



UNITED STATES DEPARTMENT OF JUSTICE

Press Conference

THE HONORABLE JANET RENO, ATTORNEY GENERAL

Thursday, March 18, 1999

9:30 a.m.

P R O C E E D I N G S

(9:30 a.m.)

VOICES: Good morning.

VOICE: Good morning, Ms. Reno.

ATTORNEY GENERAL RENO: Good morning.

QUESTION: Ms. Reno.

ATTORNEY GENERAL RENO: Yes, sir.

QUESTION: In light of the government-ordered study that was released yesterday on the medical uses of marijuana, should Federal law, which criminalizes the medical use of marijuana, be amended?

ATTORNEY GENERAL RENO: I think what that study -- and I have not had a chance to read it completely, but what it indicates is that there should be tests, that we cannot tell from anecdotal information, about the true circumstances regarding the medical use of marijuana, and that it is important that tests be done in an appropriate manner.

QUESTION: But, in the meantime, thousands of terminally ill people are technically felons because they use what they believe is a substance that helps relieve their pain, or alleviates some of the symptoms, simply because of the Federal law.

ATTORNEY GENERAL RENO: We have a number of situations involving medical crises, where decisions have to be made. And in those situations, the testing can give the information that provides the medically sound approach.

QUESTION: There is certainly an implication, however, that while testing should be looked at to find an alternative delivery vehicle -- this is the study by UPS -- there was some evidence that, for people who had terminal diseases -- cancer, AIDS -- for whom relief was part of the preeminent issue, that smoking marijuana might be preferable. Given that, pending any change in the law, which is up to Congress, has there been any thought to how the administration enforces the law, especially in those States that have already enacted medical marijuana laws?

ATTORNEY GENERAL RENO: As I indicated, I have not had a chance to read it. I am looking forward to a discussion concerning what the next step should be. And I think this is an important report for us to focus on, and to figure out what is the next step, what is the appropriate step.

QUESTION: So, what do you do now, from the Justice Department's end of things? What are the --

ATTORNEY GENERAL RENO: I read the report.

QUESTION: And then, would there be a task force who will be assigned to that?

ATTORNEY GENERAL RENO: That will depend on what the report says to me and what the recommendations are I receive from those who have been working on the issue.

QUESTION: Ms. Reno, yesterday, during the independent

counsel hearing in the Senate, you were asked about whether you could give specifics about specific past independent counsels and things about how the law worked in the past that you did not like, and you said you would rather not. Will there come a time when you think you will be able to answer that question for Congress? Or is it your view that it is just improper to ever get specific about any past independent counsel?

ATTORNEY GENERAL RENO: I think it will depend on the circumstances.

QUESTION: You mean that if there were not any independent counsels doing business at some point in the future, you might be freer to talk about them?

ATTORNEY GENERAL RENO: Possibly, again, just depending on the circumstances.

QUESTION: Has Ken Starr asked you not to talk about this, or is this something that you are doing at your own discretion?

ATTORNEY GENERAL RENO: I do not comment concerning my communication with the Independent Counsel.

QUESTION: Have you heard from the three-judge panel yet?

ATTORNEY GENERAL RENO: Not to my knowledge.

QUESTION: Ms. Reno, one of the criticisms of the Independent Counsel Act, and it would still be through any special counsel process in the future, and that is that these investigations sometimes seem as if they're investigations with a target in search of a crime. Has the Department given any thought to doing a due process review of how the Independent Counsel Act is applied or how a special counsel would conduct themselves in the future?

ATTORNEY GENERAL RENO: Well, one of the steps that I think could be taken by an Attorney General who had the authority to appoint a special counsel -- as I indicated yesterday,

the problem now is that the Attorney General is an essential part of the process but does not have full responsibility with respect to the process, so, as I said yesterday, it divides responsibility and fragments accountability -- I think that an Attorney General could designate a special prosecutor, and through a charter or some other memorandum of understanding, define steps that could be taken to give public confidence, both in the scope of the process and in the due process involved.

It can never make everything perfect, but you can take steps.

QUESTION: There has been a lot of talk about your reviewing the regulation under which you can appoint a special counsel. Can you clear up whether you are looking at the so-called parallel appointment regulation that came into effect in the mid-eighties in order to protect the independent counsels who were then operating or if you are talking about the earlier regulation that existed prior to the passage of the independent counsel law?

ATTORNEY GENERAL RENO: This is the way I understand it, and I will ask Myron to double-confirm it for you. The regulation that is in effect now was created to serve in the instance of the hiatus of the reauthorization of the Independent Counsel Act. What we are doing is developing a regulation that would apply if the Act lapsed, that would give the Attorney General the responsibility, and would not be a mirror of the Act itself.

QUESTION: But you are not talking about returning -- it's 515 or something -- you are not talking about returning to what existed prior to 1978; you are talking about creating something wholly new?

ATTORNEY GENERAL RENO: Well, it would depend on -- I do not know all the terms of what existed prior to 1978; it may contain provisions similar to that. But I would ask Myron to confirm it for you. We cannot really say, because we are in the process of drafting it now.

QUESTION: Do you believe that having the independent counsel authority returned to your office, or returned to the Department of Justice, is the proper way now if the independent counsel law is dropped?

ATTORNEY GENERAL RENO: I think it makes sense, since, as I indicated yesterday, the Supreme Court, in *Morrison v. Olson*, made clear that the involvement of the Attorney General both in triggering the statute and in having removal power with respect to the independent counsel, is what enabled the Court to find the Act constitutional. If the Attorney General is an essential part of the process in these two key decisions, then I think that the Act, or the regulation, should give the Attorney General the responsibility for making it work.

And then you can do something that I think is a more efficient, sensible process. Right now, we pursue an investigation. If we develop specific and credible evidence, then we launch a 90-day investigation. We cannot use grand jury subpoenas. We cannot use immunity tools. And we have a limited scope to determine whether there is any substance to the investigation or not.

It is not as if we were pursuing a wrongdoer. That is really held in abeyance while we determine the Independent Counsel Act, and the provisions of the Act, and whether it has been triggered. I think it makes far better sense for the Attorney General to pursue wrongdoing, to pursue allegations of wrongdoing, should the conflict exist, should the circumstances require it.

Then, as part of the continuing process, the Attorney General can appoint a special counsel who is experienced as a prosecutor, who has a reputation for fairness, who would be perceived by all the political spectrum as having integrity and objectivity with regards to the issue and, as I indicated earlier, devise a procedure with that independent counsel about how the investigation would be conducted in terms of ensuring independence and ensuring due process.

QUESTION: Ms. Reno, what difference, since you've analyzed -- this has come back to the Justice Department -- what difference does *Morrison v. Olson* make? I ask that because you raised it repeatedly yesterday in the hearing. My understanding of the decision -- and it has been a while since I read it -- was the Supreme Court was saying it is constitutional because while it looks like giving this executive branch power to this sort of quasi-judicially appointed other thing, what made it constitutional was the checks from the Attorney General.

But if it's no longer this quasi thing, if it's back in the executive branch, no matter how it works, what difference does the opinion in *Morrison v. Olson* make to your decision?

ATTORNEY GENERAL RENO: It doesn't. *Morrison v. Olson* has no application. The responsibility lies with me. I refer only to *Morrison v. Olson* to describe the process with respect to the Act itself now, and the fact that it is not -- it is a process that is not a regular and usual part of the investigation and prosecution process.

QUESTION: Well, the Attorney General part of it saves the independent counsel statute because it's sort of extra-executive. But if you eliminate the three-judge panel's role, then what difference does it make how much the Attorney General is involved once it is back in the executive branch, no matter what?

ATTORNEY GENERAL RENO: I do not think I'm understanding your question, but the Attorney General is responsible at that point. The executive is responsible. And you have not created a quasi-fourth branch of government.

QUESTION: Are you saying that because of the way the Act is structured, that *Morrison* found constitutional, it makes an impossible political situation?

ATTORNEY GENERAL RENO: No. What I have said is that because *Morrison v. Olson* found that the involvement of the Attorney General as the representative of the executive

branch was essential in terms of the triggering of the statute and in terms of the removal power, that that puts the Attorney General in the process. You cannot get the Attorney General out of the process and still have the Act ruled constitutional. And if the Attorney General is in the process, then I think, to make it more sensible and to make it more effective and to really achieve the objective of truth, that the Attorney General should be responsible for the process, for who is appointed and the circumstances and how it is done.

QUESTION: And what happens if the Attorney General does not do his or her job properly?

ATTORNEY GENERAL RENO: Well, one of the things that we have got to look at is, are there methods by which it could be triggered otherwise, through the Deputy Attorney General in certain circumstances or, in similar fashion, if the Attorney General does not do his or her job properly, as I told Senator Specter, we could review other issues. But we want to do everything we can to make sure that there is an ultimate process that the people can have confidence in.

QUESTION: Well, right now, there are some people who say you and the Deputy Attorney General are in cahoots, that you are ignoring what the law required with respect to conference campaign finance. So, you know, for some people, it is not going to be good enough for there to be a fall-back to the Deputy Attorney General.

ATTORNEY GENERAL RENO: Well, I think that the important thing is that there may be cases where you will not satisfy people. But if I had the opportunity to pursue an investigation in a constructive way, that did not involve a detour into the specific language of the Independent Counsel Act to determine whether it was triggered, and got to the truth, appointed a special counsel who was highly regarded by -- as I mentioned yesterday when somebody asked me where I would start looking, I would start looking for a former United States Attorney in a prior administration, who is a Republican, who is highly respected, who had experience as a prosecutor, who did not know any of the parties, and devise a system whereby I think people would

have confidence in the process.

QUESTION: Is it possible that, if the independent counsel law had not existed, you might have found a need for a special prosecutor in some of these instances in the past six years?

ATTORNEY GENERAL RENO: Yes.

QUESTION: Ms. Reno, isn't part of the issue the political environment in Washington, that no matter how the law is written, how the Department constructs how the special prosecutor should act -- how do you deal with this whole issue of trust?

ATTORNEY GENERAL RENO: I think one of the most important issues of trust is to keep going back to Congress, to try to answer their questions, to try to be as forthcoming as I can as they exercise their oversight function. And I think I have had four hearings in two weeks on different subjects, ranging from appropriations to the Independent Counsel Act, and I find that occasionally the questions have a slight tinge of politics to them.

(Laughter.)

ATTORNEY GENERAL RENO: But you get past the initial thrust of those questions, and they are really caring, dedicated people, who are trying to figure out how you take this extraordinary form of government that we have and make it work so that the people can have confidence in it. If you listened to those questions yesterday, there were really caring people, who wanted to try to make something work right.

I think one of the problems, in terms of trust, is that people say, well, that's not my problem, that's somebody else's problem, or we gave that to that person, or that is their problem. If the responsibility lies with one person, then they can be accountable and I could more effectively answer the concerns that have been expressed to me when I do not appoint an independent counsel or where I may

appoint an independent counsel, or I may seek the appointment of an independent counsel, and people are -- and I am not commenting on any independent counsel -- but that may be subject to criticism.

QUESTION: Along those lines, Senator Thompson says there's tremendous ramifications for the year 2000 campaign specifically because there is no independent counsel to investigate it this time around. Would one way to keep the campaigns in check -- is the Justice Department wary at this point of some of the same abuses popping up over the next couple of years?

ATTORNEY GENERAL RENO: I think it is important. Again, that is another example, in terms of campaign financing and the Federal Elections Act, that is a very complicated Act, with tremendous constitutional issues involved -- the first amendment issues, in terms of campaign limitations, in terms of what can be done. And the Court has not clearly signaled what it might do.

So, from a public policy point of view, from a constitutional scholar's point of view, from Congress' point of view, from the Elections Commission point of view, there are just a large number of issues that have, I think, got to be addressed in a thoughtful and constructive way. It will not be solved through the criminal justice process. The Elections Commission has indicated that, in the audit that precipitated the preliminary investigation, they have chosen to move in other directions, and we will see what they say.

But I think it is, again, an example -- if we would all sit down, look at the Act, look at what we are trying to do, look at what we believe the constitutional limitations are, and try to design something that can provide for -- I guess what I'm talking about is I call it the funding of democracy -- how do you finance a democratic process, a free election, an election where a man who makes \$25,000 a year can be elected to something, and we don't just leave it for those who have money?

There are just a range of issues. And I think the focus on that is not the Independent Counsel Act. I think the focus is people coming together and looking at the legislation.

QUESTION: Has there been any progress developing potential legislation to deal with this issue of the campaign finance laws?

ATTORNEY GENERAL RENO: We have not looked at the specific -- we have not developed specific legislation, but we are continuing to review the legislation as it is proposed.

QUESTION: Why hasn't the Justice Department tried to develop legislation? I mean, you guys, arguably, have seen the pitfalls of what's in place better than almost anyone. Why don't you work on it?

ATTORNEY GENERAL RENO: Because we have been focused on the legislation that has been proposed, and to see what can be done with it. And I think it represents a good beginning.

QUESTION: Ms. Reno, while we are on the Independent Counsel Act, last week, Judge Starr referred material to the Department for investigation on a leak to the New York Times. Hypothetically, if there were a disagreement between the OIC and the Justice Department about whether the Justice Department can investigate the OIC, has this, more or less, obviated that disagreement?

ATTORNEY GENERAL RENO: You know, you said "hypothetically," and you know it cannot be hypothetical.

QUESTION: Well, Mr. Bakaly is a Deputy Independent Counsel, on the books until June 1st. You are going to be investigating, if you choose to do so, a member of the OIC. Wouldn't this obviate any dispute over whether the Department has the authority to investigate the OIC?

ATTORNEY GENERAL RENO: I would not comment.

QUESTION: I was going to ask, how do you feel about

legislation proposed by the Democrats in the Congress to put a limit of funding on Mr. Starr and his operations -- I believe six months is what they propose -- do you think that it should be -- that the Congress should get involved in the determining the tenure of the OIC?

ATTORNEY GENERAL RENO: I think that, as I understand the Act, it provides for the independent counsel that exists if the Act lapses, to be able to continue their work. And I think that, under the circumstances of the Act, they should be able to continue to do so. If it lapsed, we would pick it up.

QUESTION: Ms. Reno, I noticed you set up a Privacy Council. And I have heard defense lawyers complain for years their privacy rights are being eroded thanks to a willing judiciary and all this technology that is available now. In fact, I even heard it from the White House during the recent year. And yet these are wonderful tools for finding out things about people, including crooks. So, how do you balance the needs of law enforcement with protecting the privacy rights of individuals?

ATTORNEY GENERAL RENO: I think that is one of the great, great responsibilities of law enforcement, how you proceed. I think the Attorney General's guidelines are an important step in that effort, requiring a beginning standard of evidence that precipitates an investigation. I think we have got to look at the technology that is being developed, that gives us remarkable opportunities for learning and for exchange of ideas. We have tremendous responsibilities, in terms of trying to devise means of protecting individuals' privacy.

I think another challenge with respect to privacy that you don't even allude to is how do you balance that wonderful first amendment with privacy rights. Left to your own devices, I'm not quite sure where you all would draw the line.

QUESTION: It is harder for us to get bank records than it is for FBI agents.

(Laughter.)

ATTORNEY GENERAL RENO: You all are extraordinarily good at getting some remarkable things.

But what we have talked about are three issues that are really pretty inherent in the balancing required to make our Constitution work: the independent counsel concept, as a fourth branch of government or as part of the executive; the idea of campaign financing and first amendment issues; and this issue. And I think it requires everyone in law enforcement to be vigilant and to make sure that we do not develop databases that have material in it that nobody has any business having.

QUESTION: If I may return to Mike's question for a moment. The independent counsel said in a public statement that it has referred the matter of Mr. Bakaly to the Justice Department. Do you have the option to decline to investigate?

ATTORNEY GENERAL RENO: I would not comment.

QUESTION: Okay. One other question. The talk about the independent counsel and what will happen after if it goes away has renewed interest in the Public Integrity Section. Is it correct that Public Integrity is behind in filing its annual reports to Congress? And if so, is that a subject of concern to you?

ATTORNEY GENERAL RENO: I do not know whether it is behind or not. I will check on it and let you know. I have tried to develop a system, where we have a list of all the reports that we are supposed to make so that we make them timely. And if that is not on the list and it should be, I would like to know.

QUESTION: On another matter. Ms. Reno, is the FBI on top of a smuggling ring in Los Angeles that has been smuggling Iranians, who may be terrorists - -, or do you know anything about this particular matter?

ATTORNEY GENERAL RENO: I understand that the U.S. Attorney's office is handling it. I cannot comment other than to acknowledge that.

QUESTION: Is there a concern that in fact dangerous -- terrorist dangers to the United States are getting into the country through these phony immigration representatives?

ATTORNEY GENERAL RENO: Let me see. Let me ask Myron. Because I want to make sure that I fully answer that to the extent that I can, but that we coordinate it with the U.S. Attorney's office.

QUESTION: There is a precedent in this area, though. I think the World Trade Center bombers entered this country from Egypt on a political asylum basis.

ATTORNEY GENERAL RENO: This is the language that was cleared with the U.S. Attorney's office:

There is no evidence at this time that any of the immigrants assisted by the fraud ring have been involved in any violent terrorist activity in the United States.

QUESTION: Ms. Reno, going back to the privacy issue. I understand your guidelines are starting to set up safeguards. But is there any way to prevent an agent or prosecutor from eavesdropping on a totally innocent conversation or looking up financial records?

ATTORNEY GENERAL RENO: Well, eavesdropping on a totally innocent conversation is a violation of law, without a court order. So, there are certainly regulations and criminal violations that guard against that.

Where I think we have got to be careful is when we collect information that we think might be useful, in terms of analyzing a crime problem, that we do not collect information that has no relevance to the investigation and constitutes an invasion of privacy.

QUESTION: Ms. Reno, on the regulations that are being

developed for the I.C. that you would appoint, is that something you want completed by June 30th, so that when the law lapses you'll have your own regulations ready to go?

ATTORNEY GENERAL RENO: My understanding is that Mr. Holder had suggested to Congressman Gekas, when he appeared before his subcommittee, that he had said that he would have the regulations to the Congressman in 30 days. And this would be for discussion, so that we could get congressional feedback.

Now, I will ask you all a question. Why do we not wear lighter, more colorful clothes during the darkness of winter?

(Laughter.)

QUESTION: Well, they do not absorb the sunlight and warm us as well.

ATTORNEY GENERAL RENO: You've got it.

(Laughter.)

VOICES: Thank you.

ATTORNEY GENERAL RENO: Thank you.

VOICE: Have a good day.

(Whereupon, at 9:55 a.m., the press conference concluded.)