

~~TOP SECRET~~ [REDACTED]

CHAPTER TWO

(U)
(S) THE 1982-1984 INVESTIGATION OF WEN HO LEE

Questions Presented

Question One: (U)
(S) Whether the 1982-1984 investigation of Wen Ho Lee was competently and thoroughly pursued by the FBI and brought to an appropriate resolution.

Question Two: (U)
(S) Whether DOE was appropriately and timely informed by the FBI of the investigation of Wen Ho Lee and of relevant derogatory information arising from the investigation.

A. (U) Introduction

(S) In December 1982, Wen Ho Lee [REDACTED]

[REDACTED] The FBI quickly launched an investigation of Lee. The FBI learned that Lee had been [REDACTED]

In November 1983, after a reasonable period spent pursuing available investigative measures, the FBI interviewed Lee concerning [REDACTED] At first [REDACTED] In subsequent interviews, Lee [REDACTED]

Ultimately, in January 1984, Lee was polygraphed by an FBI examiner. [REDACTED]

Eventually, through follow-up questions during the polygraph, Lee was found to be non-deceptive in answering relevant questions concerning [REDACTED] as well as whether Lee had passed classified information to any foreign country. In March 1984, the investigation was closed.

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(S) The derogatory information concerning Lee that was developed during the investigation, however, was never effectively communicated to DOE when the

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investigation was closed. Had it been, this may have affected DOE's subsequent decisions to continue Lee's "Q" clearance to nuclear weapons information. When the derogatory information did come to the attention of DOE Albuquerque, during a routine background re-investigation of Lee in 1989, it sent the file to DOE Headquarters suggesting that it obtain additional information from the FBI. There the file was lost, and the matter was apparently forgotten until the time of Lee's 1993 re-investigation. Ultimately, DOE decided that although Lee had been investigated by the FBI in 1983, that investigation had been "satisfactorily resolved." Lee's "Q" clearance was therefore continued.

B. (U) The Relevant Facts

1. ~~(S/AF)~~ [REDACTED]

(Id.)

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(Id.)

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~~(S/NF)~~ [REDACTED]

(FBI 11072)

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2. ^(u)~~(S)~~ The initiation of a full FCI investigation of Wen Ho Lee

b1 | ~~(S)~~ FBI Headquarters notified FBI Albuquerque of [REDACTED] (AQI 03004) According to the teletype, Headquarters suspected that Lee might be acting on behalf of a Taiwan intelligence service. (Id.) Headquarters was also concerned about [REDACTED] (Id.) The FBI San Francisco supervisor and case agent responsible for the [REDACTED] investigation were authorized to travel to Albuquerque immediately to brief FBI personnel on their investigation, and FBI Albuquerque was directed to initiate a full foreign counterintelligence ("FCI") investigation of Lee. (Id.)

^(u)~~(S)~~ The FBI moved promptly to action. A full FCI investigation was authorized on December 13, 1982. (AQI 03010) Telephone toll records were requested for Lee's home and office. (AQI 03013) Lee's DOE personnel file was obtained. (FBI 13990) On December 15, 1982, FBI personnel from San Francisco and Albuquerque met with security personnel from DOE and with LANL director Donald M. Kerr to discuss the matter. (AQI 03010) Kerr provided the FBI with a listing of calls made from Lee's office, and the FBI immediately sent out leads to various FBI offices to have the subscribers identified. (AQI 03018)

^(u)~~(S)~~ By December 28, 1982, the FBI had received a brief "threat assessment" prepared by LANL's Office of Security and Safeguards concerning Lee's continued access to classified information. (AQI 03021) Kerr informed the FBI that, if Lee were moved, he would likely suspect a problem, and, in any event, the weapons design information Lee possessed was not something he would immediately forget. (Id.) Thus, although the LANL Office of Security and Safeguards recommended that Lee be removed (AQI 03024), Kerr was inclined to leave Lee in his position pending the FBI investigation. (AQI 03021)

^(u)~~(S)~~ The FBI continued to assemble information concerning Lee, through national security letters ("NSLs") for telephone records and through the assistance of LANL

^(u)~~(S)~~ By that time, certain Department of Energy ("DOE") security personnel had been informed of the Lee matter. (AQI 03007)

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security personnel.³ (FBI 19605) On January 3, 1983, the FBI learned that some of the calls Lee had made from his LANL office were to the Coordination Council for North America ("CCNA"), the unofficial Republic of China establishment in the United States.⁶ (AQI 03041)

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b7E* ~~(S/NF)~~ In February, 1983, the FBI learned from LANL that Lee planned to travel to LLNL, and the FBI suspected that Lee might attempt [REDACTED] (AQI 03085) The FBI undertook a meticulous surveillance of Lee [REDACTED] including obtaining through old-fashioned legwork [REDACTED] (AQI 03115; FBI 13809) The FBI also conducted surveillance [REDACTED] (Id.) The surveillance did not produce any relevant information, however. | b1

~~(S)~~ The FBI also contacted its sources to determine whether Lee was an individual known to them. (AQI 03097; AQI 03237) [REDACTED]

[REDACTED] (FBI 19565; FBI 10773) It determined that those individuals whom Lee had called from his home or office were not mentioned in [REDACTED] FCI investigations, including [REDACTED] (AQI 03111) The FBI also reviewed the [REDACTED] where Lee was known to have visited. (AQI 03096; AQI 03071; AQI 03237)

~~(S)~~ Although the FBI displayed considerable zeal from the start of the investigation, by early in 1983, it had not collected sufficient information to solidly connect Lee to [REDACTED] (AQI 03072) At the same time, LANL did not feel that it could move Lee from his current position without more specific information. (Id.) The investigation, therefore, was somewhat stymied. To overcome

~~(S)~~ The FBI attempted but was unable unilaterally to obtain telephone subscriber information for calls Lee had made to Taiwan. (AQI 03356)

~~(S)~~ Lee had made these calls on three occasions in October 1982. (AQI 03019)

~~(S)~~ At about the same time, the FBI sought approval for a mail cover of Lee's residence. (FBI 13882)

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this problem, LANL and DOE agreed to request a re-investigation of Lee's "Q" clearance." (Id.; FBI 19564) Under this cover, [REDACTED]

[REDACTED] valuable to the FCI investigation." (Id.)

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3. (S) The background re-investigation and personality profiling of Wen Ho Lee

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(S) On March 14, 1983, DOE requested a supplemental investigation of Lee "for transfer to a position of a high degree of importance or sensitivity."¹⁰ (FBI 10799) On April 5, 1983, FBI Albuquerque sent a teletype to various FBI offices suggesting areas of inquiry to be covered during the re-investigation interviews "in an effort to determine the personality profile of this individual." (FBI 01718)

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(S) The background re-investigation was thorough. During the course of the investigation, the FBI assembled a mix of information concerning Lee. FBI agents interviewed [REDACTED]

[REDACTED] (FBI 10783) The FBI also learned that Lee [REDACTED]

(Id.) FBI agents in various FBI offices across the country interviewed a number of former supervisors, co-workers, and neighbors. (DOE 00218; DOE 00215; DOE 00227; DOE 00642; DOE 00651) Lee's supervisors and co-workers at LANL were also interviewed, as were his Los Alamos neighbors. (FBI 10693) In general, these interviews [REDACTED]

(S) At the same time, the FBI was considering the possibility of [REDACTED] to flush Lee out. (AQI 03074; FBI 19565)

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(S) The background investigation was not a sham, however. "Whereas [Lee] was hired at the Laboratory with a Q-Insensitive Clearance, he is now working on sensitive matters and it is logical that he be reinvestigated for his Q-Sensitive Clearance." (AQI 03072)

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(S) As noted above, the request actually originated with the FBI. (FBI 19563) There were, nevertheless, independently valid reasons for the re-investigation because of a change in Lee's work assignments. (FBI 01715)

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[REDACTED] Lee himself was also interviewed as part of this investigation, and it was the impression of the FBI Albuquerque agent who interviewed him that Lee [REDACTED]

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[REDACTED] (FBI 10695) Ultimately, however, the investigation turned up no evidence that called into question Lee's loyalty or his fitness to handle classified information.¹¹

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(S) Armed with the information from the background investigation, FBI Albuquerque requested, in June 1983, that the FBI Behavioral Sciences Unit prepare a personality profile "to establish the probability of [Lee's] being involved in clandestine intelligence activities . . . and also to determine a means of approach in the ultimate interview of this individual." (FBI 19504) In July 1983, the FBI learned from LANL that Lee would be traveling to Taiwan on vacation.¹² (FBI 19494) FBI Albuquerque proposed [REDACTED] (Id.) "[U]t might be to the advantage of the Bureau to [REDACTED]

(Id.)

(S) According to a July 27, 1983 FBI memorandum, FBI Albuquerque was "interested in directing [REDACTED] [REDACTED] (FBI 13802) At a meeting at FBI Headquarters on September 14, 1983, however, it was decided to [REDACTED]

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(S) Nor did any credit or criminal checks conducted by the various FBI office produce any derogatory information.

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(S) Lee was to visit Taiwan from August 27, 1983 to September 9, 1983. (FBI 19494)

(S) FBI Headquarters concurred in the suggestion for [REDACTED] "If all other logical investigation does not resolve the case in a reasonable period of time, [REDACTED]

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(FBI 19565)

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b1 interview Lee regarding his travel to Taiwan and regarding [REDACTED] "If an unsatisfactory interview occurs, the possibility of a polygraph will be mentioned and later, a second stronger interview will be conducted and a polygrapher [will] be present to administer this test, with the consent of the subject." (SF 00055)

(8) It is not clear why the [REDACTED] was abandoned. Nor is it clear why the FBI did not use the opportunity provided [REDACTED] as it had earlier contemplated. Nevertheless, it is clear that the interview of Lee was intended to be the culmination of a coordinated strategy [REDACTED] that was designed with the assistance of the Behavior Science Unit. (SF 00055; FBI 13789) Before initiating a face-to-face interview with Lee, the plan called for [REDACTED]

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(FBI 13790) The purpose of this strategy was to [REDACTED] apparently to give the FBI the psychological upper hand, and "[t]his would enable the FBI to then invite the subject for an interview." (SF 00057) According to his September 28, 1983 personality assessment of Lee, SA [REDACTED] believed that this approach, involving [REDACTED] "might produce a confession from the individual." (FBI 13790)

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(8) During October 1983, the FBI conducted interviews of [REDACTED] (FBI 13775) The execution of these interviews was not exactly according to plan, however. First, while the personality assessment called for [REDACTED] to precede [REDACTED] (FBI 13790), FBI Albuquerque set leads for only two to be interviewed. (AOI 03412) Second, of these two [REDACTED] (FBI 13753) Thus, the planned interviews [REDACTED] amounted to only one (FBI 13775), and the interviews [REDACTED] took place at more or less the same time. Whatever [REDACTED] was meant to come about as a result of the

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(8) The meeting was attended by, among others, the Albuquerque case agent, SA [REDACTED] and by SA [REDACTED] of the FBI's Behavioral Science Unit. (SF 00055)

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interviews as planned, it is doubtful [REDACTED] eventuated from the interviews as executed.

4. (U) The interviews of Wen Ho Lee

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~~(S/NF)~~ On November 9, 1983, SA [REDACTED] and one of the FBI San Francisco case b1 agents for the [REDACTED] investigation, SA [REDACTED] interviewed Lee at a motel in Los Alamos.¹⁵ (FBI 00067) Lee was questioned concerning [REDACTED]

[REDACTED]¹⁶ Lee was then shown a copy of an article from a Chinese language publication concerning [REDACTED]

~~(S/NF)~~ [REDACTED]

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~~(S/NF)~~ [REDACTED]

(FBI 00069)

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⁽⁸⁾ It is not clear who first contacted whom about arranging the interview. As suggested by the personality profile, the interview was conducted at an "off-site location," away from LANL and the FBI offices. (FBI 13791)

⁽⁸⁾ The FBI followed up on this by requesting the [REDACTED]

(FBI 13744)

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(S/NF) Thus Lee [REDACTED]

FBI Albuquerque [REDACTED] b1

however: "Although he did not reveal [REDACTED] it is felt he might be reluctant [REDACTED] because he was not acquainted with the interviewing agents. It was felt that to continue to contact and interview him was a far better solution than an adversary type interview." (FBI 19428)

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(S/NF) Nor did the interview of Lee proceed according to plan. As noted above, the FBI had decided that if an "unsatisfactory interview occurs, the possibility of a polygraph will be mentioned," to be followed by a "stronger" interview with the polygrapher present to administer the test. (SF 00056) It would seem that when Lee [REDACTED] that would be considered an "unsatisfactory interview." Yet, the FBI concluded that it would not polygraph Lee at that time. Rather, "[a]t some point in the future, assuming he continues [to be] cooperative, it is felt that if he does not admit to [REDACTED] a polygraph will be suggested." (FBI 19427) In the meantime, the FBI decided to enlist Lee's aid in the [REDACTED] investigation.

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(S/NF) The interview terminated with [REDACTED]

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He has agreed to offer his opinion and advice from a Taiwanese perspective as to how the government could best proceed in this investigation.

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(FBI 19427) This seems to have put the cart before the horse, however. Lee had not been polygraphed yet and [REDACTED] Yet the FBI was about to put him to work. b1

(S/NF) Although it is not at all clear when or why it occurred, it is obvious that at some point before or during the initial interview of Lee, the FBI's assessment of him was

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This was not the first time that Lee [REDACTED] During the initial background investigation interviews, Lee [REDACTED]

(FBI 10695)

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fundamentally altered. For example [REDACTED]

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[REDACTED] (FBI 19564) In its April 1983 investigative summary, FBI Albuquerque stated that the objective of the investigation was to [REDACTED]

[REDACTED] (AQI 03223) Also, as noted in the July 1983 request for the personality profile, the FBI knew that [REDACTED]

[REDACTED] (FBI 13802)

(S/NF) In its November 16, 1983 annual letterhead memorandum ("LHM") and investigative summary, however, FBI Albuquerque noted that after physical surveillance of Lee, analysis of Lee's telephone and toll records, and a background re-investigation, no evidence had been developed to indicate that Lee had an intelligence connection.¹⁹ (DOE 00672) According to this summary, the objective of the investigation was now to neutralize Lee if [REDACTED]

[REDACTED] (Id.)

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(S/NF) Following Lee's first interview, FBI San Francisco suggested that Lee be [REDACTED] and that Lee's "opinions, advice, and suggestions" be solicited [REDACTED] (SF 00097) "Afterwards, in general, non-threatening manner, Lee will be told that the FBI is aware of [REDACTED]"

(Id.) If Lee were still cooperative after this disclosure, the FBI would suggest that Lee [REDACTED]

[REDACTED] (Id.)

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¹⁸(S) The same point was made in the March 1983 FBI request for authority to conduct a mail cover of Lee. (FBI 13884)

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¹⁹(S) The summary did not mention, however, that Lee had made calls on three occasions to the CCNA, the unofficial Republic of China establishment in the United States.

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(S/NF) FBI Headquarters found "a number of shortcomings" with San Francisco's proposal, in that it "depend[ed] on several things happening being in the favor of the FBI" to be successful.²⁰ (SF 00118)

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(S/NF) Moreover, because the scenario calls for [REDACTED] and then asking for very specific help from him, the operation calls for a very early investment of FBI information and the risk that Lee could figure out - [REDACTED] - a very sensitive operational technique.

(Id.) Nevertheless, FBI Headquarters concluded that if San Francisco wanted to proceed with its proposal, Headquarters would approve it. (Id.)

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(S) FBI Albuquerque, on the other hand, thought that the San Francisco proposal had "significant merit" and "concur[red] fully with the scenario as set forth." (AQI 03485) It made arrangements to meet with Lee at LLNL.

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(S/NF) On December 20, 1983, Lee was interviewed by agents from FBI Albuquerque and San Francisco, with the participation of [REDACTED] to DOE b6, b7C the director of LLNL. (SF 00077) As planned, Lee [REDACTED] b1
[REDACTED]²¹ (Id.) After [REDACTED] Lee was told that the FBI knew that he had [REDACTED] "Lee [REDACTED]"
(Id.) Lee then told the agents about [REDACTED]

[REDACTED]
(Id.)

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(S/NF) "Lee [REDACTED]" (SF 00119)

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(S) "No assets, sources or techniques were revealed to him, nor were any future plans revealed." (SF 00078)

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~~(S)~~ Lee was also questioned about [REDACTED]



~~(S)~~ [REDACTED]

²³(U) It is not clear whether this was a violation of LANL policies. LANL personnel, including the director, said that this was "unusual" and they were "concerned" about it. (SF 00072)

~~(S)~~ [REDACTED]

²⁴(S) This is consistent with the three calls the FBI knew Lee had made to the CCNA in October 1982. From the 302 of the interview, however, it appears that Lee was first told of the calls before he acknowledged that he had made them. (AQI 03584)

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(S/NF) Satisfied that Lee's explanations of his calls [REDACTED] to CCNA were at least plausible,²⁶ San Francisco went on with the scenario and asked Lee to [REDACTED]. He agreed to do so.

(SF 00083) Lee made four calls [REDACTED] at the request of the FBI agents, but [REDACTED] (Id.; AQI 03512) Lee was then asked by the FBI to [REDACTED] which he did.

5. (S/NF) [REDACTED]

(S/NF) [REDACTED]

(Id.)

(S/NF) [REDACTED]

(Id.)

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^(S) Nevertheless, "[n]one of the agents participating in the interview were convinced that Lee [REDACTED] (SF 00086)

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b1 (S) By the time the FBI took its gamble on Wen Ho Lee, it had conducted a thorough background investigation, analyzed his telephone records for his home and office, conducted a mail cover, interviewed present and former supervisors, co-workers, and neighbors, and had performed a personality assessment. Nevertheless, it is puzzling that the original plan to conduct [REDACTED] or the subsequent plan to [REDACTED] were not followed.²⁷ More significantly, the plan to polygraph Lee if the initial interview was "unsatisfactory" was also laid by the side, a particularly troubling departure given the fact that: (1) Lee [REDACTED] (2) the FBI nevertheless [REDACTED] and (3) the FBI enlisted his help in the direct contact of the subject of an espionage investigation.

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b1 6. (S) [REDACTED]

b1 (S) Lee was interviewed on January 3, 1984 by FBI Albuquerque, upon his return from San Francisco. Lee [REDACTED] (Id.; SF 00075) The FBI confirmed this with LANL security personnel. (SF 00069)

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(U) (S) During the January 3, 1984 interview, the FBI asked Lee to submit to a polygraph "to resolve any questions which may have arisen concerning the information which he has furnished." Lee agreed, but it had a significant affect on him:

(S) It is noted [REDACTED]

²⁷(U) We recognize, of course, that an investigative plan is never set in stone and must adjust to both changing circumstances and an agent's intuitive judgments as to how to proceed as events unfold.

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[REDACTED]

[REDACTED]

although it did b1

not appear in the LANL telephone printout.

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(SF 00073)²⁸ Lee said

[REDACTED]

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(SF 00076)

(S/NF) In a January 11, 1984 teletype to FBI Albuquerque and San Francisco, Headquarters reported that

[REDACTED]

(Id.)

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(Id.)

7. ^(u) ~~(S)~~ The January 1984 polygraph of Wen Ho Lee

(S/NF) On January 24, 1984, Lee took a polygraph examination conducted by an FBI examiner. (FBI 00080; FBI 00087) (Id.)

[REDACTED]

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(Id.) Lee
(FBI 00089)

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^(u) ~~(S)~~ "LANL officials concurred with the administration of this examination and will provide whatever support is required to convince Lee to take the polygraph should he change his mind." (SF 00073)

²⁹ ~~(S)~~ Thus Lee

[REDACTED]

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(S/NF) Lee insisted that he had not furnished classified information to any unauthorized person nor had he ever agreed to work for any non-U.S. intelligence agency. Further testing was conducted to verify Lee's truthfulness.

b1 (FBI 00080) The FBI examiner determined that Lee had been non-deceptive in his answers to follow-up questions regarding [REDACTED] (Id.)

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(S) On February 16, 1984, FBI Headquarters informed Albuquerque that a technical review of the polygraph results had been performed. (FBI 07415) "This review disclosed that the examination is satisfactory in all aspects and review personnel concur with the results of the examination." (Id.)

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8. (S) The March 1984 closure of the full FCI investigation of Wen Ho Lee and notification to DOE

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b1 (S/NF) In March 1984, the FBI closed its full FCI investigation of Lee arising from [REDACTED] According to a March 12, 1984 memorandum from FBI Albuquerque to Headquarters:

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(S) The subject of this matter has been interviewed and has substantially admitted all allegations and has explained why he made certain contacts. *This information has been forwarded orally to appropriate personnel at the Department of Energy and the Los Alamos National Laboratory where subject is employed. . . . In view of the fact that the subject has been interviewed, has explained his actions and has passed a polygraph examination, this matter is being placed in a closed status.*

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~~TOP SECRET~~ [REDACTED]

(FBI 19314) (emphasis added)³⁰ Exactly what DOE was told, however, or who at DOE and LANL was informed, is not at all clear from the available records.³¹

~~(S/NF)~~ LANL Director Kerr was aware of the predication for the investigation, as were several of LANL's security personnel.³² (AQI 03010; AQI 03020) They assisted in providing information such as telephone records and background information on Lee. (AQI 03017; FBI 19605) DOE's Albuquerque Operations Office was also aware of the investigation.³³ (AQI 03004; AQI 03071) It was Kerr who decided that the available

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³⁰(S) In the meantime, OIPR had concluded, based upon the FBI's November 16, 1983 LHM, that the investigation did not appear to meet the Attorney General's Guidelines for the continuation of a full FCI investigation. (FBI 00092) FBI Headquarters suggested that Albuquerque consider [REDACTED] (FBI 00093) but Albuquerque found that Lee [REDACTED] (AQI 03608)

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³¹(S) SA [REDACTED] could not recall if the FBI LHM closing the investigation was forwarded to DOE at the time. [REDACTED] 9/12/99) According to SA [REDACTED] he invariably kept LANL's Director of International Technology, Danny Stillman, apprised of investigations at LANL. (Id.) According to Stillman, he was not aware of security concerns raised by the interview of Lee, and he did not see the FBI LHM closing the investigation. (Stillman 1/24/00) Stillman said that such LHMs would not have gone to him, but to DOE's Albuquerque Operations Office. (Id.) SA [REDACTED] did not know what DOE Headquarters or LANL were told about the admissions Lee had made during his interviews. [REDACTED] 9/18/99)

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³²(S) Kerr did not recall being briefed on the Lee investigation. (Kerr 12/20/99) He said that he never saw a copy of the FBI LHM closing the investigation. (Id.)

⁽⁸⁾ According to a January 25, 1983 memorandum from FBI Albuquerque to Headquarters, "[c]oordination has been established with appropriate individuals at the [DOE], Albuquerque Operations Office, and the Laboratory personnel involved with security." (AQI 03072) According to the memorandum, Kerr wanted "to limit knowledge of the facts of this matter to the people briefed to date and at this point does not desire other individuals be briefed, including [REDACTED] of this office at LANL."

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information was insufficient to warrant moving Lee from his position at LANL. (AQI 03072) DOE and LANL agreed to request a background re-investigation in part to further the investigation of Lee's contacts [REDACTED] (Id.) DOE produced a "damage assessment" concerning Wen Ho Lee's access to classified information. (AQI 03125)

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(S/NF) Moreover, [REDACTED] former LLNL [REDACTED] and then [REDACTED] to the LLNL director, was present during the interview of Lee when he was confronted with [REDACTED] (SF 00077) Thus, [REDACTED] at least, knew that Lee [REDACTED] (Id.) LANL's director and LANL security personnel were also aware that Lee [REDACTED] (SF 00072) LANL officials were also aware that Lee was to take a polygraph concerning his contacts [REDACTED] (SF 00073)

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(S/NF) There is no written record, however, that the FBI formally notified DOE or LANL of material derogatory information uncovered during the investigation, including four key pieces of information that might have affected Lee's clearance:

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- (S/NF) Lee [REDACTED] and provided truthful answers only when confronted with irrefutable evidence (i.e., the FBI's awareness of his phone call [REDACTED] or when faced with a polygraph.
- (u)
(S) Lee [REDACTED]
- (S) Lee [REDACTED]
- (u)
(S) Lee [REDACTED]

(S/NF) To be sure, certain individuals within DOE or LANL were sufficiently aware of the investigation that it may be presumed that they received additional information from the FBI through informal briefings. Nevertheless, there is no record

(Id.; see also FBI 01717)

~~TOP SECRET~~ [REDACTED]

that this was done, nor that the information was reported back to DOE Headquarters.³⁴
In a matter of this importance - where a LANL scientist with access to nuclear weapons information [REDACTED]

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[REDACTED] and his contacts

[REDACTED] - FBI Headquarters should have formally notified DOE Headquarters when it closed its investigation, so that appropriate action could have been taken.³⁵

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^(S) In fact, according to a DOE report written in 1989, the report that DOE Albuquerque's Personnel Security Branch received from the FBI in June 1983 was "free of any significant derogatory information. (DOE 01583) Specifically, that there was a "disparity in the polygraph results was not provided to DOE." (Id.) "There was no mention of the on going criminal/intelligence investigation being conducted by the FBI regarding Lee." (Id.) Nevertheless, [REDACTED] at least, knew of the continuing FCI investigation of Lee since [REDACTED] participated in the subsequent interview of Lee by the FBI. (FBI 00070) Further, LANL officials were consulted after this interview concerning the FBI's plan to polygraph Lee. (SF 00073)

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^(u)
^(S) Given what DOE did do with the information when it was informed in 1989, it is not at all clear what, if anything, DOE would have done concerning Lee's clearance if it had been informed in 1983. Nevertheless, this does not affect the conclusion that the FBI should have formally notified DOE of the derogatory information when it closed its investigation in 1984.

~~(S/NF)~~ During the fall of 1997, Director Frech twice asked his staff whether DOE had been notified of the earlier investigation and its results. (FBI 01063; FBI 12312) The first time, Director Frech was given a brief description of the investigation, including the fact that Lee [REDACTED]. The Director was told, b1
"Although the files do not show it, it is believed Los Alamos was well aware of our investigation of LEE. Interrogation of Lee was done at the lab." (FBI 01062) The second time the Director asked about the notification of DOE, he was told that there were no records showing any briefings by FBI Headquarters to DOE Headquarters, but that LANL security personnel "were fully aware of the investigation and were actively involved in it." (FBI 11630) The Director was also told that after Lee passed a polygraph, FBI Albuquerque closed its investigation "and advised DOE and the lab of

FBI
b6, b7C

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(u)
(S) 9. DOE formally learns in 1989 of the results of the full FCI investigation of Wen Ho Lee

(u)
(S) In September 1988, the Office of Personnel Management ("OPM") conducted a routine National Agency Check ("NAC") re-investigation of Lee. (DOE 01585) As a result of the NAC, DOE Albuquerque's Personnel Security Branch received classified FBI reports concerning the FCI investigation of Lee. (Id.; see also Kirby 12/26/99) What DOE received, apparently, was the entire eighteen page March 12, 1984 FBI memorandum to close the investigation, which included the various 302s of interviews with Lee. (DOE 01603; FBI 19314) This DOE report asserts that DOE received this information for the first time on August 30, 1989.³⁶ (DOE 01585)

(u)
(S) According to a September 7, 1989 review of these FBI materials, it was not clear to the DOE reviewer whether the FBI investigation involving Lee had been closed.

(u)
(S) Due to the ambiguity of the available FBI report, a determination can not be made at this time regarding whether Lee has been compromised. Expeditious effort should be made to obtain from the FBI all outstanding reports in the case and their final assessment of Lee.

(DOE 01592)

the results." (FBI 01100) There is no basis, however, to conclude that the derogatory information described above was formally communicated to DOE.

b1 ~~(S/NF)~~ A DOE chronology prepared in April 1999 to answer questions from Senator Domenici's office asserts that until 1989 the FBI failed to notify DOE of the Lee investigation itself, of its predication involving Lee's call [REDACTED] of the FBI's interviews of Lee, or of the fact that Lee was polygraphed. (DOE 01021) As discussed above, LANL's director and security personnel knew of these facts.

(u)
(S) OPM transmittal documents from DOE's files, however, show that DOE received these FBI reports at least as early as January 1989. (DOE 01600)

~~TOP SECRET~~ [REDACTED]

(U) (S) The DOE reviewer recommended that DOE obtain the FBI's investigative and polygraph reports concerning the Lee investigation and that DOE investigate whether Lee had been compromised or was vulnerable to compromise. (DOE 01583) The reviewer's supervisor agreed but said "we'll need [DOE] Headquarters help in this case." (DOE 01583)

DOE
b6, b7c

(U) (S) On October 11, 1989, DOE Albuquerque's Personnel Security Branch forwarded Lee's personnel security file to DOE's Office of Security and Safeguards Headquarters in Germantown, Maryland, seeking its assistance in obtaining all outstanding FBI reports and polygraph results. (DOE 00203) Evidently, however, the file was lost once it arrived at DOE.³⁷ (DOE 00202; see also [REDACTED] 1/6/00) Further, it appears that no one thought to look for the file until August 1992, when OPM began the process for a background re-investigation of Lee.³⁸ (Id.)

(U) (S) As of December 1992, the file had still not been found at DOE.³⁹ A reconstructed file contained enough information for DOE to conclude that it should suggest that the FBI conduct a re-investigation of Lee. (DOE 00509)

(U) (S) Specific questions need to be addressed during the reinvestigation, i.e., has there been any other contact with foreign nationals since 1983, any further distribution of information to unauthorized recipients, extent and purpose of foreign travel since 1983, and if there has been any further contact with foreign controlled organizations.

DOE
b6, b7c

(U) (S) Those at DOE in 1989 to whom the file ultimately should have been forwarded did not recall ever having seen the file. [REDACTED] 1/11/00; [REDACTED] 1/21/00)

(U) (S) In April 1993, OPM completed its re-investigation of Lee, with "inconclusive results" resulting from substantial issues raised by a national agency check of the FBI. (DOE 00463)

³⁹(U) It was found at DOE in May 1993. (DOE 00199)

~~TOP SECRET~~ [REDACTED]

(Id.) This suggestion was not pursued.⁴⁰ On June 21, 1993, a DOE reviewer recommended that Lee's "Q" clearance be continued.⁴¹ (DOE 00460)

C. (U) Conclusion

~~(S/NF)~~ The FBI handled the 1982-1984 full investigation of Wen Ho Lee in a professional, competent and aggressive manner. It must be noted, however, that the FBI's use of Lee [REDACTED] investigation without first polygraphing him, [REDACTED] was known to have initiated the contact [REDACTED] was inexplicable. Nevertheless, the FBI derived significant information from [REDACTED]

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^(u)
^(S) In June 1993, a DOE reviewer would note that the 1983 investigation had been "satisfactorily resolved by the FBI" and "[t]here is no type of information in subject's file at this time that would result in any further action on our part, regarding this investigation." (DOE 00459-60)

^(u)
^(S) As DOE Albuquerque explained long after the fact, in May 1999:

^(u)
^(S) In the absence of a response to our August 6, 1992 memorandum [to DOE Headquarters] . . . the reinvestigation evaluation was based upon the 1993 [OPM] reinvestigation report, which included the two classified FBI reports (1983 and 1984) that the OPM had originally sent to us as part of the FY 1989 reinvestigation. The 1993 investigation evaluation did not reflect any new unresolved issues, and the FBI reports, alone, indicate that a review of the polygraph examination revealed "non-deception" to relevant questions. On that basis, the "Q" access authorization was continued without further action.

(DOE 00178)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(U)
~~(S)~~ Given the events of 1994-1999, and all the acuity that comes with hindsight, the most significant consequence of the FBI's 1982-1984 investigation of Lee may well be the FBI's failure to formally and fully advise DOE of derogatory information derived from that investigation. It is possible, but no more than just possible, that DOE in light of that information would have revoked Lee's security clearance, which would have effectively resulted in Lee's termination.

(U) That would have made a difference.

~~TOP SECRET~~ [REDACTED]