

[PBS.org](#)[Video](#)[Shows](#)[TV Schedules](#)[Shop](#)[Donate](#)[WATCH](#)[SCHEDULE](#)[CONNECT](#)[TOPICS](#)[ABOUT](#)[SHOP](#)[TEACHER CENTER](#)[The FRONTLINE Interviews](#)[United States of Secrets](#)

Thomas Tamm

Former Department of Justice attorney Thomas Tamm uncovered evidence of the government's secret electronic surveillance of U.S. citizens, a discovery he later leaked to *The New York Times*. He spoke to FRONTLINE's Jim Gilmore on Dec. 11, 2013.

So, Tom, describe for us the job you had at OIPR [Office of Intelligence Policy and Review] from 2003?

Probably 2001 to 2003.

OK. What was the job? What were the requirements, your responsibilities there and how you found your way into that position?

Well, I found my way into that position after 9/11. I was working for the Capital Case Unit in the Department of Justice and doing death penalty litigation. And as part of that, we met with the victims' families up in New York and the Pentagon.

I felt really motivated to try and go more directly after the people who had attacked our country, so I applied for a position with what was then called the Office of Intelligence Policy and Review, where I kind of was led to believe that you would work with agents, FBI agents primarily, to try and develop intelligence about people that we thought were foreign agents or terrorists. So I went in with a lot of patriotic fervor, I would say, toward the end of 2001.

What was the job really?

Well, it actually ended up being much more of a word-processing job, and it really wasn't working with agents to kind of develop cases, because it was almost like an assembly line, a factory assembly line of trying to get out these FISA warrants and trying to get as many FISA warrants, Foreign Intelligence Surveillance Act warrants, that you possibly could.

There was always pressure to get more and more wiretaps authorized by the court. So the job really wasn't as much about developing leads and developing cases as it was just more trying to go up on people. And when I say go up on people, I mean wiretap their phones or their electronic surveillance.

[↑ Return to top](#)

What was the FISA Court, and what was their responsibility?

Well, when I first started there, there was a fairly short period of training, and you learn that because of abuses by the FBI and J. Edgar Hoover's tenure that the Church Committee in 1978 had come up with legislation to try and rein in the executive and try and protect the privacy of U.S. citizens and Americans more so than had been in the '70s.

So our role was to present applications for wiretaps to a court that was specially formed as a result of the Church Committee called the Foreign Intelligence Surveillance Court. And we would regularly, as attorneys in OIPR, we would regularly appear before the FISA Court and seek applications to wiretap.

So you were sort of the connection between the FISA Court and the DOJ [Department of Justice]?

Yes.

Absolutely essential point for any investigation to go forward in a world where warrants were absolutely necessary if you were going to do any domestic wiretapping?

Well, that's certainly what I thought. I think that's what we thought, that it was absolutely essential to go through that court, because the law, the legislation said that it was the exclusive means by which we would conduct electronic surveillance of these people, and the law specifically said that if you didn't go through the court, you were committing a federal felony. ...

And in a secret world, the world that is mostly done in secret, the Church Committee in their wisdom had really set up the intelligence committees in the House and the Senate and also this FISA Court to help with checks and balances in a world which is otherwise pretty impossible to understand what's going on?

Right. And it's unique, really, our kind of criminal justice system, because it's not an adversarial process. It's just the government appearing in front of a judge. There's no defense attorney arguing: "Wait a second. You don't have grounds. You don't have probable cause." So I think it was incumbent with really a lot of power and a lot of secrecy to try to be totally ethical about what we were doing.

[↑ Return to top](#)

Give me your bio, a little bit about your bio and how long-serving your family has been in this world. ...

Well, my father was an assistant director of the FBI. He was, my understanding, fairly high up, fairly close adviser to J. Edgar Hoover. I remember as a young child watching John F. Kennedy's inaugural parade from J. Edgar Hoover's office balcony. My brother went on to become an FBI agent, served an entire career as a special agent in the FBI. And my father's brother was also an assistant director of the FBI and then was appointed to the federal courts and became a U.S. Court of Appeals judge.

Then when I left law school, I was a prosecutor in the state's Attorney's Office prosecuting crimes of violence, and then joined the United States Department of Justice with the Capital Case Unit, where we litigated death penalty cases. ...

[↑ Return to top](#)

So you at some point stumble upon the existence of the NSA program. ... What do you see? What do you think? What do you do?

Well, the typical FISA process, as it was back when I was there, was that an FBI agent would come across the street, and they would have developed information, let's say, that came from someone caught on the battlefields in Afghanistan, and they had phone numbers and links back to the United States, and we would develop hopefully enough information for probable cause to believe that person was connected with a foreign agent or a terrorist group.

As you did that kind of work, there was a certain subsection of cases that were "in the program," and every warrant that you reviewed as a lawyer, you had to determine, first, whether that phone number, let's say, was in the program, whatever that was. I always thought that was kind of Kafkaesque to refer to it that way, but that's how we all knew it, as "the program."

Those cases were treated differently. Only the attorney general could sign those applications for warrants. The deputy attorney general who was nominated by the president and approved by the Senate, was not "read into the program." He couldn't sign those warrants. ...

Out of all of the judges who all had top-secret security clearances who obviously were federal judges, had background checks, only one judge could sign these warrants that were "in the program". ...

So I started asking questions, and I asked a supervisor of mine if she knew what the program was about. She told me that she just assumed that what we were doing was illegal and she didn't want to ask any questions. That really ate away at me and bothered me, because I thought I had gone into law enforcement to enforce the law. I didn't like the fact that I thought, or that a supervisor thought, that we might be doing something illegal.

I remember the boss of that unit, OIPR, who I admired and I think is a very able lawyer and is ethical as well, telling us that if we ever were reluctant -- we had to sign the warrants as well and these affidavits -- that if we were ever reluctant to put our names on these warrants to bring it to him and he would sign them.

And again, I just was looking at these documents and couldn't figure out what would be in there that I would not want to put my name on that piece of paper and basically swear to the court as to its veracity and authenticity. And again, that really kind of bothered me.

[↑ Return to top](#)

When was the very first time you heard, or you were instructed, that this file I'm handing you right now includes an "in the program" document or affidavit? When was the very first time, and what was your thought? And what did that mean?

You know, I'm not sure what it meant. That was another thing that kind of was bothersome. It was clear we weren't meant to know what it meant.

But the very first time you were given an application for a warrant, it was incumbent upon the lawyer to go to one person in that office who was connected to the NSA. And he was the only person who was connected to the NSA, and he had secret computers to be able to communicate with the NSA.

And we went to that person, and we said, "Is 555-1212, is that number in the program?" And we would wait a couple of days, and they would come back, and they would say, "No, it's not in the program." So you knew that you could get the deputy attorney general, you could get all these other people to sign these documents.

If he came back and said, "Yes, it is in the program," then it took this peculiar track, and there were only about maybe 5 percent or 10 percent of the cases were "in the program."

And it just ate away at me and came to a head when I ran into one of the deputies of the unit who said that the program had been shut down, that some information from the program had gotten into a regular FISA warrant, that there was a chance that for the first time ever that a sitting attorney general would be indicted.

And then to me it was pretty clear, putting all of that together, if I'm afraid to put my name on a paper, I assume they're doing something illegal, and a sitting attorney general is going to be indicted? It was pretty clear to me, at least, that I didn't want to keep participating in whatever was going on. ...

The thing you did know about the program and these affidavits is that they were connected to the NSA. What were the conversations around the water cooler? ...

... Again, I guess I was somewhat naive. But it was my understanding that the NSA only conducted the surveillance and electronic surveillance overseas, that they were not tasked with doing anything in the United States. In fact, the FISA Court and the FISA Department of Justice were the ones that were tasked with doing any surveillance domestically. ...

So when I first heard NSA, I didn't think much of it other than it was so strange to me that somebody who was the deputy attorney general of the United States could not review these particular affidavits.

[↑ Return to top](#)

So one of the things you do know about the program is that Larry Thompson, who's the deputy, doesn't know what the program is either? How do you learn that?

Well, we're told -- and again, this is why it was unusual. And you have to remember that we had also started bombing Iraq, and the place where I worked really was almost at a fever pitch, and I think in a lot of ways, everybody was just -- that fear permeated that office suite.

But if we would get an application that was in the program and the attorney general of the United States was in Missouri, we had to get on a plane and fly to Missouri to get him to sign those documents. We had to go wherever he was traveling as opposed to, in the 90 percent of the other cases, well, you can go to the deputy attorney general or you can go to the director of the CIA. But on these, it was just one person that we understood had been "read into the program."

And who was instructing you on what could or could not be done?

The head of the Office of Intelligence Policy and Review, and the deputies. ...

[↑ Return to top](#)

So you go talk to OIPR counsel Mark Bradley at some point, and he tells you that the judge that you're bringing this to over at the FISA Court is objecting to some of the issues about this. Tell me that story. What was that all about?

Well, Mark Bradley was one of the two deputies of the Office of Intelligence Policy and Review, and I met him in a hallway, and there was just kind of a buzz throughout the office. Nobody was really saying anything, but it was clear that something fairly major had happened.

I asked him what was going on, and he said that something from the program had gotten into a regular FISA application, that the chief judge of the FISA Court was -- I can't really say what word I remember him using, but she was very upset, outraged, whatever. She was very upset that something from this program had gotten into an affidavit that had gone to just one of the normal regular FISA judges. And that was when he told me that he thought a sitting attorney general might be indicted for the first time in our history. ...

And afterward, as you learned more about this, what do you think was really going on here?

That's a very good question. It is right around the time that from the timeline or chronologically Larry Thompson had left around that time, and the new deputy attorney general was a fellow named Jim Comey. He had a background somewhat similar to mine. He was a career prosecutor. He had done a lot of law enforcement-type; that was his background. He was a law enforcement officer.

And he insisted, my understanding is, he insisted on being read into the program. And when he was read into the program, we've since come to learn that he quickly recognized that what was being done was illegal, contrary to the law, and that is when the famous scene occurred when he rushed over to the George Washington Hospital where the attorney general was severely ill, because he had heard that I guess it's Alberto Gonzales and someone else from the administration from the White House was going over for authorization to continue doing this programming.

And so in my looking back on it, I would think that all has to be interrelated as to the possible misrepresentations, the reason the FISA chief judge was so upset and the fact that Mr. Comey clearly believed that what we had been doing was not authorized by the law.

[↑ Return to top](#)

And the judge, this was the chief justice over at the FISA Court, was this the same judge that you guys had been bringing the affidavits to all along?

Yes.

And when you would go do that, that process, what happened? You would bring it over to her office; she would take a look at it. Would she ask questions about it?

Yes. Frequently, because she was stationed here in Washington, we wouldn't necessarily see her in the FISA Court, which at the time was in the Department of Justice in a bank vault on the sixth floor.

But if it was a case that was in the program, we would go to her chambers, and on one of those, that's where she just poured over the document and checked everything, checked every word. And she would ask questions. She would ask questions of the attorney and for clarification, and you had to be really prepared with regard to what was in that affidavit that you were submitting to her. ...

[↑ Return to top](#)

Eventually, it becomes clear that the problem here is that the reason for the worry about that, the information from the program getting into these other affidavits is because the material that was gathered must have been considered possibly illegal, right?

Correct, absolutely.

Just explain that.

... With my criminal law background, I knew that if a search warrant was issued but that it was based on false information or based on evidence that had been gathered illegally, that it jeopardized your entire case against someone. It could jeopardize, literally, the prosecution of a really significant target, a really significant terrorist.

I think it's now clear that they were conducting electronic surveillance without getting warrants and using that information then to develop probable cause and basically not informing the court of the source of the information.

Thus tainting the evidence?

Absolutely. And it just is, as I said, it could really damage the government's ability to bring somebody to justice. ...

[↑ Return to top](#)

So I know you don't know about what's going on with Comey over at Ashcroft's hospital room. ... But what happens to the program immediately afterward? ...

Well, the word was from this deputy of the office, Mark Bradley, was that the program had been "shut down" and that you would no longer, presumably, be given cases to work on, and you would not have to check with the person in the office that was in touch with the NSA to see whether the number was in the program because it "had been shut down."

So it was right around the time that I had decided to leave that office because I was not comfortable working in that with my thought that there was something illegal going on.

So that was the ramification: "The program has been shut down." And then I believe I heard shortly before I left that it was back up and running. Again, as the line lawyers would have to check with the person with the NSA to make sure that if it was in the program, it only went up this one track.

So what period of time was there in between when it was shut down and when it restarted?

I think my recollection is it was about two or three weeks.

And you had left within that period of two or three weeks?

No, I left shortly after that.

So it's shut down for a little bit, and then what are you guys told about it starting up again?

That we should continue to determine whether the number or the email address or what they call the facility was in the program, we should go back to doing that.

Looking back on it, the other change would have been that Mr. Comey had now been read into this program so he would be authorized to sign affidavits or FISA applications that were in the program. ...

[↑ Return to top](#)

You at some point raise the issue with Sandra Wilkinson at the Senate Judiciary Committee. When is that? Take us through that process. ...

Taking everything together, I was very concerned about what was being done, whatever was being done, and whether the Congress knew what was being done. And again, just kind of going back to law school and civics classes and learning about checks and balances and what I thought were supposed to be three coequal branches of government, I decided to go reach out to somebody who I knew on the Hill I had worked on a death penalty case with. ... I knew she would have a top-secret security clearance.

So I went to get a cup of coffee with this person, and I basically laid out what I've been talking to you about with regard to this separate track, that only one person could sign it, only one judge could sign it. And I just basically said to her, "Can you please talk to someone on Intelligence and find out whether Congress knows what is being done?" And if Congress knows and they've been briefed and they understand what is being done, then I would just walk away and be satisfied with that. So I had a fairly long meeting with her and left and never heard back from her for several months.

I had since left the -- well, I was still with the Department of Justice, I was in a different office. I'd left OIPR, and I used my government computer email to reach out to her again and say, "Can we have another cup of coffee?" And I went back up on the Hill and met with her, and I said: "So, were you able to talk to anybody? Does Congress know what we're doing with regard to this program?" And she said she couldn't tell me and that she just -- and I said, "Well, then I think maybe I will go to the press,"

And I remember her last comment was, "You know, Tom, whistleblowers frequently don't end up very well." And I told her, yeah, I understood that.

What did you think when she said, "I can't tell you anything"?

You know, I put everything together, the fact that it was so closely held that only literally what I thought two lawyers in the Department of Justice knew what was being done. It had not been vetted by various layers of lawyers and all that sort of thing. And all of the comments about "I assume what we're doing is illegal," and "The attorney general is going to get indicted," and "I'll sign it if you don't want to sign it." I just put everything together and felt that -- and again, the fact that we were rendering people to states that we knew tortured them, I just decided to -- I had read articles by Eric Lichtblau with *The New York Times*. I knew he was covering the Department of Justice, and I felt like he had a pretty good handle of what was going on in the department, and I reached out to him. ...

[↑ Return to top](#)

So what did it take you to go to that subway station and find that phone, and how did you come to that decision and that phone? Take us to that moment where you go over to that phone and you put -- I don't know how you use a telephone anymore. Do you put a dime or a quarter or whatever the hell you put into it? (Laughs.)

Well, cell phones weren't as ubiquitous as they are now. You know, I agonized for probably for months. It's difficult to even think back to that time and remember what I was thinking.

But again, there was drip by drip in the national press with regard to things that seemed to be somewhat haywire with regard to following the law, and I thought that maybe the trains going by would mask the conversation or whatever. They could trace it, but how would they know who was using that particular pay phone? I'm sure I could have just called him straight up. And it may have been a little bit of stupidity.

I certainly was conscious of the fact that if I were going to be found out -- and I did think I would be found out actually, eventually -- that there would be serious ramifications. But I just thought it was important.

You were pissed?

I was upset, I would say, with what I thought was being done to the way our government was supposed to work. I was pretty upset.

So you make the phone call. What's the phone call like? What do you say? What's the response?

I asked to speak to Mr. Lichtblau who covered the Department of Justice. I said that I thought I might have some information that might be of interest to him. He asked me what it might be about, and I probably said that it would be with regard to foreign intelligence. And he said he was interested, and we agreed at a place to meet. We agreed on a place to meet.

[↑ Return to top](#)

What happens? What's the meeting like?

Well, I did a little probably ridiculous song and dance of just getting to know him and not really disclosing anything at the first meeting, and he assured me that he would never reveal his sources. It was also around the time that another reporter, Judy Miller, was running into problems about revealing sources. He was very interested in whatever it was that I had to offer.

I don't think I even really told him where I worked the first time. And so I just kind of got to know him, kind of tried to assess his character and see whether I thought that this was going to be worth it. ...

So what happens next?

Well, we met. I got back in touch with him, met a couple more times, and then finally I showed him my credentials from the Department of Justice and told him where I had worked and what my concerns were.

And he, as my recollection is, pretty immediately said that there was another -- he had a colleague named James Risen. I don't know that he named Mr. Risen, but he had a colleague who had sources in the NSA and the CIA, and they were hearing the same sort of thing. But they did not have a source in the Department of Justice, and they weren't sure what was being done with the information that they were learning about from the NSA and the CIA sources and that I could potentially be the link to explain what was being done with that. ...

It got to the point where he would come back and say, "Well, we believe there's data mining going on, and we're hearing that they are gathering electronic surveillance without going through the FISA Court," and did I think that that would be legal? And I said: "No. You know, the statute's really pretty clear. This is the only way that you're supposed to conduct electronic surveillance of this type."

So I eventually told him basically what I've been saying here with regard to my suspicions, that there was this separate track, that a very, very limited people knew what it was all about and that really some very experienced, high-level lawyers thought what the government was doing was illegal. ...

[↑ Return to top](#)

... Explain what you thought the consequences might be and if you second-guessed yourself.

Well, I did think there was a real chance that I would be prosecuted, and I actually even got to the point where I wondered whether I'd be out on bond or whether the bond would be so high that I wouldn't be able to make the bond. I'm claustrophobic, so I didn't look forward to that possibility.

And I had worked in the death penalty area, and if someone reveals what's called signals intelligence secrets, there is potentially a death penalty possibility, that the government could seek a death penalty. I didn't think what I was revealing rose to that level, but I was concerned that someone would say, "Well, it is signals intelligence, because we're gathering these through electronic intercepts," and that sort of thing.

I didn't think that was much of a realistic possibility, but I did feel if it was ever published that eventually the government would subpoena the reporters, that they would try and exercise their right not to reveal their confidential sources and that would be litigated and that they would eventually be ordered to turn over their sources. So I did think that I would eventually be found out. ...

So what happens next? The article doesn't come out. You're waiting, a bit frustrated. What are you hearing? What happens?

It did not come out. Looking back at a timeline and referring to articles that have been written about it, it was in the fall of I guess 2004 that they had the story. Mr. Lichtblau and Mr. Risen met with me and said they felt they had a really good story, that they wanted to tie up loose ends, and they said they had these other sources, and they thought it was going to be a really important story to run.

And then basically I didn't hear anything. I mean, they just kind of disappeared. I didn't reach out to them. I just figured I would hear sometime. ...

I remember having lunch with them after a year had passed, and Jim Risen said that the story was going to run, that the White House had said that *The New York Times* would have blood on their hands. And they kind of asked my opinion about that, and I said, "I don't understand that." I said: "It's public knowledge we wiretap people by getting authorization to do that. How does it jeopardize anything for them to know that we wiretap people without getting authorization and without a piece of paper?"

Mr. Risen said that he was writing a book and that he had basically said to the publisher that he was going to publish this story in his book if they did not run the story. And that is when [the story](#) ran, I think, in December 2005.

[↑ Return to top](#)

Eighteen months later. You start getting phone calls from the FBI soon after. Take us to that. What's it like to have the FBI starting to call you?

Well, with my background, it was pretty unnerving. I put the agent off for quite sometime. I said I would get back to them, and then I didn't, and then he would call. Then I wouldn't get back to him. ...

Finally, I don't know whether he came by my office -- I was still with the Department of Justice in a different unit -- and I told him that I chose not to talk to him. I chose to exercise my rights under the Constitution to not be a witness against myself. Of course, I knew that immediately would send up red flags and I would immediately be their primary suspect, and I contacted a lawyer, a private lawyer, and went in and talked to him and realized that I needed a lawyer. ...

So you're getting deeper and deeper in trouble here. You lose your job at the U.S. Attorney's Office at this point, right?

Right.

What happens to you?

Well, with walls closing in, and I'm not sure I was -- I know I wasn't doing the greatest job in the world, and they knew I wasn't, and I knew I couldn't stay there. ...

I was preoccupied with what was going to happen to me and when it was going to happen and what was going to happen, if it was going to happen. And again, I just ended up thinking that, well, the FBI is a part of the Department of Justice, and they want to talk to me, and I've told them that I'm not going to talk to them, that I shouldn't stay an employee of the Department of Justice. So it certainly was somewhat -- it was a mutual decision that we parted ways. ...

[↑ Return to top](#)

So Aug. 1, 2007, 18 agents raid your home. What happens? Take us to that day and what that was like and what you were thinking.

Well, I had left that day to take my son to a summer school class and also had a doctor's appointment to get a second opinion on orthopedic surgery. When I was coming home, probably around 11:00 in the morning, it was a beautiful, sunny day, and I remember driving in my suburban residential neighborhood and noticing that there were a line of cars parked at one side of the street, all just on one side, and one car was blocking my driveway.

My first thought was that somebody was having a party and I hadn't been invited. And then I looked, because I was first drawn to the cars, and then I looked over kind of more in the middle of the street, and there was my lawyer. ...

My heart just sunk. I pulled into some neighbor's driveway, and eventually my wife came out, and she was trembling and crying and asking what was going to happen to us. And people, the agents were coming in and out of the house carrying boxes of stuff and wearing their blue jackets with the big yellow FBI on the back, and my lawyer, Paul Kemp, said that I should go wait at his office.

So I went and waited at his office, and they were in my house a long time. I think it was about seven hours or so. When I came home, I learned that -- and I had been on, as a prosecutor, had been on raids or search warrants and knew kind of the technique of being assigned of which room to go to, and my wife was confronted by these people, some of whom -- and the neighbors said -- had guns drawn, at least one had a gun drawn, and wearing vests, knocking on our door and demanding to see her hands and shouting at her, and then she had to reach for the keys because we have window panes on the side of the door. I've learned that they rushed into the house, and they all went to separate rooms, and two of them woke up two of my children in bed. They were awakened by strangers wearing guns.

They were all brought down to the first level and kind of gathered in one spot, and then they were asked questions about whether I had come into unusual amounts of money, whether any *New York Times* reporters had ever been to our house, whether there were any secret compartments in our house, whether there was a safe in our house. And they seized my kids' computers. ... And all of our cell phones were taken. A lot of records were taken out of the house, all the computers. Actually missed a couple of old cell phones. But it was just -- it really shook me up. ...

It never occurred to me that they would hit my house. I thought it would go through a grand jury process with the reporters. And in fact, I had told Mr. Lichtblau that when it got to that point that he did not have to go to jail for me; he could reveal his source. So the raid on my house was unquestionably one of the worst days of my life.

So what happens next?

Well, about two days, I was over at my lawyer's office. He'd called and asked me to come over, had an office in Rockville. I was sitting in his office, and he told me that he had been contacted by the Department of Justice, and I was offered a plea. I could plea to -- I think it was going to be espionage, and it was contemplated -- the maximum penalty, for some reason I remember 10 years, but it would be contemplated under the federal sentencing guidelines that I would go to jail for a period of time.

And I just said, "I don't think I've done anything wrong, so I'm not interested." And I think that undoubtedly surprised the Department of Justice. As I said, I think they thought I would roll over.

I don't remember whether it was before or immediately after hearing that they were offering me a plea, but I got a phone call from [investigative journalist] Mike Isikoff, who I never had heard from before. I recognized his name from reading *Newsweek*. We subscribed to *Newsweek*, and he knew that my house had been raided. He knew that I had had disagreements with the administration over death penalty prosecution. He knew what had been taken out of my house. And I'm thinking at least I knew there was more than one leak in the Department of Justice. But I told him I really couldn't talk to him at that time.

And what happens next?

You know, there's just more waiting, and that really is the time then that I became aware -- I heard from people that the FBI had been at the old prosecutor's office. They knew who I had lunch with at times; they knew I wasn't going to an office function and just really became aware that obviously I was under fairly significant surveillance, I would say. ...

[↑ Return to top](#)

The Obama administration comes in. Is there a hope that at some point the new administration might bring relief to some extent? ...

I certainly had a lot of hope, and I had a lot of hope for hope and change. And in retrospect, it really is kind of naive, but I actually thought that somebody might say, "You know, you actually did the right thing, and we'd like to offer you a job again in the Department of Justice." I would not have gone back to the intelligence side; I would have gone back to working on death penalty cases where I was more comfortable, and that was really kind of my career background. I was just incredibly naive in retrospect.

[↑ Return to top](#)

And what then happened?

Well, I actually kind of figured that after the election that I would get indicted between the election and the inauguration. But I wasn't, and I guess it was around that time that I decided to be -- basically, our legal strategy, such as it was, was to not cooperate, not talk.

I went against legal advice, and I decided that I thought Isikoff, Mike Isikoff, had a really good handle and obviously had sources that knew what had happened, and I had started during that period of time to meet with him somewhat similar to my meeting with Eric Lichtblau over a series of meetings, and started talking to him with the understanding that he would not write anything until I gave him authorization to write something.

And was that useful? How did that help in the end?

Well, my view of what it was was I thought I would lay everything out: Here's what I did, here's why I did it, and if you want to indict me, you want to charge me, go for it. ...

It just got to the point where I just felt like it made sense to try and be proactive rather than just sit around and take punch after punch after punch.

What did you do?

Well, I ended up talking to or authorizing Mike Isikoff to write a story about what I had done, told him much of what I'm saying here today. ... I don't really remember when that story was published, but **it came out**, and it was a cover story. That actually lifted a sizable weight off my shoulders. ...

[↑ Return to top](#)

So April 26, 2011, after a lengthy investigation by the DOJ, ... what happens?

Well, they were in touch with my lawyer, and they asked me to appear in front of a grand jury that was convened or sitting in the Eastern District of Virginia, in Alexandria. I was given immunity for whatever I said in there in terms of prosecution, couldn't be prosecuted for what I said before the grand jury. It was my understanding that it was part of this investigation that still seems to be ongoing about Jim Risen and leaks from the CIA and/or the NSA. And I was told that I would only be asked questions about a very limited part of his book.

And when I went in there to the grand jury, I was asked everything, the entire story. And I just kind of sat there. But again, I wasn't ashamed of what I've done, or what I had done. ...

So I'm sitting outside, and the lawyer from the Department of Justice comes out and talks to Mr. Kemp, Paul Kemp, my lawyer, and says that it's over; there are not going to be any charges. Didn't talk to me, didn't say a word to me. And I remember contacting my wife Claire and saying that there are not going to be any charges. And she said "Well will they put that in writing?" And I said "Hey Paul will they put this in writing?" And he said "No, they do that for upper-level people in the departments, but they don't do that at your level."

I kind of just had this: "Is that it? That's it. It's all over, all of this." Twenty-five agents, two agents, Lawless, seizures of my Christmas card list and computers and cell phones and an offer to plead guilty. I think sometimes, well, what if I had caved and said, "OK, I'll take the plea," hoping that I get less time than if they end up trying me? But they didn't charge me with a thing, and I didn't even get an apology. ...

Was it worth it?

My biggest regret is what I put my family through. ... I put my family through a lot. I regret that, but ultimately, I was being true to myself, I think. I was being true to how I was raised. I hope my father would be proud of what I did. I know he was upset that the FBI's reputation was kind of besmirched by their wiretaps of Martin Luther King and John Lennon. I mean, he was certainly anything but -- he was not a raging liberal. But I really hope that he would be proud of what I did.

As Mr. Comey said, some of us will look back and be ashamed. And I'll look back and say, "I think I did the right thing." ...

One of the things that the NSA and the White House said was the FISA system was broken. It was too slow; it couldn't get the intelligence that they needed to prevent the next attack. What was your inside view? Did it seem like the FISA system was broken?

That's one aspect of this story that I was really bothered by in real time as it was kind of going on, was the argument that we wouldn't be able to get the ticking-time-bomb person and that the process was too slow and broken.

The fact is we regularly got emergency authorizations for FISA. It was almost routine. We would do it over weekends. We would go to judges' houses, and the statute specifically provided for an emergency -- that you could start tapping before you actually went to the court. You could start gathering intelligence before getting authorization by the court if you put in the document probable cause within 72 hours after you had started it, and we did that all the time.

The downside of it, the danger, was that if a judge said that you did not have probable cause, you then had to tell the person whose communications had been overheard or who'd been seized. When I was there, that never happened.

But that's one of the things that really bothers me about the whole aspect of the case, is that the people who were the subjects of these warrantless wiretaps, they've never been told. The law provides that in emergency situations, if it isn't found to be validated by the court, they're entitled to know.

But whose phones did we tap? I mean, I think, again, as history unfolds, that we're going to find that there were enemies lists potentially, that we're going to find some people will really be surprised their phones were wiretapped. That's a really bothersome aspect of the story. The FISA Court was not broken, and the system was not broken. ...

Is the FISA Court in the DOJ? Is it an actual courtroom?

No. Well, it is. They've moved it down to the courthouse, the federal district courthouse, so now it actually meets in a courthouse.

But back then it was literally in a bank vault because they were worried about the Soviet Union overhearing what was going on. So it was on the sixth floor, and only one elevator went up there. In order to get in, you had to get through security processes. I think they probably have fingerprint analysis, you know, the thing that you put your finger on now to get in. But no, it was not in an actual courtroom. ...

[↑ Return to top](#)



E-MAIL THIS

Tweet

Recommend

431

G+

1

0

RELATED

November 16, 2015 / 6:21 pm

[After Paris Attacks, CIA Head Reignites Surveillance Debate](#)

August 17, 2015 / 4:23 pm

[How AT&T Helped the NSA Spy on Millions](#)

June 1, 2015 / 4:03 pm

[With or Without the Patriot Act, Here's How the NSA Can Still Spy on Americans](#)

April 23, 2015 / 9:33 am

[FRONTLINE Wins Peabody Award for "United States of Secrets"](#)

Comments for this thread are now closed.



0 Comments

FRONTLINE

Login

Recommend

Share

Sort by Best

This discussion has been closed.

Subscribe

Add Disqus to your site Add Disqus Add

Privacy

In order to foster a civil and literate discussion that respects all participants, FRONTLINE has the following guidelines for commentary. By submitting comments here, you are consenting to these rules:

Readers' comments that include profanity, obscenity, personal attacks, harassment, or are defamatory, sexist, racist, violate a third party's right to privacy, or are otherwise inappropriate, will be removed. Entries that are unsigned or are "signed" by someone other than the actual author will be removed. We reserve the right to not post comments that are more than 400 words. We will take steps to block users who repeatedly violate our commenting rules, terms of use, or privacy policies. You are fully responsible for your comments.

RECENT STORIES

November 18, 2015 / 5:27 pm
[In Fight Against ISIS, a Lose-Lose Scenario Poses Challenge for West](#)

November 17, 2015 / 6:13 pm
[ISIS is in Afghanistan, But Who Are They Really?](#)

November 17, 2015 / 1:59 pm
["The Most Risky ... Job Ever." Reporting on "ISIS in Afghanistan"](#)

JOIN OUR NEWSLETTER

e-mail address

Subscribe »

Like 845K people like this. Sign Up to see what your friends like.

Follow @frontlinepbs 203K followers

FRONTLINE on



Funding for FRONTLINE is provided through the support of PBS viewers and by the Corporation for Public Broadcasting. Major funding for FRONTLINE is provided by John D. and Catherine T. MacArthur Foundation. Additional funding is provided by the Park Foundation, the John and Helen Glessner Family Trust, the Ford Foundation, Wyncote Foundation, and the FRONTLINE Journalism Fund with major support from Jon and Jo Ann Hagler on behalf of the Jon L. Hagler Foundation.



Supporting Investigative Reporting



Corporation for Public Broadcasting

MacArthur Foundation

PARK FOUNDATION



FORD FOUNDATION

Wyncote Foundation

JOHN AND HELEN GLESSNER FAMILY TRUST

[FRONTLINE](#) [Watch FRONTLINE](#) [About FRONTLINE](#) [Contact FRONTLINE](#)

[Privacy Policy](#) [Journalistic Guidelines](#) [PBS Privacy Policy](#) [PBS Terms of Use](#) [Corporate Sponsorship](#)

FRONTLINE is a registered trademark of WGBH Educational Foundation.

Web Site [Copyright](#) ©1995-2016 WGBH Educational Foundation

PBS is a 501(c)(3) not-for-profit organization.