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# BOOK REVIEWS

## KILL OR CAPTURE: THE WAR ON TERROR AND THE SOUL OF THE OBAMA PRESIDENCY

BY DANIEL KLAIDMAN

*Reviewed by Matthew Heiman\**

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**K***ill or Capture* provides a fast-moving, highly readable insider account of the formulation and execution of President Obama's counterterrorism program through early 2012. Klaidman's access to high-level White House and national security sources is the primary quality of the book. In his book, Klaidman summarizes the effort to try Khalid Sheikh Mohammed in Manhattan, the arrest of the "underwear bomber," and the killing of Anwar al-Awlaki and Usama Bin Laden, among others. But readers hoping for a substantive discussion of the merits of these policies will not find it in this volume.

It is clear that the Administration's preferred strategy is kill over capture—or at least over capture and detain. If media reports are accurate (always something to question in the area of national security), when President Obama inherited the drone program, it had been used only forty-four times and was restricted to Pakistan. As of July 2012, drones had been used in more than 250 strikes in Pakistan, Afghanistan, Yemen, and Somalia. Klaidman's account of the hunt for Saleh Ali Saleh Nabhan illustrates that the Administration's preference for kill over capture is driven by operational realities and the absence of a post capture strategy.

Nabhan was a long-time CIA and military target because of his role as a "critical link between al-Qaeda and its Somalia-based affiliate, the Shabab." Nabhan was also a suspect in the U.S. embassy bombings in Kenya and Tanzania. As Klaidman notes, "[t]aking him out would have been a major victory in the war on terror. But capturing him would have been an even bigger coup, a potentially huge intelligence windfall that could have helped counterterrorism officials understand the connections between al-Qaeda and its offshoots."

After months of surveillance, an opportunity to act arose when Nabhan would be traveling along a remote coastal road in southern Somalia. According to Klaidman, the Administration considered three options to eliminate him as a threat: 1) a missile strike; 2) a helicopter-borne assault on Nabhan's convoy; or 3) an attempt to take Nabhan alive. A missile strike was dismissed because the military recalled a similar scenario when a missile was fired seemingly on target, and the terrorist survived the attack. Of the remaining two

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*\*Mr. Heiman is a lawyer with Tyco International. Previously, he worked for the National Security Division at the Department of Justice and the Coalition Provisional Authority in Baghdad, Iraq.*

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options, the "snatch and grab" from a tactical perspective "was the most attractive alternative. Intelligence from high-value targets was the coin of the realm in the terror wars. But it was also the riskiest option, requiring significant boots on the ground." This risk, combined with memories of events in 1993 in Somalia that became known as Black Hawk Down, weighed upon many of the military and intelligence decision makers. Moreover, there was the question of what to do with Nabhan once captured.

As noted by Klaidman, "nine months into its own war on al-Qaeda, the Obama Administration had no detention policy for terrorists captured outside established war zones like Afghanistan or Iraq." The Administration had boxed itself in. Obama had campaigned on a promise to close the Guantánamo Bay detention facility, and it was the Administration's policy to reduce the number of Guantánamo detainees, so Nabhan could not be taken there. An executive order ended the use of CIA "black sites" where interrogations took place, so that was off the table. The White House also opposed sending Nabhan to the U.S. air base in Bagram, Afghanistan for fear of it becoming a new Guantánamo, and bringing him to the United States for detention and prosecution was politically unacceptable. During the discussions about Nabhan, General James "Hoss" Cartwright, the Vice-Chairman of the Joint Chiefs of Staff, told President Obama, "[w]e do not have a plausible capture strategy." The President was given a kill or capture option, but "as everyone left the meeting that evening, it was clear that the only viable plan was the lethal one." Obama signed off on a mission that would involve the use of helicopters to attack Nabhan's convoy. The next morning, Nabhan and three other militants were dead.

The absence of a capture strategy is the product of an Administration that views counterterrorism through a different lens than that of its predecessor. George W. Bush believed that America was at war against al-Qaeda and its affiliates. The Bush Administration believed that the power of the Commander-in-Chief during wartime coupled with Congress' Authorization for Use of Military Force passed shortly after the attacks of September 11, 2001 justified the Administration's approach to its prosecution of the war on terror, including the use of long-term detention facilities. In his campaign for the Presidency and his subsequent Administration, Obama rejected long-term detention and repeatedly pledged to close Guantánamo. In fact, President Obama considered ways to contract the authority he had available. Early in his Administration, Obama met with several human rights activists and civil libertarians, including leadership of Human Rights Watch and the American Civil Liberties Union. According to Klaidman's sources, the President "told the group that he wanted to create a series of institutions and laws that would limit the scope of presidential action in the global fight against terrorism – a framework that would be binding not just for himself but for future presidents." Obama worried that such a precedent, in the words of Justice Robert H. Jackson's dissent in the *Korematsu* case that upheld Franklin Roosevelt's internment of Japanese Americans during World War II, "lies around like a loaded weapon ready for the hands of any authority that can bring forward a plausible claim." The reader is left to wonder

whether the internment of innocent Japanese Americans is equivalent to the internment of terrorists removed from the theaters of war. Klaidman offers no view, and if he asked his sources to make the comparison, it is not mentioned in his book.

Drawing from the narrative, Klaidman's second recurring theme flows from the first, and it focuses on whether terrorists should be treated as criminals subject to civilian courts or as enemy combatants that are governed by the law of war. In its public pronouncements and initial instincts, the Obama Administration favored a law enforcement approach. In 2009, Attorney General Eric Holder announced that Khalid Sheikh Mohammed would be tried in a federal civil court in Manhattan. Mohammed admitted responsibility for the September 11, 2001 attacks on the World Trade Center that killed three-thousand Americans and confessed to the 2002 beheading of *Wall Street Journal* Reporter Daniel Pearl. As the author notes, the Bush Administration had rejected civilian trials for Mohammed and his co-conspirators because the United States was at war. Klaidman summarizes Holder's differing point of view:

Holder liked to think that his decision on the 9/11 cases reflected the beliefs of a hard-nosed prosecutor. And there was no doubt that he was driven in part by pragmatic, tactical considerations. But the KSM decision also amounted to a test of his principles. It was an opportunity to show that the speeches he'd given criticizing the Bush [A]dministration—"We owe the American people a reckoning," he'd said in a June 2008 address—amount to more than just political rhetoric.

President Obama supported the decision of his Attorney General. Klaidman writes, "[t]he government's willingness to try Mohammed in a civilian court would send a resounding message to the rest of the world that America was rededicating itself to the rule of law." Other Administration officials such as Harold Koh, the State Department's top lawyer, shared this view. In a meeting with the President, Koh said that terrorists had been successfully tried in civilian courts without security problems. Koh believed that trying Mohammed would be a "redemptive act" and would "show confidence in our [civil justice] system." Koh contended that to try Mohammed in a military commission would give Mohammed what he wants, the stature of a great military leader when he is "just a common criminal."

The decision to try Mohammed in a Manhattan court room was not universally supported within the White House. Rahm Emanuel, then the White House Chief of Staff, opposed the plan on political grounds. When Holder announced his decision, he was criticized by House and Senate Republicans, as Emanuel predicted. When testifying before the Senate Judiciary Committee, Holder stumbled in response to the question of what would the Administration do if Mohammed was acquitted. First, Holder said, "failure is not an option," then he argued that even if acquitted, Mohammed could be held preventively under the laws of war. As Klaidman rightly observes, this "argument undercut the reasons for using Article

III courts in the first place."

One of chief critics of the decision was Senator Lindsey Graham who supported the use of military commissions. While Obama told Graham that he supported Holder's call, this would soon change. On Christmas Day 2009, Umar Farouk Abdulmutallab boarded a flight from Amsterdam to Detroit with explosive chemicals sewn into his underwear. Trained by the Yemeni-based al Qaeda in the Arabian Peninsula (AQAP), an al-Qaeda affiliate, he tried to ignite the explosive in flight but was subdued by fellow passengers. After being taken into custody, federal agents gave Abdulmutallab his *Miranda* warning. This decision was raised in advance in a videoconference with John Brennan, the Assistant to the President for Homeland Security and Counterterrorism, and members of Homeland Security, the FBI, and the DNI. No one objected. Once he was read his rights, Abdulmutallab stopped speaking and requested a lawyer. This was viewed by Administration critics as a significant blunder, as Abdulmutallab was then off-limits as an intelligence source.

Klaidman writes that the change in climate after the Abdulmutallab arrest was reflected in Mayor Bloomberg's public announcement that trying Mohammed in Manhattan would be too costly and disruptive for the city. Congressional Republican opposition had manifested itself in the 2011 National Defense Authorization Act (NDAA). In addition to funding for troops in Afghanistan and Iraq, the law prohibited the trial of Mohammed and the other 9/11 defendants in civilian courts and barred the transfer of Guantánamo detainees into the United States. In May 2010, the Attorney General capitulated with the President's support and announced that Mohammed would be tried by a military commission. Obama signed the NDAA.

As Klaidman moves his narrative forward, the reader can see the Obama Administration muddling its way forward from one counterterrorism event to the next. One does not get a sense of a coherent strategy. This is seen in the case of Ahmed Adulkadir Warsame, a Somali who was considered to be the principal liaison between the Shabab and AQAP. He was viewed as an intelligence treasure trove, and on April 19, 2010, he and an associate were captured in open waters by United States Navy SEAL Team six commandos. He was transported to the brig of the USS *Boxer* and was held there for interrogation for an extended period before he was read his *Miranda* rights. Meanwhile, the Administration debated how he should be tried. Koh again argued for a civilian trial in New York City on the grounds of its redemptive quality, particularly in the wake of the Mohammed decision, and this time his argument carried the day.

Klaidman writes that the handling of Warsame outraged civil libertarians for creating a floating Guantánamo and upset Republicans who opposed bringing a terrorist into the country. In Klaidman's view, anger from both sides proves that Obama got it right:

It was perfectly Obamaesque resolution, pragmatic and rational. It vindicated the principle that in the war on terror there were no one-size-fits-all solutions. The Obama Doctrine on counterterrorism was a hybrid approach

to asymmetric war. Sometimes a military model made the most sense. Other times a law-enforcement model was the way to go. And in the case of Warsame, the two approaches worked together in tandem.

However, as Klaidman notes a few lines later, the capture of Warsame did not lead to a new wave of captures over kills. Klaidman attributes this to the absence of a political environment that would allow for a more pragmatic approach.

The author acknowledges that Warsame demonstrated the potential value of captures. Intelligence gained from Warsame was one of key elements that led to the CIA's killing of Anwar al-Awlaki, AQAP's chief of external operations. Awlaki, a U.S. citizen, planned Abdulmutallab's Christmas Day plot. He put improvised bombs in printer toner cartridges that were bound for the United States but were intercepted by Saudi Arabian intelligence. According to Klaidman, it was this killing that most enraged civil libertarians, yet Awlaki's U.S. citizenship was "immaterial" to President Obama.

*Kill or Capture's* strength lies in its storytelling. Klaidman gives you a sense of who said what to whom, who was in the room when a critical decision was made, and who was sidelined. Along the way, Klaidman reveals himself to be sympathetic to the Administration, though not completely uncritical. The book's weakness is the paucity of any real discussion of the consequences of the Obama Administration's counterterrorism program.

The most striking example is the genuine disconnect between the Administration's rhetoric on civil liberties and its actions. The Administration is opposed to additional terrorists being subjected to long-term detention at facilities like Guantánamo, and it understands that bringing every terrorist through the criminal justice system is politically impossible. Aside from doing nothing or releasing terrorists it detains, the only other option becomes death from above. But, if a drone attack is the only reliable tool you have, then do more terrorists look like candidates for the kill rather than capture option? Klaidman does not directly address this question, but it is hard to avoid such thoughts in light of General Cartwright's recognition that there is no viable capture policy. The Administration has proposed no alternative path out of the policy cul-de-sac. Even if Klaidman and the Administration view a more robust military commission process or special national security court as unacceptable options, it would have been edifying to hear the decision makers' reasoning and for them to explain why death, the ultimate deprivation of civil liberties, or capture and release, with the attendant risk of recidivism, is superior to incarceration at Guantánamo.

It should also be noted that the book's obvious appeal, Klaidman's access to the internal conversations and processes of military, intelligence, and political operators, is also a source of concern. Publicizing CIA success was well understood by Rahm Emanuel as a political tool to demonstrate the Administration's toughness on terrorism. But, with the publication of each detail of our tactics and strategies, their effectiveness is degraded and our enemies are educated. In the wake of media publications of multiple leaks and the

publication of this book, along with David Sanger's *Confront and Conceal*, Holder was forced in June 2012 to appoint two United States Attorneys to investigate. While the investigation was initiated after publication of this book, Klaidman's sources are silent as to the potential repercussions of using intelligence details to further a political agenda. Without sanction for such conduct, it is unlikely that reporters and political operators will ignore their respective interests in leaking and publishing sensitive material.

