

Lessons from Pop Culture: What *School of Rock* Can Teach the School of Law

William S. Bailey

“The vast majority of lawyers do not communicate effectively with jurors.”
United States District Judge Mark W. Bennett¹

The 2003 box-office hit *School of Rock* is not just a musical comedy. It is also a movie about the clash between old and new ways of teaching. Recently fired from his band and hard up for cash, guitarist Dewey Finn seizes an opportunity to impersonate his substitute teacher roommate and friend Ned at the Horace Green prep school. The principal orients Dewey to the stiff, formal culture of the school: “This is considered the best elementary school in the state. We maintain that by adhering to a strict code of conduct.”²

Dewey quickly becomes disgusted by these tightly drawn policies, crumpling up the classroom demerit chart and asking the students, “What kind of sick school is this?” Inspiration strikes, however, when he sees his students suffering through a boring music class. Dewey then realizes he can teach them something vital: unleashing inner creative passion.

Coming up with a new class project, Dewey exposes the students to the idea that rock ‘n’ roll is an art form worthy of their attention. They will compete in an upcoming battle of the bands. The students are intrigued but continue to worry. What about grades? Or missing math and world cultures? (“Not important,” Dewey says). His teaching philosophy emphasizes personal exploration, authenticity, and spontaneity: “loosey goosey . . . feel it in your blood and guts.” Little by little, the students start to take risks, growing in self-confidence. Dewey reaffirms that they are onto something. The most important

William S. Bailey is Professor from Practice, University of Washington School of Law. The insights and editorial suggestions of Robert W. Bailey, Tomás Gahan, Ben Nelson, Prof. Elizabeth Porter, Andrea Robertson, Judge Roger Rogoff and Matthew Wurdeman were invaluable and are gratefully acknowledged.

1. Hon. Mark W. Bennett, *Eight Traits of Great Trial Lawyers: A Federal Judge’s View on How to Shed the Moniker I Am a Litigator*, 33 REV. LITIG. 1, 1-2 (2014).
2. SCHOOL OF ROCK (Paramount Pictures 2004) (Transcribed from audio track by the author).

goal? Connecting with the audience and “putting on a great show.”³ With his encouragement, they succeed.

What Would Dewey Finn Say About Traditional Advocacy Skills Training?

What if the scene shifted, and Dewey Finn played the imposter in a law school trial advocacy class? How would he react to conventional wisdom and the clinical description of trial elements?⁴ “State the issues in a case on opening.” “Organize your direct logically.” “Don’t ask a question on cross if you don’t know the answer.” “Use jury instructions to frame your closing.” At first, Dewey would be puzzled, and then put off, thinking, “What’s this? I thought trials were supposed to be exciting.”

He might watch a student get up and give an opening statement: “We will present evidence and prove to you that this accident was not our client’s fault. You will meet him when he takes the stand. The evidence will show his visibility was blocked.”

Dewey’s reaction? “Boring. Robotronic.”

A student might go through a series of questions called the exhibit dance to get a photo admitted. Dewey asks, “What’s the point? Why does the photo matter?” He waits, but nobody explains it.

The students do final arguments as instructed: “Always use a theme.”

“Ladies and gentlemen of the jury, this is a case about choices. The plaintiff made a choice to take more bike messenger jobs than he could safely handle. As the judge just instructed you, negligence is the failure to do what a reasonably careful person would.”

Dewey winces. “Come on, improvise! Make us feel it!” He is puzzled. “Where’s the show here? I thought trial lawyers were supposed to be like rock stars!”

All the things frustrating Dewey reflect a resistance to change in trial advocacy teaching. The result is a failure to teach students how to build an emotional connection with their audience. Every DJ knows she must meticulously assemble individual songs into a creative mix, focusing on the flow of music from one song to the next and the emotion it creates. The same principles apply to connecting with a judge and jury in a courtroom.

Why Haven’t Forty Years of Advocacy Courses Improved the Trial Bar?

Nationally prominent trial attorney Paul N. Luvera observes that law school trial advocacy teaching focuses primarily on knowledge of the law and procedure, largely ignoring the knowledge of human nature so critical

3. *Id.*

4. Trial practice textbooks dutifully collect and present the conventional information, presented in cookie-cutter fashion, one topic at a time. The most successful of these is Thomas A. Mauet’s *TRIAL TECHNIQUES* (9th ed. 2013).

to success. The result is that “most lawyers know the law and procedure, but often haven’t a clue how to present their cases to juries, or judges either.”⁵

Veteran trial judges draw the same conclusions, finding that most lawyers do not know how to construct a compelling story, use a theme, effectively frame issues, or visualize information.⁶ Their most common complaint is the sheer volume of repetition and useless detail.⁷ Veteran King County (Washington) Superior Court Judge Dean Lum sees this as a threat to the continued viability of the jury trial itself: “The world and jurors have changed but not lawyers, who still try their cases the same way. Jurors’ short attention spans and strong preference for quick self-help Internet research makes a real recipe for trouble.”⁸

These systemic failures in courtroom advocacy today have multiple causes, including trial etiquette, structure, and tradition constraints. But the failure of advocacy training to look at story structure, social judgment, and visualization of information is a big part of the problem.

Finding Our Groove in the Classroom

Pop culture and electronic devices are the modern version of Hamlet’s holding “the mirror up to nature.”⁹ Embracing their sophisticated, multilayered narrative techniques offers a promising way to make advocacy education more effective.¹⁰ Today’s law students are digital natives, and there is little we can tell them about pop culture itself. They know it better than we do. But we can play a critical role in showing them how to apply it to courtroom storytelling and confirming that invoking pop culture is not only OK, but necessary.

5. E-mail from Paul N. Luvera to William S. Bailey (June 20, 2017, at 3:45 PM) (on file with the author).
6. WILLIAM S. BAILEY & ROBERT W. BAILEY, *SHOW THE STORY: THE POWER OF VISUAL ADVOCACY* 265-82 (2011) (see comments by Senior United States District Judge Marsha J. Pechman); WILLIAM S. BAILEY & TERENCE J. McADAM, *LAW, SCIENCE AND EXPERTS: CIVIL AND CRIMINAL FORENSICS* 138-39, 237, 245 (2014) (see comments by King County, WA Super. Dis. J. William L. Downing, and Senior D. J. Robert S. Lasnik); see also Hon. Robert S. Lasnik, *How Effective Trial Attorneys Present*, 43 *LITIG.* 6 (2016).
7. See Lasnik, *supra* note 6, at 6: “I always speak with jurors after they render their verdicts. The most common question I get is, ‘Why do the lawyers think we are stupid or aren’t listening? They repeat things over and over and go on way too long.’ I know most lawyers do this out of fear that the jurors might not understand what happened if the facts aren’t hammered into their minds, but . . . you know they have the capacity to understand and remember without being treated like numbskulls.”
8. E-mail from J. Dean Lum to William S. Bailey (Dec. 13, 2013, at 10:11 AM) (on file with the author).
9. WILLIAM SHAKESPEARE, *HAMLET*, act 3, sc. 2.
10. Marshall McLuhan predicted fifty years ago: “[T]echnology . . . is forcing us to reconsider and re-evaluate practically every thought, every action, and every institution formerly taken for granted. Everything is changing . . . dramatically.” MARSHALL McLUHAN & QUENTIN FIORE, *THE MEDIUM IS THE MESSAGE* 8 (1967).

Stories Are Central to Both Popular Culture and Trial Advocacy

In order to understand how pop culture can improve advocacy education, it is important to start with an awareness of the critical role of stories in human experience: “We learn how to act and live through stories; we learn about different people, settings, and ideas . . . moral lessons too.”¹¹

Trials are docudramas of competing stories. The best story wins. Graham Moore describes a lawyer’s critical storytelling role in *The Last Days of Night*: “His work was to take a series of isolated events and . . . craft from them . . . a story . . . organiz[ing] the chaotic world . . . into something comprehensible . . . [with] clear reason and motivation”¹²

People expect the same level of human interest in the courtroom that comes from popular culture.¹³

Judges note one core problem is that practicing lawyers rely almost exclusively on words.¹⁴ Cases dealing with boring and technical subjects are made even more tedious by this failure to deploy the visual.

Visuals Drive Today’s Stories

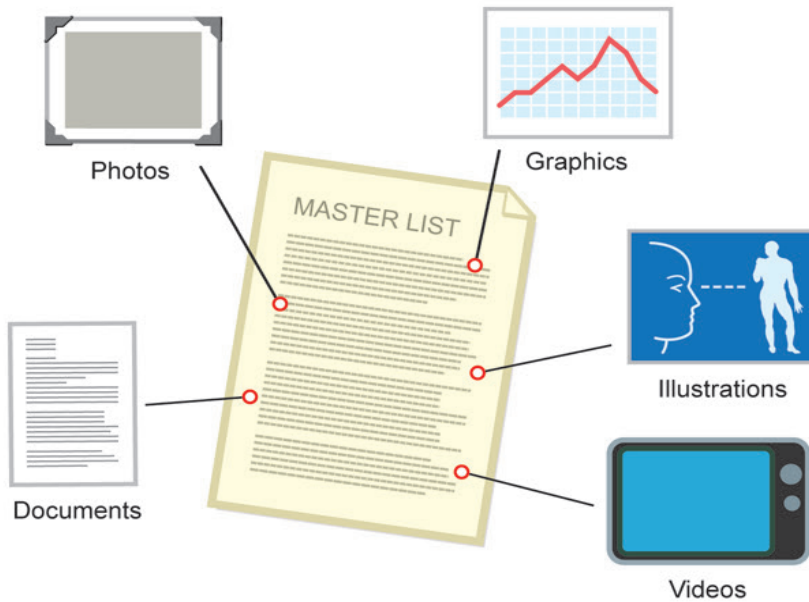
Popular culture is popular because it tells stories in visually engaging ways.¹⁵

This kind of storytelling has become the norm, and that’s no surprise, since the human brain recalls and recognizes visuals much more easily than words.¹⁶ A good example of the pop-culture preference for visual stories is the

11. DAN P. McADAMS, *THE PERSON: AN INTRODUCTION TO PERSONALITY PSYCHOLOGY* 727 (2d ed. 1994). In *TALES OF A NEW AMERICA* 7 (1987), Robert B. Reich expresses just how much stories help us to make sense of the world: “[They describe]. . . the how and why of life . . . [and] make sense of, and bring coherence to, common experience.”
12. GRAHAM MOORE, *THE LAST DAYS OF NIGHT* 6 (2016).
13. Judge Bennett sees “one trait that always separates great trial lawyers from lesser ones: superb, masterful storytelling.” Bennett, *supra* note 1, at 4.
14. The brain retains the new information for only a few seconds. Even highly intelligent people quickly lose new information if it is not presented in a memorable way. Daniel L. Schacter describes how fragile and distortion-prone memory is: “We remember only what we have encoded, and what we encode depends on who we are—our past experience, knowledge and needs all have powerful influences on what we retain.” DANIEL L. SCHACTER, *SEARCHING FOR MEMORY* 6 (1996).
15. Popular science author and media theorist Steven Johnson finds popular culture to be “more complex and intellectually challenging,” resulting in “a positive brainwashing” that “almost imperceptibly [has made] our minds sharper.” STEVEN JOHNSON, *EVERYTHING BAD IS GOOD FOR YOU: HOW TODAY’S POPULAR CULTURE IS ACTUALLY MAKING US SMARTER* 1 (2005).
16. Psychologist Allan Paivio proved the dual tracking mechanism of the brain. Words and images enhance one another, stored in different places. ALLAN PAIVIO, *MENTAL REPRESENTATIONS: A DUAL CODING APPROACH* (Donald E. Broadbent et al. eds., 1966). Paivio also showed the preference of the brain for images over words. Allan Paivio, T.B. Burger, and Padric C. Smythe, *Why Are Pictures Easier to Recall than Words?* 11 *PSYCHONOMIC SCIENCE* 137-38 (1968). Colin Ware describes the enormous power of the human visual system: “The eye and the visual cortex of the brain form a massive parallel processor . . . which is why the words

reporting on the 2009 domestic difficulties of golf superstar Tiger Woods. A Chinese media company's computer animation of his domestic dispute with his then-wife outside his Florida home quickly went viral on YouTube.¹⁷ Media company representative Daisy Li explained why they did the story this way: "The young people don't like to read the newspaper."¹⁸

Though visually sophisticated, exposed to millions of images, law students don't connect this experience to their work. Judge Dean Lum observes: "The vast majority of attorneys have no idea how to present visual evidence well, miscalculating jurors' attention spans and learning styles."¹⁹ Correcting this critical deficiency starts with intensive training on the use of visual tools.



As with the case method in doctrinal courses, advocacy teachers must teach students to analyze visuals used in actual trials for both form and persuasive impact.

Building Student Awareness of Visual Tools

As teachers, we have to familiarize ourselves with the compression and visualization of information in popular culture. First used by business

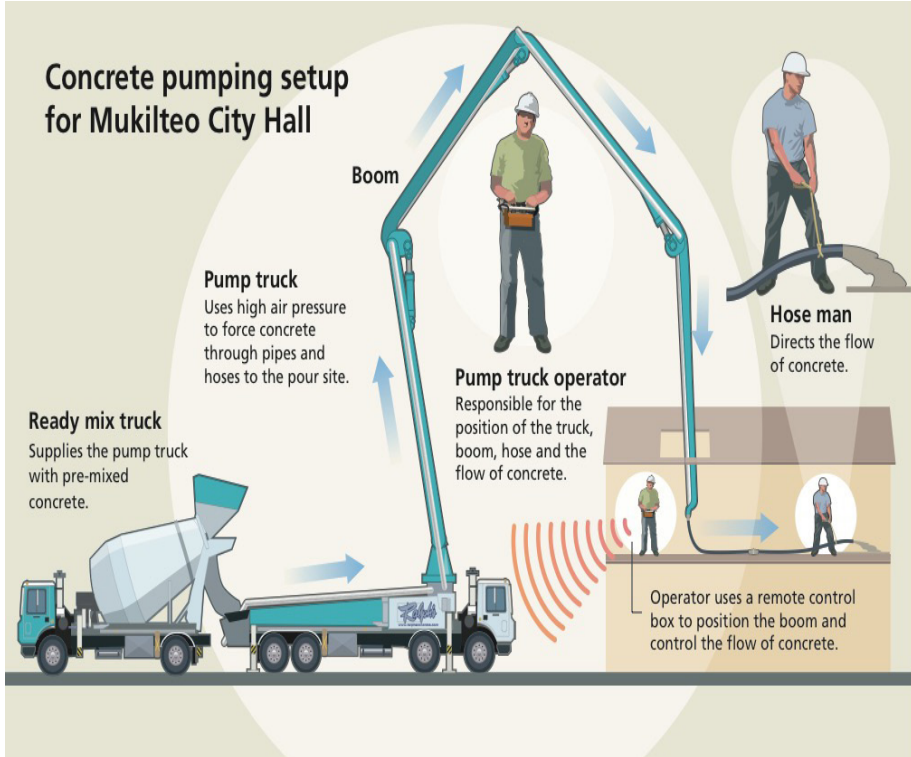
understanding and seeing are synonymous." COLIN WARE, *INFORMATION VISUALIZATION: PERCEPTION FOR DESIGN* (2d. ed. 2000).

17. Noam Cohen, *In Animated Videos, News and Guesswork Mix*, N.Y. TIMES (Dec. 5, 2009), <https://www.nytimes.com/2009/12/06/business/media/06animate.html>.

18. *Id.*

19. E-mail from J. Dean Lum to William S. Bailey (Dec. 6, 2013, at 2:59 PM) (on file with the author).

magazines sixty years ago to visualize data, information graphics have become critically important communication tools. They drastically compress word volume, making stories more efficient. Color images promote interest, retention, and depth of learning.



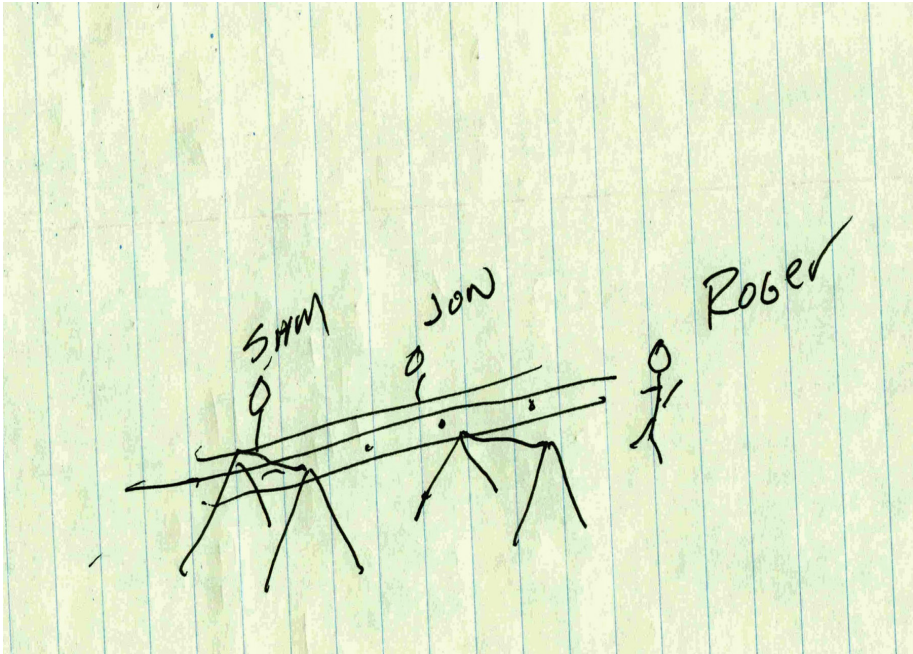
Video game storytelling provides another rich popular culture resource that can be applied to advocacy. Filled with realistic Los Angeles street scenes and action, *Grand Theft Auto V* has developed a worldwide community of dedicated users.²⁰ Adapting this technology in teaching trial techniques is not a stretch. Computer graphics and animations have been used in high-profile trials since the 1990s.²¹ Seeing is believing. When guided by the rules of evidence, procedure, and legal ethics, this kind of visual storytelling has an important place in the courtroom too. This requires lawyers to adapt traditional training in evidentiary foundation to visual media, knowing enough about often unfamiliar technology to be able to direct those in other fields in the creation of images. To get computer graphics and animations admitted into evidence, a lawyer must be able to explain why these fairly represent the evidence in the case.

20. While it took a stunning \$266 million to make, this new installment achieved \$800 million in worldwide sales the first twenty-four hours after its September 2013 release.
21. The O.J. Simpson murder trial in Los Angeles in 1994 was one of the first to draw media comment and attention as a “high-tech” case.

But most law schools do not address any of this, causing graduates to wrongly conclude that visual storytelling is not part of their job. The precedent-worshipping culture of the law breeds a reluctance to do anything like this that smacks of going out on a limb. The visual void in legal education explains why so few lawyers have embraced visual storytelling.

Realizing this in my own career as a civil trial attorney, I educated myself on how to develop computer animations that met the evidentiary standards for accuracy, visualizing information critical to a judge's or a jury's understanding of the facts, proximate cause, forensics, and legal issues.²² This resulted in realistic recreations of fatal accidents and technical expert opinions in trials.²³

Though the graphics used in computer game storytelling are expensive, animations in legal cases often are not. Pencil-and-paper sketches by a witness



can become the basis of courtroom reconstructions of reality.²⁴ The teaching goal is to give students enough fluency in the animation process to apply evidentiary rules and direct the story creation process, much the way producers

22. The multiple efforts to electronically visualize key information in my cases over a twenty-year period culminated in a book describing the process for creating visual evidence that meets the standards for admissibility, done with my brother, trial consultant. See WILLIAM S. BAILEY & ROBERT W. BAILEY, *SHOW THE STORY: THE POWER OF VISUAL ADVOCACY* (2011).
23. For example, in the wrongful death trial of *Philippides v. Bernard*, 88 P.3d 939, 946 (Wash. 2004), the opinions of my accident reconstruction expert were incorporated into a computer animation that recreated the field of view available to the defendant driver.
24. The whole process of compressing traditional verbal and written lawyer communication into visual forms, supported by proper foundation, is covered in detail in *SHOW THE STORY*, *supra* note 22.

of films do. Familiarity with this process also is useful for challenging the accuracy and admissibility of computer animations.



Film clips from courtroom classics like *My Cousin Vinny* have been used as multimedia trial advocacy instruction tools for years. While students are amused and engaged by these, the clips go by quickly, with little time to digest. The default mode is to watch them for entertainment. We must teach our students to be more critical viewers, assessing what film techniques they can adapt for legal persuasion.²⁵ I pass out work sheets to help focus the discussion,

25. Though the kind of emotional awareness that comes from the careful study of film storytelling techniques is critically important, it is almost entirely lacking in law school. Instead, we present legal decision-making as Aristotle described it, reason free from passion. Neuroscience now has proved otherwise. Patricia Churchland describes how “hidden cognition” drives all human behavior. PATRICIA S. CHURCHLAND, TOUCHING A NERVE, THE SELF AS BRAIN 201 (2013). Science author and journalist Daniel Goleman observed in a 1992 *New York Times* article that jurors do not make decisions in a logical, linear way, waiting until the end of a case to make up their minds, as instructed by the judge. Rather, they process information as the case goes along, creating a continuing story to make sense of the evidence. This often relies upon their life experience to interpret motives, credibility,

building awareness of visual storytelling techniques and the emotion they create. I ask questions like, “How did this build the theme and story?” “How did it make you feel about the characters?” “Why?” “What unspoken assumptions about human nature does this play to?” “Did it work?” “Why or why not?”

This film clip work in the classroom puts law students in touch with their own hidden cognition, leading them to understand not only how they are susceptible to being manipulated emotionally, but also how human nature and life experience drive their interpretation of information.

Trial advocacy techniques can also be enhanced by popular-culture references. For example, Texas criminal defense lawyer and teacher Mark Bennett uses the “better out than in” line from *Shrek* to explain why it is better for lawyers to bring out negative views of potential jurors in voir dire. He calls it “The Shrek Rule”: understanding how powerfully memorable a pop culture reference can be.²⁶

The Most Important Use of Pop Culture: Teaching Effective Storytelling

Popular culture shows us how to use stories to build and maintain an emotional connection to an audience. Good legal storytelling requires the same kind of attention to its effect on a jury.

The elements of story structure that must be followed are:

1. Plot. How do the events tie together?
2. Character. What are the human qualities of the people involved?
3. Theme. What is the central idea that drives the story?
4. Dialogue. What words or phrases best describe the struggle of the characters and create emotion?

Teaching About Story Themes and Moral Values

The facts of every story are organized by themes involving moral values of some kind. The legal mind invariably confuses the theme with the legal theory. But the two are not the same. The legal theory does not create emotion or drive the story. So instructors have to teach students to identify the themes that are available. Selected film clips can be a great tool, playing the same role for law students that Dewey Finn’s review of rock-star videos does in *School of*

psychological states, and emotion. Jurors’ backgrounds often lead to crucial differences in their assumptions and interpretations. Daniel Goleman, *Jurors Hear Evidence and Turn It into Stories*, N.Y. TIMES (May 12, 1992), <https://www.nytimes.com/1992/05/12/science/jurors-hear-evidence-and-turn-it-into-stories.html>.

26. Mark Bennett, *16 Simple Rules for Better Jury Selection*, THE JURY EXPERT. (Jan. 1, 2010), www.thejuryexpert.com/2010/01/16-simple-rules-for-better-jury-selection/.

Rock. For example, in the 1994 Hollywood comedy-drama epic *Forrest Gump*, the characters explicitly state the themes that bind the movie together, some of which include:

1. Mama always said life was like a box of chocolates; you never know what you're gonna get.
2. I don't know if we each have a destiny, or if we're all just floatin' around accidental-like on a breeze, but I, I think maybe it's both.
3. You got to put the past behind you before you can move on.

The goal is to connect our students' experiences as pop-culture audience members with telling stories in legal cases. What they already know becomes a solid foundation for this when we tell them why and how it matters.

Chris Ponnet, the director of spiritual care at Los Angeles County-U.S.C. Medical Center, has said, "All people have a story. It's your job to find it."²⁷ Characters generate emotional appeal and involve an audience in a story, embodying larger social themes in their appearance, behavior, and personal values.

Human beings instinctively take sides. We can't deal with muddy, dysfunctional masses of information. Knowing who to root for helps us to sort things out. Who is the protagonist? The antagonist?

Even though they have seen and heard thousands of stories, law students are not trained to dissect or build characters the way writers are. All of this is new. Keeping it simple, analyzing well-known characters from popular-culture shows allows them to connect with what they already instinctively know about character as a consumer of stories. For example, Mr. Burns, the nuclear power plant boss in *The Simpsons*, is cold, calculating, and humorless. He hunches over with his fingers in a cat's cradle and says, "Smithers, fire that man." Using pop-culture characters like this builds awareness of what causes people to take sides. To reinforce the learning, I give my students work sheets requiring them to analyze the positive and negative aspects of the characters in their assigned cases. What qualities generate emotion? Why?

Modern storytelling often is not neatly divided into good guy-bad guy characters like Mr. Burns, and this complexity creates gray areas of ambiguity and multilayered story lines. Moreover, characters do not need to be perfect for us to identify with them. In *The Sopranos*, Tony Soprano is a ruthless mob boss who has people killed for a living, but also loves his wife and children. He has a house in the suburbs and is plagued with the same kind of worries as the rest of his neighbors. In the hit television series *Breaking Bad*, Walter White is another ambiguous modern character, a despicable drug lord who also manages to be lovable.

27. Malia Walton, *How to Eulogize Someone You've Never Met*, N.Y. TIMES MAGAZINE (Dec. 20, 2015).

The goal here is to build student awareness of character in story appeal and persuasion. Clients do not need to be perfect, but they must have sufficient human qualities for jurors to identify with them. Opposing parties do not have to be evil, but they can be characterized as not likable or not credible, or simply out of sync with mainstream social values.

New Directions in Pop Culture and the Future of Trials

His appearance on the \$10 bill makes Founding Father Alexander Hamilton vaguely familiar. His critical role in writing *The Federalist Papers* and death in a duel with Aaron Burr is covered in high school history classes. Beyond this, like most historical figures, Hamilton was seen as irrelevant and “boring.”

After reading the biography of Hamilton by historian Ron Chernow,²⁸ Lin-Manuel Miranda saw him as a modern figure—an immigrant who rose from nothing to become a hero of the American Revolution. Miranda infused passion and energy into this story, making Hamilton come alive in an original Broadway musical. He cast actors of color in the lead roles and used hip-hop and rap in addition to traditional songs.²⁹

Hamilton is an exemplary model of what pop culture can do to revitalize teaching trial advocacy. While trial stories will probably never be expressed in hip-hop or rap forms, the energy and creativity of *Hamilton* shows us a path to being more effective, relevant, and useful. Some of our most treasured freedoms have come from passionate, creative lawyering that challenged the status quo. As teachers, we are the guardians of this legacy. But the widespread deficiencies among lawyers in the courtroom show that change is needed to be worthy of our charge. Pop culture provides us with multidimensional opportunities to improve our teaching while making our students better storytellers.

28. RON CHERNOW, *ALEXANDER HAMILTON* (2005).

29. For a fascinating account of how *Hamilton* came to be, see LIN-MANUEL MIRANDA & JEREMY MCCARTER, *HAMILTON: THE REVOLUTION* (2016).