

THE STRANGE CASE OF HIWA ABDUL RAHMAN RASHUL (PART 2)

In part 1, I laid out the facts surrounding the detention and illegal transfer of Hiwa Abdul Rahman Rashul. In this post, I want to demonstrate why this case matters. There is a pattern to the Bush/Cheney Administration's illegal usurpation of executive power. Because the pattern broke down in this case, the strategy behind that power grab is laid bare. The struggle within the administration over the disposition of Rashul and the way it was resolved helps to illuminate the true nature of the current regime. Perhaps this case creates an opening to unravel the authoritarian infrastructure that has been built within our country in the last eight years.

Part 2: Why it matters

In the grand scheme of things, focusing on this case might seem a little like busting Al Capone for tax evasion. The Bush/Cheney Administration has institutionalized the most egregious extralegal executive abuses in our nation's history. As matters of **policy**, they've launched a war of aggression under false pretenses, violated the most basic human right treaties, trashed the Fourth Amendment, denied the right of habeas corpus to citizens and non-citizens alike, set up secret prisons, disappeared their presumed opponents around the world, tortured the innocent and presumed guilty alike, conducted sham military tribunals against the underage and the mentally ill, and, worst of all, claimed the power to indefinitely detain anyone in the world, including U.S. citizens, without any external check whatsoever. And that's just the stuff they have admitted to.

If we want to undo all this, and I very much do,

we'll have understand how they were able to accomplish it. I'm not going to rehash the sociopolitical environmental conditions that the administration took advantage of. Folks here understand that the generalized fear and anger after the attacks of September 11, 2001, the fecklessness of the Democratic party, the docile and compliant traditional media, the tight discipline within the Republican party, and the latent authoritarian impulses of a sizeable minority of the country created the necessary conditions for what happened. I want to focus on how the administration manipulated secrecy, its own people's psychology, and the instinct for institutional self-preservation to manage a shifting set of narratives that allowed them to follow a deliberate strategy of expanding executive power and upsetting the constitutional balance of government while evading responsibility and steam-rolling all opposition. Then, I hope to show how this case exposes some chinks in the rather substantial armor of these malefactors.

Competing Narratives

One of the biggest problems in telling the full story of the Bush/Cheney Administration various illegal activities is distinguishing between the various narratives surrounding each episode. In every case, there is the story of the actual events are that always hidden behind a veil of secrecy. Then there is the momentary political scandal caused by a leak or leaks. The traditional media and the political opposition typically focus on that narrative only until there is an administration response. The administration responds with a modified limited hangout, selectively declassifying or leaking some information and augmenting it with false or misleading public statements to create an alternative narrative to defuse the political scandal. Later on, additional information comes out that contradicts the official narrative, but by that time, the issue is 'old news'. Only after a series of scandals could anyone notice

that there is a pattern to the actual events, the leaked narratives and the official narratives that help illuminate the strategy that the administration used. Keeping in mind that we always have to be alert to the unreliable narrator problem, let's take a look at these narratives in the order they come into the public consciousness, the scandal, the hangout, and what really happened.

Narrative 1: The Scandal

The most easily overlooked, and most interesting, aspect of the scandal narrative is that it is almost always driven by institutional self-preservation. In this instance, the confirmation of the existence of ghost detainees in Iraq was a side effect of Gen. Taguba's investigation of the Abu Ghraib scandal. The original leakers wanted to separate themselves from the Abu Ghraib scandal and prove they had explicit orders from higher-ups to hide Rashul. The first story about Rashul starts like this:

The top U.S. commander in Iraq, Lt. Gen. Ricardo Sanchez, issued a classified order last November directing military guards to hide a prisoner, later dubbed "Triple X" by soldiers, from Red Cross inspectors and keep his name off official rosters. The disclosure, by military sources, is the first indication that Sanchez was directly involved in efforts to hide prisoners from the Red Cross, a practice that was sharply criticized by Maj. Gen. Antonio Taguba in a report describing abuses of detainees at the Abu Ghraib prison near Baghdad.

Whatever the triggering event, whether there's a whistleblower, an inadvertent disclosure, or just someone with a score to settle, the first big story in the mainstream press is usually shaped by a bureaucracy trying to protect itself. Which mean the story always has one big

revelation and it almost always points the finger at political appointees. That naturally leads to an official administration response.

Narrative 2: The Modified Limited Hangout

This is where the Bush/Cheney team has shown real innovation. The typical script for goes like this. You put a Cabinet-level official (or if you do it on background, the infamous Senior Administration Official or SAO) out front, backed up by some guy in uniform. After the obligatory 'the terrorists are gonna kill us all' hand-wringing, the SAO confirms some of the details from the scandal story and adds a few new juicy bits, but denies or ignores significant elements of the previous narrative. The situation is presented as perfectly normal, at least for a post 9/11 world, and besides, the lawyers signed off on the whole thing, so no one could possibly question the purity of the administration motives, except the partisan media and their anonymous sources who are obviously from the Democrat party. Any uncomfortable questions are avoided because the answers are, of course, classified. The main purpose of the new narrative is deflect attention away from the most damaging aspects of the story. A key function of the cover story is to allow the policymakers to hide behind the lawyers and the lawyers to disclaim any responsibility for the policy.

Narrative 3: What really happened

Of course, the cover narrative never satisfies everyone. For example, Philippe Sands' dogged investigation of torture at Guantanamo led him to uncover the facts behind the institutionalization of torture there. Sands' article for Vanity Fair exposing the false timeline was really the inspiration for my analysis of the Rashul case. Valtin's yeoman work in ferreting out the fact that SERE

techniques were the first choice for interrogations by some in this administration provided another clue. Ultimately, I came to realize that there was a pattern, even in the actual narratives.

In a comment to my previous post, Ondelette gets this almost exactly right, so I'll quote that:

I think your timeline on Rashul is probably quite correct and very devastating. But I tried to do the '*when did the document come and when did the illegal actions come*' thing several times now, and it turns out as information seeps out, **every** time line is similar to yours with Rashul.

The conduct begins.

The administration wishes to make the conduct the norm.

They solicit an opinion from OLC, who is led to believe that the conduct is only being contemplated.

The OLC writes a memorandum.

Written policies flow from the memorandum.

The one thing I think Ondelette gets wrong is the bit about the OLC thinking that the conduct is only being contemplated. I think the available evidence points us in a different direction. In this case, Goldsmith clearly knew that Rashul was already in Afghanistan when Gonzales asked for the opinion. Even before he was confirmed, when Goldsmith gets the call from Philbin it's described as urgent. You don't make calls like that for contemplated action. Those issues become urgent after the fact when someone questions the legality of the action. Compare this to what we know about the warrantless wiretapping. The program was started, the FBI and others questioned the legality, and then the OLC opinion was issued to shut down the debate. If you look closely at Yoo's DOD torture memo, you find some very direct correlation between what had already been done at Guantanamo

and the specific actions he immunized. This correlation goes beyond the techniques documented in the request from Diane Beaver to Rumsfeld to include 'unauthorized' techniques used on al-Qatani and others. Here's how I would alter Ondalet's outline:

- An illegal policy is adopted.
- The policy is implemented.
- The policy is challenged.
- The OLC is presented with the Hobson's choice of authorizing the policy as already implemented.
- The OLC writes an opinion.
- The policy becomes 'legal'.
- A select few in Congress are notified about the policy, but only in broad outlines and under strict secrecy.

The OLC was repeatedly confronted with being asked to come up with a legal justification for a 'vital' program in the so-called War on Terror. Goldsmith's descriptions of his interactions with David Addington are revealing. On one occasion, he quotes Addington thusly:

If you rule that way, the blood of the hundred thousand people who die in the next attack will be on **your** hands.

Waving the bloody shirt was even more effective for the administration internally than it was politically. Despite all of Cap'n Jack's protestations to the contrary, he effectively caved to this pressure with his draft opinion of March 2004.

Rashul: Frayed Narratives

The Bush/Cheney Administration has been

remarkably effective in creating a consistent false narrative that disguises the true nature of their regime and protects the perpetrators from being held accountable. In the case of Hiwa Abdul Rahman Rashul, there are some interesting holes in the cover story and breakdowns in the Administration's execution of their standard game plan that leave an opening for an effective investigation. The first failure of execution was Goldsmith's initial unwillingness to bless the rather obvious breach of the Geneva Convention. By bringing Rashul back to Iraq and *hiding him from the ICRC*, the administration engaged in conspiratorial conduct. By renewing the program of disappearing Iraqis to Afghanistan on the basis of a DRAFT opinion from Goldsmith, the administration showed that they considered legality nothing but a formality. Finally, the cleverest thing part of the Bush/Cheney Administration game plan for implementing their tyrannical policies was the way they implicated Congress in their actions by manipulating Congressional notifications. I suspect that Congress is in the clear on this one. During the Rumsfeld modified limited hangout presser there was this exchange:

SEC. RUMSFELD: And as we get more information, we'll make it available. The Congress has been briefed extensively on this, as I understand it. No.

MR. DELL'ORTO: Not this particular case, as far as I know.

MR. DIRITA: Yes. No, we've done some notifications to the staff on the Hill, both us and the CIA, with respect to the details of this particular case. And as we get more, we will provide it.

That's clear as mud. If there were notifications, it's likely they were done in June 2004 rather than July 2003 when the deed was done.

In that same presser, Rumsfeld openly implicated himself and George Tenet in the coverup. The CIA OIG criminal referral implicates the highest levels in the DOJ. The available information leaves a number of avenues open for Congressional investigation. Might I suggest to Sen. Leahy that he add that criminal referral to the list of documents he's been asking for? Indeed, I will. At the same time, I'll remind the Obama camp of that promise they gave Will Bunch and that they will likely be in charge of all these records in a few months. I'll also remind the folks here that our duty as citizens includes keeping the pressure on 'our' guys to do the right thing. I'm not naive enough to think that Obama will do much about any of this unless there's some pressure. In fact, I'm old enough to remember that the best conditions for limiting Executive Branch power are when there is a Dem President and Dem Congress. We need to help Leahy, Levin, Waxman, and the rest that they need to keep pushing.

Here's my bottom line. There's plenty of evidence of war crimes for an international tribunal to start an investigation of Bush, Cheney, Rumsfeld, and the whole crew in February 2009. I think an international tribunal, as unlikely as it seems, would be a disaster. It would ignite a jingoistic furor in this country. These guys are our criminals and our responsibility. It's time for America to face up to what we've allowed this country to become. Unraveling some this big has to start with a single thread. I think that thread just might be asking what happened to Hiwa Abdul Rahman Rashul and what are we going to do about it?

[UPDATE]

If you really want to understand what Cheney's been up to the last eight years, you need to go back read the Iran-Contra Congressional Minority Report that he and David Addington wrote. The goal has always been as much about expanding Executive Branch power as anything else. I'm sure that Bush and Cheney get off on the

torture, but for Cheney at least, that's secondary to the effort to establish what is effectively an elected constitutional dictator. That's another thing Cap'n Jack never understood. It was never really about protecting America from terrorists. It was about using that as an excuse to push the real agenda.

[WilliamOckham makes an excellent, and absolutely critical, point in the update paragraph immediately above about the overarching plan of Cheney to retake, and expand further, Executive Branch power that was spelled out in the Iran-Contra Congressional Minority Report. And that is exactly what we have been witnessing in the announcement by the Administration of last minute wild expansion of domestic spying and datamining capabilities, and as discussed in the two "FISA Redux" posts here and here. – bmaz]