

1 HEARING ON U.S. INTERROGATION POLICY AND
2 EXECUTIVE ORDER 13440
3 OUTSIDE WITNESSES

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5 Tuesday, September 25, 2007

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7 United States Senate

8 Select Committee on Intelligence

9 Washington, D. C.

10 The Committee met, pursuant to recess, at 3:40 p.m., in Room
11 SH-219, Hart Senate Office Building, the Honorable Christopher S. Bond,
12 Vice Chairman of the Committee, presiding.

13 Committee Members Present: Senators Bond [presiding],
14 Feinstein, and Whitehouse.

15 Committee Staff Members Present: Andy Johnson, Staff
16 Director; Louis Tucker, Minority Staff Director; Michael Davidson, General
17 Counsel; Kathleen McGhee, Chief Clerk; Randy Bookout, Eric Chapman,
18 Tom Corcoran, John Dickas, Melvin Dubee, Evan Gottesman, David
19 Grannis, Andrew Kerr, Paul Matulic, Don Mitchell, Eric Pelofsky, Mike
20 Pevzner, Jacqueline Russell, Michal Schafer, Alissa Starzak, Greg
21 Thielmann, and Jim Wolfe.

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1 **VICE CHAIRMAN BOND:** [Presiding] This hearing will come
2 to order.

3 Unfortunately, the Chairman has been called away for a very
4 important ceremony honoring his colleague in the Capitol, so, without
5 objection, his full opening statement will be entered into the record.

6 [The prepared statement of Chairman Rockefeller follows:]

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1 **VICE CHAIRMAN BOND:** It is important, I should note, that
2 we have previously agreed that although the Committee has agreed to
3 conduct this second panel in closed session, many of these witnesses do
4 not have clearances; therefore, to my Members and staff, no classified
5 information may be discussed during this second session.

6 But, because the Committee thinks it's important that the
7 debate on these important topics be made public, the Committee has
8 made the decision to post witness statements immediately following the
9 hearing. Once the hearing transcript from the second portion of the
10 hearing is completed and reviewed to assure no classified information, the
11 transcript will also be made part of the public record.

12 Today it's my pleasure on behalf of the Chairman to welcome
13 our witnesses for the second panel – Lieutenant General Charlie Otstott,
14 Colonel Steve Kleinman, Dr. Allan Keller, the program director of the
15 Bellevue/NYU Program for Survivors of Torture, Elisa Massimino, the
16 Washington Director, Human Rights First, and Professor Robert Turner
17 from the University of Virginia Law School Center for National Security
18 Law.

19 With that, I will now call upon General Otstott.

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1 sophisticated interrogators, but the principles reflected in the field manual
2 are values that no U.S. agency should violate. The FM provides a set of
3 approaches to interrogation that should be sufficient to guide even the
4 most sophisticated interrogator.

5 General Petraeus recently reinforced the field manual
6 standards in his letter to the troops of the Multinational Force-Iraq no 10
7 May of this year, which condemned the abuse of detainees. In the letter
8 he says the following: “We are indeed warriors. We train to kill our
9 enemies. We are engaged in combat. We pursue the enemy relentlessly,
10 and we must be violent at times. What sets us apart from our enemies in
11 this fight, however, is how we behave. In everything we do, we must
12 observe the standards and values that dictate that we treat
13 noncombatants and detainees with dignity and respect.”

14 So the military or the uniformed services are back on track,
15 trying to adhere to a simple, clear and understandable standard for the
16 treatment of detainees as found in the field manual. Senior leaders are
17 now speaking out to make sure that the standards are understood all the
18 way down to the lowest levels.

19 But the President’s Executive Order of 20 July expresses an
20 interpretation of Common Article 3 which appears to provide a different
21 set of standards for the CIA in the handling and interrogation of detainees.
22 In my opinion, there are two problems associated with this new Executive
23 Order.

24 First, any techniques used by the CIA under this program are
25 essentially those which our soldiers could expect to have used against

1 them if they fall into enemy hands. Admiral McConnell, in speaking
2 publicly about the Executive Order and the CIA program, admitted the he
3 “would not want a U.S. citizen to go through the processes” that are
4 allowed under this order.

5 Second, the Order reintroduces ambiguity into situations
6 where CIA and U.S. military personnel are working side by side, as in
7 many locales within Iraq today. The existence of different standards does
8 not work well in practice and provides a confusion factor which detracts
9 from clear guidance and simple standards. This confusion can lead to the
10 disgraceful behavior which we saw earlier in the current conflict.

11 I conclude by urging you to do all within your power, Senators,
12 to maintain the integrity of Common Article 3 and provide a single, clear
13 standard of behavior for all U.S. personnel engaged in this and future
14 conflicts.

15 Thank you.

16 **VICE CHAIRMAN BOND:** Thank you very much, General.
17 Now we turn to Colonel Kleinman.

18 [The prepared statement of Col. Kleinman follows:]

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1 **STATEMENT OF COLONEL STEVEN KLEINMAN, U.S. AIR FORCE**
2 **RESERVE, EDUCING INFORMATION STUDY SENIOR ADVISOR**

3 **COLONEL KLEINMAN:** Mr. Vice Chairman and Members of
4 the Committee, it's truly an honor to be here today and share my thoughts
5 on this very important issue.

6 My background, over 20 years of commissioned service,
7 focused primarily on human intelligence operations, much of that involving
8 interrogations, including three military campaigns – in Panama, first Gulf
9 War and, most recently, in Iraqi Freedom. In addition, I was the DOD's
10 senior intelligence officer for special survival training. What that means is
11 I was also an expert on the counter-strategies to resist interrogation, one
12 of the few people, fortunately enough, who have actually worked on both
13 sides of the table, so to speak.

14 **SENATOR FEINSTEIN:** Did you say "fortunate" or
15 "unfortunate?"

16 **COLONEL KLEINMAN:** I will say fortunate, very fortunate.
17 This background will indelibly inform the perspectives that I
18 want to share with you today, as I was asked to address three primary
19 areas – historical U.S. practices, the effectiveness of various interrogation
20 approaches, and, finally, challenges faced by the United States as we
21 move forward.

22 As a student at the Defense Intelligence College, I wrote a
23 thesis on the U.S. interrogation program during World War II, and I began
24 that thesis with a quote from a British officer who worked in a counterpart
25 program. He said, "Interrogation of prisoners is a difficult and delicate

1 task that cannot be conducted by anybody anywhere, by no matter what
2 method. It is indispensable if results of any value are to be obtained, that
3 the examination be conducted in a skilled, planned, and methodical
4 manner.”

5 The U.S. program I studied, known as MISY, clearly took that
6 guidance to heart. Operating without established doctrine, these very
7 creative and dynamic individuals serving as interrogators, as analysts and
8 as monitors, developed an incredibly effective program, the product of
9 which would soon be on par with the vaunted communication intercepts of
10 the ENIGMA program.

11 The lessons I learned in my studies are these. Number one,
12 interrogation is a complex, dynamic process that is as operationally
13 vexing as any clandestine operation. MISY responded to the challenge by
14 recruiting a cadre of individuals with impressive academic credentials,
15 such successful life experience, with knowledge of the language and
16 culture and an ability to produce results in an ambiguous and chaotic
17 environment.

18 Secondly, to maximize the return on their investment, they
19 selected only those prisoners that they knew to possess information of
20 critical intelligence value. That process of selection was both judicious
21 and meticulous. The exhaustive research that went into the effort before
22 every interrogation was amazing. The standard became three to six
23 hours of preparation for every hour actually spent in interrogation.

24 Unfortunately, due to the time when we transitioned rapidly
25 from World War II into the era of the cold war, much of this information,

1 the corporate knowledge from MISY was classified and remained
2 unavailable to inform the stories that unfolded during subsequent conflicts
3 in Korea, Vietnam and in the Gulf. So those chapters were not informed
4 by the previous and very successful chapter.

5 Moving on to effectiveness, most of the debate surrounding
6 the topic of interrogation has focused on this question. Interrogation is, at
7 its best, an art and a science, probably more the former than the latter,
8 and certainly effectiveness falls into that. While the U.S. government
9 invested an extraordinary amount of time and money into studying what
10 we used to call the communist interrogation model during the fifties,
11 sixties and seventies, very little time was spent studying interrogation –
12 meaning the collection of intelligence information from sources who might
13 possess that intelligence.

14 The intent was honorable. If we could deconstruct that model,
15 perhaps we could identify counter-strategies to resist it. Unfortunately, we
16 spent very little time studying the positive interrogation side, and I would
17 state for you today that most of the approaches, most of the strategies, in
18 fact the paradigm behind the current Army field manual is not based on
19 scientific inquiry. It is, at best – and I've done my research – it is, at best,
20 based on lessons learned put together after World War II, because I've
21 looked at the archives. It sort of disappears in 1950 but has been codified
22 in each successive iteration. So what we know about “pride and ego-up”
23 and “emotional love of country,” and “we know all”, is speculation.

24 In the limited time I have I wanted to turn real quickly to when
25 “effectiveness” refers to the use of coercion. The debate around it seems

1 to center on the legal and moral episode but not looking at the
2 effectiveness. There seems to be a presupposition that coercion does
3 work. It's just a question of should we, as a nation, use it.

4 I submit that I have not seen – and I believe I can say that I've
5 studied this issue at length – any definitive studies that would prove that
6 that method works at all to produce useful information. Please recall that
7 the whole purpose of interrogation is to have access to somebody's
8 accurate, timely and comprehensive memory. Literature review on the
9 psychology of eye-witness testimony will call that into question.

10 I see my red light's coming on, so I will just quickly press on to
11 the conclusions. That is, what we need to do is develop more research.
12 We need to understand both the art and science.

13 We need to develop, I believe, like MISY, an entity of
14 common concern for the intelligence community that would address this
15 research and ultimately put that research into effect, setting standards to
16 truly professionalize this discipline, just like any other profession, whether
17 it be medicine or law, and in doing so I think we can still meet our
18 operational challenges, both those that face us today and those that might
19 emerge in a different paradigm in the future, and do so in a way that I
20 think our country may think is impossible – that is, to conduct our affairs in
21 a way that is truly good, thereby sending the message to the world that we
22 are country that wishes to be truly great.

23 Thank you very much.

24 **VICE CHAIRMAN BOND:** Thank you very much, Colonel
25 Kleinman.

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Now we'll turn to Dr. Keller.
[The prepared statement of Dr. Keller follows:]

1 **STATEMENT OF ALLEN S. KELLER, M.D., ASSOCIATE PROFESSOR**
2 **OF MEDICINE, NEW YORK UNIVERSITY SCHOOL OF MEDICINE;**
3 **DIRECTOR, BELLEVUE/NYU PROGRAM FOR SURVIVORS OF**
4 **TORTURE; MEMBER, ADVISORY COUNCIL, PHYSICIANS FOR**
5 **HUMAN RIGHTS**

6 **DR. KELLER:** Thank you.

7 Thank you for the privilege of testifying before this Committee
8 today. I'm testifying on behalf of the Bellevue/NYU Program for Survivors
9 of Torture, as well as Physicians for Human Rights.

10 I want to share with you my perspective as a physician
11 concerning torture and interrogation practices. Mine is not a theoretical
12 one. It's based on more than fifteen years of experience in caring for
13 more than 2000 men, women and children from all over the world who
14 have experienced torture and mistreatment and studying the health
15 consequences.

16 The focus of my comments is on the profound and dangerous
17 health effects of torture and interrogation techniques, often referred to in
18 the seemingly innocuous way of "enhanced interrogation techniques." I
19 know you are all familiar with the list of these techniques. In my written
20 testimony I have discussed several of them. I would be happy to answer
21 questions. But it's crucial that you understand from a medical, scientific
22 and health perspective there is nothing, nothing benign about these
23 methods.

24 If you take one thing away from what I say today, let it be that
25 you know that these methods are dehumanizing, they are traumatizing,

1 they are dangerous, they have horrific health consequences. I've treated
2 traumatized and damaged individuals who were subjected to every one of
3 these techniques. Many forms of torture and abuse, including the
4 enhanced interrogation techniques, may leave no physical scars but can
5 nonetheless cause severe physical and psychological suffering. If a gun
6 is held to someone's head and the trigger pulled in a mock execution,
7 there may be no physical marks, but the nightmares, the terror, the fears
8 can last a lifetime. Stress positions can kill you. I have patients who were
9 nearly killed or still suffer, years after, from being forced to stand for
10 extended periods and likewise suffer the psychological impact of what
11 they endured.

12 It's also important to note that any one form of torture or
13 mistreatment rarely occurs in isolation but in combination with several
14 abusive methods, and the context is also critical. There's a profound
15 difference between the student pulling an all-nighter, the young physician
16 who is on call every third night versus the detainee who is kept up for long
17 periods who has no sense of when that mistreatment will end and
18 rightfully fears for their life.

19 Such methods are potentially harmful even to individuals who
20 were healthy before. When used with individuals who have underlying
21 psychological or medical problems such as heart disease or high blood
22 pressure, they can be life-threatening by causing heart attacks or strokes.

23 Now while the health consequences are clear, it's dubious at
24 best that such methods elicit accurate information. I know from the
25 victims I have cared for that repeatedly they've told me that they would

1 say whatever they thought needed to be said, whether it was true or not,
2 to make these methods and this brutality stop. But there must be no
3 mistake about the brutality of these enhanced interrogation techniques
4 and no mistake about their health consequences.

5 Let me just focus on two examples – first of all, stress
6 positions and standing. There has been much discussion from
7 individuals, saying, well, I stand for 18 hours a day. Let me tell you there
8 is a profound difference between that and an individual forced to stand in
9 one position for that period. I have a Tibetan monk who I've cared for, an
10 individual who was arrested and mistreated because he was chanting
11 "long live the Dali Lama," "free Tibet," and as a result of that was forced to
12 stand, was beaten. He developed deep vein thromboses, clots in the
13 lower extremities that migrated up to his lungs. When I saw him, he could
14 barely breathe. He almost died. If not for life-saving surgery, in fact, he
15 would have died.

16 Sensory deprivation, such as being held in a dark cell or
17 hooded results in disorientation, profound panic, and an adrenergic surge,
18 a release of catecholamines that make you have heart palpitations and
19 horrible fear.

20 I have individuals who I've cared for years afterwards who
21 remain claustrophobic and terrified of the dark, and these aren't
22 individuals who were weak before they suffered this abuse. They were
23 very most often common high-functioning individuals who years later
24 tragically are shells of who they were.

25 I was asked to say a few words about the medical ethics of

1 physician and health professional participation. Let me just say this.
2 First, it is a gross breach of professional ethics to participate, for
3 physicians or health professionals, in any way or countenance or condone
4 torture or cruel, inhuman, or degrading treatment.

5 Regarding interrogations, most major medical organizations
6 have stated it is a violation for health professionals to participate in any
7 way. I'm also concerned as a health professional about that if we in any
8 way condone these methods, we are pouring kerosene on what is already
9 a worldwide public health epidemic of torture and mistreatment.

10 So, in conclusion, I would say as a physician and scientist who
11 has spent much of his career evaluating these individuals, I want to
12 clearly state that these methods are cruel, inhuman and have horrific
13 health consequences. I urge you to ensure that there is transparency,
14 because that's the most effective means for not having torture happen
15 and that these methods are not allowed to happen on our watch.

16 **VICE CHAIRMAN BOND:** Thank you, Dr. Keller.

17 Ms. Massimino.

18 [The prepared statement of Ms. Massimino follows:]

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1 **STATEMENT OF ELISA MASSIMINO, WASHINGTON DIRECTOR,**
2 **HUMAN RIGHTS FIRST**

3 **MS. MASSIMINO:** Thank you, Senator.

4 I am honored to be here today and I appreciate the
5 opportunity to share with you the views of Human Rights First on this
6 important issue. I'm not an expert on interrogations or intelligence. I've
7 spent most of the last two decades working to leverage the positive
8 example of the United States to pressure other governments to respect
9 human rights. But I start from the premise that intelligence gathering is a
10 vital tool in disrupting terrorist networks. Effective interrogations are an
11 important part of this effort when they are conducted consistent with the
12 laws and values of the United States.

13 As General Otstott mentioned, the Director of National
14 Intelligence recently said that he would not be comfortable having the CIA
15 techniques used against Americans, but if there's one rule of U.S.
16 interrogation policy after the Hamdan decision, it's this: if the U.S. does
17 not want Americans to be subjected to these techniques, it must not
18 employ them itself. If the CIA is authorized to use a particular
19 interrogation method under the Executive Order, it means the U.S.
20 considers that method compliant with Common Article 3 and that our
21 enemies can lawfully use those methods against captured Americans in
22 any situation governed by Common Article 3.

23 This is hardly a theoretical concern. During the cold war,
24 when my father served, captured CIA officers were subjected by Chinese
25 interrogators to precisely the same kinds of abusive interrogation

1 techniques that are now reportedly being used by the CIA – sleep
2 deprivation, long time standing and other techniques that leave no
3 physical external marks. Would it have made a difference to us if the
4 purpose of the Chinese in interrogating those prisoners was not to
5 humiliate or degrade the CIA officers but simply to gain information? I
6 don't think so. Yet there is language in the Executive Order that would
7 have offered the Chinese just such an argument. If it's read in this
8 manner, the Executive Order sets a dangerous precedent.

9 It's important to remember that all violations of Common
10 Article 3 are prohibited, not just the grave breaches outlined in the Military
11 Commissions Act. Congress explicitly rejected the Administration's
12 proposal to limit U.S. obligations under Common Article 3 to torture and
13 other war crimes. All of Common Article 3 applies to the CIA and the
14 MCA did nothing to change that.

15 Nor does the MCA authorize the enhanced interrogation
16 techniques. To the contrary, Senator Warner said during debate that all
17 the techniques banned by the Army field manual constitute grave
18 breaches of Common Article 3 and are clearly prohibited under the MCA.
19 No one contradicted that statement at any point in the Congressional
20 debate, and no Member of Congress defended the specific techniques
21 reportedly used by the CIA or claimed that those techniques would be
22 legal. To the contrary, the Congressional record is crystal clear. The
23 MCA was intended to rein in the CIA program.

24 The highest-ranking uniformed lawyers of all four branches of
25 the service agree that such techniques are illegal. They have all testified

1 that the stress positions, the use of dogs, forced nudity and the like are
2 illegal, inhumane and violate Common Article 3. This view is consistent
3 with past U.S. practice, our own court precedent, and the views of our
4 closest allies, as I outline in my written testimony.

5 Administration officials frequently imply that the U.S. wants
6 detainees to believe that they will be tortured by their American captors,
7 yet we want the rest of the world to believe just the opposite. We can't
8 have it both ways. The problem now is not that the enemy knows what to
9 expect from us; it's that the rest of the world, including our allies, does not.
10 There was a time, not that long ago, when the President declared that the
11 demands of human dignity were "nonnegotiable," when no one in the U.S.
12 government questioned the meaning and scope of humane treatment
13 provisions of the Geneva Conventions, and when the rest of the world
14 viewed with great skepticism claims by U.S.-held prisoners that they had
15 been abused.

16 Today we are in a very different place. Our stand on human
17 dignity seems to be that it is negotiable so long as there's no permanent
18 damage. The humane treatment provisions of Common Article 3, which
19 were clear to our military for more than half a century, are now considered
20 by the Administration to be too vague to enforce, and much of the rest of
21 the world believes that the U.S. routinely tortures prisoners in our custody.

22 Congress should ensure that the U.S. adheres to a single
23 standard of humane treatment of all prisoners in its custody. The most
24 effective way to accomplish this would be to make the McCain
25 amendment's Army field manual provision binding on all government

1 agencies. For the safety of U.S. personnel and the integrity of human
2 rights standards, the U.S. must make clear to the American people and to
3 the rest of the world what it means when it says it will abide by its
4 obligations under Common Article 3.

5 Interrogation techniques need not cause permanent damage
6 in order to be unlawful, but they have inflicted enormous damage on the
7 honor and reputation of the United States. Your actions will help to
8 determine whether that damage is permanent.

9 Thank you.

10 **VICE CHAIRMAN BOND:** Thank you very much, Ms.
11 Massimino.

12 Now we'll turn to Professor Turner.

13 [The prepared statement of Mr. Turner follows:]

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**1 STATEMENT OF ROBERT F. TURNER, SJD, CENTER FOR NATIONAL
2 SECURITY LAW, UNIVERSITY OF VIRGINIA SCHOOL OF LAW**

3 MR. TURNER: Vice Chairman Bond, Members of the
4 Committee, it is a great honor to be here today. I have a rather lengthy
5 prepared statement that I would propose to submit for the record.

6 VICE CHAIRMAN BOND: That will be submitted, without
7 objection. We appreciate your summarizing it in five minutes.

8 MR. TURNER: I believe I was invited because I co-authored
9 an op ed article in the Post on July 26 with former Marine Corps
10 Commandant P.X. Kelley criticizing the Executive Order in question. My
11 formal statement is divided into three parts, starting with constitutional
12 law, then international law, then some public policy considerations which I
13 would really like to expand upon.

14 My constitution discussion is somewhat detailed because I
15 think there's a great deal of confusion about separation of powers in this
16 area for foreign affairs and intelligence. I wrote a 1,700-page doctoral
17 dissertation on this issue many years ago, and I've been frustrated by
18 much of the debate on both sides.

19 Guided by writers like John Locke and Montesquieu and
20 William Blackstone, as well as their own experience under the Articles of
21 Confederation, the Founding Fathers did not intend for Congress to have
22 any role in what John Jay called "the business of intelligence," writing in
23 Federalist 64, beyond providing funds. In Federalist 64 Jay discussed the
24 importance of protecting intelligence sources and methods and explained
25 that because Congress and the Senate could not be trusted to keep

1 secrets, the Constitution had left the President “able to manage the
2 business of intelligence as prudence might suggest.”

3 The early appropriation for intelligence told the President just
4 tell us how much you spent and we will replenish the kitty, but do not tell
5 us if you think anything has to be kept secret. I quote Thomas Jefferson
6 and his rival Alexander Hamilton as well, explaining that the grant of
7 executive power to the President in Article II, Section 1, carried with it the
8 general management of foreign affairs, subject to a few narrowly-
9 construed negatives or exceptions vested in the Senate or in Congress. I
10 quote Chief Justice John Marshall in perhaps the most famous of all
11 Supreme Court cases, *Bradbury v. Madison*, as declaring “there exists no
12 power” to control the President’s constitutional discretion in the foreign
13 affairs area.

14 I strongly suggest that one of our biggest problems in the post-
15 Vietnam era has in fact been legislative law-breaking. Both the President
16 and Congress must obey the higher law of the Constitution. To give you
17 just one example, since the *Chadha* decision in 1983 that outlawed
18 legislative vetoes, Congress has enacted more than 500 of those
19 unconstitutional acts. But there is no constitutional problem with
20 Congress legislating to enforce Common Article 3 because one of those
21 exceptions expressly given to Congress is the power, in Article I, Section
22 8, to define and punish violations of the law of nations, and certainly that
23 includes the Geneva Conventions, which are the most subscribed-to
24 conventions in the history of the world.

25 The constitutional section also notes that under our

1 Constitution the President has sole power to interpret the international
2 meaning of treaties in the nation's dealing with its external world. Both the
3 President and Congress have the power to violate treaty obligations, but I
4 stress – and this is critically important – this is only true in terms of
5 domestic United States law, and such actions make us an international
6 lawbreaker liable to a variety of potential remedies available to other
7 treaty partners. And when we're talking about war crimes I would
8 emphasize that includes the right of 193 other countries to try Americans
9 for violations of Common Article 3 and other grave breaches of the law of
10 armed conflict. There is no statute of limitations. People engaged in this
11 may spend the rest of their lives unable to travel into foreign countries.

12 Part two of my statement addresses international law issues.
13 It looks briefly at the history of *Jus in Bello* and, in particular, the *travaux*
14 of Common Article 3 of the four 1949 Geneva Conventions. In doing
15 some additional research for today's hearing, I must confess I was
16 surprised to find a very strong case that Common Article 3 was originally
17 written to address the problem of civil wars and revolutions within a single
18 state and that many prominent scholars have interpreted it that way,
19 despite some last-minute changes in its wording that to me suggest it
20 applies to all armed conflicts not involving sovereign states on both sides.

21 I believe the United States is bound by Common Article 3, but
22 were there no Common Article 3, we would still be bound by the
23 humanitarian principles it embodies as matters of customary international
24 law. That has been the position of our government for many years.

25 I've given you some examples of ways in which language

1 similar to that in Common Article 3 has been interpreted by international
2 tribunals like the European Court of Human Rights, the International
3 Criminal Court for the former Yugoslavia, and the International Criminal
4 Tribunal for Rwanda. With the permission fo the Committee, I would like
5 to expand that section for the record in the next few days.

6 **VICE CHAIRMAN BOND:** Without objection, it will be
7 accepted.

8 [The information referred to follows:]

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1 **MR. TURNER:** In 1809, going to the policy issue and this is
2 my closing remark, in 1809, Thomas Jefferson wrote a letter to newly-
3 elected President James Madison in which he said, "It has a great effect
4 on the opinion of our people and the world to have the moral right on our
5 side." In his very excellent speech earlier this month to the Council on
6 Foreign Relations, General Hayden emphasized "winning the war of ideas
7 actually defines the long-term victory that we seek." I could not agree
8 more. And to win this war America must maintain the high moral ground.

9 Thank you, Mr. Chairman.

10 **VICE CHAIRMAN BOND:** Thank you, Professor Turner.

11 Without objection, the Committee has received statements
12 from the Center for Victims of Torture, the American Psychological
13 Association, and the National Religious Campaign Against Torture.

14 Without objection, those will be included in the record.

15 [The information referred to follows:]

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1 **VICE CHAIRMAN BOND:** Now, because of time constraints, I
2 will not only call on the distinguished Senator from California to ask
3 questions, but I will pass to her the ultimate weapon of authority, the small
4 wooden gavel. I thank our witnesses for their testimony.

5 **SENATOR FEINSTEIN:** [Presiding] Well, thank you very
6 much, Mr. Vice Chairman. We understand that you have to leave. The
7 two of us will carry on here.

8 I want to begin by thanking the five of you for coming here
9 today. I want to thank you for the papers you've submitted. They are not
10 classified, and it's my intention to take them out and take them with me
11 and really read them as carefully as I possibly can. One of the problems
12 we have here is that we can't really take notes with us of classified
13 information. So I think your history, your ideas, your thoughts are really,
14 really important.

15 Let me give you a summary statement. I very much agree
16 with you. I think that this is essentially a war of ideas. I think our values
17 are being tested. I think the people we interrogate are not people who are
18 drafted into the North Korean army or into the German army during World
19 War II. They are hard, fast ideologues who are prepared to give their lives
20 for what they believe, either by exploding themselves or whatever else.

21 And I candidly believe that some of this just doesn't work.
22 Although we're not often told this, we probably get a lot of bad intelligence
23 in the process as well. We probably get some good intelligence in the
24 process as well.

25 I also agree with you on the President's July 20, 2007,

1 statement. I'd just like to point something out. On page 2, subsection (e),
2 where it states that "wilful and outrageous acts of personal abuse done for
3 the purpose of humiliating or degrading the individual in a manner so
4 serious," et cetera, but I gather if it's done for the purpose of collecting
5 foreign intelligence, it's okay. I think that's a real problem with the
6 statement.

7 Have you looked at that? Do you agree with this, or do you
8 have any other thoughts?

9 **GENERAL OTSTOTT:** I absolutely agree with you on that. It
10 opens the door for bad behavior.

11 **MR. TURNER:** You will remember from law school, no doubt,
12 the Latin expression "*expressio unius est exclusio allerius*" – the
13 expression of one thing is the exclusion of another. And when you say if
14 you do this for the purpose of humiliating people, you can't threaten to
15 sexually mutilate them and so forth, implicit in that, at least a reasonable
16 interpretation of that is that if your purpose is, as you say, collecting
17 intelligence or trying to protect against the next terrorist attack, then these
18 things are not off limits.

19 That's very offensive.

20 **SENATOR FEINSTEIN:** Thank you. Senator Whitehouse,
21 you're on.

22 **SENATOR WHITEHOUSE:** Thank you.

23 I'd like to join you in thanking these witnesses. I found their
24 testimony very helpful. Professor Turner, it's nice to see a professor from
25 my alma mater here testifying.

1 **SENATOR FEINSTEIN:** Oh, that's why you're so smart.

2 **SENATOR WHITEHOUSE:** For the record, she was referring
3 to Professor Turner.

4 [Laughter]

5 **SENATOR WHITEHOUSE:** I thought, Ms. Massimino, that
6 your comparisons with some of the historical antecedents where we were
7 on the other side was extremely helpful to understand particularly the
8 episode of the Japanese officer sentenced to hard labor for war crimes for
9 the techniques that you indicated.

10 Colonel Kleinman, you entered the service in 1985?

11 **COLONEL KLEINMAN:** I was commissioned in '85, yes, sir.

12 **SENATOR WHITEHOUSE:** And you're still on active duty
13 today?

14 **COLONEL KLEINMAN:** I'm an active reservist. I'm the
15 senior reserve intelligence officer for the Air Force Special Operations
16 Command.

17 **SENATOR WHITEHOUSE:** In the 22 years that you have
18 been serving, how much of that time has been dedicated to interrogation
19 and human intelligence collection?

20 **COLONEL KLEINMAN:** One hundred percent, sir. That's my
21 career. The sum total of my career has been in human intelligence, much
22 of it relating to either interrogation or resisting interrogation.

23 **SENATOR WHITEHOUSE:** And you've been an advisor to
24 intelligence teams and interrogators operating truly at the forefront of our
25 most significant conflicts, correct?

1 **COLONEL KLEINMAN:** Yes, sir. I've conducted
2 interrogations myself. I was also a team chief during the Gulf War, where
3 I had all the services under my command interrogating literally thousands
4 of Iraqis. I was an advisor to a Special Operations Task Force on
5 Interrogation during Iraqi Freedom. So I've had a chance to really look at
6 the academic theoretical side, but I am steeped in the operational side.

7 **SENATOR WHITEHOUSE:** If you look at what we're allowed
8 to do to collect information under the Army field manual, there are
9 arguably two constraints on it, two limiting factors. One is the limiting
10 factor that we have discussed here, the sort of moral limiting factor, the if
11 we do it to them they can do it to us factor – the sort of golden rule of
12 interrogation, if you will.

13 Let me ask you, just for purposes of argument, to set that
14 aside for a minute and consider, as a real career expert in intelligence-
15 gathering from people who you have custody over, if you could set aside
16 the rest of it, if you were in a dark room, you knew nobody would ever
17 look, the intelligence that you needed to get was of urgent value, would
18 you feel that from a point of view of intelligence-gathering effectiveness
19 you would or could or should go beyond the Army field manual and the
20 techniques that are authorized in the Army field manual in order to obtain
21 that intelligence?

22 **COLONEL KLEINMAN:** Senator, I thank you so much for that
23 question, because I think I've been waiting twenty years to answer it.
24 That is, absolutely not. I am not at all limited by the Army field manual in
25 terms of what I need to do to generate useful information. That's the key

1 – accurate, useful information, not leading questions to force somebody to
2 say what they think I want to hear and the full spectrum of their
3 knowledgeability, not answering only the questions I ask but developing
4 what I call operational accord, a relationship such that they see it's in their
5 best interests, under non-pressure, non-coercive circumstances that it
6 would be in their best interest to answer these questions fully.

7 I've had situations during the Iraq war where we were very
8 interested in the location of SCUD missile systems. I had a source that
9 nobody would have suspected would have knowledge of that. At the
10 conclusion of four hours of interrogating him about other elements – and it
11 was a treasure trove of information – we had a relationship such that as I
12 was getting up, shuffling my papers, he said, “didn't you want to know
13 where the SCUD missiles were?” So I said, of course, we've spent four
14 hours, I'm tired, we'll do this tomorrow.

15 [Laughter.]

16 **COLONEL KLEINMAN:** I, of course, sat back down and he
17 gave us incredible information. And the reason, he told me, was, he said,
18 I'm so amazed at my treatment. I wanted, if I was going to be captured, to
19 be captured by one of your allies, not by the Americans, because I was
20 told you were animals. You've treated me like a gentleman. You've
21 treated me with respect, and you are clearly knowledgeable of my
22 customs and my culture. I'm more than happy to answer any question
23 you have.

24 **SENATOR WHITEHOUSE:** May I follow up? I'm afraid
25 something you said might be taken out of context. I'd like to go back and

1 ask you to go over with it again with me. You said briefly “I am not limited
2 by the Army field manual.” When you said that, I assume you did not
3 mean that in the actions that you undertake in your professional capacity
4 there’s anything you do that’s not limited by the Army field manual, as a
5 matter of law.

6 I assume that what you meant to say was that you did not see
7 the constraints of the Army field manual – the moral constraints, the legal
8 constraints – as in any way inhibiting the effectiveness of your
9 examination techniques – that you could do everything you wanted to,
10 that you missed for nothing because of those restrictions. Is that what
11 you intended to say?

12 **COLONEL KLEINMAN:** Senator, I am forever in your debt for
13 allowing me to correct myself, because that’s precisely what I meant to
14 say. I don’t see those as limiting my ability to work – the spirit or the letter
15 of that guidance. My approach was what we call a relationship-based
16 approach – far more than just rapport-building. I’ve never felt any
17 necessity or operational requirement to bring physical, psychological or
18 emotional pressure on a source to win their cooperation.

19 So, following the guidance in the field manual, I feel
20 unconstrained in my ability to work in the paradigm that I’ve taught for so
21 many years.

22 **SENATOR WHITEHOUSE:** Can you assume another country
23 in which there is no such constraint, in which the Chinese feel at liberty to
24 put American prisoners into prolonged stress positions or the Japanese
25 feel free to take American prisoners of war and lean them against the wall

1 on their fingertips for extended hours, or other such devices that would
2 exceed the limitations of the Army field manual are pursued? Why is it
3 that those interrogators utilize those techniques? Is it just professional
4 disagreement? Do they have a sort of different view of what is effective?
5 Why do they do it?

6 Again, setting aside the moral constraints, which I know
7 animate you very much and me as well, but for purposes of discussion,
8 from a pure intelligence collection perspective and setting aside any moral
9 or golden rule limitations on the behavior that you would want to limit
10 yourself to, why is that some interrogators would feel that it was
11 appropriate to go beyond what's permitted by the Army field manual?

12 **COLONEL KLEINMAN:** As a graduate of the University of
13 California, I tip my hat to the University of Virginia for the critical thinking
14 skills that are taught to the graduates, because, sir, that gets to the very
15 heart of the matter, and it is this: there is two objectives that one can
16 pursue in interrogation – either winning cooperation or compliance. They
17 seem very similar, but there are profound differences.

18 Compliance means to take action that's against your interests,
19 that you don't support, has nothing to do with intelligence. Cooperation is
20 winning a source's willingness to provide useful information. What the
21 Chinese were interested in, what the Koreans were interested in, what the
22 North Vietnamese were interested in was maybe five percent intelligence,
23 95 percent compliance, meaning creating propaganda.

24 Now that's a whole different paradigm. And the approaches
25 that they used – like sleep deprivation and torture – ultimately will get any

1 one of us in this room to do things that we couldn't imagine today. But it
2 doesn't necessarily mean our ability to provide useful information.

3 The other part of that paradigm is the fact that getting
4 intelligence – as I mentioned in my opening remarks – is getting access to
5 somebody's functioning memory. If you think back to just the panel before
6 ours, if I were to question each of you systematically, under the best of
7 circumstances, to tell me what happened – who said what, when, what
8 were the proposals, who agreed, who disagreed and so forth – we would
9 find some real deficits in your memory – again under perfect
10 circumstances.

11 Imagine now if I had had you standing for twelve hours or in
12 stress positions and now I'm asking you to call upon your memory. Even
13 if you wanted to, even if you were wilful, you would be undermined in your
14 ability to do so. So I think the key point, sir, is are we trying to produce
15 compliance, which is propaganda, or cooperation, which leads to
16 intelligence.

17 **SENATOR WHITEHOUSE:** Madam Chair, thank you for
18 letting me go over. It's been enormously valuable to me to hear firsthand
19 from somebody who has such firsthand lifelong experience in the field in
20 this discussion. So thank all of the panel. Colonel, I thank you, and I
21 thank the Chair for letting me expend the time.

22 **SENATOR FEINSTEIN:** You are very welcome. Let me ask
23 one last question.

24 This is a very troubling aspect, I think, of our processes now,
25 and the question really comes how to handle it. There is a real element of

1 fear that our country is vulnerable and that we know there are people that
2 want to hurt us and hurt us in the most grievous manner possible.
3 Therefore, to be able to get the maximum amount of information I think
4 the country has been somewhat humiliated by the fact that Usama bin
5 Ladin has never been found. Therefore, there's a lot of pressure to try to
6 find as much as possible out about al-Qa'ida, its whereabouts, its training
7 grounds, its leadership, and to be able to get to them.

8 You have submitted, all of you, that you do not believe that so-
9 called EITs – and we won't say what they are, but let's use your
10 description of them, whether that description is right or wrong – enhanced
11 interrogation techniques are not necessarily effective.

12 At this stage, how would you recommend that we proceed?
13 How do you recommend we find the information that we need? It is
14 amazing to me that, despite a \$50 million reward, no one has come
15 forward with information with respect to the whereabouts of Usama bin
16 Ladin. One has to assume that there are a lot of people that actually
17 know where he is who could really benefit from that money.

18 But I think the level of fear, the level of cooption, the level of
19 ideologic zealotry that is connected to this fanaticism is really
20 unprecedented in our history.

21 I know you'll say the manual, and I happen to agree with that.
22 But if you have any other comments I'd like to take just one last shot at
23 hearing what they are.

24 **MS. MASSIMINO:** If I might, Senator, there is another field
25 manual that I think is important, which really gets to the heart of your

1 question of how we win a battle against an enemy like that. And that is
2 the manual that General Petraeus oversaw before he left to take over in
3 Iraq – the counterinsurgency manual. There I think that the field manual
4 on interrogations fits like a glove with the overall strategy outlined in the
5 counterinsurgency manual, which is that you seek to de-legitimize the
6 enemy in the eyes of the population from which it gets its recuperative
7 power, its recruits. You seek to separate the enemy from its support base.

8 And one of the ways of doing that is to maintain the moral high
9 ground, to criminalize the actions of the enemy in the society where they
10 are operating. And one of the warnings in that manual is the degree to
11 which our forces and our personnel use the methods of the enemy. We
12 then forfeit our benefit in this asymmetric war against them. They will use
13 methods that we would never contemplate. That's their supposed
14 advantage.

15 Ours is that our values and our ideas are better and we don't
16 want to forfeit that. If we forfeit that, that's the message of the
17 counterinsurgency manual, as I read it, and it really gets to the heart of
18 what you're asking about, I think.

19 **SENATOR FEINSTEIN:** Thank you. Any other last
20 comment?

21 **GENERAL OTSTOTT:** I would just comment that We're in
22 this what has been described as a long war or a persistent conflict, and
23 these are religious zealots. These are Islamic jihadist fundamentalist
24 zealots. The people that know exactly where Usama bin Ladin is at any
25 given time probably are no more than a dozen or a hundred. And they are

1 zealots and they are religiously motivated. I don't think you could pay
2 them enough money to come out of the cave and say he's in there,
3 because that would just go against everything that they are very, very
4 strongly religiously motivated by.

5 So it comes down to the war of ideas. We've got to somehow
6 spread the ideas that we have that are of a higher plane and get them to
7 disown – get somehow at the idea of preventing the ability of the jihad to
8 grow amongst the people who are disadvantaged, who have no hope,
9 who have no economy to speak of and have no purpose in life except to
10 pick up an AK-47 and wage war against the crusaders. Somehow we've
11 got to get beyond the idea that we can torture the information out of
12 somebody and make them tell us where Usama bin Ladin is.

13 I think we know where he is. You know, he's up there in the
14 border area between Pakistan and Afghanistan. And, if we wanted to, we
15 could probably go get him.

16 **MR. TURNER:** About two years ago I going on vacation,
17 riding across the country with my son, when Voice of America called and
18 said we do you think about all this stuff about torture. My response was,
19 some very good people have done some very bad things for very good
20 reasons, which is to say good people are trying to stop terrorism and they
21 think this is the way to do it.

22 I don't think it's the way to do it. The people I've talked to in
23 the FBI and people here on this panel say that doesn't work. I don't agree
24 we need to have a uniform standard. That is to say it may well be the CIA
25 has a very senior Islamic scholar who they could send in and engage in a

1 debate about what the Qur'an means. For an Army sergeant to go in and
2 do that would be absolutely asinine. So to me the standard ought to be
3 humane treatment.

4 Common Article 3 and customary international law require
5 humane treatment. It's a fairly high standard. I love the test the Army
6 uses, which they call their modified golden rule. Ask yourself how you
7 would feel if they did this to our prisoners. If you find it objectionable,
8 don't do it.

9 We have the ticking bomb scenario. My guess is we'll never
10 have that case. If we did, I'm not prepared to say that I would risk 2,000
11 or 100,000 lives in a setting involving WMD protecting the civil liberties of
12 a terrorist. We would violate the law. We would be vulnerable to war
13 crimes trials. But I can understand somebody making that policy
14 judgment. But ultimately you certainly don't do it by issuing an Executive
15 Order saying as long as you don't want to humiliate, you can rip his
16 fingernails out.

17 We have to maintain the high moral ground. I think the
18 Director of the CIA was exactly right when he said this is a struggle for
19 ideas. The General just said that. We can't win that struggle if the world
20 sees us as barbarians.

21 **COLONEL KLEINMAN:** I just wanted to answer your
22 question this way. We have actually encountered this very same
23 circumstance once before, back in 1941. When we went to interrogate
24 Japanese prisoners of war, they were seen as zealots. The language was
25 "impenetrable." The culture was "inscrutable." It was beyond our

1 understand. But we had an approach, conducted by a small group of
2 people who spent a lot of time in Japan, who spoke the language, who
3 were absolutely comfortable in that culture. They used what I call
4 enlightened cultural finesse.

5 These prisoners were taught *bushido* from the youngest age,
6 where not only would they resist; they would not ever be prisoners. They
7 found themselves as prisoners and they found people who understood
8 them, who could speak the language, who treated them with respect
9 under that code, and it was amazing the intelligence that flowed and the
10 relationships that developed, beyond what everybody thought. Everybody
11 thought, no, they only know force. And that's what was used other places
12 and was ineffective.

13 So I think probably it's a mistake to say that we've never quite
14 encountered this type of zealotry. We have, but America was successful
15 before.

16 **SENATOR FEINSTEIN:** Thank you very much.

17 **DR. KELLER:** Senator, I'd like to say, just briefly, first of all,
18 we all know what's at stake. I will tell you on September 11 I was
19 rounding the bend at the Lincoln Tunnel when the first plane hit the World
20 Trade Center and had an unobstructed view of that. So in my being I
21 understand this, and rushed to the Bellevue emergency room to do what
22 we could.

23 These methods – first of all, taking it from the side of the
24 interrogators and why it's so important to have clear standards, we like to
25 think of people who would torture as two-headed monsters, and we've

1 learned very clearly in the psychological literature that it's easier to do
2 these things than we'd like to think it is. That's why there's a need for very
3 clear guidance, that these methods in no way are allowed.

4 The other thing, from a health perspective, that really frightens
5 me is that I know from my colleagues caring for torture survivors around
6 the world that those at risk of being tortured, individuals speaking out for
7 democracy and freedom, are at far greater risk now of being tortured, I
8 believe, than they were before. So we've made the world a much more
9 dangerous and, I believe, far more unhealthy place for ourselves and for
10 civilians around the world.

11 **SENATOR FEINSTEIN:** On that note, let me once again say
12 thank you to the five of you, and the hearing is adjourned.

13 [Whereupon, at 4:32 p.m., the Committee adjourned.]

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