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CHAPTER EIGHTEEN

(U)
(S/NF) WEN HO LEE'S CONTINUING ACCESS TO NUCLEAR WEAPONS
SECRETS THROUGHOUT THE COURSE OF
THE FBI INVESTIGATION

Questions Presented:

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Question One: (S) Why was Wen Ho Lee permitted to retain his access to classified nuclear weapons information from May 1996 to December 1998?

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Question Two: (S) Was it appropriate and necessary for the FBI to insist on Lee retaining his usual access to classified information from May 1996, when the Full Investigation opened, until August 12, 1997, when Director Freeh made his "take that right off the table" statement?

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Question Three: (S) What did DOE do, and fail to do, as a result of Director Freeh's "take that right off the table" statement?

(U) *PFIAB Question #7: Whether communications regarding the subject's job tenure broke down between DOE, FBI, and Los Alamos.*

A. (U) Introduction

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(S) For two-and-a-half years, the United States Government allowed an individual suspected of committing espionage involving critical nuclear secrets to retain his access to *additional* critical nuclear secrets.

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(S) Initially, this was done at the request of the FBI, which never seriously considered the alternatives, nor considered the full implications of its request. After Director Freeh's August 12, 1997 "take that right off the table" statement, this was done as a result of four factors: (1) DOE's bureaucratic inertia; (2) DOE's failure to appreciate

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the "import" of Director Frech's statement; (3) DOE's lack of recognition of the continuing danger posed by a suspected spy with Lee's range of access to critical secrets; and (4) DOE's reluctance to take steps which might compromise an FBI investigation despite Director Frech's admonishment that DOE needed to do *whatever* was necessary to protect its secrets.

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(S) The Wen Ho Lee investigation, unfortunately, presents the United States Government with an abject and, potentially, disastrous lesson in how *not* to address issues of access involving those suspected of committing espionage. With the exception of Director Frech's "take that right off the table" statement - the one bright spot in the midst of this muddle - those charged with the protection of classified information, and the rooting out of spies, must do better.

B. (U) An "Access" chronology

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(S) On or about April 5, 1996, Notra Trulock and [REDACTED] investigator who drafted the Administrative Inquiry ("AI"), had a discussion about Wen Ho Lee, who [REDACTED] was then characterizing as a "logical suspect." *76 [REDACTED] 416) In a memorandum following up on this meeting, [REDACTED] addressed the issue of whether to pull Lee's clearance or withdraw his access to X Division:

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(S) At this point in the investigation, I believe it would not be prudent to remove Mr. LEE's clearance or transfer him from X Division for the following reasons:

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(S) - There is no direct evidence that he perpetrated the compromise.

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(S) - He has no pending travel plans to visit the PRC officially/unofficially. * * *

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(S) Within a few weeks, [REDACTED] would be characterizing Lee as the "most logical suspect." (DOE 2407)

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(S) - To remove Mr. LEE's clearance etc., should he actually be the suspect in this case, would alert him to the fact and jeopardize the acquisition of additional direct evidence which could be used for prosecution purposes.

[REDACTED] 417)

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(S) On May 2, 1996, [REDACTED] met with UC [REDACTED] and SSA [REDACTED] to discuss the "Kindred Spirit" investigation. In [REDACTED] memorandum to Trulock memorializing the meeting, [REDACTED] noted that "[w]e discussed our concerns regarding the most logical suspect in this inquiry" and "the possibility that DOE senior management may be leaning towards serious consideration of having the suspect's clearance lifted based solely on the circumstantial evidence thus far obtained during the conduct" of the AI. (DOE 2407) Also discussed was the possibility that there [REDACTED] actions" and that, because the subject was "a marginal performer," he might very well be [REDACTED]

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(S) [REDACTED] suggested that based on the information already obtained in the AI, the FBI could assume jurisdiction over the case and initiate a full investigation. "If this were to occur, perhaps senior DOE management might be inclined to avoid initiating any actions such as removing the clearance of the most logical suspect, which could [] hinder any successful resolution (prosecution) of this matter." (DOE 2407-2408)

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(S/NF) On May 25, 1996, shortly before DOE's official dissemination to the FBI of the DOE AI, Trulock sent a memorandum to Joan Rohlfing, Director of NN (DOE's Office of Nonproliferation and National Security), concerning the "Kindred Spirit" investigation. The memorandum specifically addressed whether "we [are] prepared to act" to take administrative action against the "subject." The memorandum reads in part as follows:

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(S/NF) At this point, we have taken no preparations for any administrative actions that might be required by future investigations. The FBI has specifically requested that we take no action at this time, pending their assumption of the case.

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(S/NF) The FBI did suggest that we might consider reassignment of the subject to a special project along the lines of the Ames case. The Secretary tasked us to identify options for such a special assignment.⁸⁷⁷ [REDACTED]

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LANL will develop a "project" or series of projects for such an assignment. * * * [REDACTED] will arrive in Washington the week of June 3, and this will be his first task.⁸⁷⁸

(DOE 3809, 1844)

(U) Deputy Secretary Curtis told the AGRT that the purpose of the memorandum was to ask: "What is our administrative obligation?"⁸⁷⁹ DOE had identified a "candidate spy" and he had "access to other information." Deputy Secretary Curtis said he was "troubled" by the situation, as was Secretary O'Leary. Deputy Secretary Curtis realized that he could take "him out of access," but he also viewed the matter as presenting DOE with a "Hobson's choice." If Lee was taken out of access, "we'd never find out anything from him by those means" and we would have "compromised" the counterintelligence investigation. (Curtis 1/14/00)

⁸⁷⁷ (U) It is not clear whether Trulock is referring here to Secretary Hazel O'Leary or Deputy Secretary Charles Curtis.

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⁸⁷⁸ (S) [REDACTED] told the DOE OIG that to the best of his knowledge, it was decided not to develop a project or series of projects for Lee. (DOE 2655) [REDACTED] told the DOE OIG that he was never aware of any discussions regarding this matter and did not participate in any such assignment. (DOE 2787)

⁸⁷⁹ (S/NF) That was a critical question for DOE to answer. It had both administrative *responsibilities* and administrative *rights* that impacted on this issue. A DOE-FBI Memorandum of Understanding, dated October 7, 1992, addressed just this issue. It read in part: "While the DOE may take appropriate administrative, disciplinary or other action at any time in connection with a DOE employee whose activities are reported to the FBI, DOE will coordinate with the FBI in advance of any intended action, to avoid prejudicing any ongoing or planned FBI investigative effort or criminal prosecution."

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(U) Ultimately, Deputy Secretary Curtis said, "we trusted the FBI's judgment" on the matter. Nevertheless, he does recall speaking to LANL Director Sig Hecker in the May 1996 time frame "about coming up with a way to find [the] guy [an] alternative assignment" and, he said, there was continuing "discourse" on this matter. (Id.) Deputy Secretary Curtis took some comfort from the fact that he had "every expectation that he [Lee] was going to be put under wiretap." He "assumed it did happen and was never told it didn't." (Id.)

(U) (S) On July 3, 1996, FBI personnel met with LANL personnel at LANL. Representing the FBI were SC Doyle, SSA [REDACTED] SAC Kneir, ASAC Dick, SSA [REDACTED] and SA [REDACTED]. Representing LANL were Director Sig Hecker, [REDACTED] and the two LANL CCIO's, [REDACTED] Hecker was asked by the FBI to keep the "fact of [the] investigation closely held, and to leave LEE in place." Hecker asked how he could justify doing that and the FBI responded with two points: "Lee has had access for ten years, so firing him would not do much now; and, if lab did fire him it would have no legal justification to support the action." (Id.) Hecker agreed to leave Lee in place. An FBI timeline describes this meeting as follows:

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(U) (S) FBI HQ personnel travel to Albuquerque to confer with the Special Agent in Charge and Assistant Special Agent in Charge. All then meet with the Director of Los Alamos and his staff to brief him on the FBI's proposed investigation and to ask for cooperation: The LEEs must not be alerted to the investigation and LEE Wen Ho must continue to have his normal access.

(FBI 752) According to SA [REDACTED] who was the case agent at the time, SC Doyle and SSA [REDACTED] asked Hecker to keep Wen Ho Lee "in place for one year" and Hecker

"" (U) [REDACTED] was in LANL's [REDACTED]

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"" (U) [REDACTED] was in LANL's [REDACTED]

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agreed."²² (FBI 17817) As [redacted] put it, the "tenor" of the meeting "was to leave Wen Ho Lee exactly where he was. To do anything else would be to tip him off." [redacted] 9/13/99)

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(S) On July 24, 1996, SA [redacted] spoke with [redacted] about a meeting that [redacted] had earlier that day with LANL Director Sig Hecker. Hecker told them that he had recently talked with Deputy Secretary Curtis at DOE HQ and "learned that DOE higher-ups had been briefed on Kindred Spirit, and there are many concerned people at DOE HQ." Hecker stated that "Curtis wanted to limit access to Lee Wen-Ho starting now, if possible." (AQI 980)

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(S) SA [redacted] "told [redacted] that if access were limited, FBI investigative efforts to identify Lee Wen-Ho as the individual committing espionage at LANL would be seriously hampered." [redacted] told him "he agreed" and "indicated that he and [redacted] would not suggest any recommendations to Director Hecker that would limit access without getting prior FBI approval."

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(S) SA [redacted] subsequently called SSA [redacted] to report on his conversation with [redacted]. "SSA [redacted] advised that he would brief his chain of command immediately regarding this development, and indicated that this certainly is not the cooperation promised by Director Hecker during the recent meeting at LANL. SSA [redacted] suggested that perhaps FBIHQ could write a letter to DOEHQ from Director to Director advising that the FBI is conducting an espionage type investigation and cooperation is needed." (AQI 981)

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(S) In his conversation with [redacted] another matter came up as well, concerning ongoing plans within X Division to "tighten control on access to the X Division vault."²³

²² (U) SC Doyle told the AGRT that he stressed to Hecker the importance of the Lee case to LANL: "Their fat was in the fire." (Doyle 10/19/99)

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²³ (S) According to a DOE OIG statement given by [redacted], the [redacted] vault "contains mostly nuclear testing information, weapons designs, designers' reports of testing, and weapons development information." (DOE 2685) According to one DOE memorandum, the [redacted] vault,

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The project had been in the works "for a period of time" and [REDACTED] "wanted to make" SA [REDACTED] aware of it."

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(S) On July 26, 1996, SA [REDACTED] and [REDACTED] spoke again and [REDACTED] advised that "FBI officials" had visited with Deputy Secretary Curtis at DOE HQ the previous day. "In essence, the Bureau officials told Curtis not to pull any clearances for Lee Wen-Ho." According to [REDACTED] Deputy Secretary Curtis then called Hecker to "share the information" with him. [REDACTED] emphasized that "at no time" had "any discussions" focused on pulling Lee's clearances; rather, the "only issue being discussed between Curtis and Director Hecker was limiting access to Lee." (AQI 987)

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(S) Also on July 26, 1996, SA [REDACTED] spoke with [REDACTED] and [REDACTED] assured him that "LANL will not limit access for Lee Wen-Ho without coordinating with the FBI." (AQI 989)

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(S) [REDACTED] also suggested that placing a badge reader with limited access to the X Division vault, as was being contemplated, might also "jeopardize the FBI investigation." Therefore, he told SA [REDACTED] "no action would be taken" on this matter as well "without first coordinating with the FBI." (Id.)

(S/NF)

(S/NF) On August 19, 1996, Notra Trulock and [REDACTED] of DOE, met with SC Doyle, UC [REDACTED] and SSA [REDACTED]. The principal purpose of the meeting was for Trulock to give the FBI a letter reconfirming DOE's position on the compromise of information [REDACTED]. At the meeting, however, Trulock also raised the issue of improved vault security for X

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in 1996, contained 50,000 classified documents, including documents classified at the Secret Restricted Data level. (DOE 2854)

(u) (S) Although the issue of vault controls was not being driven by the "Kindred Spirit" investigation, it was not irrelevant to it either. As far back as April 1996 [REDACTED] was noting that Lee "had direct access to the [REDACTED] vault and direct access to the W-88 Weapons system design information." [REDACTED] 416) Three years later, Lee would tell SA [REDACTED] that he [REDACTED]. See Chapter 17.

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Division. According to a memorandum from [redacted] to Trulock, the FBI signed off on the improved vault security procedures. (DOE 4391, FBI 662, FBI 11767, FBI 12094, FBI 662)

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(S//~~FOUO~~) On March 28, 1997, SA [redacted] sent an EC to NSD summarizing a conversation he had with [redacted] concerning information which [redacted] had obtained from [redacted]

[redacted]

(FBI 800; see also FBI 973)

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(S//~~FOUO~~) On April 10, 1997, SA [redacted] interviewed [redacted] about Wen Ho Lee.

[redacted]

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If Lee was assigned to this "new team," the code "would be in his face again." [redacted] reported that the position "that Lee is presently in is not as sensitive as the position he will hold during his new team assignment." (AQI 5047)

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(S//~~FOUO~~) On October 15, 1997, SSA [redacted] would make a handwritten note concerning a conversation he had that day with [redacted] concerning the events of April 10, 1997. According to SSA [redacted] advised that on 4/10/97, [redacted] and Sig Hecker & [redacted] discussed Lee's access at LANL. Since Lee was currently involved in nothing new, they only had to keep him from any new code work or design work. As far as the Lagrangian codes went, he helped write 'em, so there is no point restricting his access to them." (DOE 2927) SSA [redacted] notes that he confirmed this with SA [redacted] on October 18, 1997; however, SA [redacted] said Hecker was not there.

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(S) On April 15, 1997, a key event occurred. DOE personnel met with FBI personnel at LANL to discuss the status of the investigation. Present from DOE were [redacted] who was Trulock's [redacted] DOE Albuquerque Operations Office [redacted], and [redacted]. Present from the FBI were SSA [redacted] and SA [redacted]. The meeting, as further described in Chapter 9, was intended by DOE to press the FBI for action on the case. b1

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(S) During the meeting, however, there was also discussion about what to do about Wen Ho Lee's continuing access to classified information in light of the new project which [redacted] had described to SA [redacted] several days earlier. According to a memorandum which [redacted] sent to Trulock and [redacted] the following week, [redacted] described his plan for the "re-alignment" of personnel and work assignments within X Division and the establishment of a [redacted] b1

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(FBI 845)

(S) [redacted] said [redacted] had learned that Lee had worked with a particular [redacted] in the past which was "instrumental for the successful development of the W-88" and was considered an "expert" in this area (Id.) Therefore, according to [redacted] memorandum, [redacted] was "of the opinion that [redacted] is compelled to place SUBJECT on the [redacted] team. [redacted] rationale is the fact that SUBJECT, being considered an 'expert' in this area, would certainly become suspect as to why he was left off of the team, perhaps alerting him to the fact that he is a suspect in an FBI investigation." (Id.)

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(U) [redacted] memorandum indicates that it was decided by "CID [DOE's Counterintelligence Division] and the FBI that it would be illogical not to assign SUBJECT to the [redacted] team, for two reasons, first, SUBJECT is a suspect only and secondly not to assign him would arouse his suspicions." (Id.)

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(Id.)

(U) [redacted] SA [redacted] also memorialized this understanding: "It was agreed that Lee Wen-Ho would not be restricted as far as his normal duties at the lab are concerned. It

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(u)
(S) [REDACTED] also noted that "[i]t was decided that as a minimum," Lee's [REDACTED] would be "recruited by the FBI to provide source coverage of SUBJECT's access to and work accomplished" on the [REDACTED] project" and that the FBI "would at a minimum initiate action to have a PEN Register placed on SUBJECT's duty and home telephone."

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(S) Finally, it "was also suggested" that NSD obtain authority from the FISA Court to place "technical surveillance" on Lee's work and residence. (Id.)

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(S) On April 22, 1997, [REDACTED] met with UC [REDACTED] and SSA [REDACTED] at FBI-HQ and the FBI agreed to begin preparation of the FISA application.

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(S) Also on April 22, 1997, [REDACTED] sent an e-mail to [REDACTED] advising him that the FBI was going to seek FISA coverage of Lee but that it "will take a couple of weeks or more." (DOE 59) [REDACTED] then advised [REDACTED] of the following:

was agreed that Lee's new team assignment would go into effect as previously planned." (FBI 851) Several months later, SA [REDACTED] would describe the understanding as follows: "the Department of Energy employees [at the meeting] decided not to move Lee Wen-Ho from his position at that time or take away Lee Wen-Ho's clearance as long as the FBI would be moving ahead with their investigation." (AQI 5522)

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(S) SA [REDACTED] summary of this matter is as follows: "It was agreed that Lee's [REDACTED] would be read into the case. It was agreed that [REDACTED] would be requested to monitor Lee's activities." (FBI 851) SA [REDACTED] told the AGRT that, when he did meet with [REDACTED] to ask for his help, [REDACTED] 9/12/99) After [REDACTED] was read in to the case, [REDACTED] asked him to watch Lee "closely" and "if Wen Ho Lee had contact with weapons designers, [his] job description should move toward more generic theoretical activity." [REDACTED] 12/20/99)

(u)
(S) This was not done. SA [REDACTED] said that [REDACTED] memorandum is "inaccurate" concerning this matter. The FBI had not agreed to place a pen register on Lee's telephone. [REDACTED] 9/12/99)

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(u)

(S) FBI requests [REDACTED]

X Division, use some ruse to preclude [REDACTED]

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FBI suggests [REDACTED]

THIS IS IMPORTANT AS [REDACTED]

PLEASE PRESS THIS HOME TO [REDACTED]

AND IF NEED BE HECKER, WHO MAY HAVE SOME IDEAS ON HOW TO "STALL" FOR A FEW WEEKS.

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(Id.)⁸⁹⁰

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(S) On April 28, 1997, SA [REDACTED] SSA [REDACTED] and SA [REDACTED] met with [REDACTED]

[REDACTED] Division. As to Lee's past access, [REDACTED] said Lee had "access to the crux of the research" and "unlimited access to computers." As to the future, [REDACTED] "advised that [REDACTED] could steer LEE away from contours and weapons" and steer him "towards theoretical work." (FBI 883)

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(S) On August 12, 1997, Notra Trulock gave Director Freeh a briefing on the PRC's nuclear weapons program and its attempts to acquire United States nuclear weapons technology. DOE Deputy Secretary Betsy Moler was present at the briefing. After Trulock's presentation, Deputy Secretary Moler made a comment indicating that DOE had deferred action on Wen Ho Lee's access to classified material at the request of the FBI. Director Freeh immediately and explicitly told Deputy Secretary Moler to "take that right off the table." (FBI 12506) See Chapter 13. The FBI's investigation of Wen Ho Lee should not be "a factor in any DOE action." (NSC 004)

(U) Deputy Secretary Moler did *hear* what Director Freeh had told her. ("I do remember him commenting that we no longer needed to keep the suspect in a no alert

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(S) To the extent that this e-mail suggests that Lee did not *already* have "total access," it is mistaken. As [REDACTED] told the AGRT: "He would have had access to primary and secondary design information just by being in X Division." [REDACTED] 12/20/99)

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(S) There is no indication that any "ruses," "crisis," or "stall" tactics were devised or employed.

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status at the request of the FBI.") (Moler 3/8/00) But she clearly did not get the *meaning* or *significance* of Director Freeh's statement.⁸⁹¹

(U) First, she viewed this as an FBI matter. "I thought it was their investigation, that they were running the show," that the FBI was "legitimately and appropriately" in charge. She found it "really strange" that anyone would think that the Director "was telling us to do something." (*Id.*) (emphasis added)

(U) Second, she emphasized that, while Director Freeh had told DOE they *could* alter Lee's status, the Director had not told DOE it *must* do this: "He did not tell us - did not give us specific direction - to take him out." Nor, she asserted, was the matter clarified for her by Notra Trulock.⁸⁹² (*Id.*)

(U) Third, Deputy Secretary Moler said, a "lot of it didn't make sense." She said she had been told by "Notra Trulock that [the] guy had been moved from [his] previous

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⁸⁹¹ (U) Trulock did. [REDACTED] said that Trulock came back from the meeting with Director Freeh and said that the Director had said, "Nothing you do can interfere with [the] FBI case. Do what you got to do. Take whatever administrative action you want. It won't jeopardize the case." [REDACTED]

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⁸⁹² (U) Trulock and Deputy Secretary Moler have a fundamental disagreement as to whether Trulock interpreted the Director's "take it off the table" statement for her. According to Trulock, in the car going back to DOE he asked Deputy Secretary Moler if she understood "what Freeh [is] telling us." Trulock said it was "to remove Wen Ho Lee's access." Trulock further says he told Deputy Secretary Moler that the entity within DOE that needed to address this matter was NN-50 (DOE's Office of Security Affairs). What they should do, he says he told Deputy Secretary Moler, was "find [a] pretext to bring him in, find [a] pretext to do [a] polygraph, and if he refuses, take him out." (Trulock 10/12/99) According to a draft memorandum which Trulock gave the DOE OIG, Trulock also "made clear" to Deputy Secretary Moler that "as the Director of Intelligence I had no authority to remove this individual from access." (DOE 2984) Deputy Secretary Moler disputed Trulock's recollection of the events that took place in the car ride back to DOE: Notra Trulock [REDACTED] (Moler 3/8/00)

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job and that his 'access' to classified information [had been] limited. DOE, she thought, had "effectively 'neutralized' him." (Id.)

(U) Fourth, she did not - and there is no other way to put it - take the Director seriously. She told the AGRT that "I was under the impression that Freeh was 'free-lancing' when he said this. I saw eyebrows raised." Her view was that the FBI was "trying to make a case against him. I believed the FBI didn't want him to be aware of what was going on."

(U) This was an unfortunate interpretation of the Director's remarks. Although the *Director of the FBI* had just told DOE to take the FBI's investigative interest "off the table" in deciding what to do about Wen Ho Lee, Deputy Secretary Moler did not believe he *really* meant it and, if he did mean it, that he was *really* speaking for the FBI. When the Director of the FBI speaks, that is, by definition, the FBI's official position.

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(S) DOE took no immediate action as a result of Director Freeh's statement. Secretary Pena was not briefed on the matter (Pena 3/15/00), nor was DOE's Office of Security Affairs asked to take action to restrict or withdraw Lee's access.⁴⁹³

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(S) On September 18, 1997, Director Freeh was briefed by his staff on the DOE counterintelligence reform efforts and on the Wen Ho Lee investigation. According to a note subsequently sent to the Director by AD Lewis, the Director asked "whether DOE had done anything in response to your very strong urging that they implement immediate steps to prevent any further loss of sensitive source codes and algorithms." (FBI 1118)

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(S) Also on September 18, 1997, a memorandum was drafted from AD Lewis to Notra Trulock which was intended to memorialize Director Freeh's "take that right off the table" statement. It read in part:

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(S) Joseph Mahaley, DOE's Director of the Office of Security Affairs since March 1997, told the DOE OIG that he was not aware of Director Freeh's statement until he read about it in the newspaper. (DOE 02725)

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(S) [W]e must withdraw our previous request that Lee's access and assignment remain unchanged to achieve immediate investigative objectives. This high priority investigation continues and we will advise you of all significant developments. If you should determine that, in light of information developed to date and in the interest of program security, Lee should have his access altered or his assignment changed, we would request that you provide to us the specifics of such planned action, and we will adjust our investigation accordingly.

(FBI 12508) The purpose of the memorandum, as an accompanying note indicated, was to advise DOE that "since subject now has recent access to a new project, and since our efforts in obtaining elsur [electronic surveillance] have not been successful, DOE may now wish to reconsider its agreement to not limit subject's access." (Id.)

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(S) This memorandum was marked "NOT SENT." SSA [REDACTED] put a note on it indicating that the FBI should find out what DOE "is doing" about Lee's access and then "re do the letter to memorialize their decision." (FBI 12507) That was never done.

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(S) On September 24, 1997, AD Lewis answered the Director's query of September 18th and the answer was that DOE had taken no action yet in response to the Director's admonishment. AD Lewis wrote the Director: "Based on conversations with [REDACTED]-background papers and options on various CI and security fixes have been provided to the Deputy Secretary, but to date it does not appear that any specific preemptive plans have been agreed upon or implemented." (FBI 1118) AD Lewis promised that "[w]e will again remind DOE of this" and the matter would also be referenced "in your talking points to raise with Secretary Pena." (Id.)

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(S) On September 26, 1997, SA [REDACTED] spoke with [REDACTED] and [REDACTED] advised that [REDACTED] had told [REDACTED] "that the subject's clearance might be pulled." (AQI 5542)

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(S) On September 29, 1997, SA [REDACTED] spoke with SSA [REDACTED] and was given the following guidance regarding Wen Ho Lee:

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(S) [I]f DOE needs to do something regarding Lee Wen-Ho, it is our position, that we will support their decision. DOE does not need the FBI's approval to take action. SA [REDACTED] should not allow DOE to use the Kindred Spirit case as an excuse for not taking action regarding the movement of Lee Wen-Ho or the removal of his clearance. If [REDACTED] calls SA [REDACTED] to tell him what action they are taking against Lee Wen-ho and then inquires as to what SA [REDACTED] thinks, or if it is okay with SA [REDACTED] SA [REDACTED] will tell [REDACTED] that he supports any action DOE decides to take against Lee Wen-Ho.

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(S) Per SSA [REDACTED] at one time the FBI did tell DOE not to pull Lee Wen-ho's clearance, but the circumstances have now changed and this is no longer the FBI's position.

(AQI 5532; see also AQI 5535-5538)⁸⁹⁴

(u)

(S) On September 29, 1997, UC [REDACTED] and SSA [REDACTED] met with [REDACTED] of DOE's Counterintelligence Division. [REDACTED] told SSA [REDACTED] that "DOE was looking into ways to limit subject's access to classified information." UC [REDACTED] recounted to [REDACTED] Director Freeh's "take that right off the table" comment. [REDACTED] advised [REDACTED] Director Freeh emphatically told DOE that it needed to immediately come up with a plan to stop the suspected PRC access to the labs, and that this case should be taken 'off the table' in deciding what they should do, i.e., do not use our investigation of this subject for not addressing the larger PRC problem." (FBI 1125)

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(S) SSA [REDACTED] also memorialized this conversation with SA [REDACTED] "AQ was advised by [REDACTED] that it is DOE's equities which are at risk here, that they have to decide on their own what they must do to protect them, and that we will support whatever they wish to do. Under no circumstances is AQ to let the lab or DOE HQ use our investigation of subject as an excuse to do nothing. AQ was advised the Director told DOE to take this case 'off the table.'" (FBI 1126)

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According to SSA [redacted] write-up of this meeting, [redacted] advised that their "inquiries DOE b6, about possible steps" to be taken should be completed "in a week or so." (Id.) b7c

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(S) On September 30, 1997, [redacted] met with Trulock and [redacted] and was told that Deputy Secretary Moler still "didn't get [the] picture," even after the Director's admonishment. She "will prob[ably] want Bureau to be [the] thugs." (FBI 20855)

(U) (S) On October 15, 1997, SA [redacted] met with [redacted] DOE discuss the Wen Ho Lee investigation. According to SA [redacted] EC: b6, b7c

(U) (S) [redacted] advised that in his present position, Lee Wen-Ho is not working on anything new. [redacted] does not think Lee Wen-Ho should be moved from his present position and does not think Lee Wen-Ho's clearance should be taken away. SA [redacted] agreed to pass [redacted] opinion along to SSA [redacted] FBI HQ. DOE b6, b7c

(U) (S) SA [redacted] advised [redacted] regarding Levy's official position in reference to the movement of Lee Wen-Ho or the removal of Lee Wen-Ho's clearance. SA [redacted] advised [redacted] that the FBI will support whatever decision is made by the Department of Energy. DOE b6, b7c

(AQI 1537)⁸⁹⁶

(U) [redacted] has also documented his recollection of this meeting between DOE b6, b7c himself and SA [redacted]. On April 16, 1999, he sent an e-mail to LANL Director Browne which reads, in its entirety, as follows:

⁸⁹⁵ (U) (S) There is no indication that anything came of such "inquiries about possible steps."

⁸⁹⁶ (U) On October 20, 1997, SA [redacted] "advised" [redacted], as well, of the DOE b6, b7c FBI's new position on Wen Ho Lee's access and clearance. (AQI 5529)

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(S) On October 15, 1997 [REDACTED] FBI, Albuquerque, asked to meet with me. [REDACTED] was out of the office that day and [REDACTED] said that he needed to talk to one of us about the subject of Kindred Spirit. I met with [REDACTED] in [REDACTED] office. [REDACTED] told me that he was told to tell me that the FBI's official position regarding the subject's access had changed. He said that the FBI would not stand in our way if we wanted to remove the subject from his current access or remove his clearance. I asked [REDACTED] if doing either would limit his options to solve the case and he said yes, but he would live with whatever we decided to do. I told him that since the case against the subject was weak, that I preferred not to limit the FBI's options. I believed that we should stick with the decision that we had made in April 1997 to not let the subject have any new access. That agreement was reached with the concurrence of the subject's management, [REDACTED] from DOE [REDACTED] and [REDACTED]

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(u)
(S) Today (April 16, 1999) I talked to [REDACTED] to get the date of the October 15 meeting. He told me that [REDACTED] FBI/Headquarters called him on September 29, 1997 and told him to tell me that the FBI position had changed and that they would "no longer stand in our way" if we wanted to remove the subject from access or remove his clearance. This of course implies that the FBI previously opposed removing the subject from access because it would limit their options. I asked [REDACTED] if he was told to tell us to remove the subject's access, and he said "heavens no." He was just told to tell us that they would not object to doing it. [REDACTED] also said that he and I discussed how we could justify removing the subject from access, and both of us believed that at that time it would have been difficult to do this.

(DOE 2852) [REDACTED] told the AGRT that, after SA [REDACTED] told him the FBI would not stand in his way if DOE wanted to remove Wen Ho Lee's access, [REDACTED] asked SA [REDACTED] what had changed. SA [REDACTED] said nothing had changed. [REDACTED] recalled believing that this was FBI-AQ's decision and was not aware that this direction came from the FBI Director himself. ([REDACTED] 9/15/99)

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(u)
(S) On October 15, 1997, SA [REDACTED] spoke by telephone to SSA [REDACTED]. He told SSA [REDACTED] that [REDACTED] "does not want to move subject or take clearance away." DOE b6, b7c (AQI 5526) Several days later, on October 23, 1997, SA [REDACTED] drafted an EC to document his communication of this information to SSA [REDACTED] (AQI 5522)

(u)
(S) On or about October 15, 1997, a set of "Talking Points" was provided to Director Freeh for a meeting which the Director and DCI Tenet held with Secretary Pena that day to discuss DOE counterintelligence reforms. The "Talking Points" included the following statement:

(u)
(S) Before we get into our specific proposals, we want to stress with you the importance of taking immediate action, if not already done, to prevent any further damage by the "Kindred Spirit" subject with his current access to sensitive computer codes. As noted in previous discussions, the FBI investigation should not prevent you from taking whatever actions you think appropriate to remove him from his current position and access to sensitive programs.

(FBI 20942) [REDACTED]

Deputy Secretary Moler told the AGRT that she was aware that [REDACTED]

(Moler 3/8/00)

(u)
(S) On October 15, 1997, Director Freeh and DCI Tenet met with Secretary Pena and other DOE personnel. In accordance with the Talking Points, Director Freeh raised the access issue again concerning the "Kindred Spirit" investigation.⁸⁹⁷ (Freeh 11/11/99)

⁸⁹⁷ (S) Although both Trulock and [REDACTED] also recall the Director raising the issue at the October 15, 1997 meeting with Secretary Pena; neither Secretary Pena, nor his chief of staff, Elwood Holstein, remember the issue coming up at this meeting. [REDACTED] Trulock 10/12/99; Pena 3/15/00; Holstein 3/29/00) Deputy Secretary Moler said she "can't say yes and can't say no" as to whether the access issue came up at the meeting. (Moler 3/8/00)

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

(S) Also on October 15, 1997, SC Dillard sent a note to AD Lewis, responding to an inquiry from AD Lewis concerning the "job and access" of Wen Ho Lee and Lee's PRC student, [REDACTED] (FBI 7642) As to Wen Ho Lee, Dillard wrote the following:

- (W) (S) Lee "has had virtually uncontrolled access to all of our nuclear designs."
- (W) (S) In July 1996, Los Alamos instituted "access controls over the vault containing the designs so as to restrict access to only those lab employees who have a specific need to see a particular design."⁸⁹⁸

(W) (S) This statement was incorrect, but the FBI did not know that. Vault controls had been considered but never implemented. Hecker told the DOE OIG that a proposal for a palm reader to limit access to the vault, and to exclude Lee from such access, was never implemented. (DOE 2648) This was confirmed to the DOE OIG by [REDACTED] (DOE 2512) In a letter to Secretary Richardson from LANL Director John Browne, dated March 30, 1999, Browne gave the Secretary the following explanation:

(W) (S) In 1996, the X Division attempted to implement cost saving measures as part of the Laboratory-wide effort to reduce overhead cost. One proposal was to install an electronic access control (palm reader) in the X Division vault to replace two individuals employed as vault custodians. The request for installation of a palm reader required DOE approval. This independent effort by X Division was identified by the CI office as a means to further limit Wen Ho Lee's access to classified information without arousing his suspicions to the ongoing FBI investigation. Part of the CI approach was to reduce overall the number of individuals in X Division who were authorized for vault access. Wen Ho Lee was to have been included in the list of individuals slated to be denied vault access. The request for a palm reader was denied by DOE. This meant that the two vault custodians continued to oversee vault security. It is important to note that the individuals at LANL and in DOE who were involved in the original plan to install a palm reader were unaware of the security concerns regarding Wen Ho Lee.

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- b1 | • (u) (S/NF/RD) Lee now plays a "key role" in [REDACTED]
- (u) (S) Lee "has had access to everything since 1978, but there have been no new designs since 1988."
 - (u) (S) When "we discussed LEE's continued access with the lab in July, 1996, the lab agreed that there was nothing new going on about which they needed to be concerned."
 - (u) (S/NF/RD) The "matter of [Lee's involvement in] the new, safer, W-88 design has, at our urging, been considered by DOE HQ and the lab. We were advised just this morning that Lee's supervisor has reviewed options to limit LEE's access, and has concluded that any change at this time is pointless. Lee has known all about the most critical design information since 1988, and the new project does nothing to enhance the weapon."

(u) (S) Thus, by the end of October 1997, the FBI knew that DOE had no plans or intention to alter Lee's access or clearance. The FBI knew, therefore, that all that had really been achieved by the Director's statement was to shift responsibility for keeping Lee in access from the FBI to DOE. That, of course, did not alter the fact that Lee's status remained unchanged. Why didn't the FBI take further action? First, it was DOE's decision, not the FBI's. Wen Ho Lee may have been the subject of an FBI *investigation* but he was a DOE *employee*. Second, the FBI, like DOE itself, continued to fail to appreciate that the key issue was not principally what Lee was *working* on but what he had *access* to. And, finally, the FBI agents running and supervising this investigation still did not want Lee to be alerted to the existence of the investigation, see, e.g., the December 1997 teletype, which was a genuine possibility if Lee's access was altered.

(DOE 2746-2747) Browne's letter goes on to state that the two vault custodians did not recall providing Lee access to the vault and the logs of vault access, maintained since 1996, did not reflect such access. (Id.) DOE records confirm that there were two requests submitted to DOE for the palm reader, one in June 1996 and one in October 1996. Both were denied. (DOE 2853-2857)

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They would dutifully and explicitly advise their counterparts at LANL and DOE that the Director had given DOE a green light to take such action as DOE deemed necessary, but they were not going to push this particular car through the intersection.

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(u)
(S) On July 23, 1998, SC Dillard and UC [REDACTED] presented a briefing to Congressman Norm Dicks, Ranking Member of the House Permanent Select Committee on Intelligence ("HPSCI"). The "Kindred Spirit" investigation was described. According to a memorandum written by UC [REDACTED] Congressman Dicks "inquired whether the subject still had access to sensitive or classified information, whether he had been recently polygraphed by the FBI, and whether he could inflict any damage (sabotage) to the lab programs in which he is currently involved." (FBI 1330)

(u)
(S/NF) SC Dillard and UC [REDACTED] told Congressman Dicks that the "subject" is currently involved "in maintenance activities" and "stockpile stewardship" efforts at the lab where he is employed and that he "still has access to sensitive and classified information." No FBI polygraph of Lee had been conducted in order "to avoid any alerting activity." Then the Congressman was told: "There is no indication based on current investigation that the subject has done anything consistent with the predicated allegation (i.e., conducted additional unauthorized disclosures of classified information during the current investigation)."⁸⁹⁹

(u)
(S) On September 11, 1998, SA [REDACTED] interviewed [REDACTED] again, Lee's [REDACTED] stated that Lee was still working on a project involving Legacy codes. According to SA [REDACTED] FD-302 of the interview, "In general, Lee is not working with information that he did not work with in the past. In general, Lee is not in a position to do more damage." Lee was "not working on anything unique right now. Lee is not working on breakthrough or revolutionary information." (AQI 1901)

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⁸⁹⁹ (u)
(S/NF) As the recent Indictment of Lee alleges, Lee had engaged in additional conduct "consistent with the predicated allegation" since the investigation had been opened, in particular, the creation of "Tape N" in 1997. This was, of course, not discovered until 1999.

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(u)
(S) On December 15, 1998, Curran and members of his staff met with SC Middleton, UC [REDACTED] SSA [REDACTED] and other FBI personnel, concerning the Wen Ho Lee investigation. The FBI advised Curran that a second FISA request was "coming up." Curran also learned for the first time of Director Freeh's "take that right off the table" comment.⁹⁰⁰ SSA [REDACTED] an FBI detailee to DOE, made notes of the meeting, indicating that in 1997 the Director told DOE to "do what is necessary" and "not to use FBI as the excuse," but "nothing" had changed. (DOE 3985) Curran understood what he was being told: "Now it's my responsibility." (Curran 2/9/00)

(u)
(S) On December 16, 1998, DOE, FBI and CIA witnesses testified before the Cox Committee, including Trulock, Curran, UC [REDACTED] SC Middleton and others. Curran's reaction to hearing UC [REDACTED] testimony concerning Wen Ho Lee was "Oh my God. I had been told that Wen Ho Lee was working on old codes. [Now I was] finding out that he had access to X Division safes, computers" and that "the guy could still do a great deal of damage." (Curran 8/31/99; Curran 2/9/00)⁹⁰¹ His reaction was: "We're getting him out of access." (Curran 8/31/99)

(S) On December 16, 1998, Curran sent a memorandum to Secretary Richardson reporting on the December 15th meeting with the FBI. He told Secretary Richardson that

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(S) [REDACTED] a retired FBI agent who worked for Curran, was also at this meeting. [REDACTED] said that SC Middleton or UC [REDACTED] "casually mentioned" that "you know, the Director said you could take him out any time you want." Curran's reaction was: "What?" [REDACTED] 2/23/00)

⁹⁰¹ (u)
(S) We should note that Curran does not necessarily agree with the AGRT's dating of these events. He indicated that he thought the meeting where he learned of Director Freeh's "take that right off the table" comment was in October. Based on SSA [REDACTED] notes, and the AGRT's review of FBI records, we believe it occurred on December 15, 1998. (See also [REDACTED] 2/23/00) Curran also indicated that the Cox Committee hearing where he learned of the true nature of Lees' access was in November 1998. There was a briefing to the Cox Committee staff by SC Middleton and UC [REDACTED] on November 16, 1998, see FBI 11553, but the AGRT believes the hearing to which Curran is referring occurred on December 16, 1998. See generally, FBI 11553, EAT 187, DOE 2382.

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the FBI was going to apply to the FISA Court and, whether or not it got a FISA order, "the FBI plans to conduct a confrontational interview of LEE to conclude this investigation." (DOE 2383) Curran wrote a note on the memorandum advising Secretary Richardson that he and [REDACTED] needed "to discuss options with you concerning this case at your earliest opportunity, especially after our testimony on the Hill." (Id.)

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(u) (S//NF//RD//UC) On December 17, 1998, according to a document provided to the AGRT by the DOE OIG, [REDACTED] Secretary Richardson, [REDACTED] sent the Secretary a memorandum recommending that Lee be fired. The memorandum included the following comments:

- (S//NF//RD//UC) "Since 1945 the FBI has suspected Mr. And Mrs. Wen Lee (codename: Kindred Spirit) are Chinese agents. [REDACTED]"

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This disclosure is the basis of the entire Notra Trulock brief which has incited the Cox Committee."

- (u) (S) "The Cox Committee is seized with this, the case and the slow response will be a big part of their final report. If you took bold action on this case soon it would be great evidence to them that you are fixing this problem."

(S) [REDACTED] recommended that Secretary Richardson "[c]all Freeh and tell him you are going to fire Kindred Spirit. He returns from his trip 12/21 and will walk into the confrontational interview with the FBI. He will then know he is made. He can legitimately be fired for not reporting foreign travel, [REDACTED] and lack of candor in previous counterintelligence interviews. This will show [th]a[t] you are getting rid of dirt, and your new counterintelligence plan has teeth." (DOE 2589-2591)

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(u) (S) On December 18, 1998, UC [REDACTED] and SSA [REDACTED] met with Curran and his staff to discuss what to do in the immediate future about Wen Ho Lee. According to UC [REDACTED] notes, Curran wanted the matter resolved "before the Cox Committee report comes out." (FBI 11948, 20325) A note was sent to Director Freeh which indicated that "DOE Counterintelligence advised they wanted to try and neutralize their employee's

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access to classified information prior to the issuance of a final report by the Cox Committee." (FBI 7721-7723)

(u)

(S) On December 21, 1998, Curran sent a memorandum to Secretary Richardson containing talking points for an anticipated telephone conversation between Secretary Richardson and Director Frech. He advised the Secretary that DOE intended to interview Lee "before the end of this calendar year" and offer him a voluntary polygraph. If he refused, "his security clearance will be removed and steps will be initiated to terminate his employment." If he agreed, but did not "pass" the polygraph, "his clearance will be removed and termination proceedings will be initiated." (DOE 3570)

(u)

(S) On December 23, 1998, Lee was interviewed and polygraphed by DOE and its contract polygrapher, Wackenhut. Wackenhut "passed" Lee, a prospect that Curran, according to the FBI, had not anticipated. See Chapter 17.

(u)

(S) On December 24, 1998, Wen Ho Lee was removed from X Division and placed in T Division, where he would not have access to classified material. Rush Inlow, Deputy Manager of the DOE Albuquerque Operations Office, sent a memorandum to LANL Director John Browne requesting that Lee be "immediately" reassigned out of X Division, that Lee would retain his security clearances, and that the action was expected to remain in effect for a maximum of 30 days. (DOE 2670)

(u)

(S) On December 29, 1998, Curran sent a memorandum to Secretary Richardson describing the events of December 23 and 24, 1998. Secretary Richardson was told that Lee had been "administratively reassigned" to T Division, which involved unclassified work, and that this action would remain in effect for a maximum of 30 days. (DOE 2378)

(u)

(S) On January 12, 1999, AD Gallagher sent a note to Director Frech, which read in part:

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(u)
(S) DOE is anxious to avoid criticism about the case. It removed the subject's access to classified information on December 23, 1998. DOE counterintelligence is pushing the FBI to interrogate the subject this month. DOE wants to fire the subject, but may not have justification to do so at this time.

(FBI 1468)

(U) On January 17, 1999, Lee was interviewed by SA [REDACTED] and SA [REDACTED] and, on January 21, 1999, Lee gave the agents a signed statement. See Chapter 17.

(u)
(S/NF) On January 22, 1999, FBI-AQ sent an EC to FBI-HQ, which was based on the assumption that Lee had "passed" the DOE polygraph and which concluded with a "SAC Analysis" stating, in part, that "[b]ased on FBI AQ's investigation it does not appear that Lee is the individual responsible for passing the W-88 information." (FBI 1515)

(u)
(S) On February 2, 1999, Curran sent a memorandum to Secretary Richardson advising him that based on Lee's passing of the DOE polygraph and the January 17, 1999 FBI interview, Lee would be returned to his former duties. (DOE 2371) That same day, Inlow, the deputy manager of the DOE Albuquerque Operations Office, signed a memorandum to LANL Director Browne terminating DOE's "request for temporary reassignment." The memorandum advised Browne: "You may return him to his normally assigned duties." However, later that same day, SC Middleton advised Curran that the FBI Polygraph Unit had concluded that Lee had *not* passed the DOE polygraph. Lee was not placed back in access.

(u)
(S) On February 10, 1999, SA [REDACTED] polygraphed Lee and concluded that he was "inconclusive" as to two questions and "deceptive" as to the other two. See Chapter 17.

(u)
(S) On February 17, 1999, Curran met with UC [REDACTED] and SSA [REDACTED]. According to UC [REDACTED] notes, "Curran wanted to know if FBI would approve Lee being suspended/fired." Given the need for further questioning of Lee, and the fact that he had already been removed from access, UC [REDACTED] said: "No!" (FBI 11906, 20366)

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(u)
(S) On February 18, 1999, John Browne, the Director of LANL requested that Lee's Q clearance be "temporarily suspended" until investigation by appropriate agencies is completed. (DOE 1160)

(u)
(S) On February 19, 1999, according to a document provided to the AGRT by the DOE Office of Inspector General, the [REDACTED] sent a note to the DOE Secretary, advising him that Lee had failed the polygraph, that his clearances "are pulled and he is out of access" and also advising the Secretary that the "FBI does not want us to fire him yet." (DOE 2592) DOE
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(u)
(S) On February 22, 1999, [REDACTED] DOE Albuquerque Operations Office, recommended to the manager of the office that Lee's Q clearance, granted in 1978, be "immediately suspended" pending resolution of concerns regarding "his continued eligibility for access authorization."⁹⁰² (DOE 198) That recommendation was immediately approved. (DOE 195) DOE instructed LANL that same day to "take immediate action" to obtain Lee's access authorization (security clearance badge) and to reassign him to "activities not involving access to classified information or special nuclear material." DOE
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(u)
(S) On February 23, 1999, SC Middleton sent a memorandum to Curran confirming UC [REDACTED] statement to Curran of February 17, 1999 concerning the FBI's opposition to Lee being fired at that time. SC Middleton noted that it anticipated conducting further interviews of Lee and that "Lee remains cooperative in the belief that his access, which is presently suspended, will be restored to him." The FBI's position was that since Lee's "continued cooperation in our investigation is vital, we ask that his

⁹⁰² (u)
(S) The reason cited for this action was that "information in the possession of the U.S. Department of Energy (DOE) indicates that Mr. Wen Ho Lee has committed, prepared or attempted to commit, or aided, abetted or conspired with another to commit or attempt to commit any act of sabotage, espionage, treason, terrorism, or sedition." (DOE 197) Specifically cited were: (1) "Information in the possession of the DOE indicates that Mr. Wen Ho Lee has provided sensitive and classified information to a sensitive foreign country." (2) "He failed a polygraph examination conducted by the Federal Bureau of Investigation (FBI) on February 10, 1999." (Id.)

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employment not be terminated at this time." SC Middleton noted that "[c]ontinued suspension of his Q clearance and access will both give Lee a reason to continue to cooperate, while simultaneously insulating the laboratory from any further loss." (FBI 1596)

(U) On February 26, 1999, Lee received formal notice of the suspension of his Q clearance. (DOE 194, 1293, 179)

(U)
(S) On March 5, 1999, Lee was interviewed by the FBI and signed a consent form to search his LANL office.

(U)
(S) On March 7, 1999, Lee was interrogated by the FBI.

(S/NF) On March 8, 1999, Curran and Joseph Mahaley, Director of DOE's Office of Security Affairs, sent LANL Director Browne a memorandum advising him that Secretary Richardson "recommends termination of SUBJECT's employment at LANL as soon as possible." This recommendation was based on three factors: (1) Lee took an unauthorized trip to Hong Kong in 1998; (2) [REDACTED]

b1 | [REDACTED] and Lee did not report this "intelligence solicitation" to DOE or the FBI, as required; and (3) Lee "failed" both the DOE and FBI polygraphs. (FBI 1609)

(U) And, finally, on March 8, 1999, LANL fired Lee. Four grounds were cited: (1) failure to properly notify LANL or DOE personnel about "your contact with individuals from a sensitive country"; (2) failure to properly mark and store some classified view graphs; (3) keeping his classified password in an inappropriate location; and (4) engaging "in an apparent effort to deceive Laboratory management about these and other security issues." (DOE 1072)

C. (U) Discussion

(U)
(S) From May 30, 1996 until December 24, 1998, DOE did not take a single significant step to limit Wen Ho Lee's access to our nation's most sensitive nuclear secrets. For approximately half that time period, it is fair and appropriate to hold the FBI principally responsible for decisions, and non-decisions, which had potentially

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catastrophic consequences. For the other half of that time period, DOE must clearly shoulder the blame. And *blame* is the proper terminology because the mishandling of this critical issue by both DOE and the FBI was unfortunate in the extreme.

(U) First, the consequences:

(S//~~DF~~FOUO) For two-and-a-half years, Lee had unrestricted access to the X Division's highly classified computer systems. [REDACTED]

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[REDACTED] In April 1997, while DOE was maintaining Lee in access *at the specific request of the FBI*, Lee created what is described in his Indictment as "Tape N." This tape is now viewed by the FBI as constituting one of the most sensitive downloads of critical nuclear weapons secrets.⁹⁰³

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[REDACTED] 9/11/99)

(U)
(S//NF) For two-and-a-half years, Lee also had unrestricted access to the X Division's vault, repository of 50,000 classified documents. That the custodians do not remember Lee visiting the vault does not mean he did not do so. More important, it certainly does not mean that there was anything to *prevent* him from doing so.

(U)
(S) For two-and-a-years, Lee was free to work within the confines of the guarded gates of LANL, and within the even more exclusive confines of X Division, and then take trips to sensitive foreign countries, such as Taiwan, which he visited twice during this time period. Indeed, during his March 1998 trip to Taiwan - a trip neither DOE Counterintelligence nor the FBI knew he was even taking until he was already gone - he accessed LANL's computer system from overseas.

⁹⁰³ (S)
(S) According to the Indictment, this tape contains several [REDACTED] source codes and input decks, including the complete source code for the current version of the most up-to-date primary weapon design code. (Detention hearing 12/13/99, Tr. 11) Such "source codes," according to Stephen Younger, LANL's Associate Laboratory Director, "represent, in essence, a graduate course in nuclear weapons design." (Id.) Tape N also contained input decks for this code. An input deck contains "[a]ll the materials and the geometry of the nuclear device." (Id.)

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(S) Nor were these consequences, in any respect, *unanticipatable*. Lee, after all, was an expert on nuclear weapons computer codes. He was, as one DOE official told the FBI, "quite sophisticated" on the LANL mainframe.

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How could the FBI and DOE *not* have perceived LANL's most sensitive secrets to be at risk from this individual?

(u)
(S) Second, the FBI's *reflexive* assumption that Wen Ho Lee absolutely had to retain his *clearance* and his *access*, in order for the FBI to make its case, was wrong.

(u)
(S) It was wrong, in particular, because there was *never* a serious consideration of non-alerting alternatives. Trulock wrote about it in his memorandum of May 25, 1996 but nothing came of it. [redacted] wrote of it in his e-mail of April 22, 1997 to [redacted] but, DOE b6, b7c again, nothing came of it. The matter came up on other occasions as well and, each time it surfaced, it just as quickly faded away.

(u)
(S) It is clear that neither the FBI nor DOE made any genuine effort to come up with an alternative to maintaining Lee's current level of access. Those alternatives could have been special unclassified and entirely *legitimate* projects. It could have been special unclassified and entirely *contrived* projects, essentially makework, that could have kept Lee busy and our country out of harm's way. The possibilities may not have been endless, but there *were* possibilities: Lee could have been transferred to a division that did not do classified work and for which he would not require access to classified material; Lee could have been assigned to some form of teaching responsibility, or given an administrative job. This was not a failure of creativity or imagination, for that presumes the matter was at least seriously contemplated and seriously pursued. It was not.

(S) It was also wrong because the FBI, in its insistence that Lee be maintained in his current clearance and current access, had no idea what the *implications* of that request might truly be. One is struck, for example, by SSA [redacted] casual dismissal of the consequences. [redacted]

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The *point* was to keep Lee from downloading them to give to a foreign country. The *point* was to keep Lee from

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retrieving them and refreshing his recollection about complex codes he had not worked on in years. The *point* was to keep Lee from compromising sensitive codes he may not have compromised in the past despite his access to them.⁹⁰⁴ The *point* was that SSA

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[redacted] - who, after all, would erroneously state in the FISA LHM [redacted]

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Nevertheless, that did not stop the FBI from insisting, at least until August 1997, that Lee's access remain untouched. Its *immediate* concerns were understandable: it did not want DOE to take a step it feared might "seriously hamper[]" the investigation. But its *long-term* concerns - protecting the United States' *other* nuclear secrets - should have been a critical part of the calculus in determining what to do with Wen Ho Lee.

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(S) Third, the FBI, and even DOE, operated on the erroneous presumption that just because classified information was dated, its importance was diminished. Repeatedly, the participants in this investigation talked about how Lee was just working on "old" codes, as if he picked them up at a thrift shop. This not only minimized the significance of the codes but it ignored an obvious and critical question: "Old" to whom? For the United States, these codes might well be "old" but Lee, after all, was not suspected of committing espionage for the United States. Where was the analysis examining how valuable these "old" codes might be to the PRC?

(S/DP/AF/UC) To put it another way, throughout this report we have criticized the FBI's failure to grapple with the *substance* [redacted]

[redacted] This failure impacted on the access decisions as well. The

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⁹⁰⁴ (S) In July 1996, the FBI told DOE that "Lee has had access for ten years, so firing him would not do much now." - That presumes a fact very much not in evidence, i.e., that Lee had *already* compromised *everything* he could compromise.

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⁹⁰⁵ (S) It is not clear that DOE did either. According to an e-mail [redacted] sent [redacted] on October 14, 1997, the understanding reached at the April meeting to which SSA [redacted] was also referring was that "[i]t was agreed to keep the individual in question away from new codes and design work. He is only maintaining an old code, which he helped write. Both [redacted] and Hecker believe this is sufficient given what we know now." (DOE 2396)

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FBI should never have been asking DOE to leave Lee *where he was* without an understanding of what it really meant to be *where he was*.

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(S) Fourth, and equally disturbing, was the FBI's and DOE's failure to make the critical distinction between what Lee *worked* on and what he had *access* to.

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(S) Lee might be working on "old" codes, and codes he had helped write, but what he had access to was a far different matter. What he had access to in the vault, for example, was 50,000 classified documents. What he had access to on the computer was *everything* to which other X Division employees had access.

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(S) Why would the FBI or DOE have thought that this "candidate spy," as Deputy Secretary Curtis characterized him, would limit his espionage activities to those matters on which he was *actually* working? Productive spies are often productive precisely because they do *not* limit themselves to the matters upon which they are themselves working. Repeatedly, and throughout this investigation, actual *work* and actual *access* were confused, and the latter was virtually ignored. DOE and the FBI reassured themselves by talking about what Lee was working on, rather than what they should have been talking about: *What did he have the ability and access to steal?*

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(S) That is not to say that Lee's current activities were irrelevant; obviously, to the extent that Lee was "steered" toward theoretical and unclassified work, he was likely to encounter *less* classified material. But that is an exceedingly small point compared to the huge one looming just behind it: *All* of X Division's files that Lee could access from his computer or in the vault were at risk of being compromised.

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(S) Fifth, there was the FBI's failure to consider as part of the access equation the significance of the fact that it did not have any FISA coverage or monitoring of Wen Ho Lee. In reality, the FBI had no idea what Wen Ho Lee was doing. It could ask a supervisor to keep an eye on Lee, but these supervisors were scientists, they were managers, they were individuals with projects of their own. That Lee would, in March 1998, fly off to Taiwan, indeed fly off to Taiwan *after* consulting the LANL computer help desk about how to gain access to LANL's computer system from overseas, and

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neither LANL's CCIOs nor the FBI would know about it, pretty much says all that is necessary to say about the efficacy of the FBI's effort to have LANL personnel monitor Lee's activities.

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(S) With FISA coverage, the risk of damage was diminished because the FBI could monitor and surveil Lee's activities. It would know who he talked to and what he said, what faxes he sent or received, who he e-mailed or got e-mail from, and so on. If Lee was engaged in misconduct, the FBI would almost certainly see it coming and could take appropriate action.

(S) Without FISA coverage, the FBI was essentially conducting this investigation in the blind. It had no genuine idea what Lee did at work, what he did at home, who he spoke with by telephone, and who he communicated with by computer. And, while it might be the case that *some* measure of protection could be afforded through surveillance and other means, this was an office that would not even mount surveillance for [REDACTED]

[REDACTED] How was it supposed to keep an eye on Lee for two-and-a-half years? | b1

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(S) Sixth, communications between the FBI and DOE on a matter critical to national security - whether to leave Lee in access - was woefully inadequate.

(S) For example, having consulted with the FBI about placing access controls on the X Division Vault, DOE never told the FBI that those vault controls - which would have prevented Lee *entirely* from gaining access to the X Division vault - had never been put in place. As late as October 15, 1997, the [REDACTED] Section was still under the misimpression that the vault controls *were* in place, and that was the message it sent up to FBI senior management. Even within DOE, there was miscommunication on this issue. While LANL's CCIOs and DOE-HQ counterintelligence personnel clearly understood that a principal benefit of vault controls was to exclude Wen Ho Lee from access to the vault - a fact that *alone* would warrant the installation of a palm reader - no one ever told this to the DOE personnel actually charged with *approving* the implementation of such controls. It was, therefore, rejected twice. | b1

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(S/NF/RD) For a second example, in April 1997, the FBI and DOE had several opportunities critically to examine the true extent of damage which Lee posed to the

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United States. *We now know that Lee himself was addressing, in a fashion, the very same issue that month when he created Tape N.* Over the course of the month, the FBI and LANL and DOE counterintelligence personnel had several meetings with X Division's leaders. This was an opportunity for *everyone* to reach a common and accurate understanding as to the universe of classified nuclear weapons secrets to which Lee had access. The discussion focused, instead, on the nature of Lee's *next* assignment. And, even as to that, there was confusion, or at least imprecision, as to what exactly Lee would be doing. Was he simply "maintaining" an "old" code? Was he "maintaining" that "old" code for the purpose of "validating" a new code? What would Lee know about the new and safer design for the W-88? Why was [REDACTED] concerned that Lee might have contact with "weapons designers?" What did "steering" Lee toward more "theoretical" work really mean in terms of strictly limiting his classified activities?"⁹⁰⁶ This matter was far too important and, as events would prove, far too consequential, to leave these questions unexamined and unresolved.

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(S) Seventh, DOE – having acceded in 1996 to the FBI's firm request not to alter Lee's access to classified information – essentially ignored Director Freeh when he explicitly *withdrew* that request in 1997.

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(S) In the Spring of 1996, DOE and LANL senior management *wanted* to take action to limit Lee's access to nuclear secrets. DOE and LANL were *dissuaded* from doing so at the request of the FBI. Now, in August 1997, the FBI, in the person of the Director, himself – the highest authority within the FBI – was telling DOE that this request was "off the table." *Deputy Secretary Moler should have gone back to DOE and caused Lee's access to be withdrawn that same day.* It might take longer to deal with Lee's security clearance, but the access issue was different. Lee's access to the X Division's computer, the X Division's files, the X Division's vault, and the X Division,

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(S) SA [REDACTED] would later write the following, based on a September 1998 interview with [REDACTED] "In general, Lee is not working with information that he did not work with in the past. In general, Lee is not in a position to do more damage." (AQI 1901) (emphasis added) These statements, meant to be reassuring, are in fact alarming. If Lee was not in a position to do more damage, *in general*, did that mean he was in a position to do more damage, *in particular*?

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itself, could have been terminated that very day. After all, Lee had no *right* to the United States Government's most sensitive nuclear secrets. Access to this information was a *privilege* that had been afforded to Lee and which could have been withdrawn *at any time*. If Lee complained, so be it. At least he would be complaining from *outside*.

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(S) It was true, of course, that Director Freeh had not *ordered* DOE to have Wen Ho Lee fired or removed from access. But what he did do was equally significant: He told DOE that it was free to take whatever action DOE deemed necessary to protect the national security against an individual who was the subject of an active espionage investigation and who was believed to be responsible for the compromise of the nation's most sensitive nuclear secrets. With this *green light*, DOE should have acted immediately.

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(S) Moreover, Director Freeh's statement was communicated to DOE and LANL repeatedly: (1) the Director made the "take that right off the table" statement; (2) UC [redacted] and SSA [redacted] reiterated the Director's statement to [redacted] and [redacted] of DOE's [redacted]; (3) SA [redacted] communicated the change in FBI position to [redacted]; (4) DOE received Director Freeh's Talking Points for the October 15, 1997 meeting, which contained the same message;⁹⁰⁷ (5) Director Freeh essentially repeated his statement directly to Secretary Pena at the October 15, 1997 meeting;⁹⁰⁸ and (6) SA [redacted] advised [redacted] of the FBI's "official" position on this issue. Thus, that "official" FBI position was raised at least *six* times with DOE or

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⁹⁰⁷ (S) If anything, the Talking Points were even more explicit: "[W]e want to stress with you the importance of taking immediate action, if not already done, to prevent any further damage by the 'Kindred Spirit' subject with his current access to sensitive computer codes."

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⁹⁰⁸ (S) We recognize that Secretary Pena does not have a recollection of this issue being raised at the meeting. Given the fact, however, that it is in the Director's Talking Points and the Director *does* explicitly recall bringing it up, we conclude that it was raised at the meeting.

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LANI. And, while it is true that AD Lewis *should* have sent to Trulock the draft letter repeating the FBI's position on the matter, the failure to do so in no way alleviates DOE's responsibility for *its* failure appropriately to address the matter.⁹⁰⁹

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(S) Once the Director made his "take that right off the table" statement, the burden was squarely on DOE to act. It did not act.

D. (U) Conclusion

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(S) In the course of this investigation, there were substantial time periods when the issue and problem of Wen Ho Lee's continuing access to classified nuclear weapons material simply fell off the map, as if it had *already* been resolved, instead of simply ignored.

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(S) One time period was between August 1996 and March 1997. Another was between October 1997 and December 1998. The latter time period might have continued *indefinitely* were it not for Curran's decision to remove Lee from X Division on December 24, 1998. That was the right decision, and even though it caused some problems of its own, see Chapter 17, at least DOE was finally taking the Director's "take that right off the table" statement to heart.

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(S) We recognize that these type of "access" decisions are among the most complex and difficult matters that confront a "victim" agency and counterintelligence officials. Nevertheless, what *could* have been done here was *not* done here. And what was done here was entirely, profoundly, inadequate.

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(S) The principal benefit of putting the FBI's position in writing was not to tell DOE what it already knew but, rather, to *force* DOE to deal with the issue. Director Frech's statement, alone, should have been enough to do that, but it obviously was not.

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