

Book Reviews

Kill or Capture: The War on Terror and the Soul of the Obama Presidency¹

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*There's always the sense that the next bad guy is going to slip our defenses and get in . . . and that keeps presidents up at night.*²

I. Introduction

On January 22, 2009, President Obama signed his first series of executive orders as the newly elected Commander in Chief.³ With the stroke of a pen, the President ended coercive interrogation methods, shut down the Central Intelligence Agency's (CIA) secret overseas prisons, and ordered the Guantánamo Bay detention facility closed within a year.⁴ Flanked by sixteen retired "flag officers" as he signed the orders, the President declared, "We intend to win this fight, but we are going to win it on our terms."⁵ His act conveyed an even louder yet unspoken message: the strength and safety of America rested squarely on upholding its constitutional values.⁶

During an August 2007 campaign speech, Obama stated, "I will not hesitate to use force to take out terrorists who pose a direct threat to America. I will ensure that the military becomes more stealthy, agile and lethal in its ability to capture or kill terrorists."⁷ Despite this early declaration, the President also recognized the need for limits to his own power.⁸ A few months after he had signed the executive order closing Guantánamo Bay, during a meeting with his cabinet advisors in the spring of 2009, President Obama expressed his desire to "create[] a series of institutions and laws that would limit the scope of presidential action in the fight against terrorism."⁹ In particular, the President worried about "the dangers of unfettered presidential powers in the

panic that would follow a future terrorist attack."¹⁰ With the enhanced lens of a constitutional lawyer, President Obama argued for groundbreaking action: legitimate restraints to his own power in the war on terror.¹¹

In Daniel Klaidman's book *Kill or Capture: The War on Terror and the Soul of the Obama Presidency*, the author poses the controversial question of Obama's War on Terror: "Can you kill or capture bad guys wherever you find them while staying true to American values and the rule of law?"¹² Unfortunately, Klaidman fails to provide the reader a clear answer to this important question. Instead of writing a coherent and chronological analysis of the ideological struggles surrounding the president and his war on terror, the author instead overwhelms the reader with voluminous and unnecessary details about political tugs-of-war, personality conflicts, and general White House politics. Further, the author relies on over 200 "on background" anonymous interviews to form the backbone of his book and insists that the identities of his sources be protected under journalist-source privilege.¹³ As a result, his prose resonates with a distracting "noise" that makes it difficult to focus on the War on Terror and leaves the reader wondering exactly what comprised the "soul" of the Obama presidency that the author implicitly promises to reveal.

II. Searching for the Soul of the Obama Presidency

*It's striking if you think about the Obama legacy. Here is the perceived liberal, who is the one to unilaterally invade a country to kill a guy. And that's what he did with Osama bin Laden.*¹⁴

When asked to "[t]alk about what you reveal in this book that we didn't know about the president's wars, particularly against al-Qaeda,"¹⁵ Klaidman explains that he revealed the President's "almost singular involvement in making those [individual military targeting strike] killing

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¹ DANIEL KLAIDMAN, *KILL OR CAPTURE: THE WAR ON TERROR AND THE SOUL OF THE OBAMA PRESIDENCY* (2012).

² Interview by David Gregory with Daniel Klaidman, *Meet the Press: PRESS Pass* (NBC television broadcast Jun. 3, 2012) [hereinafter *Meet the Press Interview*], available at http://presspass.nbcnews.com/_news/2012/06/03/12011857-press-pass-dan-klaidman?lite (quote by Daniel Klaidman).

³ KLAIDMAN, *supra* note 1, at 36.

⁴ *Id.*

⁵ *Id.* at 38. In this context, "flag officer" refers to the group of retired general officers and admirals.

⁶ *Id.*

⁷ *Id.* at 119.

⁸ *Id.* at 133.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 19.

¹³ See *infra* notes 26–27 and accompanying text.

¹⁴ *Meet the Press Interview, supra* note 2 (quote by David Gregory).

¹⁵ *Id.* (quote by Daniel Klaidman).

decisions,” noting that the President “did that because he was concerned that the use of force was spinning out of control and he wanted to make sure he exercised some sort of supervision over that process.”¹⁶ Absent this disclosure, a reader would be hard pressed to conclude that executive oversight on the military drone-targeting program was the author’s most revealing aspect on the “soul” of the Obama presidency.

Buried in his prose, Klaidman recognizes a critical theme that should have been the primary anchor for his book: President Obama’s struggle to balance constitutional values, the rule of law, and the global war on terrorism.¹⁷ In retrospect, this thesis deserved an unambiguous roadmap—one from which the reader could ascertain whether or not the President was “tough enough” to wage the war on terror; which constitutional mandates were his top priority; and how often his idealism clashed with realistic impediments.¹⁸ A more effective writing style would have approached each chapter as a case study analyzing such topics as targeting objectives, the administration’s efforts to try terrorists in federal court, and the struggles with trying to close down Guantánamo Bay.¹⁹ While Klaidman writes on each of these topics, he does so with little methodology and a tremendous amount of extraneous information. The author squanders a prime opportunity to write an engaging, analytical, and chronological narrative that clearly lays out for the reader a series of ideological and political snapshots, and that guides the reader through the most pressing national security concerns defining the Obama presidency.

The author attempts to project a more intimate and personal look at the Obama administration by writing about “the emotional state and interior thoughts of President Obama and his top aides.”²⁰ For instance, Klaidman writes that President Obama “believed America’s strength was rooted in its ideals;”²¹ that Harold Koh, the State Department’s top civilian lawyer, confided to a friend that

¹⁶ *Id.* The author explains to David Gregory that while the president also authorized the CIA drone targeting program, he was much more hands-on with the military targeting program. *Id.* Interestingly, Klaidman then talks about a “botched” CIA drone strike—which raises the question of why, at least according to Klaidman, there was not equivalent presidential involvement in the CIA targeting program. *Id.*

¹⁷ See KLAIDMAN, *supra* note 1, at 19, 25, 128, 133.

¹⁸ See generally *id.* at 119, 122, 129, 175, 178–79, 247, 259–60, 268 (portrayed as weak on terrorism); *id.* at 5, 18–19, 25, 30, 37–38, 63, 133, 136, 270–71 (American constitutional values); *id.* at 133, 142 (limits on executive power); *id.* at 59, 129, 134–35, 181, 186 (criticized from the left); *id.* at 2–3, 5–6, 8, 19, 63, 131–32, 185 (rule of law); *id.* at 119–20 (attitude toward use of force); *id.* at 2, 5, 7–8, 15, 20, 76, 171, 185, 228, 260 (political realist).

¹⁹ *Id.* at 39–43, 117–21, 256 (CIA’s covert drone program and “signature strikes”); *id.* at 58–59 (Guantánamo detainee court cases); *id.* at 37, 100, 124, 127–28, 131, 154, 195, 258, 271–72 (orders closure of Guatanamo); *id.* at 131, 136, 164, 165, 188 (civilian trials of detainees).

²⁰ *Id.* at xiv.

²¹ *Id.* at 5.

“trying to stop a targeted kill ‘would be like pulling a lever to stop a massive freight train barreling down the tracks;”²² and that Attorney General Holder told his wife “he didn’t know if he had the emotional strength to go on as attorney general.”²³ While the prose humanizes the national security debate to a certain extent, the personal references are sporadic and often come across as if the author has firsthand knowledge of various thought processes—even though he relies on such accounts from his unnamed reporting sources.²⁴ This leaves the reader questioning both the author’s objectiveness and his source validity.

III. Journalist-Source Privilege²⁵

Klaidman goes too far to protect his sources. After listing a cast of over sixty political characters, Klaidman informs the reader that his book is based on more than two hundred interviews, most of which were conducted “on background” to protect source anonymity.²⁶ In a June 2012 interview, Klaidman states, “I promised my sources I would not reveal their identities because if journalists started to do that, then some of the important information that I write about and others write about wouldn’t get out there”²⁷ The author’s declaration raises two concerns. First, the book loses credibility because it relies on a significantly high number of unnamed sources. Second, the author’s attempt to use much, if not all, of the information gained undermines his goal of portraying the more intimate “human dimensions of national security decision-making.”²⁸

From 1996 to 2011, Daniel Klaidman worked as an investigative reporter, Middle East correspondent, Washington bureau chief and managing editor for *Newsweek* magazine.²⁹ He currently works as a special correspondent for both *Newsweek* and *The Daily Beast*.³⁰ As a journalist, Klaidman can grant promises of confidentiality to his *Kill or Capture* sources that are protected by either statute or

²² *Id.* at 202.

²³ *Id.* at 196.

²⁴ *Id.* at xiv.

²⁵ Geoffrey R. Stone, *The Merits of the Proposed Journalist-Source Privilege*, 1 ADVANCE, no. 1, Spring 2007, at 67, 68–69, available at http://www.acslaw.org/sites/default/files/Advance_Volume_1_Number_1_Spring_2007.pdf.

²⁶ KLAIDMAN, *supra* note 1, at x–xv. With an on background source, the author agrees not to attribute direct quotes by name.

²⁷ Interview by Stephen Colbert with Daniel Klaidman, *The Colbert Report* (Comedy Central television broadcast Jun. 20, 2012), available at <http://www.colbertnation.com/the-colbert-report-videos/415623/june-20-2012/daniel-klaidman> (quote by Daniel Klaidman).

²⁸ KLAIDMAN, *supra* note 1 (book jacket cover).

²⁹ 2011 *Moderators: Daniel Klaidman*, ASPEN SEC. FORUM, <http://aspensecurityforum.org/daniel-klaidman> (last visited Sept. 8, 2012).

³⁰ *Id.*

common law journalist-source privileges recognized in forty-nine states and the District of Columbia.³¹ The federal government lacks this same legislative protection,³² although federal courts have produced a small body of case law that upholds the privilege.³³

Since 2007, a variation of the “Free Flow of Information Act” has been introduced in both the House and Senate as proposed federal legislation governing the journalist-source privilege.³⁴ The most recent version of the bill, introduced in 2011 by Representative Mike Pence, seeks to “provide[] conditions for the federally compelled disclosure of information by certain persons connected with the news media.”³⁵ In a 2009 *Washington Times* interview, Representative Pence stated that while he “believe[s] the only check on government power in real time is a free and independent press” and that the bill was a “federal media shield . . . to provide a qualified privilege of confidentiality to journalists,” he also declares, “[T]here should be no confusion: This bill is not about protecting journalists. This bill is about protecting the public’s right to know.”³⁶ Among other considerations, the bill proposes that “a court may consider the extent of any harm to national security.”³⁷ Representative Pence explained further, “[T]he House bill takes a reasonable and measured approach, allowing for compelled disclosure when national security, terrorism or the disclosure of classified information that harms national security is at issue.”³⁸ While there may be instances in which total source anonymity is critical to the free flow of information, Klaidman fails to reach a compromised middle ground—one that balances protecting sources with the reader’s right for readers to scrutinize and publicly examine his source information.

³¹ Geoffrey R. Stone, *Why We Need a Federal Reporter’s Privilege*, 34 *HOFSTRA L. REV.* 39, 42 (2005). Wyoming is the only state that does not recognize journalist-source privileges.

³² *Id.*

³³ See Laurence B. Alexander, *Looking Out for the Watchdogs: A Legislative Proposal Limiting the Newsgathering Privilege to Journalists in the Greatest Need of Protection for Sources and Information*, 29 *YALE L. & POL’Y REV.* 97, 118–24 (2002); Julie M. Zampa, *Journalist Privilege: When Deprivation Is a Benefit*, 108 *YALE L.J.* 1449 (1999).

³⁴ KATHLEEN ANN RUANE, CONG. RESEARCH. SERV., RL34193, *JOURNALISTS’ PRIVILEGE: OVERVIEW OF THE LAW AND LEGISLATION IN RECENT CONGRESSES 4–10* (2011), available at <http://www.fas.org/sgp/crs/secrecy/RL34193.pdf>.

³⁵ H.R. 2932, 112th Cong. (2011).

³⁶ *Protecting Confidential Sources*, *WASH. TIMES*, Sept. 24, 2009, <http://www.washingtontimes.com/news/2009/sep/24/protecting-confidential-sources/>.

³⁷ H.R. 2932 § (2)(b).

³⁸ *Protecting Confidential Sources*, *supra* note 36.

A. National Security and Anonymous Sources: Is There No Middle Ground?

Though the author cites over 200 source interviews, “internal government documents,” “numerous academics and legal experts,” “transcripts of speeches, press conferences and background briefings provided by the White House and other government agencies” to write his book,³⁹ not one source is specifically named. Instead, Klaidman provides the reader with an insufficient two-page synopsis about his sources and writing methodology.⁴⁰ As a journalist trying to protect his sources, Klaidman still possesses broad discretion to disclose as many non-confidential sources as possible. Klaidman’s exaggeration of the journalist-source privilege leaves the reader guessing about the weight, relevance, and persuasiveness of his authorities.

Bob Woodward, journalist and author of the book *Obama’s Wars*, informs his reader about the over 100 “on background” White House interviews that were sources for his book on national security issues.⁴¹ At the conclusion of his book, Woodward provides the reader with twenty-six pages of source material.⁴² Each chapter is cited, includes the approximate number of background interviews upon which the chapter relies, and lists his additional non-confidential sources.⁴³

In contrast to Woodward’s candid disclosures, Klaidman’s secrecy overreaches journalist source protection boundaries and responsible authorship. Though Klaidman claims that his disclosure is “in the interest of transparency,” his general assertions are anything but transparent.⁴⁴ In particular, his declaration that “it is a reporter’s obligation to carefully verify the accuracy of their accounts, and to give readers a glimpse into the reporting process so that they can assess the credibility of the information themselves” misleads readers into believing that they will have the independent means to assess sources instead of solely trusting the author.⁴⁵ Particularly on a topic as sensitive as national security, Klaidman fails to balance the obligation to his sources with the public’s right to evaluate the validity of his information.

³⁹ KLAIDMAN, *supra* note 1, at xiii.

⁴⁰ *Id.* at xiii–xv.

⁴¹ BOB WOODWARD, *OBAMA’S WARS*, at xiii (2010).

⁴² *Id.* at 391–416.

⁴³ *Id.*

⁴⁴ KLAIDMAN, *supra* note 1, at xiv.

⁴⁵ *Id.*

B. Too Many Stories Spoil the Broth

Assuming the author did gather tremendous amount of source information upon which to base his book, it makes sense that various chapters emanate this cacophony of “noise,” which detracts from his thesis. For example, in a single fourteen-page chapter, the author tackles four critical subjects: the President signing the National Defense Authorization Act; the start of the kill or capture Osama bin Laden campaign; Attorney General Eric Holder’s conversation with Secretary of State Clinton about trying terrorist Khalid Sheik Mohammed in upstate New York; and the Ahmed Ghailani terrorism trial verdict that resulted in his acquittal of all but one of 284 murder and conspiracy charges.⁴⁶ Another chapter discusses Abdulmutallab, the Nigerian shoe bomber; President Obama’s slow public response; Holder’s contemplation of resignation; the public safety exception rule that applies when interrogating suspects; and Secretary of State Clinton’s declaration on the best ways to support the President.⁴⁷ At these various points in the book, the author aims a veritable “fire hose” of information at his readers, instead of flushing out in greater depth the key ideological struggles and triumphs in the Obama administration’s battle against terrorism.

The author could have done a more conscientious job prioritizing and highlighting the most salient and pressing issues in a more chronological and well-organized fashion. For instance, the book starts out on shaky ground with its first title, “The Promise,” because it fails to inform the reader of anything about a promise.⁴⁸ The second chapter, “Where the Fuck is Osama bin Laden?” also fails to provide the reader with any information about the hunt for Osama bin Laden, which is not discussed until the very last chapter of the book.⁴⁹ Setting up these expectations so early in his

prose leaves the reader with lingering confusion and unanswered questions. With a cast of over sixty political characters and a clear abundance of information about White House politics, the reader ultimately struggles to discern how Klaidman provides a unique perspective on national security issues, or why it is “the most revealing and important book yet about the Obama presidency.”⁵⁰

IV. Conclusion

Ultimately, Klaidman misses an opportunity to spotlight his intended protagonist: a president who expressed deep concerns about using the rule of law within the limits of his own power. Specifically, the book fails to address the tenuous balance between President Obama’s personal beliefs on executive and national power and his desire to act for the greater good. Instead, Klaidman’s eagerness to incorporate abundant source information results in a broad, sweeping brush of White House political dynamics and undermines any purported glimpse for the reader into the “soul” of the Obama Presidency.

Kill or Capture would interest readers who enjoy the general landscape of White House national security politics. With some effort, seasoned judge advocates could probably identify and discern the rule of law concerns. Those unschooled in national security issues, however, would fare much better with a book that stays more firmly anchored to its thesis.

⁴⁶ *Id.* at 225–39.

⁴⁷ *Id.* at 199–223.

⁴⁸ *Id.* at 13–35. Even after reading the chapter a couple of times, it is difficult to discern what “The Promise” refers to. It is another chapter packed with various events occurring late in Obama’s campaign and early in Obama’s presidency (i.e., conversations with Richard Clarke, President Bush’s counterterrorism advisor; Obama’s August 2007 national security address; Obama’s first intelligence briefing as president-elect; and John Brennan being chosen as Obama’s top counterterrorism advisor). This is not even the entire list of topics covered in the 23-page first chapter of the book. The author creates reader confusion from the very beginning, particularly when his chapter content is in direct odds with the chapter title. The closest thing to a promise is when the author writes President Obama vowed, “If we have actionable intelligence about high-value terrorist targets and [then Pakistani president Pervez] Musharraf won’t act, we will.” *Id.* at 18.

⁴⁹ *Id.* at 37–63. The title of the chapter, “Where the Fuck is Bin Laden?” is highly misleading. Absent these words coming out of White House Chief of Staff Rahm Emanuel’s mouth a single time, the rest of the chapter has little or nothing to do with the search for terrorist Osama bin Laden. Instead, it speaks in more general terms about the al-Qaeda terrorist organization, missile strikes in Pakistan, and signature strikes being conducted or contemplated by the CIA. Again, while that is not an exhaustive list of all the topics covered in the chapter, none of the topics discussed are squarely on point with the chapter’s title. The actual hunt for Osama bin Laden

(Operation Neptune Spear) occurs in Chapter 10, “Textbook.” *Id.* at 241–65.

⁵⁰ KLAIDMAN, *supra* note 1, book jacket cover.