

THOMAS TAMM TO VAUGHN WALKER: THEY KNEW IT WAS ILLEGAL

I'll have a lot more to say about Isikoff's excellent story on Thomas Tamm, the guy who tipped Eric Lichtblau off to the domestic surveillance program.

But for the moment, I'd like to elaborate on yesterday's comments about timing. Tamm's lawyer reveals that DOJ just recently told him that they were delaying a decision on whether or not to charge Tamm.

Paul Kemp, one of Tamm's lawyers, says he was recently told by the Justice Department prosecutor in charge of Tamm's case that there will be no decision about whether to prosecute until next year—after the Obama administration takes office.

Delaying the decision until the Obama administration takes office would do more than dump the problem into Obama's lap (just like the Gitmo detainees, of course). It would also delay the time when Tamm testified publicly about what he knows of the domestic surveillance program until after Vaughn Walker issues a ruling on immunity for the telecoms.

By coming forward now, Tamm has told Walker something—in no uncertain terms—that the government won't tell him.

DOJ recognized that this program was illegal.

Tamm provides the names of several people whom Walker might want to consult before he rules on the immunity law. There's Lisa Farabee, who told Tamm that,

"Don't even go there," and then added, "I assume what they are doing is illegal."

And there's Mark Bradley, who told Tamm,

"This may be [a time] the attorney general gets indicted,"

If these two lawyers in the Office of Intelligence Policy and Review—the office that provides legal review of wiretaps on a logistical level—believed that this program was illegal, then how can Michael Mukasey now represent to Walker that it wasn't?

And just for good measure, Tamm also reveals the code name for the program—Stellar Wind—which will help the Electronic Frontier Foundation and others argue that the existence of this program is publicly known.

I'm guessing that Vaughn Walker is reading this article very closely this morning.

One more point about timing: I don't think Tamm coming forward now is due exclusively to noble motives. Consider how it might affect any potential trial. If Tamm can force two lawyers (plus the FISA judges who balked at the program) to go on the record that they, too, believed this was an illegal program, then it's going to make it easier for him to argue that he came forward solely to expose illegal activities. Furthermore, by postponing his charging decision until after the telecoms got immunity, DOJ may have been trying to ensure that any testimony he made in court would not affect Administration efforts to sweep all their law-breaking under the rug. Now, Tamm has ruined their attempts to do that.

Add in the way Isikoff has made this a compelling narrative, complete with all the remarkable ties members of Tamm's family have to national security, and it'll make it a lot harder to charge Tamm for his leaks.