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CHAPTER FIFTEEN

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

Questions Presented:

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Question One: ~~(S)~~ What happened to the [REDACTED]

Question Two: (U) How was the decision made that DOE would interview, and Wackenhut would polygraph, Wen Ho Lee on December 23, 1998?

Question Three: (U) Was that a bad decision?

(U) PFLAB Question #10: Why DOE, rather than the FBI, conducted the first polygraph examination in this case when the case was an open FBI investigation.

A. (U) Introduction

~~(S)~~ One significant event, and one significant non-event, occurred in the Wen Ho Lee investigation in the time period of August 20, 1998 to December 22, 1998. First, there was the decision by DOE to interview and polygraph Wen Ho Lee on December 23, 1998, and the FBI's unfortunate acquiescence in that decision. Second, there was the non-event of the FBI's seeming inability to obtain [REDACTED]
[REDACTED]

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B. (S) The [REDACTED]

1. (U) Introduction

(S) It took eight months for [REDACTED] to be completed.

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[REDACTED] Other investigations might have risen above this delay, but this was, as the previous fourteen chapters make clear, no ordinary investigation. The Wen Ho Lee investigation had little traction and virtually no momentum, and so, any delay, however insignificant, had a material and adverse impact. This *particular* delay was not insignificant; it essentially froze the investigation in place for four critical months.

(S) Could NSD have worked around the absence [REDACTED] Could it have gone ahead and submitted a new request for a FISA order based on what it *already* had? Unequivocally, yes. It had enough to work with even in the absence [REDACTED] But it was unwilling to do so. And, yet, it was also unwilling to force immediate production [REDACTED]

(S) Had NSD received [REDACTED] in late-August instead of mid-December, would it have led to a different perception on the part of NSD as to the significance of the [REDACTED] Perhaps not. But, if nothing else, the matter would have been *decided*, and the investigation could have moved on. Instead, the investigation moved nowhere and, by the time it *did* move on in late December, it was too late. DOE, having finally appreciated the implications of Director Freeh's "take that right off the table" statement of August 1997, was about to do just that.

2. (S) How did it take eight months [REDACTED]

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(S) On the evening of August 19, 1998, SA [REDACTED] called SSA [REDACTED] to report on what, for the Wen Ho Lee investigation, was an incredibly eventful day. (AQI 4867) At [REDACTED]

[REDACTED] Wen Ho Lee had not been candid with [REDACTED] (AQI 4622)

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SSA [REDACTED] who had supervised the [REDACTED] in SSA [REDACTED] absence, agreed: b1
Wen Ho Lee [REDACTED] (AQI 4861)

(S) The following day, August 20, 1998, SSA [REDACTED] asked for a "detailed report" on the [REDACTED] (AQI 1863) He also instructed [REDACTED] b1

[REDACTED]
[REDACTED] (AQI 4789)

(S) [REDACTED] (AQI 6596)

(S) On August 24, 1998, [REDACTED]
[REDACTED] but it also omitted some significant details.²⁰ On August

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¹⁸ (S) [REDACTED] (2/28/00)

¹⁹ (S) For example, it included the following [REDACTED]
[REDACTED]

²⁰ (S) It omitted, for example [REDACTED]
[REDACTED]

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28, 1998, [REDACTED] was sent to NSD along with an EC from SA [REDACTED] detailing interview of Wen Ho Lee [REDACTED]

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[REDACTED] (FBI 1352-1360) The August 28, 1998 EC also contained the formal lead [REDACTED] (Id.)

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(8) Director Freeh was told within days of NSD's receipt of this material that "[u]pon receipt [REDACTED] will present the details to DOJ/OIPR and again ask for an electronic surveillance application to the Foreign Intelligence Surveillance Court." (FBI 13011) Secretary Richardson was told essentially the same thing. (DOE 2384)

(8) The note to Director Freeh makes two points clear: (1) As of September 1, 1998, [REDACTED] intended to use the [REDACTED] results to seek a FISA order; and (2) it did not intend to do this until it received [REDACTED]. In Chapter 4, we noted that [REDACTED] could have proceeded *without* [REDACTED]. More to the point, if NSD had wanted [REDACTED] badly enough, it could *easily* have procured them. [REDACTED]

[REDACTED] were still not done (FBI 1374), NSD did not take a single step to procure [REDACTED]

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(5) Nor was FBI-AQ doing anything about it either. There is no record of any effort by SA [REDACTED] in either September or October to [REDACTED]. SA [REDACTED] told the AGRT that he had to "admit" he didn't follow up. [REDACTED] (2/28/00)

(5) Finally, on November 4, 1998, SA [REDACTED] said SSA [REDACTED] called him to ask: [REDACTED]

[REDACTED]

(5) [REDACTED]

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[REDACTED] (AQI 4774)

(S) [REDACTED] had been "delinquent."²²² (AQI 4773) [REDACTED] however, were still not forthcoming, [REDACTED]

(S) Finally, [REDACTED] were ready, and both FBI-AQ and NSD received them on or about December 11, 1998.²²³

(S) Unfortunately [REDACTED] was missing.²²⁴ This was SA [REDACTED] first inkling that there was a problem with [REDACTED]

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²²² (S) SA [REDACTED] note attributes the delinquency [REDACTED] (AQI 4773) While that may account for two weeks, it does not account for what would eventually turn out to be *eight months*.

²²³ (S) In a timeline prepared [REDACTED]

²²⁴ (S) The missing portion, see AQI 4691-4694, included some significant points [REDACTED]

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[REDACTED]

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(AQI 6597)

(S) Another three weeks elapsed.]

[REDACTED]

(AQI 4705) At

this point, said SA [REDACTED] "I was getting pretty damn frustrated."⁸²⁵

[REDACTED] 2/28/00)

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[REDACTED]

this was partially, but not completely, the case. (AQI 4766)

⁸²⁵ (S) Again, there is a discrepancy between SA [REDACTED] recollection and contemporaneous notes, on the one hand, and [REDACTED] on the other.

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[REDACTED]

(S)

[REDACTED]

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(S)

[REDACTED]

it would be mailed directly to SA [REDACTED] "today." (AQI 4703)

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²²⁶ (S) See SA [REDACTED] note to the file, dated April 18, 1999: [REDACTED] sent on 1/8/99 contained all of the addtl info [REDACTED] needed." (AQI 4704)

²²⁷ (S) Again:

[REDACTED]

(FBI 21825) Neither FBI-AQ's official files, nor SA [REDACTED] personal files, support this. Furthermore, SA [REDACTED] told the AGRT that he was not involved [REDACTED]

[REDACTED] when he was asked to become involved in the matter again by SSA [REDACTED] who was then supervising the criminal investigation. [REDACTED] 2/28/00; [REDACTED] 4/19/00) In addition, the AGRT has interviewed SA [REDACTED] SSA [REDACTED] SSA [REDACTED] and SSA [REDACTED] on this matter and none of them saw [REDACTED] prior to April 1999. [REDACTED] 4/18/00; [REDACTED] 4/17/00; [REDACTED] 4/17/00; [REDACTED] 4/18/00)

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(S) On or about April 21, 1999, SA [redacted] finally received [redacted]. Not surprisingly given the peculiar history of this matter, there was yet another problem or, actually, two problems. [redacted]

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[redacted] 2/28/00) It had taken just over eight months to complete [redacted]

(S) This unfortunate saga, as stated above, cannot be attributed *entirely* to [redacted] certainly must bear the largest measure of responsibility. SSA [redacted] SA [redacted] and SA [redacted] are also responsible.

(S) SSA [redacted] after all, was the one who *insisted* on [redacted] before submitting a FISA application. He did precious little to pursue production of them. It is probable he brought the issue up with ASAC Lueckenhoff on October 31, 1998 and he placed one call each to SA [redacted] in November 1998. (See FBI 21825) Given that Director Freeh had been told by NSD on *September 1, 1998* that a FISA application would be submitted [redacted] far more should [redacted]

121 (S) [redacted]
[redacted]
[redacted] There are at least 16 different places in which [redacted] are different, including several sentences that appear in one version but not the other. (Compare AQI 4662-4663 with AQI 4688-4689.)

122 (S) [redacted]
[redacted] SA [redacted] insisted that the cover EC and FD-302 be redated. "I didn't think it was being nitpicky. I insisted on that." [redacted] 2/28/00) It was done. (AQI 6222)

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have been done. It was not as if it would have taken the personal intervention of the Director himself to [REDACTED]

[REDACTED] No, this was a matter that could have been resolved at a far lower level. For whatever reason, [REDACTED] NSD could have made it so but first, of course, it would have had to be a critical priority for NSD, which it was not.

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(8) As to SA [REDACTED] he clearly failed to meet his responsibilities, not least because he *twice* failed [REDACTED]

SA [REDACTED] was the case agent for the Wen Ho Lee investigation. [REDACTED] should have been one of his very highest priorities. [REDACTED]

[REDACTED] he dropped the matter yet again. It is no excuse that SA [REDACTED] was not the case agent after November 4, 1998. [REDACTED] He still had some involvement in the investigation. And he - not SA [REDACTED] - was the FBI-AQ agent who [REDACTED] He had a responsibility to pursue this issue *to its completion*.

(8) As to SA [REDACTED] she was the case agent between November 4, 1998 and March 9, 1999. Thus, it was her ultimate responsibility to [REDACTED] When production was neither prompt nor complete, she should have intervened. Someone certainly needed to.

(8) The failure to [REDACTED] in a *timely* fashion hurt this investigation in three ways: -

(8) First, [REDACTED] while adequate, was just adequate. [REDACTED] might have generated greater enthusiasm within NSD.

(8) Second, [REDACTED] omitted significant incriminating information.

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(S) Third, in light of NSD's unwillingness to go forward with a FISA application [REDACTED] guaranteed no FISA coverage.

Was that consequential? Given the fact [REDACTED]

[REDACTED] (DOE 1094), it may have been very consequential.

(S) Ultimately, the failure to [REDACTED] in a timely fashion is another reflection of the lack of priority given this case by FBI-AQ and by NSD. Either entity could have [REDACTED] completely and quickly. Neither entity did.

C. (U) The events leading up to the DOE/Wackenhut interview and polygraph of Wen Ho Lee on December 23, 1998

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(S) For more than two years, the Wen Ho Lee counterintelligence investigation had proceeded as if FBI-AQ had all the time in the world. Periodically, there would be complaints about the slow pace of investigation and there would be a brief flurry of activity (e.g., April and May 1997), but it would soon subside. In December 1998, that would all change, and it would all change *permanently*.

(S) In part, this was a product of [REDACTED] years of frustration with FBI-AQ, which finally emerged in its briefing of incoming ASAC Lueckenhoff on October 31, 1998. This did lead to significant actions, including the replacement of SA [REDACTED] with SA [REDACTED] and the submission of a new request for FISA coverage. See Chapters 4 and 16.

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(U) Far more significant, however, were events occurring outside the FBI. From 1996-1998, DOE had stood on the sidelines of an investigation in a chronic state of arrhythmia. And, for those two years, DOE had deferred to the FBI. Now, however, thanks to the FBI, DOE had a head of counterintelligence who was himself an FBI veteran. Ed Curran had been hand-picked by the FBI to be the first head of DOE's new Office of Counterintelligence. In proposing his name to DOE, AD Lewis had described Curran as "a highly qualified candidate to design and manage a comprehensive Counterintelligence (CI) and Security Program at the Department of Energy (DOE)." (FBI 20956) Curran, said AD Lewis, "brings over 35 years of experience with the FBI, including extensive Foreign Counterintelligence (FCI) and management assignments."

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(Id.) That experience was about to have a dramatic impact on the Wen Ho Lee investigation.

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(S) Curran, to say the least, was not happy about the status of the Wen Ho Lee investigation. Although he had not taken office at DOE until April 1, 1998 (FBI 7152), he had heard "rumblings" about it before he began.³⁰ However, it was not until after he went out to Albuquerque, as part of his initial review of the CI programs in the national laboratories, that he became "very concerned" about the Wen Ho Lee investigation.

(Curran 8/31/99) "Ed was saying," according to [REDACTED] an FBI agent on detail to Curran, "they[ve] got to get this case moving." [REDACTED] 2/15/00) Curran was asking SA

[REDACTED] "Where's [the] conclusion?" (Curran 2/9/00)

b1 (S) Curran told the AGRT he had "absolutely no confidence" in [REDACTED] and what he perceived as the FBI's inability to bring the case "to an end." His view was that the FBI was "not doing what it should be doing," that the [REDACTED] was a failure, and that the "game [was] over." Yet what he was hearing from the FBI in the fall of 1998 was that it intended to revisit the FISA issue again. He could not see how that could be productive because, in his view, Wen Ho Lee "was onto them" and had "all his antennae up" as a result of the [REDACTED] (Curran 8/31/99 and 2/9/00)

(U) Then there were four other factors:

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(S) First, the new Secretary of Energy, Bill Richardson, had been sworn in on August 18, 1998, and promptly received a briefing paper from Curran on the Wen Ho Lee investigation. (DOE 2384) Secretary Richardson also got the Notra Trulock briefing in the DOE SCIF. He was "impatient with the case." (Richardson 3/7/00) As Curran told AD Gallagher at the time: Secretary Richardson was frustrated and felt the need for action. (Gallagher 10/28/99) He viewed Lee as a potential spy at Los Alamos.

(Richardson 3/7/00) The Secretary's view was that DOE was "sitting on a powder keg." (Id.)

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(S) An update on the case was given to SC Dillard on March 13, 1998 with a note indicating that it was drafted for Ed Curran. (FBI 13017)

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(S) Second, during this time period, Curran became aware - for the first time - of Director Freeh's "take that right off the table" statement from August 1997. See Chapters 13 and 18.³¹ "I know what that means," said Curran. "Now it's my responsibility."
(Curran 2/9/00)

(S) Third, the Cox Committee, according to Curran, was going "full blast" (Curran 2/9/00) and one of the areas in which it was making inquiries was the "Kindred Spirit" investigation. (OIPR 917; FBI 11553) According to Secretary Richardson, Congressman Norman Dicks, the Ranking Democrat on the Cox Committee, had been to see him and told him "he needed to get a handle on this issue." (Richardson 3/7/00) On December 16, 1998, Curran, along with CIA and FBI witnesses, briefed the Cox Committee (FBI 11553, 02661; EAT 187), and he returned to DOE and wrote a note to Secretary Richardson: [REDACTED] and I need to discuss options with you concerning this case at your earliest opportunity, especially after our testimony on the Hill with the Cox Committee yesterday." (DOE 2382)

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(S) Finally, Curran became aware of the *true* nature of Wen Ho Lee's access to classified information. At a Cox Committee briefing, Curran heard the FBI (UC [REDACTED] and SC Middleton) describe Wen Ho Lee's actual access. It was the first time, said Curran, that "he heard in detail [the] facts of the case." (Curran 8/31/99) "Until [the] briefing," he "thought Wen Ho Lee [was] just working on old codes." He "found out at the briefing that he had access to current codes [and the] vault." (Curran 2/9/00) Mr. Curran's reaction was, "Oh my God," particularly since he knew that there was no FISA coverage in place to monitor what Wen Ho Lee was doing.

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(S) Curran wanted to take decisive action, and he wanted to take it as soon as possible. Wen Ho Lee was in Taiwan for most of the month of December and was due to return on December 21, 1998. Curran recommended to Secretary Richardson that "they not allow [the] guy back in access," that he be interviewed, polygraphed, and removed

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(S) It is unclear when Curran first learned of Director Freeh's statement. It is probable that it was at a December 15, 1998 meeting with UC [REDACTED] SSA [REDACTED] and others. (See UC [REDACTED] notes of this meeting, at FBI 21563, 21564 and 11950; See [REDACTED] notes of this meeting, at DOE 3985)

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from access. (Curran 2/9/00) Secretary Richardson's view was that Wen Ho Lee was dangerous to have around and he felt the need "to discipline this thing." He "wanted to act" (Richardson 3/7/00) and, according to a note from AD Gallagher to Deputy Director Bryant, the Secretary wanted to act "as quickly as possible." (FBI 7721).

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(S) Curran told the AGRT that he does not think the Cox Committee "influenced events." (Curran 2/9/00) It certainly influenced at least the *timing* of those events. On December 18, 1998, UC [REDACTED] wrote a note to the file concerning a meeting with [REDACTED] Ed Curran and SSA [REDACTED]. The note referenced a plan for an administrative interview of Lee, followed by a polygraph of Lee, followed by a referral to the FBI, presumably for a thorough and detailed interview. The note goes on to say: "[Curran said before the Cox Committee Report comes out.]" (FBI 11948, 20325) That same message was repeated in a note to Director Freeh from AD Gallagher that same day: "On December 17, and 18, 1998, DOE counterintelligence advised they wanted to try and neutralize their employee's access to classified information prior to the issuance of a final report by the Cox Committee."³² (FBI 16574) On the copy of the note obtained from Director Freeh's files, there is also a note in the margin: "DOE wanted to act on Lee prior to issuance of final Cox Rpt." (Id.)

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(S) Curran's view was that DOE's interview of Wen Ho Lee was to serve one principal purpose: "to take him out of access." (Curran 2/9/00) It was to be a "pretext to take him out of access." (Id.) The interview was not intended to be either detailed or comprehensive. Rather, it "was to be very shallow." (Id.) "This was never meant to be a substitute for [an] FBI interview." (Id.)

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(S) FBI-AQ, however, was not ready to do a subject interview of Wen Ho Lee.³³ Curran talked to SAC Kitchen who indicated that FBI-AQ needed time to interview neighbors and co-workers before interviewing Wen Ho Lee. (Id.) Director Freeh and

³² (u)
(S) The typewritten note actually reads "prior to the conclusion of the Cox Committee hearings this month." The underlined words are crossed out and the "report" language inserted in its place.

³³ (u)
(S) That FBI-AQ was *still* not ready to interview Wen Ho Lee after investigating him for most of five years, is a matter discussed in some detail in Chapter 4.

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Deputy Director Bryant were told the same thing.⁸³⁴ Curran said they agreed on 30 days to complete the interview process. (Id.) Curran said that the 30-day period was "never presented as a deadline to the FBI" but, rather, as a "coordinated 30-day period."⁸³⁵ (Id.)

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(u)
(S) Curran did not ask the FBI for *permission* to interview and polygraph Wen Ho Lee. The decision was "made by DOE" and Curran states he "just told them." (Curran 8/31/99) "[It was] Ed Curran's call." [REDACTED] 2/15/00) It is also clear, however, that senior management within the FBI did not object. "No one raised any objections," according to SAC Kitchen. (Kitchen 9/10/99) He and Curran agreed that it "would be [a] logical way to go." (Id.) SAC Kitchen's principal concern about the FBI doing the interview and polygraph of Lee was that Lee might refuse the polygraph. SAC Kitchen said he met with his supervisors and "we agreed collectively that DOE had [the] best chance of getting him to take [a] polygraph."⁸³⁶ (Id.)

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(S) Nor did NSD object to Curran's plan. As AD Gallagher stated in a note to Director Freeh, dated December 18, 1998: "NSD advised DOE CI that it did not object to DOE's intentions." (FBI 16574) SC Middleton told the AGRT: "We 'think tanked' it with the unit [REDACTED] and Curran." The FBI agreed to "go with [a] DOE interview."

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(S) See AD Gallagher's note to Deputy Director Bryant: "AQ needs the two weeks to interview co-workers previously held in abeyance to protect the case." (FBI 7721)

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(S) It is not clear whether the 30-day period was established before or after the events of December 23, 1998. SAC Kitchen indicates that after the polygraph took place, Curran called him and said they were moving him out [of X Division] and the FBI had 30 days to resolve the case. (Kitchen 9/10/99)

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(S) SSA [REDACTED] who was one of those supervisors, told the AGRT that she actually had "heartburn" about DOE doing the polygraph rather than the FBI. She felt that an FBI examiner would be more experienced for purposes of the interview, and actually knew a Bureau polygrapher who had a PRC background and spoke Chinese. [REDACTED] 9/10/99) Moreover, as discussed in Chapter 4, she did not accept that Lee would necessarily be more willing to take a polygraph if it was DOE proposing it, rather than the FBI. DOE, after all, "could take his job." (Id.)

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While SC Middleton stated that he would rather have had the FBI make the initial contact with Wen Ho Lee, the problem was with approaching Lee. In his view, there was a better chance that Lee would agree to be interviewed by DOE than by the FBI. (Id.)

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(S) Initially, the interview was set for December 29, 1998. (FBI 11947, 20325) Secretary Richardson was told by Curran on December 21st that "DOE Counterintelligence intends to conduct this interview before the end of this calendar year." (DOE 3570) That, apparently, was too long for DOE to wait. By the next day, the plan had been pushed up a week. (FBI 11944, 20324) Wen Ho Lee would be interviewed and polygraphed the day he returned to work.

C. (U) Discussion

b1 (S) In the year 1998, Wen Ho Lee had three encounters with counterintelligence personnel, once on May 18, 1998 (following his return from his first trip to Taiwan), once on August 19, 1998 [REDACTED] and once on December 23, 1998 (after his return from his second trip to Taiwan.) (AQI 5471, FBI 1350, AQI 49-52) Although this was an FBI espionage investigation, all three interviews were conducted by DOE counterintelligence personnel. Even Wackenhut had access to Wen Ho Lee before the FBI.

(U) The interview and polygraph of Wen Ho Lee should have been done by the FBI. Secretary Richardson's frustration with the investigation, and Curran's determination to remove Wen Ho Lee from access, were, of course, understandable. The investigation had dragged on for an unconscionably long period of time and had amazingly little to show for it. Nevertheless, when Curran broached his plan for a DOE interview and a Wackenhut polygraph, the FBI should have said no.

(U) There are six reasons for this:

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(S) First, while Curran contemplated that the FBI would conduct a subsequent in depth interview of Wen Ho Lee, it was just as likely - or more likely - that this interview would be the only interview of Wen Ho Lee, particularly if Wen Ho Lee flunked the polygraph, or refused the polygraph, either of which would result in the initiation of DOE termination proceedings. (See DOE 3570)

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(U) Second, this was an *FBI* investigation, not a *DOE* investigation. As anemic as the investigation had been, the *FBI* still knew a great deal more about Wen Ho Lee and Sylvia Lee than did *DOE* counterintelligence. It was true that [REDACTED] had been *DOE* b6, involved in the Lee investigation from the beginning, but that did not make him the most b7c qualified person to question Wen Ho Lee. After all, his background was not as an investigator but as a computer expert. ([REDACTED] 9/13/99) As to the other LANL CCIO at *DOE* b6, the interview, [REDACTED] an investigator, a retired *FBI* agent in fact, but b7c he had been at LANL for *less than ten days*.⁸³⁷

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(S) Third, the *FBI* was available, *indeed it was available on site*, to conduct the interview of Wen Ho Lee. During the interview and polygraph of Wen Ho Lee, SA [REDACTED] and SA [REDACTED] were waiting in an adjoining room, intending to question Lee should he flunk the polygraph. ([REDACTED] 8/18/99) If the plan was to have the *FBI* question Lee *after* he flunked the polygraph, why not *before*?

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(S) Fourth, the *FBI*'s perception that Wen Ho Lee would be more receptive to a *DOE*-initiated polygraph, rather than an *FBI*-initiated polygraph, just cannot withstand close scrutiny, for the following reasons:

- (S) Lee had been expecting to hear from the *FBI* for months. [REDACTED] *DOE* b6, at the conclusion of the [REDACTED] interview, had specifically told him b7c that he would be notifying the *FBI* for their follow-up.
- (S) Lee's prior experiences with the *FBI* had not been unpleasant. It is true that he had become *enmeshed* in the [REDACTED] investigation back in 1982-1984, but he had also gotten himself *unmeshed*, and he had done so in part specifically *because* of an *FBI* polygraph.
- (S) [REDACTED] and Wen

⁸³⁷ (U) [REDACTED] retired from the *FBI* on December 1, 1998 and began at LANL, on December 14, 1998. [REDACTED] 9/13/99) He was first briefed on the case December 16, 1998, one week before he interviewed Lee. (Id.)

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Ho Lee was well aware of this. In fact, at one point, he had been debriefed himself. See Chapter 3.

- (U) Lee might well take an FBI polygraph request as both more serious and less consequential than a DOE request. It was more serious because it was the FBI, not his own office's counterintelligence personnel, who were asking for his assistance. And he might have viewed it as less consequential for the reason cited by SSA [REDACTED] DOE could take his job; the FBI could not.

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(U) In short, in the FBI vs. DOE calculus, there was at least as much, if not more, to suggest that Wen Ho Lee would be more receptive to an FBI polygraph than to suggest the reverse.

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(8) Fifth, regardless of the fact that SAC Kitchen had heard that the Wackenhut polygraphers were "pretty good" and that Curran "vouched for them" (Kitchen 9/10/99), there is something bordering on the absurd in having a private security firm take what is certainly one of the most - perhaps *the* most - critical step in an entire counterintelligence investigation. Even if the FBI had reason to believe it would get to do a follow-up interview of Wen Ho Lee, what possible reason did it have to believe it would get to do a follow-up *polygraph* of Wen Ho Lee? Indeed, Lee's initial reaction in February 1999 to being asked to take a second polygraph was [REDACTED] (9/7/99) Thus, by letting DOE take charge of the polygraph, the FBI was ceding to Wackenhut control over what might well turn out to be the *one and only* polygraph that would ever take place in this long-term espionage investigation.

(U) Finally, there is the matter of timing, and DOE's determination that Wen Ho Lee be interviewed and polygraphed immediately upon his return to LANL. Curran said he would have been happy to have had the FBI do the interview and polygraph of Lee. "Please do it" would have been his reaction. (Curran 2/9/00) "This was not you do it our way or no way." (Id.) And yet Curran was clearly unwilling to let Wen Ho Lee back into X Division. The two events, however, were not joined at the hip. It was only because Curran wanted to use the interview as a "pretext" for moving Lee out of X Division that the two events were linked. The FBI could have insisted that they be unlinked and that Wen Ho Lee not be interviewed or polygraphed until the FBI was ready

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to do it themselves. After all, the FBI was only looking for two weeks, according to what AD Gallagher told Deputy Director Bryant. (FBI 7721) The Christmas holidays, alone, could eat up most of that time, particularly since LANL was effectively shut down over the holidays. If more time was required, there were any number of non-alerting steps that could have been taken, such as a temporary special project or assignment, that could have kept Wen Ho Lee out of access for a brief period of time until the FBI was ready.

(U) Time was of the essence, but time had been of the essence for years. If it now must take two additional weeks for the FBI to get ready to interview and polygraph Lee, so be it. Wen Ho Lee's access could *easily* be restricted for two weeks, or even longer. It might not satisfy DOE's goal of a resolution before the Cox Committee issued its report, but that, after all, was not the point of the exercise.

(U) DOE's determination to interview and polygraph Wen Ho Lee on December 23, 1998, and the FBI's acquiescence in that decision, was understandable on the part of DOE, and unfortunate on the part of the FBI. As would soon become clear, it was a mistake *with* consequences.

~~TOP SECRET~~ [REDACTED]