

WHAT IF IT WERE THE REAL MUSLIM HOUSEWIVES OF TAMPA BAY SCANDAL?

In all my coverage of the Petraeus scandal, I haven't really touched on the aspect that regular readers of this blog were presumably least surprised about: the virtually unchecked authority the FBI has to snoop. As always, Chris Soghoian and Julian Sanchez offer worthwhile discussions of that surveillance. Yesterday, Greg Miller and Ellen Nakashima described how folks in DC are freaking out upon discovery of how intrusive all this surveillance can be.

The FBI started its case in June with a collection of five e-mails, a few hundred kilobytes of data at most.

By the time the probe exploded into public view earlier this month, the FBI was sitting on a mountain of data containing the private communications – and intimate secrets – of a CIA director and a U.S. war commander. What the bureau didn't have – and apparently still doesn't – is evidence of a crime.

How that happened and what it means for privacy and national security are questions that have induced shudders in Washington and a queasy new understanding of the FBI's comprehensive access to the digital trails left by even top officials.

I've been saying from the start this whole shit-show would be useful if it made some Members of Congress rethink their permissive attitude towards surveillance and lazy oversight.

All that said, it's important to note that the Petraeus example—at least what we know of

it—isn't even close to as bad as Big Brother gets in this country, even with questions about the predicate of the investigation.

Which is why I wanted to consider how this might be different if, instead of a bunch of mostly-Anglo connected Republicans, this investigation had focused on Muslims (we've discussed Jill Kelley and her sister's interesting story as indebted Arab-Americans; it will be interesting to see how their access is treated going forward).

After all, while it is unlikely the FBI would have responded to a cyber-stalking complaint from an unconnected Muslim, it's possible the internet traffic involved, particularly if it spanned international boundaries, might have attracted attention in its own right. Alternately, had the anonymous emails reflecting knowledge of the movement of top Generals involved a Muslim rather than a white Reserve Colonel, we would not now be debating whether the FBI had the predicate to investigate her emails further (though I maintain the FBI may have used a Counter-Intelligence predicate to continue the investigation in the first place).

Probably, from there the FBI would have used additional intrusive investigative methods. The National Security establishment is only now focusing on Kelley and her sister's debt problems. Which leads me to suspect no one bothered to look at their financial records until the press started doing so. What would the FBI have found had they looked at financial records, showing more details about who paid what for whom when? How would the Kelleys' bogus cancer charity look, for example, if you had more access to their financial records?

And then there's one big difference. We know—because we've heard numerous individual stories and because Ted Olson admitted it in court—that the FBI uses discoveries like the ones they made here to coerce people to turn informant. Legal trouble, financial trouble, marital trouble? All have made people targets

for “recruitment.” And those informants are sent out, with little training or legal protection, to spy on their fellow citizens, often the leaders of their community. The FBI will send out series of informants, for years on end, to target Imams who never do anything illegal but nevertheless either have connections—possibly familial—or First Amendment protected views that lead the FBI to suspect them. In the Muslim community, some people live for years under this kind of surveillance, sometimes ultimately getting caught in an FBI sting, at other times, just living a law-abiding life under the most intrusive scrutiny.

I do hope the Petraeus example scares the shit out of the often more morally and legally compromised people empowered to approve and oversee such surveillance. But I still think the scandal offers the merest glimpse into what our current state of surveillance really looks like.