

GUILTY ON ALL ACCOUNTS: *LAW & ORDER*'S IMPACT ON PUBLIC PERCEPTION OF LAW AND ORDER

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“Justice is a by-product of winning.” - Law & Order Character Jack McCoy, Executive Assistant District Attorney

INTRODUCTION

Because it is American culture’s most pervasive medium,¹ television is also our most important storyteller.² Sometimes television’s narratives supplement understandings gleaned from other sources, but oftentimes they substitute for direct experience.³ The latter is true with regard to law. Although most individuals have little direct experience with the legal system, legal themes pervade television.⁴ Consequently, research has shown that the public relies on television as its primary source of information about the legal system.⁵ Indeed, television’s narratives nurture assumptions about the operation of law, opinions about courts, and beliefs about the efficacy of the criminal justice system.⁶ Since these accounts

1. RICHARD K. SHERWIN, WHEN LAW GOES POP 2-4 (2000) [hereinafter POP]; L. J. Shrum, *Effects of Television Portrayals of Crime and Violence on Viewers Perceptions of Reality*, 22 LEGAL STUD. F. 257 (1998).

2. Kimberlianne Podlas, *The Power of Stories: Intersections of Law, Literature, and Culture: The Tales Television Tells: Understanding the Nomos Through Television*, 13 TEX. WESLEYAN L. REV. 31, 39 (2006) [hereinafter *Nomos*]; Nancy Signorielli, *Aging on Television: Messages Relating to Gender, Race, and Occupation in Prime Time*, 48 J. BROADCASTING & ELECTRONIC MEDIA 279-80 (2004); JAMES SHANAHAN & MICHAEL MORGAN, TELEVISION AND ITS VIEWERS, CULTIVATION THEORY AND RESEARCH 20-22 (1999).

3. SHANAHAN & MORGAN, *supra* note 2, at 22; Kimberlianne Podlas, *Broadcast Litigiousness: Syndi-Court’s Construction of Legal Consciousness*, 23 CARDOZO ARTS & ENT. L. J. 465, 485-86 (2005) [hereinafter *Broadcast Litigiousness*].

4. POP, *supra* note 1, at 17-18; Kimberlianne Podlas, *Please Adjust Your Signal: How Television’s Syndi-Courtrooms Bias Our Juror Citizenry*, 39 AM. BUS. L.J. 1, 2 (2001) [hereinafter *Please Adjust*]; see also Naomi Mezey & Mark C. Niles, *Screening the Law: Ideology and Law in American Popular Culture*, 28 COLUM. J. L. & ARTS 91, 93 (2005) (legal themes saturate pop culture); Richard K. Sherwin, *Law and Popular Culture: Nomos and Cinema*, 48 UCLA L. REV. 1519, 1521 (2001) [hereinafter *Cinema*] (television communicates a great deal of information about law and justice).

5. Kimberlianne Podlas, *The CSI Effect, Exposing the Media Myth*, 16 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 429, 443-44 (2006) [hereinafter *CSI Effect*]; Kimberlianne Podlas, *Blame Judge Judy: The Effects of Syndicated Courtrooms on Jurors*, 25 AM. J. TRIAL ADVOC. 557 (2002) [hereinafter *Blame*]; see also Connie L. McNeely, *Perceptions of the Criminal Justice System*, 3 J. CRIM. JUST. & POPULAR CULTURE 1 (1995) (learn about criminal justice system).

6. *Please Adjust*, *supra* note 4, at 5-6; Michael Asimov, *Law and Popular Culture: Bad Lawyers in the Movies*, 24 NOVA L. REV. 552 (2000); see also WILLIAM HALTOM & MICHAEL MCCANN, DISTORTING THE LAW 11 (2004) (legal narratives pervade and reshape cultural and political understandings of law).

constitute a significant portion of society's depictions of law, it is important to understand the content and ideologies of these stories, and to analyze their potential for cultivating beliefs about the legal system.⁷

One obvious candidate for study is *Law & Order*. This critically-lauded program is not only television's longest-running legal drama but also its most iconic representation of the legal system: Its portrayals of the criminal justice system and district attorneys dominate our culture's legal narratives. Consequently, whether and how *Law & Order* contributes to the public's perception of the legal system or informs decision-making⁸ merits serious investigation.

This article empirically investigates the ideologies of and messages cultivated by *Law & Order*. After detailing television's role as a cultural storyteller, it explains the ways in which television disseminates legal information. Drawing on media theory, this article summarizes the literature substantiating the entertainment media's impact on public attitudes, while highlighting research specific to law-related programming's contribution to perceptions of law. It further outlines the circumstances under and extent to which the public uses television's stories of law as heuristics in decision-making.

With this background, the paper turns to television's representations of attorneys. In particular, it traces the history of television's portrayal of attorneys from the righteous defense attorneys of the 1950s-60s to the prosecutors of the past two decades, the latter being best

This is true even when those stories are inaccurate. See, e.g., Sarah Eschholz, *The Media and Fear of Crime: A Survey of the Research*, 9 U. FLA. J.L. & PUB. POL'Y 37, 37-39 (1997) (noting that television exaggerates the incidence of violent crime).

7. See, e.g., Kimberlianne Podlas, *As Seen on TV: The Normative Influence of Syndi-Court on Contemporary Litigiousness*, 11 VILL. SPORTS & ENT. L. J. 1, 1-2 (2004) [hereinafter *Normative*]; Richard A. Clifford, *The Impact of Popular Culture on the Perception of Lawyers*, LITIG. Fall 2002, at 1; Lawrence M. Friedman & Issachar Rosen-Zvi, *Law and Popular Culture: Illegal Fictions: Mystery Novels and the Popular Culture Image of Crime*, 48 UCLA L. REV. 1411 (2001); David M. Spitz, *Notes and Comments: Heroes or Villains? Moral Struggles vs. Ethical Dilemmas: An Examination of Dramatic Portrayals of Lawyers and the Legal Profession in Popular Culture*, 24 NOVA L. REV. 725, 729-30 (2000); Richard K. Sherwin, *Symposium: Introduction: Picturing Justice: Images of Law and Lawyers in the Visual Media*, 30 U.S.F.L. REV. 891, 898 (1996) [hereinafter *Picturing*].

8. Timothy E. Lin, *Social Norms and Judicial Decision-Making: Examining the Role of Narratives in Same-Sex Adoption Cases*, 99 COLUM. L. REV. 739, 759 (1999) (important to examine way that narrative informs judicial decision-making).

exemplified by those featured on *Law & Order*.

The article then moves from the theoretical to the empirical. Rather than relying on untested presumptions about *Law & Order's* ideologies to posit audience effects, the paper includes a systematic content analysis. This quantitative content analysis catalogues thirty-five randomly-sampled *Law & Order* episodes, and it is combined with a qualitative ethnographic analysis that evaluates *Law & Order's* portrayals of legal process, criminal justice, and those involved in its administration.

The results of this bifurcated study reveal that *Law & Order* endorses a crime control model of justice that exalts prosecutors as moral agents while indicting the due process model of justice and the defense attorneys who align themselves with its ideals. The programmatic content and portrayals underscoring these messages are also discussed. Among these are: that prosecutors can intelligently exercise discretion, effectively screen out the innocent, and accurately assess guilt; that slavish devotion to constitutional commands threatens justice and is often irrelevant in practice; and that society must be flexible with due process rights in order to ensure public safety.

The paper concludes by suggesting that these ideologies, particularly when communicated through the narrative of *Law & Order*, can impact public sentiment and even become actualized in legal policies and jury decision-making.

I. POPULAR CULTURE AND THE MEDIA

The legal world's appreciation of mass media influence has been somewhat schizophrenic. While courts and practitioners have presumed that the media's depiction of legal events impacts the public,⁹ legal scholars have tended to dismiss popular accounts of law in favor of treatises and appellate opinions.¹⁰ Consequently, scholars have focused on the "mandarin ideals" of law at the expense of common

9. Kimberlianne Podlas, *The Monster in the Television: The Media's Contribution to the Consumer Litigation Boogeyman*, 44 GOLDEN GATE U. L. REV. 239, 261 (2004); Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527, 547-554 (1986).

10. Chase, *supra* note 9, at 539-40 (scholars' historical denigration and skepticism of pop culture depictions of law); *Nomos*, *supra* note 2, at 38.

understandings and pop cultural representations of it.¹¹ As media have proliferated, however, their role as conduits of legal information has become undeniable.¹² As a result, those interested in how the public comes to learn about and apply law have begun to explore the media's influence on attitudes and perceptions about the law.¹³ Nevertheless, "because this is a relatively new field of inquiry,"¹⁴ the effect that media imagery has on lay perceptions of the justice system is not fully understood.¹⁵

A. Culture as Classroom

The average person does not have any direct experience with the justice system,¹⁶ let alone read legal opinions and law

11. Austin Sarat & Jonathan Simon, *Introduction: Beyond Legal Realism? Cultural Analysis, Cultural Studies, and the situation of Legal Scholarship*, 13 YALE J.L. & HUMAN. 3, 12-13 (2001); Chase, *supra* note 9, at 539-40 (discussing the prejudices of "the ivory tower cultural mandarins."); cf. David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System*, 35 ARIZ. L. REV. 785, 796-96 (1993) (urging scholars to eschew "mandarin materials" in favor of common popular culture understandings of law).

12. Norman Rosenberg, *Symposium, Looking for Law in All the Old Traces*, 48 UCLA L. REV. 1443, 1444 (2001); Steve Greenfield, *Hero or Villain? Cinematic Lawyers and the Delivery of Justice*, 28 J. L. SOC'Y 25 (2001); Gayle Mertz, *Law and Pop Culture: Teaching and Learning About Law Using Images From Popular Culture*, 64 SOC. EDUC. 206 (2000); Friedman & Rosen-Zvi, *supra* note 7, at 1413-15 (pop legal culture has finally, rightfully, entered the citadel of legal scholarship).

13. Richard K. Sherwin, *Symposium: Law/Media/Culture, Legal Meaning in the Age of Images: Foreword*, 43 N.Y.L. SCH. L. REV. 653, 655 (2001); Friedman & Rosen-Zvi, *supra* note 7, at 1413-14.

Hence, pop legal culture has emerged as a valid area of inquiry. Rosenberg, *supra* note 12, at 1444; Austin Sarat, *Exploring the Hidden Domains of Civil Justice: "Naming, Blaming, and Claiming" in Popular Culture*, 50 DEPAUL L. REV. 425, 450 (2000).

14. Spitz, *supra* note 7, at 730-31 (small, but growing, body of literature); TIMOTHY O. LENZ, *CHANGING IMAGES OF LAW IN FILM AND TELEVISION CRIME STORIES* 12-13 (2003). Chase opines that empirical study of law has been delayed because "empiricism is hard work" and demands a type of intellectual work "of which most law professors are incapable of or, at least, for which they are unprepared." Chase, *supra* note 9, at 568.

15. Spitz, *supra* note 7, at 730; JONATHAN BIGNELL, *AN INTRODUCTION TO TELEVISION STUDIES* 23 (2004); LENZ, *supra* note 14, at 12-13 (media's impact on public attitudes and behaviors).

16. *Litigiousness*, *supra* note 3, at 485-86; cf. Valerie Hans, *Law and the Media: Overview and Introduction*, 14 LAW & HUM. BEHAV. 399 (1990) (only small proportion of public has direct experience with justice system); Bruce M. Selya, *The Confidence Games: Public Perceptions of the Judiciary*, 30 NEW ENG. L. REV. 909, 913 (1996).

journal articles.¹⁷ This does not mean that individuals are ignorant about the law, but that they learn about it through other, less formal means. As they do with other topics, most people learn about the law through culture.¹⁸

Though most of us think of culture as the society in which we live, it is also the basic medium from which we learn.¹⁹ Through immersion in culture, we become familiar with society's stories.²⁰ These stories or narratives²¹ function as the texts that encapsulate our cultural knowledge.²² Indeed, they are among culture's primary pedagogical tools.²³ Moreover, because we think in terms of narratives,²⁴ they are a natural mode of understanding.²⁵

Because stories establish a framework for interpreting events,²⁶ they help us understand the world.²⁷ Consistent with this, empirical research demonstrates that people rely on the stock characters, familiar plots, common patterns, and stereotypic images gleaned from stories to understand reality.²⁸ In fact, research has shown that jurors reach verdicts by reconstructing testimony into a story that explains what must have occurred.²⁹ In doing so, they assess testimony according to whether it fits into the culturally-established narrative.³⁰

Additionally, the information disseminated through this

17. *Please Adjust*, *supra* note 4, at 3-4.

18. *Nomos*, *supra* note 2, 38-39; Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 *YALE L.J.* 1579 (1989).

19. SHANAHAN & MORGAN, *supra* note 2, at 14-15.

20. *Id.* at 192 (we learn stories through immersion in culture); Lin, *supra* note 8, at 749 (informational value of stories).

21. A narrative is an ordered group set of images and sounds that make up a story. RICHARD A. POSNER, *LAW & LITERATURE* 345, 348 (1999); DAVID A. BLACK, *LAW IN FILM* 101 (1999). Most narratives are linear with a beginning, middle, and end, i.e., a disturbance, a crisis, and resolution. DAVID BORDWELL, *NARRATION IN FILM* 35 (1985).

22. Jennifer K. Wood, *Justice as Therapy*, 51 *COMM. Q.* 296 (2003) (application of narrative analysis to television conceptualizes television as a text).

23. POP, *supra* note 1, at 8 (multiple components of story); Lin, *supra* note 8, at 741.

24. SHANAHAN & MORGAN, *supra* note 2, at 192-93 (thinking is essentially narrative in nature).

25. NORMAN J. FINKEL, *COMMON SENSE JUSTICE* 69 (1995).

26. *Id.* at 65-66.

27. POP, *supra* note 1, at 8; SHANAHAN & MORGAN, *supra* note 2, at 193.

28. POP, *supra* note 1, at 167.

29. *Id.*; FINKEL, *supra* note 25, at 65 (describing research that jurors transform evidence into stories).

30. POP, *supra* note 1, at 24.; FINKEL, *supra* note 25, at 65.

narrative system is not restricted to concrete facts. Rather, it includes moral values and ideological assumptions, such as what behaviors society deems to be good or bad and ethical or unethical.³¹ In fact, the meanings we extract from stories are among their most important purposes: Their meaning remains long after the underlying scenarios and facts have dissipated.³²

Nonetheless, inasmuch as the ideologies of narratives structure our views of reality³³ and determine meaning,³⁴ they limit those understandings to culture's dominant themes.³⁵ First, people interpret situations consistent with a culture's dominant narratives.³⁶ Second, because one can reference only the stories of which she is aware and consider the issues common to those storylines, the narrative process is constrained by pre-existing understandings.³⁷ This endows stories with great power.³⁸ Therefore, in many ways, the power of stories lies not in affecting beliefs, but in constituting them.³⁹

B. The Stories of Pop Culture: The Layperson's Emmanuel

Though stories come from many sources, a significant number of them are ensconced in pop culture.⁴⁰ Because pop

31. POP, *supra* note 1, at 22. Often this information is depicted via symbols or parables. SHANAHAN & MORGAN, *supra* note 2, at 193-94. It also teaches us how to interpret these stories (and their symbolism) to determine their meaning. *Id.* at 192.

32. SHANAHAN & MORGAN, *supra* note 2, at 193 (memory of narratives often focuses on their lessons rather than on their particular facts).

33. *Id.*

34. Cf. JAMES MONACO, HOW TO READ A FILM: THE ART, TECHNOLOGY, LANGUAGE, HISTORY, AND THEORY OF FILM AND MEDIA 121-23 (1981) (culture impacts comprehension of filmic images).

35. Steven L. Winter, *Legal Storytelling: The Cognitive Dimension of the Agony Between Legal Power and Narrative Meaning*, 87 MICH. L. REV. 2225, 2272 (1989).

36. SHANAHAN & MORGAN, *supra* note 2, at 193; see also *Introduction to NARRATIVES FOR A NEW BELONGING, DIASPORIC CULTURAL FICTIONS 2* (Roger Bromley ed., 2000) (typically limited to the language of the dominant social order).

37. SHANAHAN & MORGAN, *supra* note 2, at 193.

Western culture contains various authoritative texts that foreclose alternative ways of thinking and seeing. Bromley, *supra* note 36, at 1; Peter Brooker in *NARRATIVES FOR A NEW BELONGING, DIASPORIC CULTURAL FICTIONS ix* (Roger Bromley ed., 2000) (constructions and resulting understandings are subjective and influenced by region).

38. SHANAHAN & MORGAN, *supra* note 2, at 193.

39. *Id.* at 196.

40. Dustin Kidd, *Harry Potter and the Function of Popular Culture*, 40 J. POPULAR CULTURE 69, 75 (2007).

culture⁴¹ is something to which we are all exposed,⁴² we are all influenced by it.⁴³ Our legal narratives are also situated in popular culture, more specifically in pop legal culture.⁴⁴ Like broader pop culture, pop legal culture⁴⁵ comprises the common perceptions, stories, and depictions of all things legal.⁴⁶ It includes television shows about law firms, films about trials, and jokes about attorneys.⁴⁷ Accordingly, it is an important repository of our cultural information about law.

II. TELEVISION AS A LEGAL STORYTELLER

Because of its centrality in American life,⁴⁸ television is both our mainstream of popular culture⁴⁹ and our primary

41. Spitz, *supra* note 7, at 729-730.

42. MICHAEL ASIMOV & SHANNON MADER, *LAW AND POPULAR CULTURE* 4-5 (2004) (pop culture pervades modern society). Pop culture refers to the commodities produced for the consumption of ordinary people as well as the norms and values embodied by average people. JOHN STOREY, *CULTURAL THEORY AND POPULAR CULTURE* 1-2, 6 (2001); ASIMOV & MADER, *supra* note 42, at 6-7 (reflects what its producers think that people do and believe and impacts what consumers do and believe). Television, popular music, and films are all components of pop culture. Spitz, *supra* note 7, at 729. This culture of common people is contrasted against high culture, Kidd, *supra* note 40, at 72; Spitz, *supra* note 7, at 729, the aesthetically profound works both of and directed at the intellectual elite, Spitz, *supra* note 7, at 729; STOREY, *supra* note 42, at 1-2, 6.

43. Kidd, *supra* note 40, at 75; *Picturing*, *supra* note 7, at 898; DENNIS MCQUAIL, *MASS COMMUNICATION THEORY* 103-04 (1994) (influence of pop culture).

44. *Blame*, *supra* note 5, at 557; POP, *supra* note 1, at 18 (media primary source of stories about law); *cf. Please Adjust*, *supra* note 4, at 2; Friedman & Rosen-Zvi, *supra* note 7, at 1413 (learn from media).

45. Pop legal culture is a subset of pop culture. Spitz, *supra* note 7, at 730. It encompasses idea about courts, police, lawyers, and justice. *Id.*

46. Thus, the popular culture of law can be contrasted against the high culture of law, Chase, *supra* note 11, at 528, 539-41, which is comprised of appellate opinions and doctrinal treatises. *Broadcast Litigiousness*, *supra* note 3, at 5 (assessing impact of televised legal depictions necessitates rejecting idea that only "pristine versions of justice send messages to the public").

47. Though pop culture is not the only source of norms, it is a significant one. Kidd, *supra* note 40, at 75.

48. Cary W. Horvath, *Measuring Television Addiction*, 48 J. BROADCASTING & ELECTRONIC MEDIA 378, 380 (2004) (television is central and most pervasive mass medium); Shrum, *supra* note 1, at 257 (primacy of television).

49. *Introduction to ROLE PORTRAYAL AND STEREOTYPING ON TELEVISION* xiii, xviii (Nancy Signorielli ed., 1985). Television both mirrors and leads society. D. Steiner, et al., *Folk Knowledge as Legal Action: Death Penalty Judgments and the Tenet of Early Release in a Culture of Mistrust and Punitiveness*, 33 LAW & SOC'Y REV. 461, 462 (law has a prominent cultural and media presence); Richard Sherwin, *Law Frames: Historical Truth and Narrative Necessity in a Criminal Case*, 47 STAN. L. REV. 39 (1994); *see also* Kidd, *supra* note 40, at 81 (news, a form of pop culture can impact opinions and social change).

storyteller.⁵⁰ People gain a variety of knowledge through what they see on television.⁵¹ The accumulation of its stories and their component characters, images, and scenarios show us how things work, enumerate rules,⁵² and elucidate values.⁵³ Indeed, the proliferation of visual imagery has prompted a shift in cognition.⁵⁴ The linear thinking style dominant in print-based culture is now being displaced by the associative thinking style where symbols and visual representations dominate.⁵⁵ Furthermore, television need not package information as “real” to impact audiences. In fact, entertainment television exerts on public opinion a greater influence than do news or cinematic media.⁵⁶ It also reaches people that factual programming does not.⁵⁷

Television is also a prominent conduit of stories of law.⁵⁸ Through news reports,⁵⁹ reality courtroom programs,⁶⁰ and legal dramas, television teaches citizens about law.⁶¹ “[T]he

50. Signorielli, *supra* note 2, at 279-80 (importance of TV as storyteller); JILL MARSHAL & ANGELA WERNLDY, *THE LANGUAGE OF TELEVISION* 9 (2002).

51. Sonia Livingstone, *Mediated Knowledge*, in *TELEVISION AND COMMON KNOWLEDGE* 97 (Jostein Gripsrud ed., 1999).

52. Yan Bing Zhang & Jake Howard, *Television Viewing and Perceptions of Traditional Chinese Values Among Chinese College Students*, 46 *J. BROADCASTING & MEDIA* 245, 245 (television communicates rules).

53. Michael J. Porter, et al., *Re(de)fining Narrative Events: Examining Television Narrative Structure*, 30 *J. POPULAR FILM & TELEVISION* 23, 28-29 (2002); Signorielli, *supra* note 2, at 279; SHANAHAN & MORGAN, *supra* note 2, at 13-14; FINKEL, *supra* note 25, at 67.

54. POP, *supra* note 1 at 6, 7.

55. *Id.*

56. Kenneth Dowler, *Media Consumption and Public Attitudes Toward Crime and Justice: The Relationship Between Fear of Crime, Punitive Attitudes, and Perceived Police Effectiveness*, 10 *J. CRIM. JUST. & POPULAR CULTURE* 109, 110-11 (2003) (citing studies of fear of crime); Shrum, *supra* note 1, at 257 (viewers gather information from entertainment programs).

57. Michael Irvin Arrington & Bethany Crandell Goodier, *Prostration Before the Law: Representations of Illness, Interaction, and Intimacy in the NYPD Blue Prostrate Cancer Narrative*, 2 *POPULAR COMM.* 67, 68 (2004).

58. *Cinema*, *supra* note 4, at 1519-21 (TV communicates a great deal of information about law and justice); POP, *supra* note 1, at 18 (media exclusive source of public's knowledge about law, lawyers, and legal system).

59. Kidd, *supra* note 40, at 81 (news as pop culture); *cf.* ANNETTE HILL, *REALITY TV* 80 (2005) (fact-based and reality television both entertain and provide information). For statistics on crime news coverage in local and national markets, see JEREMY H. LIPSCHULTZ & MICHAEL L. HILT, *CRIME AND LOCAL TELEVISION NEWS* 10-13 (2002).

60. *See, e.g., Nomos*, *supra* note 2; *Blame*, *supra* note 4; *Please Adjust*, *supra* note 4.

61. *CSI Effect*, *supra* note 5, at 430-31; *Cinema*, *supra* note 4, at 1521; NEAL FEIGENSON, *LEGAL BLAME, HOW JURORS THINK AND TALK ABOUT ACCIDENTS* 11 (2000); Lin, *supra* note 8, at 758-59.

public learns most of what it thinks it knows about law, its fact-finding, procedures, application, lawyers and the legal system from popular legal culture.⁶² Simply, though relatively few individuals have entered a courtroom,⁶³ millions have seen one on TV.⁶⁴ Even the Supreme Court⁶⁵ and American Bar Association⁶⁶ have acknowledged television's impact on perceptions of the legal system. Thus, in the absence of real-world experiences to guide understandings,⁶⁷ television's legal narratives nurture assumptions about the legal system and litigation.⁶⁸ These connect us to a common base of knowledge about law, truth, and social justice that can contribute to our beliefs.⁶⁹

III. THE IMPACT OF MEDIA PORTRAYALS

Most theories explaining the relationship between entertainment programming and viewer knowledge or beliefs rest on cultivation theory.⁷⁰ Television's story-telling ability is

62. Michael Asimov, *Embodiment of Evil: Law Firms in the Movies*, 48 UCLA L. REV. 1339, 1341 (2001); Mertz, *supra* note 12, at 206 (most knowledge about the legal system comes from television).

63. *Nomos*, *supra* note 2, at 38; see also Spitz, *supra* note 7, at 731 (majority of public has never consulted lawyer or experienced legal system first hand).

64. *CSI Effect*, *supra* note 5, at 443-44; *Blame*, *supra* note 5, at 557; see also McNeely, *supra* note 5, at 1 (learn about criminal justice system).

65. See *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980) (televising legal proceedings educates public); *Estes v. Texas*, 381 U.S. 532, 589 (1965) and at 589 (Harlan, J., concurring) (television can educate public about judicial process).

66. Report sponsored by the American Bar Association, "Perceptions of the US Justice System," reprinted in *Symposium: American Bar Association Report on Perceptions of the US Justice System*, 62 ALB. L. REV. 1307, 1315 (1999).

67. Where individuals have no personal sphere to provide a point of reference from which to evaluate the media's coverage of a topic, they are more susceptible to the media's representation. David Morley, *Finding out About the World from Television News in Gripsrud*, *supra* note 51, at 144.

68. See, e.g., *Please Adjust*, *supra* note 4, at 1 (television transmits pop legal culture); *Blame*, *supra* note 5, at 557 (people learn about law from TV); David Raye Papke, *Essay: Conventional Wisdom: The Courtroom Trial in American Popular Culture*, 82 MARQ. L. REV. 471, 488 (1999) (television's courtroom "reinforces, shapes, and directs" the public's view of courts).

69. *Picturing*, *supra* note 7, at 892, 897; Steiner, *supra* note 49, at 462 (impact of legal "folk knowledge" on perceptions, reactions, and understandings); Michael J. Porter, et al., *supra* note 53, at 28-29; HALTOM & MCCANN, *supra* note 7, at 11 (legal narratives pervade and reshape cultural understandings of law).

70. Steven Eggermont, *Television Viewing, Perceived Similarity, and Adolescents' Expectations of a Romantic Partner*, 47 J. BROADCASTING & ELECTRONIC MEDIA 244, 248 (2004); George Gerbner, *Growing Up With Television: The Cultivation Perspective*, in MEDIA EFFECTS: ADVANCES IN THEORY AND RESEARCH 17, 23-25 (Jennings Bryant

central to cultivation.⁷¹ Cultivation treats television as a master narrative.⁷²

According to cultivation theory, heavy, long-term exposure to television's recurrent stories and images⁷³ cultivates in viewers perceptions about facts and values.⁷⁴ This exposure can then influence viewer attitudes, standards of judgment, and even behavior.⁷⁵ Importantly, cultivation theory does not posit a direct link between television viewing and behavior such that a viewer will replicate whatever she watches. Rather, it suggests a subtle, cumulative influence.⁷⁶ If a viewer repeatedly sees a particular representation on television,⁷⁷ she will presume that representation is common in reality.⁷⁸ For example, if she sees a great deal of violence on television, the viewer will presume that society is violent.⁷⁹

& Dolf Zillman Eds., 1994).

71. SHANAHAN & MORGAN, *supra* note 2, at 197.

72. *Id.* at 193.

This master narrative uses stories to communicate culture. *Id.* at 197.

73. Shrum, *supra* note 1, at 260.

74. Robert Goidel et al., *The Impact of Viewing Television on Perceptions of Juvenile Crime*, 50 J. BROADCASTING & ELECTRONIC MEDIA 119, 124 (2006); Rebecca M. Chory-Assad & Ron Tamborini, *Television Exposure and The Public's Perception of Physicians*, 47 J. BROADCASTING & ELECTRONIC MEDIA 197, 199 (2003); Hyung-Jin Woo & Joseph R. Dominick, *Acculturation, Cultivation, and Daytime TV Talk Shows*, 80 JOURNALISM & MASS COMM. Q. 109, 110 (2003); Rebecca M. Chory-Assad & Ron Tamborini, *Television Doctors: An Analysis of Physicians in Fictional and Non-Fictional Television Programs*, 45 J. BROADCASTING & ELECTRONIC MEDIA 499, 500 (2001) [hereinafter *Doctors*]; Shrum, *supra* note 1, at 260-62.

75. *Doctors*, *supra* note 74, at 500.

76. Shrum, *supra* note 1, at 260.

This reflects an integrated cognitive approach. *Id.*

77. Contemporary cultivation theory considers exposure to specific types of programs to be a better predictor of viewer beliefs. Chris Segrin & Robin L. Nabi, *Does Television Viewing Cultivate Unrealistic Expectations About Marriage?*, 52 J. COMM. 247, 259-61 (2002); W. James Potter, *Cultivation Research: A Conceptual Critique*, 19 HUM. COMM. RES. 564, 575 (1993). Consequently, it defines viewing in terms of genre viewing. Woo & Dominick, *supra* note 75, at 111, 114; Jonathan Cohen & Gabriel Weimann, *Cultivation Revisited: Some Genres Have Some Effects On Some Viewers*, 13 COMM. REP. 99, 108-09 (2000).

78. Kimberlianne Podlas, *The "CSI Effect" and Other Forensic Fictions*, 27 LOY. L.A. ENT. L. REV. 87 (2007). Therefore, viewers who watch a great deal of a particular type of programming recall the lessons in that programming more easily than will viewers who watch infrequently or not at all. Rick W. Busselle, *Television Exposure, Perceived Realism, and Exemplar Accessibility in the Social Judgment Process*, 3 MEDIA PSYCHOL. 43, 44-45 (2001).

79. Dana E. Mastro et al., *Portrayal of Racial Minorities on Prime Time Television*, 44 J. BROADCASTING & ELECTRONIC MEDIA 692 (2000); Donald D. Diefenbach et al., *Violent Crime and Poisson Regression: A Measure and a Method for Cultivation*

If she repeatedly sees incompetent doctors on television, she will believe that doctors are incompetent.⁸⁰ If she repeatedly sees television judges yell at litigants, she will assume that judges yell at litigants.⁸¹ Furthermore, once ensconced, these representations can influence behavior.⁸² Accordingly, a viewer who believes society is unsafe may be afraid to walk alone at night, be inclined to purchase a home security system, or favor giving the police more discretion to approach or question seemingly “suspicious” individuals.⁸³

Recent research confirms that some law-oriented entertainment programming can cultivate opinions regarding litigation and the behavior of judges and litigants.⁸⁴ A multi-year study of more than 500 viewers found that daytime television’s reality courtrooms seem to impact perceptions about the way that judges behave, as well as the normality of their behaviors.⁸⁵ Recognizing that the large number of daily syndi-courts⁸⁶ comprise a relatively uniform narrative about the way that judges act when adjudicating a case, the study investigated whether heavy viewers of syndi-court integrate this presentation into their understandings of judges, and, therefore, expect real judges to be active and incisive interrogators who infuse their judgments with moral pronouncements.⁸⁷ Indeed, the results showed that heavy viewers of syndi-court expected these behaviors from judges to

Analysis, 45 J. BROADCASTING & ELECTRONIC MEDIA 432, 432-33 (2001) (heightened depictions of violent crime).

80. Chory-Assad & Tamborini, *supra* note 74, at 199-200, 209 (changing depictions of physicians).

81. Kimberlianne Podlas, *Should We Blame Judge Judy, The Messages of TV Courtrooms*, 86 JUDICATURE 38, 38-40 (2002) (reality television’s depiction of judges).

82. *See, e.g.*, Diefenbach, *supra* note 79, at 432; Busselle, *supra* note 79, at 43; Rick W. Busselle & L.J. Shrum, *Media Exposure and Exemplar Accessibility*, 5 MEDIA PSYCHOL. 255 (2003) (viewers rely on television’s information to develop understandings of events or social constructs).

83. Empirical study by Morgan confirms that the more people watch television, the more fearful they are. More importantly, however, Morgan found that this fear makes viewers more willing to accept repressive measures in the name of security, and extreme punitive sanctions for those who break the rules. Morley, *supra* note 67, at 153.

84. *See Please Adjust*, *supra* note 4, at 21 (reality courtrooms provide information about the operations of courts that viewers integrate into their beliefs); *Normative*, *supra* note 7, at 28-29 (contribution of reality courtrooms to opinions about and likelihood to engage in litigation and self-representation).

85. Podlas, *supra* note 81, at 39.

86. Syndi-court refers to syndicated reality courtrooms such as *The People’s Court*, *Judge Matthis*, and *Judge Judy*.

87. Podlas, *supra* note 81, at 35-39; *see also*, *Normative*, *supra* note 7, at 1.

a substantially greater degree than did non-viewers of the genre.⁸⁸ Similarly, children conflate fictional judges with real ones. Children who are familiar with only television judges cannot distinguish their traits from those of real judges. This research supports the hypothesis that the frequent repeated exposure to a uniform or dominant character portrayal can inform an individual's expectations and understandings of law.

Other studies have found that the way in which television portrays attorneys can impact viewer opinions about attorneys in the real world.⁸⁹ One study compared *LA Law's*⁹⁰ portrayal of lawyers as attractive, powerful, and of good moral character⁹¹ with viewer perceptions of real lawyers. Consistent with the *LA Law* version, heavy viewers of *LA Law* believed that real lawyers possessed the same set and value of characteristics of the television lawyers, whereas non-heavy viewers did not. Interestingly, this distinction in attitude was not confined to lay viewers but extended to attorney viewers.⁹² Thus, even lawyers who were inundated with the *LA Law* model of behavior tended to believe in it. Sometimes television portrayals can support ethical and normative beliefs. For example, law-student attitudes regarding the ethical (and unethical) behavior of lawyers also appear to follow the standards set by television lawyers.⁹³ Additionally, television's depiction of litigation as an

88. *Nomos*, *supra* note 2, at 48-51.

89. Michael Pfau, *Television Viewing and Public Perceptions of Attorneys*, 21 HUM. COMM. RES. 307 (1995).

90. *LA Law* ran from 1986-1994. Stephen Gillers, *Taking LA Law More Seriously*, 98 YALE L.J. 1607 (1989).

91. Pfau, *supra* note 89.

92. *Id.* This is not the only instance where students or professionals of the law exhibit the same "media symptoms" of lay viewers. Saks has found that law students greatly overestimate the damage awards received by tort victims and the proportion of medical malpractice injuries that culminate in legal claims. Michael J. Saks, *Public Opinion About the Civil Jury: Can Reality Be Found In The Illusions?* 48 DEPAUL L. REV. 221 (1998). These misperceptions are skewed consistent with the presentations of news reports. Jennifer K. Robbennolt & Christina A. Studebaker, *News Media Reporting on Civil Litigation and Its Influence on Civil Justice Decision Making*, 27 LAW & HUM. BEHAV. 5, 11 (2003).

93. Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: Of Characters and Acts*, 48 UCLA L. REV. 1305 (2001); Carrie Menkel-Meadow, *The Sense and Sensibilities of Lawyers: Lawyering and Litigation, Narratives, Film and Television, and Ethical Choices Regarding Career and Craft*, 31 MCGEORGE L. REV. 1 (1999); Carrie Menkel-Meadow, *Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 FORDHAM L. REV. 787, 815 (2000).

appropriate response can become a normative guide, influencing viewer assessments of litigation.⁹⁴

One way of understanding television's cultivation effect is in terms of heuristic reasoning.⁹⁵ Heuristics are informational vignettes or examples that are mental shortcuts for decision-making and causal reasoning.⁹⁶ Heuristic reasoning refers to the almost automatic process by which people apply these rules of thumb to draw conclusions about the world.⁹⁷ As people interpret their experiences, they automatically⁹⁸ reference these media-generated heuristics.⁹⁹ These cognitive short-cuts help people process information where it is incomplete or when they must draw conclusions quickly and efficiently.¹⁰⁰

Television's dominant narratives and character portrayals can become heuristics. Repeatedly broadcasting particular constructs enables them to be easily stored in and accessed from memory.¹⁰¹ Television's depictions of the criminal justice system and attorneys are also sources of heuristic knowledge regarding the legal process.¹⁰² These heuristics then guide

94. *Broadcast Litigiousness*, *supra* note 3, at 101-02.

95. Shrum, *supra* note 1, at 262.

96. Though variously defined, heuristics are "sense-making activities [that help] their user resolve contradictions, see patterns, and make distinctions among different types of evidence" S.S. Wineburg, *Historical Problem Solving: A Study of the Cognitive Processes Used in the Evaluation of Documentary and Pictorial Evidence*, 83 J. EDUC. PSYCHOL. 73, 77 (1991). For a description of some different types of heuristics, see Robin M. Hogarth & Natalya Karelia, *Heuristic and Linear Models of Judgment: Matching Rules and Environments*, 114 PSYCHOL. REV. 733 (2007).

97. Shrum, *supra* note 1, at 262.

98. The outcomes of heuristic processing are not inevitable however. People who are instructed to think very carefully about their answers are either not affected or less affected by television portrayals. Shrum, *supra* note 1, at 264-66.

99. Winter, *supra* note 35, at 2230 (mental coherence-seeking superimposes narrative structure on life events).

100. Nevertheless, because heuristics are born of pre-existing understandings, they are constrained by those understandings. Winter, *supra* note 35, at 2271. Thus, heuristics, while efficient, can lead us astray from logic or truth.

101. Shrum, *supra* note 1, at 263. Furthermore, heavy viewers of these portrayals will store them more frequently. Conversely, infrequent portrayals are infrequently stored and non-heavy viewers would do so infrequently. *Id.*

102. *CSI Effect*, *supra* note 5, at 430-31; *Cinema*, *supra* note 4, at 1521; FEIGENSON, *supra* note 61, at 11; Lin, *supra* note 8, 758-59; cf. NARRATIVE ANALYSIS: STUDYING THE DEVELOPMENT OF INDIVIDUALS IN SOCIETY (Colette Daiute & Cynthia Lightfoot eds., 2004) ("way people tell stories influence[s] how they perceive, remember, and prepare for future events"). These heuristics "help us to understand how truth and justice are being constructed and how these constructions capture belief in the everyday practice of law." POP, *supra* note 1, at 7.

understandings about how trial evidence will unfold,¹⁰³ determinants of truth or guilt,¹⁰⁴ and legal rules and policies.¹⁰⁵ Thus, they become the standard against which “the stories that are being told by clients, witnesses, and experts, as well as by attorneys, to one another and to the lay jurors who make up their audience” are compared.¹⁰⁶

IV. TELEVISION’S PORTRAYAL OF ATTORNEYS

Because the public has limited opportunities to engage attorneys in their practice,¹⁰⁷ it learns most of what it knows about them through television.¹⁰⁸ Courtroom and crime programs constitute the majority of television’s depictions of law,¹⁰⁹ and have long been a staple of television programming.¹¹⁰ From 1960-1990, 25% of television programs featured criminal justice themes.¹¹¹ During the 2005 season, networks broadcast thirty-two primetime crime dramas.¹¹² This steady diet both responds to and whets the audience’s

103. Kimberlianne Podlas, *The Effects of Syndicated Courtrooms on Jurors*, 25 AM. J. TRIAL ADVOC. 557 (2002); Sherwin, *supra* note 13, at 654; Fuyuan Shen, *Effects of News Frames and Schemas on Individuals’ Issue Interpretations and Attitudes*, 81 J. MASS COMM. Q. 400, 402 (2004) (schema as conceptual map or knowledge structure).

104. Sherwin, *supra* note 13, at 654; Richard K. Sherwin, *Celebrity Lawyers and the Cult of Personality*, 22 N.Y.L. SCH. J. INT’L & COMP. L. 147, 149-50 (2003) [hereinafter *Celebrity*].

105. *Id.* at 150. Voters may even bring these understandings into the voting booth. *Id.* at 149-50.

106. *Picturing*, *supra* note 7, at 892, 897.

107. Jason Low & Kevin Durkin, *Children’s Conceptualization of Law Enforcement on Television and in Real Life*, 6 LEGAL & CRIM. PSYCHOL. 197 (2001).

108. McNeeley, *supra* note 5, at 1; *see also* Spitz, *supra* note 7, at 731 (public learns most of what it knows, though often convoluted an incorrect, about attorneys through media).

109. Dowler, *supra* note 56, at 109; Chase, *supra* note 11, at 548 (vast majority of television and film depictions focus on litigation attorneys and trials); David Ray Papke, *Law, Cinema, and Ideology: Hollywood Legal Films of the 1950s*, 48 UCLA L. REV. 1473, 1477 (2001); Erica Sharrer, *Tough Guys: The Portrayal of Hypermasculinity and Aggression in Televised Police Dramas*, 45 J. BROADCASTING & ELECTRONIC MEDIA 615, 616 (2001) (pursuit of criminals has long accounted for a substantial part of the television schedule). For a discussion of lawyers and law in cinema see STEVE GREENFIELD, GUY OSBORN, AND PETER ROBSON, *FILM AND THE LAW* 34-53 (2001).

110. Mezey & Niles, *supra* note 4, at 93; Chase, *supra* note 11, at 548 (TV and law since 1948). Attorneys have played a prominent role on television since the 1940’s. THOMAS LEITCH, *PERRY MASON* 1 (2005).

111. McNeeley, *supra* note 5, at 4.

112. *CSI Effect: Investigation, Evidence and the Impact of Television on Criminal Law*, THE LEGAL INTELLIGENCER, Aug. 22, 2005, at 2.

appetite for such programming.¹¹³

News¹¹⁴ and entertainment media¹¹⁵ alike situate law enforcement at the center of this programmatic universe. The news tends to feature law-breaking, its consequences, and trials.¹¹⁶ It disproportionately focuses on serious crimes,¹¹⁷ and, when covering trials, it emphasizes the "crime control" model, i.e., that the function of law is protecting victims and punishing wrongdoers.¹¹⁸ This occurs at the expense of acknowledging the value of constitutional protections.¹¹⁹ The news also exaggerates the number of crimes "solved"¹²⁰ and portrays those in law enforcement as effective if not heroic figures.¹²¹ Despite the tone and quantity of this coverage, however, it does not reflect reality. Rather, statistics confirm that crime has decreased.¹²² Though the homicide rate in the United States has varied greatly over the past three decades, it has steadily declined since 1992.¹²³ Notwithstanding, news media continues to further the notion that crime continues to rise.¹²⁴

113. Chase, *supra* note 11, at 548; ELAYNE RAPPING, LAW AND JUSTICE AS SEEN ON TV 7 (2003).

114. Matthew B. Robinson, *The Mouse Who Would Rule the World! How American Criminal Justice Reflects the Themes of Disneyization*, 10 J. CRIM. JUST. & POPULAR CULTURE 69, 78 (2003).

115. *Id.* at 75-76.

116. Both fictional and factual television has always been preoccupied with lawbreaking and its effects. ANITA BIRESSI & HEATHER NUNN, REALITY TV 118 (2004).

117. Low & Durkin, *supra* note 107, at 197.

118. Robinson, *supra* note 114, at 75-76; *see also* Eschholz, *supra* note 6, at 37-39. The "crime control" and "due process" models were first proposed by Packer who used them to illustrate contrasting perspectives on the extent to which police should be controlled by the law. HERBERT PACKER, THE LIMITS OF THE CRIMINAL SANCTION 149, 153 (1968).

119. Robinson, *supra* note 114, at 75-76.

120. Dowler, *supra* note 56, at 111 (citing studies therein of the proportion of arrests to crimes).

121. *Id.* Congruent with the media's positive portrayal of police, public attitudes about the police are generally positive. *Id.*

122. Robinson, *supra* note 114, at 76; *see also* Eschholz, *supra* note 6, at 37-39 (noting that television exaggerates the incidence of violent crime). The news media also presents a systematically distorted picture of civil litigation, saying our civil justice system is in crisis and in need of reform. Robbennolt & Studebaker, *supra* note 93, at 6. For a detailing of this see *id.* at 7-14.

123. Beginning with the lowest homicide rate in 1967, it rose to 102 per million (1980), 79 per million (1985), 98 per million (1991), 74 per million (1996), and 68 per million (1997). Alfred Blumenstein & Richard Rosenfeld, *Explaining Recent Trends in U.S. Homicide Rates*, 88 J. CRIM. L. & CRIMINOLOGY 1175 (2001).

124. Robinson, *supra* note 114, at 76; Blumenstein & Rosenfeld, *supra* note 123, at

Entertainment television is no different. Content analyses similarly disclose that entertainment programming emphasizes serious crimes and the crime control model.¹²⁵ It depicts the legal system's primary function as repressing crime¹²⁶ and punishing the guilty.¹²⁷ Again, these goals are highlighted while due process and fair treatment are devalued.¹²⁸ "The medium won't bear hard-to-visualize abstractions, like the presumption of innocence, the right against unreasonable search and seizure, or the potentially unpopular demands of due process."¹²⁹

This is exemplified by television's depictions of attorneys. On entertainment television, all attorneys are *not* created equal. Rather, television separates the "white-hatted prosecutors and police officers"¹³⁰ from the "black-hatted defense attorneys."¹³¹ It celebrates prosecutors as folk heroes,¹³² exalting them¹³³ as society's saviors.¹³⁴ Moreover, these populist district attorneys do not "ha[ve] time for the technicalities of law. . . . Their job is to cut through the deceptions, counter the rip-offs, and sweep up the deadbeats."¹³⁵ Indeed, it seems the only impediments to these guardians of justice are the "legal technicalities" and due process demands

1175; Eschholz, *supra* note 6, at 37-39 (television exaggerates incidence of violent crime). The media, however, ignores white collar crime. Robinson, *supra* note 114, at 75-76.

125. Low & Durkin, *supra* note 107, at 197. This cultivates the growing fear of crime. RAPPING, *supra* note 113, at 4, 7-8.

126. Crime stories on television are generally some variation of the law thwarting crime and presenting authoritarian aggression as justified Margaret Reith, *Viewing of Crime Drama and Authoritarian Aggression: An Investigation of the Relationship Between Crime Viewing, Fear, and Aggression*, 43 J. BROADCASTING & ELECTRONIC MEDIA 211, 212 (1999); McNeeley, *supra* note 5, at 7 (for example, illegal searches or beating witnesses are portrayed as essential or necessary).

127. Robinson, *supra* note 114, at 78.

128. *Id.*

129. *Celebrity*, *supra* note 104, at 152.

130. RAPPING, *supra* note 113, at 8.

131. *Id.*

132. Dick Thornberg, *Prosecutors and the Press in the Search for the Truth the Whole Truth, and Nothing but the Truth*, 75 JUDICATURE 20, 21 (1991).

133. Television portrays prosecutors and police as members of the same crime fighting team who bring criminals to justice. Spitz, *supra* note 7, at 733 (television shows detectives in a positive light); Dowler, *supra* note 56, at 111.

134. RAPPING, *supra* note 113, at 8.

135. *Celebrity*, *supra* note 104, at 152; Spitz, *supra* note 7, at 733.

Prosecutors appearing on police programs are also depicted in a positive light. *Id.*

relied on by the defense.¹³⁶

By contrast, criminal defense attorneys run the gamut from inept to dishonest¹³⁷ to engaged in morally repugnant work.¹³⁸ They are not portrayed as seeking justice but as manipulating the system to help the guilty escape punishment.¹³⁹ If defense attorneys are not using “legal technicalities” to thwart the prosecution,¹⁴⁰ they tend to be tangential characters.¹⁴¹ Commonly, they stand alongside clients during prosecution or police questioning, unable to convince these clients to heed legal advice and remain silent. Indeed, their function seems not so much to reflect the reality of defense practice or its role in protecting our constitutional rights, as it does to advance the crime control narrative or explain how the guilty escape punishment.

Criminal defense attorneys were not always consigned to television’s sidelines. In television’s early years, they were central, iconic characters¹⁴² whose work and related social issues¹⁴³ were celebrated as critical to our system of justice.¹⁴⁴ For instance, the titular character of *Perry Mason* shielded the innocent from wrongful conviction and discovered the truth,¹⁴⁵ and legal teams such as the father-son duo of *The Defenders*¹⁴⁶ fought for the civil rights of the alienated and indigent.¹⁴⁷ Television “sent the message that lawyers [like these] could help attain justice and solve social problems.”¹⁴⁸

136. *Celebrity*, *supra* note 104, at 152.

137. Spitz, *supra* note 7, at 737 (public perceives defense attorneys as dishonest and being paid to lie).

138. Mezey & Niles, *supra* note 4, at 125-26.

139. Spitz, *supra* note 7, at 737; RAPPING, *supra* note 113, at 8 (depicting defense attorneys as “bad guys”).

140. *Celebrity*, *supra* note 104, at 152.

141. “[C]riminal suspects rarely ‘lawyer up’ and inevitably confess....” Spitz, *supra* note 7, at 733.

142. Mezey & Niles, *supra* note 4, at 117-120 (*Justice* ran from 1954-56, *Perry Mason* ran from 1957-64, and *The Defenders* ran from 1961-64).

143. TOM STEMPEL, STORYTELLERS TO THE NATION 88 (YEAR).

144. RAPPING, *supra* note 113, at 2.

145. Michael M. Epstein, “Separate” but Not “Equally Important,” TELEVISION Q. 4 (*Perry Mason* was a truth-seeker).

146. *The Defenders* addressed social and legal issues from a liberal point of view. ASIMOV & MADER, *supra* note 42, at 99-100. After the Kennedy Administration FCC Chair described television “as a vast wasteland” and asked television executives what they were doing to improve television, among their replies was that they had a series soon premiering called *The Defenders*. STEMPEL, *supra* note 143, at 87.

147. Mezey & Niles, *supra* note 4, at 119-20. *LA Law* aired from 1986-94. *Id.*

148. ASIMOV & MADER, *supra* note 9, at 100.

By the 1980's, however, television had replaced defense attorneys and their causes with civil lawyers in private practice.¹⁴⁹ As exemplified by *LA Law*, these programs featured well-paid yuppie lawyers¹⁵⁰ who represented whichever client was the highest bidder¹⁵¹ – even when he was morally repulsive¹⁵² – and who never allowed the inconveniences of legal research or case preparation to interfere with their social lives.¹⁵³ The attorneys at the firm of McKenzie, Brackman, Chaney, & Kuzak “often informed colleagues in a firm conference that they had a major trial starting the next day or perhaps even the same afternoon. Without apparent preparation, the attorneys then sashayed confidently into the courtroom.”¹⁵⁴

In the 1990's,¹⁵⁵ television's legal programming began to display “a decidedly different ideological slant. . . .”¹⁵⁶ Public opinion about the legal profession (except of those in law enforcement) was vitriolic¹⁵⁷ and interest in civil attorneys had waned.¹⁵⁸ Criminal prosecutors now stood alone atop the moral high ground of legal practice.¹⁵⁹ Both mirroring and furthering this shift in social consciousness,¹⁶⁰ television celebrated the work and principles of prosecutors.¹⁶¹ Even when they were not the featured characters, prosecutors were presented on shows such as *The Practice* as consistently more

149. Mezey & Niles, *supra* note 4, at 119-20.

150. Asimov, *supra* note 6 at 101 (“enjoyed lavish lifestyles”).

151. By contrast, *The Defenders* “never seemed to worry about getting paid. . . .” ASIMOV & MADER, *supra* note 9, at 100.

152. Asimov, *supra* note 6 at 101.

153. By contrast, neither *The Defenders* nor *Perry Mason* focused on the lawyer's personal life. ASIMOV & MADER, *supra* note 9, at 100-101. Indeed, the character of Perry Mason seemed to have no personal life. *Id.* at 100.

154. Victoria S. Salzmann & Philip T. Dunwoody, *Prime-Time Lies: Do Portrayals of Lawyers Influence How People Think About the Legal Profession?* 58 SMU L. REV. 411, 432-33 (2005).

155. RAPPING, *supra* note 113, at 4-5.

156. *Id.* at 3-4.

157. The public's opinion of the character and ethics of lawyers started declining beginning in the 1970s. Asimov, *Bad Lawyers*, *supra* note 6, at 536; ASIMOV & MADER, *supra* note 9, at 52 (declining public opinion about prestige and honesty of lawyers).

158. RAPPING, *supra* note 113, at 3. For a review of America's historical celebration of lawyers (and eventual change) see *Celebrity*, *supra* note 104 at 147-51.

159. RAPPING, *supra* note 113, at 10 (displaced by a fascination with prosecutors).

160. *Id.* at 3. Hence, it also influenced public opinions about law (which in turn, influence the policies that influence the reflective programming).

161. RAPPING, *supra* note 113, at 4.

principled than defense attorneys.¹⁶² *Law & Order* was first and foremost in this programming trend. Dovetailing with the emergence of the law and order era,¹⁶³ *Law & Order* focused on hard-working, justice-seeking Assistant District Attorneys (ADAs) who try and punish society's wrongdoers.¹⁶⁴ A symbiotic relationship developed among programming, audience interest, and public political sentiment. As the public became increasingly concerned about law and order,¹⁶⁵ television designated crime and criminals as major issues.¹⁶⁶ As television focused on the punitive aspects of law (such as "three strikes you're out" sentences, the death penalty,¹⁶⁷ and trying juveniles as adults), victim's rights, and safe streets policies,¹⁶⁸ the public became more concerned about crime and criminals. Thus, *Law & Order* and other programs sharing its themes not only reflected the public's prevailing views, but also sensitized and cultivated in the public these views.¹⁶⁹

V. ASSESSING TELEVISION'S PORTRAYALS

Programs featuring attorneys continue to be popular, because viewers are fascinated by what they do, or, more accurately, by what they think lawyers do.¹⁷⁰ Nevertheless,

162. *Id.* Rapping further claims that families do not want to confess that their children are public defenders. *Id.* at 1-2.

163. *Id.* at 4. The law and order era began in the 1990s. *Id.* at 4-5.

164. *Law & Order* producer Barry Schindel is a former prosecutor. Jay Michaelson, *Having the Write Stuff. What Makes All Those TV Law Shows Succeed?*, LEGAL TIMES (Am. Lawyer Media) Mar. 11, 2002, at 24.

165. VALERIE P. HANS & NEIL VIDMAR, JUDGING THE JURY 133 (1986) (describing public sentiments).

166. RAPPING, *supra* note 113, at 5-6.

167. Robinson, *supra* note 114, at 78. Studies have shown that fearful, distrustful people are more susceptible to deceptively simple crime control postures. Apparently, they are inclined toward such policies as a salve to relieve their insecurities. Nancy Signorielli, *Television's Mean and Dangerous Worlds*, in CULTIVATION ANALYSIS: NEW DIRECTIONS IN MEDIA EFFECTS RESEARCH 88, 102 (NANCY SIGNORIELLI & MICHAEL MORGAN eds., 1990).

168. RAPPING, *supra* note 113, at 4, 6-8 (identifying public's growing fear of crime); Steiner, et al., *supra* note 49, at 465 (public advocacy for punitiveness).

169. RAPPING, *supra* note 113, at 4, 7-8.

170. Douglas E. Abrams, *Picket Fences*, in PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE 129, 132, 141 (Robert M. Jarvis & Paul R. Joseph eds., 1998); GREENFIELD, OSBORN, & ROBSON, *supra* note 109, at 86 (public's fascination with law and lawyers). Television's portrayal of lawyers also seems to influence the public's belief of what being an attorney is like. Indeed, it appears that *LA Law* coincided with an increase in law school applications. Spitz, *supra* note 7, at 732.

the demands of the television medium prevent these shows from being “faithful to the realities of legal practice.”¹⁷¹ First, because television’s purpose is to entertain, accuracy inevitably gives way to dramatic effect.¹⁷² For example, explication substitutes for proper cross-examination, trial preparation and legal research are non-existent, and there is little time between arrest and trial. Second, because viewer attention spans are short, television must tell its stories simply and efficiently.¹⁷³ Although television relies on stereotypes¹⁷⁴ for the sake of story-telling,¹⁷⁵ the dichotomies employed are neither neutral nor nuanced. Rather, they portray “things as black or white, as right or wrong, as guilty or innocent. . . .”¹⁷⁶ As a result, whether these stories are presented as factual or fictional,¹⁷⁷ they can leave the audience with a convoluted view of the legal system¹⁷⁸ and its lawyers.¹⁷⁹

To the extent that television’s lessons supplant real law,¹⁸⁰ they impact law and justice.¹⁸¹ Misinformation about the legal system and crime investigation can seep into the courtroom¹⁸² influencing the way that jurors interpret behaviors,¹⁸³ assess

171. Spitz, *supra* note 7, at 740.

172. *Id.*

173. This is commonly accomplished by using stereotypes. Shrum, *supra* note 1, at 258.

174. *Id.*

175. *Id.* at 473.

176. *Cf. id.* (broad strokes of portrayals cause public to view things as black and white, etc.). This can also impede the ability to undertake “more subtle analyses or an appreciation of contradiction . . .” *Id.*

177. Spitz, *supra* note 7, at 727 (most Americans accept TV’s version of law). Additionally, the degree to which television programs are perceived to be realistic positively influences mental processing. *Cf.* Michael A. Shapiro & T. Makana Chock, *Media Dependency and Perceived Reality of Fiction and News*, 48 J. BROADCASTING & ELEC. MEDIA 675, 675 (2004); R. Lance Holbert, et al., *Fear, Authority, and Justice: Crime-Related TV Viewing and Endorsements of Capital Punishment and Gun Ownership*, 81 JOURNALISM & MASS COMMUN. Q. 343, 345 (2004) (perceived credibility of crime dramas influences effect).

178. Low & Durkin, *supra* note 107, at 197.

179. Spitz, *supra* note 7, at 731; Papke, *supra* note 69, at 489 (television’s fictionalized trials shape public’s view of lawyers and courts).

180. “The reality that counts most in this context is the one that people carry around in their heads: the popular images, stock stories and character types, the familiar plot lines and recurring scenarios.” *Picturing*, *supra* note 7, at 892-93.

181. Low & Durkin, *supra* note 112, at 198 (noting potential impact of distortion on children); *Celebrity*, *supra* note 104, at 149.

182. POP, *supra* note at 7; Harris, *supra* note 11, at 786 (may affect what occurs).

183. *Please Adjust*, *supra* note 4, at 13-21 (judge silence).

credibility, weigh theories of the case,¹⁸⁴ and understand the penal law.¹⁸⁵ These depictions might influence opinions about criminal justice policies, law reform,¹⁸⁶ and the justice system.¹⁸⁷ Furthermore, laypeople are unlikely to know how television's depictions are inaccurate or understand the deficiencies in their own knowledge.¹⁸⁸ Rather, the ubiquity of criminal justice programs makes the public so familiar with their themes and tropes that the public believes it understands the system although it may not.¹⁸⁹

In light of the enduring presence of legal narratives on television and their empirically supported potential to impact viewers, it is important to investigate their underlying ideologies as well as how they translate to lay understandings¹⁹⁰ and legal decision-making.¹⁹¹ The impact of these types of depictions of law, however, is a nascent field,¹⁹² and little attention has been paid to the effects of television crime dramas.¹⁹³ Moreover, most of the scholarship that exists is within the film and literary studies disciplines,¹⁹⁴ which fail to acknowledge television's unique attributes and cultivation effects.¹⁹⁵ Consequently, we understand little about the link

184. Friedman & Rosen-Zvi, *supra* note 7, at 1414 (pop legal culture's images teach people what to expect of criminal justice); cf. Lin, *supra* note 8, at 758-59 (important to discern the way in which narratives shape process of legal judging) and at 761 (society's narratives shape beliefs about law).

Jurors reference pop culture's stock stories, basic character types, and familiar plot lines to decide what happened and why. Sherwin, *supra* note 1 at 24.

185. Lin, *supra* note 8, at 746-47.

186. *Celebrity*, *supra* note 104, at 151.

187. Harris, *supra* note 11, at 786 (misleading information about criminal justice can affect justice system) and at 797 (erroneous material in entertainment programming impacts perceptions of legal system).

188. Steiner, *supra* note 49, at 464, 496 (people think they know more about criminal law than about other types of law).

189. *See id.*

190. Asimov, *Bad Lawyers*, *supra* note 6, at 552. It is difficult to determine the effect that legal pop culture has on a layperson's perceptions of lawyers and the justice system. Spitz, *supra* note 7, at 730.

191. Lin, *supra* note 8, at 759 (important to examine way that narrative informs judicial decision-making).

192. "The 'pop-culture legal-realist movement' is a growing body of scholarship that examines the symbiotic relationship between popular culture and law." Michael Asimov, *Embodiment of Evil: Law Firms in the Movies*, 48 UCLA L. REV. 1339, 1341 (2001).

193. Holbert, *supra* note 177, at 343, 345.

194. Cf. Greenfield, *supra* note 124, at 26 (addressing outstanding issue in study of cinematic portrayals of law and lawyers).

195. Thus, these can misperceive television's effect – where any effect exists. *See*,

between the imagery and storytelling conventions of television's legal stories¹⁹⁶ and the public's perceptions of law.¹⁹⁷

VI. LAW & ORDER

*Law & Order*¹⁹⁸ is television's preeminent narrative about the criminal justice system.¹⁹⁹ Debuting on NBC in 1990²⁰⁰ (and entering syndication in 1994), it is not only the longest-running courtroom drama in the history of television²⁰¹ but also the longest-running drama on the air.²⁰² It has spawned several spin-offs,²⁰³ received a record-setting eleven consecutive Emmy nominations as Outstanding Drama, winning the award in 1997.²⁰⁴

Law & Order utilizes a distinctive narrative structure borrowed from the short-lived 1963 television show *Arrest and Trial*.²⁰⁵ Each self-contained episode follows a criminal case from the perspective of law enforcement, both police and

e.g. ASIMOV & MADER, *supra* note 9; Podlas, *Normative*, *supra* note 7, at 1-2; Friedman & Rosen-Zvi, *supra* note 7, at 1411; Spitz, *supra* note 7, at 729-30; Richard A. Clifford, *supra* note 8, at 1; POP, *supra* note 1.

196. *Picturing*, *supra* note 7, at 897-98. Little attention has been paid to the effects of television crime dramas. Holbert, *supra* note 177, at 343, 345 (study of crime programs has been sporadic and does not form coherent whole).

197. *Cf.* Greenfield, *supra* note 124, at 26 (addressing outstanding issue in study of cinematic portrayals of law and lawyers).

198. *Law & Order* is produced by Dick Wolf Films.

199. Genres matter as cultural categories, whether specific to television or across cultural medium such as understandings of *Law & Order*. Hence, rather than considering *Law & Order* using a film-based formal aesthetic approach, *see* MITCHELL, 2-3 (2004) (describing inapplicability of the categorical labels of film and literature studies to television) that identifies and analyzes it as noir, we can conceive of it more broadly as a genre representing criminal justice and law. *Id.*, at 56.

200. Chase, *supra* note 11, at 548; Internet Movie Database, www.imdb.com (last visited August 23, 2007).

201. Epstein, *supra* note 145, at 4.

202. RAPPING, *supra* note 113, at 13; Internet Movie Database, <http://www.imdb.com/title/tt0098844/>, (last visited Aug. 23, 2007).

As of May 2007, it has aired 393 episodes. Episode Guide, http://www.nbc.com/Law_&_Order/episode_guide/, (last visited Aug. 30, 2007).

203. *Law & Order: Special Victims Unit* (1999), *Trial By Jury* (2005), *Without a Trace* (1999), *Law & Order: Criminal Intent* (2001). Internet Movie Database, <http://www.imdb.com>, (last visited Aug. 23, 2007).

204. Internet Movie Database, <http://www.imdb.com/title/tt0098844/awards>, (last visited Aug. 23, 2007). This string of nominations was from 1992-2002.

Law & Order has received 142 nominations from various organizations. *Id.*

205. ABC cancelled *Arrest and Trial* after one season (1963-64).

prosecutors. In the first half of an episode, police²⁰⁶ investigate a murder and arrest a culprit. In the last half, a pair of prosecutors – Executive ADA (EADA) Jack McCoy²⁰⁷ and a junior, female ADA²⁰⁸ – brings the case to trial or negotiates an alternative disposition (such as a plea bargain).²⁰⁹

Instead of “once upon a time,” each story begins with the following voiceover:

In the criminal justice system the people are represented by two separate and equally important groups – the police who investigate the crime and the district attorneys who prosecute it. These are their stories.²¹⁰

The program presents itself as a realistic, though fictional, portrayal of the criminal justice system. Indeed, it regularly advertises that its stories are “ripped from the headlines” and based on real events.²¹¹ The aesthetics of the show further underscore its realism.²¹² *Law & Order* shoots on location in New York City and employs the known mise-en-scene of the courtroom.²¹³ Each scene begins with a caption displaying date and location. This dramatized construction of real events adds to the authority of the program.²¹⁴ Visual cues,²¹⁵

206. These detectives represent the 27th Precinct’s Homicide Division. “Plot Summary,” Internet Movie Database, www.imdb.com/title/tt0098844/plotsummary, last visited August 23, 2007.

207. Sam Warterston as Executive Assistant District Attorney Jack McCoy joined *Law & Order* in Season 5. *Law & Order* “Cast”, <http://www.nbc.com>, (last visited Aug. 30, 2007).

208. Until Season 4, all primary characters were male. In the fourth season, two women were added: a senior detective and a junior ADA. Since that time, the prosecution duo has always featured a senior male and a junior female. *Law & Order TV Show Series on NBC: Find Cast Information and Episode Guide*, http://www.nbc.com/Law_&_Order/bios/bios_sam.shtml (last visited Aug., 30, 2007).

209. LENZ, *supra* note 14, at 156.

210. Steven Zirnkilton narrates this iconic introduction. Steven Zirnkilton, <http://www.imdb.com/name/nm0007064/>, (last visited Aug. 30, 2007).

211. Edward Wyatt, *Even for Expert, Blurred TV Images Became a False Reality*, N.Y. TIMES, Jan. 8, 2005, at B7 (describing *Law & Order* as “fictionalized versions of real events . . . sensationalized and stripped of nuance”).

212. The aesthetics of realism, lighting, framing of scenes, and camera work, further authenticate the image. See BIRESSI & NUNN, *supra* note 116, at 120-21 (discussing reality-based crime programs in UK).

213. Television’s visual, realist codes are part of *Law & Order*’s mise-en-scene. The mise-en-scene, a term from film, refers to everything that is visible on-screen. MARSHALL & WERNDLY, *supra* note 50, at 84. A critical part of the mise-en-scene is the set. TIMOTHY CORRIGAN & PATRICIA WHITE, *THE FILM EXPERIENCE* 44-45 (2004).

214. See BIRESSI & NUNN, *supra* note 116, at 120-21.

such as desaturated color, lighting, and hand-held cameras,²¹⁶ produce a cinema verite style²¹⁷ that also contribute to this verisimilitude and help tell its stories.²¹⁸

Fundamentally, though it boasts a unique style and quality acting, *Law and Order* is a crime-courtroom program where law enforcement catches and prosecutes criminals.²¹⁹ It uses both the “coded images” common to crime shows²²⁰ (i.e., mug shots, line-ups, and physical evidence)²²¹ and story-telling conventions – such as debates between ADAs about charges to be filed and suspects who ignore counsel and willingly forgo their right against self-incrimination²²² – to advance the narrative.²²³ Each episode concludes with the restoration of (or periodically the thwarted attempt to restore) law and order. The prosecution almost always solves the case and is confirmed correct, even in the rare instances where the wrongdoer escapes punishment. When the jury renders a guilty verdict, it is acknowledged to be objectively correct, and when the jury does not (it is hung²²⁴ or renders a not guilty verdict), the prosecutors commiserate about how the jury was misled by the defense or by emotion. Finally, commentators have noted that *Law & Order* has become more conservative

215. ASIMOV & MADER, *supra* note 9, at 13 (camera angles and shots tell television courtroom stories).

Moreover, because television is a visual medium, the use of visual and aural signals in televising trials and crime increases the power of television. RAPPING, *supra* note 113, at 6 (contrasting watching television with reading).

216. BIRESSI & NUNN, *supra* note 116, at 120-21 (camera work in reality-based crime programs).

217. The aesthetics of realism, lighting, framing of scenes, camera work further authenticate the image. See BIRESSI & NUNN, *supra* note 116, at 120-21 (discussing reality-based crime programs in UK).

218. JONATHAN BIGNELL, *MEDIA SEMIOTICS, AN INTRODUCTION* 146 (2002).

219. Reith, *supra* note 126, at 212.

220. BIGNELL, *SEMIOTICS*, *supra* note 217, at 141; see also ASIMOV & MADER, *supra* note 9, at 13 (courtroom films use certain cinematic conventions), but also parallel factual events. BIGNELL, *SEMIOTICS*, *supra* note 217, at 141. This metaphoric construction of crime can impact viewer expectations and knowledge. See BIGNELL, *SEMIOTICS*, *supra* note 217, at 141 (codes and conventions impact viewer expectations and knowledge gleaned from program).

221. These come from the codes of detective fiction and narratives about solving crimes that revolve around critical pieces of evidence. BIGNELL, *SEMIOTICS*, *supra* note 218, at 141.

222. Epstein, *supra* note 145, at 11 (drama depends on arrogance of defendants).

223. *Id.* at 4-5.

224. Each hung jury in the episodes reviewed numerically favored conviction.

over the years,²²⁵ coinciding with a general societal and political shift toward increasingly punitive sanctions and hard-lined criminal justice policies.²²⁶

VII. EMPIRICAL ANALYSIS OF *LAW & ORDER*

After eighteen years on network television and twelve years in daily syndication, *Law & Order* has become a ubiquitous source of information about law and justice.²²⁷ This longevity and ubiquity are also testament to *Law & Order's* potential to impact public understandings about law.

Although *Law & Order's* episodes reference various legal rules and procedures (such as privileged communications or the elements of the defense of necessity), this type of "hard content" is unlikely to impact viewers.²²⁸ Research shows that audiences usually do not learn specific legal rules from television, even when rules are repeated across programs.²²⁹ The narrative, if any, that stays with an audience "is less a depiction of actual legal rules (such as the right of a tenant to withhold rent or the tort liability of minors), than a collection of fables portraying society's moral codes."²³⁰ Nonetheless, repetitive behaviors that are perceived as norms and stable, persistent role portrayals of people such as judges and attorneys have been shown to impact the beliefs.²³¹ Consequently, the way that *Law & Order* might affect the public is likely at the broader attitudinal or normative levels. Furthermore, the nature of that influence is dictated by the

225. Laura Quinn, *The Politics of Law & Order*, 25 J. AM. & COMP. CULTURES 130, at 132 (2002) (1994-95 season's change from Michael Moriarty to Sam Waterston marked beginning of the conservative *Law & Order* era).

226. *Id.* Such policies include the widespread re-introduction of the death penalty. *Id.*

227. Additionally, these fictional portrayals of justice are more likely to have been seen and digested by the public. RAPPING, *supra* note 113, at 8 (comparing shows such as *Law & Order* with Court TV and newer prime-time offerings).

228. This is particularly true because *Law & Order* depicts so many different rules in so many different contexts that these individual nuggets of information cannot coalesce to form any unified "lessons."

229. *Nomos*, *supra* note 2, at 50-53.

230. *Id.* at 53.

231. *Picturing*, *supra* note 7, at 892, 897-98; see also George Gerbner, *Trial By Television: Are We at the Point of No Return?*, 63 JUDICATURE 416, 420 (1980) (noting that according to a recent poll seventy-three percent of those children surveyed could not cite any difference between judges depicted on television shows and those in real life); *Please Adjust*, *supra* note 4, at 10-14.

persistent behaviors of its featured characters and the ideologies it conveys about prosecutors, the criminal justice system, and justice itself.

A. Methodology of the Study

Accordingly, rationalizing the study of *Law & Order's* potential impact on the public requires a systematic review of its episodes. To discover the issues and portrayals prominent on *Law & Order*, a content analysis was conducted.

The quantification of the content analysis was then enhanced by combining it with the qualitative valuations of ethnographic analysis.²³² Ethnography places the researcher within the system or society to be studied, and then she systematically observes and records concrete legal phenomenon.²³³ Typically, ethnography focuses on issues such as whether legal rules are followed, how and by whom they are enforced, from where do those who enforce rules obtain their authority, and the respect and legitimacy accorded to those involved with law.

To accomplish this, thirty-five episodes of *Law & Order* were reviewed. This convenience sample was drawn from episodes broadcast on TNT during the month of August, and extended from Season Four (1994) through Season Sixteen (2006). (Research began with Season Four, because Season Four reflects the present structure of *Law & Order*, i.e., it includes both a female police Chief and a female ADA, and featured Executive ADA Jack McCoy). Each episode was monitored for dialogue, charges filed and penal law applied, nature of cases, evidentiary issues, legal arguments and defenses raised, rulings, verdicts, comments about defense counsel, bail, and general story content. Once this information was compiled, it was reviewed for emergent themes and categorized. Finally, the categories were analyzed with an

232. Anthropologists use ethnography to study cultural and legal systems. ROBERT L. KIDDER, *CONNECTING LAW AND SOCIETY* 15-31 (1983). For a history of the development of ethnography, see Ruth Bunzel, *Introduction to FRANZ BOAS, ANTHROPOLOGY AND MODERN LIFE* 5 (1986 ed.).

233. Bill Maurer, *Introduction To Ethnographic Emergences*, 107 *AM. ANTHROPOLOGIST* 1, 2 (2005); Timothy Zick, *Cross Burning, Cockfighting, and Symbolic Meaning: Toward a First Amendment Ethnography*, 45 *WM. & MARY L. REV.* 2261, 2265-2266 (2004); SHARAN B. MERRIAM, *QUALITATIVE RESEARCH AND CASE STUDY APPLICATIONS IN EDUCATION* 13-15 (2001).

eye toward understanding the ideologies, underlying values, and operation of law.

B. Quantitative Results

The episode review disclosed that the following themes and issues were prominent:

LEGAL ISSUE OR PLOT POINT	NUMBER OF OCCURENCES (n episodes = 35)
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Police/Prosecution encourages suspect to speak/proceed without counsel	20 (over 15 episodes)
Defense counsel permits client to speak to law enforcement	7 (over 14 episodes)
Police/Prosecution threaten to arrest individual unless they produce evidence, speak to law enforcement, turn in another individual	17 (over 14 episodes)
Police/Prosecution criticize penal law/advocate its reform	14
Bail	no bail sought: 12 bail denied: 7 bail set to \$1 million once bail set to \$500,000 once bail granted twice for an unknown amount
Intra-prosecutorial debate	8

Conviction to acquittal rate	32/35
Acquittal, hung jury	3 1 acquittal 2 hung juries ²³⁴
Conviction on lesser charge, but acquittal on higher charge	3
Motions to Suppress evidence	15
Suppression Granted (evidence or testimony out)	7
Suppression Denied (evidence or testimony in)	8 (9) ²³⁵
Attempts by Police/Prosecution to use statements possibly protected by testimonial privilege	6
Admission of privileged statements denied (not permitted into evidence)	5
Admission of privileged statements granted (permitted into evidence)	1(2) ²³⁶
Police/Prosecution pursued inconsistent theories of guilt or	8

234. In addition, there was one suspended prosecution (forced by federal government). Because this did not go to verdict, it is not categorized as a prosecution loss.

235. In one instance, the court grants defense counsel's motion to suppress a 911 tape (finding the hearsay statement to be unreliable, because the declarant had lied about and made up an attack on herself to gain police sympathy), but, later, when a police officer alters his testimony, reversed that ruling and admitted the evidence.

236. In one instance, admission was denied on the basis of the statement being privileged (physician-patient), but the prosecution eventually used an alternate theory to gain admission of the bulk of that content.

charged multiple individuals	
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C. Qualitative Results

In qualitatively analyzing *Law & Order's* narrative, its surface attributes must be distinguished from its substance. *Law & Order* includes plot points referencing skilled defense attorneys, acquittals, and the suppression of the fruits of constitutional violations.²³⁷ Sometimes prosecutors disagree about whether to pursue charges or to substitute treatment for sanctions; other times, statutes fail to criminalize behaviors. Although these issues are associated with a due process or defense perspective, their purpose in the narrative does not indicate a positive message about such ideologies. Rather, they advance crime control ideologies.

The import of these depictions is measured in relation to the lessons they tell about law's ability to achieve justice. Thus, it is not sufficient to acknowledge that – as disclosed by this study – the prosecution lost three of thirty-five cases. Rather one must ask why did the prosecution lose? Was the loss just? Was the loss due to a defense attorney's manipulating the evidence or using a "technicality"? Similarly, it is not sufficient to recognize that sometimes physical evidence is suppressed due to a constitutional violation. Instead, one must consider *why* the defendant prevailed on the motion to suppress? Did his success permit him to escape punishment? Did ensuring that the defendant have counsel present during questioning make any discernable difference? Was the statute that permitted escape from or responsibility for the crime formalistic or due process-oriented? Accordingly, the key to understanding *Law & Order's* narrative is in the lessons it teaches and the morals of its stories.

VIII. THE MORAL OF *LAW & ORDER'S* STORIES

Although the media sometimes accuse law of being

237. Constitutional violations include searches without warrants, searches without sufficient cause, consent obtained by force and prosecutor questioning of a suspect outside of the presence of the suspect's attorney.

divorced from,²³⁸ if not impeding, justice,²³⁹ *Law & Order* does not echo this criticism. Instead, the systematic content analysis discloses that *Law & Order* advances the notion that law is the best way to achieve justice.²⁴⁰ In doing so, however, the program does not follow a traditionalist legal narrative of portraying law as either good or bad. Rather, its storytelling conventions and text convey a more nuanced message: it is not that with less law, society can achieve more order, but that certain types of law are associated with justice, whereas others are not. The former, justice-enabling law, comprises legal rules that enable law enforcement to freely collect and introduce evidence, and that favor punitive approaches over rehabilitative ones. The latter, justice-thwarting law, comprises the due process rights and constitutional protections relied upon by defendants and their counsel. Therefore, while *Law & Order's* plots recount criminal law's quest for justice, its primary narrative tells us what justice is and how it can be achieved.²⁴¹ This foundational theme endorses a crime control model of justice²⁴² i.e., one that promotes law enforcement's interests over the accused's due process rights.²⁴³ This reflects our contemporary political climate as well as the era in which *Law & Order* debuted.²⁴⁴

A. Endorsement of Crime Control Values: The Crime Control Model

As noted, the crime control model sees the main function of the criminal justice system as suppressing criminal behavior and apprehending, punishing, and containing

238. LENZ, *supra* note 14, at 91.

239. See LENZ, *supra* note 14, at 18 (common criticism of law is that it hinders the delivery of justice); see also THANE ROSENBAUM, *THE MYTH OF MORAL JUSTICE* 32 (2004) (American litigation provides a "limited vision of relief" for the wronged).

240. This philosophy is traditionally advanced by a progressive or liberal philosophy. LENZ, *supra* note 14, at 118.

241. In modern society, justice is the inherent goal of law. KIDDER, *supra* note 232, at 28. This reflects the ideals of the Berkeley school. *Id.* at 25-26.

242. Quinn, *supra* note 225, at 131; LENZ, *supra* note 14, at 160.

243. For a discussion of the way in which these alternative value sets are reflected in Supreme Court jurisprudence, see Stephen A. Saltzburg, *Foreword: The Flow and Ebb of Constitutional Criminal Procedure in the Warren and Burger Courts*, 69 *GEO. L.J.* 151, 154-58 (1980).

244. That legal-political climate favors hard-line stances on crime as a mechanism of social control.

lawbreakers at maximum efficiency.²⁴⁵ "Efficiency" is defined as "the system's capacity to apprehend, try, convict, and dispose of a high proportion of criminal offenders. . ."²⁴⁶ Critical to this process is the initial fact-finding by law enforcement.²⁴⁷ However, the crime control model gives prosecutors the legal discretion²⁴⁸ to screen suspects and determine factual guilt,²⁴⁹ trusting them to screen out the "factually innocent."²⁵⁰ Consequently, those not screened out are presumed guilty:²⁵¹ "Once the prosecution (or police) have decided that there is enough evidence of guilt to charge him, all subsequent activity is based on the view that he is probably guilty."²⁵²

At the other end of the spectrum lies the due process model of criminal justice. Whereas the crime control model embraces guilt, the due process model relies on a presumption of legal innocence.²⁵³ This model is concerned with limiting the power of the state over the individual²⁵⁴ (be he factually innocent or factually guilty²⁵⁵), and is characterized, *inter alia*, by legal restrictions against unreasonable searches and seizures, the right to legal counsel, and the prohibition of illegal detentions.²⁵⁶ It values the formal fact-finding process of trial²⁵⁷ (as opposed to the administrative determinations of

245. Hung-En Sung, ANNALS (Am. Academ. Politic. & Soc. Sci.) 311, 313-14 *in* DEMOCRACY, CRIME AND JUSTICE: SECTION FOUR: JUSTICE FOR ALL: DEMOCRACY AND CRIMINAL JUSTICE: DEMOCRACY AND CRIMINAL JUSTICE IN CROSS-NATIONAL PERSPECTIVE: FROM CRIME CONTROL TO DUE PROCESS 605 (Susanne Karstedt & Gary Lafree ed., 2006).

246. Packer, *supra* note 118, at 158.

247. Subsequent stages of adjudication, however, are relatively unimportant and often truncated. Sung, *supra* note 245, at 315.

248. The prosecution's high degree of discretion is a defining feature of the American criminal justice system. MAJOR CRIMINAL JUSTICE SYSTEMS 42 (George F. Cole, et al. eds., 1981).

249. Sung, *supra* note 245, at 314.

250. Peter Aranella, *Project: Thirteenth Annual Review of Criminal Procedure: United States Supreme Court and Courts of Appeals 1982-1983: Rethinking the Functions of Criminal Procedure: The Warren and Burger Courts' Competing Ideologies*, 72 GEO. L.J. 185, 210 (1983).

251. *Id.* at 210; Packer, *supra* note 118, at 160. This screening or filtering process, however, is greatly affected by the decision-maker's values. Cole, *supra* note 248, at 42.

252. Aranella, *supra* note 250, at 210; Packer, *supra* note 118, at 160.

253. Aranella, *supra* note 250, at 211.

254. *Id.* at 210; Packer, *supra* note 118, at 165.

255. Aranella, *supra* note 250, at 211.

256. Sung, *supra* note 245, at 315.

257. Thus, the due process model envisions the trial process as a mechanism "that

the prosecution as “screener”) as the most reliable indicator of legal guilt, but does so at the expense of efficiency.²⁵⁸

B. Screening

Law & Order confirms the crime control model’s critical premises, i.e., that prosecutors are able to accurately screen cases, exclude the innocent,²⁵⁹ and assess guilt.²⁶⁰ The episode analysis shows that the prosecution’s inclination regarding guilt is almost always correct. Indeed, the prosecutors obtained convictions in thirty of thirty-five cases.²⁶¹ There was one acquittal, two hung juries, two suspended prosecutions, and two convictions of a lesser-included offense (which the prosecution deemed a loss). Moreover, in the rare event that the prosecution loses, the failure to convict is usually characterized as factually incorrect and a failure to achieve a just result.²⁶²

In fact, its screening abilities are so fine-tuned that often the prosecution charged a suspect before the story disclosed the key evidence proving guilt. (Hence, *Law & Order* shows that prosecutors are able to make correct assessments with only partial evidence). Furthermore, in a few episodes, the prosecution uncovered more evidence, and decided to shift its focus to a different individual – thus confirming that the system is also able to screen out the innocent. The audience, however, never sees stories in which ADAs are mistakenly

will provide maximum protection to the factually innocent and maximum assurance that the state has respected the defendant’s rights in securing its evidence and proving its case.” Aranella, *supra* note 250, at 211.

258. That is, “efficiency” as defined by the crime control model. Aranella, *supra* note 250, at 211; Sung, *supra* note 245, at 314-15.

259. Anyone *not* screened out is, therefore, guilty.

260. “Despite popular conceptions, research has failed to support the claim that groups of individuals can attain high-average levels of performance in judgments of truth and deception. Most experiments have shown that people perform at no better than chance level []; that training programs produce, at best, small and inconsistent improvements compared with naive *control* groups []; and that police investigators, judges, psychiatrists, customs inspectors, polygraph examiners, and others with relevant job experience perform only slightly better than chance, if at all.” (internal citations omitted). Saul M. Kassin, *On the Psychology of Confessions: Does Innocence Put Innocents at Risk?*, 60 AM. PSYCHOL. 215, 217 (2005).

261. A conviction is considered objectively correct, or, as Jack McCoy once said “means the American Dream is still safe.” *Law & Order: Paradigm* (NBC television broadcast Sep. 22, 2004).

262. In modern society, justice is the inherent goal of law. KIDDER, *supra* note 232, at 26-27, *but see id.* at 28. This reflects the ideals of the Berkeley school. *Id.* at 25-26.

convinced of their conclusions. For the most part, this resembles traditional legal fiction which underscores the competency of law enforcement²⁶³ and its ability to ensure that criminals receive their just deserts.²⁶⁴

C. Constitutional Rights

On *Law & Order*, when justice appears to be in jeopardy, it is usually due to defense counsel's manipulation of juror sentiment, statutes that fail to accord prosecutors the necessary authority to prosecute,²⁶⁵ or unnecessarily restrictive evidentiary rules that prevent the introduction of evidence of guilt.²⁶⁶ This underscores the ways that laws and constitutional rights impede the efficient quest for justice and exist solely for the benefit of defendants. In one episode, the prosecution told the victim's mother that they would not be permitted to introduce a 911 tape due to "a technicality." The ADA explained that they could not introduce the tape, because an "accused has a right to cross-examine his accuser and in this case [with the tape], he can't." She further noted that these "protections are there for everyone [but s]ometimes it makes it harder for us to get a conviction." The mother then yelled: "All you care about is protecting the so-called rights of the maniac who killed [my daughter]. Why didn't anyone protect her rights!"²⁶⁷

A senior DA later said, "I don't disagree with her. Sometimes we're so intent on a grain of sand that we lose sight of the beach."²⁶⁸

Instances of evidentiary suppression depict constitutional protections as impeding the efficiency of our system of justice.

263. WALTER CUMMINS & GEORGE GORDON, PROGRAMMING OUR LIVES 134 (2006). As part of this, the law enforcement bureaucracy is also heralded. That bureaucracy is epitomized by a division of labor, hierarchy, rules, and professionalism. See LENZ, *supra* note 14, at 88.

264. The overwhelming majority of crime programs show most criminals being apprehended. McNeely, *supra* note 5, at 10; CUMMINS & GORDON, *supra* note 263, at 133 (majority of criminals caught and punished; shows criminal behavior has dire consequences); LENZ, *supra* note 14, at 93.

265. See e.g., *Law & Order: Patriot* (NBC television broadcast May 22, 2002); *Law & Order: Access Nation* (NBC television broadcast Feb. 27, 2002); *Law & Order: Undercovered* (NBC television broadcast Jan. 16, 2002).

266. Epstein, *supra* note 145, at 8.

267. *Law & Order: Dissonance* (NBC television broadcast Nov. 1, 2000).

268. *Id.*

Fifteen of the thirty-five episodes featured suppression motions. In just over half (eight of fifteen) of those, the motion was denied; the remaining seven motions were granted. Where it was granted (i.e., where the defense prevailed), the following were suppressed: a 911 tape that was the “only evidence identifying the killer” excluded because it was hearsay;²⁶⁹ physical evidence, because the prosecutor had coerced the suspect into permitting the search, thus invalidating any “consent”;²⁷⁰ statements made in drug therapy, because they were privileged;²⁷¹ statements to a school psycho-therapist, because they were privileged;²⁷² a confession to a priest, because it was privileged;²⁷³ and a custodial confession, because the prosecutor questioned the defendant even though her right to counsel had attached.²⁷⁴ Despite proper suppression, the stories confirmed the defendant’s guilt. Importantly, the prosecution inevitably uncovered alternative and often stronger evidence with which to convict. Not only does this suggest that the sole benefit of procedural protections is to enable the guilty to escape punishment, but also it makes them into meaningless hoops that do not change the ultimate result.²⁷⁵ Rather, due process and constitutional rights merely reduce the efficiency of the system and create extra work for law enforcement. This is in line with the typical dramatic portrayal of crime in which a successful resolution is characterized by disregarding civil liberties.²⁷⁶ Thus, consistent with the crime control perspective, *Law & Order* informs the audience that fewer evidentiary restrictions and more prosecutorial discretion would lead to more justice.²⁷⁷

269. *Id.*

270. *Law & Order: Survivor* (NBC television broadcast Oct. 23, 1996).

271. *Law & Order: Privileged* (NBC television broadcast Apr. 5, 1995) (Alcoholics Anonymous treatment).

272. *Id.*

273. *Law & Order: Thrill* (NBC television broadcast Sep. 24, 1997).

274. *Law & Order: White Rabbit* (NBC television broadcast Oct. 19, 1996).

275. In one instance where evidence was suppressed, the police admitted they could easily have obtained a warrant to retrieve the information.

276. Mary Beth Oliver, *Portrayals of Crime, Race and Aggression in “Reality-Based” Police Shows: A Content Analysis*, 38 J. BROADCASTING & ELECTRONIC MEDIA 179, 180 (1994) (entertainment television’s crime programs involve high proportion of successful resolutions).

277. Empirical research shows that, for the most part, people believe that legal authorities are legitimate. Tom R. Tyler, *WHY PEOPLE OBEY THE LAW* 170 (1996).

D. Debate of Issues

The relative supremacy of the crime control model is also expressed through dialogue. The prosecutorial duo identifies an issue, such as mental illness as an exculpatory factor or the contours of the penal law, and either advocates the virtue of the prosecutorial position or discusses how the alternative shields wrongdoers.²⁷⁸

Sometimes this debate is between Executive ADA Jack McCoy and the junior ADA. Eight of the thirty-five episodes reviewed included this type of intra-prosecutorial debate. The issues in these episodes pertained to whether: (1) the government should be permitted to sterilize women who kill their children;²⁷⁹ (2) physicians who tout homeopathic medicine (not approved by the FDA) as a viable alternative to traditional breast cancer therapies commit fraud (or criminally negligent homicide);²⁸⁰ (3) the prosecution should base its case on testimony that may be perjured (in one case from a police officer who, after learning that evidence was suppressed, changed his testimony; in the other, from a jailhouse informant receiving a deal);²⁸¹ (4) it is unethical in closing argument to mention evidence ruled inadmissible; and (5) hospitalization or remorse can mitigate punishment.

Although both individuals represent law enforcement, the argument remains one between the crime control and due process models and/or conservative and liberal legal ideals: ADA McCoy advocates the crime control model and the ADA articulates the due process model. Nevertheless, the McCoy position is always shown to be the one that ensures justice or at least does not permit the guilty to escape punishment. Furthermore, by the end of each episode, the ADA abandons the due process position and expressly acknowledges the superiority of the McCoy position, i.e., undergoes "McCoy Conversion."

278. See, e.g., *Law & Order: Privileged*, supra note 271; *Law & Order: Nullification* (NBC television broadcast Nov. 5, 1997); *Law & Order: Blue Bamboo* (NBC television broadcast Oct. 5, 1994).

Additionally, the prosecution's positions regarding legal policy would lead to the best result whereas those of the defense would not. Illustrative of this are arguments to change privilege laws.

279. *Law & Order: Precious* (NBC television broadcast Nov. 9, 1994).

280. *Law & Order: Coma* (NBC television broadcast Sept. 28, 1994).

281. See also *Law & Order: Entrapment* (NBC television broadcast) (receiving a deal from the FBI).

In addition, intra-prosecutorial debate imputes gender. Since Season Four, when *Law & Order* decided to include women as primary characters (i.e., as detectives and prosecutors rather than only as victims, defendants, and mothers), the older, male EADA²⁸² has been partnered with a young, beautiful female ADA.²⁸³ Because the male presents the crime control model and that model always prevails, it creates a dynamic in which the older male is always correct and the younger female is correct when she agrees with McCoy, but wrong when she does not. In one instance of “McCoy Conversion,” the female ADA questioned McCoy’s desire to prosecute a doctor for fraud and criminally negligent homicide.²⁸⁴ McCoy responded, “You got something against putting the bad guys in jail?”²⁸⁵ The ADA argued that the medical therapy was not necessarily invalid just because the FDA had not yet approved it, and that women should be permitted to choose (as a right of privacy) their treatment regimen. McCoy belittled this argument along with the ADAs emerging “latent feminism”:

If it were Dr. Frank Haas, you’d be the first one out there with the tar and feathers. But a woman actually taking advantage of another woman, that one doesn’t show up in the collected works of Betty Friedan.²⁸⁶

By the end of the episode, the ADA not only experienced McCoy Conversion, but also proposed a sentence more severe than that sought by McCoy. In another episode,²⁸⁷ McCoy wanted to force a Munchhausen’s syndrome afflicted mother who had killed her children to be sterilized as a condition of a plea bargain. The female ADA likened this to the sterilization policies of Nazi Germany, and, referencing Supreme Court precedent, argued that the state should not interfere with one’s privacy and right to procreate. Although

282. Since 1994, the Executive Assistant District Attorney has been Jack McCoy, played by Sam Waterston. *Imdb.com Law & Order (1990) – Full Cast and Crew*, <http://www.imdb.com/title/tt0098844/fullcredits> (last visited Nov. 10, 2007). McCoy replaced the character of Ben Stone, played by Michael Moriarty. *Id.*

283. A female ADA has been used since Jill Hennessey joined the cast as an ADA in 1993. *Id.* There have been a total of 6 female ADAs. *Id.*

284. *Law & Order: Coma*, *supra* note 280 (learning that some patients would have lived longer had they embraced traditional cancer therapies such as mastectomy and chemotherapy, McCoy arrested the doctor for murder).

285. *Id.*

286. *Id.*

287. *Law & Order: Precious*, *supra* note 279.

the ADA did not articulate her adoption of the McCoy position, the episode closed with the discovery that the mother was once again pregnant and a look of horror on the ADA's face.

E. Those Who Seek or Impede Justice

Law & Order also juxtaposes those who wield the instrument of law to obtain justice against those who use law to defeat justice. This is epitomized by the prosecutors and defense attorneys, symbols of the crime control and due process models, respectively. Paramount in this narrative is prosecutors as guardians of justice. Their conclusions about guilt are correct and they prosecute only the legally²⁸⁸ or morally guilty.²⁸⁹ They are the ones who will get the bad guys off the streets. They are the ones who will enforce society's rules,²⁹⁰ thereby enforcing moral codes of right and wrong.

In contrast to prosecutors, defense attorneys are seldom associated with justice, but they are commonly portrayed as being complicit in its denial.²⁹¹ Indeed, the better the defense attorney, the more she threatens justice.²⁹² When the guilty almost escape punishment, it is often because defense counsel successfully excluded incriminating evidence.²⁹³ Even when defense counsel seems to be protecting an individual from an overzealous or politically-motivated prosecution,²⁹⁴ the

288. Factual guilt refers to actually engaging in the statutorily prohibited conduct with the requisite intent. Arenella, *supra* note 250, at 214. Legal guilt is demonstrating beyond a reasonable doubt at a procedurally correct criminal trial that the defendant has done so. *Id.* at 213. According to Aranella, "the crime control model secures the conviction of the 'factually guilty' by encouraging defendants to forfeit their factual guilt defeating claims in exchange for some sentencing concession." *Id.*

289. Guilt or culpability can be understood morally rather than descriptively. George P. Fletcher, *BASIC CONCEPTS OF CRIMINAL LAW* 99 (1998). Thus, "guilt" supposes that one can be morally blamed for the wrongdoing. *Id.* Indeed, we use moral criteria to determine attribution of wrongdoing. *Id.* at 209.

290. "We make moral judgments about the interests [of society] worth protecting under criminal law." *Id.* at 209. The punishment resulting from criminal violations carries out the community's will. Cole, *supra* note 248, at 240.

291. Epstein, *supra* note 145, at 7 (ADAs portrayed as having done their best to arrive at a just result) and at 7-8 (defense attorneys presented as foil).

292. *Id.* at 8.

293. *Id.* Thus, with regard to inculpatory statements by their clients, defense attorneys are either ineffective because they cannot convince their clients to heed their advice and remain silent or when able to silence the client are villains because they prevent the truth from coming out, or from emerging as efficiently.

294. See, e.g., *Law & Order: Suicide Box* (NBC television broadcast Mar. 26, 2003);

defendant is revealed to be manipulating the system, if not wholly guilty.²⁹⁵ Similarly, when counsel represents what appears to be a sympathetic defendant, such as a doctor offering alternative medical treatments,²⁹⁶ a parent attempting to protect a child,²⁹⁷ an abused woman,²⁹⁸ or an abused child with residual emotional issues,²⁹⁹ ultimately the defendant is shown as hiding his or her guilt behind a smokescreen of sympathy.

F. Celebrating the Character of Prosecutors

Embedded within *Law & Order's* narrative is a secondary theme that speaks to the underlying moral character of prosecutors. In addition to identifying prosecutors as lynchpins in the crime control model, *Law & Order* situates them as the moral compass of our criminal justice system.³⁰⁰ This supports the premise that prosecutors can be trusted with discretion in punishing individuals guilty of serious transgressions that might otherwise elude the grasp of the law.

Week after week, *Law & Order's* ADAs work through

Law & Order: Burn Baby Burn (NBC television broadcast Nov. 22, 2000); *Law & Order: Bronx Cheer* (NBC television broadcast Mar. 14, 2001); *Law & Order: Deadbeat* (NBC television broadcast Nov. 13, 1996). Additionally, from the standpoint of the moral of the narrative, when a prosecutor's politics or personal beliefs could potentially influence their actions, it is used as a mechanism for the prosecutor to "triumph over their own personal flaws, doing justice despite themselves and reinforcing faith in the system which ensures justice even when the individuals involved are weak and human." Mezey & Niles, *supra* note 4, at 124.

295. In one case, parents whose child is represented by counsel eschew the defense attorney and choose to go to the prosecutors. They explain that they are trying to do the right thing by their child and the defense attorney "just doesn't understand."

296. *Law & Order: Born Again* (NBC television broadcast Mar. 6, 2002); *see also* *Law & Order: House Calls* (NBC television broadcast May 7, 2003) (offering psychotherapy); *Law & Order: Coma*, *supra* note 280 (offering alternative drug therapy).

297. *Law & Order: Tabloid* (NBC television broadcast May 13, 1998).

298. *Law & Order: Blue Bamboo*, *supra* note 278.

299. *Law & Order: Privileged*, *supra* note 271.

300. The creation of these characters of "prosecutor" and "defense attorney" are also notable for their divergent constructions. Prosecutors are imbued with positive qualities. By contrast, a "positive" portrayal of a defense attorney is not designated by affirmative presence of positive qualities but by the absence of negative qualities. This recalibrates the standard, wherein the neutral standard of prosecutor is good and just ranging to very good and very just, but the best portrayal of a defense attorney is merely not immoral and not unethical and not bad, rather than having any positive qualities.

difficult ethical situations in the legal process and enforcing the law. It shows that prosecutors may bend rules or engage in questionable behavior, but that the ends are justified by their means. For instance, in three episodes the prosecution indicted multiple individuals or pursued inconsistent theories of guilt in order to cause one individual to cooperate or turn on another.³⁰¹ Seven times prosecutors threatened to arrest one family member to force a confession or cooperation from another. Twice they used apparently perjured testimony, when they had no other evidence of guilt. Four times the prosecution even convicted individuals whom it knew or suspected were not guilty of the charged crimes. For example, McCoy agreed to a murder plea from a mobster,³⁰² because the defendant had undoubtedly committed *other* crimes.³⁰³ Thus, "as long as [the defendant] is in prison," this conviction was sufficient. In another instance, it was unclear which half of a couple had planned and committed the murder and which had covered it up. McCoy assigned both the same moral culpability, and when asked whether he was sure that they had convicted the right person, he quipped "sure enough." Each time, however, this enabled the prosecution to convict a "bad" person who might otherwise have eluded justice. The moral of the story³⁰⁴ is that, even when prosecutors engage in behaviors that may seem immoral, those actions further justice and punish the immoral.³⁰⁵ Hence, provided they are

301. When asked to justify one inconsistent arrest, McCoy replied, "[W]e aren't trying both. . . . We have time to work it out." *Law & Order: Survivor*, *supra* note 270. Ultimately, when McCoy had not yet dismissed the charges against one of the defendants (because he did not believe the defendant was the killer "but he's something"), a Senior DA dismissed the charges. *Id.*

302. The mobster's son was the culprit. *Law & Order: For Love or Money* (NBC television broadcast Oct. 10, 2001).

303. *Id.*; see also *Law & Order: Faccia a Faccia* (NBC television broadcast Apr. 25, 1998) (focusing on organized crime).

304. Greenfield, Osborn, & Robson, *supra* note 109, at 87-93 (acknowledging legal films as possessing potential for a moral agenda).

305. One perspective justifying punishment of criminals holds that when an individual harms society by violating its rules or norms, it tips the scales of justice out of balance. Kevin M. Carlsmith, *Why Do We Punish? Deterrence and Just Deserts as Motives for Punishment*, et al., 83 J. PERSONALITY & SOCIAL PSYCH. 284, 285 (2002). Sanctioning the individual restores the balance. *Id.* This just deserts theory is associated with Immanuel Kant. *Id.* An alternative perspective justifies punishment as a means to minimize the likelihood of future transgressions, and thus restore social harmony. *Id.* at 285-86. This utilitarian perspective is associated with Jeremy Bentham. *Id.*

given enough latitude, prosecutors can be trusted to deliver justice.³⁰⁶

In fact, the prosecution's implementation of justice through punishment was exemplified in one case of wrongful conviction. Legal commentators instruct that a prosecutor is obligated to seek post-conviction redress if she believes that an innocent person has been convicted or, at least, should not oppose such relief.³⁰⁷ This would seem obvious. Nevertheless, in "Bronx Cheer," the prosecution learned that it had wrongly convicted a man, but left him jailed until it could establish a new case against another individual.³⁰⁸ Hence, the wrong to be corrected and the primary concern was ensuring punishment (or imprisonment), rather than releasing the innocent. In fact, McCoy asked counsel for the wrongly imprisoned why he had refused a plea. Thus, even knowing the individual was innocent, McCoy appeared oblivious to the concept that an innocent person might not be inclined to plead guilty. Moreover, this episode barely acknowledged the presence of the jailed, and never addressed the reverberations of the prosecutorial actions.

G. Defense Attorneys as Absence of Justice

The adversarial climate of *Law & Order* further dichotomizes outcomes and those who pursue them as either moral and just or immoral and unjust.³⁰⁹ Whereas ADAs are "good" even when their actions appear otherwise, defense attorneys are misled by their clients and represent the reprehensible, thereby making them complicit in the denial of justice. Among the more memorable clients were a mother who feigned despair over her daughter's death but had

306. See Kidder, *supra* note 232, at 26 (justice requiring the law to be flexible).

307. Alafair S. Burke, *Improving Prosecutorial Decision Making: Some Lessons of Cognitive Science*, 47 WM & MARY L. REV. 1587, 1612 (2006); see also *Young v. United States*, 315 U.S. 257, 258 (1942) ("The public trust reposed in the law enforcement officers of the Government requires that they be quick to confess error when, in their opinion, a miscarriage of justice may result from their remaining silent.").

308. *Law & Order: Bronx Cheer*, *supra* note 294.

309. This is in line with the courtroom dramas of popular culture, which employ standard tropes in which "good and evil, truth and falsehood, and right and wrong" battle toward justice. See Christine Alice Corcos, *Symposium: Legal Fictions: Irony, Storytelling, Truth, and Justice in the Modern Courtroom Drama*, 25 U. ARK. LITTLE ROCK L. REV. 503, 511 (2003).

poisoned her daughter and framed the daughter's therapist;³¹⁰ the racially-motivated killer;³¹¹ the large HMO that put profits before helping patients and considered medically-related deaths a cost of doing business;³¹² parents who permitted a celebrity to molest their teenage son in exchange for a large monetary payment that they pretended was a tort settlement;³¹³ and several individuals associated with organized crime.³¹⁴

In fact, the one acquittal among the reviewed episodes – though portrayed as objectively correct – nonetheless disparaged the defense attorney's morals.³¹⁵ There, in addition to a strong defense,³¹⁶ the prosecution's case was significantly undercut by the discovery that their medical examiner had lied. Mid-trial, when the prosecutor attempted to ameliorate this by offering a plea bargain, the defense attorney refused, saying he would continue with his initial theory. (That strategy focused on race and invited the media into the issue.) The prosecution labeled this choice to seek an acquittal on the original theory, instead of accepting a guilty plea as immoral, because, while significant reasonable doubt existed to support an acquittal, it was not based on proof of actual innocence.

Prosecutors sometimes call defense attorneys "opportunists"³¹⁷ and ethically conflicted,³¹⁸ or accuse them of

310. *Law & Order: Born Again*, *supra* note 296.

311. *Law & Order: Paradigm*, *supra* note 261; (middle-eastern ethnicity); *Law & Order: Rage* (NBC television broadcast Feb. 8, 1995) ("black rage" defense interposed).

312. *Law & Order: Undercovered* (NBC television broadcast Jan. 16, 2002). As Jack McCoy remarked, this company attempted "to hide behind the corporate logo." *Law & Order: Access Nation*, *supra* note 265.

313. *Law & Order: Performance* (NBC television broadcast Feb. 15, 1995).

314. *Law & Order: Hitman* (NBC television broadcast Nov. 13, 2002); *Law & Order: Faccia a Faccia*, *supra* note 303; *Law & Order: House Counsel* (NBC television broadcast Jan. 4, 1995).

315. *Law & Order: Suicide Box*, *supra* note 291.

316. Additionally, the defense chooses to present their opening argument immediately prior to their case in chief, i.e., immediately after the prosecution rested. *Id.* Although this is permissible, the prosecution complained that it gave the defense "a distinct advantage." *Id.* The defense attorney enumerated a number of advantages institutionally and procedurally awarded to the prosecution, such as presenting its opening first, presenting its summation last, being seated aside the jury, and choosing the charges. *Id.*

317. *Law & Order: Patriot*, *supra* note 265.

318. *Law & Order: Precious*, *supra* note 279 (conflict of interest due to joint representation); *Law & Order: Privileged* (suborning perjury), *supra* note 271.

having misplaced loyalties.³¹⁹ It is their advocacy on behalf of amoral, guilty clients, however, that imputes these qualities by association. As expressed by one ADA, "I believe in monsters and things that go bump in the night. . . . May they rot in hell, along with their attorneys."³²⁰

IX. THE IMPACT OF *LAW & ORDER*-GENERATED IDEOLOGIES

To the extent that *Law & Order's* ideologies of justice translate into adopting opinions and norms, they can impact legal policies, the way that jurors assess cases, and the public's appreciation of the justice system as a whole.³²¹ The public's reaction to these legal fictions is filtered through a commonsense understanding of whether the outcome was just or unjust.³²² Like a fable through which we learn not to cry wolf or that a bird in the hand is worth two in the bush, *Law & Order* portrays the criminal justice system as an environment in which the crime control model serves citizens while the alternative approach leaves them in jeopardy in order to serve criminals.

A. Policy-Related

Policy problems are not self-evident. Rather, they are socially constructed from popular perceptions of whether the criminal justice system works, what problems exist, and how to fix them. Often, these perceptions come from stories, such as those on television. Indeed, several studies have found that, the more prevalent an exemplar is in the media, the more likely audiences are to believe it is a salient issue.³²³ Therefore, these stories are a basis for public policy and law-making.³²⁴

In a time when society is focused on the efficacy of the criminal justice system, *Law & Order* is perfectly poised to contribute to this policy debate. Not only does *Law & Order*

319. *Law & Order: Performance*, *supra* note 313.

320. ADA Jamie Ross.

321. *Cf.* Harris, *supra* note 11, at 797 (content in entertainment programming impacting perceptions of legal system).

322. In modern society, justice is the inherent goal of law. Kidder, *supra* note 232, at 26-27. *But see id.* at 28. This reflects the ideals of the Berkeley school. *Id.* at 25-26.

323. Robbennolt & Studebaker, *supra* note 92, at 13.

324. *See* Neil Postman, *AMUSING OURSELVES TO DEATH* 153-55 (1986) (popular legal representations "from the culture of entertainment" are merging into law).

validate the parts of the system that work, but it also identifies which issues should be on the public agenda and illustrates the practical impact of various policies. Importantly, *Law & Order* does not offer mere abstractions. Rather, it provides narrative statements³²⁵ that show the benefits and detriments of philosophies pertaining to how the quest for justice can be facilitated, and the ramifications of liberal or conservative stances on crime and punishment.³²⁶

When criminal justice is viewed through the lens of *Law & Order*, however, the issues deemed problems and the policies deemed successful will reflect what is seen on *Law & Order*. For instance, in several episodes, the prosecution encountered some sort of testimonial privilege. Each time, the prosecution argued that the privilege should not apply or explained how honoring it harmed the goals of justice. Hence, *Law & Order* not only identified the problem (privilege laws), but also provided its solution (eliminate laws protecting certain statements as privileged). This can support political campaigns and policies for and against proposed law reforms.³²⁷ When it comes to reforming criminal procedure, this theme might lead legislators (and citizens) to believe that privilege laws are unnecessary or harmful. Politicians might decide to fix this “problem” when it is not a problem at all.³²⁸ Similarly, the episodes underscore the common notion that suppression of evidence helps only the guilty, has no beneficial application to the general public, and – since law

325. Narrative stimulates thinking about the reasons for laws and moral dilemmas associated with law. See Timothy Lenz, *Popular Law and Justice*, 20 LEGAL STUD. FORUM 387, 394 (1996).

326. Robert Weisberg, *Norms and Criminal Law, and the Norms of Criminal Law Scholarship*, 93 J. CRIM. L & CRIMINOLOGY 467, 476 (2003) (law expressing cultural values). For example, in the 1960s-80s, federal sentencing policy was premised on a rehabilitation model. S. REP. NO. 98-225 (1984), as reprinted in 1984 U.S.C.C.A.N. 3220, 3221. In 1984, Congress concluded that the rehabilitation model was “not an appropriate basis for sentencing decisions,” because the prison setting did not foster rehabilitation, and, in any event, rehabilitation could not be measured. Deirdre Golash & James P. Lynch, *Public Opinion, Crime Seriousness, and Sentencing Policy*, 22 AM. J. CRIM. L. 703, 704 (1995).

327. *Celebrity*, *supra* note 104, at 151. (“Popular images of criminals, lawyers and judges leach into the courtroom, the political campaign and the advertising blitz for and against proposed law reforms”).

328. Further, they might perceive privilege as weighted toward harming justice and benefiting only the guilty. Another example that could impact actions pertains to the pro forma denial of bail is almost pro forma, re-calibrating the norm of bail except in unusual circumstances to *denial* of bail except in unusual circumstances.

enforcement always finds other evidence – has little practical value as a deterrent to police misconduct. In this way, *Law & Order* shows how “process” and “technicalities” impede prosecutors and the justice they seek to serve. When combined with *Law & Order*’s confirmation of the competency of prosecutors in screening out the innocent and appropriately exercising discretion, this suggests a policy that law enforcement be awarded greater latitude in investigating and prosecuting crime or that it is reasonable to surrender some rights in exchange for more protection and less crime.³²⁹ Such suggestions can fan public and political sentiment in this direction. Therefore, *Law & Order* can shape criminal justice policy or at least provide a template for approaching reform.³³⁰

B. Jury-Related

Law & Order may calibrate the way that jurors assess trial evidence, and thereby contribute to juror decision-making.³³¹ Jurors³³² make sense of trial evidence by reconstructing it into a story of what “must have happened.”³³³ *Law & Order*’s narrative of how criminal justice works, how defendants get into or are excluded from the system is a baseline story on which to reconstruct that evidence and assess proffered arguments. Of course, this outline is weighted toward bolstering law enforcement and its conclusions, while diminishing its foibles and mistakes.

When television’s version of law is a barometer against which “real” legal action is evaluated,³³⁴ viewers may presume

329. In other words, that we should exchange our constitutional rights in order to achieve more law and order. Indeed, fearful, distrustful people are more susceptible to deceptively simple crime-control postures. Apparently, they are inclined toward such policies to relieve their insecurities. Signorielli, *Mean and Dangerous*, *supra* note 175, at 88, 102.

330. *Law & Order*’s veneer of reality further enhances the credibility of its messages. See Holbert, et al., *supra* note 177, at 345. It also enhances any effects. *Id.*

331. The norms of the television world come to define the contours of how the world really is. Morley, *supra* note 67, at 144.

332. The jury is a cornerstone of the American legal system, Robert T. Roper, *A Typology of Jury Research and Discussion of the Structural Correlates of Jury Decision-making*, 11 JUST. SYST. J. 5 (1986). See also Robert A. Kagan, *Adversarial Legalism: The American Way of Law* 12 (2001). Additionally, in a criminal trial, a jury is guaranteed by the Sixth Amendment. U.S. CONST. amend. VI.

333. POP, *supra* note 1 at 24; Finkel, *supra* note 25, at 65 (describing research that jurors transform evidence into stories)

334. POP, *supra* note 1, at 21.

that the procedures they see on *Law & Order* are typical when they are not,³³⁵ and ascribe to behaviors meanings that do not exist.³³⁶ Unfortunately, “nuances are lost, leading to misunderstandings of burdens, presumptions of guilt, and evidentiary issues.”³³⁷ For example, having learned how well prosecutors screen out the innocent, jurors may believe that defendants who have made it this far in the system must be guilty of something. This effectively reduces the prosecution’s burden of proof.

Additionally, the impact of these character portrayals can be profound.³³⁸ Ordaining prosecution conclusions as objectively correct can influence a jury’s assessments of witness credibility and arguments proffered. Furthermore, research shows that viewers make moral judgments about the behaviors of television characters “to form affective dispositions toward those characters,”³³⁹ i.e., that they are good or immoral. (Indeed, television viewers tend to remember a lawyer’s character, but forget the legal tale to which it is attached.³⁴⁰) Jurors rely on this type of belief in fairness as a heuristic to decide whether an authority is trustworthy.³⁴¹ *Law & Order* cloaks the prosecution in a

335. See, e.g., Shrum, *supra* note 1, at 259.

336. Harris, *supra* note 11, at 786; *Please Adjust*, *supra* note 4, at 13-20 (judge silence); Celeste Michelle Condit & J. Ann Selzer, *The Rhetoric of Objectivity in the Newspaper Coverage of A Murder Trial*, 2 CRITICAL STUDIES IN MASS COMMUN. 197, 198-99 (1985) (jurors’ social interpretation of reality is the operative force in trial decision-making).

337. *Please Adjust*, *supra* note 4 at 22 (“Jurors. . . weaned on the simplicity of syndi-court but introduced to the complexities and competing demands of the law may conclude that the justice system obfuscates issues [and] denies justice.”).

338. In another study, researchers presented individuals with purportedly authentic histories of firefighters and asked the subjects to write an explanation of the relationship between risk preference and firefighting abilities observed in the case histories. Craig A. Anderson, et al. *Perseverance of Social Theories: The Role of Explanation in the Persistence of Discredited Information*, 39 J. PERSONALITY & SOC. PSYCHOL. 1037, 1039-40 (1980). Case histories led subjects to perceive either a positive or negative correlation between the two traits. *Id.* Even after the individuals were told that the case histories were entirely fictional, they continued to cling to the theories they formed from those histories. *Id.* at 1040-42. As the researchers concluded, “[i]nitial beliefs may persevere in the face of a subsequent invalidation of the evidence on which they are based, even when this initial evidence is itself . . . weak.” *Id.* at 1045.

339. Arthur A. Raney, *Punishing Media Criminal and Moral Judgment: The Impact on Enjoyment*, 7 MEDIA PSYCH. 145 (2005).

340. Spitz, *supra* note 7, at 741. American fiction tends to privilege character. *Id.* at 742.

341. David De Cremer & Tom R. Tyler, *The Effects of Trust in Authority and Procedural Fairness on Cooperation*, 92 J. APPLIED PSYCH. 639, 640 (2007).

trustworthiness that the defense is not accorded. The arguments or witnesses of the prosecution come with a seal of approval of the trustworthy prosecutors. This may make them more likely to be believed. Presenting prosecutors as moral or just can also impact decision-making. If jurors are in doubt, the prosecution is on the side of justice, whereas the defense, even if evidence is weighted in its favor, is not.³⁴² This could even provide the prosecution with a dispensation of sorts. One characteristic of justice is loyalty to certain groups.³⁴³ Thus, we are willing to accept certain behaviors in violation of rules or lies in order to uphold the “right” group or their values.³⁴⁴ “[T]rust in authority actually moderates procedural fairness effects.”³⁴⁵ Procedural irregularities are, therefore, alleviated. Procedural fairness will influence people’s responses “when information about the trustworthiness of the authority is lacking, whereas this will not be the case when this trustworthiness information is present.”³⁴⁶

CONCLUSION

Although *Law & Order* is designed to entertain, it is steeped in ideology. These ideologies are translated into *Law & Order*’s narrative content and convey to audiences messages about the criminal justice system and both impediments and mechanisms to achieve justice. The content and ethnographic analyses reveal that *Law & Order* endorses crime control values and consistently provides to the audience the premises that support those values.

When *Law & Order* is the lens through which the public sees criminal law, procedure, and justice, it creates a world in which decisions about the best ways to achieve societal law and order will be based on *Law & Order*. Although *Law & Order* and other legal fictions have a unique ability to encapsulate legal issues in a highly digestible form, they are neither neutral nor realistic reflections of the operation of and

342. Recent research highlights the role of emotion as a powerful contributor to the decision-making process. Benoît Monin, et al., *Deciding Versus Reacting: Conceptions of Moral Judgment and the Reason-Affect Debate*, 11 REV. GEN’L PSYCHOL. 99 (2007).

343. Richard Rorty, *PHILOSOPHY AS CULTURAL POLITICS* 45 (1991).

344. *Id.* at 42-45.

345. De Cremer & Tyler, *supra* note 341, at 640.

346. *Id.*

challenges facing our criminal justice system. Simply, television may mirror real life, and real life may take cues from television, but real law is not television.