho Lee's office.

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- (S) Consider discreet physical surveillance of the Lees.

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- (S) Consider interviewing any individuals who previously provided derogatory information about the subjects.

- (S) Consider [REDACTED]

(AQI 4819)

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FBI-AQ treated the teletype as if it had never been sent - and was insulted that it had been sent. SA [REDACTED] told the AGRT that SSA [REDACTED] told him that SAC Weber had found the teletype to be "condescending," and SA [REDACTED] took that to mean that the SAC's position was "we didn't need Headquarters to tell us how to run this case." [REDACTED] 9/12/99) SA [REDACTED] stated that, "When I heard that comment, I consciously or unconsciously felt that Weber didn't think [the] teletype was important."⁷⁷⁵ (Id.)

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

(S) The failure to open the PI's was consequential. FBI-AQ was told explicitly in the December 1997 teletype that this mandatory item was being driven by DOJ/OIPR - the office that would have to approve a new FISA submission.⁷⁷⁶ The failure to open and close these PI's undermined the FISA submission that FBI-AQ would, in fact, make in November 1998. SA [REDACTED] was ordered to open the PI's by his immediate supervisor, SSA [REDACTED] and that order was given to SA [REDACTED] within a day or two of FBI-AQ's receipt of the teletype. (AQI 5503) SA [REDACTED] told the AGRT that he "got busy" with the [REDACTED] and "put it on the back burner." [REDACTED] 9/12/99) b1

(S) Significantly, according to SA [REDACTED] neither SSA [REDACTED] nor SSA [REDACTED] ever brought the issue up with him again. SA [REDACTED] says that SSA [REDACTED] knew he had not opened the PI's and did not "ding him for it." (Id.) As to SSA [REDACTED] SA [REDACTED] met him in San Francisco in February 1998 at the [REDACTED] planning session "and he b1

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

⁷⁷⁶ (SARD) See this excerpt from the teletype: "The attorneys at DOJ/OIPR suggested [REDACTED] b1

..." (AQI 4821)

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never ask[ed] me about it." (Id.) SSA [REDACTED] concedes that "I probably realized they weren't doing those things," referring to the PI's and other items in the teletype. [REDACTED] 7/28/99) But, he added in a later interview, "I was a program manager, not [the] squad supervisor." [REDACTED] 12/15/99)

(S) The PI's were only one of the mandatory items that was ignored. [REDACTED] who had provided useful information in the past [REDACTED] was to be interviewed by FBI-AQ. As to this item, however, FBI-AQ did not even get her address until September 11, 1998^m (AQI 5423) and, even then, it took no immediate action to interview her. As to the instruction to interview the [REDACTED] scientist, this was simply not done.^m Finally, there is no indication that a thorough and comprehensive review of all of FBI-AQ's files was conducted or, if conducted, that it generated any leads.

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

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

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

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

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on [REDACTED] and the Lees had made two trips to the PRC during that period of time. Nevertheless, the lead was not pursued. SA [REDACTED] attempted to justify this failure by stating that the scientists had already been debriefed by LANL CI officers, "with no unusual activity noted."⁷⁷⁹ (AQI 1990) We presume that SA [REDACTED] was referring to the usual debrief of scientists occurring after each foreign trip. If so, this response is far less than persuasive. What SSA [REDACTED] was proposing was that FBI-AQ conduct interviews targeted to ascertain specific information that would bear on whether the Lees had committed espionage during those trips. That "no unusual activity" was noted during these debriefs is as irrelevant as the fact that "no unusual activity" was referenced in Wen Ho Lee's own post-travel trip reports. b1

(2) ~~(S)~~ As to the interview of [REDACTED] the PRC student intern, FBI-AQ did request that [REDACTED] be interviewed - but that request was made on March 23, 1999, some 15 months after it was proposed by FBI-HQ. (AQI 6124) [REDACTED] interviews took place immediately thereafter,⁷⁸⁰ but far too late for it to be of any use in a FISA application. As to the other items seeking more information about [REDACTED] these also were not pursued prior to 1999.⁷⁸¹ b1

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

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⁷⁷⁹ ~~(S)~~ As recounted in Chapter 4, SA [REDACTED] was instructed by SAC Kitchen to draft an EC to FBI-HQ explaining its compliance with the December 1997 teletype. This placed SA [REDACTED] in the uncomfortable position of defending the work that SA [REDACTED] whom she replaced as case agent, had done on the case.

⁷⁸⁰ ~~(S)~~ [REDACTED] was interviewed on March 24, 1999 and March 26, 1999. (FBI 1971) b1

⁷⁸¹ ~~(S)~~ FBI-AQ did acquire information about [REDACTED] back in April 1997 (AQI 1268, 1225), and did seek additional information from the [REDACTED] on April 30, 1997. (AQI 1264, 4542) The [REDACTED] complied with FBI-AQ's request on May 12, 1997. (AQI 1283) FBI-HQ obviously recognized the need for further investigation and this is the suggestion that was not pursued.

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

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(S) We recognize that SA [REDACTED] was attempting to reconstruct events in which she was not personally involved but this explanation is quite troubling. As painfully cautious as the December 1997 teletype was in its aversion to taking risk, it recognized that some risk would have to be taken. *Indeed, that is the premise of the teletype.* For FBI-AQ, as a blanket matter, simply to dismiss such an important pursuit is completely at odds with the purpose and aim of the teletype.⁷⁸²

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

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

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[REDACTED] - obtain a copy of a [REDACTED] It also references a statement made by a [REDACTED]

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

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

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

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(S) There is only one significant item in the December 1997 teletype that was seriously pursued,⁷²³ but it was not in response to the teletype. FBI-AQ obviously pursued the [REDACTED] but it had decided on the operation *before* it received the teletype.⁷²⁴

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

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(S) Indeed, FBI-AQ's EC requesting approval of the [REDACTED] is dated two days before the December 19, 1997 teletype (FBI 220), although it is not

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(S) The December 1997 teletype was by no means perfect. It did not touch on many of the issues that *ought* to have been investigated, as further described in this report. But it represented a genuine plan to advance the investigation. That it was essentially ignored by FBI-AQ is unfortunate. FBI-AQ blamed this on its planning of the [REDACTED] [REDACTED] " Given the nature of that planning, as described below, that is a particularly dubious excuse. b1

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

FBI b6, b7C (U) (S) SA [REDACTED] claim that FBI-AQ did not interview former supervisors out of fear of alerting Wen Ho Lee is particularly ironic in light of what happened in March 1998 as a direct consequence of the FBI being so restrictive in whom it made aware of the investigation that it essentially blind-folded itself.

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

(U) (S) This was, in the first instance, a communications failure between LANL X Division personnel and LANL counterintelligence personnel. But it was one caused by the ground rules which the FBI had itself set. See Chapter 18. It did lead to some recriminations within DOE.⁷⁵ Ultimately, however, it was the FBI that was responsible

FBI b6 b7C signed by SSA [REDACTED] until December 19th. (FBI 1161)

⁷⁵ (S) See SA [REDACTED] EC: "Due to Albuquerque Division's pursuit and subsequent approval by FBIHQ for [REDACTED] several of FBIHQ's suggestions were held in abeyance" (AQI 1991) b1

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

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

(U) (S) It is impossible at this point to say what the true consequences were of this failure. We can, however, state the following: First, on March 2, 1998 - the same day he notified LANL of his intention to travel to Taiwan - Wen Ho Lee contacted the LANL computer help desk to ascertain how he could access the LANL system from overseas. (FBI 1986) Second, while in Taiwan, Wen Ho Lee logged into LANL's open computer system and accessed certain files that he had placed there. (Detention Hearing 12/27/99 at Tr. 121-123)

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

b1 D. (S) The [REDACTED]

L. (U) A brief chronology

(S) The first reference to running [REDACTED] against Wen Ho Lee is on August 19, 1997, in a note made by SC Dillard concerning a meeting with [REDACTED]. The note lists "consider [REDACTED] as one of three options for further investigation."⁷⁷⁷ (FBI 6424) The

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

(U) (S) The other two options were "Revisit FISA" and [REDACTED] (FBI 6425)

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issue came up again the next day in a meeting with the Attorney General.⁷⁸⁸ Birth rights to the [REDACTED] clearly belong to SC Dillard, who insisted that it be included as an option in the December 1997 teletype.⁷⁸⁹ [REDACTED] (7/28/99) FBI-AQ knew as early as October 1997 that [REDACTED] was on its way. On October 15, 1997, SSA [REDACTED] told SA [REDACTED] that SC Dillard had added [REDACTED] to the teletype. (AQI 5524)

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(S) FBI-AQ's immediate reaction to the possibility of the [REDACTED] was not positive. SA [REDACTED] and SSA [REDACTED] talked about it and they saw no "logical opening" [REDACTED] (AQI 5527)

(S) By early December, FBI-AQ's attitude toward [REDACTED] had changed. The reason was [REDACTED]⁷⁹⁰ FBI agents involved in the [REDACTED] case saw an opportunity to premise [REDACTED] [REDACTED] (AQI 5517, 5518, 4999)

⁷⁸⁸ (S/NF) The issue came up on August 20, 1997 after the Attorney General and the Deputy Attorney General were briefed by Notra Trulock on PRC efforts to penetrate the national laboratories. AD John Lewis and SC Steve Dillard were both present at the briefing. After Trulock left, there was a brief follow-up meeting with the FBI. According to the handwritten notes of Dan Seikaly, three "action" items were discussed. The first item was "Review FISA application," which would ultimately lead to Seikaly's review of the June 1997 Wen Ho Lee/Sylvia Lee FISA application. The second item was "Consider [REDACTED]" The third item is "Reconvene after CIA [REDACTED] analysis," an apparent reference to a CIA assessment that was then underway to provide an independent review for the NSC of Notra Trulock's assertions about the PRC's nuclear weapons program. (DAG 1303)

⁷⁸⁹ (S) See also FBI 12013, a note by UC [REDACTED] that reads, in part, as follows: "SWD wants to [REDACTED]"

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⁷⁹⁰ (U) [REDACTED] (AQI 1854)

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(S) SSA [REDACTED] told SAC Weber that it was "an opportune time to make an approach to the subject." (AQI 5513) SA [REDACTED] described it as an "ideal opportunity" for [REDACTED] (AQI 5510) Even SSA [REDACTED] who would later characterize the [REDACTED] as a "dumb idea"⁷⁹¹ [REDACTED] 7/28/99), told SA [REDACTED] on December 12, 1997 that he viewed it as a "good idea at this time." (AQI 5514)

(S/NF) By December 16, 1997, SSA [REDACTED] was [REDACTED] and, as described in Chapter 4, [REDACTED] (AQI 5508; FBI 12002) b1

(S) The next day, SA [REDACTED] drafted an EC to FBI-HQ seeking approval to run the [REDACTED] "It is believed by the Albuquerque Division and by many of the recipients of this communication that [REDACTED] presents an opportunity for [REDACTED] (FBI 1166)

(S/NF) FBI-AQ thought the [REDACTED] could be run almost immediately. On December 19, 1997, an FBI San Francisco Division supervisor called SSA [REDACTED] to report [REDACTED] (AQI 5502)

(S) That prediction would only turn out to be eight months off the mark. *Delays began immediately.* First, SSA [REDACTED] told FBI-AQ that it could not approve the [REDACTED] b1

⁷⁹¹ (S) SSA [REDACTED] was not the only one who would later characterize the [REDACTED] as "dumb." DOE's Ed Curran would also call it "dumb" and describe it as "pie in the sky" and "doomed to failure." (Curran 8/31/99) It did not help any that FBI-AQ froze out the two counterintelligence officers – one who was himself a *current* FBI agent and the other who was a retired FBI agent – that Curran sent out to Santa Fe to monitor the operation. As described below, they had an excellent suggestion, which FBI-AQ ignored. b1

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[REDACTED] (AQI 51)
5500) Second. [REDACTED]
[REDACTED] (AQI 1592)

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(SANT) SSA [REDACTED] attended the planning meeting, which took place in San Francisco on February 6, 1998. He went out there thinking it would be a "waste of time" but, after [REDACTED] he was "pleasantly surprised." [REDACTED] (12/15/99) He now viewed the [REDACTED] as a "modest plan that held some chance of success." [REDACTED] (7/28/99)

(SANT) The most significant outcome of the February 6 meeting was also its most unfortunate development. [REDACTED]
[REDACTED]
[REDACTED] 794

(SANT) [REDACTED] (AQI 4970) A month later, it was still on SSA [REDACTED] list of things to do. (AQI 4964)

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⁷⁹² (U) That could hardly have come as a surprise to FBI-AQ. After all, this was a major operation in an investigation that FBI-HQ had micro-managed from the beginning. Just after sending out the EC to FBI-HQ seeking approval for the operation, SSA [REDACTED] told SA [REDACTED] to put it down "on paper" since FBI-HQ "will probably be asking for it." (AQI 5503) It did, and FBI-AQ supplied the scenario to NSD on January 2, 1998. (AQI 1581) UC [REDACTED] reaction to it was positive. In a note to SSA [REDACTED] he said: "I would say do it . . . we should be getting on with . . . planning pronto." (FBI 1188)

⁷⁹³ (U) See Chapter 4, Section H(4)(f).

⁷⁹⁴ (SANT) [REDACTED] (FBI 238, 1306)

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(S/AF) [REDACTED] was conveyed to NSD by FBI-AQ on January 2, 1998 and represented its formal scenario proposal to FBI-HQ for its review and approval. That scenario/

[REDACTED]

(AQI 1581)

(S/AF) [REDACTED] was "agreed upon" at the February 6, 1998 planning conference in San Francisco and, of course, was predicated on

[REDACTED]

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~~(S)~~ See also AQI 4978-4986, SA [REDACTED] notes of the San Francisco conference. Listed under "GOALS" were two objectives critical to FISA: (1) "Show they are agents of foreign power"; and (2) that they are "currently engaged in clandestine intelligence activity." (AQI 4985)

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[REDACTED] (AQI 1621)

(S/NF) [REDACTED] the official scenario approved by FBI-HQ on April 13, 1998, provided the following:

[REDACTED] (FBI 12470)

(S/NF) Finally, the scenario was refined slightly

[REDACTED] (AQI 4873-4878)

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

(S) It must first be said that none of the scenarios were so inherently preposterous that they could not have worked. The likelihood of success in any [REDACTED] is limited. After all, [REDACTED]

[REDACTED] (Id.)

~~TOP SECRET~~ [REDACTED]

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

FBI
b6, b7c

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

[REDACTED]

(SAR)

[REDACTED]

FBI
b6, b7c

(S) And so on. As SA [REDACTED] said, there was "no 'what if' planning * * * [there was] no preparation for anything." [REDACTED] 9/7/99) [REDACTED]

b1

[REDACTED]

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

(S) [REDACTED] requires the most meticulous planning.⁷⁹⁷ It is a "critical critical juncture [in a counterintelligence investigation] and if you don't have every detail planned it is doomed to failure." (Curran 2/9/00) Here, it was not a question of every detail but, rather, a question of any detail.

(2) (S) [REDACTED]

(S) In this case, [REDACTED]

⁷⁹⁷ (S/AF) This was particularly true in this case. [REDACTED]

⁷⁹⁸ (S/AF) [REDACTED]

~~TOP SECRET~~

[REDACTED]

b1

[REDACTED]

And so on.

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

(3) (SANE)

[REDACTED]

These were exceedingly sensitive and difficult issues to address and required lengthy and careful planning.

(S)

[REDACTED]

~~TOP SECRET~~

[REDACTED]

~~TOP SECRET~~

b1

[REDACTED]

(4) (S) Nor was there any planning

[REDACTED]

If FBI-AQ thought that there was *any* possibility that Wen Ho Lee would simply confess to having committed espionage, [REDACTED] was the "pie in the sky" [REDACTED] that Ed Curran accused it of being. (Curran 8/31/99)

(5) (S/NF)

[REDACTED]

FBI
b6, b7c

⁷⁹⁹ (S) SSA [REDACTED] who found herself on the eve of the [REDACTED] in charge of it, see Chapter 4, was particularly critical of this "cold approach." [REDACTED] (9/10/99)

b1

⁸⁰⁰ (S)

[REDACTED]

b1

~~TOP SECRET~~

~~TOP SECRET~~

[REDACTED]

b1

(S)

[REDACTED]

(S)

[REDACTED]

FBI
b6, b7c

(9/7/99)

(6) (S)

[REDACTED] This presented an enormous opportunity for FBI-AQ. Indeed, the [REDACTED] could fail but the [REDACTED] succeed.

(S)

[REDACTED]

~~TOP SECRET~~

[REDACTED]

[REDACTED]

(S) The failure to plan any follow-up to the [REDACTED] was consequential. [REDACTED]

[REDACTED]

(7)(S)

[REDACTED] what was

²⁰¹ (S) Ed Curran sent [REDACTED] to observe the [REDACTED] brief LANL Director John Browne, and to "get involved" in the

[REDACTED]

(AQI 4887) SA [REDACTED] wrote a note to the file that "JM [SSA] will not let them interfere." (Id.) In the end, they spent the [REDACTED] sitting around [REDACTED] "waiting to hear what was happening." [REDACTED] 2/15/00) "[W]e waited for [the] telephone to ring." [REDACTED] 2/23/00) FBI-AQ, according to Curran, "blew them off." (Curran 8/31/99)

FBI
b6
b7c

b1
FBI-AQ planning to do?⁸⁰² Who knows. It had *no* plan of action for this eventuality. Even if there was insufficient basis to arrest Wen Ho Lee, there were a variety of other actions that the FBI might have taken [REDACTED]
[REDACTED]

(8) (S) [REDACTED]

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

But what it could do, it did not do.

(9) (S) There was no consideration of all the other reasonably foreseeable contingencies that might occur. [REDACTED]

That is hardly

⁸⁰² (S) [REDACTED]

⁸⁰³ (S) [REDACTED]

But, without surveillance, how was FBI-AQ to know if surveillance was necessary?

FBI
b6
b7c

speculative; it is, in fact, precisely what Wen Ho Lee did. [REDACTED] 9/7/99; FBI 1352)
There is no indication that FBI-AQ even considered this possibility, or considered what it could do to gain access to whatever Lee might try to remove from LANL. ⁸⁰⁴

(u)
(S) In short, FBI-AQ had "tunnel vision." [REDACTED] 9/7/99) First, they did virtually no planning. And then they expected "it would go exactly as planned." (Id.)

b1

4. (S) Execution of the [REDACTED]

(S) And yet. Despite everything, the [REDACTED] was a "partial success." [REDACTED] 9/12/99) There are three reasons for this: (1) [REDACTED]

[REDACTED] ⁸⁰⁵ (2) [REDACTED]

and (3) Lee demonstrated a lack of candor in his subsequent meeting with DOE's [REDACTED]

DOE b6, b7c

⁸⁰⁴ (S) [REDACTED] Search warnings were clearly posted.

⁸⁰⁵ (S) [REDACTED]

~~TOP SECRET~~ [REDACTED]

b1
a. (S) [REDACTED]

i. (S) [REDACTED]

06

(S) [REDACTED]

(S) [REDACTED]

(S) [REDACTED]

006

(S) [REDACTED]

~~TOP SECRET~~ [REDACTED]

b1

~~TOP SECRET~~

(S)

(S)

(S)

(S)

ii. (S)

(S)

(S)

⁸⁰⁷ (S) The AGRT has two versions: [redacted] one complete (AQI 4662-4667, AQI 6228-6233) and one incomplete (e.g., AQI 4718-4719) One difference, obviously, is that the complete version is four pages longer, a matter which is discussed in Chapter 15. The other difference is that there are numerous minor variations in the first two pages [redacted] in both versions. Except where indicated, the AGRT is quoting from the complete version.

⁸⁰⁸ (S)

~~TOP SECRET~~

~~TOP SECRET~~

b1

[REDACTED]

• (S) [REDACTED]

room.

~~TOP SECRET~~

b1

~~TOP SECRET~~

• (S) [REDACTED]

809 (S) In one version [REDACTED] is followed by the following sentence, which does not appear in the final version: [REDACTED] (AQI 4719)

~~TOP SECRET~~

~~TOP SECRET~~ [REDACTED]

iii. (S) [REDACTED]

b1

(S) [REDACTED]

b. (S) Analysis of [REDACTED]

FBI
b6, b7c

(S) UC [REDACTED] reaction [REDACTED] was to make this note in his journal: [REDACTED] (FBI 11954) It was not, however, that [REDACTED] but that the [REDACTED] was itself so inadequately planned as to make it a near certainty that it would not achieve its objectives.⁸¹⁰ Nevertheless, there were six specific items of incriminating material [REDACTED]

811

810 (S/NF) [REDACTED]

[REDACTED]

⁸¹¹ (S/NF) The AGRT would also note the possibility that there was a seventh item of incriminating material, [REDACTED]

[REDACTED]

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

b1
(1) (S) [REDACTED]

(2) (S) [REDACTED]

(3) (S) [REDACTED]

(4) (S) [REDACTED]

(5) (S) [REDACTED]

^(U)
812 (S) Actually, Lee was questioned by DOE counterintelligence personnel, not the FBI.

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(6) (S) [REDACTED]

b1

(u)

c. (S) Wen Ho Lee's failure to report

(S) First, it should be made very clear that Wen Ho Lee *did* fail to report [REDACTED]

DOE

b6, b7C

(S) Lee told [REDACTED] that he had intended to report [REDACTED] That is not credible. [REDACTED]

DOE

b6, b7C

Finally, it is not credible because if Lee *had* intended to report [REDACTED] why did he [REDACTED]

(S) Lee's failure to report [REDACTED]

This is what Wen Ho Lee chose not to report to authorities:

DOE

FBI

b6, b7C

813 (S)

[REDACTED] also concluded that Lee's claim of an intention to report [REDACTED] He told SA [REDACTED] several days after his interview with Lee that he "does not believe that WHL really intended to call [him] to report the incident." (AQI 4793)

~~TOP SECRET~~ [REDACTED]

b1

~~TOP SECRET~~

• (S) [REDACTED]
[REDACTED] 13

• (S) [REDACTED]

• (S) [REDACTED]

• (S) [REDACTED] and .

• (S) [REDACTED]

(S) Wen Ho Lee had a clear obligation to report [REDACTED] to either LANL
authorities or the FBI. [REDACTED]

DOE
b6, b7C

814 (S) [REDACTED]
[REDACTED]

815 (S) There is no question that Wen Ho Lee understood [REDACTED] (AQI
1867)

~~TOP SECRET~~

~~TOP SECRET~~ [REDACTED]

(u)
d. (S) Wen Ho Lee's meeting with [REDACTED]

DOE b6, b7c

b1

(S) [REDACTED]
[REDACTED]
[REDACTED] (Id.)

(S) [REDACTED]
[REDACTED]
[REDACTED] (Id.)

(S) [REDACTED]
[REDACTED] 9/14/98) DOE b6,
b7c
Thus began the most significant event in the [REDACTED]

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

(u)
(S) According to [REDACTED]¹⁶ this is the universe of information that Lee reported: DOE b6,
b7c

(S) [REDACTED]
[REDACTED]

(u)
(S) [REDACTED] recorded his meeting with Lee in a memorandum dated August 24, DOE b6,
1998. (AQI 1883) b7c

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~

b1

(S)

[REDACTED]

(S)

[REDACTED]

(S)

[REDACTED]

(S)

[REDACTED]

(S) About ten minutes after [REDACTED] meeting with Lee ended, Lee came to his office and stated that he had remembered one additional fact [REDACTED] DOE b6, b7c

[REDACTED]

(U)

(S)

In the meeting with [REDACTED], Wen Ho Lee demonstrated [REDACTED] lack of candor.

DOE b6, b7c

~~TOP SECRET~~

~~TOP SECRET~~ [REDACTED]

(u)
i. (S)

(u)
(S) As to [REDACTED] the following six matters.⁸¹⁷ DOE b6, b7c

(1) (S)

[REDACTED]

(2) (S)

[REDACTED]

(3) (S)

[REDACTED]

(4) (S)

[REDACTED]

(5) (S)

[REDACTED]

b1

FBI
b6
b7c

⁸¹⁷ (S) UC [REDACTED] made a journal entry on December 15, 1998 which reflects his review of [REDACTED] report [REDACTED]

He writes: [REDACTED] Even considering that UC [REDACTED] did not have [REDACTED] at this point, this statement is inexplicable.

DOE
b6
b7c

~~TOP SECRET~~ [REDACTED]

b1

~~TOP SECRET~~ [REDACTED]

(6) (S)

[REDACTED]

ii. (U) (S) Lack of candor

(U) (S) Equally significant were the numerous items Lee failed to report *despite* repeated requests for full and complete information:

DOE b6, b7c

(1) (S)

[REDACTED]

(2) (S)

[REDACTED]

(3) (S)

[REDACTED]

(4) (S)

[REDACTED]

(5) (S)

[REDACTED]

(6) (S)

[REDACTED]

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~

(7)(8)

61

[REDACTED]

DOE
b6, b7c

(S) In summary, Lee was [REDACTED] lacking in candor in his meeting with [REDACTED]. After the meeting, [REDACTED] wrote: [REDACTED]

DOE
b6, b7c

(AQI 1884) As FBI-AQ told NSD in an EC following the [REDACTED] "It is clear that [REDACTED] during the interview with [REDACTED] (FBI 7492)

5. (U) Conclusion

FBI
b6
b7c

(S) As ASAC Dick acknowledged, the [REDACTED] was not a "home run." (AQI 4861) But nor was it a strike-out, or the "bust" SSA [REDACTED] described it to be. [REDACTED] 7/23/99) It was, as SA [REDACTED] said, a "partial success." [REDACTED] 9/12/99) [REDACTED] Wen Ho Lee *had* failed to report a [REDACTED] And Wen Ho Lee *had* [REDACTED] lacking in candor when he was questioned by the authorities.

(S) Given what the FBI was looking for, i.e., "additional justification" for a FISA, and given what else the FBI *already* had on Wen Ho Lee, the [REDACTED] should have resulted in the submission of a FISA application and the issuance of an order. That clearly was the view of FBI-AQ. But it was clearly *not* the view of [REDACTED] And, unfortunately, it would be Washington, not Albuquerque, that would control the next series of significant events.

~~TOP SECRET~~