TWO LESSONS OF THE ROBIN RAPHEL CASE

If you haven't already, you should read this long story on how longtime US diplomat Robin Raphel came to have her life turned upside down based on a frivolous espionage investigation. The piece has earned a lot of praise both for the reporting that went into it and the writing.

I want to point to a few lessons from the piece.

The "Tip"

As the piece explains, Raphel served for decades in Pakistan and South Asia generally, developing a lot of close ties there (she also did a stint in Iraq at the beginning of the war).

Over the years, she was one of the few remaining people who would get out of US compounds to go meet with Pakistanis directly. Precisely because she was engaging directly (or collecting human intelligence, in the view of the spooks), she would be captured in a great deal of intercepts targeting her interlocutors, meaning anything that appeared amiss would elicit attention from the NSA analysts reviewing the intercepts.

> The NSA regularly swept up Pakistani communications "to, from or about" senior U.S. officials working in the country. Some American officials would appear in Pakistani intercepts as often as once a week. What Raphel didn't realize was that her desire to engage with foreign officials, the very skill set her supervisors encouraged, had put a target on her back.

By the time Raphel returned to Pakistan under the Obama Administration, the NSA included Pakistan's ruling party by name in the Section 702 foreign government certificate, which provides some indication of how much NSA was vacuuming up.

As far back as the 1990s, intelligence agencies deemed Raphel to be too sympathetic to Pakistani views, a view which continued when she returned to Pakistan under Obama.

In 2013, FBI received a "tip" purportedly implicating Raphel based off intercepts targeted at Pakistanis.

> In February 2013, according to law-enforcement officials, the FBI received information that made its agents think Raphel might be a Pakistani mole.
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> The tip came in the form of intercepted communications that suggested Raphel had shared sensitive inside information without authorization. Two officials said this included information collected on wiretaps of Pakistani officials in the U.S.

The description of this tip suggests Raphel was talking with Pakistanis located in the US. Even there, there is room for ambiguity; it could also suggest (but probably doesn't) that the wiretaps, not the Pakistani officials, were in the US.

The article also suggests Raphel's conversations with a Pakistani woman named Maleeha Lodhi were among the most interesting to spies. When Raphel was Assistant Secretary of South Asian Affairs in the mid-1990s, Lodhi was Ambassador to the US, but she had been a journalist before and returned to journalism after that post; she is now Pakistan's representative to the UN.

> [Lodhi] had returned to the news business, writing a regular column and appearing as a commentator on Pakistani television. American officials said they had no doubt that Lodhi was more than an ordinary journalist, however.
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> In her six years in Washington as Pakistan's ambassador, Lodhi had earned

> a reputation as a reliable source for what Pakistani officials were thinking, and in particular, as a trusted conduit for relaying messages to Pakistan's senior military leadership in Rawalpindi, U.S. officials said. She was, in State Department parlance, an "influencer." One reason U.S. officials trusted her: The NSA had long been monitoring her communications.

In other words, the NSA was targeting a journalist's communications. The story presents conflicting viewpoints about how much of Lodhi's information got back to the Pakistani government, with US sources insinuating that because she shared a lot of information with the Pakistani government, she wasn't really a journalist. To a great degree that's just a rationalization.Not only does the same kind of information sharing between journalists and government officials happen here. But the US targeted Lodhi not because she was deemed a threat, but because she was a good source of information. I suspect WSJ's sources shared those competing claims in an attempt to obscure, from both Congress and FISA Court observers, how broadly the NSA targets off foreign government 702 certificates, such that it can include journalists with close ties but no formal relationship with a foreign government.

Moreover, the two versions of the basis of the tip on Raphel — Pakistani officials in the US versus Lodhi — may also serve to obscure what authority she first got targeted under. That is, if she was targeted under Section 702 but the government didn't tell her that, then WSJ's sources would have reason to invent a traditional FISA source of her targeting.

WSJ's sources are probably also engaging in misdirection with the details offered in this passage.

> Investigators began what they call "circling the target," which means

> examining the parts of Raphel's life they could explore without subpoenas or warrants. Sitting in their cubicles on the fourth floor of the FBI's Washington Field Office, a modern sandstone-colored building on the edge of Chinatown, the agents began to map her network of contacts and search for signs of disloyalty.
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> One of the first things they looked at was her "metadata"—the electronic traces of who she called or emailed, and also when and for how long. Her metadata showed she was in frequent contact with a host of Pakistan officials that didn't seem to match what the FBI believed was her rank and role.

After all, the NSA would have already had every bit of metadata reflecting a conversation between Raphel and a targeted official, and the story makes it clear elsewhere a great many of Raphel's interlocutors were targeted. Indeed, in court filings, the NSA has made it clear that it prioritizes intercepts that reflect a conversation with an American. So the NSA analysts who first alerted the FBI to Raphel's conversations would have based that alert, in significant part, on precisely that kind of metadata analysis. Sure, the FBI would *recollect* that metadata, laundering the original source, but the government would have already have analyzed a great deal of it before tipping Raphel to FBI.

Spooks making claims about classified information

Across decades, because NSA and then FBI were collecting intercepts of Raphel's conversations, she fell afoul of spooks who claimed information she learned on her own could only have come from intelligence agencies and therefore must be classified.

This actually happened twice, with the first time happening almost two decades before she was targeted personally. The first time came in the mid-1990s.

> Not long after the amendment passed, Deputy Secretary of State Strobe Talbott sent an aide to Raphel's office with a disturbing message.
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> According to officials, the aide told Raphel U.S. spy agencies had intercepted communications in which Pakistani officials suggested that Raphel had revealed sensitive information to them about what the U.S. knew about Pakistan's nuclear work. U.S. intelligence officials said the information was classified and the disclosure wasn't authorized.
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> Raphel denied disclosing too much. She consulted with top officials at the State Department's internal intelligence branch, who recommended she ask Diplomatic Security—the security and law enforcement arm of the State Department—to investigate the matter.
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> Diplomatic Security agents interviewed Raphel about the alleged disclosures. They found no evidence of wrongdoing and took no disciplinary action against her.

The story suggests this 1990s incident arose, at least in part, out of animus on the part of spooks over her close ties and seeming empathy with the Pakistanis. The inquiry into her communications led her to keep records of her conversations, which she then took home with her when she first retired from State in 2004. When the FBI did a sneak and peek warrant on her home, they found these records and considered them mishandled classified information.

The CIA increasingly claimed readily available information belonged exclusively to them after

Cameron Munter started objecting to drone strikes.

> After Cameron Munter took over as the U.S. ambassador to Pakistan in 2010, the competing forces of intelligence and diplomacy began to collide. When Munter pushed the CIA to be more "judicious" in its drone strikes in the tribal areas, the CIA's station chief responded by telling diplomats not to discuss the drone program even in private meetings with senior Pakistani officials. If asked, he told them, they should change the subject.
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> Senior diplomats in Islamabad knew this was impossible. The drone program came up all the time. There was no way to avoid the topic.
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> Raphel didn't know the key details because her Top Secret clearance didn't include access to the "compartment" that covered the covert program. When her Pakistani contacts complained about the strikes, Raphel told them what other diplomats would say—that the U.S. wouldn't need to do so many if the Pakistani army did more to rein in militants in the tribal areas, according to people she spoke with.

Unsurprisingly, drone strikes were one of the topics that the FBI latched onto in her conversations with Lodhi, along with rumors of a coup and discussions of negotiations with the Taliban. Raphel was learning of such information independent of spy sources, yet because it replicated the information learned via spy sources, they claimed it was highly classified.

> As the agents listened to the back-and-forth, they would check with U.S. intelligence officials to see if the topics which Raphel discussed with Lodhi— drones, coups and reconciliation

> talks with the Taliban—were classified. They were repeatedly told that yes, they were.
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> [snip]
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> During her visit, Raphel was in regular phone contact with Lodhi, who invited her to come to her home library to talk privately over tea. Officials briefed on the investigation said the information they exchanged during the trip about the prospects of a coup was similar to what U.S. spy agencies were picking up—the same kind of information that intelligence officials were putting in the President's Daily Brief.

This is, of course, the same thing that happened with some, though not all, of Hillary's emails (and unsurprisingly, some of Raphel's communications were shared via aides with Hillary): the CIA claimed that they owned such information, and as such, any discussion outside of secure channels must be evidence of sharing classified information. In both cases, the information was readily available elsewhere.

Particularly when exacerbated by turf sensitivities and jealousy over Raphel's access to top Pakistani officials, however, this can be a lethal combination. The CIA gets to criminalize officials for sharing information it deems its exclusive purview, even if those officials discovered the information independently.

The WSJ tells a story about the double edged sword of America's dragnet: the degree to which it can implicate honest people because it captures so much, as well as the gaps in knowledge that result from overdependence on SIGINT.