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United States General Accounting Office  
Washington, DC 20548

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June 28, 2001

The Honorable Arlen Specter  
The Honorable Charles E. Grassley  
The Honorable Robert G. Torricelli  
United States Senate

Subject: FBI Official's Congressional Testimony Was Inaccurate Because He Failed to Present Certain Information That Had Been Made Available to Him About the Wen Ho Lee Investigation

This letter responds to your request that we investigate certain issues relating to information the Federal Bureau of Investigation (FBI) provided to the Congress regarding the FBI's investigation of Wen Ho Lee, a scientist formerly employed at the Los Alamos National Laboratory. In subsequent discussions with your staffs, we were requested to focus our investigation on determining whether the congressional testimony of Assistant Director Neil J. Gallagher of the FBI's National Security Division was false or purposely misleading. Mr. Gallagher testified before the Senate Committee on Governmental Affairs in June 1999 and the Subcommittee on Administrative Oversight and the Courts, Senate Committee on the Judiciary, in October 1999 regarding the FBI's investigation of Wen Ho Lee.

We provided classified briefings on the results of our investigation to Senator Specter's staff in February 2001 and to the majority and minority staffs of the Senate Select Committee on Intelligence in March 2001. Subsequently, you requested that we provide the results of our investigation to you in an unclassified letter. On June 8, 2001, we provided an unclassified briefing to the majority staff of the Senate Committee on the Judiciary.

We interviewed Mr. Gallagher regarding the testimony he gave to the Congress in 1999. We then interviewed knowledgeable senior officials of the FBI's National Security Division and Albuquerque Field Office and officials of the Department of Justice's Office of Intelligence Policy and Review and Office of the Deputy Attorney General about Mr. Gallagher's testimony. We also reviewed the hearing records and numerous classified and unclassified documents provided to the Congress by the Department of Justice, FBI, and Department of Energy. We conducted our investigation from September 2000 through February 2001 in accordance with investigative standards established by the President's Council on Integrity and Efficiency.

In brief, we found that the portion of Mr. Gallagher's congressional testimony before the Senate Committee on Governmental Affairs in which he expressed full confidence

in an Administrative Inquiry conducted by Energy<sup>1</sup> was inaccurate and misleading. Prior to his congressional testimony, Mr. Gallagher had ample opportunity to know and should have known that the FBI's Albuquerque Field Office had concerns about the Administrative Inquiry. Although we determined that Mr. Gallagher's testimony was inaccurate, we were unable to determine whether he intentionally misled the Committee. Mr. Gallagher told us that he did not lie or purposely mislead the Committee, but that he inadvertently gave incomplete testimony. Justice and FBI officials we talked with generally corroborated Mr. Gallagher's statements to us. However, we were unable to resolve an area of disagreement between Mr. Gallagher and the Counsel for Justice's Office of Intelligence Policy and Review regarding a separate matter concerning the production of documents by the FBI to the Attorney General. Mr. Gallagher and the Counsel have different recollections of the reasons Mr. Gallagher gave the Counsel for removing references to certain FBI documents from the final version of a FBI electronic communication, a copy of which Mr. Gallagher provided to the Congress.

Mr. Gallagher told us that he did not lie or purposely mislead the Senate Committee on Governmental Affairs, but that he inadvertently gave incomplete testimony before the Committee in June 1999. In his testimony before the Committee, Mr. Gallagher expressed his full confidence in Energy's Administrative Inquiry, stating that the inquiry made a compelling case for focusing the W-88 espionage investigation at the Los Alamos National Laboratory to include Wen Ho Lee. Mr. Gallagher said that following his testimony, he learned that as early as November 1998, the FBI's Albuquerque Field Office had serious concerns about the analysis made during the 1996 Administrative Inquiry. These concerns were detailed in a January 22, 1999, electronic communication from the field office to FBI headquarters<sup>2</sup> that, according to Mr. Gallagher, was included in a briefing book prepared for him prior to his testimony. In a November 10, 1999, letter to the Chairman, Senate Committee on Governmental Affairs, Mr. Gallagher explained that based on additional facts that had come to his attention, after his June 1999 testimony, he provided additional facts in order to have the record complete and accurate.

Mr. Gallagher added that he failed to read the briefing book in its entirety because he had previously received numerous briefings on this investigation and believed that he knew the facts relevant to the Committee's inquiry that day. He told us that he was aware in January 1999 that Wen Ho Lee had reportedly passed the Energy-administered polygraph examination and that the FBI's Albuquerque Field Office wanted to eliminate Wen Ho Lee as a suspect. At that time, he was also aware that the FBI and Energy were jointly considering expanding the Administrative Inquiry to include additional suspects. However, he subsequently learned that Wen Ho Lee had failed a FBI polygraph examination in February 1999 and that following that failure, Wen Ho Lee was again considered a suspect in the W-88 investigation.

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<sup>1</sup> In 1996, Energy completed an Administrative Inquiry, which (1) concluded that classified information concerning the W-88 warhead was most likely compromised at the Los Alamos National Laboratory and (2) identified Wen Ho Lee and 11 others as suspects in espionage. Mr. Gallagher told us that the Administrative Inquiry was the responsibility of Energy and that the FBI only provided assistance.

<sup>2</sup> The January 22, 1999, electronic communication from the Albuquerque Field Office to FBI headquarters has been classified by the FBI.

Mr. Gallagher concluded by saying that he now regrets not reading all the material. He said that had he read the January 22, 1999, electronic communication before he testified, his testimony would have been different. We examined the briefing book prepared for Mr. Gallagher and determined that it included a copy of the January 22, 1999, electronic communication.

During Mr. Gallagher's October 1999 testimony before the Subcommittee on Administrative Oversight and the Courts, a January 29, 1999, memorandum to the Director of the FBI was discussed. The memorandum, which was signed by Mr. Gallagher, contains a brief summary of the January 22, 1999, electronic communication and noted that Energy's 1996 Administrative Inquiry needed to be expanded to include suspects in addition to those already being investigated. Mr. Gallagher told us that this memorandum was written by a subordinate and forwarded to him through the chain of command. He said he reviewed and signed the memorandum and sent it to the Director. We confirmed that Mr. Gallagher was not the author of this memorandum. Mr. Gallagher also said that the Subcommittee was incorrect in its characterization of the memorandum as an "executive summary" of the Wen Ho Lee investigation that Mr. Gallagher had authored. He said the memorandum is in fact a "note" to the Director, which is routine in big cases. He also said that the statement in the memorandum regarding the need to expand the Administrative Inquiry did not mean that the inquiry was flawed.

We also showed Mr. Gallagher a copy of a February 22, 1999, memorandum sent to John Dion, an official in Justice's Internal Security Section, which transmitted various FBI documents, including the January 22, 1999, electronic communication from the FBI's Albuquerque Field Office. The memorandum also noted that Wen Ho Lee had failed a polygraph examination administered by the FBI in early February 1999. This memorandum, on which the initials "NJG" are written near Mr. Gallagher's name, was discussed at the October 1999 hearing before the Subcommittee on Administrative Oversight and the Courts. Mr. Gallagher told us that he had not seen this memorandum until it was shown to him during his testimony before the Subcommittee. He said that, in addition to telling the Subcommittee that he had not seen the memorandum, he testified that he did not write the initials that appear next to his name and that he did not know who authored the document. Mr. Gallagher told us that he subsequently learned that a FBI National Security Division unit chief authored the memorandum and wrote the initials. He added that transmittal memorandums such as the one discussed at the hearing are routine and that even when his name appears as the author on such memorandums, he, following standard FBI practice, ordinarily does not see them. We confirmed that the National Security Division unit chief authored the memorandum and wrote Mr. Gallagher's initials in accordance with FBI procedures.

Mr. Gallagher told us that prior to his testimony in June 1999, he did not know that any FBI unit had raised concerns about the analysis made during the Administrative Inquiry. Mr. Gallagher also said he first learned about the January 22, 1999, electronic communication in late June or early July 1999, after his June 1999 congressional testimony, during a conversation with the Special Agent in Charge of the Albuquerque Field Office. According to Mr. Gallagher, the Special Agent in Charge informed him that the Albuquerque Field Office reported its concerns about the Administrative

Inquiry in a January 22, 1999, electronic communication. Mr. Gallagher added that he then obtained a copy of this electronic communication and reviewed it.

Mr. Gallagher told us that in September 1999 after it became evident to him that there were problems with the Administrative Inquiry, he spoke to the FBI agent assigned to assist Energy in conducting the Administrative Inquiry. He said that the agent told him that he made written changes to a draft of the Administrative Inquiry in 1996 and suggested a more aggressive investigation of the original information. Mr. Gallagher told us that as a result of this conversation he determined that the agent's suggestions were ignored. He also learned that the agent did not see the final version of the Administrative Inquiry because he was no longer involved with the case after his review of the draft.

Other officials from the FBI's Albuquerque Field Office and National Security Division told us that there was a general belief that (1) the Administrative Inquiry was weak and (2) further investigation was needed to determine the extent that the information compromised was disseminated. National Security Division officials also said that it would be unlikely for Mr. Gallagher to have seen the January 22, 1999, electronic communication at the time it was received at FBI headquarters. One of these officials also told us that the January 22, 1999, electronic communication and the January 29, 1999, memorandum became less important after Wen Ho Lee failed the FBI polygraph in February 1999.

The Special Agent in Charge of the FBI's Albuquerque Field Office confirmed that he had a conversation with Mr. Gallagher during which the January 22, 1999, electronic communication was discussed. He said he was "shocked" when Mr. Gallagher told him that he had not seen the document and was not aware that there were concerns about the Administrative Inquiry.

With respect to the separate issue concerning the production of documents by the FBI to the Attorney General, Mr. Gallagher told us that after his talk with the Special Agent in Charge, he requested an outline of FBI Albuquerque Office concerns with Energy's Administrative Inquiry. Mr. Gallagher said he reviewed and made changes to two early drafts of this document before it was finalized as an Albuquerque Field Office electronic communication to FBI headquarters on September 3, 1999. Mr. Gallagher said that, among other things, he removed references in the drafts to the January 22, 1999, Albuquerque Field Office electronic communication as well as other documents from the November and December 1998 time period. He told us that he removed these references because he wanted to make a nonthreatening challenge to Energy and did not want to unnecessarily upset agency officials when they learned that the FBI was officially questioning the Administrative Inquiry. He also said he believed that the report became more focused with the references removed. Furthermore, Mr. Gallagher said that after reading the September 3, 1999, electronic communication, which raised questions about the Administrative Inquiry, Energy's Chief of Counterintelligence was nevertheless very upset with both him and the FBI.

According to the Counsel for Justice's Office of Intelligence Policy and Review, Mr. Gallagher told her during a September 17, 1999, telephone conversation that he removed the references to specific documents from the November and December

1998 time period from the drafts of the September 3, 1999, electronic communication. According to the Counsel, Mr. Gallagher explained to her that these references were removed because they were “errors in the draft” and did not exist any longer. Mr. Gallagher told us that he recalled having a conversation with the Counsel in September 1999 concerning the drafts and sent copies of them to the Counsel. According to Mr. Gallagher, (1) he has no recollection of a September 17, 1999, telephone conversation with the Counsel, (2) he did not make the statement that the Counsel attributes to him, and (3) the Counsel must have misunderstood him.

### **Mr. Gallagher’s Comments**

Mr. Gallagher reviewed a draft of this letter and said that he generally agreed with the facts presented. He told us that he believes that his testimony before the Senate Governmental Affairs Committee in June 1999 was neither inaccurate nor misleading, but, rather, incomplete. Mr. Gallagher suggested language changes and, where appropriate, we have made those changes.

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We are sending copies of this letter to the Attorney General, Secretary of Energy, Director of the FBI, and interested congressional committees. Copies of this letter will also be made available to others on request. The letter will also be available at [www.gao.gov](http://www.gao.gov). If you have any questions, please contact me at (202) 512-7455 or Assistant Director Patrick F. Sullivan at (202) 512-6722. Senior Special Agent Thomas Wiley, Senior Analyst Shelia James, and Senior Attorney Barry Shillito made significant contributions to this investigation and letter.



Robert H. Hast  
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