

**Mad or Bad?**  
**Negotiating the Boundaries of Mental Illness on *Law & Order***

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**ABSTRACT**

A qualitative discourse analysis was undertaken on a sample of seven episodes from NBC's primetime drama, *Law & Order*, that featured a storyline involving a 'not guilty by reason of insanity' plea. We investigated how the show considered the subject of mental illness, particularly how it was used to frame discussions about the themes of personal responsibility, the nature of good and evil, and flaws in the health and criminal justice systems. Critical to this discussion is how the increasingly popular format of 'ripped from the headlines' fiction elaborates upon controversial social issues in a manner not commonly found in non-fictional media.

**INTRODUCTION**

The NBC network publicizes many of its primetime shows with the tagline 'ripped from the headlines' because it draws its themes and plotlines from news stories and current events. *Law & Order* was the original 'ripped from the headlines' show, but the trend of high-quality fictional programming that draws on real life events has been replicated across networks with shows such as *West Wing*, *The Practice*, *ER* and *Third Watch*. We argue these programs represent the emergence of a new and distinct format of fictional television drama that provides revealing insights about cultural responses to social and political issues, and offers a fertile area for research.

In this age of hyperreality, it is often no longer possible to differentiate fact from fiction. As a result, the study of infotainment and faction is growing in popularity. As Brown (2003, p.53) reminds us, "[i]t is the televisual which has above all reduced the apparent gap between 'news' and 'fiction' in its generic cross-dressing...This is a multifaceted phenomenon as the 'news' and fiction' undergo a rapidly accelerating process of hybridization." Most scholars, however, have concentrated on the increase in infotainment and faction, particularly the rise in dramatic techniques in news programming, the omnipotent presence of reality television formats and the replacement of documentaries with docu-dramas, resulting in a dumbing down and tabloidization of news and factual television programming (Bird, 1998; Bromley, 1998; Fiske, 1992; Langer, 1992; Sparks & Tulloch, 2000) . The reverse, the use of real-life news stories in fiction, represents another important shift in television programming, but it has been examined

less frequently (exceptions include Bird, 2003; Brown, 2003; Gans-Boriskin & Tisinger, 2005; Turow & Gans, 2002; Van Zoonen, 2005; Wardle & Gans-Boriskin, 2004).

We decided to take the social issue of mental illness to examine the way in which this topic has been discussed and framed in the longest running ‘ripped from the headlines’ show, *Law & Order*. According to the National Institute of Mental Health (2001), the most recent figures show over 44 million Americans suffer from some form of mental illness. Research in psychology and psychiatry have provided new insights into the causes and dynamics of mental illness, and these advances offer new tools for treatment to those who work in the mental health profession and those who suffer from some form of mental illness. However, such advances also raise larger societal questions about the nature of free will and the ability of existing mental health structures to handle the problems associated with mental illness.

We undertook a qualitative discourse analysis on seven episodes of *Law & Order* that included plotlines in which the defendants used a legal plea of ‘not guilty by reason of insanity’ (NGRI)<sup>1</sup>. This particular plea allowed the show to explore the nature of mental illness and to assess the degree to which problems with mental health were mitigating factors in assigning guilt in a legal setting and personal responsibility in the larger cultural context. We found the discussions in these episodes moved beyond limited and stereotypical depictions of mental illness that are often associated with primetime television dramas (Gerbner, 1993; Signorelli, 1989; Wilson, Nairn, Coverdale, & Panapa, 1999). Instead, these episodes use mental illness as a lens through which to view wider societal questions regarding the nature of good and evil, personal responsibility, and the flaws in the legal and mental health system.

Television dramas are drawn to complex social issues that may encourage conversation and debate. *Law & Order*, in particular, seems to relish discussions of controversial issues, negotiating meaning and exploring the culture’s acceptable boundaries. As one writer for the show suggested, “drama allows you to literally elongate that moment, to view it from many sides” (Courrier & Green, 1998, p. 53). In talking about *Law & Order*, writer and supervising producer David Black extolled the strength of the show as its ability to present moral issues fairly, but in a challenging way. “It presents both sides equally strongly and when the show goes off the air people start arguing with each other.” As Black passionately reflects, such arguments are “good for the civic dialogue that a country must have to remain free” (Courrier & Green, 1998, p. 52). The desire to instigate discussion and debate seems to be a motivating force for the writers and producers of the program.

In examining the political, cultural and social discussions in fiction, we do not mean to suggest that these discussions, or the ones they may encourage amongst audience members, are the primary reason for the show’s existence. Certainly, these programs operate within a commercial and entertainment framework and their major concerns are audience share and profit. We believe, however, that these programs have the potential to engage the audience in a range of important social and political issues and for that reason they provide a rich topic for investigation.

We believe this study raises three valuable points. First, we believe the format of ripped from the headlines television programming needs to be considered more seriously. It should not

be dismissed as part of the rise of infotainment and therefore plagued by the resulting concerns about the dumbing down of television output. Second, rather than concentrating on the content of these shows in order to understand possible direct effects on attitudes about mental illness, these programs need to be considered as a format that encourages conversation. Based on the ideas raised in research by Delli Carpini and Williams (1994a, 2001) we argue that the frequent inclusion of controversial storylines and the resulting debates between characters could encourage viewers to connect with the issues, and to engage in conversations with other viewers in ways not often considered by communication scholars. Third, in this particular study, we illustrate how the topic of mental illness is portrayed. Media scholars have frequently cited the negative portrayal of mental illness in the mass media (see Wahl, 1992 for the best review of the literature), but the emphasis in many of these studies has been on the choice of storylines and characters. In this study, we closely analyze the dialogue in these episodes, hopeful that this may provide evidence of sophistication and nuance concerning the topics of mental illness and the legal system, which strict quantitative content analyses are unable to capture.

### ***Theoretical framework***

Television is the most popular storyteller in modern society (Bird, 2003; Delli Carpini & Williams, 1994b; Fiske & Hartley, 1978; Van Zoonen, 2005) and it is therefore important to examine the kinds of stories being told and what effects those stories might have in the public sphere. This was the motivation for the twenty years of cultivation research undertaken by Gerbner and his colleagues as part of the Cultural Indicators Project (Gerbner & Gross, 1976; Gerbner, Gross, Morgan & Signorielli, 1980, 1994). As they famously argued, the majority of what we know, or think we know, comes not from personal or direct experience, but from many forms and modes of story-telling. "Stories - from myths and legends to sitcoms and cop shows - tend to express, define, and maintain a culture's dominant assumptions, expectations, and interpretations of social reality" (Morgan, n.d.).

Over the years, cultivation research has considered public perceptions about a number of social and political issues. Cultivation researchers have looked at the effects television as a whole may have on individuals in terms of how they view crime, politicians, the elderly and sexuality (Gerbner et al., 1980; Mares, 1996; Shrum, 1997; Zillman & Brosius, 2000). Rather than considering the influence of media to be linear and unidirectional, these cultivation researchers believe media effects should be viewed as part of a dynamic and ongoing process of interaction between messages and contexts.

Recently, there has been scholarly attention directed towards programs that we would describe as examples of this new type of television format (see Brodie et al., 2001; Press & Cole, 1999; Rollins & Connor, 2003; Turow & Gans, 2002), particularly law shows such as *LA Law* (Gillers, 1989), *The Practice* (Thomas, 2000-2001) and *Law & Order* (Jarvis & Joseph, 1998). While useful additions to the literature, the research does not argue that these shows are offering an alternative in terms of television output. We assert however, that ripped from the headlines shows like *Law & Order* should be considered as a distinct format. The plotlines are based on real life events covered in the news. Thus, the writers are taking information already in the public domain and are weaving this information into the highly personal and therefore powerful narratives that make television drama so compelling. We believe, as a result, these programs may

engage viewers on a different level than purely fictional shows. It is our belief that the format of ripped from the headlines programs such as *Law & Order* use narrative, drama, and emotion to provide a new and important space in which society can negotiate definitions and attitudes about different social and political issues.

Fiction gives people in society the space they need to play with ideas and arguments that might be too politicized if attached directly to 'real' situations. The frequent inclusion of controversial storylines and the resulting debates between characters could draw the viewers in and encourage them to partake in dialogues with other viewers of the shows in ways not always considered by communication scholars. As "the central source of information in the United States, television provides both the topics and the substance on which most conversations are based," and that given the ongoing dialogue on television about all types of political and social issues, television is a "regular conversant in an ongoing discussion, and ultimately, the central forum for political discourse" (Delli Carpini & Williams, 1994a, p. 787).

### ***Mental illness in the media***

Much of the research about the portrayal of mental illness in the media bemoans the fact that "the general public most frequently makes contact with mental illness through the media and movies. Unfortunately the media often depicts patients as unpredictable, violent and dangerous" (Arboleda-Florez, 2003, p. 645). *Law & Order* episodes feature defendants who suffer from various forms of mental illness on a fairly frequent basis, but the primary focus in this paper is not examining how the mentally ill are portrayed, but rather the ways in which mental illness is used to discuss larger societal questions.

There has been a significant amount of research on images of the mentally ill in the mass media. This research has shown that the public receives the majority of its information about mental illness and the mentally ill from the mass media (Borinstein, 1992; Philo, 1994). Research into the depictions of the mentally ill in the media, both factual and fictitious, is substantial (Diefenbach, 1997; Fruth & Padderud, 1985; Gerbner et al., 1980; Gerbner, 1988, 1993; Philo, Henderson, & McLaughlin, 1993; Philo, 1996; Shain & Phillips, 1991; Signorelli, 1989; Stuart, 2003; Wahl, 1992, 1995; Wahl & Roth, 1982). Much of the research has involved content analyses of different media outlets that have examined whether mental illness is considered at all and, if so, how those who suffer are portrayed. These studies repeatedly demonstrate that mass media depictions of mental illness are overwhelmingly negative. While discussions about how mental illnesses are portrayed in the mass media are increasing, negative depictions of the mentally ill mean that ignorance about mental health issues persists. Similarly, there is still considerable concern about the continued problem of the stigma associated with these illnesses and those who suffer from them (Arboleda-Florez, 2003). In a comprehensive literature review of studies in mass media images of mental illness, Wahl (1992) demonstrates that mental illness is the most commonly depicted disability. One in every ten disabilities shown involves a mental health or psychological topic. The most common depictions of the mentally ill are that they lack social identity, are single, unemployed, dangerous, and unpredictable. More recent studies into common misperceptions about mental illness show again that the overwhelming negative stereotype is that the mentally ill are dangerous and violent (Angermeyer & Matschinger, 1996; Fink & Tasman, 1992; Hayward & Bright, 1997; Stuart, 2003).

Content analyses of the news found equally disturbing results about the negative portrayals of the mentally ill (Allen & Nairn, 1997; Day & Page, 1986; Shain & Phillips, 1991; Steadman & Cocozza, 1978; Wahl, 2003). Despite over a decade of scholarship that has documented these negative portrayals and called for substantive improvements in reporting these types of stories, the most recent studies have found similar results. Francis et al. (2004) undertook a large content analysis of 13,000 non-fictional media items from Australia, with one category analyzing the use of outdated, negative or inappropriate language, such as nuts, loony psycho and crazy. They found the majority of the coverage did not use these terms, but 20% of the coverage still did. Wahl's (2003) most recent content analysis, which focused on the coverage of mental illness in the news media, supported previous research findings that the majority of stories about the mentally ill reported how they were dangerous because they had committed crimes. In his sample of articles taken from six major U.S. newspapers from 2002 that included the term 'mental illness', 26% involved accounts of violent crimes committed by people suffering from a mental illness.

Across genres, media output disproportionately focuses on a relationship between mental illness and violence. Viewers do not witness each week's murder being committed *On Law & Order*, as the show always opens with the discovery of the body. However, when the defendant is portrayed as mentally ill, the relationship between violence and mental illness is triggered.

### *The insanity defense*

The defense of Not Guilty By Reason of Insanity (NGRI) has a long legal history. The law has always been concerned with the ability of the accused to form intent and have the requisite mental facility to distinguish between right and wrong at the time of the crime. This basic formulation known as the M'Naughten test (from an 1843 English case) is the standard used in many states (and the UK) for the establishment of a defendant's legal mental state. The formulation used in many other states, including New York, (where *Law & Order* is set) is the American Law Institute's (ALI) standard, which adds a component to take in advances in the field of psychiatry. The ALI standard is the basis for the New York penal code, which states that an individual lacks "criminal responsibility by reason of mental disease or defect" when at the time of the crime "as a result of mental disease or defect, he lacked substantial capacity to know or appreciate either: The nature and consequences of such conduct; or that such conduct was wrong" (New York Penal Code, 40.15).

Asserting that someone is not guilty by reason of insanity is different than stating that someone is clinically insane. It is possible to meet conventionally agreed upon standards of mental illness without satisfying the NGRI standard. If an individual suffers from schizophrenia, but at the time he commits a crime understands that the act is wrong, he is still considered guilty under the law. This is because the law is concerned with the ability of the individual to form intent, which is a major portion of responsibility. Thus intent is also the deciding factor in discerning first-degree and second-degree murder and manslaughter. The NGRI standard is quite rigid and, as a result, is a very rare and unsuccessful defense strategy (Coleman, 1999; Wahl, 1990).

Attitudes towards mental illness in general play into attitudes about the NGRI defense. John Hinckley's (in)famously successful NGRI defense for shooting President Reagan caused widespread public indignation, and directly following the case, state legislatures across the country debated the need to abolish or restrict the defense. A study by Hans and Slater (1983) conducted immediately after the case, and another one by Wahl (1990) that revisited the study, illustrated the overwhelmingly negative attitudes towards the defense, high levels of ignorance about how it works, and what it means for the sentencing of the offender. These studies suggest there is a perception that the insanity defense is morally questionable and exploits a legal loophole. There are also utilitarian concerns based on widespread misconceptions about the defense that it places the community in more danger (Fitzgerald & Ellsworth, 1984; Howell, 1982; Pasewark, 1981; Steadman & Cocozza, 1978).

More recent opinion polling shows little has changed. In polls undertaken after well-publicized cases such as the Long Island Rail Road gunman Colin Ferguson or Lorena Bobbitt, who cut off her husband's penis, opinion was very much against their use of the NGRI defense (89% in Ferguson's case and 59% in Bobbitt's case). In one Roper study from 1994, 64% of respondents disagreed with the statement, 'Most of the people who are found not guilty by reason of insanity really were insane when they committed the crime' (Roper, ABC, 1994). It is within this public climate about the Not Guilty by Reason of Insanity defense that these episodes of *Law & Order* were written, aired, and watched by audiences. They have to be understood within that context.

## METHOD

NBC's *Law & Order* is television's longest running drama and is now in its thirteenth season. Currently in syndication, it also airs twice daily on TNT and thus has a larger presence than a weekly show.<sup>2</sup> The program is divided into two sections. Dick Wolf, the producer and creator of the show, described it by saying "the first half the show is a murder mystery and the second half is usually a moral mystery" (Courrier & Green, 1998, p.53). In the first half of the show, detectives from a homicide unit investigate a murder. In the second half, prosecutors try the case in court. Throughout its twelve plus years of production, the show has tackled issues including racism, class conflict, child abuse, organized crime, terrorism, battered woman's syndrome, and mental illness.

Due to our interest in the depiction of mental illness, and particularly the relationship between mental illness and responsibility for criminal behavior, we chose as our sample episodes of *Law & Order* that featured a defendant who entered a plea of "not guilty by reason of insanity." The frequent use of mental illness as an element of the plot is demonstrated by the recurring use of the psychiatric advisors, Dr. Olivet and Dr. Skoda, as semi-permanent characters on the show. Although issues of mental illness were raised in more episodes than we included in the sample, we felt that restricting sampling to those episodes with an NGRI plea allowed for a more focused examination of the issues of interest.

Despite the frequency of depictions of mental illness, it is important to note that, for the most part, *Law & Order* has not featured stories about defendants who suffer from medically defined mental illnesses such as schizophrenia or bipolar disorder. Instead, the program tends to

focus on mental problems that may not be accepted by mainstream psychiatry and psychology. The location of these illnesses on the boundaries of what is publicly accepted allows for a dramatic tension in story telling that enables viewers to question and explore basic ideas about morality, crime and punishment, personal responsibility, and mental illness.

Using the NBC *Law & Order* website ([www.nbc.com/Law&Order/index.html](http://www.nbc.com/Law&Order/index.html)), which publishes detailed summaries of the episodes, along with a fan companion book by Courier & Green (1998), we compiled a list of all episodes in which the featured defendant used an NGRI plea. Eighteen episodes spread across the thirteen seasons, or 7% of the 267 episodes that had been aired at the time of writing (November 2002), included this element. Over a six-month period from March 1, 2002 until August 31, 2002, we used *Tivo* (the Digital Video Recorder) to capture as many of these eighteen episodes as possible. During that time frame, seven of the eighteen episodes we previously identified were aired. On the basis of the recordings, the two authors worked together to transcribe the dialogue from all of these episodes.

What follows is a qualitative discourse analysis of the seven episodes examining the arguments used to discuss issues of mental illness in the dialogue of *Law & Order*. This method relies on close readings of the dataset to identify the most important themes, issues, and examples of dialogue, combined with more systematic analysis of selected passages that represent the identified themes. After transcribing the episodes together, we had a rich collection of discussions relating to mental illness and crime and punishment. We then worked separately to identify the most important themes that emerged from re-watching the episodes and analyzing the scripts. We worked together to create a shared typology that combined and complemented the findings from our individual analyses.

We did not select *Law & Order* either because it is representative of all law programs or all police dramas, or because *Law & Order* is the only program that uses the ripped from the headline format. Rather, its ubiquity on television and its high ratings make it a sensible choice. In 2003, *Law & Order* was the third ranked drama and the ninth ranked series on television and, combined with its syndication, it is estimated that 96 million viewers a week tune in to watch the program (Byrne, 2003). We thus feel confident in discussing its contributions to the cultural landscape. We believe that the writers of the show reflect a range of societal views about mental illness, crime, and punishment, and therefore provide a rich setting in which to study cultural attitudes about mental illness and the mentally ill.

## RESULTS

We found three types of discussion about mental illness in these episodes. These types were not mutually exclusive in that, as stories evolved, different arguments arose that overlapped with other themes and issues. Most frequently, this issue was tackled using the theme of personal responsibility and how it relates to criminal behavior. A less frequent but still common theme was a questioning of the very essence of human nature and what it means to be good and evil. The third theme, and the one that could be considered the most nuanced and useful portrayal of mental illness issues, examined the legal and mental health systems and exposed the weaknesses and flaws in those institutions regarding their ability to handle the problems posed by mentally ill criminals. In the following discussion, we explore these three themes further in order to discover

what they offer as ways of understanding the ongoing cultural debate about mental illness and crime. In particular, we are interested in how the construction of legal arguments in the fictional courtroom could encourage debate and discussion in ‘real-life’ living rooms about the topics raised in the shows.

***‘The Con’: Mental illness and flight from personal responsibility***

A common theme in the shows was framing the NGRI plea as an attempt on the part of the defense to allow their clients to avoid responsibility for their criminal behavior. These arguments touched on several concerns: the use of the ‘abuse excuse’, a reliance on ‘pseudo-science’, and the fear that some will feign mental illness to avoid prosecution. Together these three elements paint a picture of mental illness as a popular escape clause for criminals hoping to avoid punishment for their crimes. However, the episodes did not rely on existing diagnoses of mental illness. Rather, the defendants variously claimed that poverty, medication, television, racism, abuse, or some combination thereof caused a mental disorder that should be blamed for their actions.

The title of Alan Dershowitz’s 1995 book, *The abuse excuse: And other cop-outs, sob stories and evasions of responsibility*, effectively captures the feeling these episodes displayed about NGRI pleas based on mental instability as a result of prior abuse. Whether this abuse was at the hands of a parent, a substance, or an uncaring society, the writers of the program were fairly dismissive of such claims. In one episode, the District Attorney intoned that “now we get to hear all about how the girl was abused by some drunken lesbian who was watching too much television” (*Angel*, 1995).

The feeling that culturally we have become too accepting of excuses for violent behavior seems to dominate these discussions. As the characters in the program discussed the merits of particular cases, they raised arguments about the roles of the courts and of the mental health practitioners in shaping cultural norms about what it means to be member of society, and about the personal responsibility of each individual within the social contract. The character of Jack McCoy, the passionate and beleaguered District Attorney, frequently voiced the frustrations of those who felt that society had gone too far in excusing bad behavior. The following exchange between Jack McCoy and his boss Adam Schiff, in which they discussed the trial of a young man who claimed that he killed because of past physical abuse by his parents, illustrates this line of thinking:

*Adam Schiff:* Sure she’s confident [the defense attorney]. Tomorrow she plans on breaking the jury’s hearts.

*Jack McCoy:* Sympathy alone doesn’t get you an acquittal.

*Adam Schiff:* It sure as hell hangs a jury. Look at those boys out in L.A. (*Privileged*, 1995)

The exchange references the 1994 trial of the Menendez brothers in which a jury failed to convict two brothers of the premeditated murder of their parents, based on a defense centering on previous physical abuse. The characters in *Law & Order* are expressing frustration with what the

writers call the Oprah-fication of America (*Angel, 1995*), a reference to the increasingly popular belief that people's emotional difficulties can only be addressed by talking publicly about past trauma.

Related to the distress over excusing present behavior because of past abuse is the fear of emerging pseudo-science that attempts to label deviant behavior as mental illness. For example, in *Rage* (1995) and *Prejudice* (2001), defendants claimed that their blinding racism should count as a mental defect precluding them from acting rationally or within the bounds of the law.

In such cases, the attorneys found themselves arguing in trials in which conflicting experts demonstrated the ambiguities and uncertainties that remain within the psychiatric community about these issues. In one episode, the District Attorney refused to put a psychiatrist on the stand as an expert, arguing, "two competing psychiatric opinions turns the trial into the battle of the experts. Once that happens [the defense attorney] accomplishes what he set out to do in the first place" (*Thin Ice, 2000*). Such a scenario raises the complexity inherent in situations where a jury of lay people is asked to assess the validity of psychological and scientific theories that may be beyond its comprehension.

The disagreement by experts underscores the dynamic nature of the definitions of mental illness and how they change over time within a society. In one episode the defendant's lawyer blamed his behavior on sports rage, arguing that, as society's understanding of mental illness became more sophisticated, it was clear people could act violently when placed under extraordinary strain. Rather than dismissing sports rage, the jury should consider the evolution of acceptance of influences such as battered wife syndrome:

Road Rage, airport rage, sports rage. How do we make sense out of all of it? The truth is we can't. But just because we don't understand something doesn't mean we should dismiss it. Battered wife syndrome, post traumatic stress disorder, they took years for juries to accept. People who shouldn't have been convicted were. Ray Taylor didn't appreciate what he was doing that morning because at that moment he was suffering from a mental defect, a rage that prevented him from doing so. And in our criminal justice system we don't hold people responsible for conduct they can't control, even if we don't understand it. (*Thin Ice, 2000*)

Jack McCoy, the Assistant District Attorney responded by pleading with the jury not to acquit the defendant or excuse his rage on the basis of a new-fangled psychiatric defense:

..... road rage, airport rage, sports rage, add to that parent rage, office rage, employee rage, it might be nice to think of all of this as a result of some new mental illness, but the truth is this kind of behavior has become ordinary and to ask you to excuse it through the fiction of a new mental illness, is just that, a fiction... Are we really prepared to create a society in which no one is responsible for controlling their anger? .... And we hold adults responsible for what they do no matter how angry they get. Don't let Mr. Taylor off the hook. Don't create an excuse where there is none. (*Thin Ice, 2000*)

It seems the writers are trying to make the point that just because certain behaviors seem incomprehensible to the average person, it does not mean that the person who committed the acts was insane. The colloquial use of words such as madness, crazy, insane, nuts, wacky, and bonkers to describe actions that we do not understand accustoms individuals to label criminal actions as insane when legally, and sometimes even medically, the diagnosis is not warranted. In an episode modeled after the Massachusetts case in which Thomas Junta, the father of a hockey player, killed another parent, the District Attorney in *Law & Order* declares, "When my niece was younger she used to play soccer. I remember all the parents screaming on the sidelines. Insanity was a pretty good description of their behavior. It's not a *legal* excuse" (*Thin Ice*, 2000).

This anxiety around 'pseudo-science' and the 'abuse excuse' is exacerbated by the underlying fear that such defenses are actually calculated attempts to manipulate the system. These episodes explore the concern that psychologists may be duped by a defendant who is able to present a convincing display of mental illness. The inability of psychology to present a blood test or a CAT scan to prove beyond a reasonable doubt that an individual is indeed mentally ill, presents a problem for those who fear the manipulation of the system.

In one episode, a 26 year-old woman passes for a 16 year-old girl and murders a teacher who could expose her true identity. When she is brought up on murder charges she claims to suffer from a mental illness. As the story unfolds it becomes apparent that the young woman is a con artist who has consistently lied and cheated her way through life. When cross examining the psychiatrist testifying on the woman's behalf, the Assistant District Attorney, who believes the defendant is lying, meets the doctor's testimony with derision, questioning the validity of the doctor's medical conclusions:

*Jack McCoy*: Okay Doctor. You say that the defendant, because of some unresolved conflict...

*Doctor*: Actually, I said intolerable conflict.

*Jack McCoy*: You say tomahto.

*Defense Att*: Objection.

*Jack McCoy*: Withdrawn. In any case, this girl is playing at being someone else. Isn't that true?

*Doctor*: It's hardly playing, Mr. McCoy. Fiona has assumed another personality at the expense of her own.

*Jack McCoy*: Let me ask you this doctor, why is it that she always adopts the persona of a teenager- after all, she is 26 years old!! Wouldn't it be more fun to be an astronaut or a race car driver? (*Shangri-La*, 2002)

Later when McCoy confronts the defendant with a lie that exposes her defense as a fraud and the evidence that will eventually convict her, she responds by saying:

*Defendant*: You're good. But you see Mr. McCoy what I'm good at, what my special talent is, is to make people see what they want to see. It's carried me this far in life and I doubt it will let me down with twelve people unable to avoid jury duty (*Shangri-La*, 2002).

In essence, the defendant speaks the prosecutor's fear that a jury will not be capable of discerning fact from fiction. This addresses the concern that the justice system is not being tough enough on crime and that people are, essentially, getting away with murder.

### *Good vs. evil and the nature of free will*

Gerbner (1993) has argued there is a documented practice of suggesting that those suffering from a mental illness are touched by evil. This sense helps to justify a mistrust and fear of mental illness and encourages victimization and punishment. It is interesting to note, therefore, that the third theme we encountered that touched on the topic of evil did not automatically position evil and insane as identical. They were more likely to be used as opposing labels. As the programs struggled with the age-old puzzle of what drives people to commit crime, the writers related the questions about personal responsibility with wider societal questions about the nature of evil. The scriptwriters certainly considered this question, asking whether it is possible to call anyone evil in an era when there is a psychological disorder for many anti-social behaviors. They also included dialogue that used terms such as 'crazy' and 'sick' interchangeably, highlighting the confusion about how people perceive mental health issues.

In one episode, *Born Bad* (1993), the characters struggle with whether there is a genetic predisposition for violence and what the moral implications of accepting such a defense are. What happens to the notion of personal responsibility when genetics displace our understanding of free will? In an age when the human genome has been mapped and doctors promise the continued unfolding of the mystery of human biology, where will the law situate responsibility?

In one episode loosely based on the Susan Smith case, in which a woman kills her own child, the characters engage in a lengthy debate about the implications of substituting therapy for morality when they offer institutionalization instead of imprisonment. The woman in the episode does not meet the legal definition of insanity, but is clearly suffering from a mental disorder. In the following exchange, the two Assistant District Attorneys, Jack McCoy and Claire Kincaid, and the prosecution's psychiatrist, Dr. Elizabeth Olivet, discuss the case:

*Claire Kincaid:* I've got to tell you, a mother killing her own baby with no motive whatsoever, you have to wonder.

*Jack McCoy:* Do I have to explain the law to you Claire? Crazy is not the same as legally insane.

*Claire Kincaid:* I'm just saying that what Leah Coleman did was incomprehensible to me, the jury's got to feel the same way. If she wasn't sick, who is?

*Jack McCoy:* What are we doing here?

*Claire Kincaid:* Jack...

*Jack McCoy:* No Claire, substitute psychology for morality and our jobs become obsolete.

*Dr. Olivet:* This is an extreme case. The jury's going to want to know why she did what she did.

*Jack McCoy:* Maybe she was just downright bad.

*Dr. Olivet:* Do you really believe that?

*Jack McCoy:* With all due respect to your profession Liz, I think it's been overplayed in the courtroom.

*Claire Kincaid:* So people are just good or bad, period.

*Jack McCoy:* It's better than healthy or sick. Deny evil and you deny responsibility. Open up the jails and send everyone to a shrink (*Angel*, 1995).

This dialogue captures the arguments raised by those in society who see our ability to clearly differentiate right from wrong slipping away. The clear dichotomy of good and evil, or for that matter healthy or sick, appears increasingly elusive.

### ***Flawed system***

The episodes that fall into this category were slightly different in that there was a tacit acceptance of some degree of mental defect with the defendants, but the strict legal standard of insanity resulted in difficulties for the District Attorney's office. Given the restrictiveness of the law, the characters in these episodes openly searched for ways the defendants could receive mental treatment while still meeting the societal demand for punishment.

These discussions highlighted the limits of the legal definition of insanity, the level of care received in state mental health institutions, and the societal push to try youthful offenders as adults. In a powerful episode that tackled the issue of school shootings, several revealing scenes considered these different topics. In the first scene, the three District Attorneys, Nora Lewin, Jack McCoy, and Abby Carmichael, struggle over the proper course of action in charging a clearly troubled teenager responsible for a school shooting spree:

*Nora Lewin:* So a kid who obviously needs psychiatric treatment doesn't get it because no one does. And we keep him at Riker's [prison] because it makes our case look better. This is a strange way to run a candy store.

*Jack McCoy:* Keeping this kid out of a psychiatric hospital is our best shot at keeping him off the streets.

*Abby Carmichael:* Permanently.

*Nora Lewin:* Permanently?

*Abby Carmichael:* I assume we're seeking the maximum here?

*Nora Lewin:* Consecutive life terms? For a kid who's just turned sixteen. Even at his age, that's a death sentence.

*Abby Carmichael:* Four children are dead, Nora. We can't just send him to bed without any dinner.

*Jack McCoy:* I think Abby's right. We have to deal with this kid severely (*School Daze*, 2001).

The dialogue illustrates the frustration the participants in the system feel when balancing the public's demands for retribution with their own sense of the mitigating circumstances of mental illness. These same themes were further examined later in the episode when the boy's attorney, Jamie Ross, came to speak to McCoy about finding a solution to the case:

- Jamie Ross:* I don't want to fight with you either, Jack. I'm here to work towards some solution so we can both sleep at night.
- Jack McCoy:* Jamie, four people are dead. Kids. Another six are in the hospital. The law demands that your client be held accountable.
- Jamie Ross:* It doesn't demand charging him as an adult without any evaluation.
- Jack McCoy:* Come on, we both know what an evaluation is going to show. That the kid knew right from wrong.
- Jamie Ross:* But that shouldn't be the end of the story, not with the country in the middle of an epidemic of these things.
- Jack McCoy:* I can only deal with the case in front of me. (*School Daze, 2001*)

McCoy's recognition of the simultaneous and opposite pressures provides the dramatic tension. On one side, he does not want to give a message to the public that the law does not take these school shootings seriously. On the other side, he acknowledges that treating children and mentally ill children as adults is not a just solution.

In another episode, the topic of juvenile killers arose again. This time the central focus of the story was the inability of the system to deal with young killers. In an attempt to provide psychological treatment for Jenny Brandt, a ten year-old killer, and to protect society from her violent tendencies, McCoy argues "the system doesn't have a place for this girl. We've got to make one" (*Killerz, 1999*). His solution is to have the child civilly committed. When questioned by his boss, Adam Schiff, about his decision, the following discussion ensues:

- Adam Schiff:* State head shrinkers. In the past year they have released three subway pushers, and a man who dined on his neighbor's liver.
- Jack McCoy:* There's no other way.
- Adam Schiff:* What about the way the state legislature prescribes.
- Jack McCoy:* They never conceived of a Jenny Brandt. Legal Aid wants her back home. I'm not going to let that happen.
- Adam Schiff:* I don't want this office coming off inhumane.
- Jack McCoy:* Inhumane to whom: To Jenny? Or the society on which she wreaks havoc? (*Killerz, 1999*)

The arguments here partly revolve around the adequacy of state mental health care. If the characters felt that these institutions were places that had the ability to treat mental illness, the decisions would be easier to make. However, the acknowledged weaknesses of state services for the mentally ill means that commitment is not a guarantee of treatment and may instead constitute a form of cruel and unusual punishment. A psychiatrist raises this point and states that "you lock this child away in an asylum for the criminally insane and you're wasting whatever chance you have of fixing her" (*Killerz, 1999*). While the show certainly never offers solutions, the flaws in both the legal and mental health systems are a common theme.

## DISCUSSION

In this sample of seven episodes, we found that three themes emerged in discussions related to the subject of mental illness. The episodes we studied argued about specific concerns

such as the effect of abuse in determining an individual's psyche, existential questions about the nature of good and evil, and institutional fears about the court's ability to handle the mentally ill.

The program writers have consistently stated that they want to make people think about the issues presented in the shows. It is thus interesting to look at the ways in which the writers have chosen to explore the issues of mental illness, personal responsibility, and crime and punishment. The NGRI defense allows these wider discussions because it allows an individual, due to a mental defect, to avoid punishment because of a different level of culpability. It presents an ambiguous moment in the criminal justice system. The fact that this is a legal drama with half the program based in the courtroom allows the scriptwriters to explore the issues from either side, forcing the prosecution and defense to consider these issues from different perspectives with eloquent and thoughtful dialogue. We believe this dramatic format encourages dialogue among viewers in ways that may not be the case with the news.

This research raises three valuable issues. First it demonstrates the need for more sophisticated analyses of the portrayal of mental illness, beyond content analyses that quantify positive and negative images. Qualitative discourse analysis allows a more nuanced understanding of how specific topics are considered. Second, the research shows the freedom provided by fictional formats, particularly these ripped from the headlines dramas, to cover issues in ways that could spark conversation and discussions. Third, the questions raised by the show about the nature of mental illness and how it relates to issues of personal responsibility and criminal behavior, as well as the problems of scarcity of resources for mental health in the criminal justice system, are not commonly addressed in other public arenas in society.

The ripped from the headlines format allows the writers to move beyond the rigidity of news reporting that demands the 'who, what, where, and when', while drawing on storylines that are familiar to viewers because they have seen them elsewhere. As Carey (1986) has explained, the demands of the four easy to answer 'w's' means that the most important, but often most different 'w' (the 'why'), frequently gets ignored. In the famous *Law & Order* format of two halves, the first half of the seven episodes mimicked the focus of news coverage with its emphasis on the investigation of fact, whereas the second half moved beyond the realms of typical journalism and asked questions about why an individual committed a crime and to what extent the society in which s/he lived was responsible for those actions. In addition, the show considered how society should deal with those people who fall outside the range of normal and whether the ultimate purpose of the criminal justice system is rehabilitation or retribution.

According to Graber's study (1980), 25% of newspaper stories and 20% of television stories are related to crime. Despite the dedication of the news media to crime related topics, wider questions are almost totally absent from mainstream reporting. If news does not address these questions, where should society turn? Partly because of a cultural climate that demands stricter and harsher punishment for criminals, the ethical and moral questions inherent in these cases are obscured and ignored. Politicians do not want to be seen as soft on crime, providing a disincentive to encourage debate about the flaws in the system. The absence of thoughtful discussion exacerbates the problem, encouraging criminal justice policy to be shaped by knee jerk reactions to highly publicized but usually anomalous crimes.

Fictional programs like *Law & Order* hold privileged positions as they are able to discuss the problems of the criminal justice system without fearing the political consequences. As a fictional character, Jack McCoy can consider controversial arguments in a way that politicians in the state or federal legislature are unable, making impassioned pleas without fearing that he will lose votes at the polls.

We are not arguing that the shows themselves are not influenced by societal pressure. Although raising critical questions, the show does not propose radical solutions. As our sample demonstrates, the majority of the discourse around the NGRI pleas falls into the category of ‘the con,’ suggesting that many of the mental disorders discussed are not worthy of serious consideration. Furthermore, most of the defendants in the episodes were convicted, thereby continuously maintaining the status quo.

Despite these qualifications, the episodes are encouraging viewers to engage in discussions that are rarely happening elsewhere and are involved in the negotiation of meaning over where the boundaries should fall in terms of what society will accept as mental illness. Inherent in these arguments is the recognition that the acceptance of mental illness is socially constructed. Mental illnesses that are now considered legitimate were ridiculed twenty years ago. As society changes with progress in the diagnosis and treatment of mental illness, the definitions of mental illness are evolving. At times there is a discrepancy between what is accepted by psychiatry and what society, at large, is willing to acknowledge. *Law & Order* probes those areas on the borders of legitimacy and uses them to ask pointed questions about the consequences of broadening definitions of mental illness.

It appears that *Law & Order* uses mental illness as a foil for discussing larger societal issues. By addressing social problems through the lens of mental illness, the programs allow people to gain critical distance from issues so that they might examine tendencies in their own behavior in a non-threatening way. In this way, the programs in our sample are only partly about mental illness. In many respects they are about locating deviance in ‘the other’ and exploring to what extent that deviance is shared.

We believe it is a positive development that *Law & Order* is addressing these issues, as so few other arenas in society are doing so. However, the limitations of the fictional format also need to be addressed. The stories are compelling from both a cultural and dramatic perspective, and it is ultimately the theatrical nature of the stories that results in the writers consistently returning to these plotlines.

A primary concern is that mental illness as a medical condition may be de-legitimized. One of the themes was the idea that mental illness is used in the justice system to avoid personal responsibility for committing crime. Indeed, the frequency of the Not Guilty by Reason of Insanity plea is grossly overrepresented in *Law & Order*. Whereas the NGRI plea was made in 7% of *Law & Order* episodes, the plea is actually offered between 0.9% and 1.5% of the time.<sup>3</sup> Research carried out by Wahl (1990) demonstrated a perception that the public tends to overestimate the frequency and the success rate of the NGRI defense. Such a disproportionate representation may exaggerate in people’s minds the frequency of the defense and may create the impression that criminals are not being punished due to the plea.

In our sample, many of the cases resulted in a conviction for the defendant. The NGRI pleas failed for several reasons. In some cases, the characters bemoaned the rigidity of the law in not accommodating people who clearly are mentally ill, but do not reach the legal standard of insanity. In other cases, the mental illness is considered illegitimate or not rising to the level necessary to negate personal responsibility. The frequency of such depictions may perpetuate the notion that psychiatry and psychology are leading to phony diagnoses. This would undermine efforts to educate society about the prevalence of mental illness in the hope of lessening the stigma attached to these disorders.

Stigma is certainly attached when depictions of mental illness stress the violent nature of the mentally ill. Although *Law & Order* may raise important questions about mental health and its treatment system, it does so in the context of cases where the mentally ill individual has committed a murder. Furthermore, *Law & Order's* depictions of the mentally ill must be understood in the context of a television environment that consistently portrays the mentally ill as dangerous. Research is clear that violent depictions of the mentally ill influence attitudes towards those who suffer from mental disorders. It may also contribute to a belief that crime is disproportionately committed by people with mental illnesses. Finally, research on perceptions of the NGRI defense (Hans & Slater, 1983; Wahl, 1990) illustrate that people remained concerned about their safety as a result of the use of the defense. A common belief is that the defense results in offenders being placed in mental hospitals rather than prisons, allowing them early release. Discussions on *Law & Order* about the flaws in the system, including overcrowding, incorrect diagnoses, and appropriate rehabilitation, only add to these concerns.

The nature of formula television compels the writers of *Law & Order* to frequently deliver a guilty verdict to the audience. The drama builds by following a crime through the criminal justice system and it would be dramatically unsettling if the prosecutors, some of the main characters, consistently lost. The title *Law & Order* also demonstrates the ideological direction in which the viewers should expect the show to lean. It would be a surprise if the episodes concluded with plotlines that provided anything else. Furthermore, as social control theory would predict, the neat endings to the programs allow viewers to leave the program without feeling threatened that mentally ill people are being released on to the streets or that criminals are getting away with murder by feigning mental illness. In this way, even though *Law & Order* asks difficult questions, it ultimately provides comforting answers.

### ***Suggestions for future research***

As the preceding discussion clearly illustrates, there is a considerable amount to be learned from examining the ways that fictional media discuss and depict mental illness and larger societal questions. The writers of television fiction are engaging in substantive discussions of issues and we believe that more studies are needed to explore the ways in which members of the public discuss the issues raised in these fictional programs. Ethnographic and focus group research that examines the specific ways in which people talk and negotiate meaning during and after viewing these shows, particularly as they relate to mental illness and crime and punishment is needed. Such research would be helpful in understanding the ways in which people use media to form their opinions and views of reality. As the implosion of format and genre distinctions becomes an acknowledged characteristic of contemporary television programming and these

'ripped from the headlines' shows remain popular, this particular format will hopefully receive more attention.

### NOTES

1. On *Law & Order* the actual plea is 'not guilty by reason of mental defect' which is the legal term used in New York State. However, the plea is more generally referred to in other states as 'not guilty by reason of insanity' and indeed, the characters on the program frequently use the term as well. This paper will use the more frequent 'not guilty by reason of insanity' term for ease and consistency.
2. TNT is the second network to air the syndicated program. The A&E network began airing reruns of the episodes in 1994.
3. One eight state study in 1991 found insanity pleas offered 1.5% of the time, whereas a separate four state study in 1993 found the incidence rate to be 0.9% (Coleman, 1999).

### ENDNOTE

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