

CHAPTER EIGHT

(U) THE FBI'S INVESTIGATION OF WEN HO LEE AND SYLVIA LEE:
MAY 1996 TO APRIL 1997

Questions Presented:

Question One: (U) From May 1996 until April 1997, was the investigation pursued competently and aggressively?

A. (U) Introduction

(U) Because SA [REDACTED] was the sole case agent assigned to the Wen Ho Lee investigation during this period of time,⁵⁶⁵ this question really turns on whether SA [REDACTED] work on this investigation was competent and aggressive. It was neither, and in some respects, the investigation never recovered.

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B. (U) The full investigation begins

(U) (S) On May 28, 1996, a copy of the DOE Administrative Inquiry ("AI") was hand-carried from DOE Headquarters to SSA [REDACTED] at FBI-HQ. (DOE 2406, FBI 525, AQI 886) SSA [REDACTED] was, of course, expecting it. Indeed, the previous week he had briefed FBI-AQ ASAC Ron Dick on the investigation and, according to a briefing memorandum, told him that FBI-HQ was expecting DOE's report by the end of the month and that "[r]ecent briefings indicate a Los Alamos employee will be named as a suspect for Albuquerque to investigate in the context of an espionage investigation." (FBI 13044)

⁵⁶⁵ (U) Although SA [REDACTED] was assigned to the investigation beginning in February 1997, he did only a slight amount of work on the case prior to April 1, 1997. See, e.g., AQI 4579, 5594, 5110, 5590, 4586, 1194, 5591, and 1210.

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(S) The investigation began with high expectations. On May 22, 1996, shortly before the transmittal of the AI to the FBI, the Deputy Secretary of Energy, Charles Curtis, and Notra Trulock, Director of the Office of Energy Intelligence, met with DAD John Lewis. According to a memorandum which Trulock sent to Deputy Secretary Curtis, DAD Lewis advised them to expect the submission of a FISA application in 30 to 60 days after the FBI's receipt of the AI. (DOE 1844) That would prove to be rather optimistic.

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(S) SSA [REDACTED] immediately upon his receipt of the AI forwarded it to FBI-AQ and ordered it to open a full investigation of Wen Ho Lee and his wife, Sylvia. (FBI 490) That investigation was formally opened at FBI-AQ on May 30, 1996. (AQI 882)

(U) Three mistakes were made immediately:

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(S) First, the case was assigned to SA [REDACTED] an agent [REDACTED] not being up to the task of investigating a matter of this complexity and magnitude. See Chapter 4.

(U) Second, the case was *only* assigned to SA [REDACTED]. He was given no help on a case that even in the hands of the most skilled and experienced and talented agent would have required help. And, as described in Chapter 4, when NSD attempted to get SA [REDACTED] help, its genuine efforts were subverted by FBI-AQ itself.

(S) Third, NSD made it clear that even though the OO - Office of Origin - for the "Kindred Spirit" investigation was *nominally* Albuquerque, the *true* OO was [REDACTED] at b1 FBI-HQ. This could hardly have been made any clearer than it was in a telephone call ten days after the case was opened between SSA [REDACTED] SA [REDACTED] and SSA [REDACTED]. To begin with, SSA [REDACTED] instructed FBI-AQ to copy all pertinent files and send them to him. (AQI 954) He then went on to give FBI-AQ "a list of things that he needed done in this matter rather quickly."³⁶ (Id.) Thus, at the same time that SSA [REDACTED] was

³⁶ (S/NF) There was nothing inherently wrong with SSA [REDACTED] "to do" list. It logically set out a number of appropriate leads, including reviewing personnel files, reviewing travel reports, documenting the predicate, ascertaining the specifics of [REDACTED] b1

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promising FBI-AQ that it would get "whatever support it needed" (AQI 954), he was also making it clear that the entity to be "support[ed]" in this investigation was NSD, not FBI-AQ. That point was driven home two days later in another telephone conversation between SSA [REDACTED] and SA [REDACTED]. SSA [REDACTED] instructed SA [REDACTED] to stop "any additional work on this matter" until SSA [REDACTED] and SC Doyle flew out to Albuquerque to meet with Division personnel. (AQI 954) Thus began the difficult and problematic relationship between [REDACTED] and FBI-AQ that is described in detail in Chapter 4.

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C. (U) The July 1996 meeting

(U) On July 2, 1996, SSA [REDACTED] and SC Doyle met with SAC Kneir, ASAC Dick, SSA [REDACTED] and SA [REDACTED]. Once again, SSA [REDACTED] gave FBI-AQ a "to do" list of additional work to be done on the investigation. (AQI 957) The most significant consequence of this meeting, however, was the decision by SC Doyle to procure for FBI-AQ additional support for the investigation. NSD addressed this issue promptly and aggressively. While it would have been more effective and efficient for NSD to have arranged for the specialty transfer of experienced FCI agents, NSD was at least attempting in a meaningful fashion to address the obvious problem of having SA [REDACTED] handle this case alone. Unfortunately, NSD's initiative in procuring two first office agents to support SA [REDACTED] was met by FBI-AQ's diversion of the agents from that assignment. See Chapter 4.

D. (U) June 1996 to March 1997 investigative activities

(U) A principal issue of competence presented itself almost immediately: SA [REDACTED] painfully slow pace, what NSD would diplomatically characterize as SA [REDACTED] lack of vigor. (FBI 706) The AGRT has examined each of the items on SSA [REDACTED] "to do" lists of June 10, 1996 and July 2, 1996. In general, SA [REDACTED]

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[REDACTED] and so on. (AQI 954)

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[REDACTED] proceeded at a completely unacceptable pace. Projects that should have taken days took months.⁵⁶⁷

(U) (S) (S/NF) It is true that SA [REDACTED] work was interrupted twice by unnecessary and avoidable delays. First, it was interrupted by SSA [REDACTED] instruction to stand-down until he and SC Doyle paid a visit to Albuquerque. Second, it was interrupted in August by SSA [REDACTED] order to cease the investigation pending DOE's and OIPR's review of [REDACTED].⁶⁸

See Chapter 4. Even given these interruptions, this was an investigation that, as SSA [REDACTED] characterized it, demonstrated a real "lack of urgency." (FBI 719)

(U) (S) Between June 1996 and the beginning of April 1997, FBI-AQ made precious little progress in the Wen Ho Lee investigation: SA [REDACTED] gathered some personnel and travel records; he issued some requests for national security letters for financial and telephone records; he requested a mail cover (although NSD actually prepared it);⁶⁹ he

⁵⁶⁷ (U) (S) For example, SSA [REDACTED] told SA [REDACTED] on June 10, 1996 to obtain and review Wen Ho Lee and Sylvia Lee's personnel files and travel files. The project was not completed until December 5, 1996.

(U) (S) ⁵⁶⁸ Significantly, SSA [REDACTED] suspension of the full investigation did not stop SA [REDACTED] from continuing to pursue leads that would have been permissible under a preliminary inquiry. SSA [REDACTED] made this precise point to SA [REDACTED] in a telephone call on August 13, 1996. (AQI 1006) Thus, much of what SA [REDACTED] was doing (or not doing) should not have been affected by the suspension of the full investigation.

⁵⁶⁹ (S) Of all the irritants in the relationship between FBI-AQ and [REDACTED] and [REDACTED] there were many, it appears that SA [REDACTED] request for a mail cover for the simple purpose of [REDACTED] was at the top of the list. According to SSA [REDACTED] with the time-consuming request for a mail cover, particularly since it required Attorney General approval. "[The] guy was totally blocked by obstacles." [REDACTED] 12/15/99) A close second was SA [REDACTED] request to have an entire Chinese language textbook on nuclear arms control translated by FBI-HQ. (AQI 1144) SSA [REDACTED] described it

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gathered some additional investigative records concerning the 1982-1984 investigation of Wen Ho Lee; he sent leads to the Washington Field Office to interview a few individuals concerning the predicate for the investigation; and he personally interviewed two LANI supervisors of Wen Ho Lee. This paltry account is essentially the sum total of SA [REDACTED] ten months as case agent on the "Kindred Spirit" investigation.

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(S) Even more harmful and certainly more consequential to the investigation, is what SA [REDACTED] did *not* do. He failed to pursue the issue of gaining access to Wen Ho Lee's computer. See Chapter 9. He failed to ask the right or appropriate questions to DOE's [REDACTED] concerning computer matters. See Chapter 9. He failed to forward the very significant interviews of [REDACTED] to FBI-HQ and then, even worse, NSD was given the mis-impression that "no useful information [was] obtained from them." (FBI 745) He failed to investigate the predicate for the investigation. He failed to take meaningful steps to understand the nature of Wen Ho Lee's past work or to develop evidence of motive.

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(S) And finally, but certainly not least significantly, he contributed *materially* to the FBI's failure appropriately to address Wen Ho Lee's continuing access to classified information.⁵⁷⁰ See Chapter 18.

as a "stupid lead" [REDACTED] 7/23/99), and rejected it out of hand. (FBI 756) SSA [REDACTED] antipathy to SA [REDACTED] manifested itself in a story which [REDACTED] told the AGRT. According to [REDACTED]

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[REDACTED]
[REDACTED] (9/15/99)

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⁵⁷⁰ (S) For example, it was SA [REDACTED] who told DOE's [REDACTED] in July 1996 that limiting Wen Ho Lee's access would "seriously hamper[]" the investigation. (AQI 980)

E. (U) A shared responsibility

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(U) Although it states the obvious, it is worth stating it anyway: it was *not* SA [REDACTED] fault that he was assigned the Wen Ho Lee investigation. That was a significant management failure on the part of FBI-AQ. It was one that *could* have been ameliorated by providing SA [REDACTED] considerable additional support, but that was not done. It was one that *could* have been ameliorated by providing SA [REDACTED] intense and aggressive supervision, but that was not done either. And it was one that *could* have been actually rectified by removing SA [REDACTED] from the case entirely, but that also was not done.⁵⁷¹ It is true that, eventually, SA [REDACTED] removed *himself* from the case by taking a promotion to FBI-HQ, but that happened long after SA [REDACTED]⁵⁷² and it was not related to his work on the Wen Ho Lee investigation.⁵⁷³

b1 ⁵⁷¹ (S) [REDACTED] at least briefly, contemplated just this action, but contemplation is as far as it went. (FBI 715)

⁵⁷² (S) [REDACTED] It was addressed, but not in any meaningful way, and it was certainly not resolved. Essentially, FBI-HQ told SSA [REDACTED] to provide SA [REDACTED] "direct supervision," which SSA [REDACTED] should have been providing anyway. (FBI 706, 705, 711)

⁵⁷³ (U) SSA [REDACTED] does claim that SA [REDACTED] Headquarters promotion and his failure to perform in the Wen Ho Lee investigation were related to each other. SSA [REDACTED] told the AGRT that SSA [REDACTED] with UC [REDACTED] and SSA [REDACTED] asserting that he had "solved" his problem on the Wen Ho Lee investigation by recommending SA [REDACTED] for an FBI-HQ promotion. [REDACTED] 12/15/99) SSA [REDACTED] however, told the AGRT that he did not and would never have recommended SA [REDACTED] for a promotion to FBI-HQ. [REDACTED] 12/1/99) SA [REDACTED] application for promotion (FD-638) is signed by SAC Weber, not SSA [REDACTED] (FBI 21591, 21594)

F. (U) Conclusion

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(S) On March 30, 1997, when SA [REDACTED] formally requested the reassignment of the Wen Ho Lee investigation to SA [REDACTED] (AQI 1212), he left behind an investigation that was floundering and directionless. DAD Lewis' prediction to DOE at the start of the investigation - a FISA application in 30 to 60 days - had proved wildly optimistic. Notra Trulock had already complained to DAD Lewis (Lewis 7/6/99), and those complaints had been communicated to [REDACTED] as well (FBI 715), *to no effect*. The investigation, DOE concluded, was "not going anywhere" and FBI-AQ had simply "dropped the ball." [REDACTED]

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(U) On April 15, 1997, that would change, but not necessarily for the better.