

**HUMAN RIGHTS FIRST  
RETIRED MILITARY LEADERS  
CONFERENCE CALL  
ON  
PRESIDENT OBAMA'S EXECUTIVE ORDERS**

**WITH  
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MAJOR GENERAL (RET.)  
UNITED STATES ARMY**

**LEE GUNN  
VICE ADMIRAL (RET.)  
UNITED STATES NAVY**

**JOHN HUTSON  
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OPERATOR: Please stand by; your conference is about to begin. Welcome to the Human Rights First retired military leaders' conference call. I want to introduce Elisa Massimino, executive director of Human Rights First. Please go ahead.

ELISA MASSIMINO: Thank you. Welcome, everybody, thank you for joining us on this historic day. I want to introduce you to three retired military leaders who will speak about their meeting with President Obama today and their witness of his signing of three executive orders dealing with prisoner treatment. These three – Admiral Lee Gunn, General Paul Eaton and Admiral John Hutson – you have their bios – are part of a group of 50 admirals and generals – retired admirals and generals – who've been working with Human Rights First over the last several years to advance prisoner treatment policies that are consistent with our laws, values and the national interests of the United States.

They were active in the legislative and public debates about torture over the last several years and have testified before Congress and met with presidential candidates during the presidential campaign, including with President Obama over the last year. I will turn it over to Admiral John Hutson, who can describe the meeting today and the agenda of this group.

ADMIRAL JOHN HUTSON: Thank you, Elissa. This is John Hutson. We spent about an hour with the president, the vice president, the president's lawyer, Greg Craig, Mary De Rosa, Denis McDonough and there were several other staff involved, starting out with a meeting in the Roosevelt room in which the president, vice president and Greg Craig talked about these three executive orders and one memorandum that the president then later signed. The meeting actually started a little bit early, we had some time – the president and the vice president came around and introduced themselves and spoke with each of us and then we sat down and just talked about these documents and where we'd been and what we've been doing.

And both the president and the vice president spoke very positively and almost glowingly of the meetings that Human Rights First had set up for us with them at the Franklin Pierce Law Center in New Hampshire and then in Des Moines, Iowa, to talk about the issue of interrogation and treatment of detainees. There was a sense, I think, of satisfaction but also very much determination, determination that this was the right thing to do and that we were going to be consistent with this going forward into the years to come.

We then adjourned to the Oval Office, the president sat – you may have seen on the video – sat there, explained each of the executive orders and the memorandum to the press that were there and to others and signed them. There was certainly among us, the 16 of the retired generals and admirals that were there – a sense of accomplishment and satisfaction and joy, perhaps, that the country was getting back on track with regard to the issues that we feel so strongly about. I think that sort of summarizes it.

MS. MASSIMINO: Thank you, Admiral Hutson. I think we'll just go ahead and jump in and take questions now. I know there are a lot of you on the phone, so I'll field those and pass the phone as necessary to Admiral Gunn and General Eaton and Admiral Hutson.

OPERATOR: Okay, if this time you would like to ask a question you may do so by pressing \* and 1 on your touchtone phone. You may withdraw your question at any time by pressing the # key. Again, to ask a question you may do so by pressing \* and 1.

And our first question will come from Jon Landay with McClatchy's. Please go ahead.

Q: Hi.

MS. MASSIMINO: Hi, John.

Q: Hi. Last week, and in fact during the campaign, the president and then last week his nominee to be the new general counsel at the Pentagon, Jeh Johnson, talked about how both of them, both he and then the president-elect, had predispositions to trying all of these cases in civilian courts. And yet the executive order talks about a review panel that will actually look at that possibility but also the possibility of improving the military commissions or going to courts martial. I'm wondering if you're slightly disappointed by that, because I know most of you, or in fact all you, support trying accused terror suspects in the civilian courts.

MS. MASSIMINO: John, I'm going to say a couple words about that and then I think I'll turn it over to Admiral Hutson. We are not surprised or disappointed by the approach that the executive order on Guantanamo takes on sorting out the disposition of the detainees there. In fact, it's quite similar to what Human Rights First recommended on its blueprint on how to close Guantanamo, that the first step needs to be a consolidated review of all the evidence in the possession of the United States government on each of the detainees there to evaluate both the risks of release for those detainees and then the possibility of prosecution.

The executive order leaves open the possibility of dealing with those cases in a number of different ways. I think it's quite clear that the president prefers to deal with those cases in Article III courts and that's going to speak for those detainees who have committed crimes against the United States, but that the White House felt it was premature to specify how those cases would be disposed of until it looked at the evidence. As President Obama has said before taking office, the current military-commission system is completely bankrupt and incapable of delivering justice in these cases.

So those proceedings will be rescinded and I think it would be inconsistent with the message being sent today if those military commissions were to proceed at any point in the future. Admiral Hutson, do you want to add anything to that?

ADM. HUTSON: I would say only in addition that there's nothing inherently wrong with military commissions. There's only – Elisa said – that there's only things significantly wrong with the present commissions. I had personally early on been an ardent support of military commissions until I saw the way these commissions were being put together. Now, the

Uniform Code of Military Justice acknowledges the validity of military commissions and we've used them over the years.

I testified that if you put me in the room with two or three smart lieutenant commanders and commanders, we could come up with a military commission system by the end of the day that would pass international muster. It's just that we – the country declined to do that this time. So I think that what the executive order does is acknowledge that but that President Obama the candidate had clearly indicated his preference for Article III courts or the Uniform Code of Military Justice, so I think he's simply leaving options open that are going to be studied. You know, he'd also said as a candidate that he didn't want to necessarily limit himself to one option, you know, all Article III courts or all court martial.

Q: Do you think it's possible that you're going to see some kind of hybrid system where there is competent cases or fool-proof cases or triable cases, I should say, against detainees going to civilian courts and then the use of some other kind of mechanism to deal with cases that are questionable when it comes to evidence and that kind of thing?

ADM. HUTSON: No, I don't think that that's what we're looking at all. We're not looking at trying to create a judicial system to deal with those cases in which there is not admissible evidence – that's sort of where we were before – or where we're going to keep the evidence secret from the world. You know, there's a guy, we can't tell you who; who's got information, we can't tell you what; but we know you're guilty, we can't tell you why.

That system isn't going to go forward, but you could create a military commission system that would completely satisfy Common Article III in that it included all the judicial guarantees considered indispensable by civilized people. So he's just leaving that option open.

MS. MASSIMINO: Thank, John. Can we get to the next question?

OPERATOR: Yes, our next question will come from Brian Bender (sp) with the Boston Globe. Please go ahead.

Q: Thanks. My question is less on sort of the legal aspects of this – maybe Admiral Hutson can address this, as well as the others – talk about, if you can for a minute – just the impact you think these decisions today will have internationally. I know it's hard to quantify, but just broadly: What does this do to the United States' ability to wage the war on terrorism more effectively and, you know, does it do that?

MS. MASSIMINO: Let me let Admiral Lee Gunn take that question, Brian. Hold on a sec.

ADMIRAL LEE GUNN: Brian, thank very much for the question. I think it is absolutely on point with regard to the effect that we as a group hope to see result from the actions the president has taken today. As your question would indicate, in the war against the kind of enemy we're fighting now, it is arguably far more important that we be able to rely on allies, to be able to trust our friends and that they be able to trust us and in the process that we

share what's vital to know and we cooperate in the kind of preparations that are necessary in order to deal with this foe.

Over the last several years, alliances and friendships have been really strained and many of the reasons for the strain that has occurred, I believe, have been dealt with – we think have been dealt with effectively today by the president, almost immediately as he began his term. As an aside – when I was on active duty one of my jobs had a great deal to do with the attaché community here in the Washington area. And attaches leave this country, having served their country here in Washington, very favorably disposed to the United States.

And over the course of the last several years, many of those attaches have made it abundantly clear to me that it's extraordinarily difficult to be a friend of the United States when they return to their own country to positions of responsibility and influence. I think that the steps that were taken today will be vital to restoring the kind of trust and the level of cooperation necessary.

MS. MASSIMINO: I want to also ask General Eaton to respond in part to that question because he is in the unique position of having been in Iraq more recently than any of us here.

GENERAL PAUL EATON: Hi, Paul Eaton here. The anecdote – the story that occurred to me was my senior Iraqi advisor when the story on Abu Ghraib broke walked into my office and said General, you cannot possibly comprehend how badly this is going to play on the Arab street. And it in fact compromised my mission to rebuild the Iraqi security forces and made it so much more difficult to work with – and we were a nine-country team building Iraq's armed forces – and it immediately undermined me, my moral authority and in fact created a far more dangerous environment for every soldier, every Marine we had in Iraq.

It was an immediate and direct outcome of the Vice president setting the tone for the previous administration when he said waterboarding is a no-brainer – that created the environment that helped deliver Abu Ghraib to us. Thank you.

MS. MASSIMINO: Thanks. But I also just wanted to add, you know, with these orders putting an end finally to the policies that brought us Abu Ghraib and Guantanamo, effectively President Obama is tearing down al Qaeda's prime recruiting poster. And General Eaton talked about the societies from which al Qaeda gains its recruits; well, the policies that are being abolished today were the fodder for recruitment in those societies and this is an important step.

From a human rights organization's perspective, I think the message that these actions send to the world just could not be clearer: The United States is ready to reclaim its role as a nation committed to human rights and the rule of law. And that will enable it to lead in its counter-terrorism efforts, in its human rights efforts and in all over the issues that are on the national-security agenda of this country. Can we take the next question?

OPERATOR: Okay, our next question will come from Adam Serwer – sorry – with the American Prospect. Please go ahead.

Q: How are you doing? My question is, if it's possible to create military commissions that are consistent with Article III, what's the point of creating a military commission in the first place? Why not just try them in courts martial or in civilian court?

MS. MASSIMINO: Well, that's a good question, Adam. You know, originally – and I can let the military folk speak to this, but they've tutored me over the years in the history of military commissions – and you know, military commissions originally were designed to dispense battlefield justice: to be swifter, to be able to be convened quickly on the battlefield. And in fact, you know, that was a lot of the language that we heard from then-White House counsel Alberto Gonzalez when the military order came down in the fall of 2001.

Of course, they became something vastly different from that. But there is a purpose for military commissions. I think it's unlikely that the Obama administration will decide that that's the path they want to pursue here. I also would refer you to the advantages of moving these cases into a civilian system are not just that that system is tried and true and has legitimacy, but there is a perhaps unintentional advantage that we cede to al Qaeda, people like Khalid Sheikh Muhammad, who want to be viewed as combatants, treated in a military tribunal, to sit across from military uniformed officials and be tried as a combatant.

That is the narrative that al Qaeda presents to its potential recruits. And as the counter-insurgency manual lays out, the faster you transition cases like that into a regular criminal system, the easier it is to de-legitimize them with the societies from which they gain their recruits and that is the way to fight this kind of enemy. I don't know if any of you would like to add on to that? Hold on just on sec.

ADM. GUNN: I won't spend too much, I guess, on commissions, but part of the problem is that the military commissions that are presently set up – until they were suspended today – basically reverse-engineered a conviction. And it started out with a conviction and then the commissions were set up in such a way to ensure that result, essentially. So that created the problems that we're facing now and that the new president is having to try to – not try, but had success with and undone. But it does mean that the next iteration, whether it's in U.S. district courts, courts martial or some reconfigured military commission, will have to stand the test of that international scrutiny because we've screwed it up once already – or twice, actually, already. Thank you.

MS. MASSIMINO: Could we get the next question, please?

OPERATOR: Our next question will come from Jess Bravin with the Wall Street Journal. Please go ahead.

Q: Hi. I had, actually, three questions; I'll try to combine them for you all. One is that some of the things missing from these executive folders are any reference to either the policy of rendition – unless I overlooked it – and also to any kind of retrospective examination of the detainee policy and whether any accountability should be required. As you know, you had Judge Crawford say earlier this month that at least one detainee had been tortured, but there was no criminal referral or anything of that nature regarding who might have committed those acts.

So that's question one. And question two is, in pulling back the Bush administrations policies, which were justified as helpful if not absolutely essential to national security, are there any tradeoffs? Is there anything that the United States loses as the result of pulling back from some of those policies or were they all completely, 100 percent gratuitous?

MS. MASSIMINO: Okay, I think I will just – this reference to the first part of your first question – my understanding is that the review that's set up in the Executive Order on interrogation has, as one of its two missions, an examination of the policy of transferring people to third countries.

Q: Okay.

MS. MASSIMINO: And that that is intended to deal with the problem of rendition, the reason that the word rendition is not used there is that actually, as in the case of Maher Arar, for example, the Syrian-Canadian who was transferred to Syria. Technically, this – (inaudible) – to an immigration proceeding and not through rendition. But that is an intention of the review that's set up in that order.

Q: Okay.

MS. MASSIMINO: And then I don't know if – which of you would like to address the question on what's not in the order, in particular, the retrospective examination of the policies and any kind of accountability question.

ADM. HUTSON: Hi Jess, it's John Hutson. You're right. It's not there. He has set up a task force to look forward. We spent a lot of time talking about looking back and whether we should read the general – (inaudible) – criminal perspective would look back just with an after-action report perspective and so forth. And that may be some place on the president's agenda but you're absolutely right that it could not – he did not address those things today in the executive orders or with us. So hold on a second for Lee Gunn.

ADM. GUNN: Thanks, Jess. One of the things that we saw today was the nature of moving forward on the administration's part. It's clear that there'll be substantial conversation in and out of the administration about what happens looking back and how we evaluate what we've done over the last several years. But at the moment, and it strikes me as being completely appropriate, the focus is on moving forward, finding out what the appropriate policies and procedures are, in anticipation that over the course of the next several years, we'll continue to have to deal with this problem in one form or another. So the gratifying part of this, while it was true that not everything's been dealt with, is that we're moving forward and we're moving forward in a deliberate but rapid matter – manner in order to determine where this administration is going to be well-advised to go. Thank you.

GEN. EATON: Paul Eaton here and I'll address the national security tradeoffs. The premise that we have used is that torture does not work. And I'm going to quote a colleague that torture is the tool of the lazy, the stupid, and the pseudo-tough. So that's our premise. Torture

and inappropriate treatment of prisoners is counterproductive. It is a significant recruiting tool for terrorists. We had an article in the Washington Post or Times a short while ago where an interrogator said that in their review, the greatest recruiting tool that al Qaeda had was the Abu Ghraib pictures and that's second only to Guantanamo Bay image that's created.

Second, this will contribute to an improvement of the good order and discipline of our force. The president has set the tone. It is the appropriate tone for all leaders and it relieves a significant amount of pressure on our young lieutenants, captains, and sergeants who have had to impose a higher standard than their own civilian leadership. So it will make things a lot easier for the men and women of the armed forces of the United States.

MS. MASSIMINO: Jess?

Q: Mm-hmm?

MS. MASSIMINO: I just also – just wanted to underscore. You know, you asked about the tradeoff and you know, that has been the framework of the public debate about this for so long that you know, you can have security or you have your values but you can't have both. And you know, on Tuesday, President Obama in his inaugural address gave a pretty clear repudiation of that and said it is a false choice between our safety and our values. And you know, these orders that he's signed today are a demonstration that he really means that. That's not a bumper sticker or a campaign slogan. That's something that has real consequences in how we pursue national security strategy. And this is what it looks like.

Q: Can I have a follow-up, which –

MS. MASSIMINO: Two questions plus a follow-up, okay, quickly.

Q: here it is. The Bush administration was very secretive the process by which it developed its policies. These executive orders, from what I can tell from glancing at them quickly, don't seem to envision any role for the public or outside groups to advise or take a look at proposed policies. Is that an oversight or is there some plan that you know of to bring the public in our Congress or other groups into this process?

MS. MASSIMO: Well, I think that may have been discussed today, let me ask Admiral Hutson to deal with that.

ADM. HUTSON: Well, we did not discuss that specifically or directly, Jess, but this group met with Eric Holder and Greg Craig and Mary DeRosa some weeks ago, and we talked at great length about these policies. Plus, too – and I don't want to just sound like a flack for the administration, but we've had a long presidential campaign where these issues have been discussed over and over and over. I think that it's probably clear that there are some people that would disagree. But I think the debate has been had, and if – I believe it's pretty safe to say if you had given the 15 or 16 generals and admirals a blank tablet of paper and some pens, we probably wouldn't have come up with anything much different or better than what we thought today. So thanks.



MS. MASSIMO: Can we have the next question, please?

OPERATOR: Our next question will come from Jane Mayer with the New Yorker. Please go ahead.

Q: Hi. I wanted to ask about whether you felt that the door was firmly shut at this point for the CIA to move beyond the military manual about what's allowed in terms of interrogations. It seemed like there might be some wiggle room there and I understand that some people in the intelligence world are arguing they need to be able to do more. So you know, is that lid shut finally or not?

ADM. HUTSON: It is slammed tight, Jane.

Q: Who's talking?

ADM. HUTSON: This – I'm sorry, this is John Hutson.

Q: Hi, great.

ADM. HUTSON: Hi, how are you, Jane? It's slammed shut tight. There is the opportunity to look at the vehicle, whether the Army Field Manual is the right vehicle for a government-wide policy. You know, does the CIA want to be governed by something that has the word 'army' in its title? Perhaps not. But the question of the content and what is there is absolutely clear, and to quote General Eaton, the point is, and the president clearly understands this, that torture simply is not good for the country and it's not effective, whether it's being done by the CIA or Department of Defense personnel. So that issue has been answered by the commander-in-chief. Anybody – Paul, Lee? Nope. I guess the next question here is Lisa.

MS. MASSIMO: Can we have the next question, please?

OPERATOR: Okay. Our next question will come from Richard Lardner from the Associated Press. Please go ahead.

Q: Hi, thank you very much. Another thing the order on Guantanamo doesn't lay out is where the most dangerous suspects, terrorists will go once that facility is shut down. I understand that didn't come up today during the meeting, but can you talk a little bit about what facilities are best-suited and whether or not there is any restrictions on mixing convicted felons in existing U.S. jails, whether they're federal or military, with suspects? Does that create a potential problem?

MS. MASSIMO: Did you hear that question?

GENERAL EATON: There is discussion – Paul Eaton here. There is discussion of the classification of prisoners, basically three groups. And those that the – we will – all of this is going to be subject to a fairly substantial review by some very, very senior folks in the

president's cabinet. So the idea of mixing prisoners with U.S. citizen prisoners, the – all of that I believe is going to come out of the substantial review on each case in Guantanamo on disposition of the particular prisoner.

Q: Okay, and on facilities, where is – what are potential candidates of places where they can be put after Guantanamo?

MS. MASSIMO: Yeah, I don't think anybody here has any particular views on that, Richard. It wasn't discussed today and, you know, I think that it really depends a lot on the outcome of the review that General Eaton just talked about. The briefing that we had from the administration made it pretty clear that their intention is to get to the finish line there, the one-year deadline and to have sound disposition of all those prisoners through transfer, release or trial.

So I think that's the – you know, the people who will be tried in the regular federal system, of course, would go into the regular federal system, and we have certainly high security, and we've used those in this country for terrorist suspects that we've tried here in the Article III courts. So I think there's ample facility to do that here and to handle those, and many of the federal prosecutors that we've talked to are quite confident that our system can handle that. Can we have your next question, please?

OPERATOR: Once again, if you'd like to ask a question, you may do so by pressing \* and 1 on your touchtone phone. And it appears that we have no further questions. Oh, actually a few just queued up.

MS. MASSIMO: Okay.

OPERATOR: Kenneth Jost with CQ Press. Please go ahead.

Q: May I ask, please, what about the one-year deadline? Is that too long?

MS. MASSIMO: You mean for closing Guantanamo?

Q: Correct.

MS. MASSIMO: Yeah. I think that – I'll answer that and then I'll turn it over to Admiral Hutson. You know, Human Rights First in its blueprint on how to close Guantanamo suggested that this could be done within a one-year span. That would both give some time pressure on the administration to come up with the answers to some of these hard questions but also put a firm time limit on it so there's the time to deal with some of the more difficult questions and to get fresh eyes, actually, on the information about each of the detainees that we have there.

One of the things that the White House folks stress is that they're going to be doing this on a rolling basis, so it's certainly possible that that place would be emptied out before the one-year deadline set in the executive order. I guess, you know, our attitude is, the sooner the better.

And it's got to be done responsibly and consistent with the national security concerns, but the general feeling is that this has gone on for far too long already and there is, as Admiral Hutson said, a sense of urgency and determination to get this done as quickly as possible.

Q: Thank you.

MS. MASSIMO: Thank you. Can we have the next question?

OPERATOR: Okay. Excuse me. Our next question will come from Adam Serwer with the American Prospect. Please go ahead.

Q: Hi. I just – I wanted to ask a question that was related to my last question. Does HRF have any concerns related to the use of civilian courts versus a court martial? Is there – I mean, do you have a preference, and if so why?

MS. MASSIMO: Sure. I would say, we have a preference for civilian courts, and that's I think both because we think those courts have proven themselves adaptable and capable of dealing with the complex issues in these cases. We published a report last year called "In Pursuit of Justice" where we – that was authored by two former federal prosecutors, where we analyzed all of the international terrorism cases that have been tried in the federal courts and looked at how they dealt with these challenging issues presented by terrorism cases – classified evidence, court security, issues of – Brady issues and discovery issues and all that.

So we're pretty confident that that's the best place, in terms of dealing with the challenges of these kinds of cases. But, you know, the UCMJ system, courts-martial, is, you know, it is a – it's the crown jewel of military justice systems in the world, and we don't have any problem at all or concerns about people being tried in that system. I want to say, our preference for the civilian system is largely a tactical one, in that it's prompted by the theory of counter-insurgency that's laid out in the Joint Military Counter-Insurgency Manual, where there's a real emphasis on trying to move these kinds of cases into a civilian system.

I don't know if you remember when the federal judge sentenced Richard Reid, the so-called "Shoe Bomber", and in the sentencing hearing, Judge Young said to Reid, you know, you're not a combatant. You are – and I'm paraphrasing. You're not a warrior. I know warriors, and you're not one. You're a criminal, a common criminal, and our system has ways of dealing with people like you and you're hereby sentenced to life in prison and – but that person is no longer a problem for the United States, to paraphrase President Bush.

So I think there are real strategy reasons for choosing a civilian system, but in terms of the due process that's afforded, we wouldn't have any concerns about use of the military justice system. Our beef is with the currently military commissions. Let me let General Eaton add to that.

GEN. EATON: Hi, Paul Eaton here. As a former commanding general and consumer of Staff Judge Advocate excellence, I have great faith in our Staff Judge Advocates, our military lawyers. I have absolute faith in the validity and the justice afforded by the Uniform Code of

Military Justice. But as a soldier, I would prefer that these cases be tried in a fully open, civilian-court fashion, simply from the perspective of the image that it transmits and that it gets uniforms away from this process. I would certainly support either way, but as a practical matter, as a soldier speaking, I think we would be better served to have this in a civilian arena.

Q: Thank you.

MS. MASSIMO: Do we have any other questions?

OPERATOR: There are no further questions.

MS. MASSIMO: I just want to bring this back around to the issue of prisoner treatment. We've had a lot of discussion about Guantanamo here, which is one important aspect of the treatment of prisoners in U.S. custody, but I also want to emphasize the importance and really the historic nature of this clean break from the policies that brought us Abu Ghraib and the abuse of prisoners in U.S. custody.

This is something that this group of military leaders has been working on for several years now, and we all owe them a debt of gratitude, I think for their moral clarity on this issue and for their persistence in pushing it forward when very few people were willing to listen. And I think today, at the White House we saw a real vindication of those efforts, and I personally want to thank them, these three officers and all of those who joined together with Human Rights First to make this possible.

So if there are no further questions, I think we'll call this to close. Thank you all very much. Goodbye.

(Music.)

OPERATOR: This does conclude today's program and you may disconnect your lines at any time.

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