

## **Parsing law in context of terrorism challenges trio**

*By Jerry Crimmins  
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In a spirited discussion about the war on terror and whether torture is ever justified, two attorneys critical of the Bush administration asserted that even they might torture a prisoner if this could save thousands of lives.

The third lawyer in the panel discussion Thursday night, who defended the Bush administration, stated that "water-boarding" appeared to be "a nice humane form of torture."

Those remarks were elicited Thursday night by moderator John D. Callaway during the discussion of "The War of Law: the Balance of International Law, Military Law, and Constitutional Law in the War on Terror."

The event was held at the Pritzker Military Library, 610 N. Fairbanks Court.

The lawyers on the panel were Gary A. Isaac of Mayer, Brown, Rowe & Maw LLP, who has defended prisoners held by the U.S. at Guantanamo Bay, Cuba; Alberto R. Coll, president of the International Human Rights Law Institute at DePaul University College of Law; and Stephen B. Presser, professor of legal history at Northwestern University School of Law.

The talk ranged from the rights of prisoners held at Guantanamo, whom U.S. officials say are enemy combatants, to whether it is ever legally justified to torture a prisoner, even to gain information to prevent a terrorist attack.

Coll argued that the U.S. signed the United Nations Convention Against Torture, which allows no exceptions.

"What good is it to portray ourselves to Islamic countries as a civilized nation," he asked, "when in reality we violate this convention?"

Coll said that to permit torture in certain situations to deter terrorist attacks is "a slippery slope."

Isaac noted that when an American agent tortured suspects in the TV show "24," this was fictional, and "We know who the bad guys are," since it is made clear to the audience.

"In real life, we don't," Isaac stated. Some suspects, he said, are simply innocent.

Callaway then posed a hypothetical case in which a suspect who was believed to know the location of a nuclear bomb that would explode in America in a very short time was being held, and the panelists were the captors.

"Would you rather lose 500,000 lives or one million lives and be true to your principles" or torture the suspect to try to prevent the catastrophe, Callaway asked.

"That's a very hard question," Isaac answered. "Honestly, if I could save 500,000 or a million lives by imposing pain on one person, I might well do it."

Coll objected that torture was ineffective and might not elicit the truth.

Pushed by Callaway to answer, Coll said, "I would fall on my knees and pray for God's mercy and order increasingly progressive means of torture."

But Coll added, "In real life, we're not talking about those extreme situations."

Presser, who had already said — whether seriously or in jest — that he approved of "water-boarding," praised Callaway's question and said, "You got even these two to go along with you."

At another point, Presser asked, "Why haven't we had a major terrorist attack since 9/11?"

Presser answered his own question by saying that it may be because U.S. law enforcement officials "have the freedom to work between the joints" of the law.

Coll said that was false. He said the tightening of American borders since 9/11 has prevented new terrorist attacks, not extralegal law enforcement activities.

"How do you know?" Callaway asked Coll.

Coll responded that if torture had prevented a terrorist attack, "the [Bush] administration would be happy to tell us about it to show the effectiveness of torture."

"I'm not sure that's true," said Presser.

Coll was deputy assistant secretary of defense in the administration of the first President Bush, George H.W., from 1990 to 1993.

Regarding the prisoners held at Guantanamo Bay, Isaac argued that they need the right of habeas corpus hearings to present evidence to an American court in the event that they are held in error and are innocent.

Isaac also said that, in the first Gulf War, the American military held 1,200 hearings on the battlefield to separate enemy soldiers from innocent civilians, and freed many civilians.

In Afghanistan following the 2001 terrorist attacks in the U.S., "the Pentagon wanted to conduct hearings in the field" in a similar manner, Isaac said. "The President and the White House said 'No.' "

Isaac also argued that many prisoners brought back by the U.S. from the Afghan war were taken prisoner by U.S. allies in Pakistan in return for large bounties. Other prisoners at Guantanamo, Isaac argued, were captured in Bosnia or Africa, not on any battlefield.

Coll also noted there is a "big debate" on who should determine the standards for trying certain Guantanamo prisoners by military commissions for alleged war crimes.

When the administration first set up military commissions, Bush "created a conspiracy crime that does not exist in international law," Coll said.

Presser noted there was "a dance going on between the courts, the executive and Congress about who should specify what to do in these cases."

The administration's original military commissions were ruled illegal by the U.S. Supreme Court in *Hamdan v. Rumsfeld* in part because Congress had not authorized the president to set up such commissions, the panelists noted.

Congress then passed the Military Commissions Act of 2006 to give the president the authority, Presser said, and this has so far been upheld in the courts.

"Alberto's problem," Presser said, referring to Coll, "is that he doesn't really trust the President. I happen to trust the executive more than Alberto."

Coll cited the necessity for checks and balances that the Founding Fathers wrote into the Constitution.

Isaac agreed. He argued that when a majority Republican Congress last fall "rammed through" the Military Commissions Act "because the president wanted it, this was not a very independent Congress."

The panel was recorded for TV and will be broadcast on "Front and Center" at 11:30 p.m. on May 13 on WYCC-TV, Channel 20.