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FINAL REPORT

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



VOLUME II

CHAPTERS FIVE - EIGHT

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CHAPTER FIVE

(u)
(S) THE FBI'S CONDUCT OF THE PRELIMINARY INQUIRY ON WEN HO LEE:
APRIL 1994 TO NOVEMBER 1995

Questions Presented:

(u)
Question One: (S) Did the FBI conduct the preliminary inquiry in an appropriate and aggressive manner given the seriousness of the underlying allegations?

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Question Two: (S) Did the FBI avail itself of all the investigative tools available to it in the conduct of a preliminary inquiry?

(u)
Question Three: (S) Should the preliminary inquiry have been converted into a full FCI investigation?

A. (U) Introduction

(u)
(S) More than two years before the FBI opened a full counterintelligence investigation on Wen Ho Lee, the FBI had an extraordinary opportunity to catch Lee in the act of engaging in the gathering and illegal transferring of secret restricted data concerning nuclear weapons. It remains a missed opportunity of singular importance.

B. (S/NF) [REDACTED]

b1 (S/NF) On March 1, 1994, the Albuquerque Division of the FBI ("FBI-AQ") received a teletype from the San Francisco Division of the FBI ("FBI-SF"). (FBI 2098; FBI 1039) [REDACTED]

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[REDACTED]

(S) (S/NF) The encounter was described by Source #1 as follows:

(S/NF) [REDACTED]

(FBI 1044) [REDACTED]

(S/NF) [REDACTED]

335 (S/NF) [REDACTED]

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(FBI 21423) See also a March 4, 1995 internal FBI-AQ handwritten memorandum, by SA [REDACTED] to the file, in which he notes [REDACTED]

[REDACTED] (AQI 3861)

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b1 | (FBI 1045) [REDACTED]

(Id.)

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(SANT) After receiving this teletype, SA [REDACTED] who was assigned to the Santa Fe, New Mexico, Resident Agency of FBI-AQ, and who was responsible for counterintelligence matters at LANL, debriefed a second FBI source ("Source #2") who

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[REDACTED] (AQI 03889; FBI 11613)

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(U)
(SANT) On this basis, and the fact that Lee had been the subject of a prior full investigation back in 1982-1984, SA [REDACTED] requested and was authorized to open a preliminary inquiry concerning Wen Ho Lee.

(U)
(SANT) The preliminary inquiry was approved on April 20, 1994. It was approved during the very same time period that Wen Ho Lee was actively engaged in transferring Secret Restricted Data from the LANL classified file system to its open (i.e., unclassified) file system, a fact that would not, however, become known to the FBI for another five years.

b1 | 336 (SANT) [REDACTED]

(AQI 01795)

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(u)
C. (S) The preliminary inquiry

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(u)
1. (S) Full investigation versus a preliminary inquiry

(S/NF) The first point that must be stated is that [REDACTED] - combined with Lee's prior background as the subject of the 1982-1984 investigation - warranted the opening of a *full* foreign counterintelligence ("FCI") investigation on Wen Ho Lee, rather than merely a preliminary inquiry ("PI").

(S) A full counterintelligence investigation requires [REDACTED]

[REDACTED]

(S/NF) By this criteria [REDACTED]

[REDACTED] This is significant because, had a full FCI

³³⁷ (u) (S) See Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (hereafter "AG Guidelines"), Sections III(C)(1)(b)(1) and (4).

³³⁸ (S/NF) [REDACTED]

[REDACTED]

investigation been opened in April 1994, the FBI would have been able to draw on a far broader array of investigative techniques to determine the nature and scope of Lee's involvement with a foreign power.³³⁹

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(u)
(S) SA [REDACTED] stated in an interview with the AGRT that he *did* recommend to his supervisor, SSA [REDACTED] that a full FCI investigation be opened. SSA [REDACTED] told the AGRT that he had no recollection of SA [REDACTED] making such a request but, if one was made, SSA [REDACTED] would have rejected it as unjustified. [REDACTED] 12/1/99) We disagree. A full investigation was warranted.

(u)
(S) Nevertheless, a full investigation was not opened. The AGRT, therefore, examined the PI to determine: first, whether it was conducted aggressively; second, whether the case agent had a coherent investigative strategy and plan; and, third, whether the case agent was appropriately supervised in the conduct of the PI. As to all three issues, the answer is no.

2. (u)
(S) The time period covered by the preliminary inquiry

(S/AFR/D) The PI was extended by the FBI five times, and remained opened for more than a year-and-a-half.³⁴⁰ However, the PI ended in fact, if not in name, on July 20, 1995 when FBI Headquarters ("FBI-HQ") ordered FBI-AQ to open a "Kindred Spirit" file based on information from DOE concerning a possible compromise in

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[REDACTED]

(u)
(S) ³³⁹ In a full investigation, the FBI is authorized to conduct interviews, recruit new assets, seek FISA surveillance, seek FISA search authority, obtain mail covers, and acquire financial records. See AG Guidelines III(C)(2)(b).

(u)
(S) ³⁴⁰ The PI was opened April 20, 1994 and extended on August 17, 1994, November 18, 1994, January 27, 1995, May 17, 1995, and August 13, 1995.

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nuclear weapons information.³⁴¹ Although technically a separate matter, once the "Kindred Spirit" file was opened - and even though FBI-AQ did virtually *nothing* on it until after the FBI formally received the "Kindred Spirit" Administrative Inquiry from DOE in late May 1996 - work on the PI ended for all practical purposes when SA [REDACTED] became aware of [REDACTED] b1

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(u)
(S) Therefore, the AGRT has focused on the time period of April 1994 to July 1995 and examined what the FBI did to achieve the principal purpose of the PI. The answer, unfortunately, is precious little.

(u)
3. (S) What was done in the preliminary inquiry

(u)
(S) This is a summary of the few things SA [REDACTED] did on the PI in the time period of April 1994 to July 1995:

- (u)
(S/NF) He requested FBI-HQ to have FBI-SF question Source #1 and to have FBI-HQ cause other FBI sources to be questioned concerning Lee. (AQI 2888; AQI 3782) Source #1 and other sources were questioned without success. (AQI 2826; AQI 2912; AQI 3766)

(u)
(S) SSA [REDACTED] said he is the one who decided to open the "Kindred Spirit" file and that his decision was not based on an instruction from FBI-HQ. [REDACTED] 12/1/99) However, FBI-AQ's files contain the airtel from FBI-HQ instructing FBI-AQ to open the "Kindred Spirit" file, with a handwritten note that the matter was "O&A" [opened and assigned] to SA [REDACTED] on July 24, 1995. (AQI 02935)

³⁴² (S/NF) Nevertheless, as discussed in Chapter 7, by July 1995 Lee's name had already surfaced as a "Kindred Spirit" subject. [REDACTED] 12/1/99) [REDACTED] b1

(DOB 1854)

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b1 | • (S) He spoke with [REDACTED] concerning their awareness of the [REDACTED] and some miscellaneous matters. (AQI 3889; AQI 2828; AQI 2830; AQI 2838; AQI 2843; AQI 3861; AQI 3810)

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• (u) (S) He gathered Wen Ho Lee's travel records concerning his 1986 and 1988 PRC trips. (AQI 3792-3809; AQI 2864-2881; AQI 3813-3827, AQI 2846-2863) It is also clear that SA [REDACTED] reviewed these records because SA [REDACTED] sent a lead to an FBI intelligence research specialist to make an indices check of the names of various PRC individuals whom Wen Ho Lee listed on his trip reports as PRC scientists with whom Lee had come into contact.³⁴³

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• (S/NF) He interviewed [REDACTED] who had observed an unusual-looking satellite dish in Lee's yard and who had also experienced intermittent "blurps" on his cordless telephone. (AQI 03788; AQI 2917)

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[REDACTED]

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340 (S/NF) It does not appear, however, that SA [REDACTED] focused on the most significant aspect of Lee's trip reports: the absence of any reference to contact with either [REDACTED]

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[REDACTED] (AQI 2877) Even if the FBI had determined that [REDACTED] alone did not warrant a full counterintelligence investigation, the additional fact [REDACTED]

344 (u) (S) In the lexicon of the Wen Ho Lee investigation, this would come to be known as the "burping telephone" issue.

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[REDACTED]

(AQI 2917)³⁴⁵

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(U) And that is essentially all SA [REDACTED] did on the PI between April 1994 and July 1995. It is hard to imagine how less work could have been done on this inquiry while still managing to keep it open.

4. (u) (S) What was not done on the preliminary inquiry

(u) (S) What SA [REDACTED] did *not* do and what *would* have materially advanced the investigation of Lee were the following:

(S/NF) No effort was undertaken to comprehend the fundamental nature of Lee's work at LANL and the true extent of Lee's access to classified information in order to determine the nature of [REDACTED]

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[REDACTED] In other words, no effort was undertaken to grapple with the meaning and significance of the incident that gave rise to the PI itself. While such an examination would have required the conduct of certain interviews and, therefore, would have required the authorization of FBI-AQ's SAC or other supervisory personnel, see AG Guidelines, at Sections III(B)(3)(c) and (h), it is incomprehensible how the agent

³⁴⁵ (S/NF) [REDACTED]

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(AQI 02921) The response went on to ask:

(u) (S) FBI-HQ notes that this PI has been on-going for approximately eleven months at this point, and wonders when AQ will be able to determine if there is a basis for a full FCI investigation.

(AQI 02921)

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contemplated significantly advancing the investigation without such an inquiry.³⁴⁶ At the close of the PI, the FBI knew nothing more than it did when it began the PI as to [REDACTED]

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(SANT) No effort was made to examine or analyze the substance of Lee's approved presentations at conferences in the PRC in 1986 or 1988 in order to exclude or include the possibility that [REDACTED]

[REDACTED] the justification for a full investigation of Lee would have been enhanced.³⁴⁷

³⁴⁶ (S) One response to this is that such interviews would have been "alerting" and might have tipped off Lee to the investigation. There is no doubt, however, that a few carefully planned interviews could have been conducted without alerting Lee -- as was in fact done three years later. Moreover, [REDACTED]

without significantly expanding the number of persons aware that Lee was a subject of interest to the FBI.

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³⁴⁷ (SANT) This analysis would have required more than simply reading Lee's travel reports, which are unilluminating on this issue. On the one hand, it is clear from the 1986 and 1988 travel reports and requests that the subject of Lee's presentations did relate to fluid dynamics and calculations. See, e.g., AQI 2861 (1986 "Foreign Travel Report") and AQI 2877 (1988 "Foreign Trip Report"). On the other hand, one of the requests for Approval of Official Foreign Travel also says that "No sensitive energy related subjects will be discussed" (AQI 2856) and "no topics directly related to weapon physics or technology will be discussed." (AQI 2860) If such a proscription had been honored by Lee, and Lee had only presented "basic research," as promised in one of his travel requests (AQI 2866), it is hard to imagine that it would have justified [REDACTED]

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(S/NF) Most significantly, the FBI could have and should have seriously considered a workplace search or monitoring of Lee's computer.³⁴⁸ After all, the underlying allegation that Lee had provided the PRC [REDACTED] should have made it obvious that a computer search or computer monitoring would potentially be a productive exercise. And, of course, had such a search or monitoring been conducted in 1994 - a time when Lee was actively engaged in the misconduct that is the subject of the pending Indictment - or even in 1995, a potentially catastrophic intelligence loss might have been averted or minimized.

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5. (U) Lack of supervision

(S/NF) The failure to capitalize on [REDACTED] or to advance the PI appropriately, does not merely constitute a failure by a particular Special Agent. It also represents a failure of management.

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(S/NF) No one in FBI-AQ management provided significant supervision to SA [REDACTED] in the conduct of the PI.³⁴⁹ It is, of course, true that a typical PI would rarely

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³⁴⁸ (S/NF) The AG's FCI Guidelines specifically authorize the use of monitoring devices (Section III(B)(3)(j)) and searches (Section III(B)(3)(k)) where there is "no reasonable expectation of privacy." *Id.* The issue of whether Lee had a "reasonable expectation of privacy" is discussed in detail in Chapter 9.

(U)
³⁴⁹ (S) The question of who was SA [REDACTED] supervisor is, itself, open to question. At the time the PI was opened, in April 1994, SSA [REDACTED] was in charge of the Santa Fe Resident Agency ("Santa Fe RA") and was SA [REDACTED] supervisor. (SSA [REDACTED] was given responsibility for the Santa Fe RA on May 17, 1993 and held this responsibility until February 23, 1995. He was assigned responsibility for SA [REDACTED] effective July 19, 1993 [REDACTED] 2/02/00; AQI 6242.) SSA [REDACTED] was SA [REDACTED] supervisor prior to July 19, 1993 and after February 27, 1995, and remained SA [REDACTED] supervisor until SA [REDACTED] left FBI-AQ in April 1997. But even when SSA [REDACTED] was not SA [REDACTED] supervisor he was still the National Foreign Intelligence Program ("NFIP") coordinator. Thus, he was still responsible for FBI-AQ's FCI activities and, according to the FBI's 1995 inspection report of FBI-AQ, he provided "guidance and direction on a regular basis" to SSA [REDACTED] in the supervision of SA [REDACTED]

merit the attention that a full investigation would warrant. Nevertheless, given the nature of the underlying allegation in *this* PI - that Lee, a LANL scientist with a "Q" clearance and actual access to Secret Restricted Data on our nation's nuclear arsenal [REDACTED]

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[REDACTED] FBI-AQ supervisory personnel should have paid more attention than it did to this PI. Instead, SA [REDACTED] was essentially on his own in the conduct of the PI.³⁵⁰

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(u)
(S) Moreover, if - as SA [REDACTED] says happened - he requested the opening of a full investigation and SSA [REDACTED] rejected it, this was a mistake that delayed a thorough investigation of Wen Ho Lee by as much as two years. Nor, with the one exception of the FBI-HQ communication which expressed frustration with the pace of the PI, was Headquarters formally pressing FBI-AQ for a resolution of the PI or complaining to SSA [REDACTED] or SA [REDACTED] about SA [REDACTED] lack of zeal. Again, given the significance of the underlying allegation, it would have been appropriate for the National Security Division to become more directly involved in insuring that the PI was appropriately advanced to a conclusion.

(u)
(S) D. Conclusion of the preliminary inquiry

(S/RD) As stated above, the PI was terminated as a practical matter in July 1995 with the opening of the "Kindred Spirit" case file and [REDACTED]

[REDACTED] On paper, however, the PI was terminated on November 2, 1995, following a meeting at FBI-HQ with SA [REDACTED] SSA [REDACTED] and SA [REDACTED]. According to SA [REDACTED] teletype to FBI-HQ confirming the closing of the PI, "it was decided [at this meeting that] Lee could be the subject at some point of Albuquerque Case "Kindred Spirit," [REDACTED]. Because of this possibility, SA [REDACTED] requested that no interviews of Lee be conducted at [REDACTED]

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[REDACTED] (FBI 16163)

³⁵⁰ (u)
(S) This lack of supervision is, of course, particularly inexplicable given that FBI-AQ, in general, and SSA [REDACTED] in particular, were bluntly criticized in 1992 for failure properly to supervise SA [REDACTED] (FBI 21627) See Chapter 4.

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this time. It is noted that SA [REDACTED] will be conducting a review, along with DOE-OCI, in efforts to identify a 'Kindred Spirit' subject." (AQI 3753) An unfortunate consequence, then, of the "Kindred Spirit" Administrative Inquiry process [REDACTED]

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[REDACTED] is that where there had previously been *at least* a PI on Lee - albeit one that cannot be described as having been conducted aggressively or thoroughly - now there was *no* investigation of Lee at all, and that remained true from July 1995 to July 1996.³³¹

(U)
(S) The PI on Wen Ho Lee should not have been suspended in July 1995 nor should it have been terminated in November 1995.³³² The PI, anemic as it was, should have gone forward and, as stated above, should have led to the initiation of a full investigation. Given the initial allegation of potentially serious misconduct, the fact that there was now a second allegation of potentially serious misconduct - which might be related to the first, and which might be related to Wen Ho Lee - should never have caused the FBI to shut down its first inquiry. Rather, it should have made even more apparent how important it was that the PI on Wen Ho Lee be conducted thoroughly and aggressively. That it had precisely the opposite effect is one of the enduring and unfortunate ironies of this investigation.

³³¹ (U)
(S) Although the Wen Ho Lee/Sylvia Lee full FCI investigation was opened at FBI-AQ, at FBI-HQ direction, on May 30, 1996, FBI-AQ did no work on the case prior to July 1996 other than to put Wen Ho Lee and Sylvia Lee into the caption of the "Kindred Spirit" case file. (AQ 953)

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³³² (U) One of the reasons it was terminated in November 1995 was SSA [REDACTED] lack of confidence in SA [REDACTED] SSA [REDACTED] told the AGRT that it was he who told SA [REDACTED] to close the PL [REDACTED] (12/15/99) [REDACTED]

(Id.)