SILENCING WHISTLEBLOWERS, 12 YEARS LATER

As reported by Zoe Tillman, Thomas Tamm, the first whistleblower to go to Eric Lichtblau with reports of Stellar Wind, is being investigated for ethical violations by the DC Bar. The complaint alleges he failed to report that people within DOJ were violating their legal obligations to superiors, up to and including the Attorney General, and that he took confidences of his client (which the complaint defines as DOJ) to the press.

The question, of course, is why the Bar is pursuing this now, years after Tamm's actions became public. Tillman describes the complaint as having had some kind of virgin birth, from Bar members reading the news accounts rather than someone complaining.

> D.C. Disciplinary Counsel Wallace Shipp Jr. declined to comment on the charges against Tamm. The ethics case was opened in 2009, but the charges weren't filed until late December. The disciplinary counsel's office has working in recent years to clear a backlog of old cases.
>
> Shipp said the disciplinary counsel's office launched the investigation after reading about Tamm's case in news reports. It was opened under the office's name, which generally means there is no outside complainant.

That's a funny explanation, given that the complaint doesn't reference the press reports, most notably Michael Isikoff's 2008 report on Tamm's whistleblowing, which describes Tamm going to two of his superiors (though not, admittedly, all the way to Attorney General Ashcroft).

> It's unclear to what extent Tamm's office was aware of the origins of some of the information it was getting. But Tamm was puzzled by the unusual procedures—which sidestepped the normal FISA process—for requesting wiretaps on cases that involved program intelligence. He began pushing his supervisors to explain what was going on. Tamm says he found the whole thing especially curious since there was nothing in the special "program" wiretap requests that seemed any different from all the others. They looked and read the same. It seemed to Tamm there was a reason for this: the intelligence that came from the program was being disguised. He didn't understand why. But whenever Tamm would ask questions about this within OIPR, "nobody wanted to talk about it."
>
> At one point, Tamm says, he approached Lisa Farabee, a senior counsel in OIPR who reviewed his work, and asked her directly, "Do you know what the program is?" According to Tamm, she replied: "Don't even go there," and then added, "I assume what they are doing is illegal." Tamm says his immediate thought was, "I'm a law-enforcement officer and I'm participating in something that is illegal?" A few weeks later Tamm bumped into Mark Bradley, the deputy OIPR counsel, who told him the office had run into trouble with Colleen Kollar-Kotelly, the chief judge on the FISA court. Bradley seemed nervous, Tamm says. Kollar-Kotelly had raised objections to the special program wiretaps, and "the A.G.-only cases are being shut down," Bradley told Tamm. He then added, "This may be [a time] the attorney general gets indicted," according to Tamm. (Told of Tamm's account, Justice spokesman Boyd said that Farabee and Bradley "have no

> comment for your story.")

Compare that version with how the complaint describes Tamm doing precisely what the complaint says he failed to do.

> Respondent learned that these applications involved special intelligence obtained from something referred to as "the program." When he inquired about "the program" of other members of the Office of Intelligence Policy and Review, he was told by his colleagues that it was probably illegal.

Isikoff describes Tamm *going to two of his superiors*, "a senior counsel in OIPR who reviewed his work," and "the deputy OIPR counsel," the former of one of whom is the one who told him "I assume what they are doing is illegal." The complaint rewrites that story — what ostensibly is the source of the complaint — and turns these superiors into "colleagues."

Mind you, according to this story, there is one superior within OIPR to whom Tamm didn't go: Counsel James Baker. He was the guy who was laundering applications to the FISC in ways Colleen Kollar-Kotelly found unacceptable.

Baker, of course, is currently the General Counsel of FBI, someone who reviews a slew of applications for larger programs, including those that go to FISC.

So 12 years after Tamm leaked DOJ's secrets to the NYT, he is being investigated by the Bar because he didn't go to the right superiors with his complaints, one of who just happens to be the FBI General Counsel.