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# Whistleblower Facing Ethics Charges Over NSA Leak



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by PRIYANKA BOGHANI

(HTTP://WWW.PBS.ORG/WGBH/FRONTLINE/PERSON/PRIYANKA-BOGHANI/)



Thomas Tamm, a former Justice Department attorney who said he talked to the press about the National Security Agency's warrantless surveillance program in the mid-2000's, is facing ethics charges that could potentially threaten his ability to practice law.

On Tuesday, the District of Columbia Office of Disciplinary Counsel charged

(http://pdfserver.amlaw.com/nlj/Thomas%20Tamm%20specification%20of%20ethics%20charges.pdf)

Tamm with violating rules of professional conduct for bringing his concerns about the NSA program to the press instead of reporting them to authorities above him in the Justice

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Department, including former Attorney General John Ashcroft. At the time, however, Ashcroft had already signed off on the controversial program. The office also charged Tamm with disclosing “confidences” of his client, the Department of Justice, to the media.

When he worked at the Justice Department’s Office of Intelligence Policy and Review, it was Tamm’s job to prepare warrants for the Foreign Intelligence Surveillance (FISA) court so that the government could conduct surveillance inside the United States. However, when he started working on terrorism cases, Tamm said he found references to wiretaps and information that did not come through FISA warrants.

“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,” Tamm told FRONTLINE in an [interview](#)

(<http://www.pbs.org/wgbh/pages/frontline/government-elections-politics/united-states-of-secrets/the-frontline-interview-thomas-tamm/>) for the 2014 documentary *United States of Secrets*

(<http://www.pbs.org/wgbh/frontline/film/united-states-of-secrets/>). In the below excerpt from the film, he wondered if the attorney general was doing something illegal.

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Tamm said he tried to take his concerns up the chain of command, without success. When that failed, he said he approached a Senate staffer to find out if Congress knew about

“the program” — as the NSA surveillance effort was known. The staffer said she couldn’t tell him anything. When he mentioned the possibility of going to the press, he said she told him, “You know, Tom, whistleblowers frequently don’t end up very well.”

Still, Tamm decided to go to the press. He made an anonymous call (<http://www.newsweek.com/whistleblower-who-exposed-warrantless-wiretaps-82805>) to *The New York Times*, which later exposed the program in print.

Eric Lichtblau, one of the reporters who broke the story, has never confirmed Tamm as a source, but acknowledges receiving a tip from an anonymous source. Unbeknownst to Tamm at the time, the order for “the program” had come straight from President George W. Bush’s office.

Tamm told FRONTLINE he was fully aware of the consequences he might face for the leak.

“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,” he told FRONTLINE in 2013.

After *The Times* (<http://www.nytimes.com/2005/12/16/politics/bush-lets-us-spy-on-callers-without-courts.html>) story ran in 2005, Tamm became a suspect in a massive FBI investigation into the source of the leaks. He resigned from the Justice Department in 2006. In 2007, his house was raided by 18 FBI agents.

The Justice Department informed (<http://www.politico.com/story/2011/04/wiretapping-leak-probe-dropped-053718>) Tamm in 2011 that it had decided not to prosecute him. The charges he faces now stem from an investigation that the D.C. bar’s ethics office opened in 2009.

*The National Law Journal* (<http://www.nationallawjournal.com/id=1202747971994/DOJ-Lawyer-Who-Exposed-BushEra-Surveillance-Faces-Ethics-Charges?slreturn=20160028102229>), which first reported the news of the ethics charges, quoted one of Tamm’s lawyers,

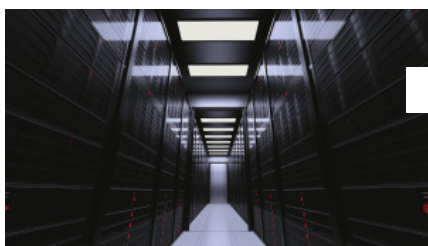
Paul Kemp, saying that it was “a shame this thing comes about 11 years after the facts that give rise to it.”

The charges could lead to reprimands, disbarment, though it’s also possible they result in no disciplinary action at all, according to

[http://www.nytimes.com/2016/01/28/us/politics/ex-department-of-justice-lawyer-faces-penalties-in-leak-of-nsa-program.html?\\_r=0](http://www.nytimes.com/2016/01/28/us/politics/ex-department-of-justice-lawyer-faces-penalties-in-leak-of-nsa-program.html?_r=0)) *The Times*

[http://www.nytimes.com/2016/01/28/us/politics/ex-department-of-justice-lawyer-faces-penalties-in-leak-of-nsa-program.html?\\_r=0](http://www.nytimes.com/2016/01/28/us/politics/ex-department-of-justice-lawyer-faces-penalties-in-leak-of-nsa-program.html?_r=0)). It remains unclear whether Tamm being disbarred in D.C. would prevent him from practicing law in Maryland, where he now works.

Georgetown University law professor Michael Frisch, who is also representing Tamm, told *U.S. News & World Report* (<http://www.usnews.com/news/articles/2016-01-27/pre-snowden-whistleblower-thomas-tamm-faces-misconduct-charges-12-years-later>), “A lot of the damage of these cases is the strain and pressure of having to endure the process and the charges.”



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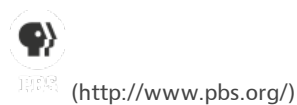
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