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# Here's Hulu: How Popular Culture Helps Teach the New Generation of Lawyers

Victoria S. Salzmann\*

## I. INTRODUCTION

Law students in this generation respond to visual stimuli in a way prior generations did not. They understand large pieces of information quickly and concisely by relating it to various schemas, or categories of information, they have compiled from external influences. The process itself is nothing new—law students throughout time have learned by applying new legal concepts to the world as they know it. The difference, however, is the *source* of the schemas. Law students of yesterday used information from their own experiences, combined with what they gleaned from literature and current events, as their experiential framework. Today, however, the dominant societal force in the United States is popular culture or media such as television, movies, popular fiction, or art. These fictional or popular depictions become benchmarks for students learning new ideas. Accordingly, because students are already engaging in the process of applying new legal concepts to the schema they compile from popular culture, legal educators can facilitate learning by using a similar modality. The purpose of this Article is to explore how one may tap into that well of popular culture in the classroom.

Popular portrayals of attorneys, such as those in films like *To Kill a Mockingbird*<sup>1</sup> or *The Devil's Advocate*,<sup>2</sup> or in television shows like *Law & Order*<sup>3</sup> or *The Practice*,<sup>4</sup> are often used to educate students about lawyer roles.<sup>5</sup> Whole courses in both law schools and undergraduate programs are devoted to critical analysis of law films.<sup>6</sup> This Article, however, focuses on something different—the use of non-legal popular-culture references as a means of conveying doctrinal legal concepts. These non-legal popular-culture references can “vividly illustrate both how disputes arise and how to avoid them.”<sup>7</sup> Thus, they provide useful

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1. *TO KILL A MOCKINGBIRD* (Brentwood Productions et al. 1962).

2. *THE DEVIL'S ADVOCATE* (Warner Bros. Pictures 1997).

3. *Law & Order* (NBC television broadcast 1990-2010).

4. *The Practice* (ABC television broadcast 1997-2004).

5. Alexander Scherr & Hillary Farber, *Popular Culture as a Lens Legal on Professionalism*, 55 S.C. L. REV. 351, 361 (2004).

6. See James R. Elkins, *Popular Culture, Legal Films, and Legal Film Critics*, 40 LOY. L.A. L. REV. 745 (2007).

7. K.J. Greene, “*There's No Business Like Show Business*”: *Using Multimedia Materials to Teach*

insights into the function of legal concepts in our society. Part II of this Article explores the power of visual tools as a mechanism of learning. Part III discusses why popular culture is so influential to our everyday lives. Part IV discusses the psychology behind why popular-culture references resonate with students. Part V explains possible ways to use popular-culture references in the classroom. Part VI considers the practical issues raised by the references and suggests ways to avoid pitfalls. Finally, Part VII discusses why the use of popular-culture references is appropriate in legal education.

## II. DON'T TELL ME, SHOW ME

Leaders in legal education have recognized that traditional educational theories may not be serving our students or creating the best learners. After fifty years of legal education, "the casebook remains the bedrock of the classroom experience," even when that method may not be the most effective means of teaching modern law students.<sup>8</sup> In particular, the traditional Socratic Method has come under attack as being not only ineffectual for the majority of learners, but also discriminatory against minority and women students.<sup>9</sup> Scholars are arguing that, for law schools to keep pace with other fields of education, law professors need to incorporate methods that appeal to variances in learning.<sup>10</sup>

Accordingly, many law schools are shifting from focusing exclusively on Socratic lecture in doctrinal courses, to tailoring educational plans for adult learners with a variety of learning styles.<sup>11</sup> "Learning style is a student's way of responding to, and using, stimuli in the context of learning. It refers to a person's characteristic style of acquiring and using information in learning and solving problems."<sup>12</sup> A particular student's learning style will be as unique to him as his

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*Entertainment Law*, 52. ST. LOUIS U. L.J. 765, 765 (2008). Greene, a law professor at Thomas Jefferson School of Law, uses "visual images containing *Star Trek*, Art Buchwald and *Coming to America*, and the Taco Bell Chihuahua" to explain legal concepts. *Id.* at 769.

8. Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1, 14-15 (2002). Lasso notes that the casebook method was formulated by Christopher Columbus Langdell at Harvard School of Law in 1870, but it did not become standard practice until the mid-twentieth century. *Id.* at 13 n.50. Once adopted, we have never looked back.

9. Benjamin V. Madison, III, *The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students*, 85 U. DET. MERCY L. REV. 293, 301 (2008) ("If women and minorities do not benefit from the pure-Socratic approach, we ought to ask ourselves whether professors are ironically perpetuating a subtle form of discrimination by their insistence upon a purely Socratic classroom.").

10. *Id.* at 295.

11. Gary G. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 329-48 (1995); Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F. L. REV. 941, 943 (1997); Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 J. LEGAL EDUC. 402, 411-12 (1998).

12. Vernellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63, 71 (1995); see also Kristin B. Gerdy, *Making the Connection: Learning Style Theory and the Legal Research Curriculum*, 19 LEGAL REFERENCE SERV. Q. 71, 72 (2001). Gerdy defined "learning style as 'characteristic cognitive, affective, and psychological behaviors that serve as relatively stable indicators of

personality traits. In turn, the average law-school classroom will have as many learning styles as students. Until recently however, this fact has been mostly ignored.

Traditional legal education has maintained a pedagogy that centers on a teacher's methods of teaching instead of the diverse student-learning mechanisms.<sup>13</sup> Each student has been expected to conform his learning to the professor's style of teaching, which is usually the Socratic Method.<sup>14</sup> If a student fails to grasp the material, it was his own deficiency that is to blame.<sup>15</sup> But many students can succeed simply by changing to their preferred learning styles. For example, the Socratic Method alone benefits only certain kinds of students, such as verbal learners.<sup>16</sup> Interestingly, most law students historically fall into this category. Perhaps, however, the success of verbal learners in law school is the *result* of emphasis on Socratic teaching, rather than the *cause* of educators using it exclusively. In other words, maybe these types of learners did best in law school because their teaching environment forced it to be so.<sup>17</sup> Perhaps the reality is that *any* kind of learner can be equally successful if we only teach to his learning preference.

Appealing to as many different learning styles as possible will result in reaching a greater number of students with more success.<sup>18</sup> Research has shown that younger students, particularly the Millennial Generation of twenty-one to thirty-one year-olds, have the widest variety of learning styles recorded to date.<sup>19</sup> The reason for this variety is the "visual and technological revolution of the past two decades."<sup>20</sup> While the variety of learning style has increased, however, the dominant style has shifted toward visual-learners.<sup>21</sup> Students have come to expect visual media to be the foundation of their education because it likely has been the foundation of their entire lives. Today's students did not watch a single hour of *Sesame Street*<sup>22</sup> once a day as their parents did—they likely spent most of their developmental years glued to *The Disney Channel*<sup>23</sup> or *Noggin*,<sup>24</sup> or learned to read by playing with Leapster Leapads<sup>25</sup> instead of books.

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how learners perceive, interact with, and respond to the learning environment.'" *Id.* (citation omitted).

13. Lasso, *supra* note 8, at 18.

14. *Id.*

15. Gerdy, *supra* note 12, at 72.

16. *Id.* at 78 ("The majority of legal instruction is oriented toward verbal learners.").

17. Lasso, *supra* note 8, at 18. "Therefore, students may not be failing due to lack of ability or effort but because linear teaching is often incomprehensible to many of today's more technologically interactive law students." *Id.*

18. Craig Anthony Arnold, *How Do Law Students Really Learn? Problem-Solving, Modern Pragmatism, and Property Law*, 22 SEATTLE U. L. REV. 891, 899 (1999) (reviewing EDWARD H. RABIN & ROBERTA ROSENTHAL K WALL, *FUNDAMENTALS OF MODERN REAL PROPERTY LAW* (1992)).

19. Madison, *supra* note 9, at 297.

20. *Id.* at 298.

21. Gerdy, *supra* note 12, at 79.

22. *Sesame Street* (PBS television broadcast 1969-present).

23. THE DISNEY CHANNEL (Walt Disney Co. 1983-present).

Practicing lawyers have long recognized the growing reliance on visual media as a means of communication and regularly use it to communicate with judges and juries.<sup>26</sup> Similarly, educators can enhance the learning experience by using the same visual means in the classroom. In fact, visual media is likely the wave of future education. Grade schools, for example, are already ahead of the curve. My kindergartener spends much of each school day doing exercises on the classroom Smartboard, a visual learning tool that provides visual and tactile reinforcement to traditional learning. The teachers swear by it. The same principles should be applied to higher education.

Some scholars have noted the *form* of the material actually influences the way we process it. Students who receive information in a dynamic form, such as through electronic or visual means, use different cognitive processes than those who simply read the material in printed text.<sup>27</sup> Because today's students have essentially been hard-wired by their electronic upbringings to depend primarily on those kinds of cognitive processes, presenting material to them in a dynamic form enhances their learning. In contrast, most law professors were book-learners and thus teach using what they know—books. Similarly, because law professors tend to have graduated at the top of their classes, and thus they most likely succeeded with the Socratic and case-book methods, they now rely on those familiar methods in their classes. This disconnect between teaching style and learning style does not benefit the student. Instead, students learn better when the material is presented in a more dynamic way.<sup>28</sup>

Studies have now shown that even non-visual learners benefit from visual cues in their education.<sup>29</sup> One result of our highly visual society is that *all* learners, even non-visual ones, expect visual aids as an educational supplement. Students with a strong affinity for verbal learning—the traditional learning style for the majority of law students—also benefit from exposure to visual media.<sup>30</sup> Some education experts have argued there is a trend away from learners who rely solely on verbal orientations because the visual field has come to dominate.<sup>31</sup>

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24. NOGGIN (renamed NICK JR. in 2010) (Viacom 1999-present).

25. Leapster Leapads are educational toy computers for toddlers, preschoolers, and school-agers sold by the Leapfrog Corporation. LeapFrog Customer Support: LeapPads, [http://www.leapfrog.com/en/pages/support/top\\_product\\_list/LeapPad.html](http://www.leapfrog.com/en/pages/support/top_product_list/LeapPad.html) (last visited Oct. 17, 2010) (on file with the *McGeorge Law Review*).

26. Madison, *supra* note 9, at 306.

27. Lasso, *supra* note 8, at 22.

28. *Id.* at 23.

29. Madison, *supra* note 9, at 309, 313-14.

30. *Id.* at 313-14; Gerdy, *supra* note 12, at 79 (“[M]ost students do have some visual preference and learn more when visual presentations are used to complement lectures and readings, and all students learn better when material is presented both verbally and visually.”); *see also* Eric A. DeGroff & Kathleen A. McKee, *Learning Like Lawyers: Addressing the Differences in Law Student Learning Styles*, 2006 BYU. EDUC. & L.J. 499, 517 (2006) (proposing that if verbal and aural learners perform better on LSATs, perhaps cross-training visual learners in such learning strategies would be beneficial).

31. DeGroff & McKee, *supra* note 30, at 505-07 (noting that television and video may be the cause for underdeveloped verbal precision).

Furthermore, this “cross-pollination” of learning styles improves the quality of learning altogether. Students who stretch beyond their primary or secondary mode of learning and use a different method may have better recall of information than those who rely on their dominant traditional learning style.<sup>32</sup> Thus, visual media are necessary tools for visual-learners and excellent supplemental tools for the rest of the students. Accordingly, popular-culture references, particularly visual ones, may be the key to teaching this generation of law students.

### III. POPULAR-CULTURE AS A DEFINING INFLUENCE

Legal scholars are starting to recognize the positive impact of using popular-culture references as a mechanism of communication in legal discourse.<sup>33</sup> Accordingly, popular culture has become a powerful force in many lawyers’ practices. To appreciate the power of popular culture as an educational tool, we should first understand the psychological impact that popular culture already has on our development. Looking at the dominant popular-culture source—television—scholars have noted that it has become the defining force in our society:

With the single exception of the workplace, television is the dominant force in American life today. It is our marketplace, our political forum, our playground, and our school; it is our theater, our recreation, our link to reality, and our escape from it. It is the device through which our assumptions are reflected and a means of assaulting those assumptions.<sup>34</sup>

Television has replaced the traditional sources of social companionship—newspapers, radio, churches, and sometimes, even our family.<sup>35</sup> More importantly, as television grew in popularity, it became the mechanism by which most people in the developed world get their information.<sup>36</sup> Where knowledge about a subject was once gained through personal experience or anecdotes of others, students now learn by watching strangers interact on the small screen. In 2006, the A.C. Nielsen Company reported that the average American adult

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32. ROGER H. BRUNING ET AL., COGNITIVE PSYCHOLOGY AND INSTRUCTION 22 (4th ed. 2004) (noting that students who learn “both visually and auditorially” are likely to have greater recall of information than if it is presented in a single format).

33. See, e.g., Victoria S. Salzmann, “Honey You’re No June Cleaver:” The Power of “Dropping Pop” to Persuade, 62 ME. L. REV. 242 (2010).

34. JEFF GREENFIELD, TELEVISION: THE FIRST FIFTY YEARS 11 (Lory Frankel ed. 1977).

35. *Id.* at 15 (noting that by the time television was only twenty-five years-old, it had driven the four most popular mass-circulation magazines out of business and rendered *TV Guide* the most popular magazine in the country).

36. Larry A. Viskochil, *Foreword to* LLOYD DEGRANDE, TUNED IN: TELEVISION IN AMERICAN LIFE 1, 3 (1991).

watched more than thirty-two hours of television each week.<sup>37</sup> Televisions in U.S. households are turned on, as background noise or for companionship, at least fifty-seven hours each week.<sup>38</sup> More than ninety-eight percent of U.S. households own at least one television, but most have more than one.<sup>39</sup> By the time a person has reached the age of seventy, she likely has spent between seven and ten years viewing a television.<sup>40</sup>

Furthermore, television has become far more than a simple entertainment source—it is the space-filler in our daily lives. Psychologists note that many people use television as a substitute for human companionship, preferring voyeuristic relationships to real ones.<sup>41</sup> Individuals feel uncomfortable in silence or with nothing to occupy their time, and in response, turn on the television to fill the void.<sup>42</sup> After all, with the hundreds of television stations available to watch twenty-four hours a day, *something* interesting is always on. And when the television plays as background noise, one need never feel alone because there are always “people” nearby. The unexpected side-effect of such perpetual and mindless viewing is a constant stream of popular-culture information being downloaded into and recorded by the viewer’s subconscious mind. What we may view as entertainment or background noise today may well become the reality we use to understand the events of tomorrow.

The social sciences recognize this information-gathering side-effect as a subconscious necessity. Psychologists note individuals watch television for reasons more than mere entertainment; television also satisfies our media system dependencies (understanding dependency, orientation dependency, and play dependency).<sup>43</sup> These dependencies are the psychological routes by which we store and process the world around us. The first media system dependency, understanding dependency, is the mechanism that forms the basis for most social interaction.<sup>44</sup> In everyday life, we must negotiate a sea of unknown information and figure out how to act in unfamiliar situations. We seek to “understand the social environments within which we must act or anticipate acting, because meaningful social action cannot occur in the absence of a definition of

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37. Nielsen Media Research Reports Television Popularity is Still Growing, [http://www.thinktv.com.au/media/Articles/Nielsen\\_Media\\_Reports\\_TV's\\_Popularity\\_Is\\_Still\\_Growing.pdf](http://www.thinktv.com.au/media/Articles/Nielsen_Media_Reports_TV's_Popularity_Is_Still_Growing.pdf) (last visited October 17, 2010) (on file with the *McGeorge Law Review*).

38. *Id.*

39. Catholic Education Resource Center, Television Statistics and Sources, <http://www.catholiceducation.org/articles/parenting/pa0025.html> (last visited Oct. 17, 2010) (on file with the *McGeorge Law Review*).

40. Comm. on Commc'ns, Am. Acad. of Pediatrics, *Children, Adolescents, and Television*, 96 PEDIATRICS 786, 786 (1995).

41. *See id.*

42. *Id.*

43. SANDRA J. BALL-ROKEACH ET AL., *THE GREAT AMERICAN VALUES TEST: INFLUENCING BEHAVIOR AND BELIEF THROUGH TELEVISION* 7 (1984).

44. *See id.* at 7-8. Of the three dependencies, the first, understanding, is relevant here.

situation.”<sup>45</sup> When personal experience does not provide enough context for understanding, the natural place to turn is the popular-culture representations we witness on a daily basis. Often, we resort to thinking about how a fictional character or a reality star acted or would have acted in a given situation, and we conform our behavior accordingly. In other words, we use the *media* to determine our behavior. While this process is helpful in educating individuals for unknown situations, it presents the risk that the popular-culture versions, particularly if reinforced through numerous examples or numerous viewings, will become reality at the expense of our own experiences. Personal observations may essentially give way to those acquired via popular culture.<sup>46</sup> Thus, the understanding dependency is a double-edged sword—it both informs and distorts reality.

This dependence on media as a source of worldly information is seen most acutely in children. The understanding dependency is exacerbated in children because they are at the apex of using contextual information, rather than past experience, to understand the world around them. Decades ago, a child would learn how to act in a particular situation by observing his parents and peers. Today, however, the television set is the driving social platform for a child. A 1993 study indicated most U.S. children spend more time watching television than engaging in *any other* activity outside of school besides sleeping.<sup>47</sup> The result of such concentrated viewing is that popular culture becomes the driving informational source during the time an individual is gathering the most contextual data—childhood.<sup>48</sup> Television portrayals become a child’s reality against which he processes and evaluates future information. Popular culture sets the norm. For example, a child who regularly views excessive sexuality on television may eventually believe that inappropriate sexual behavior is normative behavior.<sup>49</sup> Although the child may not grow up in an overtly sexual home, his secondary (or in many cases, primary) information source—popular culture—becomes an integral thread in the fabric of his societal development. Years later, that remembered popular-culture sexuality will have the same impact as if the child had learned it at home, and he will conform his behavior accordingly. Thus, this media understanding dependency forms the basis of a child’s perception of reality even when it is entirely fictitious.

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45. *Id.*; see also Richard K. Sherwin et al., *Law in the Digital Age: How Visual Communication Technologies are Transforming the Practice, Theory, and Teaching of Law*, 12 B.U. J. SCI. & TECH. L. 227, 246 (2006) (“[People] interpret and draw inferences from new data in light of their habits of thinking and feeling, their largely intuitive conceptions of how the world works and how things go.”).

46. See BALL-ROKEACH ET AL., *supra* note 43, at 8.

47. Comm. on Commc’ns, Am. Acad. of Pediatrics, *supra* note 40, at 786.

48. *Id.*; see also GREENFIELD, *supra* note 34, at 15 (“Children may well learn more from television than from their parents, who depend on television as a source of diversion for their children.”).

49. See Comm. on Commc’ns, Am. Acad. of Pediatrics, *supra* note 40, at 786 (noting a correlation between television-viewing and adolescent violence, pregnancy, sexually transmitted diseases, and alcohol-related deaths, likely indicating that children are desensitized to things that were once considered societal taboos).



But contextual learning does not end with childhood. The only reason that the understanding dependency is able to have a lasting impact on future behavior is because it creates a secondary storehouse of contextual information in the viewer's psyche. Just as a law student learns about the law by analogizing the holding from a previously decided case to the facts in his immediate case, humans learn about the world by comparing their storehouse of learned knowledge to the unfamiliar situation before them. These pre-existing knowledge structures are called "schemas." Essentially, schemas are categories of information compiled by past experience.<sup>50</sup> The schemas have a double-duty: first, they are the conduits for transmitting a great deal of information quickly and without elaboration;<sup>51</sup> second, they provide the contextual framework to process and categorize any new information that may come in. Each new idea or experience is compared to what the learner already knew as a mechanism to enhance understanding. Processing information through a schema is akin to interpreting the meaning of a word by reading it in the context of a sentence. The familiar words around it give the reader a clue to its definition. Thus, the millions of schemas people possess are the building blocks to all understanding.

When the storehouse of prior knowledge derives from actual personal experiences, that storehouse is essentially a conscious or subconscious memory bank. In contrast, when the storehouse derives more heavily from viewed popular-culture experiences rather than actual ones, the popular-culture sources are the primary schemas at work. For differentiation, I call these "fictional schemas," though psychologists might not make a distinction. Using the understanding dependency, the person processes information against past experience and it does not matter where the information came from. But I believe it is significant that the individual uses the popular-culture reality, rather than the true one, as the foundation for learning. "The shared elements of popular culture supply the materials out of which we construct self and social realities—they comprise the stories that we live in, and that we live out."<sup>52</sup> In essence, we behave as television or movie characters would, simply because our storehouses of information have come from the actions of television and movie characters,

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50. Joshua A. Newberg, *The Narrative Construction of Antitrust*, 12 S. CAL. INTERDISC. L.J. 181, 202-03 (2003).

[Schemas] are the mental blueprints that we carry around in our head for quick assessments of what we may or should be seeing or feeling in a given situation. Such blueprints are simplified models of experiences we have had before. They represent a kind of shorthand that transcribes our stored knowledge of the world, describing kinds of situations, problems, and personalities. These models allow us to economize on mental energy: we need not interpret things afresh when there are preexisting categories that cover the experience.

Richard K. Sherwin, *The Narrative Construction of Legal Reality*, 18 VT. L. REV. 681, 700 (1994) (citations omitted) [hereinafter Sherwin, *Narrative Construction*].

51. Newberg, *supra* note 50, at 202-04.

52. Richard K. Sherwin, Introduction, *Picturing Justice: Images of Law and Lawyers in the Visual Media*, 30 U.S.F. L. REV. 891, 899 (1996) [hereinafter Sherwin, Introduction]; see also Sherwin et al., *supra* note 45, at 250 ("The visual codes that come from popular culture become a part of people's visual common sense, which is to say, they are unconsciously assimilated.").

rather than from real people.<sup>53</sup> Ultimately, the understanding dependency becomes a negative feedback loop because the storehouse of information becomes more real than the truth.

For example, President Ronald Reagan publicly confused actual historical events with scenes from a movie because those movie clips, when accessed later as memories, fooled his mind into believing the scenes were *actual* events instead of *viewed* ones.<sup>54</sup> Such confusion is a bad thing when the person can no longer distinguish between fiction and reality, but this fictional storehouse of information is not *inherently* a problem. On the contrary, the fictional schemas created via popular culture may be used as an incredible educational tool. Because most people have significant experience with popular culture, it may provide common ground where people can meet despite their experiential differences. No two people will have the same lifetime experience catalogue—but people may—even those of us from incredibly diverse backgrounds, share common schemas based on viewing the same popular culture. For example, two people growing up in the 1970s may have been raised in vastly different areas of the country with vastly different childhood experiences, but may have similar fictional memories of the Grand Canyon or Hawaii, even if neither of those two people ever visited those places, simply because they both watched the *Brady Bunch*, a 1970s television sitcom, as children.<sup>55</sup> Anyone who has seen these episodes is probably thinking right now about Bobby and Cindy Brady getting lost in the Grand Canyon<sup>56</sup> or about Greg finding the Hawaiian idol and hitting his head in the surfing contest.<sup>57</sup> And if two people are thinking about that, even if they have never met, they share a common schema. Tapping into that knowledge storehouse is the key to successfully using popular-culture references as an educational tool.<sup>58</sup>

Importantly, television is not the only source for common schemas. Other popular-culture media such as movies, music, art, Internet resources, and popular literature collectively provide as much information as television. Statistics show that television viewing amounts to 3.75 hours each day, but the number of hours spent on *all* media consumption jumps to 11.8 hours each day.<sup>59</sup> In other words,

53. See Lisa Scottoline, *Get Off the Screen*, 24 NOVA L. REV. 655, 656 (2000) (“[T]he line between the reality of lawyering and its fictional representation on television and in books has gone well beyond blurred. It isn’t really a question anymore of how lawyers and law are portrayed on television and in books, because that depiction is merging daily with reality.”).

54. Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527, 534 (1986) (citing *60 Minutes: Ronald Reagan: The Movie* (CBS television broadcast Dec. 15, 1986)); see also Neal R. Feigenson, *The Rhetoric of Torts: How Advocates Help Jurors Think About Causation, Reasonableness, and Responsibility*, 47 HASTINGS L.J. 61, 90 (1995) (“These sorts of [schemas] . . . are necessary for thinking and understanding, but they can also lead to errors when used inappropriately.”).

55. *The Brady Bunch* (ABC television broadcast 1969-1974).

56. *The Brady Bunch: Grand Canyon or Bust* (ABC television broadcast Sept. 24, 1971).

57. *The Brady Bunch: Hawaii Bound* (ABC television broadcast Sept. 22, 1972).

58. See Sherwin, Introduction, *supra* note 52, at 893 (“If persuasion is a matter of tapping into the reality that people carry around in their heads and of emulating the habits of perception and styles of thought that come with extensive exposure to mass-mediated popular culture, where else would one turn but to the screen?”).

59. Catholic Education Resource Center, *supra* note 39.

most of us spend half of the total hours in a day (certainly more than half of our waking hours) downloading and compiling information we receive from popular-culture sources. It is no wonder then that fictional popular-culture schemas become the primary basis of shared experience.<sup>60</sup> Understanding and tapping that shared experience is an invaluable resource for education.

#### IV. HOW POPULAR-CULTURE REFERENCES TEACH

The first step in wielding the power of popular-culture schemas as a tool for teaching is to understand how and why using them works. At the outset, we should recognize that teachers are most effective when they convey information the audience already knows.<sup>61</sup> Accordingly, when the educator grounds new concepts in fictional schemas, he is tapping the common storehouse of information already available to the student:

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. With such knowledge in hand, the persuader gains the leverage she needs to mobilize and arrange the mental constituents of reality making.<sup>62</sup>

An educator who taps that “fictional reality” created with the popular-culture schemas instantly forges a connection with his audience. Like the understanding dependency described above, “[s]tudents approach the study of law with existing . . . schema. . . . [and] better understand, explore, apply, and synthesize new legal concepts when the concepts are linked or related to their preexisting knowledge and experiences.”<sup>63</sup> Law students use these schemas as learning tools every day. For example, when studying Contracts, most students will consider their own daily lives and the bargains or contracts they have personally formed when categorizing information about the course.<sup>64</sup> But those same students may not be familiar with other areas of the law, such as criminal law or court procedure. In those courses, the student is likely to rely on schemas that come from television or other popular-culture media. I routinely get more questions about *Law & Order*<sup>65</sup> or *CSI*<sup>66</sup> episodes than I do about real events. Students are

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60. See Sherwin et al., *supra* note 45, at 249 (“In contemporary culture, most people get their facts primarily from popular visual media.”).

61. See Hess, *supra* note 11, at 942 (“[A]dult learners quickly withdraw their participation if they feel that the education is not . . . connect[ing] with their past experiences.”).

62. Sherwin, Introduction, *supra* note 52, at 893.

63. Arnold, *supra* note 18, at 895; see also Hess, *supra* note 11, at 943 (“Adults learn new concepts, skills, and attitudes by assigning meaning to them and evaluating them in the context of their previous experience.”).

64. Madison, *supra* note 9, at 319 (noting that while most law students have entered into a contract before law school, many will not be familiar with courts).

65. *Law & Order* (NBC television broadcast 1990-2010).

66. *CSI: Crime Scene Investigation* (CBS television broadcast 2000-present).

trying to relate new concepts to the information they already know, and that information turns out to be what they viewed on television. Students need to have a framework against which to process information.<sup>67</sup> If the educator can guide them by providing specific examples of popular culture to use, the educator can wield the understanding dependency to his advantage. Because reality may no longer be defined by the experiences the students have—but rather by the experiences they watch others have in television and movies—understanding and clarity are granted to references that conform to their shared storehouse of popular-culture knowledge.<sup>68</sup> Students come to understand new concepts because they are explained in the main reality they know—the reality they saw on television.

At this point, some educators may think: does a good hypothetical not accomplish the same end? Popular-culture references are more effective learning tools than hypotheticals alone for several reasons.

First, as mentioned above, students learn best when they are taught something they already know. Some scholars opine, “all learning is really ‘relearning.’”<sup>69</sup> Accordingly, information grounded in a student’s “fictional reality” will be easier to access than an entirely novel hypothetical. While it may be difficult to create a hypothetical that equally taps into the schemas of each individual in the class, painting the same fact scenario into a popular-culture reference that most of the students will be familiar with immediately puts a particular student at ease because he is already familiar with the context. Because the information is already known, it is easier to process.

The second advantage to using popular-culture references rather than mere hypotheticals is the ability to convey a great deal of information quickly and concisely.<sup>70</sup> The moment a schema is triggered, “a resonate set of understandings, feelings, and judgments” are available to inform the discussion.<sup>71</sup> Once the reference taps into the schema, it quickly conveys complex fact patterns that would be difficult to explain on their own. And often, that critical information is conveyed unconsciously because the student is not influenced by the direct facts

67. See Madison, *supra* note 9, at 319.

68. Sherwin, Introduction, *supra* note 52, at 892 (“[V]erisimilitude in a given text or story . . . stems from the text’s consistency with well-known linguistic usages in a particular social and cultural context . . .”); see also Scottoline, *supra* note 53, at 656 (“[T]he wall between fiction and reality is as thin and porous as a cell membrane, with reality passing through it to fiction, and fiction flowing backwards to reality, in constant flux.”); Richard K. Sherwin, *A Manifesto for Visual Legal Realism*, 40 LOY. L.A. L. REV. 719, 724 (2007) (“Popular communication technologies not only help to produce cultural and cognitive content; they also provide the mental tools we use to think (and feel and judge) with.”) [hereinafter Sherwin, *Manifesto*].

69. Gerdy, *supra* note 12, at 82 (citing DAVID A. KOLB, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT (1984)).

70. One scholar noted this effect as it relates to metaphors in legal analysis. See Chad M. Oldfather, *The Hidden Ball: A Substantive Critique of Baseball Metaphors in Judicial Opinions*, 27 CONN. L. REV. 17, 23-24 (1994) (“[Metaphors have an] ability to express in a few words what in literal language would take several pages . . . [T]he metaphorical reference clearly makes its points more concisely than literal language could.”). The same logic applies to popular-culture references, particularly given that they are effectively used as metaphors in their own right. See *infra* Part IV.

71. Newberg, *supra* note 50, at 204.

of the reference, but by the accompanying baggage. In other words, a character appearing from fiction is not a blank slate defined only by his immediate actions in the reference. That character, like a real person, has a personality, a reputation, a history, and predictable reactions. When an individual devises a schema from a popular-culture event or fictional character, these fictional ancillary characteristics resonate most deeply. The student ends up transferring the emotional characteristics, or a bigger picture of why the character behaves a particular way, onto the comparison object even without being prompted to do so.<sup>72</sup> In essence, the comparison object assumes the fictional character's baggage just because the reference was made. For this reason, using a hypothetical that compares a business to the company in *Avatar*,<sup>73</sup> a criminal defendant to the characters in *No Country for Old Men*,<sup>74</sup> or an insurance company to *The Rainmaker*,<sup>75</sup> provides greater depth to the analogy because the student applies every characteristic of reference and makes his own unspoken analogies. A company characterized by *Avatar* could be understood as greedy, domineering, destructive, and having little care for indigenous populations in the way of its own expansion. Similarly, *The Rainmaker* emphasizes not only a pattern of litigations, but the greed, lies, and destruction intentionally created by the insurance industry. The primary criminal villain in *No Country for Old Men* is a heartless murderer with no sympathies or ability to be rehabilitated. The student quickly understands these points because he already understands the baggage the characters carry beyond their discrete actions. The result is that discussing theories of punishment as they relate to the characters in a movie like *No Country for Old Men* will have more impact than discussing the theory in the abstract because the student is not looking only at the act of murder, but at the psychology of the example as well. And because legal education theorists have recognized that it is advantageous for students to learn in context because they think about concepts in both the abstract and the concrete, devices such as popular-culture examples also allow the student to see or to import the human emotions at stake.<sup>76</sup>

More pragmatically, popular-culture references grab students' attention. A teacher's most important job is to keep the student engaged and receptive to the material.<sup>77</sup> If the student does not pay attention, the battle is already lost. In-class techniques that entertain are more likely to convey the educator's point simply because they keep the students engaged. In the context of writing, this point is known as the "decorative function" of the technique, which some scholars think

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72. Sherwin et al., *supra* note 45, at 251; see also Sherwin, *Manifesto*, *supra* note 68, at 730 ("If the comparison with the popular media scripts sticks in their minds, jurors may be inclined to fill in the rest of the story, reflecting familiar plot constructs and character traits unmentioned at trial, even if they are fictional."). One scholar calls this the "halo effect" and cautions that it "makes it harder for observers fully to attend to and fairly weigh proffered evidence," presumably because it is so powerful. Andrew E. Taslitz, *Patriarchal Stories I: Cultural Rape Narratives in the Courtroom*, 5 S. CAL. REV. L. & WOMEN'S STUD. 387, 416 (1996).

73. *AVATAR* (20th Century Fox 2009).

74. *NO COUNTRY FOR OLD MEN* (Miramax Films & Paramount Vantage 2007).

75. *THE RAINMAKER* (Paramount Pictures 1997).

76. Arnold, *supra* note 18, at 896.

77. Lasso, *supra* note 8, at 42.

may alone be enough to persuade a reader.<sup>78</sup> Educational techniques that entertain and captivate make the material more accessible for the student. For example, videos tend to better illustrate concepts because they stimulate the traditional classroom atmosphere.<sup>79</sup> In addition to the obvious fact that an entertaining class is more interesting to attend and, therefore, more likely to be attended (thus, providing more exposure to the material), it also knocks down the understanding barriers that some students unconsciously put up when they are in unfamiliar territory. Popular-culture references take boring, esoteric legal concepts and ground the analysis in terms and situations that are more interesting. The students are more likely to stay engaged and thus, are more likely to learn.

These references are also readily available and diverse enough to cover almost any legal concept. Movies and television clips are a vast resource for illustrating complex legal issues. For example, when teaching criminal law, I show the movie *Heat*<sup>80</sup> during my final class to illustrate almost every topic covered to that point, including attempt, burglary, robbery, felony murder, withdrawal from criminal enterprise, mistake, self defense, and accomplice liability. At the beginning of each Torts class, I show scenes from the television sitcoms *The Office*<sup>81</sup> or *Arrested Development*<sup>82</sup> to illustrate whatever concept we are discussing that day. I know trusts and estates professors who show clips from the movie *Body Heat*<sup>83</sup> to illustrate the importance of the Rule Against Perpetuities (perhaps the only movie in history to have its plot hinge on the infamous rule), and professional-responsibility or criminal procedure professors who use scenes of the television shows *24*,<sup>84</sup> *The Practice*,<sup>85</sup> or *The Shield*<sup>86</sup> to prompt ethical and constitutional discussions.<sup>87</sup> I even knew a writing professor that showed a clip from the television show *Ed*<sup>88</sup> in which the main character describes being forced to open a small-town law firm/bowling alley after he was fired from a large corporate firm for misplacing a comma in a document and costing his client millions of dollars. That particular professor felt that twenty-second scene had much more impact as to the importance of proof-reading than her admonishments alone. These popular-culture references work because they create a shorthand communication between the educator and the student. And

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78. Oldfather, *supra* note 70, at 20-21 (citing Michael Boudin, *Antitrust Doctrine and the Sway of Metaphor*, 75 GEO. L.J. 395, 395 (1986)) ("An opinion that is well-written and enjoyable to read will doubtless be more persuasive than one that possesses equal logical force yet is not well-written.").

79. Lasso, *supra* note 8, at 44.

80. *HEAT* (Warner Bros. Pictures 1995).

81. *The Office* (NBC television broadcast 2005-present).

82. *Arrested Development* (Fox television broadcast 2003-2006).

83. *BODY HEAT* (The Ladd Company 1981).

84. *24* (Fox television broadcast 2001-2010).

85. *The Practice* (ABC television broadcast 1997-2004).

86. *The Shield* (FX Network television broadcast 2002-2008).

87. Other scholars note that film may be a means to teach other legal theory such as legal pluralism, outsider perspectives, and how to manipulate facts. Rebecca Johnson & Ruth Buchanan, *Getting the Insider's Story Out: What Popular Film Can Tell Us about Legal Method's Dirty Secrets*, 20 WINDSOR Y.B. ACCESS TO JUST. 87, 93 (2001).

88. *Ed* (NBC television broadcast 2000-2004).

because the subject matter of popular-culture is endlessly broad, using it can enhance or explain almost any topic.

Perhaps most importantly, popular-culture references are a boon to education because they tap into one's psychology in a way few other mechanisms can. Professor Michael Smith's book, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing*, which explains the psychological impacts of literary references, greatly informs the discussion here.<sup>89</sup> Educators have long harnessed the special power of literary exemplars to illustrate the moral relationships between parties.<sup>90</sup> Chances are that at some point in a student's academic career, he will have read *Paradise Lost*<sup>91</sup> to learn about the struggle between good and evil or *1984*<sup>92</sup> to see the impact of government oppression. Smith explains why these references work by tapping into other scholarly disciplines, "including psychology, classical rhetoric, literary theory, morality theory, and narrative theory . . . ."<sup>93</sup> The same rationales that explain why literary references resonate apply to popular-culture references and are so effective for teaching students. In fact, Smith's psychology, particularly when applied to television and film references, may be *more* effective to explain the importance of popular-culture references than literary references because unlike literature, which requires at least some effort of imagination by the reader, visual media uses camera angles, lighting, editing, and sound to create "brute perception" that is far more impactful than a narrative alone.<sup>94</sup> Accordingly, the psychological forces discussed below are even stronger when applied to popular-culture.

The first theory at work is discursive psychology theory,<sup>95</sup> which is used mostly when an educator references, rather than shows, a movie or television clip. Under this theory, also known as "shared knowledge theory," people communicate by emphasizing the bits and pieces of information they share in common.<sup>96</sup> Learning involves understanding a series of "shorthand" references that mean more in context than they do on their face.<sup>97</sup> The reference itself taps into the fictional schemas of the student.<sup>98</sup> Doing so creates an instant bond

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89. MICHAEL R. SMITH, *ADVANCED LEGAL WRITING: THEORIES AND STRATEGIES IN PERSUASIVE WRITING* 13 (2002).

90. Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 VAND. L. REV. 1665, 1687 (1990).

91. JOHN MILTON, *PARADISE LOST* (2005).

92. GEORGE ORWELL, *1984* (1949).

93. SMITH, *supra* note 89, at 13.

94. Johnson & Buchanan, *supra* note 87, at 99-100; see also Douglas J. Goodman, *Approaches to Law and Popular Culture*, 31 LAW & SOC. INQUIRY 757, 762 (2006) ("[L]aw and popular culture is more than law and literature in the sense that popular culture has stronger, more obvious, and more persuasive effects . . . than does literature. The effects that even the greatest novels have had . . . are negligible in contrast to the effects of a television program.").

95. SMITH, *supra* note 89, at 20.

96. *Id.* at 20-21; see also Sherwin et al., *supra* note 45, at 247 ("Studies in the philosophy of language, linguistics, and cultural anthropology . . . indicate the implicit understandings that people must share in order to make sense of one another's words.").

97. SMITH, *supra* note 89, at 21.

98. Johnson & Buchanan, *supra* note 87, at 104 ("What we see and hear is influenced by what we

between the educator and student because the student feels he “gets” the educator’s point more quickly. The moment the educator uses the familiar popular-culture reference, the student feels a connection to both the educator and the material.

The second psychological theory at work is the literary theory of intertextuality.<sup>99</sup> Intertextuality, similar to the understanding dependency discussed above, is the process by which a person takes new information, compares it to the bank of knowledge he already has, and draws reliable conclusions concerning the new information.<sup>100</sup> The student essentially learns by making a series of analogies. For example, if a due process hypothetical is compared to the movie *Minority Report*,<sup>101</sup> students will connect that reference to their storehouses of knowledge concerning Steven Spielberg’s movie and presume the teacher is implying the defendant is being punished without being proven guilty. The process taps the well of popular-culture information already in the students’ brains.<sup>102</sup> Students want to tie the content to their personal lives, and thinking about a movie they have seen allows them to do so. Intertextuality provides the sentence that gives context to the word.

The final theory, classic rhetoric theory, is based on the traditional art of persuasion as recognized by the ancient Greeks.<sup>103</sup> Rhetoric theory may be divided into three distinct functions: logos, pathos, and ethos, with each providing one basis for understanding. First, the logos function, is the substantive portion of the argument or concept.<sup>104</sup> In other words, it is the concept itself. For example, application of statutes, common-law rules, and policy considerations are based on the logos function.<sup>105</sup> When the application of the rule or the reason for the rule cannot be understood directly, an analogy helps clarify the content by illuminating the substance.<sup>106</sup> The student understands the information because he can connect it to something with which he is familiar (the real and fictional schemas discussed above). The *substance* of the new concept is readily understood because the student is relating it to facts he knows—the facts in his storehouse of knowledge.

The second function under classic rhetoric theory is the pathos function. Pathos is the mechanism by which an author persuades through emotion rather

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already know.”).

99. SMITH, *supra* note 89, at 21.

100. *Id.*

101. MINORITY REPORT (Dreamworks Pictures & 20th Century Fox 2002).

102. Some popular-culture scholars have already recognized the power of using narrative that conforms with preconceived expectations. Johnson & Buchanan, *supra* note 87, at 98 (“[T]he better story, the one that ties up the most loose ends, the one that makes sense to the decision makers and that conforms with narrative expectations, is the one most likely to be believed.”).

103. SMITH, *supra* note 89, at 22.

104. *Id.*

105. *See id.*

106. *Id.*



than logic.<sup>107</sup> This emotional mechanism can be used in two different ways. First, the popular-culture reference creates “emotional substance,” or general feelings like sorrow, guilt, or anger.<sup>108</sup> The educator can then use these emotions to prompt a particular way of thinking. The students become engaged on an emotional level rather than simply an intellectual one. Second, the educator can use “medium mood control,” or a subtle feeling of emotion to color the entire presentation of the new material.<sup>109</sup> For example, the reference to the movie *Minority Report* above may be used to invoke feelings of oppression, darkness, and fear, or at the very least, lack of privacy, anonymity, and due process. By using a reference to the film or a clip in the classroom, the educator creates a *feeling*, rather than merely stating that a lack of due process is a bad thing for society. The result is a richer discussion than that prompted by a hypothetical alone.<sup>110</sup> Additionally, even if the mood created is a negative one, the educator, by using an interesting visual, forges a connection to the student that raises positive feelings toward the teacher and the subject matter.<sup>111</sup> The student is more willing to consider the point because he is engaged.<sup>112</sup> Thus, using pathos or an emotional response connects the audience and enhances understanding.

Finally, the last classic rhetoric theory function is ethos. Ethos marks a persuader’s ability to convey credibility and cleverness.<sup>113</sup> First, credible and thoughtful teachers are given more deference, which makes the material they are conveying more acceptable. The educator who taps the students’ fictional schemas by discussing well-known popular-culture references gains instant credibility because he is grounding the material in information the student already knows. These students lend credibility to the subject because it is familiar, and they feel connected to someone who describes reality as they already perceive it to be. Second, the student feels connected to the educator because the student understands the unspoken analogies. This understanding raises the teacher’s credibility.<sup>114</sup> Third, the use of popular-culture references informs the class that the educator is well-read and educated.<sup>115</sup> The educator becomes the conduit for what the student already knows and what the educator can show him. All of these mechanisms, enhanced through the use of popular-culture references, contribute to increasing student understanding.

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107. *Id.* at 22.

108. *See id.* at 23.

109. *Id.*

110. *See Scherr & Farber, supra* note 5, at 363-64 (“The scenario projected for students on the screen provides a fuller, richer dimension to the discussion than one typically offered by an ethical problem posed in writing.”).

111. SMITH, *supra* note 89, at 23.

112. *See id.*

113. *Id.*

114. *See id.* at 23-24.

115. *See Salzmann, supra* note 33, at 251.

## V. HOW-TO MANUAL

Once an educator understands why popular-culture references are an invaluable educational tool, it is beneficial to learn how to use them. Merely popping a reference into a Socratic lecture or showing a video in class does not always bring about the intended effect. The *type* of reference used is often as important as the substance of the reference itself.

The first mechanism of teaching is to use the video or film clip as a problem or hypothetical upon which the educator can elicit careful analysis. Promoters of the problem-theory of teaching legal education argue that presenting students with problems is a better approach to teaching than the traditional case-book method because students are “more likely to grapple with the course material” when they have a goal in mind.<sup>116</sup> They begin with concrete, identifiable facts and must use them to solve a problem, rather than starting with a decided case and working through hypotheticals. This presentation is a closer representation of practice and more likely to be remembered. Students who feel they are practicing what they will be doing as lawyers, rather than merely talking about it, tend to venture deeper into the material and its contexts.<sup>117</sup>

Popular-culture references could be used as a hypothetical fact pattern to set the stage for research and writing. The educator could present a scene from a movie and suggest that it is the surveillance tape or recorded fact statement of the problem. The benefit to the student is that he has an immediate visual context for the events, and he also sees the emotional facts at issue, rather than merely viewing the problems as words on a paper. The hypothetical will seem more real because he will actually see it. The visual media may even create a more realistic view into actual practice.<sup>118</sup> Thus, popular-culture references can be used as a valuable tool to supplement the problem-method.

Second, the educator can simply refer to the popular-culture reference during normal lecture as an illustration or hypothetical. While not as impactful as presenting the reference in visual form, the reference itself still invokes many of the same psychological responses listed above. It connects the student and professor on common ground and taps into the student’s storehouse of fictional knowledge. It breaks the monotony of traditional, dry hypotheticals and it gives the professor a kind of “street cred.” As an avid film buff, I find these references more readily available than even current events because I can always think of a movie scene to illustrate my point. And because they do not require any advanced planning or presentation, they are perfect for use on the fly as the discussion progresses.

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116. Arnold, *supra* note 18, at 892 (reviewing EDWARD H. RABIN & ROBERTA ROSENTHAL Kwall, *FUNDAMENTALS OF MODERN REAL PROPERTY LAW* (3d ed. 1992)).

117. *See id.* at 893.

118. Scherr & Farber, *supra* note 5, at 352.

Another way to use a popular-culture reference is for its content. One professor indicated she shows the *Schoolhouse Rock* video of the “Bill on Capitol Hill” when teaching legal research.<sup>119</sup> Students who might have been stymied by the legislative process only minutes before can suddenly articulate how statutory law is made<sup>120</sup>—and most of them do it by singing the song.<sup>121</sup> She notes the exercise benefits students by both tying into their prior experiences (because most of them have seen the video during their childhoods) and also by entertaining the class, at least for a few moments.<sup>122</sup>

A final mechanism might be to use another popular-culture medium—music—to create a mood or a theme for a particular class.<sup>123</sup> One professor plays a different song at the beginning of every class to set the tone for that day’s lecture. The music is the auditory cue for how the material should be processed. Songs are especially powerful because they tap into a student’s subconscious in a way that few other popular-culture references can. “Music, as the saying goes, is the soundtrack for our lives.”<sup>124</sup> Quoting songs by certain artists creates a mental picture of both the song’s message and a particular place and time. For example, Jefferson Airplane’s song *White Rabbit* not only tells a literal story about drug use in the 1960s (using its own literary references), but the melody itself stirs emotions about that culture.<sup>125</sup> The effect of using popular song references is that the listener will have a deeper understanding of the material than had he simply learned about the material on its own.

## VI. CHALLENGES

Of course, the use of popular-culture references, like any other novel teaching mechanism, is not without its dangers. The references may be ineffectual, or worse, detrimental to the lesson if they are not understood by the target audience, distract the student from the important legal concept, pollute the subject matter, or are over-used. Thus, the following pitfalls should be avoided.

First, there is nothing worse than using a reference that the student does not “get.” For example, if an educator were to reference the tortious activities of the characters Gob and Buster during an episode of the television show *Arrested Development* without actually showing a clip of the show, the students who

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119. Gerdy, *supra* note 12, at 75.

120. *Id.*

121. *Id.*

122. *Id.*

123. David S. Caudill, *Fabricating Authenticity: Law Students as Country Music Stars*, 20 CARDOZO L. REV. 1573, 1574 (1999) (“Law-music interpretational analogists . . . draw a strong distinction between the law and literature enterprise, where literary/textual analogies predominate, and the law and music enterprise, which emphasizes performance/textual analogies.”).

124. Alex B. Long, *[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing*, 64 WASH. & LEE L. REV. 531, 544 (2007).

125. JEFFERSON AIRPLANE, *White Rabbit*, on SURREALISTIC PILLOW (RCA Victor 1967).

happened to know about *Arrested Development* would probably laugh.<sup>126</sup> More likely, however, many of them would simply be confused.

A popular-culture reference only works if the student has the functional shorthand to understand the example. I often see this trend in reverse when my students create visual presentations to reinforce intentional torts concepts (an assignment that is enormously popular every semester). The students often use clips of cartoons or television shows in their presentations that I have never seen. While their fellow students think the clips are hilarious (because they understand the full context of the actions having watched the entire show), I am often left wondering why it is the clip was funny. If the students had merely referenced the clip, and not shown it, I would be *completely* in the dark. Thus, this lack of familiarity is even more problematic when the reference is just mentioned, rather than shown in a video clip. Some of the information might be gleaned from the clip itself (and its visual cues), but if the professor uses a reference on the fly, that reference should be explained in enough detail that even someone who has not seen it could understand. Otherwise, half the class might miss the point.

The purpose of a popular-culture reference is to create a quick shorthand for the student or a sense of shared history with the professor. Using a reference the student does not understand or is unfamiliar with may build a wall, not a bridge, to understanding.<sup>127</sup> I believe this may be the reason *literary* references are less effective on today's students. This MTV generation has a much better grasp of a television sitcom like *Seinfeld* than it does classic literature.<sup>128</sup> I have experienced this disconnect first-hand. One day, during a criminal law discussion on self-defense, I posed a hypothetical about Charles Manson because everyone knows who that is—right? Wrong. The student confused Charles Manson with Marilyn Manson and argued that while he looked strange, he was not particularly dangerous. It was an interesting discussion, but clearly not what I intended.<sup>129</sup> Thus, the critical basis for a popular-culture reference is choosing those that are either familiar or explanatory on their faces.

While unfamiliarity is an issue, so too is *over-familiarity*. Students who are intimately familiar with every line of a television episode or movie may color their analysis with facts that are beyond the scope of the clip. Viewing the forest,

126. *Arrested Development* (Fox television broadcast 2003-2006).

127. See Long, *supra* note 124, at 563-64; see also SMITH, *supra* note 89, at 25 ("If the reference is obscure or pretentious, the writer risks confusing, alienating—or worse, offending—the reader.").

128. *Seinfeld* (NBC television broadcast 1989-1998). In his article *Using Non-Fiction Films as Visual Texts in the First-Year Criminal Law Course*, Philip Meyer recounts a class where he used literary anecdotes to tell criminal law concepts. The students were unfamiliar with the plots. 28 VT. L. REV. 895, 898 (2004). The next semester, he used video clips from the *Sopranos* and was immediately rewarded with the students' understanding and enthusiasm. *Id.* at 898-99.

129. It is important to note that even a bad reference might produce a teachable moment in the classroom. In this example, my class ended up comparing the reasonableness of shooting the two Mansons in self-defense.

the student is unable to see the tree—he cannot distill the concept in isolation.<sup>130</sup> For example, if I were to illustrate conspiracy formation with a clip from the movie *Donnie Brasco*,<sup>131</sup> where Johnny Depp played an undercover federal agent infiltrating the mob, a student familiar with the *entire* movie might be blinded by the fact that Depp was a federal agent and thus, had a valid defense. That student might miss the subtler lessons about agreements and overt acts that give rise to conspiracy. Often times, viewing the clip in isolation is easier said than done.

Third, using popular-culture references in the classroom might confuse the student as to the seriousness of the material. Legal educators walk a fine line between entertaining engagement and professionalism. Popular-culture references help explain concepts, but students should not be confused into thinking that all legal issues can be distilled to a series of movie clips. This can already be seen in legal opinions—those opinions that are written in prose or use song lyrics for emphasis may not be taken seriously.<sup>132</sup> In an article arguing that law review articles can be made more accessible with humor, one author points out that humor should nevertheless be used sparingly because it might “undermine reverence for legal institutions.”<sup>133</sup> That same danger is present when the topic is popular culture in the classroom. If classes become more a source of entertainment, students who have no formal legal training may not grasp or appreciate what was supposed to be a clarification of a legal principle. The educator must balance the goal of engagement with the goal of maintaining a professional environment.

Fourth, popular culture as a teaching tool may confuse the student. This problem arises when students are distracted by the reference, or repelled by it, instead of being enlightened by it.<sup>134</sup> Once that distraction occurs, it may pollute the subject matter each time the student considers the topic.<sup>135</sup> Some students have incredibly strong emotional reactions to certain topics, such as violence, and those reactions can be exacerbated when viewed visually.<sup>136</sup> Offending or distracting the student with an offensive or ill-fitting reference is probably more harmful than merely boring the student without one. The student’s view of the concept is tainted because his reaction to the original reference was so visceral and lasting.

This concept also works in reverse. Some students may completely discount the material or the legal concept because it is only fiction.<sup>137</sup> The students

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130. Scherr & Farber, *supra* note 5, at 382.

131. *DONNIE BRASCO* (Tri-Star Pictures 1997).

132. See Long, *supra* note 124, at 559; see also Daniel M. Filler, *From Law to Content in the New Media Marketplace*, 90 CAL. L. REV. 1739, 1770 (2002) (“When a court’s language is evidentially unserious, it is unlikely that readers will take the opinion seriously.”).

133. J.T. Knight, Comment, *Humor and the Law*, 1993 WIS. L. REV. 897, 908 (1993).

134. Long, *supra* note 124, at 561.

135. See, e.g., Oldfather, *supra* note 70, at 25 (noting a similar effect for metaphors that draw strong associations).

136. Scherr & Farber, *supra* note 5, at 383.

137. *Id.* at 378.

disengage because they see the reference as detached from reality, and thus, not worthy of consideration. If it is not real, it is not worth their time. Or, the student may get bogged down in how the film differs from reality, rather than focusing on the teacher's point.<sup>138</sup>

Fifth, there is a risk that a film or television analogy might keep the student from deeply considering the implications of the legal principle.<sup>139</sup> When the educator desires critical thinking about the subject matter, the popular-culture reference may stifle that deeper analysis. Celluloid characters are often caricatures of real people with extremes in human attitudes. If they are the benchmark for analysis, the student may not adequately consider all aspects of the human emotion. For example, showing clips of the characters in the movie *Natural Born Killers*<sup>140</sup> to discuss theories of punishment might not allow the student to fully explore both sides of each theory. The characters are one-dimensional killers who do not invoke feelings of sympathy that would likely be present in the real world.

This problem is especially true when the depictions contain any stereotypical characteristics. For example, one scholar noted *The Cosby Show*<sup>141</sup> was "one of the most novel programs in television history," simply because it separated the characters from their skin-color and portrayed the main couple as upper-middle class professionals.<sup>142</sup> Nearly all of the television depictions prior to that point were based on stereotypical depictions.<sup>143</sup> Using clips from the pre-*Cosby* era might taint consideration of the legal concept if the student is offended or swayed by erroneous characterizations. Legitimate considerations about the purposes of law may give way to superficial analysis.

Richard Sherwin, in his book *When Law Goes Pop*, expressed concern that the growing relationship between popular culture and legal theory is having a negative impact on the latter.<sup>144</sup> Sherwin's concern is that the fictional, popular-culture schemas that people have created cause them to make biased judgments based on their viewed experiences rather than the objective facts before them. That danger is perhaps even more acute for the students who are only just beginning to get their bearings in the legal landscape. Helping a student import

138. Elkins, *supra* note 6, at 784 (noting that people should "steer clear of the temptation to catalogue a legal film's inaccuracies" and instead dive deeper into the meaning).

139. See, e.g., Oldfather, *supra* note 70, at 25-26 (noting that metaphors "can lead to inattention to other considerations that should rightly factor into the analysis").

140. *NATURAL BORN KILLERS* (Warner Bros. Pictures et al. 1994).

141. *The Cosby Show* (NBC television broadcast 1984-1992).

142. Greene, *supra* note 7, at 770. Interestingly, the Second Circuit disagreed, holding that non-stereotypical depictions of an African-American family were not novel under idea-misappropriation law. *Murray v. Nat'l Broad. Co.*, 844 F.2d 988, 992-93 (2d Cir. 1988).

143. Greene, *supra* note 7, at 770 (pointing to *The Jeffersons*, *Sanford and Son*, *Good Times*, and *That's My Momma* for pre-*Cosby Show* characterizations).

144. See RICHARD K. SHERWIN, *WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE* 242 (2000).

pre-conceived ideas by tying popular-culture examples to the new concept might inhibit an open and receptive attitude toward learning.

Sixth, too many references may make each one less impactful. One of the most important purposes in using references is to break the pattern from traditional Socratic lecture. But if the teacher is just swapping the monotony of Socratic methods for the monotony of movie clips each day, there is no net gain. The general idea is to break things up and make the student more engaged.

Finally, using popular culture in its most effective form, visual or audio, requires special technical consideration. Nothing breaks the rhythm of a class like a professor fooling around with the audio-visual equipment in the front of the room. If the clips are not easily accessible, it might be easier and less distracting just to describe them as hypotheticals. Proper command of the technology is the only way the references will enhance, rather than distract, the class.

## VII. CONCLUSION

For most law students, legal concepts are not only unfamiliar, but they may be antithetical to many things the students have learned before. Using popular culture is simply another effective tool to breach that barrier. If students are able to connect to the material in a way that they might not have otherwise, at the very least, it may open a door to a level of comprehension that was not there before. More pragmatically, the two greatest hurdles in the classroom are connecting to students and keeping them engaged. What better way to overcome these difficulties than to break out Hulu? The psychology certainly shows it works and the student response is usually positive. Besides, it gives me an excuse to watch movie clips while also making me a better teacher. Should we not strive to make our classrooms the optimal spot for learning? If so, we need to make the shift toward popular-culture supplements, particularly in their visual forms. When it comes to legal education, we must remember Dorothy's words: "We're not in Kansas anymore."<sup>145</sup> Get what I mean?

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145. THE WIZARD OF OZ (Metro-Goldwyn-Mayer 1939).