

# LAW & ORDER V. JOHN YOO

As we've been discussing the threads (and as Glenn Greenwald discussed here), Law & Order last night took on torture and, specifically, the role of John Yoo and others in justifying torture. If you didn't see it, check your local listings, because it may be on again at 8PM.

The episode was a TV show. But (as someone who wrote a 400-page dissertation on some "fictional narratives" that used factual details to intervene in current events), I particularly liked the way they used actual details from our history of torture—integrated within a narrative structure—to appeal to the emotions of viewers.

The Law & Order folks originally get the torture issue because the John Yoo figure (named Franklin in the show—he differs from Yoo in that he's white and he's still trying to get tenure) kills a former Abu Ghraib guard suffering from PTSD, Greg Tanner, who tried to get Franklin to help him get money and/or VA treatment for his PTSD. The implication, ultimately, is that the Franklin killed Tanner to try to prevent Tanner from revealing his role in torture. After Franklin escapes manslaughter charges through some cynical lawyering, the Law & Order team indict him for conspiracy to torture, based on his role in writing the torture memos.

## Stop Now to Avoid Spoilers

The show uses the details of Manadel al-Jamadi's murder to elicit horror about torture Americans committed. Here, Greg Tanner describes serving as a guard assisting what ended up being the murder of someone killed as al-Jamadi was.

GREG (ON MONITOR) We walked the detainee into the shower room. He was handcuffed and wearing a hood over his head. The interrogator told us to hang him by his wrists from the bars of a window. Like

this, with his hands behind his back.

[snip]

Up high, so the guy can't kneel or sit, all his weight's on his arms and chest. The 'gator said the guy was an unlawful combatant and under the rules we could do whatever we want to him...We hooked him up and left him with the 'gator. An hour later, the 'gator called us back in, he wanted us to reposition the detainee. The detainee was slumped forward, his arms were almost out of their sockets, he wasn't responsive. We took the hood off his head and all this blood poured out of his mouth. He was dead...those rules. Those damn rules were wrong. We had to live by them and it messed us up...I found one of the guys who wrote the rules, right here, at the college...I got to get right with this. I didn't join the service to murder people.

I'll need to check, but I believe these details—down to the blood pouring from al-Jamadi's mouth when his hood was taken off—come out of the trial of the Navy Seals who were tried for this death.[Update: Garrett notes the description of al-Jamadi's death comes from an MP's statement included in the CID investigation of his death.]

Later, in a court room scene, the show has a Matthew Alexander or Ali Soufan figure contextualize such treatment (technically, the use of this position was not sanctioned as a stress position by Yoo's memos, though it was sanctioned in the guise of sleep deprivation).

GARDNER: It's called a Palestinian Hanging. It's how the North Vietnamese tortured Senator John McCain when he was a POW. It's one of the stress positions sanctioned by Mr. Franklin's memo.

CUTTER: As an expert in interrogations, would it surprise you that, according to

medical testimony, the prisoner described by Mr. Tanner died of suffocation from being hung in this position while being interrogated by American personnel.

GARDNER: It doesn't surprise me, sir. It disturbs me.

After describing the horror of the al-Jamadi-type killing, the show then traces it back to language taken nearly verbatim from the Bybee One Memo. Here's the original language:

A defendant could negate a showing of specific intent to cause severe mental pain or suffering by showing that he had acted in good faith that his conduct would not amount to the acts prohibited by the statute. Thus, if a defendant has a good faith belief that his actions will not result in prolonged mental harm, he lacks the mental state necessary for his actions to constitute torture. A defendant could show that he acted in good faith by taking such steps as surveying professional literature, consulting with experts, or reviewing evidence gained from past experience.

[snip]

Because the presence of good faith would negate the specific intent element of torture, it is a complete defense to such a charge.

And here's how they introduce that in the show.

MC COY: Read his advice to anyone worried about being charged with torture.

CUTTER: "If a defendant has a good faith belief that his actions will not result in prolonged mental harm, he lacks the specific intent necessary for his actions to constitute torture. A

defendant could show that he acted in good faith by surveying the professional literature or consulting with experts. Good faith is a complete defense to a charge of torture."

RUBIROSA: He's telling interrogators how to circumvent the law.

MC COY: Just remember kids, if you're going to torture, read a book first! In our name. This was done in our name.

It's the Matthew Alexander/Ali Soufan figure who has the job of rebutting the "24" Ticking Timebomb scenario (Granick is Franklin's lawyer).

GRANICK: I want to be clear, Mr. Gardner – if you had a terrorist who you believed had information about a dirty bomb set to go off in this city within twenty-four hours, you wouldn't avail yourself of every technique possible to extract that information from him?

GARDNER: In my experience, sir, that ticking clock scenario you describe happens only in TV shows.

GRANICK: Nevertheless, indulge me.

GARDNER: A man in severe pain or mental anguish will say anything to make it stop. If you only have twenty-four hours, the last thing you want to do is waste time chasing down false leads. As for real life scenarios, the Israelis have had more success stopping suicide bombers on their way to their targets by using non-coercive techniques. Torture just doesn't work.

GRANICK: No one here's advocating torture, Mr. Gardner. We were talking about harsh techniques –

GARDNER: I know what we're talking about, sir. I don't need a memo to tell me what torture is.

And then, some of the last words the Yoo-figure speaks in the show echo Yoo's statement that the president might legally order an interrogator to crush the testicles of a terrorist's child.

CUTTER: So if he deems that he's got to torture somebody, for example by crushing the testicles of that person's child, your memo says there is no law, no treaty that can stop him?

FRANKLIN: Well, it would depend on why the President thinks he needs to do that.

Narratively, this is the climax of Franklin's trial. By using so much of John Yoo's work to make the case, though, it serves as an indictment of Yoo's own actions.

Which is why the episode's ending—which some people did not like—was so useful. Literally as the Judge begins to read the verdict—which we know would find Franklin guilty—a Federal Marshall runs in with an order to halt the case. The Attorney General from the subsequent Administration—one that wants to look forward, not backward—has successfully won a court judgment that the DA cannot properly try this case.

Which of course leaves viewers hanging, understanding that a jury found Franklin guilty and, if the narrative worked, believing him to be guilty themselves. Yet, at the same time, knowing that the fictional Franklin and the real Yoo have thus far avoided justice, largely through the intervention of the subsequent Administration.

I'm not a regular TV viewer (except for football, of course), so I can't measure whether the narrative worked or not. But if it did, it

would have left viewers with no closure, with a sense of injustice. It's just one TV program, and it's got years and years of "24" to rebut. But it's a start.