Fordham Center on Religion and Culture

TORTURE AND AMERICAN CULTURE: An Inquiry and Reflection
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Session II
American Elites and Their Response to Torture

Moderator
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Panelists
Legal Profession:
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Military and Intelligence:
Col. Patrick Lang (Ret.)
President, Global Resources Group

Religion:
Drew Christiansen, S.J.
Editor, America magazine

Psychology:
Stephen Behnke
Director, Ethics Office,
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MARGARET STEINFELS: This is the second panel of our three-panel event, “American Elites and Their Response to Torture.”

To introduce this session and our panelists we have the excellent services of Frederick Wertz, who is professor of psychology here at Fordham. Among the courses Dr. Wertz teaches at the University are Psychology and Human Values, Culture and Identity, Cults and Religion, and the Philosophical Foundations of Psychology. He is the Editor of the Journal of Phenomenological Psychology and Guest Editor of The Humanistic Psychologist. He edited the volume The Humanistic Movement: Recovering the Person in Psychology, and co-edited Advances in Qualitative Research in Psychology. He has served as President of the Society for Humanistic Psychology and of the Society for Theoretical Philosophical Psychology, both of which are divisions of the American Psychological Association.

I think, as these courses and editorial responsibilities and book titles suggest, Dr. Wertz is not an investigator just of human reflexes, brain waves, or even the mind, but a profound scholar of the human person. I am honored to turn the
podium over to him. Thanks, Fred.

FREDERICK WERTZ: Thanks, Peggy, for such a nice introduction. And thanks for inviting me here for such a stimulating and interesting afternoon with such excellent panelists. This is really a pleasure and a treat. And also, thank you, Peggy, for all the great work you are doing at the Center for Religion and Culture at Fordham. It’s just one of the parts of Fordham that we’re the most proud of, and events like this and so many others that you brought to us that have shown leadership here at Fordham and offered illumination to our immediate neighborhoods of New York City, and even to the global community and the world. I think you have really been a great leader yourself.

This focus on torture is a really important and profound thing in and of itself. We have already seen in the first part of our program today that torture touches on very primal human impulses of violence and the meaning of violence and how it is that inhumanity can appear to be a solution to human problems. The focus on the media and popular culture is really important for us to understand and then to reflect on what that media and popular culture has done to us, how we are attracted to it, and what its role is in life.

I think it is ingenious that you also thought to include in this analysis the so-called elite, the leaders of our society, the professions. These are the people who, in the law, in the military, in psychology, and in religion are really responsible for our human welfare, the ones who should have the highest, most noble, most intelligent, and the best in the sense of the good, the highest ethical values. And not just in guiding their own professions and the contributions those professions make to all of our lives, but in teaching us what is good, what is right, and bringing illumination to phenomena like torture, to phenomena like violence.

So let me go ahead and introduce our great panelists here today.

William Treanor is Dean of Fordham University’s Law School. A leading constitutional historian, he has focused on the original understanding of the Constitution. His writings include studies examining judicial review and the Constitution’s Takings Clause, the Intellectual Property clause, and the War Powers Clause. He served in a variety of positions in the federal government, including, most notably for our panel today, as Deputy Assistant General in the Department of Justice Office of Legal Counsel from 1998–2001, which is responsible for providing legal advice to the Attorney General and the White House. He was also Associate Independent Counsel in the Office of the Iran Contra Independent Council. His work has appeared in many law reviews, including those of the University of Chicago, Cornell, Columbia, Fordham, Yale, and Stanford.

Patrick Lang is President and CEO of the Global Resources Group. He has served for many years in the Defense Intelligence Agency as Director of Human Intelligence Collection. Prior to that, he was the Defense Intelligence Officer for
the Middle East, South Asia, and Terrorism. He was a principal advisor to the Secretary of Defense, Chairman of Joint Staff, and the President of the United States for Middle Eastern affairs during the Iran-Iraq war and the 1990–1991 Gulf War. A commissioned officer in the U.S. Army from 1962–1988, he served several tours of duty in Vietnam in the Special Forces and has taught at West Point. He writes widely on military intelligence in professional and popular publications. His blog, Sic Temper Tyrannis, regularly treats military and intelligence issues. I should also mention that he is the Director of Harry Guggenheim Foundation, which is committed to examining the causes of violence.

**Father Drew Christiansen, S.J.**, is Editor-in-Chief of the Jesuit weekly *America*. He has taught at the Jesuit School of Theology at Berkeley and the University of Notre Dame. From 1991–1998 he was Director of the Office of International Justice and Peace of the United States Catholic Conference and served another seven years as Counselor for International Affairs to the Conference. He is co-editor of three books, including *Forgiveness in International Politics: An Alternative Road to Peace* and the just-released *Faithful Witness: Michel Sabbah on Peace and Reconciliation*.

I should mention while I am here that we are going to have a change in the order of our panelists as they speak today. Actually, Dr. Stephen Behnke will go third and Father Christiansen will be our anchor. So I was a little out of order as I just read their backgrounds.

**Dr. Stephen Behnke** is Director of Ethics at the American Psychological Association. He received his J.D. from Yale Law School and his Ph.D. in Clinical Psychology from the University of Michigan. He has served as Chief Psychologist of the Day Hospital Unit at the Massachusetts Mental Health Center, a position he held until 1998, when he was named a Faculty Fellow at Harvard University’s Program in Ethics and the Professions. He has directed a program in research integrity in the Division of Medical Ethics at Harvard Medical School. Dr. Behnke’s research interests focus on issues of convergence of law, ethics, and psychology.

We will start our presentations today with Dean Treanor.

**WILLIAM TREANOR:** Thank you very much, Fred, and Peggy, thanks very much for bringing together this very important program as we grapple with this issue.

The issue that we started the first panel with was one that for me, as I think for so many law students, was one that I first encountered when I was in law school. In law school you have hypotheticals.

One of the hypotheticals that we grappled with was: you are a judge; the FBI is torturing a terrorist; the terrorist knows where a bomb is that is going to
decimate Los Angeles; they’re breaking the law; what do you do? For people in the legal profession this is a kind of issue that, long before it became the kind of reality that we are talking about here, was something that people struggled with, the relationship between the rule of law and practical necessities.

One of the things that I think is really very heartening to me as I reflect on what has happened in the past seven years is really the way in which, by and large, the legal profession has really held true to the rule of law, has held true to the rules against torture.

I think, as a profession, we are wedded to the notion that the focus has to be on the larger principles rather than confronting what seems to you in a specific situation the right thing to do because it will produce the best results. That’s what constitutions are about; it’s about framing a rule that lasts for all time, that keeps you from yielding to temptation, and that’s what the rule of law is about. So that’s the positive piece.

Now, it hasn’t been totally consistent. Dr. Wertz told you at the very beginning that I was in the Office of Legal Counsel in the Department of Justice from 1998–2001. The Office of Legal Counsel answers legal questions for the Attorney General and the White House. I was one of the deputies. As a deputy, my two primary areas were criminal law and international law.

The person who was my successor, John Yoo, was the one who, among other things, wrote the torture memo, which really sanctioned, said it was okay, for the United States to engage in what in any common parlance is torture. He defined torture as causing organ failure, which means you can do anything short of that. He was the pivotal figure from the law’s point of view in formulating a whole series of decisions that allowed the Administration to engage in a lot of the activities that we have been focusing on and that we will focus on. What I think is important to recognize, though, is the extent to which, when he did that, he was breaking with the rule of law and he was breaking with the way in which the government is structured.

The Office of Legal Counsel is supposed to be like the judiciary of the Executive Branch. It is supposed to decide cases on the basis of precedent, and it is supposed to be particularly conservative in allowing the Executive to do things when what it is allowing the Executive to do will not become public. In other words, it is considered, in terms of OLC precedent, better to be aggressive if the world can then see what the Executive is doing and stop it than if what you are doing is covert and will never be known.

What John Yoo did was, first of all, he took a view of the law that was at odds with OLC precedent, at odds with the way in which the words of the statutes that he was interpreting had been interpreted. Torture in previous case law had always been read broadly, to bar a broad range of actions. And he took a view of the scope of Executive power that was totally novel in terms of government
practice. It was not that John Yoo was being deceptive — he got tenure at Berkeley for taking a view of Executive power that he then applied when he was at OLC — but in terms of what the government had always done, it was novel. Essentially, if you read these opinions — and they are breathtaking; they are now public — they essentially say that when the president decides something is in the national interest, because he is responsible for foreign affairs, that’s the end of the analysis.

John Yoo, working with a limited number of other Department of Justice attorneys, put together essentially the template that authorized the Administration to do what it did. Because of that, the legal profession is complicit in the kind of torture that we are focusing on today. But as I was thinking about this, what struck me overall, however, was the way in which at a time of crisis, at a time in which the hypothetical that I had in 1983 in law school seemed to become a reality, the legal profession held true to the rule of law.

For example, if you look at the accounts that we now have of what happened within the Administration, where OLC was being very aggressive, the State Department’s Legal Advisors Office was saying, “This is wrong,” one of the heads of OLC stepped down, and the JAG [Judge Advocate General] attorneys, who are the military lawyers, were consistently against a broad reading of what was permissible with respect to torture. We talked in the first sessions about Human Rights First’s recognition of the military officers who spoke out against torture. Most of those were JAG lawyers, or many of those were JAG lawyers, generals who were the leading lawyers for the Air Force and the Army and the Navy, who spoke out against what was going on, spoke out against torture.

You saw the same thing among leaders of the bar. Actually, the City Bar was very active — it had a report that came out just at the time of Abu Ghraib that really denounced what was going on — as did the American Bar Association. And the lawyers at Guantanamo were overwhelmingly members of the elite bar and of law schools who were representing defendants at a time when it was very unpopular; [these lawyers included] for example our clinic [at Fordham], the clinic at Seton Hall, and the clinic at Georgetown. Neal Katyal brought the Hamdan case, which is really the central case.

And finally, if you look at the judicial decisions at the Supreme Court, there have been four major cases in the Supreme Court since 2004 about challenges to what was going on in Guantanamo in particular. In each case — in Rasul in 2004, in Hamdi in 2004, in Hamdan, and Boumediene most recently — the Supreme Court upheld the rights of the people who were being held in Guantanamo, the people who were being accused and denied rule of law procedures.

Again, it’s not to say that the entire legal profession has recognized the damage and the harm that violating the rule of law can do.

[Richard Alleva], you read the Richard Posner quote at the very beginning, who’s
a very esteemed Seventh Circuit judge. And Justice Scalia in the most recent opinion said in dissent, “At least thirty of those prisoners hitherto released from Guantanamo Bay have returned to the battlefield.” The majority’s decision “will almost certainly cause more Americans to be killed. The nation will live to regret what the Court has done today.”

But I think overall, again, what the story of the past seven years demonstrates is that the commitment that the legal profession has to the rule of law is a strong one and it is a necessary anchor to resisting temptation. That for me is the most powerful lesson to be drawn from the struggle against terrorism, is that the rule of law and the commitment to individual liberty is something that we must have an unyielding commitment to.

**FREDERICK WERTZ:** Colonel Patrick Lang.

**PATRICK LANG:** As a matter of curiosity, are there any career military people here? Any career intelligence people? Any career police people? Okay. I always like to know.

I think that it is important to understand that what has been said here about the influence of the media on fresh young minds and people entering the military over the last ten, fifteen, twenty years is extremely important. The influence of the media is widespread. If you look at this film — Mr. Danzig is still here, I presume — that was shown, it was specifically designed in the beginning — I can see from the way it was designed and the presence of Colonel Solis there — to be used as a teaching vehicle at West Point.

This film is not really about teaching interrogators things, it is about teaching people who are going to be commissioned officers things, because in the military commissioned officers are not interrogators, enlisted men are interrogators, but commissioned officers set the tone for everything that happens. They set the moral tone, they set the boundaries for what can happen, unless you’re out on a five-man patrol somewhere run by a sergeant who captures some guy in an Iraqi village, in which case the guidance he has received in the past from his officers comes into play there. This is really about officers. So you are really talking about the philosophy of an institution in the case of the United States Army.

I can talk about the Army. I won’t attempt to speak for the Marine Corps; they live in a different world so far as I am concerned. I can talk about the intelligence community too. I understand how that works since I used to run a considerable piece of it.

In the case of the Army, I think General George Marshall, for whom I have the greatest respect possible, got it exactly right in the way he was quoted in this film, that there are in mankind demonic forces — it sounds kind of Nietzschean — that can rise to the fore when released, and that the circumstances of combat and the application of violence in what is deemed to be the national interest are a great
temptation to let loose those forces on an unlimited basis.

Samuel Huntington — I’m sure a lot of you are familiar with his name — wrote the book, called The Soldier and State, long ago, in which he said that the professional officer is a manager of violence. That’s exactly right. My family has been in the business of managing violence for the United States since 1861 on a pretty much continuous basis. The law of the United States Army is really the law of our village. Most of you probably don’t think of the Army as a village, but it is to us. It is a village.

The Army knows extremely well, through hard experience, that the trick in combat and in controlling men who are armed and have been trained to kill at your direction is to control them, not to let them loose. They are easily let loose. If you put them in the circumstance in which they fight and they kill and they are not under good control, because you the officer, or the officers collectively, do not have a good, firm idea of what must not be done, then in fact they will do almost anything. That is true in any army in the world anywhere.

You have to remember that soldiers are not policemen. They are not there to arrest people. They are there to kill people and destroy things in the service of their government. That is what they do. Every government in the world, except maybe Costa Rica, has deemed it necessary to have people in an organized group to do that, either to defend itself, to suppress insurrection, things of that kind — as, for example, in the instance when my family got involved in this in this country. So this is a very important thing.

Since the Army understands that, over many, many years it has worked out a careful philosophy of what is not to be done, which is expressed in the words of that field manual that you saw up there — you cannot do this, you cannot do that, you cannot do these things, because those things are destructive of discipline and the ability to control men and prevent them from doing truly bestial things.

It is understood by the Army that if you let people do those things that you forbid, that you know are not to be done, that are forbidden by the Uniform Code of Military Justice, then in fact they become uncontrollable, because you break down their self-respect as human beings, you break down their sense of identity as Americans, who usually have a basic idea of what is right and what is wrong, when Jack Bauer isn’t messing with it. [When he is] things go to hell in a hand basket very quickly, as they would say in the military. So it is understood that you cannot do that.

To that end, the Army is very careful in all the years that I was in the Army — and I was in the Army as an officer for twenty-six years, then I was an executive in the intelligence business for eight or nine more years, and I continue to try to give them advice. It is very clear that they train people; the process of interrogating prisoners by military personnel was a process in which what you had to do was you had to apply only that amount of pressure which did not fit any of those...
[prohibited] categories. In other words, you could yell at the man, you could be persistent, you could be insistent, you could seek to trick him in some way into telling something you wanted him to by a verbal display of *legerdemain*, something like that, but you couldn't hurt him physically. Very clearly understood that that was forbidden. And everybody understood that.

So, in fact, the Army never trained anybody to torture anybody. The United States Army never trained anybody to torture anybody to get information — never — and I ought to know.

So how did this happen, this business in Guantanamo and in these places in Afghanistan and every other little rat hole around where they have managed to secrete people? How did that happen?

Well, what happened was, in fact, that we finally had a government that was willing to encourage the kind of nonsense that has taken place and to tell people that, “We don’t care how you find out whatever it is in the aftermath of 9/11. These people attacked us, and these people, whoever they are, all these funny dark-skinned people here who worship a strange god, these people are our enemy, they are all our enemy. Even though you don’t know anything about that, they are our enemy. Find out what we want to know. We don’t care how it is you find out.”

It’s very clear now, from all the things that were said, that that kind of stuff rolled right downhill from the White House and the political side of the Pentagon, down to where the rubber meets the road. There are all these guys in an army, as there are in any activity in human nature anywhere, who are willing to do whatever it is that will get them promoted — in other words, what the boss wants. You can always find one or two here, there, everywhere. You can find them in any institution. You can find them in church actually.

**DREW CHRISTIANSEN:** I’ll say something about that.

**PATRICK LANG:** You can always trust a Jesuit to tell you the truth about that.

The fact of the matter is that that’s what happened, in fact. The people were told to “get tough, get tough, get tough.” They had never been told how to get tough, these enlisted interrogators at Guantanamo and places like that. So what did they do?

I’ve done a lot of research on this. There used to be a training phenomenon in the Armed Forces called the SERE program — I guess there still is — Survival, Evasion, Resistance, and Escape. We used to teach guys who might be downed air crews or Special Forces characters like me how to resist interrogation and how to escape if you were captured by these absolutely rotten characters that we’ve struggled against in the Cold War. This was an expectation. So we trained them.
So people tried to figure out what it is these awful people would do to our people, and we did that in modified form to people on our side who were in training. Now, I’ve been the victim of this, so I can tell you it wasn’t pleasant in fact.

In the beginning of this business with Guantanamo and these things, looking around, since nobody had ever trained anybody in the U.S. Armed Forces how to torture people for information, what is the only thing they knew about this? They knew what had been done in these SERE schools. So that’s what they did. If you don’t think that’s true, then why is it that the U.S. Department of Defense just issued a directive last week forbidding people to use techniques used in the SERE schools for training against foreign prisoners? That’s one thing.

Then, on the other hand, you have lawyers, like this Yoo fellow, who had a rather expansive view of what the president’s authority ought to be.

Since we’re confessing to knowing people like that, David Addington is a neighbor of mine, one block away. His house was struck by lightning a few years ago. One of the neighbors said, “Well, we should have known.” But they rebuilt.

So those things came together to create this atmosphere in which people started doing things for which they had never really been trained. And then, on top of this, you have the influence of these wretched TV programs and movies and things like this, in which people do things that would never be done in fact in real situations.

My wife is really tired of me — maybe in a lot of ways after all these years — but in fact she is tired of me watching things with her on television and getting really upset because it depicts the Army or the intelligence community or something like this that are doing some stupid, foolish thing that nobody would ever really do in a million years.

But as was said in the first panel, they don’t care in the least about that. This is a competitive business out there in La-la Land. In fact, I’ve been so lucky, or unlucky, as to be consulted by the producers and directors of a number of feature films. One of them was The Kingdom — anybody see that?

People are always asking me, “How would this really be done?” I tell them how it really would be done. They say, “No, we don’t want to do it that way. That’s uninteresting. That’s dull. That’s boring. What do you mean everybody can’t drive a Cadillac Escalade in the embassy? What do you mean? Chevy trucks? What are you talking about?” The list of things like this in which they’re not interested is absolutely incredible. So they create this stuff.

Having been a professor at West Point myself long ago in fact, I can tell you that those kids up there, and in all sorts of places where junior officers are trained, are absolutely tabula rasa, especially in this day and age. Anybody who still thinks that the service academies — Annapolis, West Point, all that stuff — that these
kids come from some kind of white-glove society background is absolutely wrong and about forty years out of date. In fact, these are institutions that draw their students from a very capable group of people who come from blue-collar and lower-middle-class families where these kinds of things have never been discussed in a million years because people are too busy making a living.

So they arrive up there and they are completely in the hands of whoever is going to shape their little minds. Four years of shaping their little minds was enough for me.

Films like this are very important. So the fact that these kids would think that Jack Bauer was a great national hero doesn’t surprise me in the least.

In fact, you have on the one hand the Army, which is my native institution, which understands fully that almost never is physical coercion an effective means of interrogation of a prisoner, and it is certainly the wrong thing to do, it is certainly destructive of the institution of the Army and the minds and souls of the men and women in it — you know, it understands that very well. These guys are engaged in mortal combat against this rush of popular culture out here that’s trying to teach these kids the opposite. And then, we’ve had a government which in fact encouraged them to think that “whatever it takes, you go out and do it” — well, when you are dealing with men who have guns and who have been trained to kill, you are taking a hell of a big chance when you start telling them things like that.

Thank you.

**STEPHEN WERTZ:** Next we’ll hear from Dr. Steve Behnke.

**STEPHEN BEHNKE:** Thank you very much for including me and the American Psychological Association in this important discussion.

In my brief remarks I’d like to do three things. I’d like, first, just to say a word about the American Psychological Association and who we are. Second, I’d like to give an overview of how APA became involved in the issue of psychologist involvement in military interrogations. Third, I’d like to explain how we have approached this issue and describe our current position. I know that there will be time for discussion and then there’s another entire panel devoted to discussion, so I’ll just touch upon what is in fact I think a very complicated story that I hope we’ll have a chance to talk a little bit more about.

First, the American Psychological Association has about 150,000 members and associates. Members in the Association address a wide range of areas, anything to do with human and nonhuman animal experience. Thus, psychologists will offer traditional psychotherapy, help determine whether an airline pilot is fit for duty, and explore basic components of how the eye perceives in darkness. There are fifty-six divisions in APA, reflecting the broad range of what psychologists do. One of these fifty-six divisions is a Division of Military Psychology.
Second, how did psychologists become involved in this issue, and specifically how did APA become involved in this issue? In 2004 two events unfolded. Stories in the media began to emerge about events that had occurred or were occurring at Abu Ghraib and Guantanamo Bay. There was enormous concern in the Association about what we, along with all Americans, were learning. At the same time, members in the Association in military and national security roles began to ask how the APA Ethics Code applies to their work. The APA Ethics Code applies in direct and obvious ways to issues traditionally associated with psychology. For example, the issue of plagiarism, the issue of informed consent, release of psychological testing data, sexual involvements with clients — all of those are tried and true aspects of how we deal with our ethics. Our rules are very clear and very settled. The implications of the Ethics Code for other areas of the field that were expanding, such as national security roles, were less obvious. Given these two concurrent motivations, APA established a task force to examine the ethical aspects of psychologist involvement in interrogations.

Third, regarding the position of the American Psychological Association, the task force that was convened met in 2005 and began a series of positions adopted by the Association. APA has adopted policy on the issue of psychologist involvement in interrogations in 2005, 2006, 2007, and twice in 2008. So it is an ongoing area of intense attention.

Because my time is brief, I'll paint with just at the moment very broad brush strokes. All of APA’s work on this issue, in my opinion, can be thought of as falling under two questions.

The first question is whether torture and abuse are ever permissible as part of an interrogation process. On that question, the first question, there is complete unanimity within the Association. The answer is no; torture and abuse are always unethical and always prohibited. Of the many statements APA has made to this effect, one resolution takes language directly from the UN Convention Against Torture and states that there is never a justification for torture.

I’d like to stress the unanimity within the Association on this issue. Over the last four years, I have spoken with hundreds of psychologists across the country. Never once has there been appeal to the ticking-time-bomb scenario to justify torture or abuse. That scenario has simply not been part of our dialogue. It has been completely rejected by the Association as a justification. So the first issue is whether torture and abuse are ever justified. The answer is no. And by virtue of APA’s condemnation of harsh interrogation techniques, the national media, The Washington Post, has called our position “a rebuke of Bush Administration interrogation policy.”

The second issue is where psychologists may work. Now, on that issue there has been a great deal of discussion and debate within the Association. The debate on the second issue has concerned whether it is preferable to pursue a strategy of
engagement or disengagement to fight policies that allow abuse. Some APA members strongly support a strategy of total disengagement from military interrogations. Others have argued for a strategy of engagement and said, “No, psychologists should be present to make clear that interrogation done ethically and appropriately never involves torture or abuse.”

Now, in the latter camp, that of arguing for a strategy of engagement, is Dr. Mike Gelles, who is perhaps the most well-known psychologist who has fought the abuse of detainees. Dr. Gelles was at Guantanamo Bay. If one reads Jane Mayer’s accounts in The New Yorker or in her book The Dark Side, it recounts the story of how Dr. Gelles called the issue of detainee abuses at Guantanamo Bay to the attention of Alberta Mora, who was then General Counsel of the Navy.

Now, this debate about whether we should pursue a strategy of engagement or disengagement has been ongoing. APA’s most recent policy on this issue was passed just in September, and that says that psychologists may not work in settings that violate international law or the U.S. Constitution unless they are working directly for the detainee or for an independent third party concerned with human rights. That is where the American Psychological Association is today.

I think that we in the Association very much look forward to working in settings run by an administration that believes in fully protecting the human rights of detainees and fully adhering to the Geneva Conventions. Thank you very much.

FREDERICK WERTZ: Our final speaker will be Father Drew Christiansen.

DREW CHRISTIANSEN: I want to commend Dr. Behnke for keeping to the eight-minute limit that Peggy Steinfels set and giving a lot of substance in that short time. Earlier in the first panel there was some question about when American sensibilities towards torture began to run down. The conjecture was the Indian wars in the late 19th century.

Has anyone here ever heard of Hannah Dustin? Who was Hannah Dustin?

PARTICIPANT: She was captured by Indians in New Hampshire and her baby was killed.

DREW CHRISTIANSEN: She went back, led a raid, took scalps. There is a statute in Haverhill, Massachusetts, in her honor. She wrote an autobiographical account of the capture and the detention in the Indian village. It became the basis for ideological attitudes on the part of the English settlers in the Massachusetts Bay Colony towards the natives in the surrounding areas from the late 17th century on, from King Philip’s war. So this notion of desensitization has a long, long history.

After the Vietnam War, some social psychologists talked about sanctions for evil.
Hannah Dustin’s autobiographical account wasn’t, if you will, a sanction for evil. It began with the kind of horrible taking of scalps and other things that went on in the relationship of the settlers to the natives after that period.

In the intellectual history of the West — and here I feel as if, representing the Church, I come like Atlas with the world on my shoulders — the real beginning of the intellectual justification of torture begins with St. Augustine, who justified what he called “coercion” by distinguishing between the good of the body and the good of the soul. You could torture the body or inflict pain, what he called *disciplina*, for the sake of the good of the soul. From then on, you have the use of coercion for religious purposes, at least the justification of it, until the year 2000.

In 2000 Pope John Paul II had a unique day at the beginning of Lent called the Day of Pardon, where he asked God’s forgiveness for the sins of the church over the last millennium. He could have gone back another 600 or 700 years to the time of Augustine as well.

One of the specific things for which he asked forgiveness at that time was for the use of coercion in the Inquisition. He asked for forgiveness for the Crusades and other things, but for the use of coercion in the Inquisition and against heretics generally. That was the settling, it seems to me, of the Catholic account on torture in terms of the intellectual side.

Now, it’s not as if that was a universal position — there were bishops and monks who led demonstrations and nonviolent campaigns against coercion and forced conversion for centuries, until the High Middle Ages, both in the Eastern and in the Western Churches — but that became, with Augustine’s authority in the High Middle Ages, a kind of settled position until the year 2000, when it was finally rejected out of hand as a sin by members of the church.

The work of the contemporary church against torture goes back some time. I have not been able to trace myself how far back it goes. But when I was with the Office of International Justice of the Peace, we worked with John Salzberg. John was the legislative aide who with Don Fraser wrote the first human rights legislation under the Carter Administration, and then in the early 1990s was working on promoting centers for victims of torture elsewhere. We provided him with assistance and backing for his cause and resolutions. My successor, Jerry Powers, continued to do that in testimony before Congress in 1998.

As far as the Catholic Church goes — and here you could go through each denomination or faith group and do a history — I am going to talk first about Catholic tradition, just to be in continuity with what I’ve said, and then about the National Religious Campaign Against Torture.

The Bishops Conference supported the prohibition of torture and abuse in the military in the Congress in 2004 and 2005. When the National Religious Campaign was organized in 2006, people were pressing about why the
Conference hadn’t done more. Other people who were from other churches, who had been active in the lobbying for the prohibitions that came in in 2006, said to me: “Look, the work that was done by the Conference really made a difference at that time. It really did help solidify opinion so that we got legislation.” The problem was, as successive chair people of the Bishops Committee on International Policy have said, that they weren’t able to get legislation that extended that to the rest of the government. But that’s still the position.

The most recent work of the Conference is this manual, *Torture As a Moral Issue: A Catholic Study Guide*, which was published in July. You can get it on the Web at usccb.org. It’s a manual that I think is based a lot on the work of the National Religious Coalition Against Torture. It is distributed and endorsed by the Bishops Conference.

When it was released, our own editorial commentator at *America* said, “Well, it doesn’t talk about Abu Ghraib and it doesn’t talk about ongoing problems of torture, like rendition and so on and so forth, and the continued permission for torture in the CIA.” But I still think it is a substantial document that can be used in training parish groups to take this up as a moral issue.

A further criticism is simply that there is not a really heavy campaign, as there has been in other things like landmines, to make this an issue which each parish is going to be asked to educate on. At least the dioceses and offices are going to be asked to promote it in their dioceses. Materials are available and statements are released and legislative advocacy goes on. But it is not a full campaign, if you will.

The National Religious Coalition Against Torture was founded by George Hunsinger, a graduate school classmate of mine who’s a professor at Princeton Seminary and a student of Karl Barth. Of course, being a student of Karl Barth, with his great images of Barth saying no to the government of Hitler and helping organize the Confessing Church under Nazi Germany, when the torture issue broke out, he thought religious people out to be speaking out. So he organized this conference at the beginning of 2006 that brought together people from not just the Christian churches but across traditions— Muslims, Hindus, Buddhists — and from para-religious organizations in the National Religious Campaign Against Torture.

The Campaign has run ads; they have produced a film, called *The Ghosts of Abu Ghraib*, which can be used in congregational education; and they have congregational educational programs. Among its continuing objectives are excluding exemptions and exceptions by the United States to its international commitments prohibiting torture and abuse, opposition to forcible rendition, and the prohibition of secret prisons.

I think, in conclusion, that for me one of the most astounding things — and there is still a lot of controversy about the Bishops’ 2007 document, *Forming*
Consciences for Faithful Citizenship — is that in talking about life issues, the Bishops stated that “the conscientious Catholic is required to resist” — that’s a very strong word. Aquinas didn’t say “resist evil,” he said “avoid.” The Catholic tradition has really picked up something from Martin Luther King in using the term “resist unjust war and torture and oppose preventive war.” To resist means to actively oppose. That was exceptionally strong language in Forming Consciences for Faithful Citizenship, and it’s language we ought to bear in mind, I think, as we move ahead and think about what we must do on this question.

Finally, I think for Christians generally the way we need to think about torture is at the foot of the cross, which is itself an instrument of torture and of death. It is there that our faith takes its beginning. So in responding to torture we have to begin with that sacred memory. Thank you very much.

FREDERICK WERTZ: We have some good time to discuss among our panelists. Let me briefly share an impression, maybe pose a question to get things started, and then I’d like to hear the comments of the panelists on each other’s presentations and also their questions of each other.

I guess my overall impression, hearing such knowledgeable leaders in such crucial professions as the law, the military, psychology, and religion, is that there is tremendous concern about the problem of torture. There is tremendous opposition to the problem of torture. There have been strenuous, and maybe even heroic, efforts within these professions and their leaders to oppose, to resist torture.

And yet, even with that, I am left with a kind of lower-level feeling that the problem isn’t solved — and not just the problem of torture, but the larger issue of human violence, inhumanity of a person against another person, and the way in which we are tempted to do that, the way in which we somehow in some situations feel it is justified. Even lawyers at the highest levels are defining torture in a very narrow way and seeking to justify it, or governmental officials, from the president and through our system, are somehow tempted, somehow taking the position that these professions are so strongly opposing.

You know, within the military, there are these demonic forces to kill that are somehow justified, that there is a thin line there that they need to be controlled. So the military is on the right side, but it is kind of playing with fire, just as lawyers feel tempted to justify.

I’m happy I’m a member of the one profession where there are no members who argue for torture, psychologists. It doesn’t happen. Totally against it. We’re all good. Even religion, no less than Augustine, has tried to justify bad treatment of the body for a higher good.

So I guess the question I’d like to pose to the panelists is: Given that the problem isn’t solved, given that there is a larger problem glaring at us, as virtuous as our
professions in their best moments are, and given even that within these professions there are temptations, there are movements, that are not so resistant to this problem, and also in our culture at large there are also these temptations, what are the greatest challenges your profession faces right now in coming to terms with this, both within itself — lawyers, military, psychologists, religious — and also the responsibility for the rest of the world; what can you do for us, the rest of the world — what are the challenges for the law, for the military, in terms of self-monitoring; and, on the other hand, responding and relating to this larger problem in our culture, in our society, in our own personal lives?

Who would like to go first? What’s the biggest problem? What’s the biggest challenge? Where do we go from here? What needs to be done in your part of the world?

WILLIAM TREANOR: It’s a terrific question. There’s no easy answer. In some sense, the larger question is: how do you keep people from yielding to temptation? You can apply that in an endless series of areas.

One of the things that really strikes me, thinking through this, is that when we have a constitution or when we have a law or when we sign treaties, it reflects our deep principles, our better selves. So we have a federal anti-torture statute, we sign the Geneva Conventions, we sign the Anti-Torture Conventions. There is a whole string of cases that are about what torture means. That’s our better self.

The challenge that we face is how we deal with the temptation of the moment. From a lawyer’s perspective, I think it really is about embracing the rule of law, about following the normal procedures, about not yielding to temptation. The Office of Legal Counsel has certain policies about what it looks at in answering questions. John Yoo didn’t follow them. Even procedural rules — the Office had a rule that any major decision had to be signed off by the Assistant Attorney General and two deputies. John Yoo’s decisions were not signed off on by the Assistant Attorney General and they were not signed off by two deputies. He was kind of put in a position where he was blessing things in a way that really defied all of our procedures.

The rule of law — the example I always give is it is like smoking. In other words, they’re like New Year’s Day pledges. On January 1 you say, “I will not smoke,” and then you stick to that. Whereas if you’re making the decision moment to moment, you say, “I really have to smoke.” But what you have to do is you have to hold true to the New Year’s Day pledge. That’s what a constitution is and that’s what a statute is and that’s what the procedures we follow every day are, and you can’t deviate from them.

DREW CHRISTIANSEN: I think in religion the biggest problem is acquiring the number of personnel. We run ads for military chaplains in America, and take a lot of guff for it. For that reason, we’ll be running a pair of articles in a few weeks on military chaplaincy and alternatives of military chaplaincy, turning
around an editorial about why we think we ought to continue to run those ads. But the fact that there aren’t enough Catholic chaplains in the military to deal with young people in those situations is an important problem.

But I think it’s equally a problem — and it’s across denominations — that the number of vocations to the ministry are down and the quality of the personnel are down. So the ability of people to handle difficult issues like this is really reduced. The roles in which people have time to exercise themselves will be reduced because more demands will be on them, but also their competence is reduced because they are not of the quality that they once were. I think those are the biggest difficulties we have in facing this kind of issue.

PATRICK LANG: It was mentioned at the beginning here that I’m a director of the Harry Guggenheim Foundation, a foundation which is devoted to the elimination of war. I’m the practitioner member on the board. I am amongst all the social scientists and people of that sort. So I deal with this problem a lot on the intellectual level.

I think that, unless you can really visualize a world in which there will be no armies — and I know there are a lot of people who can visualize that, but I can’t — if you believe, as I do, that there are probably always going to be armies, because of what we used to call the element of Original Sin in mankind, then in fact you have to figure out how you are going to control the beast.

If you are going to have the army, you have a caught and caged tiger. That tiger has to be taught in fact that it is the servant of your people, and not someone who endangers not only you but in fact the things that you stand for and believe in.

We’ve worked at that for a very long time in the U.S. Army. Now, I don’t speak for the CIA or any of those people. But we worked at that for a long time.

We had a breakdown of that system here in the last ten years. The Army as an institution is hell-bent on getting the tiger back on a leash. So now you have things like this training film welcomed, and cadets at West Point and all these other schools are being taught a lot more about what their professional moral and ethical obligations are, all the things they can’t do. That’s an extremely important thing.

I think that we are about to have a change of administration here in a direction in which you will see that the people in charge now in the Army who want to set this straight, in fact make sure it stays straight for a long time, in fact are really going to have the upper hand, and those who in fact caved in and sought their self-interest in appeasing the present Administration are going to be put out. The Army is very good at that. It purges itself with great regularity. They are finished. So you can take some comfort in that.

But in fact this problem will never go away. As long as people are what they are,
and as long as you have armies, this is going to be a problem. The problem has to be dealt with all the time. It has to be watched all the time and dealt with.

People like these lawyers, the JAG officers who have been referred to, who are like the guardians of the Army’s legal conscience, and the chaplains, the guardians of the Army’s soul, are people who in fact are very important. It’s a great disappointment to me that there are not more Catholic clergy who wish to be chaplains, because I think they are really not following the kind of example that they should have found in religion.

**STEPHEN BEHNKE:** I agree completely with Colonel Lang that as long as human nature is with us, this problem will be with us. But I think if we take a look at the last several years and what has happened, I think from the perspective of psychology there was a toxic combination. That combination was a hugely high level of anxiety that was experienced in a vacuum.

The vacuum, I think, has been very well described actually in a report of the Department of Defense Inspector General [the Taguba Report] that was made available in 2006. What that report describes is a situation early on in which there was no clear policy about what was appropriate for interrogations and no oversight into the conduct of interrogations.

So you had this hugely high level of anxiety that was being manifested by an administration — I think Jane Mayer describes this very well in her book — that literally thought we were on the cusp of another attack. That anxiety was being felt with very little direction or oversight into how these activities were taking place. I think when you put those two together it was just fertile soil for terrible things to happen.

We now have a new Army Field Manual that I think has many good aspects of it — certainly not perfect, but it has many good things — along with the prohibitions about you cannot do a number of activities during interrogation, such as water boarding, such as forced nakedness, such as sexual humiliation.

At the end it has a two-part test. One of the parts of the test said: “Ask yourself this question” — the introduction says no list can ever be exhaustive. The question you should ask yourself is: “If this technique were used against one of your fellow soldiers, would you consider it abuse? If you answer that question yes, don’t do it. Consider it prohibited.” I think that there are signs that we are moving in a good direction, but clearly we have a distance to travel yet.

**FREDERICK WERTZ:** I’d like to open it up to the panelists. Do you have comments on each other’s presentations or questions for each other, reactions to the whole conversation?

**WILLIAM TREANOR:** Colonel, would you say that torture never works, or is it that it’s not worth it?
PATRICK LANG: Well, I think anybody who has ever worked in the intelligence business, either in combat or otherwise, knows that in the overwhelming majority of cases physical coercion in a questioning situation is likely to lead to deception. That’s not rocket science; it’s just common sense. It occurs a great deal.

And oftentimes people push too far. As somebody said here somewhere, [the detainee] seeks to put the blame for whatever [the interrogator] is looking for on some rival of within their organization, something of that kind. There are lots of things like that people do. It is conceivable, I guess, that there is some situation out there in which physical coercion might be effective. But I think it is absolutely essential that government should make it very clear that in fact government considers this to be a crime and will punish it accordingly. It must be a crime, because if that barrier comes down, then in fact people will start to embroider around the edges for themselves, make excuses for themselves, in such a way that worse and worse things will be done, loopholes of one kind of another will be found in the law. So that barrier has to stand there like a rock.

In an odd way, it’s analogous to the situation with regard to the idea of the imposition of martial law. Now, I went through all the Army’s officer schools from the bottom to the top, and in every one of these things they teach a fair amount of law as it would apply to you, the officer students.

One of the things I always found interesting was the business about martial law, that a commander in a place where civil authority has broken down can use his troops to impose order. That’s fine, except that you are responsible before the civil courts for what you did and what your troops did once the civil courts are reestablished.

In a way this is analogous. If you choose to do something, whether you are a three-stripe sergeant or a full colonel, in the field that violates the essential legal principle that people may not be tortured, then you should answer for that in a court of law and the courts should decide.

I think it is absolutely essential that it be a principle in military law that torture is a crime.

FREDERICK WERTZ: Drew Christiansen?

DREW CHRISTIANSEN: Dean Treanor, my question kind of follows from that. That is, what remedies do we have for people like John Yoo, the lawyer who is now at Berkeley, or the generals and the political appointees who approved the torture techniques?

PATRICK LANG: Well, unfortunately, I think that it is unlikely that, since American political life depends on the principle of a seamless and uncontested
transfer of power on the basis of elections, I think almost anybody who takes over is going to be extremely reluctant to start punishing the people in the previous administration. So this is a powerful inhibition to that.

There are a couple of generals in the Army — one in particular I could name, who enthusiastically signed up to be the mentor of how things were done at Guantanamo — whom I would love to see court martialed. But in fact I don’t think it is likely to happen.

**WILLIAM TREANOR:** I think, just as a matter of law, a couple of points. To some extent, you’ve got kind of two mirror images. John Yoo in the Office of Legal Counsel essentially blesses what goes on. Actually, this is debated among lawyers now. But I think the mainstream view is that that gives you an authorization defense. If you are the person who engages in torture and you have an official decision by the Department of Justice that says that what you have done is not torture and that you are legally allowed to do it; that is a defense, just as a legal matter. And again, that is not an uncontroversial statement, but I think that’s the best view of the case law.

**PATRICK LANG:** Whether or not it would be a successful defense, you don’t know.

**WILLIAM TREANOR:** Well, I think it would be — again, when you get a government official who tells you — think about with all of these things. Whether you’re a nineteen-year-old or whether you’re a general, and the Department of Justice says “you can do X and it’s not unlawful,” that is generally a defense to a criminal prosecution — not just asserting it, but it is something that, if you were to be convicted, most courts of appeals would throw out the conviction.

John Yoo, again, has become a very controversial person at Berkeley. Some people are calling for his removal of tenure. But again, just as a matter of criminal law, I would say —

**DREW CHRISTIANSEN:** How about discipline by the bar?

**WILLIAM TREANOR:** Again, there is a move to discipline him by the bar.

I think with all of these things, to some extent, the accountability rather than sanctions is really the best way to proceed. In other words, everybody at this point knows what John Yoo did. He has to live with that. If he thinks that’s fine, that’s really for his own conscience to bear.

As a lawyer, I would be hesitant to use bar sanctions against him as well. But again, there are people who feel very differently about that.

**STEPHEN BEHNKE:** I just think we need to be very cautious about not giving vent to the very impulses that we are so worried that have been so destructive. So
I think we just need to be aware of that possibility. It seems to me essential that the story be told so that we know what happened and that there is accountability in that sense.

**FREDERICK WERTZ**: And that open debate and transparency is part of the solution, I think. Military secrecy, even privilege of confidentiality with lawyers — you know, a lot of the problems we are seeing are taking place shrouded in darkness. I guess that is often justified as it has to be the way it is.

But I think that transparency — I think if people knew more about the nature of our military, what their ethical principles are, what their training involves, I think that education and that transparency, and people’s awareness of the struggles of the legal profession with temptations to diverge from the rule of law, and psychologists, and in religion too — transparency, debate, dialogue may be more of a solution than sanctions.

**PATRICK LANG**: I come from a very different world. My world is more like the church actually. It’s a highly hierarchical system built on rewards and punishments and advancement and patronage and that kind of thing.

In fact, if there are not sanctions, the ultimate lesson that will be learned is: “Well, he got away with this and he retired as a major general.” That will be the lesson that will be learned by some. So you have to make sure that lesson is not learned that way.

**WILLIAM TREANOR**: But I think, just as a matter of law, let’s go back to the Jack Bauer case. As a matter of law, if Jack Bauer wants to engage in torture because he thinks it is in the national interest, it’s a crime. That’s a decision for him to make in some sense, to face the criminal sanctions under the criminal torture statute. And then, if the president wants to say, “Jack, that was terrific,” he can do it, but he has to do it publicly. It’s called the pardon power.

But then they have both taken ownership. You know, Jack has said not just, “I think this is in the national interest — ”

**DREW CHRISTIANSEN**: But someone has to bring charges against him for that to happen. Someone has to have the courage at the moment to say, “Jack Bauer is responsible for this crime. We’re going to seek a trial and sanctions.” Then the president can go ahead and pardon him.

**WILLIAM TREANOR**: Right.

I think that one thing from the lawyer’s point of view that I think non-lawyers don’t appreciate is the professionalism of the bar and of government lawyers. I mean the JAG lawyers were very courageous. U.S. Attorneys Offices bring cases in situations like that, the way it is supposed to work, because they think the law has been broken.
DREW CHRISTIANSEN: But we also know from history that the JAG system was corrupted at certain points. There was political influence that strongly influenced the handling of the cases.

PATRICK LANG: Yes.

FREDERICK WERTZ: This will be the final comment in the interest of time and our kind audience.

PATRICK LANG: If you’re going to talk about corruption of the system, if there is sufficient political pressure for a long enough period of time, you keep electing governments of the same kind, and they keep applying the same kind of pressure, eventually the system breaks down and becomes a different system. You have to be very careful about doing that.

If you want to talk about a brave man who wasn’t a lawyer, how about Major General Antonio Taguba? How about that guy? He’s an immigrant from the Philippines who was a major general in the Army, certainly not a member of the inside group, who had the courage in fact to call it just the way it was with regard to the Abu Ghraib situation. You don’t see him around anymore, do you?

FREDRICK WERTZ: Thank you, panelists.

MARGARET STEINFELS: We will be back at 4 o’clock with a few last comments from all of the panelists and then time for your questions.