

THE SIMPSONS, 24, AND THE LAW:
HOW HOMER SIMPSON AND JACK BAUER
INFLUENCE CONGRESSIONAL LAWMAKING
AND JUDICIAL REASONING

Steven Keslowitz*

INTRODUCTION

Although Homer Simpson's hometown of Springfield, USA is reportedly the town with the nation's lowest voter turnout,¹ at least two of its residents are extremely politically active. On October 12, 2007, the United States' House Energy and Commerce Committee minority staff published a press release devoted entirely to summarizing the remarks at a press conference featuring Springfield residents Mayor Diamond Joe Quimby and wealthy nuclear power plant owner C. Montgomery Burns. The pair expressed bipartisan support for the reauthorization of the State Children's Health Insurance Program (SCHIP), a source of great conflict between President Bush and Congress.² Appearing at the end of the press release was the disclaimer

*Incoming Executive Editor, *Cardozo Law Review*, J.D. Candidate (June 2009). First and foremost, I would like to thank my parents, Alan and Helene, for their constant support, inspiration, and unconditional love. Thank you also to my brother, Justin, for his support and eagerness to discuss *The Simpsons* and *24*. Special thanks to Professor Minzner, Professor Bierschbach, and Professor Goodrich for their invaluable advice and encouragement throughout law school as well as their comments during the Note writing process. Thank you also to Daisuke Beppu (Senior Articles Editor extraordinaire) for his invaluable comments on the Note and insights into both television shows, some of which found their way into this Note. Thank you to Joseph Mueller, Timothy Yip, Carrie Maylor, Laura Barandes, Deric Behar, and the other members of the *Cardozo Law Review* for their support for the Note as well as the time spent commenting on drafts. Finally, a special nod to both Homer Simpson and Jack Bauer—without you this Note simply could not have been written.

¹ In *The Simpsons* season seven episode entitled *Two Bad Neighbors*, Former President George H.W. Bush moves to Springfield upon his return to private citizenry. Former first lady Barbara Bush cited the fact that Springfield has the lowest voter turnout in America as one of the couple's main reasons for moving to the town. *The Simpsons: Two Bad Neighbors* (Fox television broadcast Jan. 14, 1996); see James A. Cherry, *The Simpsons Archive, Two Bad Neighbors*, <http://snpp.com/episodes/3F09.html> (last visited Oct. 27, 2007).

² Press Release, House Energy and Commerce Committee Republicans, Bipartisanship on SCHIP! (Oct. 12, 2007), available at <http://republicans.energycommerce.house.gov/News/PRArticle.aspx?NewsID=6636> (last visited Oct. 27, 2007).

“Actual facts and events may vary, but really, how much?”³

Similarly, Justice Antonin Scalia referenced fictional super-agent Jack Bauer from the television show *24* when debating the legal defensibility of torture with a group of judges in Ottawa, Canada in June 2007.⁴ The relevance of both *The Simpsons* and *24* in the legal and policymaking arenas is demonstrated by numerous references to these shows in law journals, Congressional hearings, and judicial opinions.⁵ On a broader scale, the references to these shows within contemporary legal discourse mirror a tendency of legal professionals to be influenced by aspects of popular media.

The influence of popular culture on law is pervasive. Popular culture’s impact on the development of specific areas of the law is demonstrated, for example, by legislators’ use of Hollywood movies as points of reference for the enactment of anti-stalking legislation in California. As scholar Orit Kamir documents, reliance on depictions of stalkers in popular movies adversely affects the way anti-stalking legislation develops.⁶ If the public is influenced by popular culture’s inaccurate portrayals of both the functions and purposes of law, and legislatures (in order to please their constituents) respond to the public’s desires for reforms based on those depictions, the legislature will enact legislation tailored not to real-life situations but rather those created by the entertainment industry. Because both *The Simpsons* and *24* address legal issues and influence the viewing public’s conceptions of the purposes and functions of law, both shows, based on the stalker legislation paradigm, can potentially influence the enactment of legislation. Both shows lay the groundwork for real influence in both the legislative and judicial contexts.

Alexis de Tocqueville observed that “[t]he spirit of the law . . . infiltrates through society right down to the lowest ranks, till finally the whole people have contracted some of the ways and tastes of a magistrate.”⁷ As law and popular culture scholar Richard K. Sherwin pointedly notes, however, Tocqueville’s insight tells only part of the story.⁸ The reverse of Tocqueville’s observation rings true in the

³ *Id.*

⁴ *See infra* note 171.

⁵ *See infra* notes 92-100, 117-23, 141-60 and accompanying text.

⁶ *See, e.g.*, Gad Barzilai, *Culture of Patriarchy in Law: Violence from Antiquity to Modernity* 38 *LAW & SOC’Y REV.* 867, 871 (2004) (reviewing ORIT KAMIR, *EVERY BREATH YOU TAKE: STALKING NARRATIVES AND THE LAW* (2001)). *See generally* ORIT KAMIR, *FRAMED: WOMEN IN LAW AND FILM* (2006) (discussing the impact of *Taxi Driver* on anti-stalking legislation).

⁷ ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 268-70 (Doubleday 1969) (1835).

⁸ Richard K. Sherwin, *Foreword: Law/Media Culture: Legal Meaning in the Age of Images*

context of contemporary American legal discourse. While the law shapes the way society functions, it is also true that popular perception of the law—as evidenced by critical interpretations of contemporary popular culture⁹—influences the way law develops.¹⁰

Public perception of the law is heavily influenced by the images shown and ideas expressed by the mass media,¹¹ television in particular.¹² This Note challenges the notion that popular television shows mainly impact perceptions of the law held by the general public and have little impact on the legal community at large, in particular judicial reasoning. The Note provides a new perspective on emerging studies of the influence of television shows on the law by arguing that judicial, legislative, and scholarly references to two prime-time television shows—*The Simpsons* and *24*¹³—adversely affect the legal reasoning employed by judges, legal academics, and policymakers.

Part I draws upon specific examples of manifestations of the law in both *The Simpsons* and *24*, and analyzes the ways in which each series uses the law to express ideas about the world. Part II examines the relationship between legal culture and popular culture, specifically

Symposium, 43 N.Y.L. SCH. L. REV. 653, 653 (2000).

⁹ Law and popular culture scholar Lawrence M. Friedman defines “popular culture” as “the norms and values held by ordinary people, or at any rate by non-intellectuals” as communicated in works “whose intended audience is the public as a whole.” Friedman defines “legal culture as “ideas, attitudes, values and opinions about law held by people in a society.” Finally, “legal popular culture” consists of those “attitudes about law which ordinary people or more generally lay people hold.” Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579, 1579 (1989).

¹⁰ See Austin Sarat, *Living in a Copernican Universe: Law and Fatherhood in A Perfect World*, 43 N.Y.L. SCH. L. REV. 843, 847 (2000) (“[T]he proliferation of law in film, on television, and in mass market publications has altered/expanded the sphere of legal life itself.”).

¹¹ See, e.g., David A. Harris, *The Appearance of Justice: Court TV, Conventional Television, and Public Understanding of the Criminal Justice System*, 35 ARIZ. L. REV. 785, 786 (1993) (today, “popular culture virtually creates the picture people have of criminal justice); Sherwin, *supra* note 8, at 654-55 (“American law cannot be, and historically speaking never has been, insulated from American popular culture.”).

¹² See, e.g., Dr. Kimberlianne Podlas, “*The CSI Effect*”: *Exposing the Media Myth*, 16 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 429, 448 (2006) (exploring the contours of the argument that “people who watch a great deal of television will come both to perceive the real world to match the one on TV and adopt attitudes conforming to that visage”); Maurice Vergeer et al., *Exposure To Newspapers and Attitudes Toward Ethnic Minorities: A Longitudinal Analysis*, 11 HOW. J. OF COMM. 127, 130 (2000); Thomas C. O’Guinn & C. J. Shrun, *The Role Of Television In The Construction Of Consumer Reality*, 23 J. CONSUMER RES. 278, 280 (1996). A number of articles have examined the palpable effects of television shows on public perception of the law. See, e.g., Steven D. Stark, *Special Issues and Topics: Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229, 230 (1987) (“Prime time television drama has the power to change—and has in fact changed—the public’s perception of lawyers, the police, and the legal system.”).

¹³ I have chosen *24* and *The Simpsons* as my focus in this Note because of both the popularity of these television shows and their hypothesized influence in American society. Furthermore, I believe that it will be interesting to discuss both shows because of the fundamental differences in the ways in which each series tackles legal issues and influences law in society.

focusing on the cultivation theory and the influence of popular culture on public perception of the law. Part III argues that the influence of *The Simpsons* and *24* has crept into the reasoning process of contemporary American legal discourse, particularly judicial reasoning. This is demonstrated by judicial reliance on both Homer Simpson and Jack Bauer as primary frames of reference in the contexts of employment and terrorism cases, respectively. Finally, this part argues that judicial reliance on these extralegal sources has adverse consequences, and, from a normative standpoint, impedes the proper functioning and development of the law.

I. 24, *THE SIMPSONS*, AND THE LAW

A. The Simpsons and the Law

No television show in history has tackled as many important issues within contemporary society as *The Simpsons* has over the course of its 20-plus year run.¹⁴ With more than 400 episodes and a full-length feature movie, *The Simpsons* has come to both define a generation and document important changes in society.¹⁵ Most importantly, however, *The Simpsons*, through its unabashed use of satire to depict society, has helped to forge a new way of thinking about the world in which we live.¹⁶ Despite *The Simpsons*' frequent commentary on the legal

¹⁴ For a thorough analysis of many of the issues addressed by *The Simpsons* over the course of its prime-time run, see *infra* note 96. In documenting both the success and the influence of *The Simpsons*, *New York Times* film critic A.O. Scott writes that "Nothing has summed up the promise and confusion of American life in the post-cold war era better than *The Simpsons*. Nothing else has harnessed the accumulated energies and memory traces of the civilization with so much intelligence and originality." A.O. Scott, *Homer's Odyssey*, N.Y. TIMES, Nov. 4, 2001 (magazine), at 43. And, as *Time Magazine*'s James Poniewoznik rhetorically asks, "Is there any situation without a suitable Simpsons quote?" James Poniewoznik, *100 Best TV Shows of All-Time*, TIME, Oct. 2007. See STEVEN KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS: WHAT OUR FAVORITE TV FAMILY SAYS ABOUT LIFE, LOVE, AND THE PURSUIT OF THE PERFECT DONUT 27 (2006) [hereinafter KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS] ("It is certainly possible to ignore the influence of *The Simpsons*, but it is more difficult to deny the very existence of this influence.").

¹⁵ See KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS, *supra* note 14, at 27.

¹⁶ *Id.* at 15-27. Like Socrates, who proclaimed that "the unexamined life is not worth living," *The Simpsons* constantly questions the status quo, undermines figures of authority, and urges fans to think critically about the world. In this way, *The Simpsons* utilizes satire in order to bring about social changes. Despite these observations, however, *The Simpsons* often does support the status quo. *Id.*; see also Kevin K. Ho, Comment, "*The Simpsons*" and the Law: Revealing Truth and Justice to the Masses, 10 UCLA ENT. L. REV. 275, 288 (2003) (*The Simpsons* "ventures into the realm of socially corrective satire; it is not only reflective of a flawed legal system, but also represents an attempt to change the system as well."). Ho continues: "'The Simpsons' uses the age-old form of satire to convey modern and relevant messages regarding the failings of American society, especially with regard to the legal system." *Id.*

system,¹⁷ there has not been a great deal of literature specifically addressing *The Simpsons* and its relationship with the law.¹⁸

Law and the pursuit of justice are central themes explored by *The Simpsons*.¹⁹ The series has devoted entire episodes to contested legal issues such as gun control, gay marriage, the viability of prohibition during the 1930s, the viability of the necessity defense in the context of American criminal law, capital punishment, and many others.²⁰ Thorny legal issues have appeared on *The Simpsons* since the series first aired as shorts on the Tracey Ullman Show in 1987,²¹ and then as a prime time cartoon in 1989.²² These legal dilemmas range from the mundane²³ to highly theoretical problems.²⁴ There have been countless

¹⁷ Various characters on *The Simpsons* have provided commentary on the legal profession. In one episode, for example, C. Montgomery Burns expresses his disdain for lawyers, referring to his highly paid legal team as “vipers” and declaring that they “live on personal injury . . . divorces . . . and pain and misery.” The legal team then validates Burns’s points regarding the coldness of lawyers, by advising Burns to offer Homer Simpson a small settlement amount, which will cause Homer to “be so dazzled [that] he’ll sign anything you shove under his nose.” *The Simpsons: Brother, Can You Spare Two Dimes* (Fox television broadcast Aug. 21, 1992). In another episode, a lawyer who is on the verge of death advises onlookers to remember him “as a drain on society.” *The Simpsons: My Mother the Carjacker* (Fox television broadcast Nov. 9, 2003).

¹⁸ Some writing has been devoted to *The Simpsons* and the law, though most of the literature in this area provides a largely descriptive account of legal references on *The Simpsons*. See, e.g., Ho, *supra* note 16; Larry M. Wertheim, *The Law of The Simpsons*, BENCH & BAR OF MINN., Feb. 2003, available at The Simpsons Archive, <http://www.snpp.com/other/articles/lawsimpsons.html> (last visited Sept. 9, 2007).

¹⁹ On *The Simpsons*, the law is sometimes seen as both an equalizer and a vehicle to achieve justice; this has angered Mr. Burns, who once exclaimed that “[t]his is America—justice should favor the rich!” Burns has used the legal system to his advantage as well: he has threatened to use his ten high priced lawyers to stave off potential lawsuits from angry employees, such as when Marge Simpson alleged employment discrimination when Burns fired her as a result of her refusal to date him. *The Simpsons: Marge Gets a Job* (Fox television broadcast Nov. 5, 1992).

²⁰ See generally KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS, *supra* note 14; Ho, *supra* note 16, at 275; Wertheim, *supra* note 18.

²¹ KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS, *supra* note 14, at 277.

²² *Id.* at 279.

²³ Mundane legal issues constantly arise on *The Simpsons*. See, e.g., *The Simpsons: Realty Bites* (Fox television broadcast Dec. 7, 1997) (real estate law). Sometimes, the characters engage in certain actions specifically to circumvent the legal system. See, e.g., *The Simpsons: The Twisted World of Marge Simpson* (Fox television broadcast Jan. 19, 1997) (a franchisor advised Marge to stage a fake ticker-tape parade in order to escape littering laws); *The Simpsons: The Mansion Family* (Fox television broadcast Jan. 23, 2000) (Homer avoided local prohibitions on alcohol consumption by sailing to international waters).

²⁴ Some of the more theoretical legal issues on *The Simpsons* have arisen in the context of American criminal law. See, e.g., *The Simpsons: Homer Badman* (Fox television broadcast Nov. 27, 1994). (Groundskeeper Willie’s cultural defense); *The Simpsons: Treehouse of Horror IX: Hell Toupee* (Fox television broadcast Oct. 25, 1998) (degree of efficacy of capital punishment); *The Simpsons: Sideshow Bob Roberts* (Fox television broadcast Oct. 9, 1994) (viability and fairness of fundamental aspects of American law); *The Simpsons: Trash of the Titans* (Fox television broadcast Apr. 26, 1998); *The Simpsons: Treehouse of Horror XV: The Ned Zone* (Fox television broadcast Nov. 7, 2004) (viability of the necessity defense in the context of American criminal law).

references to the legal profession on *The Simpsons*,²⁵ and the American legal system has been portrayed in both positive and negative lights.²⁶ Characters on the series often find themselves in legal quandaries and seek the advice of lawyers such as Lionel Hutz, whose law firm is named “I Can’t Believe It’s A Law Firm.”²⁷ *The Simpsons* has also employed some legal terminology in certain episodes, thereby teaching definitions of certain legal terms to its audience.²⁸

B. 24 and the Law

24 has also examined a number of cutting edge legal ideas, including the legality of torture, detainment centers, racial profiling, the viability of the necessity defense in criminal law, the viability of self-defense and duress defenses, the proper definition of treason, proper treatment of prisoners, and many other legal issues pertaining to striking the proper balance between maintaining civil liberties and protecting the nation from harm.²⁹ As the pre-eminent post-9/11 drama/thriller, 24 has tackled dilemmas on the television screen that had generally (with some exceptions) been confined to the pages of scholarly articles and books.³⁰

²⁵ For a satirical critique of the judicial role in an overloaded court system, which does not really solve problems at all, but simply allows litigants to go home only to have them often return for future transgressions, see *The Simpsons: The Parent Rap* (Fox television broadcast Nov. 11, 2001).

²⁶ See, e.g., *The Simpsons: Das Bus* (Fox television broadcast Feb. 15, 1998) (perceived injustices and bright spots of the American legal system explored through a mock trial put on by Springfield schoolchildren); *The Simpsons: Bart Gets Hit By a Car* (Fox television broadcast Jan. 10, 1991) (legal and medical professionals’ manipulation of the court system); see generally Ho, *supra* note 16; Wertheim, *supra* note 18.

²⁷ Hutz has been shown not to be familiar with legalese; in one instance, for example, Hutz moved for a “bad court thingy,” only to be informed by the presiding judge that the proper name is a “mistrial.” Hutz also claimed to have argued “in front of every judge in the state—often as a lawyer!” *The Simpsons: Burns’ Heir* (Fox television broadcast Apr. 14, 1994). Other Simpsonian satire with respect to lawyers and judges abound. C. Montgomery Burns, for example, keeps 10 high-priced lawyers stored away in the closet of his office. Jurors, like Homer Simpson, have been shown to be sleeping during the trial, mildly reflecting the alleged juror misconduct in the U.S. Supreme Court *Tanner* case. See *Tanner v. United States*, 483 U.S. 107 (1987); *The Simpsons: The Boy Who Knew Too Much* (Fox television broadcast May 5, 1994).

²⁸ In the episode *The Boy Who Knew Too Much*, Homer Simpson, after demonstrating his boredom while on jury duty, requested definitions of the words “sequestered” and “deadlocked.” As Kevin K. Ho writes, “[t]his scene draws its humor from the common perceptions that jury duty is a bore and a burden, that jurors do not take their duty seriously, and that laypeople do not understand legal jargon. Thus, it calls into question the integrity of the jury system itself.” Ho, *supra* note 16, at 287. *The Simpsons: The Boy Who Knew Too Much* (Fox television broadcast May 5, 1994).

²⁹ See generally Steven Keslowitz, *The Tao of Jack Bauer* (Dec. 16, 2007) (unpublished manuscript, on file with author).

³⁰ 24 adds an important visual element to many of the ongoing debates regarding the pros and cons of legalizing torture. See *id.* at 30-50 (discussing 24’s visual depiction of the “ticking time bomb” torture scenario in the context of the debates between Harvard law professor Alan M.

Moral and ethical quandaries abound on the series, inspiring much debate as to the possible connection between law and morality.³¹

Viewers are expected and urged to think critically about the diverse points of view with respect to these controversial areas.³² As a result of fictional federal agent Jack Bauer's frequent use of torture, Bauer has testified in front of 24's (fictional) Congress regarding the legality of his actions.³³ Real-life politicians have professed their love for the series.³⁴

Episodes aired during the second and sixth seasons have explored the statutory interpretation of the fourth provision of the 25th Amendment.³⁵ When lawyers appear on the series, they are generally portrayed as meddlers, as they attempt to prevent the controversial (and possibly illegal) actions that federal agents seek to take in order to save the nation from harm.³⁶ Lawyers are also shown to work to prevent the racial profiling of minority groups.³⁷ While engaged in an intense debate regarding the practicality of the employment of specific security measures during season six, Chief of Staff Tom Lennox told Sandra Palmer that her views would make for a "wonderful Law Review

Dershowitz and Harvey A. Silvergate).

³¹ *Id.* at 79-101.

³² A healthy, well-functioning legal system requires that our citizenry remain educated with respect to the justifications for and underpinnings of the law. See Harris, *supra* note 11, at 786 ("Accountability requires accurate information" on the part of the citizenry). An open, vibrant discussion of diverse viewpoints is vital to maintaining a system of accountability with respect to our institutions. Because torture is a subject that is hotly contested among scholars and engulfs the passions of debaters, we can all benefit from intellectual discussions regarding its possible use. And 24 serves as a remarkable springboard for engaging in the debate. *But cf.* Sam Kamin, *How the War on Terror May Affect Domestic Interrogations: The 24 Effect*, 10 CHAP. L. REV. 693 (2007) (arguing that 24 glorifies the use of torture).

³³ Fox Broadcasting Co., *24: Season 7 Trailer*, <http://www.fox.com/24> (last visited May 3, 2008).

³⁴ Senator and presidential hopeful John McCain (R-AZ), an opponent of the legalization of torture, is reportedly a devoted fan of 24, and even made a very brief cameo appearance on the series. Upon Kiefer Sutherland's arrest and imprisonment following a 2007 DUI charge, McCain joked "[i]f I know my Jack Bauer, he's gonna be out of there in a New York minute! I've never seen him held captive for more than five minutes in any episode." Mark Murray, *A Heartbroken McCain*, MSNBC, Oct. 11, 2007, <http://firstread.msnbc.msn.com/archive/2007/10/11/406947.aspx> (last visited Oct. 26, 2007). Senator McCain also listed 24 as his favorite television show on his MySpace page. See <http://www.myspace.com/johnmccain> (last visited Feb. 2, 2008). He has jokingly compared himself to Jack Bauer. See John McCain or Jack Bauer, May 3, 2007, <http://uncutvideo.aol.com/videos/85fb39cc4117a41d7f2aa52dc2a5de5c> (last visited Feb. 2, 2008).

³⁵ 24 explored the constitutional issue regarding the removal of the President of the United States from office if he is unable to fulfill his duties. See U.S. CONST. amend. XXV, § 4. See also Gregory F. Jacob, 7 GREEN BAG 2D 23 (2003) for an analysis of the accuracy of the interpretation of the 25th Amendment on both 24 and *The West Wing*. The author concludes that 24 did not accurately use the law in its plotlines, while *The West Wing*'s implementation of the law was much closer to being accurate.

³⁶ Keslowitz, *The Tao of Jack Bauer*, *supra* note 29, at 47.

³⁷ 24: *Season 6, 7:00 AM – 8:00 AM* (Fox television broadcast Mar. 12, 2007).

article.”³⁸ This exchange served as a classic example of the interplay between law and popular culture.

II. LAW AND POPULAR CULTURE

Contemporary popular and legal cultures are closely intertwined.³⁹ Lawrence M. Friedman and William P. MacNeil, scholars on the subject, argue that this relationship engenders new methods of perceiving both law⁴⁰ and popular culture.⁴¹ Sometimes the legal system, as portrayed, largely echoes contemporary American jurisprudence. At other times, however, popular culture’s depictions of the law in specific contexts undermine the efficacy, if not legitimacy, of aspects of the law.⁴² Orit Kamir, a scholar in this field, has explored this phenomenon in the arena of law films, and concludes that the legal values in the real world and fictional worlds can both reinforce and undermine the values existing in the other.⁴³ Law and film scholar

³⁸ 24: *Season 6, 6:00 AM – 7:00 AM* (Fox television broadcast Jan. 14, 2007).

³⁹ See, e.g., Friedman, *supra* note 9, at 1579 (explaining the interrelationship between legal culture, popular culture, and popular legal culture. Friedman argues that legal culture and popular culture reflect and influence each other); Orit Kamir, *Cinematic Judgment and Jurisprudence: A Woman’s Memory, Recovery and Justice in a Post-Traumatic Society*, J. MEDIA & CULTURAL STUD. 271 (2005); Naomi Mezey & Mark C. Niles, *Screening the Law: Ideology and Law in American Popular Culture*, 28 COLUM. J.L. & ARTS 91, 93 (2005) (“American popular culture is saturated with legal themes.”).

⁴⁰ See WILLIAM P. MACNEIL, *LEX POPULI: THE JURISPRUDENCE OF POPULAR CULTURE* 1 (2007) (“Contemporary pop culture has something important to say to and about jurisprudence, above and beyond what the mainstream legal academy has to offer.”).

⁴¹ See Friedman, *supra* note 9, at 1579 (“In the first place, legal culture acts as an intervening variable, a mechanism for transforming norms of popular culture into legal dress and shape. In the second place, legal and popular culture, as images of each other, help explicate and illuminate their respective contents.”); see also Kamir, *supra* note 39, at 257 (observing that both law and film invite “participants—viewers, legal professionals, parties to legal proceedings and/or members of the public—to share its vision, logic, rhetoric and values”).

⁴² MacNeil argues that the depictions of the law in popular media “not only reach a much larger audience than standard legal texts, but potentially, and even more democratically, they also help restore topics of jurisprudential import—justice, rights, ethics—to where they belong: not with the economists, not with the sociologists, not even with the philosophers, but rather with the community at large.” MACNEIL, *supra* note 40, at 2. Thus, even if it is true that popular culture’s depictions of the law undermine its efficacy in certain respects, it is important to acknowledge the argument that popular culture has also served to expose the public to various aspects of the law, and in this way encourages individuals to critically examine the ways in which the law functions.

⁴³ In the context of law films, Kamir argues that:

[I]n its cinematic judgment, a law-film may echo the worldview encoded in its fictional legal system, allowing legal and cinematic mechanisms to reinforce each other in the creation of a community and a worldview. Alternatively, a law-film may constitute a community and value system that criticizes or undercuts those supported by its fictional legal system. Moreover, as a rich, multi-layered text, a law-film can perform both of these functions concomitantly, through different means and on different levels, evoking complex and even contradictory responses towards social and legal issues

2008] THE SIMPSONS, 24, AND THE LAW 2795

William I. Miller argues that the cinematic conception of equity provides a sense of justice, balance, and closures that the passionless law fails to deliver.⁴⁴ Both Kamir's and Miller's observations ring true in the arena of television shows. *24*'s break from the strict constraints of the law in desperate situations, for example, serves as an equitable contrast to the constraints of existing law.⁴⁵

Miller's observations with respect to film are particularly relevant to an analysis of the portrayal of the law on *24*. On *24*, a desire to comply with the law rarely serves a deterrent function with respect to Jack Bauer, as Bauer is willing to break the law in order to perform those actions that he believes are necessary to save the United States from imminent harm. On *24*, the law is portrayed as weak and inflexible, as Bauer is often unable (and unwilling) to conform his actions to the requirements of the law. But the fact that Bauer does often break the law serves to placate the perceptions that the law is so constraining as to serve as a watchdog over the actions of federal agents in desperate situations. In one episode, a lawyer associated with the fictional Amnesty Global stops by the Counter Terrorist Unit (CTU) in order to prevent the torture of a suspected terrorist.⁴⁶ Bauer then requests that he be stripped of his title and, now acting as a civilian, secretly tortures the suspect. In the context of Miller's argument, Jack Bauer's actions serve to placate viewers by demonstrating that even if our legal system lacks the flexibility to deal with a particular situation, fearless federal agents will find a way to skirt the law in order to achieve vengeance and protection. This equitable contrast has not been lost on members of the federal judiciary.⁴⁷

presented on screen.

Kamir, *supra* note 39, at 269.

⁴⁴ William I. Miller, *Clint Eastwood and Equity: The Virtues of Revenge and the Shortcomings of Law in Popular Culture*, in *LAW IN THE DOMAINS OF CULTURE* 161 (A. Sarat & T. R. Kearns eds., 1998).

⁴⁵ The equitable function of popular culture in this context should not be understated. Film and television can serve to fill in gaps left open by the law, and create a pervasive sense of equity when the law does not provide such equity. More importantly, however, is the idea that popular culture can "accommodate the human desire and need for vengeance, which is no longer honoured and served by the law." *Id.* at 161. In the context of law films, William I. Miller argues that "[f]ilms thus constitute a popular-cultural, much-needed system of equity, complementing the common law. This cinematic notion of equity offers a sense of justice, balance and closure, that the legalistic, calculated, passionless law fails to deliver." *Id.*

⁴⁶ *Season 4, 12:00 AM – 1:00 AM* (Fox television broadcast Apr. 18, 2005).

⁴⁷ Part II of this Note outlines the tenets of cultivation theory and examines the manifestations of this theory by specifically analyzing the impact of *The Simpsons* and *24* on the general public's perception of the law. Part III both extends this analysis by arguing that both shows serve as concrete examples of manifestations of cultivation theory in the arenas of legal academia, lawmaking, and judicial reasoning and provides a normative perspective on this phenomenon.

A. *Influence on the General Public*

The influence of television and movies on the general public—particularly on the way in which people perceive the law—has been the subject of many scholarly articles.⁴⁸ This is not to suggest that television and movies are the only important fountains of information,⁴⁹ but rather that the impact of television and movies on perception of the law should not be ignored. The influence of both news and entertainment programming has affected not only the way in which the public perceives the structure and functioning of the court system,⁵⁰ but also the ways in which legal issues impact the world around them.⁵¹ This phenomenon is not surprising if we consider the pervasive influence of television in our lives and its effects on our collective psyche.⁵² In our “public opinion” society, public perception of the law

⁴⁸ See, e.g., Harris, *supra* note 11, at 797 (“[M]uch of the information television viewers get about the legal system comes not in the form of news, but in the form of entertainment programming.”). Harris observes that “[f]or most people, television has become an important (and for some, the only) source of information. Almost nowhere is this more true than in the field of law.” *Id.* at 796. Harris writes that “popular culture virtually creates the picture people have of criminal justice.” *Id.* at 786; Elliot E. Slotnick, *Television News and the Supreme Court: A Case Study*, 77 JUDICATURE 21, 22 (1993) (concluding that most people get most or all of their information and news from television); Brian Lowry, *In King Trial Wake, News Media Will be the Message*, DAILY VARIETY, Apr. 7, 1993 (reporting that a Roper Organization study indicates that “69 percent of Americans, the highest percentage yet, view television as their primary source of news and information”).

⁴⁹ See, e.g., KESLOWITZ, *THE WORLD ACCORDING TO THE SIMPSONS*, *supra* note 14, at 129 (observing that while television alters the messages that the public (as consumers of news and information) receives, the print medium remains a vital source of information and is arguably still the cornerstone of information); Peter Clarke & Eric Fredin, *Newspapers, Television, and Political Reasoning*, 1978 PUB. OPINION Q. 143, 145 (the public depends on newspapers “somewhat more than television” for political information); see also GEORGE COMSTOCK, *TELEVISION IN AMERICA* 120-21 (1980); Doris A. Graber, *Evaluating Crime-Fighting Policies: Media Images and Public Perspective*, in *EVALUATING ALTERNATIVE LAW-ENFORCEMENT POLICIES* 179-188 (Ralph Baker & Fred A. Meyer eds., 1979).

⁵⁰ See, e.g., Podlas, *supra* note 12.

⁵¹ Harris, *supra* note 11, at 796-97. George Gerbner and Larry Gross argue that viewers who watch a great deal of violent programming overestimate their own chances of being involved in violence. George Gerbner & Larry Gross, *Living With Television: The Violence Profile*, 26 J. COMM. 173, 191-93 (1976); George Gerbner et al., *TV Violence Profile No. 8: The Highlights*, 27 J. COMM. 171, 176 (1977). Gerbner and Gross also opine that because fear is “easy to exploit . . . [television violence] may cultivate exaggerated assumptions about the extent of threat and danger in the world and lead to demands for protection.” *Id.* at 193. These demands can influence viewers to head to the voting booths and vote for candidates espousing such “tough on crime” views. Harris points out that a causal connection between watching violent programming and developing exaggerated fears of being involved in violence cannot be assumed. Harris, *supra* note 11, at 797. Friedman opines that it might be that viewers with a predisposition towards violent attitudes watch more of this violent programming, and it may not be the case that their attitudes with respect to crime and violence are influenced by television programming. See Friedman, *supra* note 9, at 1580.

⁵² See, e.g., Ronald K. L. Collins & David M. Skover, *Pissing in the Snow: A Cultural*

is crucial because it can influence the way in which the law develops.⁵³ Politicians, for example, often respond to public reaction to the judicial system by enacting or modifying specific laws, reforms, and changes.⁵⁴ Some movies and television shows have even led to specific changes and shifts in legislation.⁵⁵ This phenomenon is largely attributable to the “disinformation” that the public frequently receives on television.⁵⁶ Specific episodes of both *The Simpsons* and *24* have influenced legislation.⁵⁷

Both Jack Bauer and Homer Simpson are consistently tried in the court of public opinion. When Homer, for instance, purchases a handgun in order to protect his family (*The Cartridge Family*) or performs gay marriage ceremonies (*There’s Something About Marrying*), the audience is encouraged to consider whether Homer is acting both morally and within the confines of our legal system.⁵⁸ It is here that *The Simpsons* urges viewers to formulate normative conclusions with respect to how American society should deal with fundamental moral and legal issues. If legislatures respond to the enactment of such legislation by passing laws which reflect the public’s

Approach to the First Amendment, 45 STAN. L. REV. 783, 785 (1993) (reviewing JAMES B. TWITCHELL, CARNIVAL CULTURE: THE TRASHING OF TASTE IN AMERICA (1992)) (“TV talk is the talk of our times. . . . So much of who we are, what we think, how we express ourselves, and how we perceive and react to our world are tied to television.”).

⁵³ The importance of popular culture with respect to its influence on legal culture stems from its ability to shape the way in which people think about the law. Harris writes that “what people think about the law is important because this is a ‘public opinion’ society, which makes heavy use of referenda, and in which government does not lift a finger or move a muscle, without reading the tea leaves of public desire.” Harris, *supra* note 11, at 796.

⁵⁴ See Harris, *supra* note 11, at 796 (“[P]opular culture may have a direct effect on the institutions of justice themselves. The public’s perception of justice therefore influences courts, laws and judges because popular culture influences the democratic process.”).

⁵⁵ See *infra* note 101.

⁵⁶ See generally NEIL POSTMAN, AMUSING OURSELVES TO DEATH: PUBLIC DISCOURSE IN THE AGE OF SHOW BUSINESS (1985) (introducing the concept of “disinformation,” a phenomenon whereby erroneous information is transmitted to the public, who subsequently come to rely on its veracity); see also KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS, *supra* note 14, at 142-46 (discussing the dangers of disinformation in a democracy). Keslowitz argues that disinformation is more dangerous than misinformation because the possession of disinformation creates the false expectation that viewers have accurate information when heading to the voting booths. In this way, disinformation can lead individuals to vote for politicians who espouse particular views (similar to the views held by the voting public as a result of disinformation) pertaining to the enactment of specific legislation.

⁵⁷ See Part III.A for a detailed discussion of the influence of both shows on legislation.

⁵⁸ Even in episodes of *The Simpsons* in which there is no judge or jury trial, we, as viewers, try Homer Simpson in our own courts. Discussing this phenomenon in legal films, Carol Clover writes that “the narrative machine underneath the manifest plot, whatever its label, is the trial. There may be no trial in the movie, but there is a trial underneath and behind it; the movie itself mimics the phases, the logic, and the narrative texture of the trial.” Carol Clover, *Law and the Order of Popular Culture in LAW IN THE DOMAINS OF CULTURE* 110 (A. Sarat & T. R. Kearns eds. 1998).

Indeed, many plots in episodes of *The Simpsons* foster thinking about the issues presented in a similar manner as we would think about such issues in a jury trial.

misunderstanding of legal issues as portrayed on *The Simpsons*, laws will be tailored not to the needs of contemporary society but rather to the perceived insufficiencies of the fictional society in which Homer Simpson resides.

So, too, with *24*. When Jack Bauer tortures a suspected terrorist, the television audience is expected to debate the legality and morality of torture in “ticking-time bomb”⁵⁹ scenarios. Furthermore, when we watch characters on *24* attempt to invoke the 25th Amendment⁶⁰ in order to unseat a sitting President, we ask pointed questions: Does the 25th Amendment *really* permit this—and if so, should it? Such public scrutiny of the actions of both Homer Simpson and Jack Bauer lead to normative evaluations of the law as portrayed in both Springfield and the world of *24*.⁶¹ As demonstrated by Kamir’s stalking legislation studies, such evaluations can lead to a real influence in terms of the development of law.

B. *Cultivation Theory*

Scholars have addressed the ways in which inaccurate world models with respect to incidences of crime on television influence public perception of the law.⁶² The most popular theory⁶³ to posit a

⁵⁹ The “ticking time bomb” scenario occurs when a terrorist suspect knows of the whereabouts of a dangerous weapon set to go off within a very short period of time and refuses to reveal the location of the weapon. The issue is whether it should be permissible to torture the suspect in such a scenario. See Keslowitz, *The Tao of Jack Bauer*, *supra* note 29, at 72.

⁶⁰ See U.S. CONST. amend. XXV, § 4.

⁶¹ Evaluations of the law on fictional television shows can have an influence on public perception of the law in the real world. If the law is inaccurately portrayed on television shows, we can begin to see deleterious effects in contemporary society. As David Harris argues, “erroneous information in popular culture may damage the ability to make correct assessments of institutions and policies, and may even affect the law itself.” Harris, *supra* note 11, at 786.

⁶² See, e.g., Sarah Eschholz, *The Media and Fear of Crime: A Survey of the Research*, 9 U. FLA. J.L. & PUB. POL’Y 37, 38 (1997) (observing that both the print media and television “greatly exaggerate the incidence of crime in the United States, particularly violent crime . . . and convey a more violent and dangerous view of our world than exists in reality”). Eschholz argues that “[b]ecause most of us lack direct experience with many social problems, such as violent crime, television and newspapers serve as our primary frame of reference for these issues. Such ‘exaggerated emphasis on violent crime. . . may produce a distorted image of what is important and how social policy should be developed.’” See also *id.* at 42 (discussing George Gerbner’s seminal *Cultural Indicators Project*, in which Gerbner and his associates developed the “cultivation hypothesis” which predicted that television viewing, irrespective of the specific types of television programs watched, would inevitably produce an image of the world as a scary place. The researchers concluded that television series’ use of violence to resolve conflicts may be incorporated into the viewing public’s assumptions regarding incidences of crime in the real world and therefore lead to increased levels of public fear).

⁶³ Podlas points to the existence of a few less popular theories, including Albert Bandura’s social learning or cognitive theory, and mental processing models such as heuristic processing model of cultivation effects. Podlas, *supra* note 12, at 447; see, e.g., ALBERT BANDURA, SOCIAL

relationship between television viewership and attitudes, behaviors, and beliefs is cultivation theory.⁶⁴ Cultivation theory hypothesizes that viewers' perceptions of reality are cultivated in a manner consistent with the programming to which they are exposed.⁶⁵ In this context, it is important to consider the observation that *24* serves as the primary frame of reference⁶⁶ for many Americans with respect to issues such as torture, terrorism, and even presidential politics.⁶⁷ Because *24* presents a hyper-dangerous world, it is highly probable, based on the television crime studies,⁶⁸ that *24* has a palpable effect on public fears of terrorists.⁶⁹ The media plays a large role in engendering the perception

LEARNING THEORY 64-68 (Prentice Hall 1977); L.J. Shrum, *Media Consumption and Perceptions of Reality: Effects and Underlying Processes*, in MEDIA EFFECTS, ADVANCES IN THEORY AND RESEARCH 43, 78 (Jennings Bryant & Dolf Zillman ed., 2002); Hyung-Jin Woo & Joseph R. Dominick, *Acculturation, Cultivation, and Daytime TV Talk Shows*, 80 JOURNALISM & MASS COMM. Q. 109, 112 (2003).

⁶⁴ See Podlas, *supra* note 12, at 447.

⁶⁵ *Id.* at 447. Cultivation theory posits that “the overall pattern of television programming to which viewers are exposed cultivates in them common perceptions of reality.” *Id.* Podlas writes that under cultivation theory, “[t]his ‘reality’ tends to mirror what viewers see on the TV screen. Therefore, people who watch a great deal of television will come both to perceive the real world to match the one on TV and adopt attitudes conforming to that visage.” Cultivation theory “divides the world into ‘heavy’ and ‘light viewers,’ and investigates the influence of media messages on society as a whole.” Podlas observes that “cultivation is not an incremental influence, but a presumed effect of significant viewing.” *Id.* at 447-48.

⁶⁶ In other contexts, scholars have argued that the jurors are likely influenced by the ways in which popular culture portrays serious issues. With respect to *Fatal Attraction's* perceived influence both on stalking legislation and how a juror will understand the legal standard regarding stalking, Mathieson observes that “[s]ince the stalking victim in *Fatal Attraction* . . . is a fairly normal, empathetic, rational person, it is easy for the jury to use that fictional character as a model for the fictitious legal standard they are supposed to apply.” Anna-Rose Mathieson, *Survey: V. Gender and the Law* 101 MICH. L. REV. 1589, 1599 (2003) (reviewing ORIT KAMIR, EVERY BREATH YOU TAKE: STALKING NARRATIVES AND THE LAW (2001)) (“Kamir argues that by asking the jury to evaluate what an ill-defined ‘ideal average man’ would feel, the reasonable person standard ‘invites uncritical import of cultural images into the legal discourse, thereby potentially allowing moral panic to penetrate the law.’” *Id.* at 1599. Because the general public has little exposure to visual depictions of torture outside of television, *24*, as the most popular television show depicting terrorism serves as a primary frame of reference for Americans. See Keslowitz, *The Tao of Jack Bauer*, *supra* note 29, at 45. See *infra* Part III for an argument that Jack Bauer serves as the primary frame of reference in a number of judicial opinions.

⁶⁷ Dennis Haysbert, the actor who portrayed the first African American president on *24* argues that his character influenced many members of the *24* audience to support presidential hopeful Senator Barack Obama. Haysbert argues that “[a]s far as the public is concerned, it did open up their minds and their hearts a little bit to the notion that if the right man came along . . . that a black man could be president of the United States. . . . People on the street would ask me to run for office . . . when I went to promote [24].” Haysbert also noted that he and Obama “have a similar approach to who and what we believe the president is. . . . Barack doesn’t get angry. He’s pretty level. That’s how I portrayed President Palmer: as a man with control over his emotions and great intelligence.” Obama and Palmer were senators and campaigned for president in their mid-40s. Lisa Claustro, *Haysbert Says 24 Role Paved the Way for Presidential Hopeful Barack Obama*, <http://www.buddytv.com/articles/24/haysbert-says-24-role-paved-th-15880.aspx> (Jan. 22, 2008).

⁶⁸ See *supra* note 58.

⁶⁹ The themes engendered by the media, Eschholz observes, “often give the viewer . . . the

that certain crimes occur more frequently than they do in reality.⁷⁰ One might go so far as arguing that *24* has the capability of inducing a “moral panic,”⁷¹ which Sarah Eschholz argues is driven largely by fear of criminal activity and requires public participation to sustain its viability.⁷² Furthermore, *24* (like much of the rest of popular media) has a tendency to link together individual incidences of, say, torture in order to create a recurring theme.⁷³ Because the general public is largely unfamiliar with torture outside the context of its depictions in popular culture, it is likely that *24*’s creation of this recurring theme influences the ways in which jurors view torture.⁷⁴ Juror reliance on *24* as a primary means of information regarding the use of torture will have the likely (adverse) effect of causing individual jurors to give less credence to countervailing considerations presented at trial.

With respect to *24*, we can unmask a danger lurking beneath the inaccurate portrayal of law and justice on the show. By presenting its audience with a visual depiction⁷⁵ of the highly improbable “ticking time bomb” scenario,⁷⁶ *24* presents an image of terrorism that the law

impression that the behavior emphasized in a particular crime . . . is increasing.” Eschholz, *supra* note 62, at 50.

⁷⁰ Eschholz argues that the media play a significant role in “energizing public fear by decontextualizing crimes and publicizing certain crimes in disproportion to their actual occurrence.” *Id.* at 50.

⁷¹ It is debatable whether *24*, through its frequent depictions of terrorism, has created a “moral panic” in America. If *24* has in fact engendered such a state, we can expect that the public response to the themes expressed on *24* may create their own “lasting repercussions for society in terms of drastic changes in laws and social policy.” *Id.* at 48. See also Mathieson, *supra* note 66, at 1593 (“Kamir argues that our society is currently in the midst of one of these moral panics” with respect to stalking.); see generally STANLEY COHEN, *FOLK DEVILS AND MORAL PANICS* (3rd ed. 2002).

⁷² Eschholz, *supra* note 62, at 50.

⁷³ Mathieson observes that “[o]ur societal narratives are a key reference point whenever we are asked to determine the appropriate action in an unfamiliar situation.” Mathieson, *supra* note 66, at 1599.

⁷⁴ Keslowitz, *The Tao of Jack Bauer*, *supra* note 29, at 74.

⁷⁵ *24*’s visual depictions of torture have an undeniable impact on the torture debate. *USA Today* reports that “Alistair Hodgett of Amnesty International credits *24* . . . with realistic depictions that provide ‘a clearer idea of what torture involves. . . . They do more to educate than desensitize.’” Bill Keveney, *Fictional 24 Brings Real Issue of Torture Home*, *USA TODAY*, Mar. 13, 2005, available at http://www.usatoday.com/life/television/news/2005-03-13-24-torture_x.htm. Hodgett’s argument is a tricky one, and it is not entirely clear, on the surface, whether the primary effect of *24*’s depictions of torture serve to objectively educate viewers, to desensitize viewers, or to promote a particular political agenda. Documenting the upsurge in the frequency of the use of torture on more recently aired seasons of *24*, Douglas L. Howard writes that “[w]here Bauer’s violent interrogation of a non-compliant witness or terrorist contact once seemed shocking and frightening, as we become used to the show, we now expect it as part of Bauer’s and CTU’s protocol in such situations.” See Douglas L. Howard, *Torture and Morality in Fox’s 24*, in *READING 24: TV AGAINST THE CLOCK* 140 (Steven Peacock ed., 2007).

⁷⁶ *24* has played a significant role in the recent upsurge of torture scenes on television. The Parents Television Council, a television watchdog group, counted 102 scenes of torture on prime time television during the five years prior to September 11, 2001. See *The Parents Television Council*, <http://www.parentstv.org/> (last visited May 1, 2008). In the following three years, that

has no effective way of dealing with. Under a cultivation theory analysis, it is expected that 24's vast audience⁷⁷ will perceive terrorists as extremely capable of causing harm to Americans—in a way that exaggerates the true threat.⁷⁸ Similarly, because of these exaggerated depictions of terrorists' capabilities on 24, the law is shown to be largely ineffective with respect to preventing attacks on American soil. In his position as federal super-agent, Jack Bauer serves the role of a gap filler with respect to perceived insufficiencies in the law and in its ability to protect the country from harm.⁷⁹ In reality, however, terrorist capabilities to attack America are not as developed as they are presented to be in the show.⁸⁰ Furthermore, the ticking-time bomb scenario is highly idealized and rare in real life.⁸¹ Although writers have

number increased to 624, with 24 leading the way with such depictions. See Tom Regan, *Does 24 Encourage U.S. Interrogators to 'Torture' Detainees?*, CHRISTIAN SCI. MONITOR, Feb. 12, 2007, available at <http://www.csmonitor.com/2007/0212/p99s01-duts.html>. Sixty-seven scenes depicting torture were broadcast during the first five seasons of 24. This figure translates roughly to one torture scene per every two hours. The *New York Times* noted that “[v]ery little public scrutiny—much less protest—of violent interrogation is depicted” on the show. Adam Green, *Normalizing Torture on 24*, N.Y. TIMES, May 22, 2005, available at <http://thinkprogress.org/2007/02/13/torture-on-24/>. It is also worth noting that the degree of intensity of interrogation techniques used on 24 has increased since the show's inception. Howard observes that during the earlier seasons of 24, Jack Bauer more frequently spoke about torture as opposed to actually resorting to its use against suspects. See Douglas L. Howard, *Torture and Morality in Fox's 24*, in *READING 24*, *supra* note 75, at 134. For an argument that Americans have become blasé with respect to torture, see Rosa Brooks, Opinion, *America Tortures (Yawn)*, L.A. TIMES, Feb. 23, 2007, available at <http://www.latimes.com/news/opinion/la-oe-brooks23feb23,0,6489262.column?coll=la-opinion-center>. Other critics, however, have argued that 24 reflects, but does not necessarily influence ideas in contemporary society. Larissa Dubecki, *TV's Torturers May Be Making the Unspeakable Acceptable*, AGE, Mar. 2, 2007, available at <http://www.theage.com.au/news/opinion/tvs-torturers-may-be-making-the-unspeakable-acceptable/2007/03/01/1172338792224.html> (arguing that 24 mines the seam “between illusion and reality,” which supports “the fact that popular entertainment doesn't inhabit a vacuum but is very much a product of its time”).

⁷⁷ During 2006, 24 had weekly viewership of close to 14.0 million fans. See *24 (TV series)*, [http://en.wikipedia.org/wiki/24_\(TV_series\)](http://en.wikipedia.org/wiki/24_(TV_series)) (last visited Dec. 18, 2007). At one point in 2006, ratings peaked at 16.3 million viewers. *Id.*

⁷⁸ In contrast to the frequency of terrorist attacks depicted on 24, New York City mayor Michael Bloomberg stated that an individual is more likely to be struck by lightning twice than be killed in a terrorist attack. Marcia Kramer, *Bloomberg on JFK Plot: 'Stop Worrying, Get a Life'*, WCBSTV.COM, June 5, 2007, <http://wcbstv.com/topstories/Terrorism.New.York.2.244966.html>. See also BARRY GLASSNER, *THE CULTURE OF FEAR: WHY AMERICANS ARE AFRAID OF THE WRONG THINGS* (2000) (documenting the ways in which the fears of Americans are misguided as a result of media influences).

⁷⁹ Jack Bauer arguably represents justice. If the audience views his illegal actions as constituting justice, their perceptions of the law (and their perceived vision of what the law *should* look like) will unfortunately be based on highly improbable situations and thus improperly formed. As Harris writes, “[t]he appearance of justice in popular culture may influence legal culture, and in turn the law itself; thus appearance may have substantive impact upon laws and legal institutions.” Harris, *supra* note 11, at 789.

⁸⁰ Keslowitz, *The Tao of Jack Bauer*, *supra* note 29, at 78.

⁸¹ See *id.* at 80 (discussing Harvey A. Silvergate's argument pertaining to the rarity of the “ticking time bomb” scenario).

previously argued that *24* provides a springboard for urging viewers to debate critical issues,⁸² the idea that *24* helps to shape the debate (and viewers' perceptions) is undeniable.⁸³ *24*, however, largely departs from the mold created by other television shows in that the show often portrays the law as an unfortunate barrier to effectively remedying situations and creating a pervasive sense of justice.⁸⁴

The Simpsons makes extensive use of satire in order to convey messages and poke fun at specific groups and individuals as well as society in general.⁸⁵ Satire, by definition,⁸⁶ exaggerates circumstances in society in order to set forth a specific conception of reality. On *The Simpsons*, for instance, corruption among politicians, lawyers, doctors, nuclear power plant owners, and police officers is rampant.⁸⁷ Conditions in Springfield often require that harsh laws be passed in order to solve specific societal problems. In *The Cartridge Family*, for example, the National Rifle Association is portrayed as completely absurd, and might galvanize viewers, under a cultivation theory analysis, to protest the existence of the organization.⁸⁸ And when anti-gay marriage advocates watch Ralph Wiggum marry a tiger,⁸⁹ they are provided with support for their position that there should be certain limitations on what constitutes marriage.

Indeed, if *The Simpsons'* audience watches specific episodes without an appreciation for the satire and instead believes that *The Simpsons* accurately presents social problems and the ability of the law

⁸² See generally *id.*; READING *24*, *supra* note 75.

⁸³ Popular culture and the mass media often offer interpretations of how to interpret the themes that they present. See Eschholz, *supra* note 62, at 39.

⁸⁴ See generally Podlas, *supra* note 12 (exploring the veracity of the existence of the "CSI Effect," which some scholars argue engenders idealized viewer expectations with respect to the efficacy of the law and the ability of police and federal agents to extract and gather evidence). Harris observes that "[w]hile the portrayal of police in conventional television has often been sympathetic, it has conditioned viewers to expect much more of law enforcement, prosecutors, and courts than they can realistically deliver." Harris, *supra* note 11, at 813. *24* breaks from this conventional television format in that federal agents are consistently shown to have great difficulty garnering evidence and must resort to measures not sanctioned by the legal system in order to acquire such evidence. Furthermore, courts and the legal system on *24* are perceived as too slow and inefficient to adequately deal with the complex, time-sensitive situations that arise on the show.

⁸⁵ See generally KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS, *supra* note 14.

⁸⁶ Cultural critic Chris Turner, discussing the underlying goals of satire, notes that "satire has . . . ambitious goals: it starts from a belief that the ideas and things it mocks—usually ideas and things invested with authority—are wrong and that exposing this fact through satire will erode their authority and precipitate change. Satire is in this sense inherently optimistic." CHRIS TURNER, PLANET SIMPSON 238 (2005).

⁸⁷ See KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS, *supra* note 14, at 19-22.

⁸⁸ *Id.* at 204-06.

⁸⁹ At the close of the episode *There's Something About Marrying*, *The Simpsons* portrayed Ralph's decision to marry a tiger as a logical extension of the idea that if gay marriage is legalized, unexpected consequences will result as society slides down a slippery slope. *The Simpsons: There's Something About Marrying* (Fox television broadcast Feb. 20, 2005).

to handle such problems, cultivation theory provides that the audience will have an inaccurate perception of justice and the law.⁹⁰ This has led to a documented influence of *The Simpsons* in the legal world: specific episodes of *The Simpsons* have been cited by fans in discussions of how best to reform the law. When New York Senator Charles Schumer visited a high school to speak on the subject of school violence, for example, one of the students responded to the question of gun control that arose by invoking an episode of *The Simpsons*.⁹¹ Specific inaccuracies with respect to the application of fundamental common law doctrines—such as Nelson Muntz’s declaration that the Halloween tradition of ‘trick or treat’ represents a binding oral contract between the parties to the transaction⁹² and Springfield’s use of local law to deport an illegal immigrant⁹³—buttress the argument that reliance on *The Simpsons* for legal knowledge can create misconceptions of the state of the law.⁹⁴

Such misconceptions can influence the ways in which jurors view cases involving similar legal issues, thus increasing the likelihood that they will decide such cases based on their understanding of the way in which the law functions on fictional television shows. The dangers of juror reliance on both *The Simpsons* and 24 in specific legal contexts, however, pale in comparison with the prospect of judicial and legislative reliance on these extralegal sources when enacting laws or deciding cases.

III. POPULAR CULTURE’S REACH INTO THE LEGAL ARENA

Although scholars have largely focused their attention on the influence of popular culture on the general public,⁹⁵ legal scholars,

⁹⁰ Because *The Simpsons* is multilayered in nature, the show can be watched and appreciated on many different levels. Inaccurate presentations of social realities—including the capability of the law to contend with such realities—are a given on *The Simpsons*.

⁹¹ The student observed: “It reminds me of a Simpsons episode. Homer wanted to get a gun, but he had been in jail twice and in a mental institution. They labeled him as ‘potentially dangerous.’ So Homer asks what that means and the gun dealer says, ‘It just means you need an extra week before you can get the gun.’” KESLOWITZ, *THE WORLD ACCORDING TO THE SIMPSONS*, *supra* note 14, at 10-11.

⁹² *The Simpsons: Treehouse of Horror XVIII* (Fox television broadcast Nov. 3, 2002).

⁹³ In *Much Apu About Nothing*, Springfield residents pass Proposition 24, which orders the deportation of illegal aliens. One Springfield resident, Groundskeeper Willie, is deported at the end of the episode, despite the fact that in the real world, federal law controls these immigration issues. *The Simpsons: Much Apu About Nothing* (Fox television broadcast May 5, 1996).

⁹⁴ Part III.C.4, *infra*, provides a brief normative assessment with respect to judicial reliance on extralegal sources and also presents the argument that these television shows are exerting a largely undocumented influence on the ways in which individuals with varying degrees of exposure to the law both perceive and apply the law in specific circumstances.

⁹⁵ See *supra* Part I.

lawmakers, and judges have been influenced by the ways in which law has been portrayed on television. This Part uses *The Simpsons* and *24* as specific examples of cultivation theory's reach into the legal arena and provides a normative evaluation of this phenomenon.

A. *Influence on Legal Scholars*

Scholars and authors have devoted serious academic attention to both *The Simpsons* and *24*, specifically with respect to the storylines that in some ways mirror legal problems and issues in contemporary society.⁹⁶ In an essay appearing in the *Fordham International Law Journal*, for instance, James R. Silkenat and Peter M. Norman use specific scenes from *24* to examine the complex legal idea of extraordinary rendition.⁹⁷ Professor Walter Sharp at the Georgetown University Law Center teaches a course entitled *The Law of 24*.⁹⁸ In an article appearing in the *Fordham Law Review*, Saul Cornell and Nathan DeDino use a classic scene from *The Simpsons* season nine episode *The Cartridge Family* to explore the intricacies of gun control doctrines.⁹⁹ In an article entitled *Proving Homer Simpson Wrong*, published by the Chicago Bar Association, Michael B. Hyman argues that members of the legal profession are responsible for ensuring that the general public understands that Homer Simpson was mistaken when he remarked, "When will people learn? Democracy just doesn't work!"¹⁰⁰ Legal

⁹⁶ A number of academic books and thesis articles have been devoted to critical analyses of *The Simpsons*. See, e.g., JOHN ALBERTI, *LEAVING SPRINGFIELD* (2003); ALAN BROWN & CHRIS LOGAN, *THE PSYCHOLOGY OF THE SIMPSONS* (2005); PAUL HALPERN, *WHAT'S SCIENCE EVER DONE FOR US* (2007); WILLIAM IRWIN ET. AL, *THE PHILOSOPHY OF THE SIMPSONS: THE D'OH OF HOMER* (2001); KESLOWITZ, *THE WORLD ACCORDING TO THE SIMPSONS*, *supra* note 14; MARK PINSKY, *THE GOSPEL ACCORDING TO THE SIMPSONS* (2001); CHRIS TURNER, *PLANET SIMPSON* (2005). College courses exploring the academic relevance of *The Simpsons* have been taught at a number of universities, including Tufts, Carnegie Mellon, University of Colorado at Denver, Drew University, University of California at Berkeley, and many others. Books have also been devoted to critical analyses of *24*. See, e.g., Keslowitz, *The Tao of Jack Bauer*, *supra* note 29; READING *24*, *supra* note 75. The fact that legal scholarship has devoted serious attention to debunking the perceived abuses of law on *24* demonstrates the influence of the series on public perception of the law. See, e.g., Harold Hongju Koh, *War, Terrorism, and Torture: Limits on Presidential Power in the 21st Century: Can The President Be Torturer in Chief?*, 81 *IND. L.J.* 1145, 1164 (2006) (exposing perceived abuses of the law on *24*).

⁹⁷ James R. Silkenat & Peter M. Norman, *Jack Bauer and the Rule of Law: The Case of Extraordinary Rendition*, 30 *FORDHAM INT'L. L.J.* 535 (2007).

⁹⁸ Georgetown University Law Center, *The Law of 24* (Spring 2008) http://www.law.georgetown.edu/curriculum/tab_courses.cfm?Status=Course&Detail=1534

⁹⁹ Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 *FORDHAM L. REV.* 487 (2004). The authors refer to the exchange between Homer and Lisa as "remarkable." *Id.* at 489.

¹⁰⁰ Michael B. Hyman, *President's Page: Proving Homer Simpson Wrong*, 20 *CBA REC.* 12, 12 (2006).

scholars have also argued that depictions of lawyers on *The Simpsons* reinforce negative public perceptions of practitioners.¹⁰¹

Other examples of significant references to both of these television shows abound.¹⁰² Some of these references pertain specifically to legal policy and the current state of the law,¹⁰³ as well as providing commentary on specific statutes.¹⁰⁴ Homer Simpson's quotations have been referenced to rebut quotations from legal and philosophical scholars.¹⁰⁵ The use of these references by legal scholars in specific legal contexts—such as gun control (*The Simpsons*) and extraordinary rendition (24)—demonstrates the ability of these shows to strike a chord with lawyers by pinpointing specific legal issues and providing

¹⁰¹ See Tim A. Baker, *Professionalism and Civility: A Survey of Professionalism and Civility*, 38 IND. L. REV. 1305, 1310 (“Recurring media images such as [portrayals of lawyers and law enforcement officers on *The Simpsons*], repeatedly broadcast into homes throughout the country by way of a hugely popular or long-running television series, reinforce negative views of the law and those who operate in the legal system.”).

¹⁰² See, e.g., Anthony J. Fejfar, *Corporate Voluntarism: Panacea or Plague? A Question of Horizon*, 17 DEL. J. CORP. L. 859, 934, n.172 (1992) (using the relationship between Bart and Homer to discuss inadequate child-rearing strategies); Lawrence M. Friedman, *Lexitainment: Legal Process as Theater*, 50 DEPAUL L. REV. 539, 556 (2000) (discussing a news columnist's argument that legal ramifications rarely result from tortious actions in sitcoms or cartoons, noting that “a hundred anvils can fall on Homer Simpson's head and no lawsuit will emerge”); Clifford J. Rosky, *Force, Inc.: The Privatization of Punishment, Policing, and Military Force in Liberal States*, 36 CONN. L. REV. 879, 973 n.330 (2004) (discussing a Simpsons episode in which Homer Simpson starts a new private security force, Springfield, Inc).

¹⁰³ See, e.g., Scott B. Kitei, *Is the T-Shirt Cannon “Incidental to the Game” in Professional Athletics?*, 11 SPORTS L.J. 37, 53-54 (2004) (discussing *The Simpsons* episode in which Maude Flanders is killed as a result of falling over a railing after being hit with a T-shirt fired out of a cannon); Christine Alice Corcos, *“Who Ya Gonna C(S)ite?” Ghostbusters and the Environmental Regulation Debate*, 13 J. LAND USE & ENVTL. L. 231, 232 n.4 (1997) (observing that *The Simpsons* contains “environmental message[s]”); Cornell & DeDino, *supra* note 99, at 489 (citing to *The Simpsons* in their discussion of their gun control arguments); Jonathan M. Gutoff, *Part Three: Naval Warfare: The Law of Piracy in Popular Culture*, 31 J. MAR. L. & COM. 643, 647 (2000) (discussing *The Simpsons* in the context of piracy law, and referencing the episode entitled *The Mansion Family*, in which Homer takes Mr. Burns' yacht more than 12 miles out of the state's boundaries in order to circumvent the state's prohibition on buying beer in the morning.); Lee Kovarsky, Note, *Tolls on the Information Superhighway: Entitlement Defaults for Clickstream Data*, 89 VA. L. REV. 1037, 1072 (2003) (“The threat to which law must respond is no longer merely that of people like Homer Simpson slandering celebrities and pawing through their trash, but that of highly organized companies systematically collecting and selling data about ordinary people.”).

¹⁰⁴ See, e.g., Mary LaFrance, *Nevada's Employee Inventions Statute: Novel, Nonobvious, and Patently Wrong*, 3 NEV. L.J. 88, 105 (2002) (discussing a Nevada statute regarding inventions, the author writes that “[r]ather than rewarding employees who develop better ways to accomplish their assigned tasks, the Nevada statute leaves them bereft. They are no better off, it seems, than if they had emulated Homer Simpson, bringing minimal effort and no inspiration whatsoever to their assigned duties.”).

¹⁰⁵ See, e.g., Anthony T. Kronman, *Precedent and Tradition*, 99 YALE L.J. 1029, 1037 (1990) (arguing that “[t]he idea that we are bound, within whatever limits, to honor the past for its own sake, to respect it just because it is the past we happen to have, is an idea that is at war with the spirit of philosophy”), and then using a “But see” signal to quote Homer Simpson. See Homer Simpson, *The Quotable Homer Simpson*, available at <http://www.people.virginia.edu/~der7s/homer.htm>. (last visited Sept. 6, 2001).

commentary on emerging legal ideas. The fact that legal scholars have chosen to make use of these references in law journals demonstrates that *The Simpsons* and *24* have both made more than fleeting references and comments; rather, this demonstrates that these shows provide (or are at least perceived to provide) serious and noteworthy commentary on specific legal ideas.

The use of these references in the areas of gun control, child-rearing strategies, private security, piracy law, and alcohol consumption laws demonstrates both the diversity and breadth of Simpsonian references to law and legal scholars' utilization of these examples in their research. Scholars have used *The Simpsons* in a variety of legal contexts, thus demonstrating its impact on the way in which the series is used by legal scholars on a broad scale.

B. *Influence on Policymakers*

There have been a few studies documenting Hollywood's influence on the passage of specific legislation. Kamir, for example, has argued that California's anti-stalking legislation was influenced by Hollywood's construction of stalking.¹⁰⁶ Kamir documents the dangers resulting from using television and movies in passing stalking legislation, specifically decrying Hollywood's focus on "fictional archetypal images"¹⁰⁷ of stalkers as opposed to real-life stalkers. Despite the scholarly discussion¹⁰⁸ generated by Kamir's studies, the

¹⁰⁶ See Kamir, *supra* note 39, at 264 (observing that Hollywood's "stalking characters . . . served as points of reference and role models" and that "when legislators resolved to define stalking . . . *Fatal Attraction* (1987) and the many *Dracula* films influenced the legislation against stalking more than the actual social phenomenon that required attention"). See generally ORIT KAMIR, *FRAMED: WOMEN IN LAW AND FILM* (2006) (discussing the impact of *Taxi Driver* on anti-stalking legislation).

¹⁰⁷ Kamir, *supra* note 39, at 265. Kamir concludes that the California anti-stalking legislation largely influenced by *Death and the Maiden*:

had in mind fictional archetypal images rather than the actual offenders; no attempt was made to investigate and analyse the real social phenomenon of stalking. As a result of addressing cinematic, mythological images rather than social reality, the legislature did not adequately conceptualize the prohibited behaviour, and the 'panicky' drafting rendered an imperfect law. Most states followed suit and adopted California's formulation. Hollywood, in turn, quickly responded to the legal formulations, moulding the fearsome serial killer accordingly.

Id.; see also Barzilai, *supra* note 6, at 871 (observing that the California legislature, reacting to public hysteria regarding stalking, defined stalking in a very narrow way, and noting that "most anti-stalking legislation in the United States reflected the public panic concerning serial killers, while much more frequent and non-murderous incidents of male stalking were neglected in state law. Anti-stalking legislation was affected by public panic and hysteria, and did not respond to the sources of women's subjugation to violence.").

¹⁰⁸ See Mathieson, *supra* note 66, at 1590 (noting that Kamir's stalking analysis provides arguments supporting the notion that "stalking narratives fuel the fear of stalking that leads

perception that cultivation theory's reach does not extend beyond the public's views with respect to the law persists.¹⁰⁹

Both *24* and *The Simpsons* have had considerable influence on policymakers and legislation. Because each of these shows has penetrated previously insuperable barriers in terms of both content and the messages conveyed,¹¹⁰ policymakers have been quick to respond to the ideas presented on both *The Simpsons*¹¹¹ and *24*.¹¹² With respect to *24*, President Bill Clinton, for instance, has spoken about the actions of Jack Bauer.¹¹³ On NBC's *Meet The Press*, Clinton discussed the "Jack

society to criminalize it, and even affect the definition of the crime itself"). Mathieson observes that "[s]ince the legal definition of stalking uses the 'reasonable person test'—assessing the fears and reactions of a typical person to determine whether actions constitute criminal stalking—stalking stories affect the scope of stalking statutes by shaping the subconscious fears of the 'average' member of the community"). *Id.* Mathieson argues, however, that Kamir's observations with respect to the perceived under-inclusiveness of California's anti-stalking legislation might well be misguided: "The fact that stalking laws do not punish everyone whom Kamir has labeled as a 'stalker' does not in itself prove that the legislature negligently drafted underinclusive laws; it could instead be a legislative judgment that some 'stalkers' are better dealt with under existing murder and assault statutes." *Id.* at 1594.

¹⁰⁹ This is evidenced by the fact that virtually all scholarly articles regarding cultivation theory pertain to the influence of specific aspects of popular culture (or popular culture generally) on the general public.

¹¹⁰ See generally KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS, *supra* note 14; Keslowitz, The Tao of Jack Bauer, *supra* note 29.

¹¹¹ *The Simpsons'* extensive use of satire to convey messages is also arguably directed at influencing the implementation of changes in society. See generally KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS, *supra* note 14.

¹¹² *24*, as the first post-9/11 television show to regularly air scenes of torture as well as raise legal issues pertaining to national security and civil liberties, has engendered mixed responses from politicians. In 2007, for example, a Republican Presidential candidate lauded the actions of Jack Bauer. At a Republican national debate, Rep. Tom Tancredo of Colorado stated: "You say that nuclear devices have gone off in the United States, more are planned, and we're wondering about whether waterboarding would be a bad thing to do? I'm looking for Jack Bauer at that time! . . . We are the last best hope of Western Civilization. When we go under, Western Civilization goes under." Joe Kovacs, *'Jack Bauer' Called on at Republican Debate*, WORLDNETDAILY (May 16, 2007), http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=55722. In another Republican debate, Senator John McCain (R-AZ) similarly invoked the name of Jack Bauer in the context of discussing torture, arguing that "life is not *24* and Jack Bauer." *Romney, McCain Spar on Waterboarding and Torture at GOP Debate*, DEMOCRACY NOW!, (Nov. 27, 2007), http://www.democracynow.org/2007/11/29/romney_mccain_spar_on_waterboarding_and.

¹¹³ Clinton specifically pointed to *24*, noting that "if you look at the show, every time they get the president to approve something, the president gets in trouble, the country gets in trouble. And when Bauer goes out there on his own and is prepared to live with the consequences, it always seems to work better." See *Meet the Press* (Sept. 30, 2007), transcript available at <http://www.msnbc.msn.com/id/21065954/page/3/>; see also Michael McAuliff, *Torture Like Jack Bauer's Would Be OK, Bill Clinton Says*, N.Y. DAILY NEWS, Oct. 1, 2007, available at http://www.nydailynews.com/news/wn_report/2007/10/01/2007-10-01_torture_like_jack_bauers_would_be_ok_bil.html. (last visited Oct. 7, 2007).

The fact that a former President—and the spouse of a Presidential candidate—referenced *24* during a discussion about national security and torture speaks volumes about the series's influence on the ways in which politicians formulate ideas and consider serious issues.

Bauer moment,”¹¹⁴ and argued that a formal exception permitting torture in limited circumstances should not be created.¹¹⁵ Instead, Clinton argued, “the Jack Bauer person” should be provided with the opportunity to explain the specific reasons for his actions in court.¹¹⁶ President Clinton argued that “the Jack Bauer person’s” actions should be judged according to what ultimately turns out to be the truth with respect to the circumstances of the situation.¹¹⁷ Additionally, a Pentagon official acknowledged that Jack Bauer provided inspiration for specific ways in which to deal with suspected terrorists.¹¹⁸ *The Simpsons* was singled out by President George H. W. Bush when outlining his plans for the proper direction for the country to take in terms of morals and family values, declaring that the nation needs more families like the Waltons and less like the Simpsons.¹¹⁹

24, as the quintessential post-9/11 television series, has had—and continues to have—a palpable influence on policymakers. Influential policymakers, for example, participated in an event sponsored by the Heritage Foundation in Washington, D.C. entitled *24 and America's Image in Fighting Terrorism: Fact, Fiction, or Does it Matter?*¹²⁰ The June 2006 event featured Michael Chertoff, Rush Limbaugh, and writers and producers from *24*.¹²¹ Homeland Security Secretary Michael Chertoff praised *24* for its “reflect[ion] of real life.”¹²² Michael Chertoff, the Director of the United States Department of Homeland Security, is a fan of *24*, and recently visited Jack Bauer while the cast

¹¹⁴ *Meet the Press*, *supra* note 113.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Diane Beaver, a lawyer who worked underneath Major General Michael Dunlavey, the first commander at Guantánamo Bay, stated that “The first year of Fox TV’s dramatic series *24* came to a conclusion in spring 2002, and the second year of the series began that fall. An inescapable message of the program is that torture works. . . . We saw it on cable. People had already seen the first [season]. It was hugely popular.” Adding that Jack Bauer had many friends at Guantánamo, Beaver noted that “[Bauer] gave people lots of ideas.” Phillippe Sands, *The White House: The Green Light*, VANITY FAIR, May 2008, available at <http://www.vanityfair.com/politics/features/2008/05/guantanamo200805?printable=true¤tPage=all>.

¹¹⁹ See KESLOWITZ, *THE WORLD ACCORDING TO THE SIMPSONS*, *supra* note 14, at 228. Barbara Bush once remarked that “*The Simpsons* is the dumbest thing I’ve ever seen.” *Id.* She later apologized for the comment by writing a letter to Marge Simpson, in which she explained that her comment was made from a misinformed perspective. Mrs. Bush also observed several similarities between her husband and Homer Simpson. William Bennett also expressed his qualms with *The Simpsons*, only to later retract a disparaging statement which he had made about the series. *Id.* British Prime Minister Tony Blair appeared in an episode of *The Simpsons*. *Id.*

¹²⁰ See The Heritage Foundation, <http://www.heritage.org/Press/Events/ev062306.cfm> (last visited Sept. 23, 2007); see also Michael Brendan Dougherty, *What Would Jack Bauer Do?*, AM. CONSERVATIVE, Mar. 12, 2007, available at http://www.amconmag.com/2007/2007_03_12/cover.html. The cover of this magazine featured a picture of Jack Bauer and asked “Why Can’t Bush Be More Like Bauer?”

¹²¹ See The Heritage Foundation, *supra* note 120.

¹²² *Id.*

was filming in Washington, D.C.¹²³ The show's influence on global politics is also evidenced by the serious attention that it has received by those in the United States Armed Forces.¹²⁴ In 2007, for instance, newspapers received confirmation from the United States Military Academy at West Point that Brigadier General Patrick Finnegan recently traveled to California to meet producers of *24*.¹²⁵ He reportedly informed the producers that the scenes of torture depicted on *24* were influencing United States soldiers to mistreat (and potentially torture) enemy soldiers.¹²⁶ Brigadier General Finnegan requested that the writers air fewer scenes of torture in the future.¹²⁷

Both *24* and *The Simpsons* have been referenced by representatives in Congressional hearings.¹²⁸ More important, however, is the influence of both of these shows on debates regarding the enactment of specific

¹²³ Richard Johnson, *Page Six: Chertoff Meets Jack Bauer*, N.Y. POST, Nov. 8, 2007, available [at http://www.nypost.com/seven/11082007/gossip/pagesix/chertoff_meets_jack_bauer_33039.htm](http://www.nypost.com/seven/11082007/gossip/pagesix/chertoff_meets_jack_bauer_33039.htm).

¹²⁴ It was also reported that Kiefer Sutherland, the actor who plays the role of Jack Bauer on *24*, spoke to a class of West Point students in order to influence them not to torture or mistreat prisoners. It was further reported that soldiers' *24* DVDs were blown up in a recent attack on U.S. soldiers stationed in Iraq. Posting of Faiz, *U.S. Military: Television Series '24' Is Promoting Torture In The Ranks*, to Think Progress (Feb. 19, 2007 12:10 EST), <http://thinkprogress.org/2007/02/13/torture-on-24/>. It is, of course, difficult to prove with any degree of certainty that *24* contributed to and/or influenced soldiers to harshly interrogate and/or torture enemies. Still, television does indeed have an impact on actions. Others have disagreed with Finnegan's assessment regarding the influence of *24*; Rick Moran, writing for the blog *American Thinker* wrote that "to posit the notion, even tangentially, that the actions of Jack Bauer on a fictional TV show somehow contributed to this state of affairs strains credulity." Rick Moran, *Stranger Than Fiction: Does 24 Inspire Real Life Torture?*, AM. THINKER, Feb. 10, 2007, http://www.americanthinker.com/2007/02/stranger_than_fiction_does_24.html. Aware of the prodigious influence of *24*, Human Rights First has launched a "Primetime Torture Project" designed to educate "junior soldiers about the differences between what they see on TV and the way they ought to act in the field. Human Rights First is also working to encourage those with control over creative content in Hollywood to consider portraying torture in a more nuanced, more responsible fashion." Human Rights First, *Prime-Time Torture: Torture on TV Rising and Copied in the Field*, http://www.humanrightsfirst.org/us_law/etn/primetime/ (last visited May 1, 2008).

¹²⁵ Moran, *supra* note 124.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ There have been a number of off-hand references to *The Simpsons* during Congressional hearings. *See, e.g.*, 141 CONG. REC. H1472 (daily ed. Feb. 9, 1995) (statement of Rep. Quillen) (Representative Collins of Illinois remarking, "In the words of Bart Simpson, Mr. Speaker, 'Ay Carumba!'"). *The Simpsons* has also been referenced in the titles of Congressional remarks. *See, e.g.*, 142 CONG. REC. H6292 (daily ed. June 13, 1996) (statement of Rep. Tiahrt, titled *Bart Simpson and the White House: 'I Didn't Do It.'*) (referencing and quoting from *The Simpsons* in order to analogize the White House's alleged withholding of Travelgate documents to Bart Simpson's defense that "I didn't do it, nobody saw me, you can't prove anything"). *The Simpsons* has been cited by Congressmen when exploring the state of U.S.-Russian relations. *See, e.g.*, 140 CONG. REC. H2208 (daily ed. Apr. 12, 1994) (statement of Rep. Gingrich) (Newt Gingrich, recounting a trip to Russia in which he explained that the Russian community's infatuation with Bart Simpson speaks volumes about U.S.-Russia relations).

legislation.¹²⁹ Some Congressmen have cited *The Simpsons* in attempts to curtail the perceived moral decline of American society resulting from television.¹³⁰ Because *The Simpsons* and *24* tackle the most pressing issues of the day,¹³¹ references to these shows by legislators in various contexts is expected. More surprisingly from a legal perspective, however, is the fact that legislators have referenced these shows in order to shape legal and public policy debates.¹³² The actions of both Homer

¹²⁹ In the House of Representatives, for example, Representative Frank Pallone, Jr., (D-NJ) began a three minute statement with a reference to *The Simpsons* and argued that a specific scene from an episode “really sums up the way the American people will react to the tax bill being pushed by our Republican colleagues.” Pallone also observed that Homer Simpson’s character is a “symbol for the middle class,” while his boss, Mr. Burns is a “representative of the rich.” *The Simpsons*, by presenting this dichotomy between wealthy and middle class Americans, offers a great deal of fodder for Congressmen. 143 CONG. REC. H4225-03 (daily ed. June 24, 1997) (statement of Rep. Pallone). Scholars have documented the influence of other television shows and movies on the enactment of specific legislation. See *supra* note 101.

¹³⁰ *The Simpsons* has also been cited in an effort to curtail the perceived moral decline in American society. Rep. Gorton (R-WA), addressing the President of the United States, argued that the lack of proper educational standards for learning national history was due in large part because of popular culture. Rep. Gorton began his remarks by asking: “what is a more important part of our Nation’s history for our children to study—George Washington or Bart Simpson? Is it more important that they learn about Roseanne Arnold, or how America defeated communism as the leader of the free world?” Calling for a revision of the standards for learning national history in the public school system, Rep. Gorton argued that if the current standards are not abolished, students will be “asked to spend their evenings studying Bart Simpson instead of Benjamin Franklin’s discovery of electricity.” 141 CONG. REC. S1025 (daily ed. Jan. 18, 1995) (statement of Rep. Gorton); see also Robert K. Dornan, (R-CA), citing from Michael Medved’s article *The War on Standards*, while addressing the House of Representatives (“With Bart Simpson regularly turning up on all lists of the most admired Americans, we’ve certainly come a long way from the Andy Hardy model, with young Mickey Rooney learning life’s lessons from his father, the stern but kindly judge.”). 137 CONG. REC. H6040 (daily ed. July 30, 1991) (statement of Rep. Dornan). Senator Paul Byrd (PA), lamented the fact that polls indicate that “59 percent of Americans can name the three Stooges, but only 17 percent of the American people can name three Supreme Court Justices; only about 50 percent of the American people could identify the Vice President of the United States, but 95 percent could identify Homer, Bart, and Marge Simpson.” 147 CONG. REC. S3970, (daily ed. Apr. 26, 2001) (statement of Sen. Byrd).

¹³¹ See generally KESLOWITZ, *THE WORLD ACCORDING TO THE SIMPSONS*, *supra* note 14; Keslowitz, *The Tao of Jack Bauer*, *supra* note 29.

¹³² During the 101st Congress’s Statements on Introduced Bills and Joint Resolutions, Homer Simpson was referenced in order to demonstrate that workers can be adversely affected by toxic substances while transporting such substances on their clothing and person. The humorous circumstances surrounding Homer’s frequent mishaps with toxic chemicals provided a springboard for discussing the serious health and environmental risks associated with harmful chemicals at both work and in the home. 136 CONG. REC. S16830 (daily ed. Oct. 23, 1990) (statement of Rep. Reid). Beyond providing fodder for Congressmen debating serious issues, *24* has a palpable influence on the perspectives and viewpoints on lawmakers. In a Congressional hearing regarding the Department of Homeland Security Appropriations Act of 2008, Rep. Chaka Fattah (D-PA) of the 110th Congress, for example, invoked the name of Jack Bauer and acknowledged that the public’s fears regarding the detonation of a nuclear bomb on American soil were influenced by fictional events on the television show *24*. By failing to decry specific elements of *24* for its likely inaccuracies, Rep. Fattah gave his implicit approval to the ways in which issues pertaining to national security are addressed on the series. Indeed, by equating watching *24* with other forms of information, Rep. Fattah’s words provided *24* with an air of legitimacy. 153 CONG. REC. H6347-01 (daily ed. June 13, 2007) (statement of Rep. Fattah).

Simpson and Jack Bauer have also served as a standard against which the actions of employees¹³³ and federal agents,¹³⁴ respectively, are judged. In the arena of taxes, Homer Simpson and Mr. Burns have come to represent the divergence of class interests in America—as evidenced by Congressional invocation of their names during a hearing.¹³⁵ In the arena of nuclear safety, Homer Simpson serves as the paradigmatic example of the incompetent employee.¹³⁶ In the context of national security, Jack Bauer has come to represent the quintessential federal agent.¹³⁷ The references to *The Simpsons* and *24* in the legislative context demonstrate that lawmakers have not ignored relevant legal references on these shows. Because neither *The Simpsons* nor *24* are designed specifically to either examine the state of the law in contemporary society¹³⁸ or mirror the precise social conditions at a given point in time¹³⁹, policymakers' unrestrained reliance on these shows while debating the enactment of specific legislation is both dangerous and unwarranted.

C. *Influence on the Judiciary*

Evan R. Seamone, discussing the theory of judicial mindfulness,¹⁴⁰

¹³³ See *infra* text and footnotes at Part III for the argument that Homer Simpson serves as a primary frame of reference in a number of judicial opinions addressing issues relating to employee work ethic and incompetence.

¹³⁴ See, e.g., 153 CONG. REC. H11645, H11651 (daily ed. Oct. 17, 2007) (statement of Rep. Rogers) (arguing that federal agents will not be adversely influenced by the actions of Jack Bauer, but rather will “err on the side of the United States Constitution every time”).

¹³⁵ See *supra* note 119.

¹³⁶ See *supra* note 122.

¹³⁷ See *supra* note 122.

¹³⁸ While *The Simpsons*, for example, aims to satirize elements of our society, the Simpsonian approach is arguably too broad to tackle legal issues in a manner that can help inform policymakers at a specific level of government. While *The Simpsons* tackles many legal issues, the Simpsonian analysis often takes the form of a general critique of a particular policy at some unidentifiable level of government, rather than targeting a specific level of either federal or state government. Indeed, Springfield is designed as an amalgamation of an urban city and a small town. While many of the elements of the town are unmistakably reminiscent of a small town, other elements help to identify Springfield as a large city (such as the observation that it serves as home to Hollywood-type movie studios such as Krusty-Lu Studios, and movie stars such as Rainer Wolfcastle). For this reason, *The Simpsons*' analysis of specific legal issues, though useful from a broad perspective, serves less of a purpose when a real life legislature attempts to incorporate Springfield's laws as part of the legal agenda at a particular level of government, which often faces specific challenges and limitations that differ from Springfield's multidimensional society.

¹³⁹ Each season of *24*, for example, is set several years in the future from the year in which the series airs on television.

¹⁴⁰ The theory of mindfulness, proposed by Professor Ellen Langer, makes a distinction between different types of thinking. She observes that mindful thinking involves “drawing novel distinctions, examining information from new perspectives, and being sensitive to context,” while mindless thinking is characterized by “treat[ing] information as though it were context-free-true

argues that judges are sometimes influenced by extralegal sources.¹⁴¹ Judicial reliance on such sources is not surprising if we consider the nature of the profession,¹⁴² generally applicable universal aspects of human nature,¹⁴³ and cultural influences in the world at large.¹⁴⁴ Psychological factors are also at play when judges make decisions.¹⁴⁵ Even if a decision is deemed to be rational and legitimate from a legal standpoint, reliance on extralegal sources, insofar as it influences “premature information processing”¹⁴⁶ during the judicial decision-making process, can pose societal problems.¹⁴⁷ Indeed, judicial biases resulting from an array of factors can impede the broad societal goal of deciding cases in the optimal manner.¹⁴⁸ The types of judicial bias can take several forms.¹⁴⁹ Despite this outside bias, judges have the ability

regardless of circumstances.” Seamone argues that Professor Langer’s theory of mindfulness is relevant to an analysis of judicial decisions with respect to judicial bias and reliance on extralegal sources. Evan R. Seamone, *Judicial Mindfulness*, 70 U. CIN. L. REV. 1023, 1071 (2002) (internal citations omitted).

¹⁴¹ Seamone argues that “judges are human beings, and as a result, are motivated by influences originating beyond the scope of their immediate comprehension.” Seamone observes that this phenomenon is an “essential element of reality.” *Id.* at 1029 (internal citations omitted).

¹⁴² Seamone observes that “[a]lthough judges are well respected, judging is one of the most stressful professions known,” since “judges are often torn between the mandate of the law as opposed to their own conscience.” Seamone also writes that the “major difficulty that results from [judicial] stress is increased difficulty recognizing the presence of unwanted thoughts.” *Id.* at 1026-27; see also C. Robert Showalter & Tracy D. Eells, *Psychological Stress in the Judiciary*, 33 CT. REV. 6, 6 (1996) (pointing to the National Judges Health-Stress Project’s findings that “judges are over-represented in . . . ‘high stress’ categor[ies] compared to other professionals”); James L. Gibson, *Personality and Elite Political Behavior: The Influence of Self Esteem on Judicial Decision Making*, 43 J.L. & POL. 104, 114 (1981) (“Although American judges . . . are subject to the expectation that they ‘follow’ precedents in making decisions, they are just as obviously expected, by others and by themselves, to ‘do justice.’”).

¹⁴³ See generally Seamone, *supra* note 140, for an analysis of psychological factors and aspects of human nature in the context of judicial reasoning.

¹⁴⁴ For a discussion of judicial references to extralegal sources from diverse cultural arenas, see *id.* at n.191 (listing some judicial references to television shows, children’s nursery rhymes, paintings, and sculptures); see also William Domnarski, *Shakespeare in the Law*, 67 CONN. L.J. 317, 323 (1993).

¹⁴⁵ See, e.g., Chris Guthrie et al., *Inside the Judicial Mind*, 86 CORNELL L. REV. 777, 783 (2001) (observing that “judges make decisions under uncertain, time-pressured conditions that encourage reliance on cognitive shortcuts that sometimes cause illusions of judgment”).

¹⁴⁶ Seamone, *supra* note 140, at 1059.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 1059. Seamone argues that

[O]n a grand scale, when such biases go unchecked during the process of legal interpretation, there exists a risk that the optimum answer will not be given. It is a danger that judges may not consider all of the relevant arguments and will thus achieve a result that—albeit certainly legally legitimate—still falls short of the best answer in the given situation, or, at the very least, a better answer. One can base this result on the fact that continuing review and reflection might have resulted in a more informed decision. And, quite possibly, the more informed decision could have altered the outcome of the case and thus could have transformed the law into a more responsive body of authority capable of meeting the challenges of an ever-changing society.

Id. at 1059-60.

¹⁴⁹ Seamone identifies five types of bias which serve to influence judges: “advocacy,” in

to disregard misleading information which would otherwise adversely affect their decision-making ability in individual cases.¹⁵⁰ With respect to both *The Simpsons* and *24*, judges have the option of using scenes from those shows as a point of comparison with existing law without using the scenes to influence their reasoning in specific cases. Because judges often shape law, they have a responsibility to be particularly wary of being unduly influenced by inaccurate portrayals of societal conditions and the functions and purposes of law in the fictional worlds created by both *The Simpsons* and *24*.

Judicial reference¹⁵¹ to fictional characters is not an entirely new phenomenon. Classic television shows, such as *Leave it to Beaver* and *Father Knows Best* have been referenced in the family law context in judicial discussion of family norms, particularly with respect to monetary exemptions for the head of the household.¹⁵² Some of these references have been highly influential in a string of judicial opinions.

which a judge selectively uses and incorporates particular evidence in order to support a hypothesis, without blatant concealment or fabrication of these efforts; “fraud,” defined as “intentional, conscious efforts to fabricate, conceal or distort evidence, for whatever reason—material gain, enhancing one’s professional reputation, protecting one’s theories, or influencing a political debate;” “cold bias,” which largely operates at an “unconscious” level “even when the judge is earnestly striving for accuracy;” “hot bias,” which, like “cold bias” is unintentional, but rather “directionally motivated,” and occurs in situations in which “the judge wants a certain outcome to prevail;” and “skeptical processing,” where a “judge interprets the evidence in an unbiased manner, but [his or her] conclusions may differ from those of other judges because of [his or her] prior probability estimate, his asymmetric standard of proof, or both.” Seamone, *supra* note 140, at 1045-46 (quoting Robert J. MacCoun, *Biases in the Interpretation and Use of Research Results*, 49 ANN. REV. PSYCHOL. 259, 268 (1998)).

¹⁵⁰ Seamone observes that

[j]udges can choose to forgo useless or misleading information. They can adjust their responses—if not internal representations—in light of information about non-representativeness. They also have a third option: They can make different use of the non-representative information. More specifically, they can use such information not as a basis for judgments, but as a standard of comparison. Judgments thereby acquire a comparative, relative quality, yielding a contrast effect.

Seamone, *supra* note 140, at 1053.

In this manner, judges can use references to fictional texts not as a means of interpreting the law or deciding the ultimate outcomes of cases, but rather citing laws as portrayed in fictional television shows as a point of comparison with existing interpretations of the law in contemporary society.

¹⁵¹ Judges are not the only courtroom participants who have referenced popular television shows. In *Guy Chemical Co. v. Romaco AG*, defense counsel compared a law firm to “‘Eddie Haskell . . . the specious brownnosing character from . . . Leave it to Beaver.’” *Guy Chem. Co. v. Romaco AG*, No. 3:06-96, 2007 U.S. Dist. LEXIS 31832, at *10 (W.D. Pa. 2007).

¹⁵² See *In re Townsend*, 344 B.R. 915 (W.D. Mo. 2006). In *Townsend*, the judge wrote that according to the early decisions on the head of a household exemption, the head of a family is the one who controls, manages and supervises the home. But this definition is dated. “Father Knows Best” and “Leave it to Beaver” are off the air, and the modern household is far more egalitarian than the ostensibly autocratic, male-dominated households of yore. Nevertheless, only one party may claim the moniker and benefits of head of household for exemption purposes.

Id. at 918.

A particular reference to Archie Bunker of the 1970's television show *All in the Family*, for instance, has been quoted by at least fourteen federal judges in the employment discrimination arena.¹⁵³ His character has been used as a standard by which judges guard against forms of prejudice and discrimination.¹⁵⁴ Archie Bunker's influence on judicial perceptions of prejudice and bias is evidenced not only by Judge Carl B. Rubin's statement that "we refer to [racist] persons as "Archie Bunkers,""¹⁵⁵ but by the fact that this perspective was echoed by more than a dozen federal judges.¹⁵⁶ Scholars have also observed that Justice Earl Warren was influenced by Perry Mason.¹⁵⁷ Judicial reliance on these non-academic sources while deciding cases in specific legal areas is dangerous, since these sources were created largely—if not exclusively—for entertainment purposes. Such sources did not consider accuracy in terms of deconstructing the legal environment as it exists in the real world a primary objective.

In a similar manner, the actions of both Homer Simpson and Jack Bauer have become the standard by which a number of judges view the actions of individuals in the employer-employee and national security contexts, respectively. Like Archie Bunker and Ward Cleaver, both Homer Simpson and Jack Bauer have exerted an influence on public perception of relevant political and social issues, and thus it is not surprising that judges have not been immune to such influence.

1. Homer Simpson Has His Day in Court: Judicial Perceptions of Homer Simpson as America's Everyman

Judges and scholars have recognized the relevance of *The Simpsons* to contemporary legal doctrine. Many judicial opinions, particularly those within the employment arena, have used Homer Simpson as a primary frame of reference with respect to determinations regarding whether an employee has engaged in misconduct or has

¹⁵³ See, e.g., *Torres v. Pisano*, 116 F.3d 625, 633 (2d Cir. 1997).

¹⁵⁴ See *id.*

¹⁵⁵ Judge Rubin wrote the following:

In the past three years we have even adopted as a part of our folk lore a character who is prejudiced and biased against all persons other than of his own neighborhood, religion and nationality. We refer to such people now as "Archie Bunkers." The Archie Bunkers of this world, within limitations, still may assert their biased view. . . .

The defendant in this case is charged by law with avoiding all discrimination; the defendant is not charged by law with discharging all Archie Bunkers in its employ.

Howard v. Nat'l Cash Register Co., 388 F.Supp. 603, 606 (S.D. Ohio 1975).

¹⁵⁶ See *supra* note 153.

¹⁵⁷ See Stark, *supra* note 12, at 230 ("Did Perry Mason pave the way for the Warren Court's criminal procedure decisions? Though it would be preposterous to suggest that he did it singlehandedly, it would be equally foolish to pretend that he played no role at all.")

displayed incompetence. In a Seventh Circuit case in which a bank chose a decidedly unsuitable individual to direct its trust operations, Judge Terence T. Evans likened this misinformed decision to “Mister Burns’ determination that Homer Simpson would make a fine nuclear safety inspector.”¹⁵⁸ While legal scholars might be tempted to dismiss this reference as “fleeting” or “ornamental,” a close reading of the analogy to *The Simpsons* suggests that it served as a point of reference upon which Judge Evans relied in order to analyze the perceived incompetence of the director of trust operations. Furthermore, the Simpsonian reference in this case has been cited in at least one other case,¹⁵⁹ suggesting that use of this reference has had an influential effect in more than one courtroom. More importantly, however, is the fact that references to Homer Simpson have consistently been made in judicial opinions addressing employment-related issues.

The influence of *The Simpsons* in judicial opinions discussing nuclear safety¹⁶⁰ norms also merits serious attention. Judicial reliance on Homer Simpson in this context was perhaps most pronounced in *Local 97, International Brotherhood of Electrical Workers, A.F.L.-C.I.O. v. Niagara Mohawk Power Corporation*, a case in which the conduct of a Nuclear Security Officer (NSO)¹⁶¹ at a nuclear power plant was at issue.¹⁶² Judge Howard G. Munson, sitting in the Northern District of New York, faulted the NSO’s attempt to conceal his “Homer Simpson-like conduct.”¹⁶³ Judge Munson’s reference to Homer

¹⁵⁸ *Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co.*, 200 F.3d 1102, 1105 (7th Cir. 2000).

¹⁵⁹ In *Hicks v. Midwest Transport, Inc.*, a case in which an individual was accused of mismanaging corporate assets, Judge Phil Gilbert quoted Judge Evans’s reference to Homer Simpson in *Citizens First*. Thus, there is evidence that these popular culture references are having a precedential effect with respect to the ways in which judges view particular issues. *Hicks v. Midwest Transport, Inc.*, No. 2004-cv-4263, 2005 WL 1267463, at *1 (S.D. Ill. May 16, 2005).

¹⁶⁰ It is not surprising that judicial references to *The Simpsons* appear in the nuclear safety regulation context. Many episodes of *The Simpsons* address issues relating to nuclear safety, and some episodes have parodied the context of specific nuclear incidents, such as the Three Mile Island accident in 1979. See *The Simpsons: Homer Defined* (Fox television broadcast Oct. 17, 1991).

¹⁶¹ It is noteworthy that Homer Simpson serves as Springfield’s Nuclear Safety Inspector at the Springfield Nuclear Power Plant.

¹⁶² In *Local 97*, the NSO failed to monitor alarms at the nuclear power facility, which the court described as an “inexplicably baffling, lackadaisical response to the alarm.” *Local 97, Int’l Bhd. of Elec. Workers, A.F.L.-C.I.O. v. Niagara Mohawk Power Corp.*, No. 96-cv-728, 1997 WL 793137, at *6 (N.D.N.Y. Dec. 16, 1997). The failure of the NSO to properly monitor alarms is strikingly similar to Simpsons episode plots in which Homer failed to properly perform his job duties.

¹⁶³ *Id.* at *6. The court noted that “[t]he NRC regulations require [the NSO] . . . to be ‘trustworthy and reliable’; his employment cannot ‘constitute an unreasonable risk to the health and safety of the public.’” *Id.* (quoting 10 C.F.R. § 73.56(b)(1)). Under this standard, Homer Simpson should absolutely be fired. In the episode *Homer Goes to College*, Homer feared the prospect of losing his job, and declared, “Oh, I’m going to lose my job just because I’m

Simpson was not dismissed as a popular culture aside by Judge Thomas J. Meskill of the New York Court of Appeals for the Second Circuit, who quoted the reference in his opinion on appeal in the case.¹⁶⁴

Additional references to *The Simpsons* in judicial opinions addressing issues regarding human behavior buttress the argument that Homer Simpson, a cultural icon¹⁶⁵ often characterized as America's Everyman,¹⁶⁶ is an influential figure in the context of engendering judicial formulations of an incompetent or negligent employee.¹⁶⁷ Judge Edith H. Jones, for instance, cited both *The Simpsons* and *All in the Family* as points of reference when she compared the conduct of an alleged harasser to Homer Simpson and Archie Bunker.¹⁶⁸ The fact that references to Homer Simpson most often appear in the context of employment-related issues supports the argument that the references should not be dismissed as "ornamental" asides, but rather should be understood as exerting an influence on the ways in which judges define the behavior of a reasonable employee. Such reliance on Homer Simpson as a point of reference for defining an incompetent employee is somewhat disturbing given the fact that the writers of *The Simpsons* have as a goal the creation of the *most* incompetent employee imaginable. Creator Matt Groening would be surprised to learn that an employee may not be liable in a particular courtroom unless her actions reach the degree of negligence exhibited by Homer Simpson.

dangerously unqualified." *The Simpsons: Homer Goes to College* (Fox television broadcast Oct. 14, 1993).

¹⁶⁴ *Local 97, Int'l Bhd. of Elec. Workers, A.F.L.-C.I.O. v. Niagara Mohawk Power Corp.*, 196 F.3d 117, 124 (2d Cir. 1999); see also *Dyno Nobel, Inc., v. United Steel Workers of Am.*, 77 F.Supp. 2d 307, 310 (N.D.N.Y. 1999) (deriding employee's "Homer Simpson-like response" to an incident which placed others in great physical danger). This case cited *Local 97* in the context of discussing standards for workplace safety and employee conduct, suggesting that his reading of *Local 97* may have contributed to his decision to include a reference to Homer Simpson. *Id.* at 309-10.

¹⁶⁵ The popularity of Homer Simpson is demonstrated by a 2003 BBC poll asking respondents to choose the "greatest American of all-time." Homer Simpson topped the list, receiving 40.83% of the total votes, beating out influential leaders such as Bill Clinton (3.92%), Martin Luther King, Jr., (10.06%), Abraham Lincoln (10.28%), and George Washington (5.10%). KESLOWITZ, *THE WORLD ACCORDING TO THE SIMPSONS*, *supra* note 14, at 1.

¹⁶⁶ See *id.*

¹⁶⁷ The aforementioned judicial references to Homer Simpson in the employee-related context suggest a deep judicial familiarity with and recognition of *The Simpsons*. There are particular episodes of *The Simpsons*, for example, that explicitly address Homer's negligence. See, e.g., *Homer's Enemy* (Homer purposely spilled a pitcher of water on his workstation in an ill-advised attempt to resolve a dangerous situation. Homer also almost drank a beaker of sulfuric acid in this episode.) *The Simpsons: Homer's Enemy* (Fox television broadcast May 4, 1997); *Homer Defined* (Homer, faced with imminent crises on two separate occasions while working at the power plant, saves the town from destruction by sheer luck. As a result, Homer Simpson's picture is entered into the dictionary next to the phrase "to pull a Homer," which is defined in the dictionary as "to succeed despite idiocy."). *The Simpsons: Homer Defined* (Fox television broadcast Oct. 17, 1991).

¹⁶⁸ *DeAngelis v. El Paso Mun. Police Officers Ass'n*, 51 F.3d 591, 595 (5th Cir. 1995).

2. Jack Bauer Has His Day in Court

Given the use of popular fictional television characters in specific legal contexts, references to fictional federal agent Jack Bauer in the judicial arena do not come as a surprise. They are most pronounced in the area of national security. Jack Bauer serves as the primary frame of reference for cases involving the controversial actions of federal agents. In the Ninth Circuit Court of Appeals opinion in *Don v. Gonzales*, for example, a dissenting judge discussed Jack Bauer's actions in the context of the permissibility of controversial actions performed by federal agents.¹⁶⁹ In outlining a training session for the Homeland Security Department, the Executive Director wrote that his objective was not to try to make "Jack Bauers out of assistant district attorneys."¹⁷⁰ In a recent argument with other judges, United States Supreme Court Justice Antonin Scalia made reference to Jack Bauer.¹⁷¹

3. Broader References

Specific plot scenarios on *The Simpsons* have also been invoked by judges as a means of understanding specific legal issues. *New York v. FCC*,¹⁷² for instance, involved the FCC's purported exercise of

¹⁶⁹ Judge Wardlaw noted:

I cannot even imagine to which television shows the IJ is referring. In one of the most highly-rated series on television, *24*, Jack Bauer, a federal agent at the Counter Terrorism Unit, located in Los Angeles, has *never* once had the opportunity to 'sit down at a table' and 'straighten it out' at any time during its past five seasons. Perhaps the IJ was imagining an idealistic world that exists only in his own mind—but that would be speculation, and my dissent does not depend on that.

Don v. Gonzales, 476 F.3d 738, 751 n.3 (9th Cir. 2007) (Wardlaw, J., dissenting).

¹⁷⁰ 41-APR Prosecutor 9, at 10 Prosecutor, Mar./Apr., 2007, Message from the Executive Director, *Homeland Security Training Announced*, 2007, National District Attorneys Association.

¹⁷¹ One commentator, lamenting "Supreme Court justices citing Hollywood for constitutional principles," reported on the statements of Justice Scalia in front of a gathering of judges in Ottawa:

'Jack Bauer saved Los Angeles. . . . He saved hundreds of thousands of lives,' Judge Scalia said. Then, recalling Season 2, where the agent's rough interrogation tactics saved California from a terrorist nuke, the Supreme Court judge etched a line in the sand. 'Are you going to convict Jack Bauer?' Judge Scalia, challenged his fellow judges. 'Say that criminal law is against him? You have the right to a jury trial? Is any jury going to convict Jack Bauer? I don't think so. So the question is really whether we believe in these absolutes. And ought we believe in these absolutes.'

Susan G., *Scalia: The Jack Bauer Torture Test*, DAILY KOS, June 19, 2007, <http://www.dailykos.com/storyonly/2007/6/19/11445/8105> (last visited Sept. 7, 2007). On October 4, 2007, *Slate* magazine featured a parody of Justice Scalia and his reference to Jack Bauer entitled "Nino Scalia is Jack Bauer." See SLATE, <http://www.slate.com>, Oct. 4, 2007.

¹⁷² 267 F.3d 91 (2d Cir. 2001).

jurisdiction over local telephone dialing and the legality, under the 1996 Telecommunications Act, of its imposition of mandatory 10-digit dialing in New York resulting from a shortage of local telephone numbers.¹⁷³ Similarly, in *The Simpsons* episode entitled *A Tale of Two Springfields*,¹⁷⁴ the residents of Springfield are angered by the imposition of a 10-digit dialing code also resulting from a shortage of local telephone numbers.¹⁷⁵ Judge Parker of the Second Circuit Court of Appeals, recognizing the relevance of *The Simpsons* episode,¹⁷⁶ cited it in the course of his observation that the increase in communications options, such as fax machines, cellular phones, pagers and modems, has created a situation in which society must overcome the obstacles that have resulted from a pervasive shortage of telephone numbers.¹⁷⁷ Judge Parker's perception of the hardships caused by the imposition of the dialing code was arguably shaped by his exposure to such problems in popular culture.¹⁷⁸ Citing specifically to *The Simpsons* episode, Judge Parker further observed that the addition of the new area codes in New York City has caused anxiety for many people.¹⁷⁹ While the popular

¹⁷³ *Id.*

¹⁷⁴ *The Simpsons: A Tale of Two Springfields* (Fox television broadcast Nov. 5, 2000).

¹⁷⁵ *Id.*

¹⁷⁶ Judge Parker also referenced an episode of *Seinfeld*, in which the character Elaine was angered that she received a "646" area code as a result of a shortage of "212" codes. *New York*, 267 F.3d at 94.

¹⁷⁷ *Id.*

¹⁷⁸ Certain mediums within popular culture can serve to elicit strong emotions from viewers. Kamir observes, for example, that "[f]ilms have a unique way of touching people's hearts and allowing them to employ their emotions in the processes of seeing, listening, understanding, discussing and analysing." Kamir, *supra* note 39, at 275. For an analysis of emotional influences in the context of the judiciary, see Karl Georg Wurzel, *Methods of Judicial Thinking*, in SCIENCE OF LEGAL METHOD 286, 298 (1921) ("The judge is exposed more than any other thinker to emotional influences," which can lead to errors in judgment.).

With respect to television, Judge Parker's reference to *The Simpsons*, when placed in context with the factual scenario of the case, is attributable to his emotional response to the hardships endured by the residents of Springfield following the imposition of the new dialing code.

Often, however, judicial opinions lack the type of emotional response elicited from elements of popular culture. In this way, popular culture, as John Denvir argues, can provide an important contrast and/or complement to the law as articulated in judicial opinions. In his discussion of viewing certain films as jurisprudential texts, Denvir writes:

[W]e can study movies as "legal texts". . . . Frank Capra's film, *It's a Wonderful Life*, provides an important complement, or perhaps antidote, to Chief Justice William Rehnquist's legal discussion of the reciprocal duties we owe each other as citizens. Not only do both "texts" treat the difficult legal issue of the claims of community, Capra's treatment brings out an emotional ambivalence toward community that Rehnquist's legal prose ignores.

JOHN DENVIR, *LEGAL REELISM: MOVIES AS LEGAL TEXTS* xii (1996).

One of the virtues of popular culture is its ability to elicit emotions in a way in which words on a paper cannot. This is especially so in the context of the torture debate. *24* has enabled the general public to visualize realistic images of torture, and has expanded the scope and breadth of the torture debate.

¹⁷⁹ *New York*, 267 F.3d at 94.

culture references could plausibly be dismissed as an immaterial aside,¹⁸⁰ it is noteworthy that the reference to *The Simpsons* episode was made at the very start of Justice Parker's opinion. The fact that Judge Parker approached the case with these pre-conceived ideas in mind speaks volumes about the influence of aspects of popular culture on the judiciary.¹⁸¹ While many scholars have argued that the media's influence on perceptions of legal issues and dilemmas is limited to members of the general public who are unfamiliar with the workings of the legal system, this example highlights the fact that federal judges, too, can be influenced by what they watch on situational comedies. There is little reason to believe that ideas culled from and expressed by mainstream popular culture escape the members of the federal judiciary.

If we believe that jurors enter certain cases with a particular predisposition as a result of popular culture,¹⁸² it should also be expected that judges may also enter their courtrooms with a predisposition with respect to cases at hand as a result of outside popular culture influences. Based on Judge Parker's reference, there is little reason to believe that cultivation theory's application does not extend beyond the general public.

Because we live during a time period in which television shows—particularly socially relevant television shows such as *The Simpsons* and *24*—both reflect and influence social realities,¹⁸³ references to specific plots and characters from these shows in legal literature and judicial opinions suggest a departure from the merely decorative and ornamental references to staples of children's literature, paintings, and sculptures.¹⁸⁴

¹⁸⁰ A report conducted by M/A/R/C(R) Research concluded, for example, that “all forms of media, such as television news, local newspapers, radio news, and even television dramas are significantly more important to people with less knowledge than to people with more knowledge. This clearly suggests that the media can and does impact some people's knowledge base.” Symposium, *American Bar Association Report on Perceptions of the U.S. Justice System*, 62 ALB. L. REV. 1307, 1315. This finding seems to suggest that popular culture's main sphere of influence is on the general public as opposed to those who have more intimate knowledge of the law. This Note argues to the contrary.

¹⁸¹ Widely-cited studies conducted by Maurice Vergeer “advance the proposition that exposure to fictional and entertainment programming, rather than general programming, cultivates attitudes consistent with that programming.” Podlas, *supra* note 12, at 449, (citing Maurice Vergeer et al., *Exposure To Newspapers and Attitudes Toward Ethnic Minorities: A Longitudinal Analysis*, 11 HOW. J. OF COMM. 127, 130 (2000)). There is no reason to suspect that judges, despite their intimate knowledge of legal doctrine, are better positioned to ignore the influence of the mainstream media with respect to specific factual circumstances and the harm that may result in certain situations. Indeed, cultivation theory, discussed *infra*, makes no inherent distinction between the creation of “common perceptions of reality” among the general public on the one hand, and the judiciary, on the other. See, e.g., Podlas, *supra* note 12, at 447-48.

¹⁸² See generally Podlas *supra* note 12.

¹⁸³ See generally KESLOWITZ, THE WORLD ACCORDING TO THE SIMPSONS, *supra* note 14; Keslowitz, The Tao of Jack Bauer, *supra* note 29.

¹⁸⁴ For a sampling of judicial references to fictional texts, see Seamone, *supra* note 140, at n.191.

Consistent with the tenets of cultivation theory,¹⁸⁵ the messages conveyed on these intelligent, highly influential television shows are exerting a demonstrable effect on the ways in which some judges view legal issues and policy considerations, particularly with respect to the potential public policy effects of their decisions.¹⁸⁶

4. Normative Implications of Judicial Reliance on Extralegal Sources

The significance of the influence of *The Simpsons* and *24* is demonstrated by the shift in the manner by which lawyers, litigants, and members of the general public read judicial opinions. Presumably, if litigants and their lawyers were aware that Justice Scalia has relied on *24* in the torture context,¹⁸⁷ they would seek to exploit such judicial preference to their advantage. Such manipulation of elements of popular culture is hardly unprecedented in the judicial arena.¹⁸⁸

A determination of whether judicial reliance on extralegal sources has adverse implications for the law depends largely on both the nature of the particular source and the way in which it is being used. From a normative perspective, judicial reliance on both *The Simpsons* and *24* during the decision-making process is particularly troublesome, given the underlying goals of both shows.¹⁸⁹ The writers of *The Simpsons*, for instance, have as their primary goal the production of humorous situations.¹⁹⁰ On *24*, the writers' main objective is to maintain a constant sense of fear and suspense, which is partially achieved by creating highly unlikely scenarios that fail to accurately reflect real-world events.¹⁹¹ In order to achieve their respective objectives, both shows often distort the functions and purposes of the law.¹⁹² The adverse implications of public reliance on police and crime television dramas¹⁹³ are magnified when legislators and judges rely on extralegal sources that do not aim to portray the law in an accurate manner. Inaccurate portrayals of the law can lead to the enactment and enforcement of misguided legislation.¹⁹⁴ Public and judicial

¹⁸⁵ See *supra* note 61.

¹⁸⁶ See, for example, *New York*, 267 F.3d at 94, where Judge Parker referenced an episode of *The Simpsons* when discussing the potential effects of instituting a change to the method of dialing telephone numbers in New York.

¹⁸⁷ See *supra* note 171.

¹⁸⁸ See generally Seamone, *supra* note 140.

¹⁸⁹ See generally KESLOWITZ, *THE WORLD ACCORDING TO THE SIMPSONS*, *supra* note 14; Keslowitz, *The Tao of Jack Bauer*, *supra* note 29.

¹⁹⁰ KESLOWITZ, *THE WORLD ACCORDING TO THE SIMPSONS*, *supra* note 14, at 3.

¹⁹¹ Keslowitz, *The Tao of Jack Bauer*, *supra* note 29, at 10.

¹⁹² See *id.*; KESLOWITZ, *THE WORLD ACCORDING TO THE SIMPSONS*, *supra* note 14, at 3.

¹⁹³ See generally Stark, *supra* note 11.

¹⁹⁴ See *supra* note 106 (discussing the enactment of stalking legislation based on *Taxi Driver*).

consciousness of this phenomenon is important and can serve as a check against extralegal intrusions into the law.

CONCLUSION

In addition to the importance of references to popular culture with respect to how judges and legal scholars view the law, judicial juxtaposition of law and popular culture is relevant in terms of its influence on the way in which the general public reads judicial opinions. Bloggers on The Wall Street Journal website, for example, responded to Judge Boyce Martin's¹⁹⁵ Simpsonian reference in a recent case¹⁹⁶ by posting other law-related quotes from *The Simpsons* and commenting on the judicial use of the quote. While many fans would view the reference as purely comical—Homer, as offeror, enters into an oral contract with God, an offeree who Homer believed accepted the terms of the contract by means of his silence—legal professionals responded to the news of the reference by posting other law-related quotes from *The Simpsons* and offering insights on the judicial invocation of the quote. While judicial reliance on popular culture in the context of considering legal ideas might be interpreted in a manner that suggests that the judicial system is being undermined, judicial use of such references can also serve to lessen the generational and educational gaps between judges and the general public.

This Note has shown that two popular television shows—*The Simpsons* and *24*—have exerted an influence not only on the way in which the general public perceives the law, but also on the ways in which laws are made and cases are decided. These examples demonstrate that cultivation theory's reach extends beyond the general public. Despite intricate familiarity with law and policy, some judges and lawmakers are influenced by the events and ideas expressed on fictional television shows. The popular culture references in the context of both judicial reasoning and federal lawmaking demonstrates that law is not informed solely through library books; conversely, some lawmakers and judges lend at least one ear to the volume on their

¹⁹⁵ See Posting of Peter Lattman to Wall St. J. Law Blog, Footnote of the Day: Homer's Unilateral Contract with God, <http://blogs.wsj.com/law/2007/11/13/law-blog-footnote-of-the-day-doh/> (Nov. 13 2007, 14:55 EST).

¹⁹⁶ *Id.* The following reference was made in a footnote to Judge Martin's discussion of the elements required to form a unilateral contract. Homer Simpson talking to God:

Here's the deal: you freeze everything as it is, and I won't ask for anything more. If that is OK, please give me absolutely no sign. [no response] OK, deal. In gratitude, I present you this offering of cookies and milk. If you want me to eat them for you, please give me no sign. [no response] Thy will be done.

The Simpsons: And Maggie Makes Three (Fox television broadcast Jan. 22, 1995).

television sets. Consciousness of this phenomenon on the part of the public, lawmakers, and judges can serve as a check against the adverse consequences that may emanate from such reliance.