

# JACK BAUER SYNDROME: HOLLYWOOD'S DEPICTION OF NATIONAL SECURITY LAW

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Let's face it, Jack Bauer, who has saved the United States five times since 2001 in Fox's counterterrorism television series, *24*,<sup>1</sup> is, by any reasonable measure, a criminal. He routinely violates laws against torture, murder, aggravated assault, armed robbery (including carjacking), airplane hijacking, burglary, and making false statements to government officials (usually his superiors). If Bauer were a real person, the national debt would be monstrously large due to the damages the federal government would owe in countless *Bivens* lawsuits.<sup>2</sup>

In his defense, Bauer does not commit these crimes because he's a sadistic psychopath; he breaks laws to save the country from terrorists bent on using nuclear, biological, or chemical weapons on U.S. soil. The threats in the *24* universe are not purely hypothetical, either. They run the gamut of terrorism fears of the American public: terrorists detonated nuclear bombs in seasons two and six, deployed a lethal airborne virus in a Los Angeles hotel in season three, melted down nuclear power plants and shot down Air Force One in season four, and unleashed nerve gas in a shopping mall in season five.

Of course, ruminations on *24* would be just an entertaining diversion if it were not for the fact that the show has slowly seeped into the national debate on antiterrorism tactics. Former Office of Legal Counsel attorney John Yoo referenced *24* in his recent book defending the Bush Administration's interrogation policies.<sup>3</sup> During a debate among Republican presidential candidates in 2007, Rep. Tom Tancredo answered a hypothetical question about the appropriate response to a captured would-be suicide bomber with, "I'm looking for Jack Bauer at that point, let me tell you."<sup>4</sup> Homeland Security Secretary Michael Chertoff has said that *24* "frankly, . . . reflects real life" in presenting scenarios with "no clear magic

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<sup>1</sup> *24* (Fox 2001–present).

<sup>2</sup> See *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 396 (1971).

<sup>3</sup> JOHN YOO, *WAR BY OTHER MEANS: AN INSIDER'S ACCOUNT OF THE WAR ON TERROR* 172 (2006).

<sup>4</sup> See, e.g., Clarence Page, *Memo to the Candidates: 24 is Just a TV Show*, in DAN BURSTEIN & ARNE J. DE KEIKZER, *SECRETS OF 24: THE UNAUTHORIZED GUIDE TO THE POLITICAL AND MORAL ISSUES BEHIND TV'S MOST RIVETING DRAMA* 149 (2007).

bullet to solve the problem,”<sup>5</sup> and former CIA Director James Woolsey has said that *24* is “quite realistic” about the threats that it depicts.<sup>6</sup> In Fall 2007, Georgetown Law School offered a course entitled “The Law of *24*,” which was taught by an Associate Deputy General Counsel at the Defense Department.<sup>7</sup> Even more significantly, an article in *The New Yorker* reported that the dean of the West Point military academy and three veteran interrogators went to Los Angeles to urge the producers of the show to stop “promot[ing] unethical and illegal behavior.”<sup>8</sup> According to the West Point dean and the interrogators, American soldiers in Iraq were beginning to emulate the interrogation tactics used in the show.<sup>9</sup> One legal scholar worries that the “*24* effect” will desensitize judges and juries to methods of coercive interrogation that fall short of torture.<sup>10</sup>

In this Article, I engage in criticism of *24* through a legal lens, focusing on two issues relevant to national security law: the use of torture to extract information in order to stop an imminent terrorist attack, and the depiction of Arabs as villains (and non-villains) with the concomitant impact on racial profiling and other stereotyping of Arab-Americans and Arabs. In Part I, I provide plot summaries of seasons two through six of *24*, with particular emphasis on the two elements to be analyzed: torture and the depiction of Arabs. In Part II, I examine the depiction of torture on *24* as season-long “ticking time bomb” scenarios and I conclude that the show “stacks the deck” in favor of justifying torture in ways that are unrealistic and problematic, particularly given the odd fact that Bauer never tortures female terrorists. In Part III, I consider the three seasons in which the terrorists are Arabs and examine whether those portrayals, along with other Arab or Arab-American characters who are not terrorists, may inflame prejudices against Arabs and thereby support calls for racial profiling.

## I. *24*: A VIEWER’S GUIDE TO SEASONS TWO THROUGH SIX

The gimmick of *24* is that each hour of programming represents an actual hour, with the *24* episodes of the season making up one hellish day in which Bauer, an agent of the fictional Counter-Terrorism Unit (“CTU”), must foil a deadly terrorist attack involving weapons of mass destruction. Seasons two through six of *24* therefore operate at one level as sixteen hour

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<sup>5</sup> Michael Chertoff, *Reflections on 24 and the Real World*, in BURSTEIN & DE KEIJZER, *supra* note 4, at 160.

<sup>6</sup> *An Interview with James Woolsey, The Threats Portrayed on 24 Are Quite Realistic*, in BURSTEIN & DE KEIJZER, *supra* note 4, at 164.

<sup>7</sup> Georgetown Law, Courses Online Curriculum Guide: *The Law of 24*, available at [http://www.law.georgetown.edu/curriculum/tab\\_courses.cfm?Status=Course&Detail=1534](http://www.law.georgetown.edu/curriculum/tab_courses.cfm?Status=Course&Detail=1534) (“This course provides a detailed understanding of a very wide-range of U.S. domestic and international legal issues concerning counterterrorism in the context of the utilitarian and sometimes desperate responses to terrorism raised by the plot of *24*.”).

<sup>8</sup> See Jane Mayer, *Whatever It Takes: The Politics of the Man Behind “24,”* NEW YORKER, Feb. 19, 2007, available at [http://www.newyorker.com/reporting/2007/02/19/070219fa\\_fact\\_mayer](http://www.newyorker.com/reporting/2007/02/19/070219fa_fact_mayer).

<sup>9</sup> *See id.*

<sup>10</sup> Sam Kamin, *How the War on Terror May Affect Domestic Interrogations: The “24 Effect,”* 10 CHAPMAN L. REV. 693, 695 (2007).

“ticking time bomb” hypotheticals.<sup>11</sup> (*Warning*: There will be massive spoilers throughout the rest of this Article, not just for *24*, but other television shows and movies!)

In season two, terrorists from three unnamed Middle Eastern countries manage to smuggle a nuclear weapon into Los Angeles, unknowingly assisted by the seriously misguided National Security Advisor. In a memorable opening that really defines the series, Bauer asks to meet with a criminal informant before attempting to infiltrate a local gang believed to be involved with the terrorists. However, when introduced, Bauer kills the informant with a gunshot and then growls, “I’m going to need a hacksaw;” Bauer is next seen lugging around a bag containing the informant’s severed head as proof of his bona fides. During the course of tracking down the nuclear weapon, Bauer captures the lead terrorist, Syed Ali; Bauer’s interrogation methods include punching Ali in the face, breaking Ali’s finger, and carrying out a threat to orchestrate the murder of Ali’s older son.<sup>12</sup> In order to save his younger son, Ali divulges the full details of the plot, and Bauer is able to find the nuclear bomb in time to save Los Angeles.<sup>13</sup> The nuclear bomb does detonate, but only after being crashed into a remote part of the California desert.

Season three begins with a Mexican druglord’s threat to unleash the deadly airborne Cordelia virus in Los Angeles if his imprisoned brother is not released immediately. To forestall that catastrophe, Bauer pretends to go rogue and breaks the brother out of prison. The real mission, it turns out, is for Bauer to gain the confidence of the Mexican drug lord brothers and to use them to flush out the terrorist who controls the virus. Bauer captures the terrorist’s intermediary, briefly torturing the man by cutting his hand with a knife, then pretends to let him escape so as to follow him secretly. However, the intermediary is killed by a bomb planted by his superior, leaving Bauer with no further leads. The terrorist then exposes a downtown hotel to the deadly virus, infecting several hundred people. Bauer discovers that the terrorist was someone from his past, a former British soldier named Stephen Saunders who Bauer thought had been killed in a joint mission years ago. Saunders issues orders for the President to obey or face more releases of the virus; one demand calls for CTU to deliver to Saunders the body of Ryan Chappelle, a regional CTU supervisor. To buy more time to track Saunders down, the President orders Bauer to comply with the murderous demand, and Bauer shockingly shoots Chappelle in the back of the head. Finally, in order to gain leverage over Saunders, Bauer kidnaps Saunders’s daughter and offers to trade her for an agent that Saunders captured. During the ensuing exchange, Bauer and his team kill Saunders’ men and capture the terrorist. Because Bauer believes Saunders to be

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<sup>11</sup> Season one involved an assassination plot against a presidential candidate and thus did not present the same kind of national terrorism threat that the later seasons presented.

<sup>12</sup> Bauer uses video technology to make it appear that Ali’s son was shot, but in actuality, the boy was not harmed.

<sup>13</sup> Ali is not the only person subjected to torture in an effort to locate the nuclear bomb. At one point, the President orders his National Security Advisor to be subjected to electro-shock torture administered via a defibrillator. Bauer himself is also tortured—to death, no less—in the short story arc following the resolution of the nuclear weapon plotline. (He is conveniently resuscitated because his torturers aren’t through questioning him).

capable of resisting torture long enough for his couriers to unleash their deadly canisters of virus, Bauer orders his men to throw Saunders' daughter into the infected hotel. Saunders gives in at the last possible moment and agrees to help Bauer track down his couriers.

In season four, the Araz family, an Arab-American "sleeper cell," works with other Arab terrorists to carry out a bizarrely intricate attack on the United States that culminates in the shooting down of Air Force One in order to obtain nuclear launch codes, which are needed to unlock a nuclear missile that was hijacked from a military convoy traveling through Iowa.<sup>14</sup> Over the course of the day, Bauer shoots a captured terrorist in the leg to extract information about the first phase of the terrorist plot, tortures his girlfriend's ex-husband with electrical wires ripped from a hotel lamp, tortures a criminal with links to the terrorists, and violates China's sovereignty to kidnap a Chinese nuclear scientist working with the terrorists.

In season five, a Russian billionaire named Vladimir Bierko smuggles deadly VX nerve gas into an airport in Southern California. Bierko's plan is to use the nerve gas against the Russian president, who is in the United States to sign an anti-terrorism treaty, but when CTU thwarts the ambush on the Russian motorcade, Bierko turns his sights to the United States. In season five Bauer tortures the President's Chief of Staff, an ex-CTU agent now working for the defense contractor that manufactured the nerve gas. He also shoots the ex-agent's wife.

Finally, at the beginning of season six, the United States has already been subject to a wave of suicide bombings over several weeks. An Arab militant in the United States named Abu Fayed has offered to deliver the terrorist behind the attacks, Hamri al-Assad, in exchange for Bauer—a deal that the government agrees to. Bauer learns that Abu Fayed is in fact the one behind the terrorist attacks and escapes to warn al-Assad. Meanwhile, a suitcase nuclear weapon controlled by Abu Fayed destroys the Southern California town of Valencia, killing over ten thousand people. Before Bauer manages to stop Abu Fayed from using any more suitcase nuclear devices, Bauer ends up torturing his own brother and numerous Arab-Americans are detained in an internment camp.

## II. TORTURE

### A. TICKING TIME BOMBS AND CONSEQUENTIALISM

There is a common perception that torture may be needed to extract useful intelligence from captured terrorism suspects; this was especially true in the days immediately following 9/11. Whether torture can ever be

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<sup>14</sup> Other components of the attack include kidnapping the Secretary of Defense and attempting to display his execution on the internet and trying to cause over one hundred nuclear power plants to melt down.

justified on the ground of extreme and exigent circumstances is a question that has generated a large volume of literature.<sup>15</sup>

Torture proponents usually rely on the “ticking time bomb” scenario,<sup>16</sup> in which the person to be tortured is assumed to know the hidden location of a bomb (often a weapon of mass destruction) that is expected to detonate shortly and in which other efforts to extract that knowledge have failed. Can torture be justified if it would lead to information that would save hundreds (or thousands, or tens of thousands) of people?<sup>17</sup> Michael Moore captured the dilemma in a 1989 law review article, later republished as a book chapter,<sup>18</sup> in which he described himself as a “threshold deontologist,” meaning that acts such as torture, while generally forbidden despite producing net gains under a cost-benefit analysis, nevertheless may become justified when the costs are sufficiently high:

It just is not true that one should allow a nuclear war rather than killing or torturing an innocent person. It is not even true that one should allow the destruction of a sizable city by a terrorist nuclear device rather than kill or torture an innocent person.<sup>19</sup>

Critics of torture do not rely solely on deontological arguments.<sup>20</sup> They argue torture may be effective at forcing its victims to speak, but it may lead to wildly unreliable information, particularly if what is extracted is an uncorroborated confession.

There are, however, two recent instances in which the use of torture or the threat of torture to extract vital information was arguably justified. The first occurred when Philippine law enforcement officials arrested Abdul Hakim Murad, a suspected al--Qaeda member, in January 1995. After sixty-seven days of brutal beatings and other torture, Murad confessed to being part of a plot concocted by terrorists Ramzi Yousef and Khalid Sheikh Mohammed to blow up eleven airplanes simultaneously over the Pacific

<sup>15</sup> See, e.g., ALAN DERSHOWITZ, *WHY TERRORISM WORKS: UNDERSTANDING THE THREAT, RESPONDING TO THE CHALLENGE* (2002); John Alan Cohan, *Torture and the Necessity Doctrine*, 41 VAL. U.L. REV. 1587 (2007); John Parry, *Interrogating Suspected Terrorists: Should Torture Be An Option?*, 63 U. PITT. L. REV. 743 (2002); Jonathan Alter, *Time to Think About Torture*, NEWSWEEK, Nov. 5, 2001, at 45. See also Jim Rutenberg, *Torture Seeps into Discussion by News Media*, N.Y. TIMES, Nov. 5, 2001, at C1 (quoting Alter as saying that there were those “who might be described as being on the Left whispering ‘I agree with you.’”).

<sup>16</sup> The ticking time bomb hypothetical is similar to the famous “Trolley Problem,” in which an out of control trolley car will plow into five people on a railway track—killing them—unless the driver deliberately swerves onto a separate track where one person is working. See PHILIPPA FOOT, *The Problem of Abortion and the Doctrine of the Double Effect in VIRTUES AND VICES* 19 (1978); Judith Jarvis Thomson, *The Trolley Problem*, 94 YALE L.J. 1395 (1985). Both scenarios essentially dare the reader to adhere to non-consequentialist decision-making, when doing so will absolutely lead to greater loss of life than that which would occur if one made a deliberate decision to kill (or torture) someone else.

<sup>17</sup> See, e.g., Eric A. Posner & Adrien Vermeule, *Should Coercive Interrogation Be Legal?*, 104 MICH. L. REV. 671, 676 (2006) (“[I]t is fanatical to argue on deontological grounds that rights against coercive interrogation should not be overridden to prevent serious harms to others.”).

<sup>18</sup> See MICHAEL S. MOORE, *PLACING BLAME: A GENERAL THEORY OF THE CRIMINAL LAW* 669, 723 (1997); Michael S. Moore, *Torture and the Balance of Evils*, 23 ISRAEL L. REV. 280 (1989).

<sup>19</sup> See MOORE, *supra* note 18, at 719 (for a critique of Moore’s argument, see Larry Alexander, *Deontology at the Threshold*, 37 SAN DIEGO L. REV. 893 (2000)).

<sup>20</sup> See JOHN H. LANGBEIN, *TORTURE AND THE LAW OF PROOF: EUROPE AND ENGLAND IN THE ANCIENT REGIME* (1977).

Ocean.<sup>21</sup> Notwithstanding the successful foiling of the plot, it remains unclear whether torturing Murad was necessary, since Yousef had been captured before Murad confessed to the plot.

The other example did not have a such a positive ending.<sup>22</sup> In September 2002, a German law student kidnapped an eleven year old boy, tied him up, hid him in a forest, and issued a ransom demand. After the law student was captured trying to pick up the ransom, the suspect refused to disclose where he had hidden the victim. As a result, a senior police officer instructed his subordinates to threaten to torture the suspect. While the suspect immediately disclosed the hiding place, the boy was unfortunately already dead.

Torture is, of course, unlawful. The United States is a party to the Torture Convention,<sup>23</sup> which obligates all parties to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”<sup>24</sup> The Torture Convention further states, “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>25</sup> Notwithstanding that statement, the argument put forth in 24 to justify torture of suspects is that, under the particular circumstances (nuclear bomb, deadly airborne virus, or nerve gas), it is *necessary* to torture the suspect to extract information needed to stop the terrorist attack from happening.

Whether acts such as torture or murder can ever be justified has fascinated legal thinkers since the infamous lifeboat cannibalism cases, *Regina v. Dudley & Stephens*<sup>26</sup> and *U.S. v. Holmes*.<sup>27</sup> In both of those cases, survivors from sunken ships found themselves on lifeboats running out of food or space, and elected to save the majority by killing a smaller number: in *Dudley & Stephens*, the victim was eaten; in *Holmes*, the victims were tossed overboard and left to drown. Both courts rejected the necessity defense on the facts. The court in *Dudley & Stephens* held that the defendants should have taken their chances on being rescued with the victim and that they were not justified in killing him to save themselves. While the court in *Holmes* held that it was acceptable to sacrifice a few to save many, the ruling stated that the ship officers should have sacrificed themselves first rather than selecting the unmarried males to toss overboard.

Still, even if torture might be justified under the necessity doctrine, there are several problems with the depiction of torture on 24. First, Bauer

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<sup>21</sup> See MARITES VITUG & GLENDA GLORIA, UNDER THE CRESCENT MOON: REBELLION IN MINDANAO 223 (2000).

<sup>22</sup> The events here are drawn from Mark Bowden, *The Dark Art of Interrogation*, ATLANTIC MONTHLY, Oct. 2003, at 70, available at <http://www.theatlantic.com/doc/200310/bowden>.

<sup>23</sup> Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment (Dec. 10, 1984), 1465 U.N.T.S. 85.

<sup>24</sup> See *id.* at Art. 2(1).

<sup>25</sup> *Id.* at Art. 2(2).

<sup>26</sup> See *Regina v. Dudley*, (1884) 14 Q.B.D. 273.

<sup>27</sup> See *United States v. Holmes*, 226 F. Cas. 360 (E.D. Pa.Cir. 1842) (No.15,383).

never tortures the wrong person.<sup>28</sup> More problematically, viewers *know* that the person Bauer is torturing is a terrorist, because the “real-time” narrative structure of *24* forces the show to air scenes other than those in which Bauer is present; otherwise, viewers would be subjected to not very interesting interludes where Bauer is driving wordlessly through Los Angeles traffic. Those scenes often display the terrorists carrying out their diabolical plans. As a result, Bauer’s grim certainty that the particular circumstances call for torture resonates with the viewer.

In reality, of course, such certainty is foolhardy. Stories abound of persons wrongly suspected of involvement with al-Qaeda being subjected to brutal interrogation—if not outright torture—by countries to which they were “rendered.”<sup>29</sup> Even if we assume that government actors proceeded in good faith,<sup>30</sup> there remains the possibility of making a mistake. It may well be that in sufficiently dire circumstances, the possibility of a mistake is outweighed by the need to stop the terrorist plot from succeeding. Similarly, the possibility that an innocent person might be convicted does not paralyze the criminal justice system; society has instead imposed the “beyond a reasonable doubt” standard to minimize the likelihood of false convictions, at the cost of a corresponding increase in the likelihood of false acquittals.

Second, in virtually every instance Bauer is correct that torture will produce results. After seeing one of his sons seemingly shot to death and the other threatened with the same fate, Ali reveals the location of the hidden nuclear bomb. Saunders agrees to help track down the virus canisters after seeing his daughter threatened with exposure to the virus. The captured terrorist at the beginning of season four reveals the plot to kidnap the Defense Secretary after being shot in one leg and threatened with a second gunshot. Bauer’s success is important from a legal perspective, because one of the elements of the necessity defense is commonly that “the defendant had no alternative legal means of preventing [the] harm.”<sup>31</sup>

## B. TORTURE AND MORAL CORROSION

Next, *24* makes it abundantly clear that Bauer is not a sadist. He tortures terrorists not because he likes doing it, but because he feels he has to. At the same time, one cannot escape contemplating Bauer’s intense savagery. Numerous examples exist, but perhaps the best illustration occurs near the end of season three: terrorist mastermind Saunders is in Bauer’s custody, but eleven vials of the Cordelia virus remain in the hands of Saunders’ couriers, who are traveling to unknown destination-targets. Knowing that he will not have enough time to “break” Saunders, Bauer

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<sup>28</sup> On a couple of occasions, he has tortured or threatened to torture a person that he knows to be innocent in order to induce a terrorist or collaborator to cooperate with him, but these are not instances of torturing a person who turns out to be innocent.

<sup>29</sup> See, e.g., STEPHEN GREY, *GHOST PLANE: THE TRUE STORY OF THE CIA TORTURE PROGRAM* 62–102 (2006) (discussing rendition and subsequent torture of Maher Arar and Khaled el-Masri).

<sup>30</sup> In el-Masri’s case, for example, it appeared that there was a person named Khalid al-Masri who allegedly helped Mohammed Atta and other 9/11 hijackers. See *id.* at 94.

<sup>31</sup> See Shaun P. Martin, *The Radical Necessity Defense*, 73 U. CIN. L. REV. 1527, 1535 (2005).

instead threatens to put Saunders' beloved daughter Jane into the contaminated Chandler Hotel. As CTU guards drag Jane toward the airlock that has been set up at the entrance, Bauer turns to Saunders and yells, "Everything that happens to your daughter is because of you! . . . When your daughter's infected, I'm going to make you watch her die!"<sup>32</sup>

Perhaps Bauer is bluffing; after all, in season two, he stages the execution of terrorist Ali's older son in order to coerce Ali into telling him where the nuclear bomb is located.<sup>33</sup> But in season five, in order to get Christopher Henderson to give up information, Bauer shoots Henderson's innocent wife in the leg.

What *24* does not show is the expected moral corrosion caused by the repeated infliction of torture.<sup>34</sup> To put it another way, is it reasonable that someone could become an expert at torturing humans without becoming a sadistic monster? I do not profess to know the answer, but an expert FBI interrogator told *The New Yorker* that "[o]nly a psychopath can torture and be unaffected."<sup>35</sup>

It is useful to compare and contrast the depiction of torture by the protagonists in *24* with that in another post-9/11 thriller series—the re-imagined *Battlestar Galactica*.<sup>36</sup> *Battlestar Galactica* takes place in another part of the galaxy where humans created a robotic race, called Cylons, to serve them. The Cylons rebelled and fought a bloody war that ended approximately forty years ago. During those forty years, unbeknownst to the humans, the Cylons developed twelve humanoid models that were virtually indistinguishable from humans. Viewers refer to these models as "Splyons;" the characters of *Battlestar Galactica*, once they discover the existence of these special Cylons, call them "skin jobs." Although the Splyons may be scientifically unbelievable, they are a clever fictional device with which to explore post-9/11 insecurities, where the inescapable fear is that the person next door could be a terrorist. One of the Splyons gains access to the humans' defense networks, enabling the Cylons to launch their preemptive strike against the humans. Billions of humans spread across twelve planets are vaporized in nuclear strikes, leaving a mere fifty thousand survivors to flee for safety.

Torture does not arise as frequently on *Battlestar Galactica* as it does on *24*, but there is at least one notable instance of it on the show. The *Galactica* crew discovers that another warship, the *Pegasus*, survived the Cylon sneak attack.<sup>37</sup> Admiral Cain, who outranks *Galactica*'s Commander Adama, runs the *Pegasus* with a ruthless hand, and her crew emulates her monstrous attitude. The *Pegasus* crew has detained a female Splyon, who

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<sup>32</sup> *24: Day 3: 11:00 am – 12:00 pm* (FOX television broadcast May 18, 2004).

<sup>33</sup> *24: Day 2: 7:00 pm – 8:00 pm* (FOX television broadcast Feb. 11, 2003).

<sup>34</sup> But see Rick Moran, *The Circles of Hell: Dante, Daniel Boone, Gary Cooper, and . . . Jack Bauer*, in BURSTEIN & DE KEIJZER, *supra* note 4, at 50, 53 (suggesting that Bauer's character has (d)evolved each season).

<sup>35</sup> See Mayer, *supra* note 8, at 4.

<sup>36</sup> *Battlestar Galactica* (SCI FI television broadcasts 2004–present). This is not the original, largely campy Lorne Green/Richard Hatch/Dirk Benedict series that ran on ABC for one season in 1978.

<sup>37</sup> *Battlestar Galactica: Pegasus* (SCI FI television broadcast Sept. 23, 2005).



was “interrogated” by the ship’s Cylon Interrogation Officer (“CIO”) so brutally that she lies in a useless, catatonic state. When Cain learns that the *Galactica* identified pilot Sharon “Boomer” Valieri as a Sylon and detained her, Cain sends her CIO to conduct further interrogation. The CIO’s idea of interrogation is to smack Valieri across the jaw and then have his aides bend her over a table so that he can rape her.<sup>38</sup> The CIO has a palpably repulsive leer on his face as he prepares to unbuckle his pants. Two of the *Galactica* crew members learn about the CIO’s interrogation methods by overhearing other Pegasus crewmembers expressing hope that the CIO will let them take turns raping Valieri, just as they had gang-raped the Sylon they captured. The rape/interrogation is averted only through the intervention of the two *Galactica* crew members.

Which depiction of professional torturer seems more intuitively plausible: Bauer, or the Pegasus’ CIO?

### C. BAUER AND FEMALE TERRORISTS

One of the narrative oddities of *24* is that Bauer encounters a surprisingly large number of female terrorists and conspirators, yet never resorts to torturing them, even when they clearly possess critically vital information. Had this reluctance to torture a woman manifested itself only one time, we might simply attribute it to a unique plotline, but the repeated refusal to do so suggests a deliberate aversion.<sup>39</sup>

For example, in season four, Bauer and CTU agents capture Dina Araz, the mother in the “sleeper cell” working with terrorist Habib Marwan to attack the United States. The first CTU agent to question Araz digs his fingers into her gunshot wound, prompting Bauer and another agent to yell, “Stand down!” Bauer then orders the first agent to step outside.<sup>40</sup> After getting background information on Araz, Bauer has the following conversation with her:

BAUER: How long have you been planning this operation? Two years? Five years? Ten? All this planning for one day.

BAUER: You do realize if all the reactors melt down, hundreds of thousands of people will die.

ARAZ: Every war has casualties.

BAUER: These people don’t know about your war. These people are innocent.

ARAZ: No one is innocent.

BAUER: You really believe that?

ARAZ: As strongly as you believe in what you believe. I won’t waste my time or yours trying to explain something you can never understand.

BAUER: Maybe I understand more than you think.

<sup>38</sup> On whether rape can constitute torture (a question which, to me, there seems to be an easy answer), see Evelyn Mary Aswad, *Torture By Means of Rape*, 84 GEO. L.J. 1913, 1939–42 (1996).

<sup>39</sup> But see *24: Day 3: 2:00 am – 3:00 am* (Fox television broadcast Feb. 17, 2004) (depicting CTU’s use of pain-inflicting drugs on Nina Myers).

<sup>40</sup> Matters are complicated by the fact that Bauer follows the agent outside and tells him, “You did the right thing.” Arguably, then, Bauer was concerned more about the effectiveness of torturing Araz than about the morality of doing so.

ARAZ: I doubt it.<sup>41</sup>

Bauer then discusses the fate of Araz's son, who is being pursued by Araz's husband:

BAUER: If you were to help us find the override device, we *will* protect your son.

ARAZ: So he can spend the rest of his life in prison?

BAUER: No, so he can walk from all of this, immune from prosecution.

ARAZ: How?

BAUER: Mrs. Araz, your son is a minor. He's seventeen years old. I can get him a legal and binding pardon, signed by the President of the United States.

ARAZ: You don't have the authority to do this.

BAUER: I can reach the President. If you provide us with the information that allows us to find the override device—in time—I am confident that the President will sign that pardon.<sup>42</sup>

Also in season four, a female assassin named Mandy is the only person who can lead Bauer to terrorist Marwan, who has prepared a nuclear missile for imminent use on an American city. Mandy has already murdered four people (including a CTU agent) and taken another agent hostage. After Bauer captures Mandy, he engages in the following dialogue with her:

BAUER (gripping her neck with one hand): Where is Marwan?

BAUER: That's what I thought. We're both professionals. You know that I can force this information out of you, but I'm running out of time. You never get second chances in our line of work, but I'm going to give you one. I have the power to give you a deal signed by the President of the United States that grants you immunity from past and present crimes. In exchange you're going to help me find Marwan and stop this warhead from hitting its target. Do you understand?

BAUER (putting his gun to her head): You are either going to help me now or I will kill you.

MANDY: Show me the deal.<sup>43</sup>

Similarly, in season five, Bauer's only lead to finding Russian terrorist Vladimir Bierko at one point is a black market information dealer named Collette Stenger.

BAUER: We're running out of time. You better tell me what you want.

STENGER: Full immunity, no holdbacks, signed by your president and transmitted to lawyers in Zurich and Tripoli. . . .

STENGER: Give me immunity and I'll give you my source. Those are my terms.

BAUER (smirking): You haven't offered us very much. I'll see what I can do.<sup>44</sup>

Nevertheless, Bauer recommends to his superiors at CTU that they provide Stenger with her immunity deal.

<sup>41</sup> 24: *Day 4: 3:00 pm – 4:00 pm* (FOX television broadcast Feb. 14, 2005).

<sup>42</sup> *Id.*

<sup>43</sup> 24: *Day 4: 5:00 am – 6:00 am* (FOX television broadcast May 23, 2005).

<sup>44</sup> 24: *Day 5: 8:00 pm – 9:00 pm* (FOX television broadcast Mar. 20, 2006).

Bauer's immediate decision to rule out torturing these women due to the lack of time stands in contrast to his actions in a virtually identical scenario in season two. Then, having captured terrorist Ali and desperate to find the location of the nuclear device Ali has armed, Bauer is considerably less patient.

BAUER: I know who you are. I know everything you've done.

BAUER (forcing Ali's head backward): Where is the bomb?

BAUER (punching Ali in the midriff, then the face twice): Where's the bomb?!

BAUER: You are wasting my time. When is the bomb going to detonate?

ALI: You're the one wasting time. I woke up today knowing I would die.

BAUER: I can make you die with more pain than you ever imagined (breaking Ali's finger).<sup>45</sup>

Perhaps the difference is that Bauer believes Ali to be a diehard terrorist who could never be persuaded to abandon his plan, whereas he recognizes Mandy as a "professional" who can be bargained with. But Bauer also recognizes Araz as a diehard, committed terrorist—which in fact is the reason he gives to the first CTU agent on the scene not to torture her—because she would die before giving information under such compulsion.

Bauer does not even attempt to offer Ali an immunity agreement in exchange for the location of the nuclear device. In season three, Bauer makes a cursory attempt at an immunity agreement with Michael Amador, a captured go-between working for terrorist Stephen Saunders. The following exchange takes place:

BAUER: All I want to know right now is where the virus is.

AMADOR: I don't know. I've passed it off.

AMADOR: Look, you can do what you want with me. I'm not going to tell you anything.

BAUER: What are you afraid of? Who are you afraid of?

BAUER: We can protect you.

AMADOR: Can you, Jack?

BAUER: Yes.

AMADOR: And my family?

BAUER: Yes.

AMADOR: You couldn't even protect your own.

BAUER: I'm going to ask you this one last time. Where is the virus?

AMADOR: Go to hell.

Following this unsuccessful questioning, Bauer forces Amador's hand on a table and calls for his partner, who takes out a knife and cuts Amador's hand so severely that Amador passes out.<sup>46</sup> In fairness, Bauer does try to offer Amador a "carrot" before resorting to his usual "stick." On the other hand, he does not seem to try very hard, compared to the lengths that he goes to on behalf of Araz, Mandy, and Stenger. Unlike the women, Amador does not get offered a deal signed by the President.

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<sup>45</sup> 24: *Day 2: 7:00 pm – 8:00 pm* (FOX television broadcast Feb. 11, 2003).

<sup>46</sup> 24: *Day 3: 3:00 am – 4:00 am* (FOX television broadcast Feb. 24, 2004).

The closest that Bauer comes to torturing a female terrorist was probably in season two,<sup>47</sup> when he refuses to provide pain medication to Marie Warner, an American conspiring with Ali to set off the nuclear bomb in Los Angeles. While apprehending her, Bauer shoots Warner in the shoulder. Later, as he interrogates her, he restricts the amount of pain medication being administered to her.<sup>48</sup>

Why does Bauer not torture women? The answer is probably that viewers might stop viewing him as the dedicated hero who does whatever it takes to save the nation, and start seeing him as a monster.

Physical abuse, or the threat of such abuse, of women does seem to strike a raw nerve among some Americans. A primary rationale offered to justify the restriction on front-line combat duty for women is the concern that, if captured, the women would be tortured and raped, perhaps in front of male prisoners in an effort to coerce them into divulging information.<sup>49</sup> When Specialist Melissa Rathbun-Nealy was captured during the first Gulf War, the public strongly suspected that she was being raped or otherwise sexually assaulted, and when she later revealed that she had not been mistreated at all, only one newspaper gave a full accounting of her story.<sup>50</sup> Perceived American unease about torture of women may also partially explain the severely misleading account that the U.S. military provided of Private Jessica Lynch's capture during the 2003 Iraq War. According to the government's initial reports, Lynch—the sole survivor of an ambush on her convoy—fought off Iraqi soldiers despite severe injuries, killing several, before running out of ammunition and being captured, only to be rescued later with the aid of a kind-hearted Iraqi citizen. Her authorized biography, however, reveals that her rifle jammed before she fired a single shot. Furthermore, it reported that post-rescue medical examinations indicated that she had been raped and that her gruesome injuries may have been the result of physical assaults by her captors.<sup>51</sup> The government may have disseminated the misleading story about Lynch's capture in part out of

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<sup>47</sup> As discussed earlier, Bauer has had strangely fewer qualms about torturing women that he knew to be innocent, such as Marilyn Henderson, whom he shot in the leg in season five in an effort to coerce her husband into cooperating, and Jane Saunders, who was nearly forced into the virus-infected hotel in season three in an effort to coerce her father into cooperating.

<sup>48</sup> This deliberate withholding of painkillers in the face of injuries inflicted during capture is remarkably similar to the interrogation method reportedly used by the U.S. government on Abu Zubaydah, a senior al-Qaeda leader captured in 2003. See Don Van Natta Jr., et al., *Threats and Responses: Interrogations; Questioning Terror Suspects in a Dark and Surreal World*, N.Y. TIMES, Mar. 9, 2003, at A1.

<sup>49</sup> See LINDA BIRD FRANCKE, GROUND ZERO: THE GENDER WARS IN THE MILITARY 89–90 (1997); Kristin K. Heimark, *Sexual Harassment in the United States Navy: A New Pair of Glasses*, 44 NAVAL L. REV. 223, 233–34 (1997); Elaine Donnelly, *Private Lynch & Amazon Myths*, NAT'L REV. ONLINE, Nov. 14, 2003, available at <http://www.nationalreview.com/comment/donnelly200311140914.asp>. See also Elaine Donnelly, *Constructing the Co-Ed Military*, 14 DUKE J. GENDER L. & POL'Y 815, 854–55 (2007) (noting survey showing that a majority of female soldiers “do not wish to participate in combat assignments”); Blythe Leszkay, *Feminism on the Front Lines*, 14 HAST. WOMEN'S L.J. 133, 165 (2003) (acknowledging that “[t]he desire to prevent women from being captured and killed, raped, and tortured is a visually compelling argument,” but going on to refute it).

<sup>50</sup> See Cynthia Nantais & Martha F. Lee, *Women in the United States Military: Protectors or Protected? The Case of Prisoner of War Melissa Rathbun-Nealy*, 8 J. GENDER STUD. 181, 187 (1999). One should keep in mind, however, that the other female American soldier taken prisoner during that conflict, Major Rhonda Cornum, did report being sexually molested by her captor. See *id.*

<sup>51</sup> RICK BRAGG, I AM A SOLDIER, TOO: THE JESSICA LYNCH STORY (2003). See also Rick Hampson, *Lynch Book Tells of Rape by Captors*, USA TODAY.COM, Nov. 6, 2003, available at [http://www.usatoday.com/news/nation/2003-11-06-lynch\\_x.htm](http://www.usatoday.com/news/nation/2003-11-06-lynch_x.htm).

concern that the true facts would have appalled the public and led to a drastic decrease in support for women in the armed forces.

The *24* producers' refusal to depict Bauer interrogating female suspects in the same way that he interrogates male suspects may well reflect an accurate perception of the intolerance that the public would exhibit toward such behavior. However, the fact that the public might be disgusted if Bauer were to torture Mandy or Stenger is hardly a good reason to avoid showing it if one really accepts the consequentialist reasoning that torture may be justified to stop a sufficiently violent terrorist attack. Put another way, the fact that presidential pardons effectively induce female terrorists and collaborators to cooperate suggests that Bauer resorts to torture too quickly with regard to the male terrorists and collaborators.

#### D. JUSTIFYING TORTURE NARRATIVELY AND THE STACKED DECK

In the end, the presentation of the ticking time bomb scenario on *24* is problematic for a number of reasons. Bauer and CTU have, for all intents and purposes, perfect information: they are certain that a weapon of mass destruction is primed for use in the United States, they are certain that they have apprehended a terrorist with positive knowledge of the terror plot, they are certain that time is of the essence, and they are certain that torture is necessary (except, as noted, with women). In real life, of course, such perfect information is unattainable. As a thought experiment, one can imagine what *24* would be like if viewers saw or heard *only* what Bauer himself encountered or heard. Would a scene of a terrorist suspect shrieking "I DON'T KNOW!" while being tortured by Bauer be as easily tolerated as the current scenes—where viewers know that Bauer is torturing a "guilty" person?

That Bauer almost always succeeds in extracting actionable information by torturing terrorists, combined with the fact that the male terrorists seem to leave him no choice but to torture them (despite Bauer's pleas to the contrary), stacks the deck in favor of the show's depiction of torture as necessary. Understandably, the real-time narrative device, where one television season constitutes a single twenty-four hour day on the show, makes it difficult, if not impossible, to depict rapport-based interrogation.<sup>52</sup> Nevertheless, the show undoubtedly makes torture seem far more effective and efficient than it is in reality.<sup>53</sup>

The impact of this skewed portrait of torture is mixed; on the one hand, if a government agent were ever to be prosecuted for torturing a terrorist suspect and raised a defense of necessity, a jury influenced by *24* might demand that the agent had possessed the perfect information that Bauer regularly has. This phenomenon would be somewhat analogous to the so-

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<sup>52</sup> For an interesting contrast between rapport-based interrogation and abusive interrogation at Guantanamo Bay, compare ERIK SAAR & VIVECA NOVAK, *INSIDE THE WIRE: A MILITARY INTELLIGENCE SOLDIER'S EYEWITNESS ACCOUNT OF LIFE AT GUANTANAMO* 167–70, 177–80, 182–85 (2005) (respectful treatment of detainees) with *id.* at 222–28 (sexual humiliation of detainee).

<sup>53</sup> Consider, for example, that it took Philippine officials sixty-seven days to torture Abdul Murad enough to get him to confess to the "Bojinko" plot to bomb eleven airlines over the Pacific Ocean. See VITUG & GLORIA, *supra* note 21, at 223.

called “CSI effect,” where some juries are demanding the kind of hard, unquestionable scientific proof displayed on a weekly basis on the crime show *CSI*.<sup>54</sup> If so, the government agent may have a tough time proving the necessity defense.

On the other hand, as demonstrated by the reports of the West Point dean and other government interrogators, some military personnel have been influenced by the show to engage in more abusive interrogations. To the extent that the analogue to the CSI effect does not materialize, the impact may well be greater acceptance of the “necessity” for torture or other, slightly less coercive interrogation methods.

### III. RACIAL PROFILING: ARABS AND MUSLIMS

Hollywood’s generally negative depiction of Arabs and Muslims has come under fire recently—most notably in Jack Shaheen’s *Reel Bad Arabs*.<sup>55</sup> After cataloging almost one thousand American films containing Arab characters, Shaheen concluded that most—though not all—movies tended to reduce Arabs and Muslims into stock villains, blonde-lusting sheikhs, maidens, or Egyptian or Palestinian terrorists.<sup>56</sup>

What is the legal significance of skewed portrayals of Arabs and Muslims in movies and television programs? Such depictions raise the possibility of provoking violence against Arab-Americans as well as justifying drastic race-based measures.<sup>57</sup> One need only look at the Supreme Court’s opinion in the Japanese internment cases, where in upholding military orders setting curfews for and excluding persons of Japanese descent—including American citizens—from large portions of the West Coast, the Court engaged in gross, and largely inaccurate, stereotyping of Japanese-Americans, noting among other things that:

There is support for the view that social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population. In addition, large numbers of children of Japanese parentage are sent to Japanese language schools outside the regular hours of public schools in the locality. Some of these schools are generally believed to be sources of Japanese nationalistic propaganda, cultivating allegiance to Japan.<sup>58</sup>

That Japanese-Americans were seen as different from other Americans in that they were perceived to retain greater loyalty to Japan than to the

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<sup>54</sup> See, e.g., Erin Murphy, *The New Forensics: Criminal Justice, False Certainty, and the Second Generation of Scientific Evidence*, 95 CAL. L. REV. 721, 737 (2007).

<sup>55</sup> See JACK G. SHAHEEN, *REEL BAD ARABS: HOW HOLLYWOOD VILIFIES A PEOPLE* (2001).

<sup>56</sup> See *id.* at 14–27. Recent exceptions include *THREE KINGS* (Warner Bros. 1999), singled out for its complex portrayal of Iraqis in the post-Gulf War era, and *THE 13<sup>TH</sup> WARRIOR* (Touchstone 1999), noted for its “bona fide Arab champion.” *Id.* at 481, 485.

<sup>57</sup> See SHAHEEN, *supra* note 55, at 7 (raising such a concern about the portrayal of Arab terrorists in *The Siege*). For an interesting exploration of the pernicious impact of racial biases in the legal system, See also Jody D. Armour, *Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes*, 46 STAN. L. REV. 781 (1994).

<sup>58</sup> *Hirabayashi v. United States*, 320 U.S. 81, 96–97 (1943).

United States made it easier to rationalize shipping them off to internment camps. While there have been no serious calls for interning Arab-Americans,<sup>59</sup> in the days immediately following the 9/11 attacks, there appeared to be broad support among Americans for racial profiling of Arab-Americans.<sup>60</sup>

Still, it is hard to deny that the greatest present terrorist threat to the United States comes from radical Islamists. Arab terrorists have been responsible for a majority of the major attacks against Americans or American interests in the past twenty-five years, including the truck bombing of the U.S. Marine Corps barracks in Lebanon in 1983, the truck bombing of the World Trade Center in 1993,<sup>61</sup> the bombing of the Khobar Towers in Saudi Arabia in 1996,<sup>62</sup> the simultaneous bombings of the U.S. embassies in Kenya and Tanzania in 1998,<sup>63</sup> the suicide boat attack on the *U.S.S. Cole* in 2000,<sup>64</sup> and of course the devastating attacks on the World Trade Center and the Pentagon on September 11, 2001. Notable and important exceptions are Timothy McVeigh and Terry Nichols, who carried out the deadly truck bombing of the Murrah Federal Building in Oklahoma City in 1995, and the “Unabomber” Ted Kaczynski, who sent sixteen bombs through the mail over seventeen years, killing three persons and wounding several others.

How well does *24* fare in terms of its portrayals of Arabs and Muslims? Seasons two, four, and six do involve Middle Eastern terrorists intent on setting off nuclear devices in Los Angeles—Syed Ali (season two), Habib Marwan and the Araz family (season four), and Abu Fayed (season six)—thus appearing to fit the common stereotype of portraying Arabs or Muslims as the villains. Furthermore, the terrorists are shown torturing innocent men and women,<sup>65</sup> poisoning a teenage girl to death,<sup>66</sup> and torturing Bauer and a CTU computer technician.<sup>67</sup> While the terrorists are generally portrayed as ruthlessly competent,<sup>68</sup> the audience is given little to

<sup>59</sup> Perhaps the closest one might find is MICHELLE MALKIN, IN DEFENSE OF INTERNMENT: THE WORLD WAR II ROUND-UP AND WHAT IT MEANS FOR AMERICA'S WAR ON TERROR (2004). Malkin attempts to justify the internment of the Japanese-Americans, but does not quite come out explicitly in support of interning Arab-Americans. A more convincing account is Mark Tushnet, *Defending Korematsu?: Reflections on Civil Liberties in Wartime*, 2003 WIS. L. REV. 273 (2003), suggesting that the nation learns slowly from past mistakes and is therefore unlikely to repeat the exact same mistake made in *Korematsu*.

<sup>60</sup> See, e.g., Mariano-Florentino Cuellar, *Choosing Anti-Terror Targets by National Origin and Race*, 6 HARV. LATINO L. REV. 9, 13 (2003); Kevin R. Johnson, *Racial Profiling After September 11: The Department of Justice's 2003 Guidelines*, 50 LOY. L. REV. 67, 79–80 (2004).

<sup>61</sup> FINAL REPORT OF THE NAT'L COMM'N ON TERRORIST ATTACKS UPON THE UNITED STATES 71–73 (2004).

<sup>62</sup> See *id.* at 60.

<sup>63</sup> See *id.* at 115–18.

<sup>64</sup> See *id.* at 190–91.

<sup>65</sup> *24: Day 2: 4:00 p.m. – 5:00 p.m.* (Fox television broadcast January 14, 2003). Ali uses scalpels and other cutting instruments to slice Kate Warner and Paul Koplun in an effort to find out what they learned from searching a computer used by one of Ali's associates.

<sup>66</sup> *24: Day 4: 10:00 a.m. – 11:00 a.m.* (Fox television broadcast January 10, 2005). Araz gives her son's girlfriend poisoned tea after discovering that the girl had followed the son to the secret location where Marwan's men were holding the Secretary of Defense.

<sup>67</sup> *24: Day 6: 6:00 am – 7:00 am* (Fox television broadcast Jan. 14, 2007) (Bauer); *24: Day 6: 1:00 pm – 2:00 pm* (Fox television broadcast Feb. 12, 2007) (CTU technician).

<sup>68</sup> For example, in season four, one of Marwan's men, Kalil Hasan, cleverly deduces that a police officer let him go after a traffic confrontation so that he could be followed to the terrorists' staging base; as a

no understanding as to *why* the terrorists seek to inflict such massive casualties.<sup>69</sup>

True, al-Qaeda offered no explicit motive for the 9/11 attacks.<sup>70</sup> Nor were the post-9/11 al-Qaeda-led or -inspired acts of terrorism, including the 2004 train bombings in Madrid, the 2005 subway/bus bombings in London, and the disrupted London airline bombing plot in 2006, preceded or followed by any explanation as to the reasons for the attacks. Al-Qaeda may be little more than a nihilistic, death-worshipping cult lashing out at Western civilization.<sup>71</sup>

But from a narrative perspective, the producers of *24* need not have duplicated al-Qaeda's senseless love of carnage. Consider the 1997 action thriller *The Peacemaker*,<sup>72</sup> whose plot generally resembles that of the typical season of *24*: Bosnian-Serbian terrorists hijack a train carrying ten Russian nuclear warheads and smuggle nine of the warheads into the United States with the intent of detonating one in New York City at the United Nations building, all the while pursued by two Americans, a nuclear physicist and a military operative. Viewers learn the terrorist leader, Dusan Gavric's motivation through a videotape found in his home and through an extended flashback. The videotape contains the message that Gavric meant to be played after destroying New York City, and in it, he explains that the United Nations forced the Serbs, Croats, and Muslims to adhere to Western standards of peace while ignoring their grievances, and that the only way to make the Western nations stay out of Bosnian-Serbian affairs was to make them feel like "the peacemaker." In the flashback, viewers see why Gavric feels so personally invested: during the strife referred to in the videotape, his wife and baby died in his arms after being shot by a sniper. To be sure, I do not mean to suggest that Gavric is a fully developed character in the movie, nor do I mean to suggest that Gavric would have been justified in destroying New York for personal revenge. My point is merely that, from a narrative perspective, the providing of a motive turns the antagonist from a caricatured "evil-doer" into a more challenging opponent.<sup>73</sup>

Thus, the depiction of Arabs and Muslims as terrorists on *24* leaves something to be desired. Although the Arab villains in *24* are far from the

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result, he commits suicide to thwart Bauer's plan. *24: Day 4: 11:00 am – 12:00 pm* (Fox television broadcast Jan. 17, 2005).

<sup>69</sup> Perhaps the closest explanation viewers are given in any of these seasons is near the beginning of season six, when Abu Fayed tells Bauer that he saw what Bauer did to his brother in the course of interrogation, and that he plans to inflict the same injuries on Bauer. *24: Day 6: 6:00 am – 7:00 am* (Fox television broadcast Jan. 14, 2007). But even this bit of insight is limited to explaining why Abu Fayed wants to torture Bauer to death, not why he wants to set off a nuclear bomb in California.

<sup>70</sup> *Transcript: Bin Laden Video Excerpts*, BBC NEWS WORLD EDITION, Dec. 27, 2001, [http://news.bbc.co.uk/1/hi/world/middle\\_east/1729882.stm](http://news.bbc.co.uk/1/hi/world/middle_east/1729882.stm) (listing general reasons for the attacks including America's hatred of Muslims) (last visited Jan. 2, 2008).

<sup>71</sup> See, e.g., LAWRENCE WRIGHT, *THE LOOMING TOWER: AL-QAEDA AND THE ROAD TO 9/11* 107 (2006).

<sup>72</sup> *THE PEACEMAKER* (DreamWorks 1997).

<sup>73</sup> Another movie that takes the time to give insight into a "bad guy" is *THREE KINGS* (Warner Bros. 1999). In *Three Kings*, an Iraqi soldier torturing a U.S. soldier played by Mark Wahlberg explains that "during the war American bombs crippled [his] wife, killing his young son." SHAHEEN, *supra* note 55, at 486. As a result of this dialogue, the U.S. soldier cannot help but imagine a scene where a bomb drops on his own house, killing his wife and son.



bumbling buffoons or venal hypocrites that populate numerous American movies,<sup>74</sup> they are little more than machine-like haters of the United States who could be replaced by Arnold Schwarzenegger's Terminator with little loss of continuity.

Still, one might compare *24*'s depiction of terrorists as Middle Easterners with a recent movie, *The Sum of All Fears*,<sup>75</sup> in which the producers made a substantial change to the identity of the villain. In the original Tom Clancy novel that served as the basis for the movie,<sup>76</sup> Muslim extremists recover an Israeli nuclear warhead and use it to construct a nuclear device, which they then detonate in Denver, Colorado; the terrorists hope to start a nuclear war between the United States and the Soviet Union in order to derail the peace process between Israel and Palestine. The 2002 film version lifts the storyline but makes the villain an Austrian neo-Nazi who emulates Adolph Hitler in seeking to draw the United States and Russia into conflict with each other.

The change was reportedly made because the movie director did not believe that Arab extremists would have been capable of carrying out the terrorist plot detailed in the novel.<sup>77</sup> Putting aside whether the director might have underestimated the ingenuity of terrorist groups such as al-Qaeda, one can ask whether changing the terrorists from Arab extremists to neo-Nazis would be a demonstration of sensitivity toward Arab-Americans or mere narrative cowardice: does anyone really believe that the underlying causes and justifications for neo-Nazi terror (to the extent it exists) are remotely comparable to those underlying extremist Arab terrorism? The intertwined issues of Israel's occupation of the West Bank and the Gaza Strip, the United States's stationing of troops in the Middle East, the United States's continuing occupation of Iraq, and the United States's support of repressive regimes in the Middle East do not justify terrorism directed at civilians, but the issues themselves are legitimate and complex. With respect to the Israeli occupation of Palestine, for example, disagreement with the tactic of suicide bombings can be meaningfully separated from the underlying question of whether the Palestinians have a legitimate grievance over the occupation itself. It is difficult to see how neo-Nazism addresses any issues of comparable legitimacy.

In short, the problem with the depiction of Arabs as terrorists in *24* lies less in that Arabs have in fact been cast as the villains.<sup>78</sup> Rather, the problem lies in the one-dimensional nature of the Arab terrorists as nihilistic ciphers—they are essentially dehumanized, which in turns makes the torture inflicted upon them by Bauer more palatable than if they were seen as persons.

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<sup>74</sup> See SHAHEEN, *supra* note 55, at 14, 18.

<sup>75</sup> *The Sum of All Fears* (Paramount 2002).

<sup>76</sup> TOM CLANCY, *THE SUM OF ALL FEARS* (1991).

<sup>77</sup> See *THE SUM OF ALL FEARS* (Paramount 2002) (discussed during the commentaries to the movie on the DVD version).

<sup>78</sup> It would, of course, be different if *every* season cast Arabs as the villains, but in the *24* universe, the antagonists (not just terrorists) have included a Britain, Russian separatists, a Serb family, and Chinese agents.

On the other hand, there is more to be said about the depiction of non-terrorist Arabs and Muslims on the show. *24* has been a regular target of criticism from the Council for American-Islamic Relations (“CAIR”),<sup>79</sup> such that in season four, star Kiefer Sutherland filmed a public service announcement that aired during one episode. In it, Sutherland said:

Now while terrorism is obviously one of the most critical challenges facing our nation and the world, it is important to recognize that the American Muslim community stands firmly beside their fellow Americans in denouncing and resisting all forms of terrorism. So in watching *24*, please, bear that in mind.<sup>80</sup>

Season two includes three significant Arab or Arab-American characters besides Ali: Reza Naiyeer, Imam al-Fulani, and Yusuf Auda. Naiyeer is a British businessman of Arab descent who comes under CTU’s scrutiny as having possible links to Ali; he is also getting married to Marie Warner—the younger sister of Kate Warner, who later helps Bauer track down and identify Ali. Early episodes intimate that Naiyeer did business with Ali, but viewers later learn that it was actually Marie Warner who used Naiyeer’s computer to conduct those transactions. Sadly for Naiyeer, Marie Warner is in league with Ali and she kills Naiyeer before she is apprehended by CTU.

Imam al-Fulani is the imam of the Los Angeles mosque where Bauer eventually locates Ali and subsequently captures and interrogates him. Bauer asks the Imam if he is hiding Ali:

IMAM AL-FULANI: No, Agent Bauer, I have no misplaced loyalties. If the man you are looking for has murdered an innocent, he is as guilty in the eyes of Islam as he is in yours.

BAUER: The man I’m looking for set in motion today a plan to detonate a nuclear weapon in Los Angeles.

IMAM AL-FULANI: Are you certain?

BAUER: Yes, we’re certain. Our estimates are between one and two million people will die if this bomb goes off. That, sir, is why we need to find him now.

IMAM AL-FULANI: Thank you for informing me, but I can be no more honest with you than I have been. But if you find this man, perhaps I can talk to him in a way you cannot. Persuade him.<sup>81</sup>

After Bauer’s initial, unsuccessful questioning of Ali, Imam al-Fulani tries speaking to Syed Ali:

IMAM AL-FULANI: I am the Imam of this mosque. Do you deny these men’s accusations that you are planning to explode a bomb that will kill millions of people?

IMAM AL-FULANI: The Koran clearly forbids the killing of innocents and noncombatants. You know this as well as I do.

<sup>79</sup> See Robert Spencer, *Fox Cowtows to CAIR*, FRONTPAGEMAGAZINE.COM, Jan. 19, 2005, <http://www.frontpagemag.com/Articles/4DF3C5F888F8> (last visited Jan. 2, 2008). Read.aspx?GUID={809737A5-F8E5-46C6-8777-4DF3C5F888F8}

<sup>80</sup> See, e.g., Wayne Parry, *Portrayals on “24” Anger Muslim Community*, WICHITA EAGLE, Mar. 14, 2005, at 2C.

<sup>81</sup> *24: Day 2: 7:00 pm – 8:00 pm* (Fox television broadcast Feb. 11, 2003).

ALI: We have different interpretations of the Koran.

IMAM AL-FULANI: You are misguided. Someone has twisted the words of the Prophet. Allah does not love aggressors. Listen to me. The murder of one innocent, let alone millions, will not get you into paradise.

ALI: We will continue this debate when I see you there, Imam al-Fulani.<sup>82</sup>

Imam al-Fulani walks away horrified and says to Bauer, "I have talked to men like this before, who misuse our religion to channel their hate, but I have not personally known anyone who would actually act on their impulses."<sup>83</sup>

Yusuf Auda is an intelligence agent sent by one of the three unnamed Middle Eastern countries suspected of sponsoring Ali, with the ostensible goal of assisting CTU in tracking down Ali. Although the CTU agents are initially suspicious of Auda and marginalize him, Auda ends up playing a major role in saving Bauer from a deadly ambush. Later, a trio of clearly bigoted Caucasians savagely beat Auda nearly to death; he survives just long enough to pass a critical piece of information to Bauer.

Season four contains only two notable instances of Arab-Americans who are not terrorists. The first is a passing instance where an Arab-American woman sees a newscast about the day's events and says that she hates it when Arab terrorists attack the United States because it makes things difficult for law-abiding Arab-Americans, to which sleeper terrorist Navi Araz replies, "I completely agree." The second is a set piece where Bauer and a businessman helping him are trapped in downtown Los Angeles while being pursued by a group of ex-military mercenaries. Bauer and the businessman take shelter in a gun shop owned by two Arab-American brothers. Bauer instructs the brothers to leave for their own safety, but when the brothers learn that Bauer is a counterterrorism agent, they elect to help him, because:

FIRST BROTHER: For years, we've been blamed for the attacks by these terrorists. We grew up in this neighborhood. This country is our home.

SECOND BROTHER: If you're fighting the people who caused today's bloodshed, then we'll help you.<sup>84</sup>

Season six has three major Arab-American or Arab characters who are not terrorists. The Arab-Americans are Nadia Yassir, the Chief of Staff of the CTU office in Los Angeles, and Walid al-Rezani, the director of the Islamic-American Alliance; the Arab is Hamri al-Assad, a former terrorist who has renounced terrorism.

Yassir is one of the season's Arab-Americans designated to be victimized by racism and bigotry. Though a U.S. citizen who apparently has high level security clearance, her Middle Eastern background subjects her to unfounded suspicion of being a mole. Special controls are imposed on her alone in the CTU office because she is of Arab descent.

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<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> 24: *Day 4: 7:00 pm – 8:00 pm* (Fox television broadcast Mar. 14, 2005). Indeed, one of the first things the brothers tell Bauer is, "We're the first ones to be [looted] today because everyone knows we're Arabs. We're good citizens!"

Al-Rezani ends up arrested (due primarily to his lawyer's deliberate destruction of evidence) and sent to an Arab-American internment camp. While his lawyer protests his treatment, al-Rezani tries to help U.S. government agents by acting as an informant within the camp, at great risk to himself. In a memorable moment, when he tells his lawyer that he has overheard what he believes to be information related to a terrorist plot and the lawyer complains about the gross civil rights violations by the government, al-Rezani says impatiently, "Can't you stop being a lawyer for once?!"

Al-Assad is initially suspected of instigating the wave of suicide bombings that have plagued the United States at the beginning of season six, but Bauer comes to trust that al-Assad has renounced terrorism and works with him to track down the real terrorist, Abu Fayed. Al-Assad receives a Presidential pardon and agrees to make a televised statement with the President in which he will make a plea to Muslims across the world to seek peace with the West. However, before the telecast occurs, al-Assad spots a bomb in the Presidential podium and tries to push the President away; the bomb detonates and kills al-Assad.

In these three seasons, viewers are exposed to a variety of Arab-American or Arab characters who are not terrorists. Some are regular persons who, if anything, are unfairly suspected of wrongdoing *because* they are Arab-Americans or Arabs (al-Rezani, Auda, Naiyeer, Yassir): one denounces the terrorists (Imam al-Fulani), some actually fight with Bauer (the brothers in the gun shop, Auda), and one saves the President of the United States at the cost of his own life (al-Assad). In some instances, one might dismiss the portrayals as "token good guys."<sup>85</sup> The gun shop owners in season four, for example, struck me as too obvious an attempt to include "good Arab-Americans." However, Imam al-Fulani presents a strikingly positive image on a number of dimensions—he demonstrates that one can be a loyal American and a devout Muslim (indeed, an Imam) and, perhaps most importantly, he shows that the typical American Muslim rejects terrorism and regards it as an affront to Islam and the Koran.<sup>86</sup> Similarly, Nadia Yassir is not just a "good" Arab-American, but a top counterterrorism agent dedicated to protecting the United States against terrorists.

Of course, one can debate whether these non-terrorist portrayals are enough to offset the potential harm caused by the images of Arab terrorists plotting to use nuclear weapons against Americans.<sup>87</sup> It may well be that *positive* portrayals of Arabs and Arab-Americans do not make an equal impression as *negative* portrayals do, even if equal time were devoted to

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<sup>85</sup> See SHAHEEN, *supra* note 55, at 17 (comparing the "token" Arab-American FBI agent in the movie *The Siege* (Fox 1998) to Tonto in the old cowboys-and-Indians movies, where scenes of Indians massacring settlers were "balanced" by Tonto).

<sup>86</sup> At the same time, one could argue that Imam al-Fulani is too obviously caricatured as a "good Arab-American" in that he fails to protest physical abuse and torture being perpetrated in his mosque, and that his purpose is merely to espouse a pro-American view of Islam.

<sup>87</sup> Critic Jack Shaheen argues that "[i]n three out of its six seasons, 24 has drilled home the same falsehoods about America's Arabs and Muslims." See Jack G. Shaheen, Editorial, "24" *Glorifies Torture, Foments Hate Against U.S. Arabs and Muslims*, AKRON BEACON J., Feb. 26, 2007, at A5.

each. If true, however, the only way for television shows and movies to avoid this sort of harm to image is by not portraying any Arabs, Arab-Americans, or Muslims as terrorists – an approach that I criticized earlier.

#### IV. CONCLUSION

It would be easy to dismiss *24* as mere entertainment, but as we have seen, the show has crept into the national security discourse already, and therefore it is useful to analyze how the show treats matters such as torture and racial profiling. Measured by such standards, *24* is a mixed bag. The relentless use of torture—though only on males—may be cathartic to some in the post-9/11 era, but it presents an unduly optimistic justification of torture. Bauer may never be wrong about whom he tortures, and he may still be a basically decent human being, but there is little reason to believe that both factors will play out similarly in real life.

With regard to the portrayal of Arabs and Arab-Americans, *24* may not be as negatively biased as some critics complain it is. The terrorists are not always Arabs; in fact, even in the seasons when the terrorists *are* Arabs, there are usually other, non-Arab villains as well, such as Marie Warner in season two. In addition, the producers appear at least cognizant of the fact that one-sided portrayals amount to little more than polemic; how else can one explain the sometimes heavy-handed inclusion of Arab-American characters who make speeches proclaiming their patriotism as they risk their lives to help Bauer? Where *24* could improve its presentation on this front would be to provide a better sense of the motivations of the terrorists—not for the purpose of justifying the terrorism, but to humanize the antagonists. The terrorist in season three, Saunders, was left for dead by Bauer on a previous mission and endured years of torture at the hands of the Serbs. Is he misguided, even monstrous, in unleashing a deadly virus in a California hotel and seeking to unleash eleven more canisters across the country? Yes. But at least viewers can sympathize with his suffering.

