

THE GEORGE NADER PROBLEM: NSA REMOVES THE CHILD EXPLOITATION CONTENT FROM ITS SERVERS

When Lebanese-American dual citizen George Nader was stopped at Dulles after arriving on a flight from Dubai on January 17, 2018, he had at least 12 videos on his phone depicting boys as young as two years old being sexually abused, often with the involvement of farm animals. In the days before a Mueller prosecutor obtained the contents of the three phones Nader had with him, Nader sat for at least four interviews with Mueller's prosecutors and told a story (which may not have been entirely forthright) about how he brokered a meeting in the Seychelles between Russia and Erik Prince a year earlier. Nader exploited Prince's interest in work with Nader's own employer – Mohammed bin Zayed – to set up the back channel meeting, and as such was a very effective broker in the service of two foreign countries, one hostile to the US. As such, I assume, Nader became a key counterintelligence interest, on top of whatever evidence he provided implicating Trump and his flunkies.

Mueller's team got the returns on Nader's phones back on March 16. An FBI Agent in EDVA in turn got a warrant for the child porn. But two days after the agent got the warrant return, Nader skipped town and remained out of the country until days after Mueller shut down his investigation, at which point he returned to the US and was promptly arrested for his abuse of children. Even without the other influence peddling that Nader had done on behalf of the Emirates, he would have remained a key counterintelligence interest for the entire 14 months he remained outside the country. After all, Nader had been making key connections since at least the time he introduced Ahmed Chalabi to

Dick Cheney, and probably going back to the Clinton Administration.

So it is quite possible that for the entire period Nader was out of the country, he was surveilled. If that happened, it almost certainly would have happened with the assistance of NSA. As an agent of Dubai, he would be targetable under FISA, but as a US citizen, targeting him under FISA would require an individualized FISA warrant, and the surveillance overseas would take place under 705b.

If the surveillance did happen, Nader's sexual abuse of boys would have had foreign intelligence value. It would be of interest, for example, to know who knew of his abuse and whether they used it as leverage over Nader. The source of the videos showing the children being exploited would be of interest. So, too, would any arrangements Nader made to procure the actual boys he abused, particularly if that involved high powered people in Middle Eastern countries.

Understanding how George Nader fit in international efforts to intervene in US affairs would involve understanding his sexual abuse of boys.

And that poses a problem for the NSA, because it means that really horrible content – such as Nader's videos showing young boys being abused with goats for the object of an adult's sexual pleasure – is among the things the NSA might need to collect and analyze.

I've been thinking about George Nader as I've been trying to understand one detail of the recent FISA 702 reauthorization. In January 2020, the NSA got permission to – in the name of lawful oversight – scan its holdings for child exploitation, stuff like videos of adults using goats to sexually abuse very young boys.

In a notice filed on January 22, 2020, the government informed the Court that NSA had developed a method, [redacted]

of known or suspected child-exploitation material (including child pornography), to identify and remove such material from NSA systems. To test this methodology, NSA ran the [redacted] against a same of FISA-acquired information in NSA systems. The government concedes that queries conducted for such purposes do not meet generally applicable querying standard; nor do they fall within one of the lawful oversight functions enumerated in the existing NSA querying procedures. Nevertheless, NSD/ODNI opined that “the identification and removal of child exploitation material ... from NSA systems that is a lawful oversight function under section IV.C.6,” and that the deviation from the querying procedures was “necessary to perform this lawful oversight function of NSA systems.” Notice of Deviation from Querying Procedures, January 22, 2020, at 3; see Oct. 19, 2020, Memorandum at 10.

NSA anticipates using such queries going forward, likely on a recurring basis, to proactively identify and remove child-exploitation material from its systems. The government submits that doing so is necessary to “prevent [NSA] personnel from unneeded exposure to highly disturbing, illegal material.” October 19, 2020, Memorandum at 10. The Court credits this suggestion and likewise finds that performance of these queries qualifies as a lawful oversight function for NSA systems. But the Court encouraged the government to memorialize this oversight activity in § IV.C.6, among the other enumerated lawful oversight functions that are recognized exceptions to the generally acceptable querying standards.

The government has done so. Section IV.C.6 now includes a new provision for

“identify[ing] and remov[ing] child exploitation material, including child pornography, from NSA systems.” NSA Querying Procedures § IV.C.6.f. The Court finds that the addition of this narrow exception has no material impact on the sufficiency of the querying procedures taken as a whole.

At first, I thought they were doing this to protect the children. Indeed, my initial concern was that NSA was using these scans to expand the use of NSA queries for what wound up being law enforcement action, such that they could ask to do similar scans for the seven other crimes they’ve authorized sharing FISA data on (though of the other crimes, only snuff videos would be as easy to automate as child porn, which has a well-developed technology thanks to Facebook and Google). I thought that, once they scanned their holdings, they would alert whatever authority might be able to rescue the children involved that they had been victimized. After all, under all existing minimization procedures, the NSA can share proof of a crime with the FBI or other relevant law enforcement agency. Indeed, in 2017, FISC even authorized NSA and FBI to share such evidence of child exploitation with the National Center for Missing and Exploited Children, so they could attempt to identify the victims, help bring the perpetrators to justice, and track more instances of such abuse.

But that doesn’t appear to be what’s happening.

Indeed, as described, “saving the victims” is not the purpose of these scans. Rather, preventing NSA personnel from having to look at George Nader’s pictures showing goats sexually abusing small boys is the goal. When I asked the government about this, NSA’s Director for Civil Liberties, Privacy and Transparency, Rebecca Richards, distinguished finding child exploitation material in the course of intelligence analysis – in which case it’ll get reported as a crime – from this, which just removes the content.

NSA does not query collected foreign intelligence information to identify individuals who may be in possession of child exploitation material. This particular provision allows NSA to identify and remove known or suspected child-exploitation material (including child pornography) from NSA systems.

The Court agreed that this was appropriate lawful oversight to “prevent [NSA] personnel from unneeded exposure to highly distributing, illegal material.” The point of the query is not to surface the material for foreign intelligence analysis, the function of the query is to remove the material. If NSA finds such information in the course of its analytic process to identify and report on foreign intelligence, it will review and follow necessary crimes reporting.

The Court credits the suggestion to conduct this activity as part of NSA’s lawful oversight function. [my emphasis]

I asked NSA a bunch of other questions about this, but got no further response.

First, isn’t the NSA required to (and permitted to, under the minimization procedures) alert the FBI to all such instances they find? So wouldn’t this be no different from a law enforcement search, since if found it will lead to the FBI finding out about it?

Second, as offensive as this stuff is, isn’t it also of value from a foreign intelligence perspective? Ignoring that George Nader is a US person, if a high profile advisor to MbZ was known to exploit boys, wouldn’t that be of interest in explaining his position in MbZ’s court and his preference for living in Dubai instead of VA? Wouldn’t

it be of interest in understanding the counterintelligence threat he posed?

If it is of FI interest (I seem to recall a Snowden revelation where similar discoveries were used against a extremist cleric, for example), then how is it recorded to capture the FI use before it is destroyed? And in recording it, aren't there NSA and/or FBI personnel who would have to look more closely at it? Wouldn't that increase the amount of child exploitation viewed (presumably with the benefit of finding more predators, even if they are outside US LE reach)?

Finally, can you tell me whether NCMEC is involved in this? Do they receive copies of the material for their databases?

Are you saying that if the NSA finds evidence of child exploitation via these searches, it does not refer the evidence to FBI, even if it implicates victims in the United States?

Another question I have given Richards' response is, why would NSA personnel be accessing collections that happen to include child exploitation except for analytic purposes?

But maybe that's the real answer here: NSA employees would access child exploitation 1) for analytical purposes (in which case, per Richards, it would get reported as a crime) or 2) inappropriately, perhaps after learning of its presence via accessing it for analytic purposes (something that is not inconsistent with claims Edward Snowden has made).

After all, there have been two really high profile examples of national security personnel accused of critical leaks in the last decade who also have been accused of possessing child pornography: Donald Sachtleben, who after he was busted for (amazingly) bringing child porn on

his laptop into Quantico, he later became the scapegoat for a high profile leak about Yemen, and Joshua Schulte, on whose computer the government claims to have found child porn on when it searched the computer for evidence that he stole all of CIA's hacking tools.

So perhaps the NSA is just removing evidence of child exploitation from its servers – which it spent a lot of resources to collect as foreign intelligence – to avoid tempting NSA employees from accessing it and further victimizing the children?

If that's correct, then it seems that NSA has taken a totally backwards approach to mitigating this risk.

If you're going to scan all of NSA's holdings to ID child exploitation, why not do so on intake, and once found, hash and encrypt it immediately. Some of what analysts would be interested in – tracking the dissemination of known child porn or the trafficking of known victims by transnational organized crime, for example – could be done without ever viewing it, solely after those existing hashes. If there were some other need – such as identifying a previously unidentified victim – then the file in question can be decrypted as it is sent along to FBI. That would have the added benefit of ensuring that if NSA personnel were choosing to expose themselves to George Nader's videos of young boys being abused with farm animals, then the NSA would have a record of who was doing so, so they could be fired.

I get why the NSA doesn't want to host the world's biggest collection of child abuse, particularly given its difficulties in securing its systems. I don't have any answers as to why they're using this approach to purge their systems.