

# ILLEGAL WIRETAP LEAK PROBE DROPPED

According to Josh Gerstein, DOJ decided not to charge anyone in the illegal wiretap leak probe.

The Justice Department has dropped its long-running criminal investigation of a lawyer who publicly admitted leaking information about President George W. Bush's top-secret warrantless wiretapping program to The New York Times – disclosures that Bush vehemently denounced as a breach of national security.

[snip]

The Justice Department would not discuss the current status of the probe, which began in late 2005 after the Times story was published with a formal leak complaint from the National Security Agency. However, [Thomas] Tamm's attorney, Paul Kemp, told POLITICO he and his client were informed "seven or eight months ago" that the investigation into Tamm was over.

The information was relayed during a meeting with the prosecutor handling the case, William Welch, Kemp said. The Justice Department recently issued Tamm a letter confirming that the probe had concluded, the defense attorney said.

Prosecutors also appear to have lost interest in a former National Security Agency official who also publicly acknowledged being a source for the Times on the warrantless wiretapping story, Russell Tice. An attorney for Tice, Joshua Dratel, said it has been several years since prosecutors contacted him about the investigation.

Gerstein discusses the possibility that the investigation was dropped because it was found to be illegal.

“What leaps out to me is the fact that the program was arguably illegal, so while that does not provide a legal defense or immunity to the leaker, from a practical jury-appeal standpoint, which a seasoned prosecutor should consider, how appealing is the case going to be if they’re prosecuting government attorneys for disclosing the program but ... the people who were doing the wiretapping don’t get prosecuted?” asked [Peter] Zeidenberg, who was a prosecutor on the leak-related case against Bush White House aide Lewis Libby. “How would you like to be the prosecutor to get up there and make that argument?”

Note, Vaughn Walker’s decision against the government in the al-Haramain case was just over a year ago, so it may be that his decision provided a big disincentive to the government to pursue the case.

Of course, that raises the possibility that the same might be true for Bradley Manning. Granted, his case will not be judged by a jury of civilians; he will have a military jury. Still, as more and more documents he allegedly leak reveal our government’s knowing cover-up that it was detaining innocent people and abetting Iraqi torture, it may make it a lot less palatable to argue against Manning.