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## The Wire as a Gap-Filling Class on Criminal Law and Procedure

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# *The Wire* as a Gap-Filling Class on Criminal Law and Procedure

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“Whatever it was, they don’t teach it in law school.”<sup>1</sup>

—Assistant State’s Attorney Rhoda Pearlman, reacting to how the prosecution had just lost a huge trial.

In the world of television, *The Wire* is in a class by itself.<sup>2</sup> In the world of law school, *The Wire* should be a class by itself. While many professors effectively show isolated scenes from *The Wire* to paint a vivid picture of interrogations and searches,<sup>3</sup> basing an entire course around *The Wire* can cover huge gaps in law schools’ criminal-law curriculum.

The most obvious doctrinal hole that the *The Wire* fills is the law of wiretapping. Most criminal procedure classes do not cover the heightened standard for obtaining a wiretap, the statutory requirement that police minimize their listening, or the need for officers to provide magistrates with progress reports about a wiretap. *The Wire* vividly demonstrates each of these legal concepts.

More importantly, *The Wire* introduces us to the surprisingly complicated crime of possession of a controlled substance. The series repeatedly depicts open-air drug markets in which one young man takes the buyer’s money, another stands as a lookout while a third hands the drugs to the buyer. These scenes raise a multitude of legal questions: Are all three of the players in constructive possession of a controlled substance, even if only one of them is in physical proximity to the drugs? If the kingpins running the drug operation

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1. *The Wire: Took* (HBO television broadcast Feb. 17, 2008).
2. See Susan A. Bandes, *And All the Pieces Matter: Thoughts on “The Wire” and the Criminal Justice System*, 8 OHIO ST. J. CRIM. L. 435, 445 (2011) (describing the show as the “greatest television series ever made”).
3. Like many instructors, I show my criminal procedure students the opening scene of Season 5, in which Detective Bunk tricks an unsophisticated suspect into believing a copy machine is a machine that performs as a lie detector test. Police actually use this gimmick. See DAVID SIMON, *HOMICIDE: A YEAR ON THE KILLING STREETS* 204 (1991). And it is perfectly legal. See *People v. Smith*, 150 P.3d 1224, 1241-42 (Cal. 2007).

have heavily diluted the narcotics with baking soda or other adulterants without telling the foot soldiers, should the judge count the entire weight of the drugs at sentencing? If a suspect is found with a crack pipe, is that persuasive evidence that he is a user rather than a dealer? Even though these questions are litigated in criminal courts every day and even though drug offenders account for more than a quarter of the United States' prison population,<sup>4</sup> these issues are almost completely absent from first-year criminal law courses.<sup>5</sup> Combining *The Wire* with a selection of judicial decisions provides an opportunity to fill this enormous hole in the criminal law curriculum.<sup>6</sup>

In other areas—such as the Fourth and Fifth Amendments—traditional criminal procedure classes do a good job of teaching the law, but often miss the big-picture context of real world policing. Once again, *The Wire* fills the gap and grapples with key questions: Do police officers (such as Officer Pryzbylewski) even understand the Fourth and Fifth Amendment rules they are supposed to be following? If the police do understand the rules, how many of them (like Detective McNulty) seek to circumvent constitutional protections at every opportunity? Are Fourth and Fifth Amendment protections of any value to the juveniles hanging around on the streets in poor neighborhoods or are they simply a privilege of the middle class who live behind fences and have lawyers on speed dial?<sup>7</sup> *The Wire* provides an opportunity to assess how Fourth and Fifth Amendment law actually operates in the real world, as opposed to on the pages of the *United States Reports*.

The series also forces us to dig deeper into how decisions by police and prosecutors affect other players in the criminal justice system. For instance, every criminal procedure student learns about the importance of informants for demonstrating probable cause. Yet students are rarely asked to think hard about the enormous charge reductions and sentencing discounts that informants receive for their assistance. And little attention is paid to the harm that snitching can have on the informants—particularly juveniles—after they return to the street or their schools.<sup>8</sup> *The Wire* focuses our attention on what happens to the players in the criminal justice system after court adjourns.

4. See William J. Sabol et al., U.S. Dep't of Justice, No. NCJ 228417, BUREAU OF JUSTICE STATISTICS BULLETIN: PRISONERS IN 2008, at 37 App. Tbl. 15 (rev. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/po08.pdf>.
5. For an excellent (albeit brief) exception, see WILLIAM J. STUNTZ & JOSEPH L. HOFFMANN, *DEFINING CRIMES* 347-379 (2011). For a much more detailed treatment designed for an upper-level course, see ALEX KREIT, *CONTROLLED SUBSTANCES: CRIME, REGULATION, AND POLICY* (2013).
6. I have recently written a textbook that includes such cases, as well as other materials, to supplement *The Wire*. See ADAM M. GERSHOWITZ, *THE WIRE: CRIME, LAW, AND POLICY* (2013).
7. For an exploration of these questions, see *id.* at 87-192.
8. There is very good academic work on these issues. See, e.g., Alexandra Natapoff, *Snitching: The Institutional and Communal Consequences*, 73 U. CIN. L. REV. 645 (2004). Unfortunately, students typically get no more than a passing glance at these issues in traditional criminal procedure courses.

*The Wire* also boldly tackles major public policy issues that drive the criminal justice system, but which are only background noise in most criminal law and procedure courses. For instance, should drug use be legal, or simply ignored? Does the media have undue influence in directing the police toward certain neighborhoods and encouraging arrests for certain types of crimes? Do officers manipulate the information in police reports to improve their crime statistics? Do states do an adequate job of helping prisoners to reintegrate into society after release?<sup>9</sup> Although these big-picture questions are typically absent from most criminal law and procedure classes, they are front and center in *The Wire*.

In the span of 60 episodes, *The Wire* paints a comprehensive picture of the front-end of the criminal justice system—the stops, frisks, arrests, searches and interrogations that police conduct thousands of times a day.<sup>10</sup> It is a devastating picture of the flaws in modern American criminal justice. Law students should see this picture—and think deeply about the law that has helped to create it—before calling themselves lawyers.

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9. In my course and textbook, I take up these issues as well as the problems of police brutality, under-enforcement of certain laws in poorer neighborhoods, distribution of criminal justice resources, and racial disparities in incarceration. See Gershowitz, *supra* note 6.

10. The series also offers a smaller, albeit valuable, window into the adjudicative aspects of plea bargaining and sentencing that happen later in the process.