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From Guantanamo to Abbottabad

The bin Laden mission benefited greatly from Bush administration interrogation policies, but President Obama still prefers to kill, rather than capture, terrorists. This costs valuable intelligence.

By John Yoo

In the space of 40 minutes on Sunday night, two Navy SEAL teams descended on a compound in Abbottabad, Pakistan, and killed the fugitive leader of al Qaeda. They brought a rough measure of justice to the man responsible for the killing of 3,000 Americans on Sept. 11, 2001 and thousands of others in countries from Spain to Iraq. Credit goes to the armed forces, which executed the operation; the intelligence agencies, which found the target; and the Obama administration, which approved it.

Sunday's success also vindicates the Bush administration, whose intelligence architecture marked the path to bin Laden's door. According to current and former administration officials, CIA interrogators gathered the initial information that ultimately led to bin Laden's death. The United States located al Qaeda's leader by learning the identity of a trusted courier from the tough interrogations of Khalid Sheikh Mohammed, the architect of the 9/11 attacks, and his successor, Abu Faraj al-Libi.



Columnist Bill McGurn on bin Laden's demise and the 2012 presidential race.

Armed with the courier's *nom de guerre*, American intelligence agencies later found him thanks to his phone call to a contact already under electronic surveillance. Last August, the courier traveled to bin Laden's compound, but it took another eight months before the CIA became certain that the al Qaeda leader was hiding inside.

President George W. Bush, not his successor, constructed the interrogation and warrantless surveillance programs that produced this week's actionable intelligence. For this, congressional Democrats and media pundits pilloried him for

allegedly exceeding his presidential powers and violating the Bill of Rights.

As a candidate in 2008, then-Sen. Obama held Mr. Bush and Sen. John McCain "responsible for the most disastrous set of foreign policy decisions in the recent history of the United States." These decisions, he said, allowed bin Laden and his circle to establish "a safe-haven in northwest Pakistan, where they operate with such freedom of action that they can still put out hate-filled audiotapes to the outside world."

Upon taking office, Mr. Obama tried to fulfill the dreams of the antiwar left. In January 2009, he signed executive orders to close the prison at Guantanamo Bay and limit the CIA to U.S. military interrogation methods. He made it clear that al Qaeda leaders would be tried in civilian courts. And in August 2009, his attorney general, Eric Holder, launched a criminal investigation into CIA officers who had interrogated al Qaeda leaders.

Imagine what would have happened if the Obama administration had been running things immediately following 9/11. After their "arrest," we would have read KSM and al-Libi their Miranda rights, provided them legal counsel, sent them to the U.S. for detention, and granted them all the rights provided a U.S. citizen in criminal proceedings.

If this had happened, the CIA could not have built the intelligence mosaic that pinpointed bin Laden's location. Without the intelligence produced by Bush policies, the SEAL helicopters would be idling their engines at their Afghanistan base even now. In the war on terror, it is easy to pull the trigger—it is hard to figure out where to aim.



ASSOCIATED PRESS

Locals gawk at Osama bin Laden's Pakistani hideout.

Over the past two years, congressional pressure and the demands of the real world have forced Mr. Obama to give up his law-enforcement approach to terrorism. Thanks to congressional funding riders, Gitmo remains open and terrorist detainees there cannot be brought to the United States. Attorney General Holder has finally dropped his ill-conceived plan to prosecute al Qaeda leaders in Manhattan, and he has now restarted the military commissions devised by the Bush administration.

The repatriation of Gitmo detainees has also ceased, again due to congressional pressure. Mr. Obama's advisers have even publicly reaffirmed his authority to capture or kill terrorists as enemy combatants. Drone attacks have more than tripled.

Mr. Obama's policies now differ from their Bush counterparts mainly on the issue of interrogation. As Sunday's operation put so vividly on display, Mr. Obama would rather kill al Qaeda leaders—whether by drones or special ops teams—than wade through the difficult questions raised by their detention. This may have dissuaded Mr. Obama from sending a more robust force to attempt a capture.

Early reports are conflicted, but it appears that bin Laden was not armed. He did not have a large retinue of bodyguards—only three other people, the two couriers and bin Laden's adult son, were killed. Special forces units using nonlethal weaponry might have taken bin Laden alive, as with other senior al Qaeda leaders before him.

If true, one of the most valuable intelligence opportunities since the beginning of the war has slipped through our hands. Some claim that bin Laden had become a symbol, or that al Qaeda had devolved into a decentralized terrorist network with more active franchises in Yemen or Somalia. Nevertheless, bin Laden was still issuing instructions and funds to a broad terrorist network and would have known where and how to find other key al Qaeda players. His capture, like Saddam Hussein's in December 2003, would have provided invaluable intelligence and been an even greater example of U.S. military prowess than his death.

White House counterterrorism adviser John Brennan said Monday that the SEAL team had orders to take bin Laden alive, "if he didn't present any threat," though he correctly dismissed this possibility as "remote." This is hard to take seriously. No one could have expected bin Laden to surrender without a fight. And capturing him alive would have required the administration to hold and interrogate bin Laden at Guantanamo Bay, something that has given this president allergic reactions bordering on a seizure.

Mr. Obama deserves credit for ordering the mission that killed bin Laden. But he should also recognize that he succeeded despite his urge to disavow Bush administration policies. Perhaps one day he will acknowledge his predecessor's role in making this week's dramatic success possible. More importantly, he should end the criminal investigation of CIA agents and restart the interrogation program that helped lead us to bin Laden.

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