“Law & Order” episode makes case for prosecution of Bush administration torturers

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Last Friday’s season premiere of NBC’s crime drama “Law & Order” was a rarity for American television: an unsparing and essentially honest examination of the crimes being committed by the American government, in the name of the “war on terror.”

The episode is entitled “Memos from the Dark Side,” a reference to Vice President Dick Cheney’s phrase describing US tactics in the “war on terror.” It has the familiar structure of the long-running program: the first half-hour focuses on the police investigation of a murder, the second half-hour on the outcome of the case in court.

The murder victim is an Iraq war veteran, a former guard at the Abu Ghraib prison who participated in the torture-killing of a prisoner and is haunted by it. In a moving video “diary,” not discovered until after his death, he avows, “I didn’t join the service to murder people.”

The veteran is shot down after he confronts a professor at a New York City law school over the professor’s role in drafting the legal memoranda spelling out permissible methods of interrogating prisoners. The professor ultimately confesses to the shooting, claiming self-defense, and a grand jury refuses to indict him.

It is here that the program takes a sharp political turn. The district attorney, Jack McCoy, played by Sam Waterston, intervenes to propose that the law professor (clearly modeled on former Justice Department attorney John Yoo) be prosecuted on charges of conspiracy, using the fact that the torture memoranda were drafted at the office of the US Attorney in Manhattan to assert local jurisdiction.

“You want to prosecute a member of the Bush administration for assaulting suspected terrorists?” his top assistant district attorney, Michael Cutter (played by Linus Roache), asks incredulously. “The word is torturing,” McCoy replies, “and yes, it’s about time somebody did it.”

When the law professor objects that he can’t be charged with conspiracy without co-conspirators, McCoy extends the case, bringing indictments against the Joint Chiefs of Staff, the former secretary of defense, former vice president Cheney, and others in the chain of command (whether this includes former president Bush is left unstated).

These indictments touch off a political and legal uproar, with countermotions by a battery of lawyers for the prominent defendants and threats to McCoy’s political career, culminating in the intervention of the Obama administration to head off the prosecution of its predecessors.

There are several points at which the executive assistant DA Cutter expresses doubts about the prosecution case, voicing both some sympathy for the right-wing justifications for torture and concern over the political repercussions for McCoy. But he is eventually convinced of the legal basis of the case and serves as lead trial attorney.

At several points during the latter half of the program, the script makes use of verbatim sections of actual documents written by Yoo and other Justice Department torture apologists, including one where the lawyer upholds the right of the president to order a child’s testicles to be crushed to force his parent to talk.

In perhaps the most striking sequence, the author of the torture memos is confronted on the stand with photographs of other famous examples of the brutal treatment of “illegal enemy combatants”—the summary execution of a Vietnamese prisoner on the streets of Saigon by the chief of the US-controlled secret police, and the hanging of Polish resistance fighters by the Nazis during World War II.

The comparison between the methods of the Nazis and the methods of American imperialism does not faze the former Bush aide. He defends not only these atrocities, but even the right of King George III to treat American militiamen in a similar fashion during the Revolutionary War.

The most politically important aspect of the program is not merely its hostility to the Bush administration, however justified, but its portrayal of the Obama administration (although the new president is never mentioned by name).

A Justice Department official and former colleague

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approaches McCoy to pressure him to abandon the prosecution, pointing out that the attorney general has already begun such an investigation. When McCoy dismisses this—correctly—as targeting only "small fry," while the decision makers go scot free, the official tells him cynically that it's all "just politics."

Later, the same official uses Obama's own words, declaring, "We're looking forward, not backward." When McCoy refuses to cave in, the Justice Department goes to federal court seeking an injunction to suppress the case under the "supremacy clause" of the Constitution. At the end of one hearing, the official sneers at McCoy that he should be careful not to provide "aid and comfort to the enemy."

This allegation is the staple of all defenders and apologists for the crimes of American imperialism. It is rebutted effectively by the former doubter, Cutter, in his closing argument to the jury. He declares that it is not "treasonable" to question the actions of the government. On the contrary, he tells the jurors, they need to decide what they want the government to be able to do "in your name."

Whatever the conscious intentions of those who created the program, they have given voice to the growing suspicion and hostility towards the new administration felt by millions of people, many of whom voted for Obama in the hope that the installation of a Democrat in the White House would mean an end to the Bush policies of war and attacks on democratic rights, only to see these policies continued with slightly altered rhetoric.

There has been little notice taken in the American media about the unusually pointed political exposure in the "Law & Order" season premiere. In liberal quarters on the Internet, such as Huffington Post and Salon magazine, the program was highly praised, but with a significant silence on its criticism of the Obama administration.

Salon featured a 10-minute audio interview with head scriptwriter Rene Balcer by Glenn Greenwald, in which not a single question touched on the portrayal of the Obama Justice Department official. While noting Balcer's use of comments by Cheney, Yoo and other Bush administration officials, Greenwald made no mention of the citation of Obama's "looking forward, not backward" apologia for allowing Bush administration officials to escape prosecution for ordering and condoning torture and other violations of international law.

Balcer told Greenwald that he was in part motivated to write the episode by anger over the role of some of his Hollywood counterparts at program's like Fox Television's "24," which regularly glorifies torture.

"I was embarrassed by how some in my community of writers and producers on television had irresponsibly embraced torture by having their heroes use it as a supposedly effective means of getting information," Balcer said, "and how these same writers and producers were peddling lies even in the face of the Defense Department sending experts to talk to them and enlighten them on the realities of torture."

Perhaps the most politically duplicitous response to the "Law & Order" broadcast came from Anthony Romero, executive director of the American Civil Liberties Union, who posted an extended commentary on Huffington Post hailing the NBC program. "What McCoy understands is that in America, the rule of law applies to everyone. No one is above the law, not even (and some might say especially) the most powerful," Romero wrote. "In real life, there has yet to be an investigation into the high-level authorization of torture, a crime that has stained the reputation of our nation at home and abroad."

Romero described the appointment of a special prosecutor by Attorney General Eric Holder as "a good first step and a positive sign," suggesting that prosecution of higher-level officials could ensue. He then concludes his post by asking, "Now the question is, in real life, will Attorney General Holder rise to the occasion?"

This rhetorical question falsifies the actual position of the Obama administration, since both Holder and Obama have flatly rejected the prosecution of those who authorized torture and wrote the legal apologetics. Only those CIA agents whose abuse of prisoners went beyond the letter of the authorized torture methods face any investigations, and even those are unlikely to face legal sanctions.

Romero made no reference to the broadcast's actual criticism of the Obama administration, which is portrayed, quite correctly, as opposing prosecution of the Bush administration for fear that its own crimes could be prosecuted by a successor. In context, this is nothing more than an ACLU cover-up for Obama's right-wing policies. Protecting torturers is fine as long as it is done by a Democratic administration.

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