# WEEKLY PRESS BRIEFING WITH ATTORNEY GENERAL JANET RENO

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ATTY GEN. RENO: The Department of Justice is charged with protecting the security of this nation and the liberty of its people, and I take those two responsibilities very, very much to heart. To protect national security while guarding the liberty of its people, Congress passed the Foreign Intelligence Surveillance Act in 1979. This act is known as FISA, and it requires that before the government can wiretap or conduct an electronic surveillance of a

United States citizen for intelligence purposes, it must obtain approval from a judge by presenting evidence sufficient to show probable cause to believe certain things.

Those certain facts are that a particular U.S. person knowingly engages in clandestine intelligence-gathering activities on behalf of a foreign power, which may involve a violation of the criminal statutes of the United States. Congress required this specific showing for a very good reason; it wanted to protect the rights of U.S. citizens to be free from unreasonable searches, as guaranteed by the Fourth Amendment.

In the investigation of espionage at the Department of Energy laboratories, the department was asked whether surveillance or wiretaps could be authorized. Based on the facts reported to us in 1997, the department determined that the evidence was insufficient to support a finding of probable cause, but as in all cases, it was prepared to continue to review the matter, to determine if there was additional evidence that could be used to show probable cause.

Although Eric Holder and I did not personally review the matter at the time, I have since reviewed the case, and I agree with the findings made by the career lawyers of the Department of Justice.

As in all cases where questions are raised concerning how we handled a matter, we're going to review everything that we did to see if there is anything that should have been done differently, in order to ensure our national security and to do everything possible in the future.

When I took this job, I swore to uphold the Constitution and the laws of the United States. I believe that it is my sworn duty to ensure that only FISA cases with evidence sufficient to show the probable cause required by the statute are presented to the court.

Our efforts to fight crime and to protect the national

security can require the government to intrude into the homes of American citizens or listen to their telephone conversations in certain instances. But the same law that allows the courts to authorize such intrusions says it can only be done if the probable cause standards set by Congress, courts, and the Constitution are met.

Some have said, "Well, we should simply let the court decide whether to authorize a FISA warrant or FISA surveillance," but that is not what the law says.

If I do not believe that the probable cause standard is met, I can't present to the court a FISA application. To do so would violate my oath of office, and I'm not going to do it.

Q Ms. Reno, I guess we're speaking specifically of the request to wire tap Dr. Wen Ho Lee in Los Alamos. Can you say that this specifically addresses that issue?

ATTY GEN. RENO: I can't comment on that. And again, this is one of the frustrations because so much of this information is classified and we have tried to do everything that we could to comment without in any way violating the classification.

Q Ms. Reno, there are a couple of senators who have specifically stated in public that there was probable cause, that you should have gone forward. Have those members seen the evidence that the FBI brought to the Justice Department? Have they seen the application? On what basis are they making their determination?

ATTY GEN. RENO: You would have to check with them.

Q Well, you should know, though, in the weeks and months that this has been a scandal, I mean, you certainly are aware what the Congress has been briefed on.

ATTY GEN. RENO: I do not know what they have read or what they have not read.

Q What is your response --

ATTY GEN. RENO: I know what they've been presented with.

Q Well --

Q What is your response to the recommendations of the Cox report? Are there any that you don't agree with?

ATTY GEN. RENO: I have had the chance to read earlier drafts and part of the Cox report. We have, I think, undertaken, in the five recommendations that affect the Justice Department, to either have implemented or in the process of implementing them, and I think they're constructive.

Q Ms. Reno, have you spoken with the president about this, and are you assured of his full backing? As you know, there have been a couple of calls, including from a Democratic senator, for you to resign.

ATTY GEN. RENO: I have spoken to Mr. Ruff and he assures me of the White House's confidence.

Q Ma'am, is it time to -- is it time to come down hard on the PRC, the PLA, in its various alleged and some well-known activities against the interests of the United States? Is it time for a special counsel?

ATTY GEN. RENO: I don't know of any basis for a special counsel. I do know that we are continuing to pursue investigations and we will seek the appropriate course of action in each investigation.

Q Ms. Reno, you articulated the law's standard: a particular person knowingly engages in intelligence gathering on behalf of a foreign power. Lots of elements there. Which elements were missing in this case?

ATTY GEN. RENO: Again, I could not comment without discussing the classified information. And you said -- I think you said -- you missed one line: "knowingly engages

in clandestine intelligence- gathering activities."

Q Is that one of the things that was missing, the clandestine part?

ATTY GEN. RENO: I cannot --

Q I mean, I know it was missing from what I said, but was it missing from this submission? (Laughter.)

ATTY GEN. RENO: I can only refer you to the statute and I cannot discuss the classified evidence.

Q Well maybe just ask one other question. Without regard to the evidence, were there defects in all of these points or just a few of them?

ATTY GEN. RENO: I would not comment.

Q Ms. Reno, Notra Trulock, the former director of counterintelligence at the Department of Energy, has testified that he briefed you on these intelligence matters in the fall of 1997. Is that accurate?

ATTY GEN. RENO: I don't think it was the fall of 1997, I think it was August of 1997.

Q Ms. Reno, in the case of an employ working at a national lab, in the case of Mr. Lee for the University of California, is there a different standard met for that person, if they have signed in fact a waiver allowing access to certain materials? Is there a different standard than just an average citizen when you're being asked to approve a warrant?

ATTY GEN. RENO: I don't do "what ifs".

Q Ms. Reno, if you were briefed in August of 1997 and there was an appeals process, there was some give and take, the FBI had come back a couple of times with this request, wouldn't that have been around the same time, and would that not have influenced your decision or the department's

decision?

ATTY GEN. RENO: I was not briefed on the details of the application.

Q Should you have been briefed?

ATTY GEN. RENO: I think so.

Q I'd like to clarify; neither you nor Mr. Holder checked out this request personally?

ATTY GEN. RENO: No. We had -- I had established a procedure on the FISA applications to make sure that if there were disagreements between the FBI and the Office of Intelligence Policy Review, that either would bring the matter to my attention. The FBI brought the issue to my attention just in terms of a general reference to a concern about the FISA, and I referred that for consideration. The FBI did not bring it to me after they were told that the person who had reviewed it did not think that there was probable cause.

Q Why do you think it should have been brought to your attention -- you should have been briefed on this?

ATTY GEN. RENO: I think that in all of these matters where there is something serious, where there is a disagreement, where Director Freeh disagrees with the findings, I think that it should be discussed at my level.

Q But Director Freeh never did come to you himself and appeal or ask you to look again, it was one of his deputies that came to you.

ATTY GEN. RENO: That's correct.

Q And the deputy that came to you -- or I should say the assistant director who came to you did not present you with a full briefing, but just brought it up in a general way?

ATTY GEN. RENO: We had had the understanding -- they -- I

said, look, if you have any problems with FISAs, let me so we can review it further, and if you're still dissatisfied, let's take it all the way up to Louis and let's have a good discussion on it.

Q Why was it that you had said that? Had there been disagreements, had there been clashes?

ATTY GEN. RENO: I think there had been some disagreements, and I wanted to make sure that any matter in which there was a disagreement, particularly on something like this, would be reviewed.

Q What office, other than OIPR, dealt with this matter when it came up within the Justice Department?

ATTY GEN. RENO: The Executive Office of National Security within the deputy's office.

Q Ms. Reno, can you just clarify two points on what you just said? The FBI came to you before or after this particular FISA warrant was turned down?

ATTY GEN. RENO: Again, let me point out to you that in the FISA process, the FBI will come to the Office of Intelligence Policy Review and present some information. The office will type up a draft application and then review it with the FBI for accuracy and say look, this doesn't meet the standard yet; why don't we try this or this or this or this? As a consequence, there were -- apparently a second draft was done, and then a third -- what is labeled as a third draft was done, though there is -- we do not find a second draft; we find what is labeled a first draft and a third draft. At that point, the person talking with the agent said again that it's not sufficient.

What -- the hope is that in these instances that they will follow through, see if there is additional information, comb their records, see if there is something else that can support it. And as I indicated, if they still reach disagreement, I want to try to make sure that I'm the one that ultimately resolves it.

Q Were you then consulted following the third draft of the proposed warrant?

ATTY GEN. RENO: The third draft was -- they were told it was insufficient. At that point, Mr. Lewis said -- said that he mentioned to me just about a FISA problem generally. At that point, I asked that it be reviewed in the Executive Office of National Security. The person who reviewed it went back to the Office of Intelligence Policy Review, told them that he agreed with them; they so advised the FBI, and the FBI did not come back.

Q Who should have sent it back?

Q One last thing, if I may.

ATTY GEN. RENO: I think in this instance it should have been brought to my attention by the Office of Intelligence Policy Review, considering the subject matter, but I think I understand, and I want to make sure that I've confirmed with all concerned, that if the FBI continues to disagree, that it comes back to me.

Q But still, you're talking about procedural matters. And as a matter of substance, you still agree with the final decision that was made.

ATTY GEN. RENO: Again, it wasn't a final decision in the usual process that we have. But if that were going to be the final decision, and if that was all the information that was available, and if nothing else could be found to pursue it, then I think that the decision was correct.

Q You said that you were not consulted, but you've also said that an FBI official by the name of John Lewis did bring something to your attention. Can you explain that apparent discrepancy?

ATTY GEN. RENO: I don't think there's a discrepancy. What I have said was that I was not consulted after I had referred it once. I was not presented with the application. I

assumed that since I did not hear from the FBI, that the matter had been resolved to their satisfaction. I want to make sure and confirm the process that we have in place, that it be brought to my attention.

Q Had it been brought to your attention, what would you have done? Would you have pursued it further, do you think?

ATTY GEN. RENO: I would have asked to meet with Director Freeh and the people who were were involved in the whole undertaken -- undertaking. I would have asked the FBI to go back and look at their records to see if there was additional information that could be utilized to show probable cause. I would have looked at everything. I don't know what the end result would have been, but I do know that we would have discussed it and done everything we could to see if probable cause could be developed.

Q Back to the question of criticism on Capitol Hill, have you given any thought to resigning over this?

ATTY GEN. RENO: No.

Q Do you feel that you're being set up by somebody in the administration in a "fall guy" position?

ATTY GEN. RENO: No.

Q Ms. Reno, how often does it happen that applications for warrants from the FISA court are brought by law enforcement and the department feels there is not sufficient evidence to proceed? Does this happen in other cases?

ATTY GEN. RENO: I think it's happened upon occasion. I can't quantify it because what usually happens is that when it's brought and the Office of Intelligence Policy Review says that it is insufficient, the FBI will go back out and do -- take additional investigative steps that either confirm the decision one way or confirm the decision the other so that there is not disagreement.

Q Ms. Reno, did there -- did the FBI's application change

substantially between drafts one and apparent draft two and draft three? Did they add additional information?

ATTY GEN. RENO: I would not comment on the substance of the applications.

Q What, exactly -- just to briefly go back to the John Lewis role, what, exactly, did he say to you, or what attention --

ATTY GEN. RENO: I don't have any recollection of John Lewis mentioning it to me, but I do have a very specific recollection that John Lewis and I, as we would meet and talk, I'd say, "Do you have any problems with FISAs?" and he would usually say, "No, I think we're getting them worked out." He came to me with this. We continued even after that, until his retirement from the FBI, and he did not mention it to me again.

Q When, exactly, did you learn the details of this application in its entirety and the severity of the whole Wen Ho Lee case?

ATTY GEN. RENO: I think everybody understood the issues involved and the magnitude of the problem with respect to the labs. And we had discussed that -- that was back as early as 1997. And with respect to the specific application, I did not see it until this issue arose this spring.

Q Ma'am, when Mr. Lewis came to you, however, he raised a complaint about a specific FISA warrant with enough particularity that you referred that specific warrant back down to the executive office --

ATTY GEN. RENO: I didn't refer it back down. I referred it for further review by another office to make sure that people who had had experience in espionage cases reviewed it.

Q When you say "it," we're talking specifically about the warning question involving Mr. Lee; is that correct?

ATTY GEN. RENO: Specifically about the application, yes.

Q So Mr. Lewis brought that specific problem to your attention with enough particularity that you focused on it specifically enough to refer that particular --

ATTY GEN. RENO: I wouldn't have to focus on it specifically to refer it. If Mr. Lewis had concerns, I would refer it so that it could be reviewed again.

Q But Mr. Lewis's concerns were not of a general nature, right?

ATTY GEN. RENO: No, that's correct. His concern was that the FISA had not been approved.

Q In this case.

ATTY GEN. RENO: That's right.

Q And so he reviewed his specific understanding of the case with you at that time?

ATTY GEN. RENO: I have no recollection of him doing so, and I have not been told that he says that he did.

Q Ms. Reno, have you spoken directly to Mr. Lewis since --

ATTY GEN. RENO: No, I have not.

Q And you said that you asked a guy in the Office of National Security --

ATTY GEN. RENO: No, I didn't ask "a guy in the Office of National Security." (Scattered laughter.)

Q The Executive Office of National -- you referred it to a person --

ATTY GEN. RENO: I referred it to the -- yes.

Q To a person in the Executive Office of National Security, within the Deputy Attorney's Office. But you're saying that it never reached Mr. Holder? Did it reach Mr. Waxman when he was acting deputy?

ATTY GEN. RENO: Mr. Waxman was not at that time acting deputy.

Q Who was?

ATTY GEN. RENO: This was in August when Mr. Lewis raised it.

Q August of '97, correct?

ATTY GEN. RENO: Yes.

Q So who did it reach?

ATTY GEN. RENO: It reached Dan Sikley (ph) in the Executive Office of National Security.

Q And Mr. Sikley (ph) never took it to the deputy or whoever may have been acting deputy then?

ATTY GEN. RENO: That's correct.

Q Ms. Reno, do you agree with the Cox panel that this has been a "devastating national security loss"? And I have a follow-up for that. Do you feel that that is truly the case?

ATTY GEN. RENO: I think it has been a very, very serious national security concern.

Q And my second question would be, could there be some mitigating, counterintelligence activity on the part of the U.S. that is not yet seen and maybe never will be seen? (Chuckles.)

ATTY GEN. RENO: I would not comment.

Q Ms. Reno, may I come back to a question Beverly asked earlier? Why do you think -- I'm sure you must have wondered this, what the members of Congress are talking about when they say that it's horrible that -- outrageous, or whatever, that this warrant was never approved? Do you believe that they fully understand the evidence here, the process of the decision? Why --

there's such a mismatch here. Why do you think they're saying that?

ATTY GEN. RENO: You would have to ask them.

Q Ms. Reno --

Q I guess what I'm asking is -- let me just ask it more bluntly. Do you think they just don't understand the process here?

ATTY GEN. RENO: I don't know what their -- the process they are using to reach their conclusion. I just know that from my experience with determining probable cause, I don't think it existed here. Again, I think it is important that we pursue these cases, and if there are disagreements, that we try to do everything we can to find further evidence to support it.

Q And clearly, from the way you've described the process, no one in the Justice Department in a decision-making role that looked at this earlier thought there was probable cause either; is that correct?

ATTY. GEN. RENO: That's correct.

Q Do you see all FISA warrant requests before they go to the FISA court?

ATTY. GEN. RENO: Yes, except when I'm out of town or -- when I'm out of town, then the deputy or then the associate would approve them.

Q But just to be clear, you only see them when OIPR has signed off on them? You don't see them when they are in this back- and-forth between OIPR and the FBI?

ATTY. GEN. RENO: I have been involved in some FISA situations where they are raised to my level and we discuss them and try to figure out -- I try to think of the person who can best help support the initiative to try to find additional probable cause.

Q Ms. Reno, what was your understanding of the gravity of the concern of Mr. Lewis when he brought it to you at the time?

ATTY. GEN. RENO: I think we were all concerned by the whole investigation.

Q Ms. Reno, in the ultimate analysis, the FBI is a part of this department and whether there was a communication problem between them and you or from the OIPR to -- not getting it to you -- how much do you think, looking at the magnitude of this, potential magnitude of this, that the Department is to blame for that?

ATTY. GEN. RENO: To blame for what?

Q Could you have done something to have reduced the extent of the problem? Had you approved -- you know, had it come to you, would you have made a difference?

ATTY. GEN. RENO: I can't answer that question, because I don't know what additional information that the FBI could have provided. I don't know it in all its details.

Q Ms. Reno, just to backtrack a little bit, just to make absolutely sure that I understand, do you believe it would be a violation of the -- it would have been a violation of the law and of your oath to have approved this particular FISA request?

ATTY. GEN. RENO: In the form it was in. I don't know what would have happened if there had been further discussion,

if we had -- I don't know, because the -- it did not --

Q Ms. Reno, how often during your tenure has an assistant director for the national security at the FBI come to you to appeal a specific call on a FISA warrant, to challenge the Justice Department's finding on a warrant?

ATTY. GEN. RENO: There have been just general discussions, sometimes with reference to a specific warrant, sometimes more in the line of how do we look at the process, the FISA process, to make sure that it's timely, that it's complete, that we do everything we can to make sure that the record is complete.

And that's often done in the context -- when that conversation occurs, it occurs in the context of an experience they've had with a particular FISA.

Q And these would have been specific occasions when the bureau came to you to appeal --

ATTY GEN. RENO: It might not be a specific occasion. It might be the regular bi-weekly meeting with the FBI.

Q Was the Criminal Division consulted at any point through this process? And if not, should it have been?

ATTY GEN. RENO: In a FISA situation, it is handled by the Office of Intelligence Policy Review because the primary purpose of it must be the collection of foreign intelligence and not the criminal -- and not a criminal investigation. So there's got to be care taken with respect to when the matter goes to the Criminal Division.

Q Is that to say that the Criminal Division was not consulted?

ATTY GEN. RENO: To my knowledge, the Criminal Division was not consulted.

Q Ms. Reno, looking at this now, forgetting the specifics of this case for a moment and just sort of how the system

worked here, do you think this case is so unusual that it doesn't really tell us anything? Or, having looked at this, do you want the system to work differently now?

ATTY GEN. RENO: I don't know what the answer will be. One of the things that I think everybody has got to understand, there have been times as a prosecutor where our lawyers said there wasn't sufficient evidence for a search warrant, to show probable cause for a search warrant, and police officers would be very upset. We'd try to work through that, but when we didn't have sufficient evidence, we said so.

And I think it is difficult for people who have not had a lot of experience in the criminal justice system or in issues with respect to national security or foreign counterintelligence to understand the processes and the hard decisions that have to be made in order to ensure that we comply with the law and that we protect the process for the future.

It is a very -- the Fourth Amendment is one of our most cherished protections. I think every American wants to make sure that there is no police officer that comes busting through their door without a warrant, or a warrant improperly obtained. They don't want their telephones tapped. They don't want their lives invaded. And so that Fourth Amendment is very, very critical to this nation, its freedom and its liberty.

At the same time, when they see a situation involving espionage of this magnitude, they want to think, well, forget the Fourth Amendment; go ahead. That's the great balance of this nation; how we protect our people while at the same time ensuring their liberties. And I think that the FISA Act is one safeguard. I think it is important for everybody in the system to try to work together to achieve the dual aims.

Q Ms. Reno, very briefly on another subject, the State Department has accepted in principle a plan for an FBI forensics team to go inside Kosovo itself once an

international force is introduced. I presume that the findings of the forensics team would be made available to the U.N. War Crimes Tribunal in support of whatever indictments that they've handed down or whatever prosecutions they want to pursue.

ATTY GEN. RENO: We would work with the State Department and do everything that was appropriate.

Q Ms. Reno, back to the Lee case just for one moment. You said in your statement earlier this week that there was no specific request during the FISA application for access to his computer files in that case. Given what we know now about how essential his computer files and his activities prior to '97 were, was that a misstep by the FBI in the application? And was that discussed verbally between you and the FBI at any point, the issue of his computer records and whether or not you'd go in there?

ATTY GEN. RENO: Nothing was discussed with me. But I can't discuss the -- again, the substantive facts to really answer your question.

Q Would a mention or a specific reference of the computer issue perhaps have tilted your thinking in whether or not this application should have or could have been approved?

ATTY GEN. RENO: I can't comment on the classified information, but I can say that the instrument that you use or that you (surveil ?) does not go to the issue of probable cause, and it was probable cause that was lacking in this situation.

Q Ms. Reno, some members of the Senate Intelligence Committee say that it's not just the FISA application that they're upset about, that overall they feel that the department hasn't been as cooperative in their investigation and they're looking into this. They've actually said that the CIA -- director of the CIA has been more forthcoming than you have in this case. Have you been as candid as possible with the Hill, with the Senate Intelligence people? And what's your response to that

criticism?

ATTY GEN. RENO: I have tried to be as candid as humanly possible. The director of the CIA and the attorney general have different roles. The CIA is responsible for the collection of intelligence. The attorney general is responsible both for that, and for making sure that the process does not interfere with a pending criminal investigation and that the interest of national security and the pending criminal investigation are balanced. That, therefore, produces some tension at times with Congress that wants to be able to exercise its oversight function, while at the same time the executive has the responsibility for pursuing criminal matters. And it is one that I obviously have been involved in, and an issue that I've been involved in for some time, and it's one that I think is important for us all to consider in a thoughtful way, because as I have said on a number of occasions, I am very respectful of the oversight function of the Congress. I'm going up there in an hour. And I think Senator Hatch is always a little shocked that I tell him at the end of the process that I have found it useful and thoughtful, and in almost every instance, I have. But at the same time, I've got a responsibility to prosecute and to investigate, and I'm going to continue to try to do that.

Thank you.

Q Thank you, Ms. Reno.

END.