

FBI Abuse of “National Security Letters” — New Revelations

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When biochemist Magdy Mahmoud Mustafa el-Nashar was released from custody in Cairo in 2005, no one could have be more relieved than the vacationing former student and his family.

Falsely accused by British authorities for alleged links to the July 7, 2005 London transport bombings that killed 52 and maimed 700, el-Nashar was taken into custody in Egypt because he had casually known two of the suicide bombers. He had met them while obtaining a Ph.D. in biochemistry at the University of Leeds. When freed, el-Nashar told the [International Herald Tribune](#),

“The reason for suspecting me was because I specialize in chemistry. I am completely innocent,” he said, adding that he planned legal action against British media that he said had defamed him. He did not identify the media. (“Egyptians Free Biochemist Who Knew 2 of the London Bombers,” International Herald Tribune, August 10, 2005)

Released unharmed by Egypt’s notoriously torture-prone Interior Ministry police, el-Nashar lived to tell the tale. But unbeknownst to the former North Carolina State University student there was a disturbing backstory to his arrest.

The Electronic Frontier Foundation (EFF) released a damning [report](#) Tuesday documenting the FBI’s abuse of the process for obtaining a National Security Letter (NSL) in connection with its probe of el-Nashar.

Incredibly, the Bureau *delayed its own investigation* in North Carolina “by forcing a field agent to return documents acquired from a U.S. university,” Ryan Singel [reports](#).

Why? Because the agent received the documents through a lawful subpoena, while headquarters wanted him to demand the records under the USA Patriot Act, using a power the FBI did not have, but desperately wanted.

When a North Carolina State University lawyer correctly rejected the second records demand, the FBI obtained another subpoena. Two weeks later, the delay was cited by FBI director Robert Mueller in congressional testimony as proof that the USA Patriot Act needed to be expanded. (Ryan Singel, “FBI Caused Delay in Terror Case Ahead of Senate Testimony,” Wired News, April 15, 2008)

That's right.

The investigation into a suspected accomplice to mass murder was sidetracked because FBI bureaucrats sought additional powers they “desperately wanted,” in order to escape judicial oversight and expand their brief to shower the public with flimsy National Security Letters. During 2004-2005 for example, the Bureau issued some *100,000* NSLs, often on no more than a hunch.

Under provisions of the oppressive USA Patriot Act, Bureau gumshoes can issue NSLs without probable cause to obtain phone records, e-mails, credit reports and bank statements so long as the request is relevant to a “terrorism” or “espionage” investigation. Unlike grand jury subpoenas however, NSLs have no expiration date and recipients of these baneful warrants are bound by draconian gag orders forever forbidding disclosure of their content. Violations can result in stiff fines and even a stint in federal prison.

According to an EFF [Press Release](#),

In the report, EFF used documents obtained through a Freedom of Information Act (FOIA) request coupled with public information to detail the bizarre turns in the FBI's investigation of a former North Carolina State University student. Over the span of three days in July of 2005, FBI documents show that the bureau first obtained the educational records of the suspect with a grand jury subpoena. However, at the direction of FBI headquarters, agents returned the records and then requested them again through an improper NSL. (“EFF Report: FBI Slowed Terror Investigation with Improper NSL Request,” Electronic Frontier Foundation, April 15, 2008)

EFF's Senior Staff Attorney Kurt Opsahl denounced this egregious flim-flam by FBI Director Robert F. Mueller when he testified before Congress in 2005:

“The FBI consistently asks for more power and less outside supervision. Yet here the NSL power was misused at the direction of FBI headquarters, and only after review by FBI lawyers. Oversight and legislative reforms are necessary to ensure that these powerful tools are not abused.”

However, in testimony before the House Judiciary Committee Tuesday, FBI General Counsel Valerie Caproni claimed that the FBI's misuse of the NSL in the el-Nashar case may have been the result of “miscommunication.”

According to [EFF](#), citing a 2007 [report](#) by Caproni's Office of the General Counsel,

the FBI's Charlotte Division, “acted upon the advice and direction of FBIHQ [and] Charlotte personnel sought legal advice prior to the service of the NSL.” FBI documents show that the NSL at issue was reviewed by the Senior Supervisory Special Agent for the Raleigh office, and then reviewed by the Special Agent in Charge of the Atlanta Division before being signed. (Kurt Opsahl, “EFF General Counsel Questioned on EFF NSL Report,” Electronic Frontier Foundation, April 15, 2008)

Attentive readers may [recall](#) that Caproni had earlier rejected a ruling by the secretive FISA court that had rebuffed Bureau requests to obtain sensitive records because “the ‘facts’

were too thin” and the “request implicated the target’s First Amendment rights.” The FBI used an NSL as a “work around” and proceeded anyway. Why? Because the Bureau’s General Counsel believed “it was appropriate to issue the letters in such cases because *she disagreed with the court’s conclusions.*” [emphasis added]

Meanwhile, the ACLU and the New York Civil Liberties Union filed a federal lawsuit Tuesday “to uncover the extent of the FBI’s misuse of National Security Letter powers.” According to the [ACLU](#):

Specifically, the lawsuit seeks the release of records pertaining to the FBI’s use of NSLs at the behest of other agencies including the Department of Defense (DoD) as well as documents concerning the FBI’s use of its gag power. Newly un-redacted documents released to the ACLU last month in a separate Freedom of Information Act (FOIA) lawsuit revealed that the Defense Department is using the FBI to circumvent legal limits on its own NSL power and may be obtaining sensitive records of people within the U.S. to which the military is not otherwise entitled, simply by asking the FBI to issue the record demands. While the FBI has broad NSL powers and compliance with FBI-issued NSLs is mandatory, the Defense Department’s NSL power is more limited in scope. (“ACLU Challenges National Security Letters in Congress and Court,” Press Release, American Civil Liberties Union, April 15, 2008)

To make matters worse in the el-Nashar case, the Bureau tried to cover up the incident by failing to report it for nearly two years to the Intelligence Oversight Board (IOB). That is, until shortly before Department of Justice Inspector General Glenn Fine’s [report](#) on FBI NSL abuse was due before Congress. Statutory requirements demand that potential violations be reported to the IOB within 14 days.

Not that we can expect any earth-shattering “oversight” from a de-fanged IOB. As I [wrote](#) last month, the Bush administration quietly stripped the “independent” IOB of much of its authority to root out illegal spying activities by the intelligence “community.”

As I noted then, a little noticed February 29 executive order signed by Bush gutted the board’s mandate to refer illegal activities by the national security state to the Justice Department. “Self-policing” at its finest in the Bushist panopticon!

What little “oversight” remains are in the hands of a compliant Congress, more attuned to the needs of their real “constituents,” the horde of well-heeled corporate lobbyists and their paymasters who rule over an ever-expanding private “security” empire.

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