

THE FDA DEMONSTRATES WHAT “TARGETING” DOES

“They think they can be the Gestapo and do anything they want.” – Chuck Grassley, on learning his staffer’s emails had been surveilled by the FDA

It is utterly predictable that members of Congress only get concerned about heavy-handed surveillance when they get sucked up in the surveillance. And so it is that Chuck Grassley, who voted for the FISA Amendments Act, and Chris Van Hollen, who didn’t, are outraged that their offices have been dragged into the FDA’s invasive surveillance used to conduct a leak investigation.

The surveillance started in response to a belief that FDA scientists, upset that their concerns about the safety of medical diagnostic equipment had been overridden, leaked classified proprietary information to the NYT. But after targeting just 5 scientists suspected of the leak, the FDA developed profiles on 21 people thought to be conspiring against the agency.

What began as a narrow investigation into the possible leaking of confidential agency information by five scientists quickly grew in mid-2010 into a much broader campaign to counter outside critics of the agency’s medical review process, according to the cache of more than 80,000 pages of computer documents generated by the surveillance effort.

Moving to quell what one memorandum called the “collaboration” of the F.D.A.’s opponents, the surveillance operation identified 21 agency employees, Congressional officials, outside medical researchers and

journalists thought to be working together to put out negative and “defamatory” information about the agency.

Mind you, Grassley and Van Hollen’s aides (and Van Hollen himself) were not themselves the targets of the leak investigation. The scientists were the targets. But since they were communicating with the scientists, their communication—some of it protected by law—were collected, “incidentally.” And having convinced themselves a leak had happened and a conspiracy was afoot, the FDA continued its collection program, even after the FDA’s Inspector General determined no law was broken and the Special Counsel started investigating the retaliation against the scientists.

Precisely the same thing can happen under FAA in the name of national security: people are targeted based on a suspicion, and those they communicate with, even for legitimate purposes, get sucked into the trap. That is, this is precisely the problem with the FAA, which Grassley, at least, is prepared to reup for another 4 years.

And precisely the same thing has and continues to happen as agencies put their concerns about classification ahead of whistleblower concerns. This story is not so different from what happened to Thomas Drake, with members of Congress targeted, whistleblowers punished, and the underlying complaint ignored.

On that point, the NYT leaves two questions left unanswered in their important article on the FDA surveillance: it doesn’t make clear whether the medical devices—mammogram and colonoscopy imaging devices—are still out there on the market, exposing Americans to too much radiation.

And while the NYT does include the FDA’s two different attempts to justify this surveillance, it doesn’t tell us where are the people who put

the FDA's institutional interests above the safety of the American people.

We are all already at risk of this kind of surveillance given the way FAA is structured. This instance, because it's only about General Electric's security rather than "national security," might actually provide an opportunity to talk about how inappropriate this kind of surveillance is, both in other workplaces, and when our government targets us in the name of national security.

But it probably won't happen.