

The Peter Jennings Project for Journalists and the Constitution
Military Panel
February 27, 2010

David Eisner

01:12 Good evening and welcome. I'm David Eisner. I'm the President and Chief Executive Officer of the National Constitution Center, and it is our distinct honor to host the 4th Annual Peter Jennings Project for Journalists and the Constitution. It's named for a man who, prior to his passing in 2005, had made it his mission to bring constitutional conversations to his viewers and readers. And moreover, he did it in such a way that was commensurate with his enthusiasm for what he felt for the historic human achievement represented by the U.S. Constitution. It is to that unfinished mission that the Peter Jennings Project for Journalists and the Constitution is dedicated.

Our midcareer journalists come from 19 states and 9 countries. The Jennings Fellows in the audience—will you all wave? The Jennings Fellows in the audience represent a diverse group of media professionals. They're all here and have given us this weekend to engage with constitutional issues. They're exploring the principles and the ideas that are expressed in our nation's most cherished document. As journalists, they're performing a unique service in ensuring the integrity of our democracy, whether directly covering the struggles of power in and among our branches of government or if they're reporting on business, education, health, art, culture or any other area where constitutional issues come into play. In strengthening their ability to report on constitutional issues, they're striving to provide all Americans with what Thomas Jefferson called avenues of truth so that all of us, all Americans, can fulfill our potential as citizens.

On behalf of the center, I want to thank all of our Jennings Fellows and all of the participants for honoring Peter's legacy in such an important way. I also want to thank Jennings Project Director, Todd Brewster, who you will be hearing from in just a moment. And of course, I want to thank Kayce Freed Jennings, a close advisor to the project and a great friend to the center. Let me also extend a special thank you to the Annenberg Foundation and the Knight Foundation, both of whose generous support is responsible for allowing us to bring you the Peter Jennings

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Project and this forum tonight. And to our distinguished guests here tonight I want to offer a thank you for making this what promises to be a fascinating conversation.

04:14 Tonight's timely program, The Constitution and "The Long War," will consider whether the U.S. can maintain the long fought Constitution's prized balance of power where a war is prolonged and will consider whether the executive must have expanded powers to act without significant participation by Congress or the courts. Todd Brewster will introduce the program. In addition to his work with the Jennings Project, he's the director of the West Point Center for Oral History, which is our program's co-presenter this evening. He was a close friend of Peter Jennings. Todd is a veteran journalist who for more than 20 years covered national and international politics, working with *Time* and ABC News. He is co-author with Peter Jennings of the bestselling books, *The Century* and *In Search of America*. Todd has also taught journalism, documentary film, and constitutional law as a visiting professor at Wesleyan University, and he is a Knight Fellow at Yale Law School. It's my pleasure to introduce him now. Ladies and gentlemen, please join me in welcoming Todd Brewster.

Todd Brewster

Thank you, David, and welcome, everybody, to our main event for the Peter Jennings Project. It's a joy to be addressing you all, introducing this main event, conceived in partnership with the Center for Oral History at West Point. If you spend a lot of time around West Point the way that I do, you occasionally hear Army officers grumble about how war ought to be left to the warriors and civil affairs to the civilian politicians. You also hear Clausewitz's famous dictum, "War is politics by other means." Hence the dilemma where should the line properly fall between civil and military affairs? The framers negotiated this path with a delicate penmanship. The Constitution gives power to Congress to provide and maintain a navy, but an army must be reappropriated every two years, so fearful were Madison and Hamilton that a standing army could be an agent of tyranny. Yet there here is another oddity. It was under the administration of Thomas Jefferson that West Point, a military academy churning out professional warrior class, was founded in 1802; Jefferson who feared standing armies as much as anyone in his time. If the framers were suspicious that a powerful military would be bloodthirsty, perhaps too quick to act, history has not necessarily proved them right. After the first guns were fired at Fort Sumter, Abraham Lincoln famously derided the parade of Union generals who, as he put it, "had a bad case of the slows," so reluctant were they to act. In the end, it was he as much as anyone else who guided the Union soldiers to victory. In our own time, we know that the decision to invade Iraq, the adoption of enhanced interrogation techniques, and the insistence on going to war with

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the army we had rather than the army we may have needed was guided by our civilian leaders, often in conflict with the military's advice. It is Army officers who understand perhaps better than anyone else that other familiar phrase, "the fog of war," and know that no plan survives the first contact with the enemy. War, they know, is a dangerous and unpredictable business.

08:09 Throughout most of American history the Army has remained small, its role episodic, built up during wartime and demobilized quickly after; that is, until World War II. Since then the Army has remained large, expensive, and more frequently employed, not only because of America's stature as a superpower but because being a superpower in the 20th and 21st centuries has required a permanent war footing from World War II to the Cold War to the War on Terror. The result has been a president who is always dressed as Commander in Chief and an executive bloated in size. Remarkably, James Madison anticipated this when he argued in the *Federalist* that, "constant apprehension of war has a tendency to render the head too large for the body."

Today we are in a period of extended conflict with troops deployed in two theaters and, perhaps even more important, a sense that a protracted war—30 years, 40 years—will blanket the first half of the 21st century. How can the Constitution tolerate such a situation? What are the implications for civilian control over the military when the military is in a period of permanent engagement? What are the prospects for the balance of power?

Today we are fortunate to have a panel of extraordinary professionals to help us negotiate through this difficult territory. Brigadier General H. R. McMaster commanded the 3rd Armored Cavalry Regiment in Iraq and was widely praised for securing the Iraqi city of Tal Afar in 2004. He has been a military history professor at West Point, holds a Ph.D. in history from the University of North Carolina, and is the author of a terrific book which I recommend to all of you, *Dereliction of Duty: Johnson, McNamara, the Joint Chiefs of Staff, and the Lies That Led to Vietnam*. He's also a local boy. He grew up here in Philadelphia.

Retired Army Four-Star General Jack Keane served in the Vietnam War as a paratrooper. He was later deployed in U.S. engagements in Somalia, Haiti, Bosnia, and Kosovo. He commanded both the 101st Airborne Division and the 18th Airborne Corps and was Army Vice Chief of Staff.

Bruce Ackerman is the Sterling Professor at Yale Law School. He is the author of *Before the Next Attack: Preserving Civil Liberties in an Age of Terrorism*. His op-ed piece criticizing General Stanley McChrystal for publicly challenging President Obama last fall was widely circulated. Bruce is now at a work on *The Expansion of the Presidency in the 21st Century*.

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10:55 They are all joined tonight by Terry Moran, co-anchor of ABC News's "Nightline." Terry is uniquely qualified to frame the questions for tonight's program. In addition to his work at "Nightline," he is also ABC News's Supreme Court correspondent. He has reported extensively on the wars in Iraq and Afghanistan, and he was White House correspondent during the presidencies of Bill Clinton and George W. Bush.

So let's welcome our guests and get ready for an exciting evening. Thank you.

Terry Moran

Thank you, Todd. Thank you. It's an honor to be here with all of you and with this remarkable panel. It's a great topic too, a topic of abiding interest, really, to generations of Americans. You never know where it's going to turn up. I was in the taxi over here and told the taxi driver, "I'm going to the National Constitution Center." She starts driving, and a couple minutes later, apropos of absolutely nothing, she said, "Well, yeah, maybe we'll get our Constitution back someday." Now, she could have been someone who didn't like President Bush or somebody who didn't like President Obama, she could have been anybody. But it's that word *our* that really is the focus, as Todd has pointed out. Americans own their Constitution, and this building is full of those quotes telling us that, one from John Marshall I saw this afternoon: "The American people made their Constitution and only they can unmake it through conversation, through discussion."

So let's do some Constitution making. And I'd like to start with a big question focusing on one word in our title, our topic, "The Long War" and The Constitution. War. War has a constitutional meaning. The Constitution divides up power over war between the branches. It's got a political meaning. Nations and peoples change at war, and of course, as General Keane and General McMaster know intimately, it has a human meaning which is right at the bottom of it all. So, war. Is that the right word to use—this is a debate that's out there—to describe the struggle we're in to defend our country against extremists, Muslim jihadism, against terrorism, and to defeat that enemy? Is war the right word? General Keane, what do you think?

General Jack Keane

The struggle against jihadism and radical Islam, it clearly is a political movement. It's founded in an ideology that has clearly a religious base to it. And we cannot dismiss the seriousness of

their belief in that. But what clearly makes a war, in my view, is the means, which is jihadism and the use of arms and violence to achieve those political objectives. And even though they may not be a nation-state in some cases—in some cases they are—the fact of the matter is they are using armed violence to achieve political objectives, which is essentially what war itself is.

Terry Moran

But Bruce, you don't think so?

Bruce Ackerman

14:16 We have to make a distinction between two sorts of problems. One is we certainly are at war with Saddam Hussein, and we certainly are at war with Afghanistan, and we are certainly engaging in occupation of these two countries at the present time, trying to prop them up in various ways. So war in that sense is perfectly appropriate. The problem of terrorism is not a problem of war, however. It's a real problem, but it's a very different one. The state is losing its monopoly of force in the 21st century. That's a problem that would exist even if the Middle East became an oasis of peace. 9/11 and such events are fundamentally not like Pearl Harbor. In Pearl Harbor you had a state, a war machine, that you knew was going to follow and could have invaded the United States. Terrorist acts will occur intermittently. They are the consequence of black markets in violence. A smaller and smaller number of people, whether they be called jihadists or militiamen from Montana or whatever, will with smaller and smaller sums of money be able to buy bigger and bigger weapons. That's the black market. And we have to understand that that's a very different problem from invading countries.

General Jack Keane

Can I respond to that?

Terry Moran

Yes. Let's go to General— Go and then just jump in. You bet. General Keane.

General Jack Keane

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16:35 First of all, this enemy has declared war against us, and I think that's a fact. Secondly, most administrations, both Democratic and Republican, in dealing with this threat prior to 9/11 treated it as something less than war. They treated it as criminal activity, whether it be Republican or Democrat. Post-9/11 I think we finally woke up to the harsh reality of what it had always been: an act of violence against the nation-state, which it is, much what the Israelis have been dealing with with their own problem. We know for a fact—those of us who have been around the intelligence community—that this same body of people want to get their hands on two or three WMD capability and do that almost simultaneously in our cities, killing somewhere in the neighborhood of 200,000 per. Now, 9/11, the horror of what we witnessed—the means certainly is terrorism—a potential WMD strike in America that would collapse our economic system and drive down the trust and confidence in national institutions and therefore make the United States mute is their objective, and that, in my judgment, is all about war.

Terry Moran

Okay, General McMaster.

Brigadier General H. R. McMaster

I'd just like to make a couple quick points. First of all, I think prior to 9/11 we saw the gravest threat to our national security as emerging from the most industrialized nations. And when we perceived that threat, we could see those industrialized nations mobilize and we could in turn respond to that. I think now what Bruce has mentioned is with the increased access to weapons of mass destruction, weapons of mass effect, the ability of terrorist organizations to do something fundamentally different from what terrorists have been able to do in the past, terrorism is not a new phenomenon. What is new is the access to these destructive weapons and also communications and the ability to take local grievances and connect them to a networked transnational movement that poses a grave threat to all civilized peoples—our nation and especially the peoples of that region. And I think it's important for us to remember that this is essentially an irreligious enemy who uses an irreligious ideology to motivate largely undereducated or illiterate young people to their cause. They exacerbate weakness and use weakness where there is lawlessness, lack of governance, rule of law. And so for us to be effective against this enemy, to deny this enemy safe havens and support bases that are still needed to mobilize resources and organize efforts against us and others, we have to operate in the least industrialized areas, more agrarian areas, and we have a very complicated problem of not just a security problem, not just a military problem where you can follow the advance of an

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army across the map and know when they get to the capital city the war is over, but we have to be able to integrate civil and military efforts very closely to achieve the kind of sustainable security and stability necessary to remove these safe havens and support bases to protect populations and help inoculate them against this cancer of this enemy who cynically uses this irreligious ideology for their own purposes.

Terry Moran

19:50 So there you have an outstanding display of the basic debate over this. Why does it matter in this topic? Because war has a constitutional meaning. And if we call it war—and let me pick up on Bruce's point—if we call it war, doesn't that stack the deck constitutionally for the president in the Long War, decades perhaps, punctuated by threats, close calls, successful attacks? Doesn't the president's war-making power then reach a kind of Caesarean zenith that he or she is constantly deploying military force, using military force covertly, overtly, large-scale, small-scale. In the Long War doesn't the president in this situation we've just described become constitutionally unrestrainable?

General Jack Keane

I don't think that's true at all, but certainly, the abdication that it is a war gives him additional powers or gives her additional powers, that's for sure, because if it is a war, then they can use all the element of national power to deal with that war and not just treat it as a criminal activity as we had done in the past. As a result of that, he's not just using military means; he's using covert means to do that and also he's using other elements to do it. We cleaned up a lot of the al-Qaeda's finances. The Department of Treasury did some very herald work which isn't in the public domain and probably should not be, and certainly, the power that he had to do that was able to achieve those kinds of results. The basic framework of the Constitution in terms of the limits of presidential and executive power are still there.

Terry Moran

They still are.

General Jack Keane

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21:42 They definitely are as I see it and as I see it being played out in front of our very eyes in terms of the Congress of the United States. Now, is there potential for abuse? Certainly so. But I think the values of America, the character of America as it's defined in the Constitution itself, are there to limit that power and at the same time give the president the tools to meet the ever-changing responsibilities that a global country has in the world today. Is there tension there? Of course there is, and it's been a subject of much debate in our country, as it rightfully should be.

Bruce Ackerman

If it's a war, I think it's extravagant to think of this as a war; that is to say, not the wars against Afghanistan and Iraq. Those are classic wars. I have no trouble with that. But let's just step back for a second and ask at what point from 1950 to 2010, what moment was the least dangerous for America? The answer is today is the least risky. When we had the Soviet Union, that was a big state. We had members of a Communist party who actually were in high positions. There was a conspiracy in the United States by very reputable people who thought that Marxism and Leninism was the way to go. That was much riskier than today. We could have had total nuclear obliteration. Did we throw people before military commissions? No. We tried Communists, even at the worst of the McCarthy period, in civilian courts. Once we say that the situation today is like Abraham Lincoln trying to do heroic things in a condition of true national emergency, once we say that this situation right now is like the situation that Franklin Roosevelt encountered when some Germans came and were dumped off on Long Island in a submarine and he sees them and put them before a military commission, giving them no due process, I should say if our situation is like that, this justifies under the laws or under the precedents of the United States very repressive actions, very repressive actions by the President of the United States. So we have to be very careful. The presidency, as you were suggesting, Terry— We've had many, many wars: the war on crime, the war on drugs, the war on terror. Terror is a technique. We don't make war on techniques. There are seven billion people in the world almost, and there will always be—always—jihadists, non-jihadists, people who think that the treaty of Guadalupe Hidalgo is terribly unjust, which it was, by the way. There will always be people, millions of them, who will conceive of themselves as enemies of the United States and form conspiracies. As I said, this is a very serious problem, but we should not call it a war. If a state actually organizes itself and makes war against the United States or if jihadists or others seize control of let's say Pakistan, then that's a war.

Terry Moran

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March 4, 2010

25:53 There is a constitutional and very pressing legal question in there which Congress has yet to address in some ways, and let me put it to General McMaster. Bruce just said terror is a technique. Terror is not the enemy. We aren't making a war on terror, according to Bruce. So who is the enemy? And for the purposes of detention, for the purposes of what the President of the United States, what the government of the United States, can do, who is an enemy that we can imprison?

Brigadier General H. R. McMaster

We have plenty of them right now. From the perspective of a soldier, we are at war because we're operating against enemy organizations that are fighting our soldiers and fighting our partners in Afghanistan and in Iraq every single day. Now the enemy that we're facing is a hybrid enemy, but make no mistake that this is a networked, organized enemy with a real structure and ability to mobilize resources. In Afghanistan you have sort of a hybrid enemy, you might call it, but it's an enemy that has joined in an alliance of convenience. You have a series of Taliban groups. It is not a monolithic organization, but you have the Hakani network, you have the Hekmatyar, the HIG group, you have the Afghan Taliban, you have the Pakistani Taliban that is made of a number of other sub-organizations. But these organizations are operating against us, many of them are operating against the Pakistani government, others are linked to transnational terrorist organizations that have conducted attacks in India and elsewhere, and so these organizations are who we're fighting. If you want a proper noun, fill in the blank on any of those groups, and we are at war against them. In Iraq we are war against insurgent organizations that over time became affiliated with al-Qaeda and allied with the al-Qaeda affiliate in Iraq, an organization with this tac fearist ideology. Anybody that does not adhere to their narrow irreligious definition of Islam is an unbeliever, a rejectionist, and so forth. And we're also at war with Shia Islamist militias, many of whom are directly supported and controlled by the Islamic Republic of Iran. So I think it's important for us to understand the role of the military in fighting these wars against these organizations but also the role that the military plays in the area of deterrence and conflict prevention. One of the differences between wars against states or the Cold War is we were able to deter a state actor. These groups are much more difficult to deter, which is one of the reasons why we're fighting them overseas: to deny the safe haven and support bases the opportunities to pose a grave threat to us, our key allies, and certainly our partners in the region, especially Afghanistan and in Iraq.

In terms of the status of detainees, these are enemy prisoners from our perspective. But what is important in these environments where the enemy blends in to the population is to make sure that

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we are continuing to evolve our capabilities in the Army to develop police work, to be able to gather not just intelligence but evidence against these individuals because one of the key ways to defeat this enemy is to do so consistent with the rule of law within that particular country. And so what is important for us as we are fighting this enemy, as we detain this enemy, is to develop a transparent review-based security detainee system along with our partners in the region. But there is no way that I can imagine giving the status to these individuals we're fighting overseas commensurate to the status that our own citizens have. I mean, I think that's a ridiculous notion. So if we equate the fact that we are capturing the enemy and imprisoning the enemy, as we should, overseas to any kind of repressive policy in the U.S., Bruce, I'm not sure what you're talking about, but I think it's two separate issues.

Terry Moran

29:52 Fire away. Do you want to answer?

Bruce Ackerman

Oh, sure. Let's take Somalia or Yemen because what we're talking about is the failure of state power and the creation of black markets and small groups. There's every reason to think that if Iraq and Afghanistan are stabilized, then we have these other places. One question: If it's a war, which we need a new framework presented some time—

Brigadier General H. R. McMaster

You need to come with me next time. You'll be thinking, "Hey, I think I'm in a war here."

Bruce Ackerman

But from the constitutional point of view, you see, can we invade Somalia? Can we invade Yemen? Who declared the war? It's only this notion, war on terrorism or war on them—we know what they are, and then of course we find out that there are all these little groups who have a very problematic relation to one another, and the Congress of the United States has or hasn't authorized a global war. The Bush administration and the Obama administration's doctrine is that there is no battlefield here, and that's why it's a problem for domestic when Jose Padilla arrives in the O'Hare airport and is seized, has no weapons but just on intelligence, and then he is put in the naval brig for the next three and a half years as an enemy combatant. So if we admit

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this notion that we're at war with all of these smallish groups with a thing they have in common—they're not states, they haven't controlled states—then how do we declare war on them? Now, the key issue is we have to take proactive measures in a structure, but we have to be problem-oriented in developing new constitutional concepts, not just call it war, not encourage extravagant analogies to what Franklin Roosevelt was up to in a total war for its civilization and say, "That's just like a problem, which would be a terrible thing, destroying half of a city of the United States." But really, we were up to much worse in the Second World War and the Cold War. And so we have to structure a new framework without extravagant analogies to these heroic moments or terrible moments in the past that's related to the problem, and that's my real problem with this aimless war talk.

General Jack Keane

33:27 Personally, I don't think that's aimless, and arresting someone at one of our airports that we believed to be a suspected terrorist or a danger or threat to the United States is more in the purview of criminal activity and something that law enforcement is doing; in this sense a much lesser action than what is taking place overseas where our armies, navies, air force, and marines are operating in a theater of war. I want to go back to something Bruce said about the Soviet Union. This Communist ideology, clearly intent on dominating the world with that ideology, not trying to force it on others in the sense that Fascism and Nazism were doing that had to be violently repelled, but believing that with that ideology the world would come to them because of the model state that they established, that collapsed in front of our very eyes. But in doing so they became a super military power and had clearly ideological opposition to what the United States stood for. Therefore, we were geopolitically opposed with them during that time frame. What kept that from becoming the potential holocaust it could have become is because they were a nation-state that wanted to preserve that nation-state, and the policy of mutual assured destruction worked for both nations. That's the reality of it. I believe this period that we're in, dealing with these transnational actors, is actually a more dangerous period for us because of what their intent is and the means to achieve that intent. And even though they're not sitting there with a government and a head of state and a police force that's self-evident and an army that's even more evident for us to deal with, their danger and threat to us is significant, and it's not something that we should ever attempt to minimize in any way, shape, or form or even suggest that it is considerably less right now than any period since World War II.

Terry Moran

35:30 Let me shift gears right now from that big question to an intimate question, in a way. Interrogation, which is a question of our values, and in this world that we've been discussing where whatever label you give it the danger can at any moment be very extreme, the government has taken steps in interrogations that many people believe cross the line into torture. So I just want to ask an open-ended question. Are there times when interrogators in uniform or civilian interrogators must, in this long war we're talking about, cross those lines of our values and traditions? And is there a constitutional way you can do it? Who would like to take a crack at that?

Brigadier General H. R. McMaster

I'll just answer from an inside of the Army perspective in terms of Army operations. The answer to your question is no. There is never a time to cross the line. I don't think you can justify it from any kind of philosophical point of view, from either a Kantian point of view of treating man as an ends or a John Stuart Mill kind of point of view from taking a utilitarian perspective on this. First of all, it's not right to do it. It undermines our values as a force if we behave in that way. It can have a corrosive effect on a unit's discipline, a unit's professionalism. It's absolutely inconsistent with our Army's values that we draw on the values from our nation as well. But also it just wouldn't work. There's no reason to do it from a military operations perspective. Now, the largest percentage of the people who we capture in Iraq or Afghanistan—many of them—have been essentially brainwashed. They have been brought into these organizations through effective propaganda and disinformation. Some of them joined for mercenary reasons, for money and so forth. You have a very tiny core of committed ideologues, but most of them are even using religion cynically for their own purposes and are recruiting or coercing these others to join or brainwashing them to join these organizations. I'm talking about people with third or fourth grade educations who come in, they kill the legitimate imam of the mosque, they use the mosque as a recruiting tool, they take 14-, 15-, 16-year-olds, they draw them in by telling the family, "Give us your son or we'll kill your whole family." These are many of the people who we're interrogating. So once they see that we are not some part of a Zionist crusade or a conspiracy, that we're not there to subjugate them, once they see they're being treated respectfully, you get all kinds of cooperation from them. There is no reason to use any kind of physical or mental abuse against them in our experience.

Terry Moran

It happened though.

Brigadier General H. R. McMaster

38:19 Of course it happened, and it was, I think, a breakdown of standards and discipline. And the Army has addressed this head-on in terms of—

Terry Moran

Do you think in the early years after 9/11 that ethos that you just described was weakened in uniform and, certainly with civilian interrogators, that Abu Ghraib wasn't just an aberration, that there was a shift in the way men and women in uniform looked at that? What do you think?

General Jack Keane

I don't think so myself. To redo all these events we don't have enough time, but I've spent a lot of time on Abu Ghraib, and we had a fundamental breakdown in discipline and leadership that led to absolute outrageous hooliganism and not a function of policy, and you get into the details of that: ineffective company commander, ineffective battalion commander, a brigade commander whose headquarters was in Kuwait as opposed to in the theater, and how we tolerated that is beyond belief, not having the proper oversight, etc. There are no excuses for that horrific behavior and, even worse, for the moral high ground that we lost as a result of that and the damage it did and that continues to resonate around the world in terms of America saying this and doing something else. We grew up as officers in the United States military, H. R. and I, and torture is about as foreign to us as any subject could be. It just isn't in our values, it's not anywhere in our policies, there's no training about it, it's not something we would do. At the emotional tension level of war and particularly when you're dealing with an enemy that's living among the people, doesn't wear a uniform, and there are tension levels and frustrations, are there at times abuses? Yes. When we find those abuses, we deal with them. We hold people accountable. They go to jail if necessary, they're dismissed from the military if necessary, they lose their rank and status that they have if necessary. The abuse of enemy combatants in war by the United States military has occurred in every war we've ever been in. That's the reality of it. The reality is it's not policy. War is an event that's full of tension and emotion and huge psychological pressure. When H. R. says it's a breakdown of discipline, that's exactly what it is. We take these beautiful, young people in America and we train them to do something that's very difficult, not just to protect lives but to take human life. That is a sobering responsibility that we draw from our commissions as officers to the Constitution of the United States. To get

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somebody to do that, you have to have a disciplined organization because we never want to take more life than is necessary. That's American values operating in a wartime environment. We will do what we need to do to compel an enemy in terms of taking life, to be sure. And then when we have a prisoner in front of us or a detainee in front of us, we want to treat that prisoner with the dignity that another human being deserves. That's policy. So torture is about as foreign to us as officers or as noncommissioned officers as there is in the United States military. It has happened, and when it does happen, we're going to hold people accountable, and if necessary, put in correcting mechanisms in terms of education and training, which we had to do after Abu Ghraib to make sure that everybody understood what we thought everybody should have understood.

42:12 I do have an exception here. I believe that the President of the United States, acting as a president duly elected by the people, should be able to act and use special interrogation techniques if, in a special set of circumstances, the sovereignty of this state is being threatened by a typical catastrophic WMD event and he has somebody in his hands that knows where and when. If that intelligence is there, then I think that president should be able to do something about that to preserve what could possibly happen as a result of that. That's the only exception I would make for that.

Bruce Ackerman

Torture was the official policy of the President of the United States. This is what John Yoo's memo was all about. John Yoo's memo, which was the official policy of the United States—secret, to be sure—in one of his more extravagant dimensions said that despite the fact that there is an anti-torture statute passed by Congress, despite the fact that we are signatories to international agreements, but it's not a mere question of international law; it's a question of domestic law. We're not talking about John Yoo's—it isn't John Yoo; it was the administration's policy which was reported, and obviously, President Bush knew it. It isn't merely that the Office of Legal Counsel defined torture in a narrow way; it also asserted that the President of the United States as Commander in Chief had the constitutional authority to override the statutes. And that was the feature that impelled Jack Goldsmith, the next head of the Office of Legal Counsel—John Yoo was never; it was Jay Bybee who was the head of it—to withdraw the memo. But there can be no doubt that torture was the official policy of the Bush administration, and we shouldn't engage in collective denial here. My concern is not so much the reason of exculpation of John Yoo and the like; my concern is what's going to happen after the next terrorist incident in the United States. Is there any reason to think that the extreme

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reaction, as exemplified by the Bush administration, will not be repeated? I do not think there is any reason to think that the next time around will be better unless we think constitutionally about the problem and create new structures. You see, I believe that in the period after a terrorist attack in the United States there is a good reason to have a new statute which regulates states of emergency; neither crime nor war but to create a state of emergency in the United States so that we can have not torture but for 60-day periods arrest under much less than probable cause and detention and questioning of people suspected of engaging in terrorist attacks because, of course, we won't know next time around, just as we didn't know last time around, whether there are eight cells throughout the United States, each of whom has prepared or whether a small terrorist group of 300 people with some serious weapons were just lucky. It's not a problem like war, but it is a problem, and it is justified for a short period of time to try to find out and disrupt the other seven or eight sources in the country. The problem that I see before us is normalization of states of emergency; that things that are justified in the short run, although reasonable people can disagree about what special interrogation techniques are and are not and things of this kind, but whatever is justifiable after an attack when you suddenly recognize that it isn't merely a free-floating risk which is going to exist for not the Long War; it's going to exist for a very long time—hundreds of years—this loss by the state of its monopoly of authority. But when something actually happens, that's a very good reason to try to find out whether there are eight or nine other things that are about to happen too and take preemptive steps in the short run and every 60 days, in my proposed emergency statute—but the details aren't too important—Congress would have to vote again on whether we should have another 60 days of emergency.

Terry Moran

48:06 State of emergency.

Bruce Ackerman

Absolutely, so that instead of thinking in terms of war and crime, we should have these three conceptual boxes: war, in which we're really dealing with— It's a very different problem if extremists take over Pakistan. That really is a very different problem from these little groups moving around, and they're never going to be eliminated.

Terry Moran

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48:32 An American state of emergency is very provocative, and we're going to open it up for questions in a little bit. But I want to pick up on something you said and get the view of our military friends and colleagues here, and that is that after the next attack—God forbid—the president is going to be radically empowered once again. I remember coming to the White House. I was covering the White House after 9/11, and I'm sure I was imagining or projecting, but you'd walk through those gates, and I almost felt you could sense all the values, the traditions, the strength, the hopes, the fears of the country surging into that house, surging into that office, into that person. And there is a sense where the president is almost supreme. He could have ordered an invasion of the moon in those days afterward and probably gotten majority support for it. So the question I have: What is the responsibility of the military leadership when the civilian leadership, under the pressure of these emergencies which we are going to face, overreaches or does something really stupid?

General Jack Keane

In terms of military and national leadership, there have always been disagreements here. I think what you're going to find from the military is sort of trying to sharpen the reason at the policymaking level of the rationale to go to war because most people who have been exposed to this quite a bit are fairly conservative about the use of that instrument. But I think at the heart of what the military is doing is we're providing advice, we're placing options in front of a national leader in terms of what the risks are and what the benefits are, and when we disagree in a matter of policy and we don't believe we can execute that, then there's plenty of opportunity there to do something about that.

Terry Moran

What do you mean?

General Jack Keane

Resignation, which is done in full public view, which would crystallize then that issue a little bit more for the media and also for the Congress of the United States. As you can imagine, a four-star leader resigning over a disagreement in a matter of policy with a president over a theater of war, within 24 hours after that resignation where is he? Before the television cameras and the Congress.

Terry Moran

51:24 He's on "Nightline." That's where he is.

General Jack Keane

Maybe he's on "Nightline." Most of my military friends would probably shy away from that, but they would answer the call to testimony before the Congress and, giving a full explanation of what that is, the American people would have the benefit of that and the Congress would have the benefit of that. It's an important issue. I think sometimes it's overstated in terms of what military impact can have on policy formulation because at the end of the day the military executes that policy. That's primarily what its function is. But it does not suggest or minimize the importance if those leaders believe that that policy is wrong, they have a moral problem with that policy, or they have some other execution issue with that policy, then they should speak. Most of the ones that I know would; clearly, there are some that would not, even though they have been in leadership positions, and I would like to think that those that are coming behind us would as well. And H. R. wrote a book on this.

Terry Moran

Yeah, a marvelous book on it. So on the situation in Vietnam during the Johnson administration, what is the responsibility of military leadership when a president is either getting into or getting out of war in ways that the military judges are wrong?

Brigadier General H. R. McMaster

There's only really one responsibility, and it's to provide your best military advice and to not cross the line between advice and advocacy. Nobody elect generals to make policy. To do that would be dangerous to our democratic values and processes. But it is important though for the military to provide their best military advice, and the quality of that advice depends on, I think, who the military leaders are, the degree to which they're able to provide thoughtful advice and in a way that connects to the policy goals and objectives. There has to be what Professor Eliot Cohen has called unequal dialogue between civilian leaders and military leaders. It's very important for military leaders to help maybe crystallize the policy by helping civilian leadership understand the potential costs and consequences and help sharpen whatever the objectives are. George Marshall said at one point that if you get the objectives right, a lieutenant can write the

strategy. I think a lot of the debate has to be about that. George Bundy, by contrast, who helped set conditions for the disaster of Vietnam and the way we got into Vietnam, said that the lack of an objective was really an advantage because that would give the president more flexibility in the domestic political realm. So if things went bad in Vietnam, the administration could just say, “Well, it wasn’t really our objective to win this war anyway.” And it was that ambiguity that prevented the development of an effective strategy. The problem with the joint chiefs in this period of time is the Joint Chiefs of Staff failed to provide their best military advice and instead told their civilian bosses what their bosses wanted to hear. And so they compromised their principles for expediency. They thought if we just got our foot in the door militarily, then over time they could argue for more resolute military action. So I think sometimes you can cast a false dilemma like we are here, like using the word *total war*—we’re not in total war; that’s a false dilemma also—but a false dilemma between resignation and then complete passivity. Really, there are lots of examples of very effective civil-military relations in the course of our history. I would say it depends less on law, it depends less on bureaucratic structure, and it depends all on the character of the individuals and the relationships that they develop. And I think that is what’s most important.

Bruce Ackerman

55:17 I think it depends a lot on structure and, in particular, the fundamental change in American military structure wrought by the Goldwater-Nichols Act of 1986. Before that, the members of the Chief of Staff voted, and the chairman was basically a coalition builder. He couldn’t speak out unless everybody agreed. We had, as it were, a check and balance system within the military, and the military members of the joint chiefs were mostly interested in more bombers, more soldiers, more battleships, and that’s really what they were jostling around. Now, in 1986 with Goldwater-Nichols, the Chairman of the Joint Chiefs of Staff, for the first time in American history and for the first time certainly within the period where we’ve had a big army, began to speak for the military in a single voice. Colin Powell was the first Chairman of the Joint Chiefs of Staff who saw this opportunity and really took advantage of it. In 1992 he wrote an op-ed in the *New York Times* lecturing Bill Clinton, telling him, “You shouldn’t invade Bosnia, etc. and so forth.” Forget about the, “Don’t ask, don’t tell” business. This is a very bad thing. And we see that once again with McChrystal just getting up there and starting to publicly tell the President of the United States what the military strategies are.

Terry Moran

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57:28 General McChrystal in Afghanistan publicly said he—

Bruce Ackerman

That's right. I entirely agree with your description of what—

Brigadier General H. R. McMaster

It's important to read General McChrystal's speech, by the way, like it was, word for word, because that really isn't what he did, in my view. It was in the Q&A period, and it was a general question between a raiding approach to a complex problem in Afghanistan versus a more comprehensive counterinsurgency approach. And he answered it honestly, and it was not meant to lecture anybody or to influence policy, I don't believe, but we can disagree on that obviously, Bruce.

Bruce Ackerman

I entirely endorse your description of the appropriate role of the military, but the question is whether the emerging structure since 1986 actually created an incentive to do what is being proposed here, and I do not believe that's so. It is propelling the Chairman of the Joint Chiefs of Staff into a celebrity position. Notice as soon as Bill Clinton wins, the chairman's appointment ends ten months after the term begins. Bill Clinton sees this. He says, "Gee, I think we're going to appoint a new Chairman of the Joint Chiefs who is not going to be a member of the Joint Chiefs. I'm going to go down to the lower command and take John Shalikashvili. He seems like he's going to support my policy." He's a very competent fellow, mind you. He's a very first-rate military guy, but he was selected on political criteria. People notice these things. People notice these things. This is another step in the politicization of the military. Another factoid and then I'll stop. Between 1947 and 1980, because it's also a phenomenon of colonization of formerly civilian positions by military men, the civilian secretaries—the Army, Navy, and Air Force—between 1947 and 1980 there were 41 people of this kind confirmed by the Senate. None of them had served 15 years in the military. Fifteen percent had served five years. In the period since '80 to the present, there have been—don't take this number seriously—I think it is 23. Twenty-five percent of them have served for 15 years in the military, and 40% have five years. So I could give you numbers in similar important things. For example, the head of the National Security Council today is a four-star general.

Terry Moran

1:00:36 I want to get General Keane on this. The politicization of the military sounds scary.

General Jack Keane

Goldwater-Nichols. We don't want to go too far into it, but it was basically designed to grow officers so that they had more experience with their other services and competencies with them, and we called that joint, the ability to operate with other services as an army officer and to operate in those commands with a degree of effectiveness and not be a stovepipe for your entire career. So that was basically it. But like anything, when you make some sweeping changes that impact culture and the rest of it, there are some mistakes made in that. There's something here I do agree with Bruce about. One of the things we did with the Chairman of the Joint Chiefs is we in a sense politicized the position because he is the principal military advisor to the President of the United States, quote-unquote. In the past the joint chiefs were the advisor to the President of the United States. There were problems with that system as well. You may be surprised to know that war is being prosecuted by operational commanders in the theater. One of them is McChrystal in Afghanistan, another one is Odierno. They respond to a military chain of command above them, in the name of General Petraeus, who responds to no four-star in the military; he responds to the Secretary of Defense. And that's appropriate. That's civilian control of the military. But what you may be surprised to know is the joint chiefs and the chairman have no operational oversight whatsoever of that theater, and I think we've gone too far to remove them because for the reason that you stated: they're concerned about their service primarily by statute, but there is no statute that gives them some operational accountability for what is being done in terms of the war. And the chiefs themselves, as a result of Goldwater-Nichols, have even less influence outside their service because the principal military advisor is the president. I think most of us look at this to include congressional leaders. I think that at some point we've got to readjust this and bring this back into a more appropriate role for all of the joint chiefs and make the role of the Chairman of the Joint Chiefs less of a political role, which by definition it becomes today.

Terry Moran

We're going to do one more question, and then we're going to open it up for questions. We'll do two questions for the Jennings Fellows, for every one of the general public. Since we have some journalists here, for our final little round here let me turn on the media and the First Amendment

in this situation, both on the battlefield and back home. The *New York Times* in 2005 and 2006 wrote a series of articles which disclosed previously secret counterterrorism programs which included a surveillance program of communications that were coming into and out of the United States and some financial programs having to deal with banks in Europe. These were top secret programs that the Bush administration believed were very, very effective in fighting this long war, and the *New York Times*, after listening to pleas from the highest levels of the Bush administration, published those stories, and we all learned about what is shorthandedly called the Domestic Surveillance Program and the like. And the *New York Times* went on to win Pulitzer Prizes and all kinds of other things. Is that a good thing? And on the battlefield—I've been embedded a few times in Iraq and Afghanistan—there's a big debate within journalism circles about the role of the reporter on the battlefield. Do we have to rethink both the role of the media and even perhaps the First Amendment when we're talking about this struggle or is that alarmist? General McMaster, do you want to take a crack at that?

Brigadier General H. R. McMaster

1:04:56 What I'd like to do if I could is just place the question in just a little bit broader context in terms of really the degree of transparency that now exists in any war that we're fighting. You mentioned a negative sort of consequence with that, which was compromising techniques that we were using to fight our enemies in war. Rather than talk about that specifically, which may not be appropriate for me to do in uniform anyway, I'd rather talk more broadly about transparency in general being very good. And I think that it's really important for us to give access to the media for all of our operations. In fact, I would never complain, and I don't think many soldiers anywhere would complain about bias in the media. What you may hear is that the wars in Iraq and Afghanistan are underreported, and there is so much that happens that the American public doesn't see. So of course, you're going to see a lot of the negative things, obviously, the breakdowns in discipline and so forth. What you don't see is how every day soldiers are taking additional risks to protect civilians. What you don't see every day is the relationships we're building with populations who are so grateful to have this pall of fear and intimidation lifted off them as life comes back to normal after these nihilistic, brutal, murderous enemies are defeated. That's the story that we want to get out. Of course, our enemy is very effective at propaganda and disinformation. The best way to counter that is through media transparency, I think, through U.S. media and international media. So I am all for more reporters, more transparency. There's a downside to it, obviously. There could be breaches of security, but it's always been my experience with every journalist who I've had the privilege to work with or to host temporarily in Iraq that that's not really much of a risk.

Terry Moran

1:06:46 That's been my experience doing it as well, although, as I say, there are questions in the media community about are you compromising your independence by being embedded? I've always found, while it is the ancient rite of every soldier to gripe, that no one holds back. There is no Secretary of Defense sitting around out there to sense them. The general and the specific, the sense that transparency is part of our armament and also this more specific sense that there are things we do and must do in this war that maybe should or should not change the dynamic between government and the media.

General Jack Keane

In my own view, certainly having the media on the battlefield with our troops is a huge plus for the American people. They have every right to see, even through that narrow prism, what is truly happening in putting those youngsters on a battlefield for America's values. And you have the right to see that and touch it as much as it's humanly possible, and the only way you really can do that is through the media. So thank God we have journalists who want to accept that risk first of all, and you know as well as I that a number of them have given up their lives in taking that risk and others have been seriously maimed, just like our soldiers have been. So thank God for all of that. Most all of us who have become leaders in the military welcome the media, want them actually embedded in the organization so they're not just parachuting in and getting out but they get to understand the human dynamics of what is taking place and maybe even get to understand the people a little better. And I think most journalists, experienced as they are, are capable of doing that without biasing or prejudicing the situation. I don't think that is really the issue because I think that is done better than any country on the planet in terms of relationships of our journalists and the soldiers who are fighting and rarely, if ever, is a journalist out there going to put anything in print or say anything in a broadcast interview that would put those soldiers at risk. I cannot think of a single incident myself, but I'm sure, given human events, there are probably some.

Terry Moran

Geraldo Rivera drew in the sand the plan of attack and got kicked out of Iraq.

General Jack Keane

1:09:21 Yeah, that's one I remember. He got kicked out for a while, but he's welcome back.

Terry Moran

Although based on his reporting, if I were the enemy, I'm not sure I would have— No, that's a joke. That's a joke. Wait a minute. That's a joke.

Bruce Ackerman

My own belief is these embedded people are fine. The information that they can provide to the American people is extremely modest. One of the great failures of American journalism is that they're not good at languages and, both in Iraq and Afghanistan, especially Afghanistan at the present time, that they can't get around. So if one wanted to say, "Does the thoughtful or not so thoughtful reader of American press actually have a sense of what's going on in Afghanistan politics?" I don't think the answer is yes. I'm all for the embedded journalism, but there's only so much that you can learn from a particular perspective in a particular place on the field. It's good drama, good television, but I don't really think it's key. What is key, for example, is the remarkable fact—and I still am really amazed by this—that we are presently fighting in Iraq under something called a Status of Forces Agreement negotiated by the Bush administration with the Maliki administration. While it was being negotiated, it was kept secret from Congress, entirely secret from Congress. I was an advisory to some of the congressmen and indeed to Senators Clinton and Obama at the time. This agreement, which commits American troops for three years, was never approved by the Congress of the United States, I should emphasize. We found out about what the evolving negotiations were because the Maliki government leaked Arabic versions of the text to the Arabic-speaking media and the Friends Service Committee, and the *Christian Science Monitor* translated the Arabic in a horrendous way—more power to them; it was hard for me to understand the text—into English. I gave this to Hillary Clinton and Barack Obama. Ambassador Satterthwaite, who presented himself, said, "No, we are not going to let you know what's going on." And it was only after the agreement was signed by both the ambassador for the United States and Iraq and Maliki that it was officially published to the Congress of the United States. Now, this is incredible.

Terry Moran

The role of Congress has been—

Bruce Ackerman

1:12:45 But I mean, just to publish the thing.

Terry Moran

We want to go to questions. Very quickly, General McMaster and General Keane, I—

Brigadier General H. R. McMaster

Okay, I just have one quick comment. I think you underestimate the degree to which you get access when you embed with U.S. units, first of all. They're not on the field; we're in and amongst populations, we're working with Iraqi leaders, Iraqi police, Iraqi army, Afghan police, Afghan army, political leaders, and so you do get access that way. You need to get there with security, obviously, because our enemies are operating in and amongst the population and are targeting journalists. The most dangerous course of action would be not to embed journalists and to rely on stringers because the stringers who are in those communities oftentimes are influenced by our enemies, and I can almost read some stories in some print media and I know exactly that the stringer is planting that propaganda from the enemy in American papers. It depends, I guess, on the editor's familiarity with the situation to be able to weed that out. But we have to remember that the enemy is really operating very strongly on this battleground of propaganda and disinformation, and so it is in our interest to give the maximum sort of access to the media. We don't lie; the enemy lies. The best way to expose those lies is to give access.

General Jack Keane

I just want to comment on what Bruce was saying. I happened to be in Iraq during the time when our negotiating team was doing some of this with the Iraqis on the Status of Forces Agreement. Those negotiations were kept secret for obvious reasons because they were negotiations. There was no intent to keep that from the American people. We had positions ourselves, the Iraqis had positions. If we exposed those positions and what the disagreements were with the Iraqis, that would break down what we believe was a political relationship that was being forged so we could come to a common agreement and get two leaders to agree to it. If you're going to open that up, that would, I think, risk the ability to have common agreement. Maliki leaked it. He's a politician, he was running for office, and he was taking a very strong

stand about how finite American troops should be in Iraq, and he wanted to get political credit for it.

Terry Moran

1:14:54 Right, he wanted that out there. Bruce is talking about the disempowerment of Congress.

Bruce Ackerman

That's right. Senator Clinton couldn't get it. It isn't the American people.

Terry Moran

All right. We'll start right here with a question. Please, if you would just state your name and fire away.

Unidentified Female Speaker

Professor Ackerman, I was taken by your proposal of creating new structures and also the fact that you are basically saying that words create reality, that language creates reality, and therefore, instead of calling it war, we should start naming it a state of emergency when there are attacks here. I'm wondering, did you fully explicate what you were talking about in terms of new structures? Is that one example? Do you have several ideas? And I'm also wondering what the generals think about that. And part two that's part of this, in parentheses, what do you call what's going on in Afghanistan and in Iraq? Are they wars? Have we declared war? What should we call those? Conflicts?

Bruce Ackerman

All of law is words. I have a book called *Before the Next Attack*, which tries to talk about how we should think in terms of these temporary emergencies; that during these terrible incidents in our future we should engage in extraordinary measures and that the challenge is to bring these measures to an end and go back to normal. Now, we might also want to redefine the normal. I have quite a few such things, but I definitely do believe that the John Yoo memo kind of thing is a structural failure and that we should redesign the way the executive interprets the Constitution.

Terry Moran

1:17:03 There's a strategic question in that answer, and let me ask our military. Could you fight this war, could we win this war, could we succeed if we approached it as a state of emergency when there's been an attack and the president is granted extraordinary powers and then we try to return to some kind of new normal? Or is this a campaign, a sustained campaign?

General Jack Keane

Bruce, would you answer the second part of her question for her because she asked you about Afghanistan and Iraq and how you would describe those.

Bruce Ackerman

Yes. I think we won the wars in Afghanistan and Iraq. That is to say, Mullah Omar is no longer the head. We won them very dramatically and effectively, and now what we are is in alliance with very rickety states, more rickety in Afghanistan at the present than in Iraq, and we are fighting in Afghanistan, for sure, in a civil war. It's very important from my perspective, although these labels aren't too useful, to distinguish between al-Qaeda, which does have a risk to our national security, and the Taliban, which is an active participant in a civil war that is of problematic concern to the homeland, in my view.

Terry Moran

There's your answer. If you want to comment, go ahead.

General Jack Keane

I want to comment following this discussion. We deposed two regimes, Iraq and Afghanistan, for our national objectives. We don't want to refight why that was; I think we all know the reasons. But those regimes were deposed, Saddam Hussein's in Iraq and the Taliban regime in Afghanistan, for different reasons. In both cases elements in those societies chose to regain power: Saddam Hussein and his thugs' former regime element organized a major movement to do that, and they were aided and abetted by the al-Qaeda, which was a foreign intervention force, and the Taliban in Afghanistan, not a homogenous group to be sure, and H. R. mentioned some

of the variations of it, initially aided by the al-Qaeda but not much now. We as military practitioners look at that as an insurgency trying to regain power for whatever the reason, address the grievances of that government that's in power, and use armed violence to achieve that. What we're doing is a counterinsurgency, and by definition it's a war. What I have trouble with Bruce is I think he's saying to us the al-Qaeda, who is a transnational organization not wedded to a particular country, when we're fighting them in Iraq as a foreign intervention force, I believe it's a war. It meets his definition. When we're fighting them in Afghanistan, it's a war. But when they kill 3,000 Americans here and go back someplace and they're difficult to get a hold of and they're moving from one country to another, the Congress of the United States has authorized the president to kill or capture them wherever they may be because of what they have done to us and what they could do to us. That gives him special powers to do that. We believe we're fighting a war against that enemy, even though at times it was in Iraq, in times it was in Afghanistan, some of it's in Pakistan, some of it's in other places. We do believe that meets the definition.

Terry Moran

1:21:08 Okay. We're going to go to another question here. Right here.

Unidentified Male Speaker

First off, I want to thank the panel for speaking to us tonight. This question is for all three panelists. General McMaster, you mentioned the necessity to set your objectives ahead of time, and presumably, that imperative applies to war or states of emergency or whatever conflict and however you describe it.

Brigadier General H. R. McMaster

In the military, we're going to go no matter what you call it. We're going. Do you know what I mean? Go ahead.

Unidentified Male Speaker

So I'm interested to know what are the objectives of this conflict and how the three of you would define those and how we achieve them to end the war.

Brigadier General H. R. McMaster

1:22:01 It's a really important, important question because war is waged to achieve policy goals and objectives. I think there is a tendency sometimes to equate war to just military operations, and this was one of the problems going into Afghanistan and Iraq, I think, is that in the 1990s it became very popular to think in terms of this revolution in military affairs, if you've heard that term. And this sort of bled over into kind of the orthodoxy of defense transformation. And the idea was that because of America's technological capabilities and significant advantages, especially in the area of surveillance, technical intelligence, and precision-guided munition technologies, that we could wage future wars cheaply, quickly, low-cost, mainly at standoff range, and it had reduced war to kind of a targeting exercise. But what it did is it depoliticized war. It considered war outside of the political goals and objectives you have to achieve in war, and it also dehumanized war and neglected the enduring psychological and cultural dimensions of conflict. And so that misunderstanding, I think, really helps explain the lack of planning in certain areas, integrated civil-military planning, for those wars. So if you say war is waged to achieve policy goals and objectives, what are our policy goals and objectives in Afghanistan and Iraq? They're very clear. They've been articulated very clearly by our civilian leadership. The key now is if you want to have an Iraq that is secure where you have sustainable security and stability and a country that doesn't prey on itself, that's not a threat to its neighbors, that doesn't develop weapons of mass destruction and so forth— And we are interested in what happens after the fall of the Saddam regime. We went to war with that country in 1991. We've spent 13 years containing that country. We went to war to unseat the government in 2003. We ought to care what happens next. So the continuation of the war is to achieve a political outcome and the kind of stability there consistent with our interests there and in the region, and we ought to just be straight up about that. It's the same thing in Afghanistan. In Afghanistan the problem began it was, as General Keane said, a safe haven and support base for those who committed mass murder against our citizens on September 11 and citizens of other nations. The reason a continuing effort there is still connected to that is because this enemy seeks the safe haven and support base. We know that from the Federally Administered Tribal Areas in North-West Frontier Province in Pakistan and in areas like in Yemen as well, the enemy has used those safe havens and support bases to plan attacks against our country. So the effort to help Afghanistan stabilize, to provide security for its own population, to develop a monopoly on the use of coercive force within that country, to establish local governance and address the needs of the population to meet their basic expectations, which are, by the way, very basic in Afghanistan and have mainly to do with security, that is still all connected with denying this enemy the safe haven and support base, and it would be this same dynamic that existed in Afghanistan prior if this nihilistic enemy or organization were to gain control. And we have to remember this is an

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explicit goal of the enemy we're fighting, okay? Zawahiri has said that, "We need to control territory." You see them trying to do it. You see it in Yemen, you see it in Somalia, you see it in Afghanistan, you see it in Pakistan, you see it in southern Tajikistan, you see it in Indonesia, you see it in the Philippines. They've got to control some territory. And I could go into what their strategy is militarily, but I think there is certainly a clear way ahead. If you look at General McChrystal's strategy and the civil-military approach that NATO is taking in Afghanistan, there is now a clear strategy. I think that what we owe the American public as military is to help explain how the risks our soldiers are taking and the sacrifices they're making are contributing to objectives that are worthy of those risks and sacrifices, not to advocate for policy. I could go on more about this. Great question.

Terry Moran

1:26:12 That's the bottom line. It is a great question. How do we know when we win?

Bruce Ackerman

As General Keane was saying, there really are two different questions here. Is our continuing intervention in the counterinsurgency, which is another word for civil war, in Afghanistan? Yes, it is. That's what lawyers say when there are two groups who are well organized militarily and engaged for control over the same territory. That's my definition of a civil war at least. And the talk of an enemy invites that kind of thing, and that's fine. And having won the wars in Afghanistan and Iraq, whether we should continue is a fine policy that reasonable people can talk about. Those wars will come to an end. The point that General Keane was making is the fundamental one. There is also the privatization of violence by small groups with more and more power to them. This problem is not going to come to an end, not going to come to an end. There are too many crazy people in the world. This problem has to be managed with the strategic use of force on occasion. But I'm a pragmatist in the sense that it's much more important to be clear about the distinct character of these different problems and design structures to respond to these different problems. I'll give you some ideas; someone will have better ideas. It's just that we can't confuse them all as special cases of the same thing called war.

General Jack Keane

1:28:20 To get back to your question, in both countries—Iraq and Afghanistan—the political objective is a stable, secure country or environment where the military and police are capable of

protecting the people from internal threat and also from an external threat. To achieve that requires military-civilian objectives in support of that political objective. And what the debate in this country is that took place just recently and what the president engaged in with all of his advisors was when do we have the objective and the strategy right at the first instance? Are we pushing on the right buttons in terms of what we want to achieve in Afghanistan? Secondly, what should be the military strategy to achieve those goals? And there was considerable debate over that. What he selected was to put in place a counterinsurgency strategy as opposed to the strategy that we had before that. And the strategy before that was focused principally on a counterterrorism strategy, which is jargon for going after terrorist leaders principally and training the Afghan National Security Forces and attempting to provide operations against the Taliban or against the al-Qaeda. The counterinsurgency strategy does not make the enemy the center of gravity, which the previous strategy did. It makes the people the center of gravity so that every operation that you're going to conduct is through the prism of what is its effect on the people? Which means the military commander at a low company commander level or at a general officer level will at times decide not even to execute the operation because it's too much risk in terms of its adverse impact on the people. And that is driving fundamental change in Afghanistan, and it deserved to be debated. Why? Because it drives up the number of forces to execute that strategy. If you do the other one, you can do it with considerably less. The problem with the other one was every six months the situation was getting worse, and it didn't look like that strategy was going to be viable. For three years in Iraq we tried a similar strategy, and it was not viable. So there was a powerful argument, I think, to move to the military strategy, which is counterinsurgency, to achieve the political goal of a stable, secure Afghanistan which is capable of protecting itself from an inside threat as well as an external threat, which means we must transition to the Afghan National Police and the Afghan Army so that they can do that protection. And the faster we're able to transition to them so that they can do it is what is in play. The problem is the level of violence is so high they're not capable of doing it. We have to help bring that level of violence down.

Terry Moran

Okay, let's go up here.

Unidentified Male Speaker

1:31:24 General Keane, you have been repeatedly mentioning about the war and looking into the topic which Terry as well as Professor Bruce mentioned about the Long War, the word *war*

with the Constitution cannot go in the present situation. Of course, this can go as far as the situation is concerned, but asking you if this is a war, which you said has been declared, do you call it, looking into the Long War, that it's the beginning of the Third World War because it's the war for a generation which is going to be fought. And if it's a war, will you allow the international interventions of organizations like UN and others to really take part in it because U.S. is also one of the signatories to all the treaties. Professor Bruce, I would just ask you that if you say that this is not a war, how do you define the proportionality of the weaponry being used as you define the war, the civil war, or the new term for it? To the intimate question of Terry about the interrogations as well as the arrests of the people, you said that yes, we have been arresting people in Afghanistan and Iraq. How do you define them there? Do you call them prisoners of war or simply detainees? And under which law do you keep them arrested?

Terry Moran

Thank you for that, and let's take that last one because that is an interesting question. Are the detainees in Afghanistan and Iraq prisoners of war?

Brigadier General H. R. McMaster

It depends on if they can be transitioned into the Afghan system. I haven't been in Afghanistan for a couple years, so I don't know how it's evolving now. I know the goal though is whenever there is a security detainee taken into custody, to develop enough evidence so that it can stand up based on Afghan law, and then the idea is to transition as many of these detainees as possible into the Afghan system as much as it can bear it because one of the problems, obviously, is in a counterinsurgency effort, in an insurgency the enemy targets judges, targets the legal system, and so all of the institutions of the Afghan government are under some degree of duress. And so it depends on really the maturity of local systems. And as you know, there's sort of a hybrid system in Afghanistan where you have tribal law that applies as well as national law, so it depends on the maturity of those systems and if they have the police, the jails, the courts, and the prisons to be able to establish. And this is a really important battleground, both in Iraq and in Afghanistan, is this establishment of rule of law.

Terry Moran

1:34:28 So soldiers under your command, if they grab somebody at a site that's got a gun, they're not a prisoner of war.

Brigadier General H. R. McMaster

One of the things we have to do is resolve this ambiguous legal status over time. The way we're doing that in Afghanistan and in Iraq is to try to develop the indigenous systems. And as Bruce said, one of the things I agree with what he said is one of the roles of the military is to get this down such that it is a law enforcement problem, so that the enemy is defeated such that these enemy organizations can no longer effectively pursue their strategies, that the state and the security forces and the rule of law system in the state is strong enough to bear this burden.

Terry Moran

Great. If you don't mind, I'm going to let that be the question, and we're going to move on over to here.

Unidentified Male Speaker

General Keane and General McMaster, when the military advises the civilian officialdom, do you ever take into account the total cost of the project being pursued? The Iraq war has cost, to date, \$710 billion, Afghanistan \$256 billion. The national economy right now is in the toilet. I don't think anybody will disagree with that. So how far do we go? At what cost do we pursue these military objectives that are laid out? You say that we have handily won the war in Iraq and Afghanistan. I say to you what is it we have won, and again, at what cost?

Terry Moran

The cost question is a very interesting one. What is the responsibility of the senior officers in the military to take that into consideration?

General Jack Keane

I don't think I said we won the war in Iraq and Afghanistan. We're still dealing with the realities of that. I think Iraq is becoming a relatively secure situation with hopefully political stability around the corner. We'll see; we have a national election.

Terry Moran

1:36:49 Cost.

General Jack Keane

I'm just correcting his statement, okay? Thank you. And in the war in Afghanistan I never said we won a war. We just devised a policy that hopefully will help us win that.

In terms of financial cost, certainly all those monies come out of the Department of Defense budget, so there's not a senior leader who is not dealing with financial cost. When we go to war and we're formulating a strategy to go to war—somebody is asking us, as H. R. said, rightfully so—we don't pick the place and we don't choose the objective, but someone tells us to execute. We put before our leaders what does that mean to us to execute that policy that you just formulated, what is the size of that operation, our best judgment in terms of what the duration of that operation will be, and what the cost of that operation will be. And we also try to make some attempts—certainly, it's something we're all very close to—in what is the risk to the human lives that we're committing to that operation? So absolutely, yes, that is put in front of leaders in some level of detail in terms of what that is. We'll go even further with that in terms of presenting different options that they may want to select in terms of the benefits and risks associated with those options and then let them make the decision.

Bruce Ackerman

One of the big constitutional problems about how we've been financing these wars is that we've been financing them on emergency appropriations. President Obama says he's going to stop that; we'll see whether that's true. I've been working with Congressman David Wu on a proposal—we've written quite a few op-eds along these lines—to set a numerical amount—let's say a billion dollars—for Iraq rather than confronting Congress with very micro choices: “You have to give us \$50 billion more; otherwise the troops won't have armaments.” And of course, when framed in this way, the Congress is going to vote yes. So we should set a numerical target contemplating these big questions that you were raising, sir, and then as we get close to the target, we should reauthorize the war or terminate it. We don't have a good structure for asking the right questions. As you can see, this seems to be the light motif of my life.

Terry Moran

1:39:30 A lot of those questions are not being asked in Congress. We're going to have a couple more questions here. Who's got the mike? Right here. There we go.

Unidentified Female Speaker

I'd like to ask General McMaster and then also come back to General Keane whether you think the torture issue and the issue of how to conduct interrogations has really been resolved within the military and resolved no matter which civilian administration of whatever party should be in power. And one of the reasons I ask this is, as you know, many people believe that it was political pressure from the civilian side involved in what came down in Abu Ghraib. The commander of Guantanamo was deliberately transferred to command at Abu Ghraib. He was never reprimanded—Geoffrey Miller, I believe his name was—and there were many questions involved there, not the least of which is whether the individuals who were finally imprisoned were simply scapegoats or even the female commander. There were political pressures there that went beyond and around the commander. So how do you look at this now? And were there another administration that produced a Yoo doctrine, would the same questions be brought up and would the Army know how to deal with it? And I'm curious to ask, General Keane, whether you really think that the investigation that took place resolved who was responsible for the misdeeds at Abu Ghraib.

Brigadier General H. R. McMaster

First of all, thanks for the question. The Army has done quite a bit to adapt to the demands of the wars in Afghanistan and Iraq. As I mentioned, I think largely because of this orthodoxy of defense transformation revolution and military affairs, we may not have been as prepared as we ought to have been for operations in and amongst the populations, for operations against the kind of brutal enemies that we're facing, the ambiguity of those circumstances broadly from a cultural perspective plus from a perspective of fighting it and who we're capturing and interrogations and all these other demands. But I think the Army has adapted extremely well to that, and I don't think it would matter, really, from administration to administration. Of course, law constrains us—the Geneva Conventions, the Uniform Code of Military Justice—but those only constrain people—laws do—only as long as they're enforced or as long as they're on the books. What I think constrains us more than anything else is our values, our values as an army, our professional military ethic, our warrior ethos. And so what defines us as soldiers and our behavior are mainly our expectations of each other, and I think that the Army has really taken a hard look at how to make sure that we use applied ethics education but in units we have discipline and expectations

of each other in terms of our code of professional conduct, and I don't see that changing. I think our army is getting stronger every day in that connection as we prepare soldiers for the ethical, moral, psychological demands of these very complex environments in Afghanistan and Iraq by studying the culture, studying the history, developing empathy for the population, really understanding that the murderous acts of this enemy cannot be justification for less constraint on the use of firepower but instead we have to apply firepower with greater discrimination to protect innocents. So I think that the Army has come an extremely long way and adapted very quickly based on the demands of these conflicts as they were revealed to us.

Terry Moran

1:43:18 General Keane?

General Jack Keane

The issue at Abu Ghraib and Guantanamo and the relationship between the two is an interesting one. I'm privy to some of this. Secretary Rumsfeld was very frustrated by the fact that we had tens of thousands of detainees in Iraq and a paucity of intelligence coming out of that. We had a small population—less than a thousand—in Guantanamo Bay, and we had some rather significant intelligence value that came out of that. There was no interrogation policy or no under-the-table interrogation policy that operated in Guantanamo Bay. Nonetheless, it became a public relations nightmare for the United States. That's a fact. General Miller, who I had something to do with him being placed in Guantanamo Bay to improve the efficiency and effectiveness of that place, what he did was he got all the military guards involved in intelligence gathering, where in the past they were not; just the interrogators were. And he said, "That doesn't make any sense. After we take X out, interrogate him for two hours, and he goes back to the population, who is talking to him? What is the conversation about? Why aren't we monitoring that because there's huge transfer of information, there's coercion enforcement taking place. You should be providing all of that to the intelligence people." That was his major contribution that he made. He was brought post-Abu Ghraib because he was so effective in terms of the order, discipline, and effectiveness of using the entire U.S. military presence to gather intelligence. Rumsfeld was trying to fix that. Abu Ghraib came. There's been this implication that because he was putting pressure on the generals to get more intelligence out of that detainee population that therefore that manifested itself into interrogation policies that were in fact abusive. There have been interrogation policies that were abusive. I don't believe in my own mind it was driven by that. What took place in Abu Ghraib fundamentally was abuse of the

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prison population by the guard population. They were sent there to do another mission. They had never been trained to be a guard population, and we didn't train them in some of the psychological aspects of the dehumanizing of the population, which is a significant thing that takes place in our own prison systems. I'm not making excuses; I'm just trying to explain what happened. That abuse took place, and that chain of command there was not sensitive to the potential for that abuse over time and manifested in those horrible incidents, which were clearly prison abuse. That was no interrogation abuse; that was prison abuse, and I think that issue got way away from us in terms of policies that were driving abuse of interrogations and abuse of prisoners. That connection has never been able to be made, and many people tried to make that connection, and it has not been made. Rumsfeld's frustration was, "What is the difference here? I'm getting this value from such a small population, and I'm getting very little value here." Now, did we resolve this in terms of ourselves? Yes. In terms of the United States military, we went through how did this happen? How did a unit do something like that and be so ineffective? We did have some abuses on the interrogation side, but they weren't a matter of policy. How did that happen and why did it happen? Those people have been held accountable for all of that, and we have gone through education and training inside the United States Army to make certain that everybody understands what our policies are and what proper supervision and execution of that policy is.

Terry Moran

1:47:31 Okay, our last question. Right here.

Unidentified Female Speaker

My question is probably more for the generals but also I would be interested in hearing Professor Ackerman's view. There have been a lot of reports coming out that the lack of Arabic and Farsi translators on the front lines of these wars is an issue, and I even heard a report that there was a backlog of government data that included plans for 9/11 that had not been translated. So with that in mind and, of course, with the title of our talk on the Constitution, I'm wondering what your thoughts are on "Don't ask, don't tell" considering that since 1998, 30 Arabic and Farsi translators have been discharged from the Army because of it.

Terry Moran

1:48:17 There you go, General. There you go.

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General Jack Keane

H. R. doesn't want to go near that for sure. On "Don't ask, don't tell" I supported the "Don't ask, don't tell" policy when I was on active duty, and I'm still supporting it. I will change that position if operational commanders like H. R. believe that it's not going to break down the cohesion of our fighting organizations by having homosexuals serve in those fighting organizations and be public about it. That was the essence of it. This is not an equal opportunity issue with the United States military. It is not an equal opportunity organization. It's an organization that has a mission to win on a battlefield, and it has to train organizations to be successful. And the only way that we can get people to perform under that high degree of stress is they have to care about each other and they have to trust each other, so much so that the psychological variable that's operating to keep that unit functioning under tremendous stress and going forward and doing what it needs to do is that the individual soldier does not want to let down their fellow soldiers. And that gives that soldier the courage to overcome their fears. It's the basic training crucible. So the cohesion of that organization is paramount to us. It's one of the reasons why in those fighting organizations we do not have women serving in those fighting organizations because we believe—our judgment tells us—that introducing women into a fighting organization is a cultural norm that's very different and would be difficult to maintain that same level of intense cohesion that we need to have; that there could be breakdowns in trust by favoritism, etc. That is the basic premise on "Don't ask, don't tell" in terms of its application to the military, and I'm still supporting that until I hear from operational commanders like General Ray Odierno, like General Dave Petraeus, like Stan McChrystal because they're operating that force in the field, and I left this army in 2003. So if there's something different happening out there, I want to hear them say it. But as of right now, I still support it.

Terry Moran

Can you take a crack at this?

Brigadier General H. R. McMaster

Obviously, it's a policy decision. Our senior leaders are speaking and are looking at it and are doing it with the analysis so that they can provide their military advice as part of a policy decision. And the one thing our army is really good at, I think, is responding to whatever the policy is and doing the best job to implement it. I know that there are some concerns in some

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quarters at times about civil control of the military. Is the military going to push back? I really don't see that as a problem. I think that whatever the decision is that the military leadership will do its best to implement that decision. And so I think, as in all other policy issues that involve senior civilian leaders consulting the military, civil control of the military exists in the executive, certainly within the Secretary of Defense, the civilian secretaries of the services, and the president, but it also exists in the Congress. And it's issues like these and issues of war where military officers have to provide their best advice to both. The difficulty is if an issue is politically charged, you don't want officers to cross the line between giving their best advice and advocacy for a certain policy. You just have to give your best advice and then allow the Constitution to work in terms of developing the policy and telling the military what to do.

Todd Brewster

1:52:12 I'd like to say thank you to everyone, thank you to our panel, and I hope you enjoyed it.

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