



SMALL WARS JOURNAL

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The Strategic Knucklehead

by Butch Bracknell

On March 16, 2011, Central Intelligence Agency (CIA) contract employee Raymond Davis was released from jail in Lahore, Pakistan after payment of monetary compensation (*diyya*) to the families of two Pakistani citizens shot to death by Davis, acting in what he describes as self-defense, and a third Pakistani killed by an American government vehicle responding to the scene of the shooting. Davis is out of jail, the families are satisfied, the courts are relieved to be rid of the case, Pakistani protests have been relatively mild, and the U.S. and Pakistan governments can dial the tenseness of their bilateral relationship back from “critical” to its normal level of “very serious.”¹ Crisis averted? Not so fast. In reality, the actions and failures of a relatively modest number of actors committing very serious lapses of judgment changed the strategic balance between the U.S. and Pakistan – perhaps permanently, and at least long-term, well beyond the time when “Raymond Davis” ceases to be a national security household name.

In 1999, Marine Corps Commandant General Charles Krulak popularized the term “the Strategic Corporal.”² The term captured in shorthand the concept that in the emerging “complex, high-stakes, asymmetrical” security environment of instant communications (and now social media), nonlinear conflict, irregular and hybrid warfare, urban settings, and distributed operations, the actions of small-unit tactical leaders (Strategic Corporals) and even individuals (e.g., Strategic Privates) can have strategic effects. Gen. Krulak was almost certainly focused on the positive aspects of the small unit leader’s actions – by applying judgment, leadership, decisiveness, and moral courage, small unit leaders, such as corporals and sergeants, could make rational and correct decisions about how best to manage and lead in tactical events. Through positive leadership, small unit leaders can produce affirmative strategic consequences, sometimes producing *no* strategic consequence by maintaining the status quo or avoiding disaster. Of course, the inverse is true – an *absence* of judgment, leadership, decisiveness, and moral courage can produce outcomes or reactions that have a negative strategic effect. This type of personal failure is likely the rest of the story with Raymond Davis and his supervisors, a tale that has implications for the joint force and the “whole of government”³ approach to future operations. Strategic knuckleheads were at work in the Davis affair – individuals and small unit leaders whose particular failures produce undesirable strategic effects.

Marines frequently use the term “knucklehead” to describe a person who is not only dense or does not follow guidance, but also maintains a penchant for finding trouble or attracting misfortune – a problem child who bears close watching. The term is descriptive, not purposefully discourteous. Raymond Davis and, more importantly, the CIA supervisors

¹ The CIA killer who paid 'blood money' to escape Pakistan, March 17, 2011, <http://theweek.com/article/index/213264/the-cia-killer-who-paid-blood-money-to-escape-pakistan>.

² Gen Charles Krulak, "The Strategic Corporal: Leadership in the Three Block War", *Marines Magazine*, January 1999, available at http://www.au.af.mil/au/awc/awcgate/usmc/strategic_corporal.htm

³ The National Security Strategy of the United States (May 2010), p. 14.

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
1. REPORT DATE 13 SEP 2011		2. REPORT TYPE		3. DATES COVERED 00-00-2011 to 00-00-2011	
4. TITLE AND SUBTITLE The Strategic Knucklehead				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) U.S. Marine Corps Forces Command,Current Operations,Norfolk,VA,23551-2400				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT Same as Report (SAR)	18. NUMBER OF PAGES 5	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

purportedly managing Mr. Davis“ duty performance epitomize the strategic knucklehead by setting in motion a foreseeable and preventable chain of events that matured into a strategic liability. For the better part of 10 weeks, the “Davis Situation” dictated the tenor of the bilateral relations of the United States with its mercurial ally Pakistan -- a nuclear armed state⁴ with fragile political leadership⁵ and over 180 million often restive inhabitants⁶ vital to the successful prosecution of the U.S. campaign in Afghanistan and the virtually ungoverned tribal regions along the Afghanistan-Pakistan border.⁷ Relations between the U.S. and Pakistan are likely at an all-time post-9/11 low for a variety of factors,⁸ but clearly both countries would be better positioned if the Davis Situation had never happened. It did not have to happen.

The security situation in Pakistan is volatile, and U.S. forces and intelligence community personnel who serve there perform vital functions supporting the security of the United States, with professionalism, technical expertise, and operational aplomb. Regrettably, the David Situation reflects cavalier, cowboy-ish execution which casts a pall over the entire U.S. intelligence community and its contributions to the U.S. security posture in the region. Even if Davis was truly in danger – an open question that deserves further scrutiny – the real error was allowing him to be placed in a situation where this danger, his reaction, and its predictable strategic consequence was not properly mitigated. One does not need to be an expert in clandestine tradecraft to see the series of preposterous mistakes that led to a diplomatic crisis between the U.S. and Pakistan. Davis was traveling alone, and press reports indicate Pakistani police seized facial disguises, cameras, cell phones, and multiple ATM and identification cards.⁹ While it is difficult to second-guess the man who may have faced danger in the moment, one of the two Pakistani men Davis killed was shot in the back. There is no evidence in press reports that Davis attempted to deescalate the situation to protect his cover, and, even after the engagement, his exfiltration was unsuccessful. Nonetheless, some reports indicate Davis administered coup de grâce shots after wounding the men and snapped photographs of their dead bodies, rather than leaving the scene. In fact, the situation was made worse when Davis“

⁴ David E. Sanger and Eric Schmitt, Pakistan Nuclear Arms Pose Challenge to U.S. Policy, N.Y. Times, January 31, 2011, <http://www.nytimes.com/2011/02/01/world/asia/01policy.html>.

⁵ Jayshree Bajoria, Pakistan“s Fragile Foundations, Council on Foreign Relations, March 12, 2009, <http://www.cfr.org/pakistan/pakistans-fragile-foundations/p18749#p2>.

⁶ CIA Factbook, Pakistan, <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>.

⁷ Julie McCarthy, Davis Case Complicates U.S., Pakistan Relations, February 21, 2011,

<http://www.npr.org/2011/02/21/133932044/Pakistan-Raymond-Davis>.

⁸ Pakistan army accuses US of „negative propaganda“ as sour relations persist between allies, Washington Post, April 21, 2011, http://www.washingtonpost.com/world/pakistan_army_chief_defends_operations_against_militants_after_us_official_asserts_spy_links/2011/04/21/AFiwqqFE_story.html?wprss=rss_world; Greg Miller and Karen DeYoung, CIA, Pakistan Look to Repair Widening Rift, Washington Post, April 12, 2011,

http://www.washingtonpost.com/world/cia-pakistan-look-to-repair-widening-rift/2011/04/12/AFfeN1SD_story.html;

Simon Tisdall, US-Pakistan relations facing biggest crisis since 9/11, officials say, The Guardian (UK), April 12, 2011, <http://www.guardian.co.uk/world/2011/apr/12/us-pakistan-relations-crisis>; The Pakistan Ultimatum, Wall Street Journal, April 15, 2011,

<http://online.wsj.com/article/SB10001424052748703385404576259110311433964.html>

⁹ American Who Killed 2 Pakistanis...What was His Job in Pakistan? February 10, 2011,

http://www.allgov.com/Top_Stories/ViewNews/American_Who_Killed_2_Pakistanis_What_was_His_Job_in_Pakistan_110210.

colleagues killed a third Pakistani man with their vehicle as they raced to the scene of the shooting to help Davis.¹⁰

In the case of an utterly foreseeable and perhaps even likely crisis, tradecraft and situational awareness were abandoned. Panicked overreaction is a reasonable outcome for an untrained American businessman facing a street encounter in Islamabad. It is a markedly less defensible outcome for a former Special Forces soldier and trained security professional supporting clandestine intelligence operations in a volatile Islamic republic, where popular sentiment overwhelmingly is against the U.S. and the precarious civil government of the host country. Press reports almost certainly do not tell the whole story, but they paint a damning picture; it is as though Davis was armed by his supervisors and placed in the middle of one of the most precarious and hostile situations one could imagine, without much thought as to what might happen if he actually had to use force in self-defense against a local national or a terrorist posing as a local national. These failures made Davis' supervisors their own worst enemy. News services report that the intelligence community has been forced to rescope its operations and conduct substantial personnel replacements in Pakistan,¹¹ interrupting the flow of operations and reporting, and sacrificing well-developed corporate knowledge and relationships accrued by people who have been in country for months. Moreover, the Pakistani political opposition intends to use the incident to further destabilize the already shaky Pakistani government.¹² Regime change in fragile, capricious nuclear states that are home to transnational terrorists is a dicey proposition. It should not be made more likely by the individual actions of rogue teammates acting unprofessionally and without due regard for the volatility and precariousness of the strategic environment.

To be clear, there is no room to argue Davis was not entitled to qualified immunity as an adjunct to the U.S. mission in Pakistan; on this point, the Pakistani government and courts had no legal support for their contention that Davis was not entitled to the protection accorded by international law, which is well settled on this issue.¹³ In this case, Davis' otherwise lawful, duty-related activities were likely covered by the Convention, entitling him to qualified immunity from Pakistani judicial process.¹⁴ Commentators who maintain that Davis should have

¹⁰ Karin Brulliard and Aoun Sahi, Pakistani police report deems American official 'guilty' in shootings, Washington Post, February 13, 2011, http://www.washingtonpost.com/world/pakistani-police-report-deems-american-official-guilty-in-shootings/2011/02/13/ABYewpQ_story.html.

¹¹ Asad Kharal, *After Davis' arrest, US operatives leaving Pakistan*, The Express Tribune, February 28, 2011, <http://tribune.com.pk/story/124965/intelligence-assets-after-davis-arrest-us-operatives-leaving-pakistan>.

¹² Release of American CIA contractor removes obstacle in Pakistan-US ties, but problems remain, Washington Post, March 17, 2011, http://www.washingtonpost.com/world/release-of-american-cia-contractor-removes-obstacle-in-pakistan-us-ties-but-problems-remain/2011/03/16/ABQN3Vd_story.html.

¹³ Vienna Convention on Diplomatic Relations (1961), http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf. The Vienna Convention on Consular Relations (1963) provides similar protections. The 1961 Vienna Convention on Diplomatic Relations creates several different categories of persons within diplomatic missions who enjoy different levels of immunity from the judicial process of host states. This arrangement prioritizes the unadulterated practice of diplomacy between states (strategic relations) above host nation interests in individual criminal acts (tactical events). Accredited diplomats receive complete immunity. Non-accredited employees who perform administrative and technical duties, such as intelligence collection, accounting, secretarial duties, security, or military program management, receive immunity for acts occurring within the scope of their duties. In practice, this "scope of duty" criteria is interpreted broadly and is defined more by what is *not* covered, such as criminal acts performed while an employee is on vacation but still inside the country, or offenses that have no duty connection whatsoever (e.g., petty theft during off-duty hours). Acts are presumed duty-related unless there is evidence to the contrary.

¹⁴ Davis' entitlement to immunity from Pakistani court jurisdiction does not preclude the fact that this strategic knucklehead should be subject to investigation and prosecution for his acts by American authorities in U.S. courts, if he in fact acted contrary to U.S. law. Greg Miller and Pamela Constable, CIA contractor Raymond Davis freed after „blood money“ payment, The

been subject to Pakistani judicial process clearly do not understand this finer point of international law and its decades-long practice in diplomatic communities. Others who insist that Davis is immune from *all* jurisdiction are similarly misinformed – U.S. authorities have jurisdiction and discretion to investigate, indict, and prosecute if evidence reveals violations of U.S. law. The equities at stake in ensuring these points of law are vindicated loom far larger than the individual case of Raymond Davis.¹⁵

The extractable maxim for U.S. actors performing duties in the service of the nation in foreign countries – military servicemembers, diplomats, intelligence agencies, and development agencies – is that there is no such thing as business as usual, and there is no room for panache as a substitute for professionalism. Every situation occasioning operational risk has to be war-gamed during a constant cycle of re-evaluation and adjustment -- risk has to be managed constantly.¹⁶ Routine is the enemy of diligence. In particularly precarious contexts like the Davis Situation – such as operating undercover in a hostile, unstable, nuclear-armed third world country with a marginally effective and reliable government and which is home to hundreds if

Washington Post, March 16, 2011, http://www.washingtonpost.com/world/cia-contractor-raymond-davis-freed-after-blood-money-payment/2011/03/16/ABYVJ1d_story.html. The U.S. Department of Justice investigation of CIA agents, which commenced in 2009 when Attorney General Eric Holder appointed a special prosecutor to review about a dozen cases of alleged torture and abuse of detainees in Iraq and Afghanistan, has been extraordinarily controversial. See Carrie Johnson, Holder's Pick for CIA Investigation Known as Tough, Diligent, Washington Post, August 24, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/24/AR2009082401945.html>. Detractors allege governmental disloyalty and note that investigations could chill future aggressive intelligence activities. See Siobhan Gorman, Seven CIA Directors Ask Obama to Stop Criminal Probe, Wall Street Journal, September 18, 2009, <http://blogs.wsj.com/washwire/2009/09/18/seven-cia-directors-ask-obama-to-stop-criminal-probe>. On the other hand, agents following the law have little to fear from an investigation, which sends the strategic signal that in America no one has the authority to act outside the law. Of course, a U.S. federal case against Davis will be difficult to prove; even if the Department of Justice compiles evidence of unlawful acts, the case against Davis will likely hinge on the testimony of local Pakistanis. Assuming the local Pakistani witnesses can be located, it is extraordinarily unlikely they would travel willingly to the United States to testify. As foreign citizens, the Pakistani witnesses are beyond the reach of the U.S. courts to compel their appearance. Finally, their testimony would likely have to be offered through a translator and is apt to be biased, contradictory, and emotional, an easy case for the most inexperienced defense lawyer to torpedo.

¹⁵ Jennifer K. Elsea, Congressional Research Service Report for Congress, Private Security Contractors in Iraq and Afghanistan: Legal Issues, CRS R40991, January 7, 2010. While any U.S. investigation faces an uphill battle to result in a successful prosecution, there is merit in going forward anyway: the U.S. must demonstrate due diligence to the Pakistani government and the rest of the world as a precedent for similar future cases. That the case could well be a loser in U.S. federal court is no justification not to investigate, indict, and prosecute, if warranted by the evidence – the American rule of law tradition requires the government to pursue difficult cases from time to time to vindicate social interests which have nothing to do with winning or losing cases. The U.S. must also send a signal within its own services and agencies that assiduousness and professionalism are the watchwords of advancing U.S. national security interests in the execution of duties in foreign countries, and that there are consequences to departing from the standards of expected conduct. If the investigation reveals that Davis acted in self-defense, no harm will result from the inquiry unless evidence of other violations of U.S. law are substantiated. The only consequence will probably be that his prospects for future employment will have been damaged, a possibility that Davis tactily accepted when he agreed to a risky assignment. The requirement for Davis to seek a new line of work is one which most policymakers would likely consider an acceptable outcome given the amount of risk that this strategic knucklehead's actions posed to the security of the United States. See also United States Government Accountability Office, Rebuilding Iraq: DOD and State Department Have Improved Oversight and Coordination of Private Security Contractors in Iraq, but Further Actions Are Needed to Sustain Improvements, GAO 08-966, July 2008.

¹⁶ See, e.g., FM 100-14, Risk Management, Headquarters, Department of the Army, Washington, DC, 23 Apr 98; Marine Corps Order 3500.27B, Operational Risk Management, 5 May 04; Clark A. Murdock, Authors: Matt Squeri, Chris Jones, Becca S. Smith, Risk Management in Non-DoD U.S. Government Agencies and the International Community: Best Practices and Lessons Learned, Center for Strategic and International Studies, Washington DC, March 14, 2011.

not thousands of radical terrorists¹⁷ -- managed obsession and paranoia can even be useful. Individual actors have to account for the third order effects of otherwise innocuous actions.¹⁸

Leaders have to account for and manage risk constantly to strike the balance between taking chances to achieve desirable results and mitigating risk to avoid strategic meltdowns based on the acts of individual actors with bad judgment. Managing the national security affairs of the United States is hard enough without strategic knuckleheads adding degrees of difficulty. Leaders must work to identify organizational strategic knuckleheads, mitigate the risk they pose through training, suitable assignments, and accountability, and prepare to moderate the consequences when their individual actions create strategic liabilities and compromise U.S. national security ends.

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¹⁷ Terrorism Project, List of Known Terrorist Organizations, Center for Defense Information, <http://www.cdi.org/terrorism/terrorist-groups.cfm>.

¹⁸ See Michael G. Miller, Thinking About Second & Third Order Effects: A Sample (And Simple) Methodology, *Iosphere*, Summer 2006, pages 36-39 (available at http://www.au.af.mil/info-ops/iosphere/iosphere_summer06_miller.pdf). To wit, the infantryman on liberty in a foreign country who beats a taxi driver instead of paying his fare jeopardizes basing rights when the incident is used by the host nation political opposition to attack incumbents. The pilot who flathats his aircraft over an ally's territory until he loses control, ejecting as he watches it crash into a school, risks that ally's support in future international political contexts because of domestic political pressure. Diplomats who flaunt their immunity risk local law enforcement authorities finding other ways at leveling the playing field by harassing local national embassy employees and their families to the point of hampering the embassy mission in ways that affect national strategic priorities.