

# The HBO Series *The Wire*

## Introduction

Bennett Capers\*

It perhaps comes as no surprise that, at a gathering of four criminal law professors over drinks and dinner, the subject would turn to the HBO series *The Wire*. The four of us—Susan Bandes, Jeff Fagan, David Alan Sklansky, and myself—were part of a larger group of about twenty or so criminal professors invited to participate in the University of Chicago’s Criminal Justice Roundtable, and after a full day of discussing each other’s scholarship, we were eager to discuss something else. In fact, it would not surprise me if the other participants, grouped at adjacent tables that night, also found themselves turning to *The Wire*.

Though under-watched, *The Wire* is one of those critically acclaimed shows that has a devoted, if eclectic, following. As the *Wall Street Journal* observed, its fan-base includes both “the hip-hop world and the intelligentsia.”<sup>1</sup> It’s also amazingly good, so good that it’s been the subject of seminars at Duke, Middlebury College, University of California-Berkeley, and most recently Harvard, where the prominent sociologist William Julius Wilson teaches a course on the show. Wilson’s praise bears repeating: *The Wire* has “done more to enhance our understanding of the challenges of urban life and the problems of urban inequality than any other media event or scholarly publications, including studies by social scientists.”<sup>2</sup> Perhaps most importantly, criminal law and procedure professors have embraced *The Wire*. (Tellingly, when I was at Vanderbilt’s Young Criminal Scholars Roundtable, we also discussed *The Wire*). *The Wire* has even found its way into the law school curriculum. At George Washington Law School, Roger Fairfax teaches an entire seminar using *The Wire* as his core text.

At our table that night in Chicago, the four of us raved about *The Wire*. Then we lamented the fact that, to our knowledge, there had never been a law conference devoted to *The Wire*, or even a symposium issue in a law journal. The series certainly raises enough criminal law and criminal procedure questions to warrant such a project. But even more importantly, *The Wire* does something else. I once argued that “law and order” shows can have a type of “de-shadowing” effect.<sup>3</sup> There is the justice administered by the courts. And there is the justice that the

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<sup>1</sup> Lauren Mechling, *Television: Inside The Wire*, WALL ST. J., Dec. 29, 2007, at W1.

<sup>2</sup> Amanda M. Fairbanks, *Deconstructing ‘The Wire,’* N.Y. TIMES (Education Supplement) Jan. 3, 2010, at ED4.

<sup>3</sup> I. Bennett Capers, *Notes on Minority Report*, 42 SUFFOLK U. L. REV. 795, 796 (2009).

courts imagine they are regulating. Law and order shows, especially the ones that give the illusion of being police procedurals, are uniquely positioned to critique this justice. Law and order shows, at their best, bring out of the shadows the justice that actually exists. No show does this better than *The Wire*.<sup>4</sup>

“The four of us should put together a panel on *The Wire*,” one of us said that night over dinner. I’m pretty sure it was Susan Bandes. “Maybe a panel at the upcoming Law and Society Conference.” Drinks in hand, we all seconded the idea. We even came up with a hook: we would each select one of our favorite scenes and discuss it in the context of criminal law or procedure. I don’t know how many of us quietly dismissed our plan as idle talk or, worse yet, the liquor talking. What I do know is that a few months later, Susan Bandes emailed the group, reminded us of our dinner conversation, and offered to write up a panel proposal for the Law & Society Conference. The four of us became five with the addition of my colleague Alafair Burke. And Burke, as a professor and a prolific mystery writer with connections we could only dream about, in turn brought in her friend David Simon, the creator of *The Wire*. What followed was one of the most well-attended panels at Law & Society this past year. What followed too was this mini-symposium in the *Ohio State Journal of Criminal Law*, thanks in large part to Joshua Dressler, who liked our idea and ran with it.<sup>5</sup>

The mini-symposium opens with Susan Bandes’s essay, “And All the Pieces Matter: Thoughts on *The Wire* and the Criminal Justice System,” and a scene in which D’Angelo Barksdale, the heir apparent to his uncle’s drug organization, teaches two of the organization’s street-level dealers to play chess. The dealers quickly pick up on the parallels between the game of chess and the drug game, especially when it comes to warring drug organizations. But Bandes pans back to reveal another “game”—between cops and drug dealers, a core part of the “war” on drugs—and larger points that extend to every organization in *The Wire*, including the schools, the media, and the government. All of these organizations, after all, are comprised of pawns, expendable to protect the king, whether that king is a drug kingpin or the chief of police or the mayor. Bandes’s ultimate point is larger still: Until we recognize “the symbiotic relationship between the police, the schools, the street corner, the various levels of government, and other institutions,

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<sup>4</sup> Another reason *The Wire* stands out is because of its richness in language. The cops have their argot, the denizens of the projects have theirs, and the drug dealers have another. The show celebrates a polyphony of voices, much like the polyphony of voices in this mini-symposium.

<sup>5</sup> Unfortunately, Jeff Fagan found himself preparing an expert report, and then a reply report, in a case involving the New York Police Department’s stop-and-frisk tactics just as our papers were due, and had to pull out of the symposium. But his influence is here. First, I think we were all influenced by Fagan’s presentation at our Law & Society panel. Second, early on Fagan shared with us an unpublished essay he’d come across by Caroline Levine, who teaches English Literature at University of Wisconsin. See Caroline Levine, *Artful Accuracy and the Problem of Form: Why The Wire Feels Real* 6 (unpublished manuscript) (on file with *Ohio State Journal of Criminal Law*). I think I can safely speak for the group when I say that Caroline Levine’s discussion of *The Wire*, realism, and network theory got us all thinking in new ways. Fagan deserves a shout out, and so does Caroline Levine.

we can't even scratch the surface of what's wrong here."<sup>6</sup> Bandes is talking about *The Wire*, but she's also talking about us. In short, we must recognize that "all the pieces matter."

For her part, Alafair Burke explores the problematic moral codes on display in *The Wire*. In "I Got the Shotgun: Reflections on *The Wire*, Prosecutors, and Omar Little,"<sup>7</sup> Burke focuses on a Season Two scene involving Omar Little, who robs and kills, but who does have morals. As Omar himself boasts in court, "I ain't never put my gun on nobody that wasn't in the game." (There it is again, the "game.") But as Burke points out, if Omar's moral code leaves a lot to be desired, so does the moral code of the cops and prosecutors. Even cops and prosecutors are often willing to break the rules to obtain results, telling themselves they're just "seeking justice." Even cops and prosecutors are part of the game. Even cops and prosecutors—both in the fictional world of *The Wire*, and in the real world—are in it to win. As Burke observes, prosecutors and cops, and Omar Little, in fact have a lot in common.

My contribution, "Crime, Legitimacy, *Our Criminal Network*, and *The Wire*,"<sup>8</sup> also uses a scene from Season One of *The Wire*. Although the scene I chose may seem familiar to television, or at least familiar to the cop shows I watch, the scene complicates things in ways that showcase *The Wire*'s uniqueness. In the scene, three officers, after a night of drinking, decide to go into the projects to show "the motherfuckers there who we are." Before the night ends, one of the officers has cold-cocked a kid, blinding him, and the officers' vehicle has been torched. Again, the use of excessive force is nothing new. But it's what *The Wire* adds to this scene—through its writing and camera work—that makes it interesting. Not only is the politics of identification complicated, not least of all by race, but the scene also gestures towards a relationship that has concerned me for some time: the relationship between perceptions of police legitimacy and crime rates. The scene also allows me to raise issues about the role evidentiary rules play in perpetuating illegitimacy, and to question *our* role, as professors of criminal law and procedure, in addressing the interlocking networks, wired for dysfunction, that plague the criminal justice system.

Lastly, in "Confined, Crammed, and Inextricable: What *The Wire* Gets Right,"<sup>9</sup> David Alan Sklansky attempts to answer the question that, in one way or another, runs through each of the essays in this mini-symposium. What is it that makes *The Wire* so compelling, so addictive, and so true, especially to professors

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<sup>6</sup> Susan A. Bandes, *And All the Pieces Matter: Thoughts on The Wire and the Criminal Justice System*, 8 OHIO ST. J. CRIM. L. 435 (2011).

<sup>7</sup> Alafair S. Burke, *I Got the Shotgun: Reflections on The Wire, Prosecutors, and Omar Little*, 8 OHIO ST. J. CRIM. L. 447 (2011).

<sup>8</sup> Bennett Capers, *Crime, Legitimacy, Our Criminal Network, and The Wire*, 8 OHIO ST. J. CRIM. L. 459 (2011).

<sup>9</sup> David Alan Sklansky, *Confined, Crammed, and Inextricable: What The Wire Gets Right*, 8 OHIO ST. J. CRIM. L. 471 (2011).

of criminal law and procedure? As Sklansky observes, “the institutional failures that the series spotlights—the futility of the war on drugs, the cooking of crime statistics, the often casual brutality of street-level policing—are, let’s face it, hardly news.” Sklansky argues that *The Wire*’s appeal is only partly attributable to its realistic depiction of the drug trade, or life in the projects of Baltimore, or Baltimore cops. Rather, *The Wire*’s appeal is due to “something at once bigger and more basic: the dimensions of human and moral complexity that criminal justice work, in pretty much any time and place, will inevitably bring to the surface.” As a case in point, Sklansky turns to Season Four of *The Wire*—the season that introduces the stories of a group of eighth-grade boys living in the shadow of Baltimore’s drug world—and zooms in on a heartbreaking scene involving one of the eighth-graders. A witness to a murder, the boy is taken under the protective wing of the same police officers—Pryzbylewski, Carver, and Herc Hauk—that are the perpetrators of excessive force in my essay. By now, the police officers have matured in ways that are commendable. But for all their maturity, they still make mistakes. They are still human. And they are still pawns in a larger system. All of this fuels the moral complexity of the scene, and of the criminal justice system itself. All of this reveals “individuals undone by systems.”

I mentioned earlier that much credit is owed to Joshua Dressler, who liked our proposal for a mini-symposium on *The Wire*, and ran with it. Imagine my surprise, then, when during an exchange of emails, Joshua admitted that he had never seen the show. I wanted to reach through the computer and shake him. How can you not have seen *The Wire*? I wanted to ask him. Now, months later, it may be that Joshua is still one of the uninitiated. In a way, the essays that follow are for him, as well as the die-hard fans. Our collective goal is simple. To encourage those who haven’t seen the show to wake up and add the show to their Netflix queue ASAP. To encourage those of us who are already fans of *The Wire* to re-watch the show and see criminal law and procedure aspects we might have missed. And to do this in a way that is accessible, informative, and fun. Hopefully, we’ve accomplished that task.