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- California Court of Appeal Justice Paul Turner
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- Los Angeles Superior Court Judge Carolyn B. Kuhl
- Los Angeles Superior Court Judge Michael Nash
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Mrs. BOXER. Mr. President, believe me, this is going to be a very big day for this nominee, for my friend Richard Paez. He is a good man. Before Senator SPECTER begins, once more I thank him. He has been so fair to this nominee and also to Marsha Berzon. I thank him for his strong support of these two nominees.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

REPORT ON INVESTIGATION OF ESPIONAGE ALLEGATIONS

Mr. SPECTER. Mr. President, I have sought recognition to speak about the "Report on the Investigation of Espionage Allegations against Dr. Wen Ho Lee." I have circulated this 65-page re-

port with a Dear Colleague letter today, but I think it important to speak about it on the Senate floor.

The Dear Colleague letter urges Senators to support S. 2089 which is designed to reform the Foreign Intelligence Surveillance Act to avoid the mistakes which were made in the investigation of Dr. Wen Ho Lee.

In the Wen Ho Lee matter, the FBI went to the Attorney General personally to ask for approval for a FISA warrant and was turned down. The Attorney General in August of 1997 assigned the matter to a subordinate who had no experience on FISA matters. The Attorney General did not check on the matter, and the FBI request was, therefore, rejected. The FBI then let the matter languish for some 16 months before taking any investigative action.

At that stage, the Department of Energy meddled in the matter by giving a lie detector test to Dr. Lee, representing he had passed it when, in fact, he failed it, throwing the FBI investigation off course. The FBI then gave another polygraph on February 10 which Dr. Lee failed, but there was no action taken to remove him from the office until March 8, so that he stood with access to this very important information for some 19 months.

This information was so important that, according to the testimony of Dr. Stephen Younger at the bail hearing, it could change the global strategic balance.

The legislation seeks to correct these failures by requiring the Attorney General personally to review the matter when requested in writing by the Director of the FBI, and then, if the FISA application is declined, to state in writing the reasons, which will give a roadmap to the FBI as to what to do, and then for the Director of the FBI to personally supervise the investigation and to centralize the authority of the FBI to keep the meddling of the Department of Energy illustratively out of it.

This report is disagreed with in some manner by the Department of Justice, and there is some disagreement by other Federal agencies and some Senators. But it sets out a narrative, and anybody who has a disagreement will have an opportunity to testify before the oversight subcommittee.

This legislation has been cosponsored by Senator TORRICELLI, Senator GRASSLEY, Senator BIDEN, Senator THURMOND, Senator FEINGOLD, Senator SESSIONS, Senator SCHUMER, Senator HELMS, and Senator LEAHY. There is widespread support for the legislation even though there is some disagreement as to whether the probable cause was adequate for the FISA warrant or some of the other specific statements of fact.

This report has been prepared with the exhaustive work of Mr. Dobie

McArthur. It summarizes in detail what happened on the errors of the Wen Ho Lee investigation. I am circulating it, as I say, with a Dear Colleague letter to Senators.

I think it is an important matter. It has been cleared by the Department of Justice and other agencies so that it does not contain any classified information. It can be found at my Senate website: www.Senate.gov/~Specter.

I ask unanimous consent that the Dear Colleague letter and the executive summary be printed in the CONGRESSIONAL RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,

Washington, DC, March 8, 2000.

DEAR COLLEAGUE: I urge you to support S. 2089 which would reform the Foreign Intelligence Surveillance Act (FISA) to prevent future lapses like the ones which plagued the investigation of Dr. Wen Ho Lee. Had these reforms been in effect, a FISA warrant would doubtless have been issued and major risks to U.S. national security could have been avoided.

The seriousness of Dr. Lee's downloading classified codes onto an unclassified computer was summarized at his bail hearing on December 13, 1999 when Dr. Stephen Younger, Assistant Laboratory Director for Nuclear Weapons at Los Alamos, testified:

"These codes and their associated data bases and the input file, combined with someone that knew how to use them, could, in my opinion, in the wrong hands, *change the global strategic balance.*" (Emphasis added)

While the overall investigation of Dr. Lee from 1982 through 1999 contained substantial errors and omissions by the Department of Energy and the Department of Justice, including the FBI, the failure of DoJ to authorize the FISA warrant in August 1997 and the failure of the FBI to pursue prompt follow-up investigation gave Dr. Lee a critical opportunity to download highly classified information.

The Attorney General was personally requested by ranking FBI officials to approve the FISA warrant. She did not check on the matter after assigning it to a DoJ subordinate who applied the wrong standard and admitted it was the first time he had worked on a FISA request. After DoJ declined to approve the FISA warrant request, the FBI investigation languished for 16 months (August 1997 to December 1998) with the Department of Energy permitting Dr. Lee to continue on the job with access to extremely sensitive information from August 1997 until March 1999.

Senator Torricelli summed up the situation in his February 24th floor statement supporting S. 2089:

"There was a startling, almost unbelievable failure of coordination and communication between the Department of Justice, the FBI, and the Department of Energy in dealing with this matter, and only through that lack of coordination with this matter, and only through that lack of coordination was an allegation of possible espionage able to lead to 17 years of continued access and the possibility that this information was compromised." (Congressional Record S801)

This bill would require the Attorney General to personally decide whether a FISA warrant should be approved by DoJ when personally requested in writing by the FBI

Director, the Secretary of State, the Secretary of Defense or the Director of Central Intelligence. If the Attorney General declines, the reasons must be set forth in writing.

This bill would further require the FBI Director to personally supervise the follow-up investigation to secure additional evidence/information to obtain the FISA warrant. The bill further provides that the individual need not be "presently engaged" in the particular activity since espionage frequently spans years or decades and improves the coordination of counter intelligence activities among Federal agencies.

I am enclosing for your review: (1) a copy of S. 2089; (2) a sixty-five page Report on the Investigation of Espionage Allegations against Dr. Wen Ho Lee, including a five-page Executive Summary. Circulation of this Report has been delayed until the Department of Justice including the FBI, the CIA and the Department of Energy agreed that the Report does not contain classified information.

While the Department of Justice and some Senators disagree with some of the conclusions in this Report, there has been general agreement that legislation is warranted. To date S. 2089 has been co-sponsored by Senators Torricelli, Grassley, Biden, Thurmond, Feingold, Sessions, Schumer, Helms and Leahy.

If you are interested in co-sponsoring, please contact me at 224-9011 or have your staff contact Dobie McArthur at 224-4259.

Sincerely,

ARLEN SPECTER.

REPORT ON THE INVESTIGATION OF ESPIONAGE ALLEGATIONS AGAINST DR. WEN HO LEE, MARCH 8, 2000

SUMMARY

While the full impact of the errors and omissions by the Department of Energy and the Department of Justice, including the FBI, on the investigation of Dr. Wen Ho Lee requires reading the full report, this summary covers some of the highlights.

The importance of Dr. Lee's case was articulated at his bail hearing on December 13, 1999 when Dr. Stephen Younger, Assistant Laboratory Director for Nuclear Weapons at Los Alamos, testified:

"These codes and their associated data bases and the input file, combined with someone that knew how to use them, could, in my opinion, in the wrong hands, *change the global strategic balance.*" (Emphasis added)

As Dr. Younger further noted about the codes Dr. Lee mishandled:

"They enable the possessor to design the only objects that could result in the *military defeat of America's conventional forces* . . . They represent the *gravest possible security risk to . . . the supreme national interest.*" (Emphasis added)

It would be hard, realistically impossible, to pose more severe risks to U.S. national security.

Although the FBI knew Dr. Lee had access to highly classified information, had repeated contacts with the PRC scientists and lied about his activities, the FBI investigation was inept. In December 1982, Dr. Lee called a former employee of Lawrence Livermore National Laboratory who was suspected of passing classified information to the PRC. Notwithstanding the facts that Dr. Lee denied (lied) about calling that person, admitted to sending documents to Taiwan marked "no foreign dissemination" and made other misrepresentations to the FBI in

1983 and 1984, the FBI closed its investigation in March 1984.

A new investigation was initiated in 1994 by the FBI after Dr. Lee failed in his obligation to report a meeting with a high ranking PRC nuclear scientist who said that Dr. Lee had been helpful to China's nuclear program. This contact occurred at a time when the PRC had computerized codes to which Dr. Lee had unique access. Notwithstanding good cause to actively pursue this investigation, the FBI deferred its inquiry from November 2, 1995 to May 30, 1996 because of a Department of Energy Administrative Inquiry, which was developed by a DoE counterintelligence expert in concert with a seasoned FBI agent who had been assigned to the DOE for the purposes of the inquiry.

In the 1993-1994 time frame, DoE was incredibly lax in failing to pursue obvious evidence that Dr. Lee was downloading large quantities of classified information to an unclassified system. According to Dr. Stephen Younger, it was access to that information which would eventually enable the "possessor" to "defeat America's conventional forces". DoE's ineptitude had disastrous consequences when the FBI asked DoE's counter-intelligence team leader for access to Dr. Lee's computer and the team leader did not know Dr. Lee had signed a consent-to-monitor waiver.

The most serious mistake in this sequence of events occurred when DoJ did not forward the FBI request for a Foreign Intelligence Surveillance Act (FISA) warrant to the FISA court where:

(1) The FBI presented ample, if not overwhelming, information to justify the warrant;

(2) The Attorney General assigned the matter to a DoJ subordinate who applied the wrong standard and admitted it was the first time he had worked on a FISA request;

(3) Notwithstanding Assistant FBI Director John Lewis's request to the Attorney General for the FISA warrant, the Attorney General did not check on the matter after assigning it to her inexperienced subordinate.

After DoJ's decision not to forward the FBI's request for a FISA warrant, which could have been reversed with the submission of further evidence, the FBI investigation languished for 16 months with DoE permitting Dr. Lee to continue on the job with access to classified information.

On the eve of the release of the Cox Committee Report that was expected to be highly critical of DoE, DoE arranged with Wackenhut, a security firm with which the DoE had a contract, to polygraph Dr. Lee on December 23, 1998 upon his return from Taiwan. According to FBI protocol, Dr. Lee would have been questioned as part of the post-travel interview. However, the case agents were inexplicably unprepared to conduct such an interview. Ultimately, the polygraph decision was coordinated between DoE and the FBI's National Security Division. The selection of Wackenhut to conduct this polygraph was questioned by the President's Foreign Intelligence Advisory Board and criticized as "irresponsible" by the FBI agent working Dr. Lee's case.

The FBI's investigation was thrown off course when they were told Dr. Lee had passed the December 23, 1998 polygraph which the Secretary of DoE announced on national TV in March 1999.

A review of the Wackenhut polygraph records by late January contradicted the Department of Energy's claims that Dr. Lee had passed the December 1998 polygraph; and

a February 10, 1999 FBI polygraph of Dr. Lee confirmed his failure. In the interim from mid-January, Dr. Lee began a sequence of massive file deletions which continued on February 10, 11, 12 and 17 after he failed the February 10, 1999 polygraph.

It was not until three weeks after the February 10, 1999 polygraph that the FBI asked for and received permission to search Dr. Lee's computer which led to his firing on March 8, 1999. A search warrant for his home was not obtained until April 9, 1999. Those delays are inexplicable in a matter of this importance.

The investigation of Dr. Lee demonstrates the need for remedial legislation to:

1. Require that upon the personal request of the Director of the FBI, the Secretary of State, the Secretary of Defense or the Director of Central Intelligence, the Attorney General will personally review a FISA application submitted by the requesting official.

2. Where the Attorney General declines a FISA application, the declination must be communicated in writing to the requesting official, with specific recommendations regarding additional investigative steps that should be taken to establish the requisite probable cause.

3. The official making a request for Attorney General review must personally supervise the implementation of the Attorney General's recommendations.

4. Explicitly eliminate any requirement that the suspect be "presently engaged" in the suspect activity.

5. Require disclosure of any relevant relationship between a suspect and a federal law enforcement or intelligence agency.

6. Require that when the FBI desires, for investigative reasons, to leave in place a suspect who has access to classified information, that decision must be communicated in writing to the head of the affected agency, along with a plan to minimize the potential harm to the national security. National security concerns will take precedence over investigative concerns.

7. The affected agency head must likewise respond in writing, and any disagreements over the proper course of action will be referred to the National Counterintelligence Policy Board.

Mr. SPECTER. Mr. President, how much time do I have that I am yielding back?

The PRESIDING OFFICER. The Senator has 3 minutes of his 7 minutes.

Mr. SPECTER. I only asked for 4, but I yield back the remainder of my time. I thank my distinguished colleague, Senator HUTCHINSON from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

EXTENSION OF MORNING BUSINESS

Mr. HUTCHINSON. Mr. President, I ask unanimous consent that subsequent to the UC of the Senator from California, the morning business period be extended until 5 p.m., with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HUTCHINSON. I thank the Chair.

(The remarks of Mr. HUTCHINSON pertaining to the introduction of S. 2215