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## USING FILM AS A TEACHING TOOL IN A MENTAL HEALTH LAW SEMINAR

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*This essay explores my use of film to teach a seminar in mental health law. Film is particularly useful in a course such as mental health law, because few law students have had significant interaction with mentally ill individuals, and many have unexamined, stereotypical images of the mentally ill. Using films enables the professor to illustrate and challenge preconceived notions about the mentally ill. It also serves as a powerful tool for illuminating many of the legal issues the mentally ill face today. This essay describes the substantive coverage of the course I teach, provide illustrative examples of using film to enhance the coverage and discussion of substantive legal concepts, and provide suggestions for use of film to illustrate mental health concepts. The essay concludes with a selected resource list for the law professor interested in mental health issues in film.*

### INTRODUCTION

Since the 1999–2000 academic year, I have taught a course at the Louis D. Brandeis School of Law at the University of Louisville titled “Psychiatry, Mental Health and the Law.”<sup>1</sup> As part of this course, I have begun thinking about and experimenting with the use of film to stimulate class discussion; illustrate ideas from the substantive areas of coverage of the course; and help students conceptualize mental illness and the experiences of mentally ill

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<sup>1</sup> Some of the available teaching materials use the phrase “mental disability law” to describe this area of study. See, e.g., MICHAEL PERLIN, LAW AND MENTAL DISABILITY (1994). I prefer the term “mental health law,” both because of my self-identification as a health care lawyer interested in mental health issues and to avoid confusion with the distinct, though overlapping, field of disability law. I will thus use this term throughout this paper.

individuals. In my efforts in this course, I have been fortunate in several ways. First, I have been fortunate that the administration of my law school, despite the constant struggle to offer a complete curriculum in a small dual-division law school, has allowed me to teach such a specialized course every year for six years now. Second, I am fortunate that my law school has invested in classroom and library technology which facilitates the presentation of multimedia materials. Third, I am fortunate to have had the input of several colleagues from the Department of Psychiatry and Behavioral Sciences at the University of Louisville, who have helped add an interdisciplinary element to the courses and helped deepen our understanding of the related fields of mental health and law. Finally, I am fortunate to have consistently had students in my courses who have been indulgent of my attempts to bring nontraditional teaching methods into class.

The study of film and mental health law occupies an interesting intersection of trends in the scholarly literature. Legal scholars are increasingly turning to a study of popular-culture representations of legal practitioners and legal subjects, in recognition of the power of film and other cultural art forms to influence the course of public policy debates. The scholarship on film and the law generally divides into three genres. The first consists of studies of filmic representations of lawyers themselves, their ethical roles and duties, and the lawyer-client relationship.<sup>2</sup> The second focuses on particular legal doctrines and how they are developed or reflected in, or

<sup>2</sup> See PAUL BERGMAN AND MICHAEL ASIMOW, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996); John Brigham, *Representing Lawyers: From Courtrooms to Boardrooms and TV Studios*, 53 SYRACUSE L. REV. 1165, 1166 (2003); Stacy Caplow, *Still in the Dark: Disappointing Images of Women Lawyers in the Movies*, 20 WOMEN'S RTS. L. REP. 55, 55-56 (1999); Christine A. Corcos, *Legal Fictions: Irony, Storytelling, Truth and Justice in the Modern Courtroom Drama*, 25 U. ARK. LITTLE ROCK L. REV. 503, 504 (2003); Michael M. Epstein, *Law and the Supernatural: How One Film's Truth Compulsion Conceit Critiques and Redeems the Post-O.J. Lawyer*, 28 VT. L. REV. 881, 881-82 (2004); Louise Everett Graham & Geraldine Maschio, *A False Public Sentiment: Narrative and Visual Images of Women Lawyers in Film*, 84 KY. L.J. 1027, 1027-28 (1996); Marianne M. Jennings, *Moral Disengagement and Lawyers: Codes, Ethics, Conscience and Some Great Movies*, 37 DUQ. L. REV. 573, 578 (1999); Orit Kamir, *Feminist Law and Film: Imagining Judges and Justice*, 75 CHI.-KENT L. REV. 899 (2000); Carrie Menkel-Meadow, *The Sense and Sensibilities of Lawyers: Lawyering in Literature, Narratives, Film and Television, and Ethical Choices Regarding Career and Craft*, 31 MCGEORGE L. REV. 1, 1-2 (1999); Carolyn Lisa Miller, *Film and the Female Attorney*, 4 COLUM. J. GENDER & L. 203, 204 (1994); Francis M. Nevins, *Reconnoitering Juriscinema's First Golden Age: Law and Lawyers in Film, 1928-34*, 28 VT. L. REV. 915, 915 (2004); David Ray Papke, *Crusading Hero, Devoted Teacher and Sympathetic Failure: The Self-Image of the Law Professor in Hollywood Cinema and in Real Life, Too*, 28 VT. L. REV. 957, 958 (2004); Rebecca Porter, *Lawyers on the Big Screen*, 38 TRIAL 54, 54 (2002); Laura Krugman Ray, *Judicial Fictions: Images of Supreme Court Justices in the Novel, Drama and Film*, 39 ARIZ. L. REV. 151, 153 (1997).

affected by, filmic depictions.<sup>3</sup> The third, to which this essay belongs, discusses the pedagogical role of film in teaching legal doctrine to law students.<sup>4</sup> On the medical side, there is substantial literature in filmic depictions of mental illness.<sup>5</sup> Certainly, there is a longstanding cinematic fascination with mental illness.<sup>6</sup> Strangely, there is as yet relatively little published scholarship which explicitly analyzes the relationship between filmic depictions of mental illness and the legal treatment of individuals with mental illness.<sup>7</sup>

This short essay will describe my use of film in class to illustrate mental health concepts and substantive legal issues. I will include some examples I have actually used, and some which I have not yet implemented.<sup>8</sup> Finally, I will provide a short list of re-

<sup>3</sup> See generally LEGAL REELISM: MOVIES AS LEGAL TEXTS (John Denvir ed., 1996); Michael A. Baldassare, *Cruella De Vil, Hades and Ursula the Sea Witch: How Disney Films Teach Our Children the Basics of Contract Law*, 48 DRAKE L. REV. 333, 334–35 (2000); Robert Batey, *Minority Report and the Law of Attempt*, 1 OHIO ST. J. CRIM. L. 689, 689 (2004); Melissa Cole, *Projecting Civil Litigation Through the Lens of Film Theory*, 47 ST. LOUIS U. L.J. 21, 22 (2003); John Denvir, *The Slotting Function: How Movies Influence Political Decisions*, 28 VT. L. REV. 799, 799–800 (2004); David R. Dow, *Fictional Documentaries and Truthful Fictions: The Death Penalty in Recent American Film*, 17 CONST. COMMENT. 511, 512 (2000); Melvin Gutterman, *“Failure to Communicate”: The Reel Prison Experience*, 55 SMU L. REV. 1515, 1515 (2002); Elizabeth Pendo, *Images of Health Insurance in Popular Film*, 37 J. HEALTH L. 267 (2004).

<sup>4</sup> See Paul Bergman, *Teaching Evidence the Reel Way*, 21 QUINNIPIAC L. REV. 973, 973 (2003); James R. Elkins, *Reading/Teaching Lawyer Films*, 28 VT. L. REV. 813, 817 (2004); Philip N. Meyer & Stephen L. Cusick, *Using Non-Fiction Films as Visual Texts in the First-Year Criminal Law Course*, 28 VT. L. REV. 895, 895 (2004).

<sup>5</sup> See DANNY WEDDING ET AL., MOVIES AND MENTAL ILLNESS: USING FILMS TO UNDERSTAND PSYCHOPATHOLOGY 4–5 (2005); Dennis P. McNeilly & Steven P. Wengel, *The “ER” Seminar: Teaching Psychotherapeutic Techniques to Medical Students*, 25 ACAD. PSYCHIATRY 193 (2001); Donald A. Misch, *Psychosocial Formulation Training Using Commercial Films*, 24 ACAD. PSYCHIATRY 99 (2000); Christopher J. Welsh, *OD’s and DT’s: Using Movies to Teach Intoxication and Withdrawal Syndromes to Medical Students*, 27 ACAD. PSYCHIATRY 182, 182 (2003).

<sup>6</sup> This cinematic fascination has even spawned its own film festival. In June of 2003, the Institute of Contemporary Arts in London, England hosted the first Reel Madness film festival devoted to the depiction of mental illness in film. See Chris Michaels, *Reel Madness Film Festival 2003: Seeing the Madman*, KAMERA.CO.UK, [http://www.kamera.co.uk/features/reel\\_madness\\_film\\_festival\\_2003\\_seeing\\_the\\_madman.php](http://www.kamera.co.uk/features/reel_madness_film_festival_2003_seeing_the_madman.php) (last visited Oct 7, 2005).

<sup>7</sup> One notable example of such scholarship is Professor Donald Hermann’s article discussing the role of homosexuality in the law, in the mental health sciences, and on the screen which, although now somewhat out-of-date since the Supreme Court decided *Lawrence v. Texas*, is still a fascinating study. See Donald H. J. Hermann, *Legal Incorporation and Cinematic Reflections of Psychological Conceptions of Homosexuality*, 70 UMKC L. REV. 495, 495 (2002).

<sup>8</sup> In the interest of good lawyering, I should point out that the author makes no representations or warranties concerning the value of any of the examples discussed herein, and all attempts to use these materials in your own classes is undertaken entirely at your own risk.

sources for the use of those who may be inspired to explore this area for themselves. Film provides a powerful adjunct to the normal law school diet of appellate cases and scholarly articles, and has the potential to be a valuable addition to many courses.

### **A Course in Mental Health Law**

I have taught mental health law in several different forms—as a traditional, three credit-hour course with an examination at the end, as a two-hour course, and as a seminar in which the primary evaluation of students' work is through a research paper. Although the format and available class time vary, the basic coverage of the course has been fairly consistent. I divide the course in mental health law roughly into three parts: the doctor/patient relationship, civil commitment law, and the roles of mental status in criminal law. Although this organization leaves out much that is worthy of study in this field,<sup>9</sup> I have selected these areas of emphasis as an introduction for students to the vast range of legal issues in which mental status plays an important role. This section will briefly describe each part of the course while discussing specific films used in the course.

#### **A. The Doctor/Patient Relationship**

After a short introduction to mental health sciences and discussion of mental illness, the course focuses on the doctor/patient relationship in mental health care.<sup>10</sup> As part of this discussion, I want the students to have a concept of the range of mental illnesses, to gain what appreciation they can for the distress and pain caused by mental illness, and to understand the distinction between the categorization of mental illnesses used for therapeutic/diagnostic purposes and the categorization of mental states used for legal/moral decision making. In working through these materials, we often discuss images of the mentally ill derived from popular culture. In the

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<sup>9</sup> For example, issues of mental health care funding, correctional mental health care, capacity issues in contract law and property conveyancing, and disability law as applied to the mentally ill receive only brief coverage in my courses.

<sup>10</sup> Mental health, perhaps more than some other fields of medicine, employs a team-oriented approach to treatment. Thus, a patient may receive mental health services from, among others, psychiatrists, psychologists, psychiatric nurses or advanced nurse practitioners, social workers, case managers, and others. In this paper, for ease of writing, I will generally not distinguish between these categories of health care providers, and I may use the term "doctor" as an umbrella term. This is not meant in derogation of the valuable services provided by non-medically trained mental health workers.

spirit of fighting fire with fire,<sup>11</sup> I use films in this section of the course to explore the meaning and experience of mental illness and the stigma surrounding a label of “mental illness” in our society, and to explore the forms of mental illness and mental health treatment. Before the first class, I also ask students to reflect on their memories of popular cultural depictions of mental illness, and we discuss a variety of images in the first class, from *Forrest Gump*,<sup>12</sup> *One Flew over the Cuckoo’s Nest*,<sup>13</sup> *Shine*,<sup>14</sup> and other films. We discuss the tendency toward unflattering portrayals of the mentally ill in film, and also the opposite tendency to focus on the stories of those who spectacularly overcome their illness.

### 1. *A Beautiful Mind*

Before the first class meeting, I ask the students to watch the film *A Beautiful Mind*, Ron Howard’s film adaptation of Sylvia Nasar’s award-winning biography<sup>15</sup> of Princeton mathematician and Nobel laureate John Nash (portrayed in the film by Russell Crowe), who suffered from schizophrenia throughout much of his career.<sup>16</sup> This film, although not without its flaws, is one of the best depictions on film of the subjective experience of mental illness. Discussion of the film generally proceeds along two lines. First, students want to discuss the nature of the symptoms of schizophrenia, and the relationship between mental illness and creative activity. In this, the film does an excellent job of drawing the viewer into Nash’s experience of his illness, and the viewer eventually realizes that he cannot trust his own concept of which aspects of the film represent reality and which are hallucinatory. Second, students raise the issue of the disparity between the film’s depiction of Dr. Nash’s life with schizophrenia, and the experiences of the vast majority of individuals diagnosed with the condition. The film’s depiction of Nash’s life is somewhat sugarcoated, skipping over several

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<sup>11</sup> Others have recognized the power of film in forming popular cultural images and informing policymaking. The inaccuracy of the filmic depiction can unfortunately sometimes lead to poor policymaking; as the computer science saying goes, “garbage in, garbage out.” See, e.g., Melvin Gutterman, “Failure to Communicate”: *The Reel Prison Experience*, 55 SMU L. REV. 1515, 1517 (2002).

<sup>12</sup> FORREST GUMP (Paramount Pictures 1994).

<sup>13</sup> ONE FLEW OVER THE CUCKOO’S NEST (Fantasy Films 1975).

<sup>14</sup> SHINE (Momentum Films 1996).

<sup>15</sup> SYLVIA NASAR, *A BEAUTIFUL MIND* (1998).

<sup>16</sup> *A BEAUTIFUL MIND* (DreamWorks Pictures 2001).

of the more difficult aspects of Nash's life, such as his divorce and alleged homosexual affairs.<sup>17</sup>

## 2. *Shine*

This film, although a critical and popular success, has also been criticized for an overly romantic image of mental illness. While Geoffrey Rush's performance as pianist David Helfgott is superb, winning him the Academy Award for Best Actor in 1997,<sup>18</sup> the film glosses over the years between Helfgott's breakdown as a music student and his reemergence. Critics further contend that the film misrepresents the extent to which Helfgott was able to recover from his illness and resume his career as a concert pianist. Rush's performance, contrasted with these critiques, make this film useful to help develop students' critical faculties on the usefulness of film to help us understand mental illness. Class discussion centers on the tendency for films to portray mentally disabled characters as either heroically overcoming their disabilities or as mere caricatures of human beings, reduced to an eccentric mannerism or tic. Examples of the latter tendency include Dustin Hoffman's portrayal of the autistic Raymond Babbitt in *Rain Man*<sup>19</sup> and the 1990 Dudley Moore film *Crazy People*.<sup>20</sup>

## 3. *The Sopranos*

HBO's popular drama about a New Jersey organized crime family contains a nuanced portrait of a psychotherapist-patient relationship. As the series opens, mob boss Tony Soprano (James Gandolfini) has sought out the assistance of a psychotherapist, Dr. Jennifer Melfi (Lorraine Bracco), because he has been experiencing panic attacks.<sup>21</sup> As the first season progresses, the show explores issues of transference and counter-transference, mandatory reporting laws, ethical and legal confidentiality requirements, the relationship between pharmacological and psychotherapeutic treatment,

<sup>17</sup> NASAR, *supra* note 15, at 169-71, 302-03.

<sup>18</sup> Interestingly, also nominated for Best Actor that year was Billy Bob Thornton for his portrayal of a mentally retarded man in *SLING BLADE* (Miramax Films 1996). See 1996 Academy Awards Winners and History, <http://www.filmsite.org/aa96.html> (last visited Oct. 7, 2005).

<sup>19</sup> *RAIN MAN* (United Artists Pictures 1988).

<sup>20</sup> *CRAZY PEOPLE* (Paramount Pictures 1990).

<sup>21</sup> *The Sopranos* (HBO Television Broadcast, Jan. 10, 1999).

and the stigma of mental illness.<sup>22</sup> Useful discussions can center on the reasons why Tony does not want his colleagues to learn of his treatment, their reactions upon learning that he is receiving therapy, and his efforts to hide his therapy. Other issues for discussion are the ethical and legal duties of the therapist who knows of illegal activity by a patient,<sup>23</sup> inappropriate behavior by a patient, and the role of psychiatrists and other mental health professionals in the clinical treatment of mental disorders.<sup>24</sup>

## B. Civil Commitment

One of the images of the mentally ill that students bring to my course is often the image of the locked ward and involuntary treatment of the (perhaps violent) mentally disordered. This image is of course reinforced by Hollywood, which often presents a much distorted picture of civil commitment and involuntary treatment.

### 1. *One Flew over the Cuckoo's Nest*

Perhaps more than any other source, the film adaptation<sup>25</sup> of Ken Kesey's novel *One Flew over the Cuckoo's Nest*<sup>26</sup> shapes students' understanding of and interest in mental illness and mental hospitalization before they begin studying mental health law. This is not surprising, as the film swept the major Academy Awards categories after its release in 1975, winning the 1976 awards for Best Picture, Best Director (Milos Forman), Best Adapted Screenplay, Best Actress (Louise Fletcher), and Best Actor (Jack Nicholson), and garnering nominations in several other categories.<sup>27</sup> The film retains its power thirty years after its release. Most students are familiar with the film's storyline, in which petty criminal Randle McMurphy (Nicholson) feigns mental illness in order to escape jail for what he imagines to be the gentler environment of a mental institution. He

<sup>22</sup> *The Sopranos* (HBO Television Broadcast, Jan. 10, 1999 – Apr. 4, 1999).

<sup>23</sup> I like to discuss the relationship between the attorney's ethical duty to represent unpopular clients and the therapist's role in treating unlikable patients.

<sup>24</sup> Although Tony's therapist, Dr. Melfi, is a psychiatrist, psychotherapy is rarely provided by psychiatrists in the modern mental healthcare market. See June Grant Wolf, *Contributions of Other Disciplines to Psychiatric Practice*, in ALLAN TASMAN ET AL., *PSYCHIATRY 1835* (2nd ed. 1999). This leads to discussion of issues surrounding ability to pay, quality of care, and other issues surrounding the ethics of mental health finance.

<sup>25</sup> *ONE FLEW OVER THE CUCKOO'S NEST* (Fantasy Films 1975).

<sup>26</sup> KEN KESEY, *ONE FLEW OVER THE CUCKOO'S NEST* (1962).

<sup>27</sup> Academy Awards Winners (1970–1979), <http://www.filmsite.org/oscars70.html> (last visited Aug. 12, 2005).

discovers instead a tightly controlled environment in which the slightest deviation from the rules is punished with physical and chemical restraint and involuntary electroshock therapy (ECT). In fact, the lingering impact of this film causes students every year to be surprised to discover that ECT is still considered an appropriate and therapeutically effective treatment. Although *McMurphy* has not been civilly committed himself, this film lends itself well to a discussion of the civil commitment process. Which characters in the film have been or could be civilly committed? What is the legal process by which Randle *McMurphy* arrives at the hospital? Is it true that mental hospitalization is perceived as preferable to prison, and what should be the prison system's response to attempts to "fake" mental illness?

## 2. *Girl, Interrupted*

This film is an adaptation of Susanna Kaysen's autobiographical account of her 18-month stay in a mental hospital.<sup>28</sup> It explores the extent to which mental illness is socially constructed, as well as the extent to which social outsiders are disproportionately labeled as mentally ill. Kaysen (Winona Ryder) is encouraged to enter a mental hospital after a half-hearted suicide attempt.<sup>29</sup> A theme of the film, which it shares with *One Flew over the Cuckoo's Nest*, is the blurring of the line between eccentric behavior or lack of purpose and mental illness. This parallelism may be due to the fact that the events on which both films are based—Kaysen's hospitalization and Kesey's stint as an orderly in a psychiatric ward— took place in the 1960s, a time in which the very existence of "mental illness" was being challenged.<sup>30</sup> This film has echoes in cases such as *Maniaci v. Marquette University*,<sup>31</sup> in which a female student was hospitalized involuntarily to keep her from leaving school,<sup>32</sup> and *People v. Bradley*,<sup>33</sup> in which an African-American man's reluctance to leave his wife's hospital bedside after her operation was misinterpreted as irrational behavior and resulted in his being forcibly committed to a mental hospital.<sup>34</sup> Class discussion focuses on ways in which per-

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<sup>28</sup> *GIRL, INTERRUPTED* (Sony Pictures 1999).

<sup>29</sup> *Id.*

<sup>30</sup> See, e.g., Thomas Szasz, *The Myth of Mental Illness*, 15 AM. PSYCHOL. 113 (1960)

<sup>31</sup> *Maniaci v. Marquette Univ.*, 184 N.W.2d 168 (Wis. 1971).

<sup>32</sup> *Id.* at 169–70.

<sup>33</sup> *People v. Bradley*, 318 N.E.2d 267 (Ill. App. Ct. 1974).

<sup>34</sup> *Id.* at 271.



ception of mental illness results from social or racial “otherness,” and whether the law can minimize this effect through guarantees of due process. Finally, the film can be a springboard to a discussion of the nature of “voluntary” inpatient treatment. Was Susanna’s hospitalization truly voluntary? What would have happened if she had refused hospitalization? What practical restrictions exist on the right of nominally voluntary patients to leave the hospital?

### C. Criminal Law and Mental Status

The stereotype of the violent mentally ill criminal is pervasive in our society, and to some extent I teach against this stereotype throughout my course. However, the stark reality is that many of those haled into court on criminal charges, convicted, sentenced, and, in some cases, executed, are in fact significantly mentally ill,<sup>35</sup> and that the criminal justice system is the largest provider of mental health services in the country.<sup>36</sup> Much of this section of the course deals with the tension between these two realities.

Unfortunately, one of the enduring images of mental illness in films is that of the psychotic killer. From Alfred Hitchcock’s *Psycho*<sup>37</sup> to *The Silence of the Lambs*,<sup>38</sup> there is no scarcity of films featuring deranged murderers, and the negative image of the mentally ill perpetuated by these films has attracted much-deserved criticism.<sup>39</sup> It is important to present students with research establishing the true incidence of violence among individuals with mental illnesses,<sup>40</sup> both to combat stigma and to lay the foundation for discussion of legal policy toward the mentally disabled criminal suspect. Films depicting hospitalization as an alternative to imprisonment,

<sup>35</sup> See Ralph Slovenko, *The Transinstitutionalization of the Mentally Ill*, 29 OHIO N.U.L. REV. 641, 655-57 (2003).

<sup>36</sup> See *id.* at 657.

<sup>37</sup> *PSYCHO* (Paramount Pictures 1960).

<sup>38</sup> *THE SILENCE OF THE LAMBS* (Orion Pictures 1991).

<sup>39</sup> See, e.g., Doug DeVoe, *The Mental Health and the Criminal Justice Conundrum: Solutions*, 32 CAP. U. L. REV. 925, 926 (“Those of us with mental illnesses are often viewed as psychotic. . . stalkers, comic figures, neurotics who do everything to excess, or sometimes as sympathetic characters. Seldom are we depicted as competent.”); David C. Stone, *Hollywood on the Screen and on the Streets: The Cuckoo’s Nest of LPS*, 31 LOY. L.A. L. REV. 983 (1998); Justine A. Dunlap, *What’s Competence Got to Do with It: The Right Not to be Acquitted by Reason of Insanity*, 50 OKLA. L. REV. 495, 513 (1997).

<sup>40</sup> See, e.g., Ann Hubbard, *The ADA, the Workplace, and the Myth of the “Dangerous Mentally Ill,”* 34 U.C. DAVIS L. REV. 849 (2001).

such as Alfred Hitchcock's classic *Psycho*,<sup>41</sup> can stimulate discussion of the relationship between mental status and criminal culpability.

Nonetheless, it is undeniably true that the mentally ill do sometimes commit violent acts, and that mental health providers are sometimes called to answer legally for the harm caused by their patients.<sup>42</sup> Films can be used to provide hypothetical situations for students to evaluate whether the character's behavior in therapy should trigger a duty to warn a third party. Some of the productions discussed here, such as *The Sopranos*,<sup>43</sup> contain scenes which skirt the edges of reportability. For example, in some scenes, the patient begins to discuss aspects of his life involving violence and illegal activity, while the therapist tries to ensure that the patient does not inadvertently cross the line into reportability.<sup>44</sup>

### 1. *The Green Mile*

The Court's opinions in *Penry v. Johnson*<sup>45</sup> (*Penry II*) and *Atkins v. Virginia*<sup>46</sup> raised the importance of mental status. In *Atkins*, the Court held that execution of the mentally retarded is violative of the Eighth Amendment to the U.S. Constitution.<sup>47</sup> This is an unusual holding in mental health law, because it relies almost entirely on diagnostic categorization to make the distinction between those mentally impaired capital convicts who are eligible for the death penalty, and those who are not.<sup>48</sup> Important issues in this area include the ability of a death row inmate to appreciate the nature of the punishment being imposed on him,<sup>49</sup> and the distinction between a diagnosis of mental illness and that of mental retardation. Films such as *The Green Mile*,<sup>50</sup> with its depiction of the execution of a possibly mentally retarded inmate, innocent of the crime for

<sup>41</sup> See generally *PSYCHO*, *supra* note 37.

<sup>42</sup> The seminal case establishing the mental health provider's duty to warn of the dangerousness of her patient is of course *Tarasoff v. Regents of the Univ. of California*, 17 Cal. 3d 425 (1976).

<sup>43</sup> See *supra* notes 21–22.

<sup>44</sup> *Id.*

<sup>45</sup> See generally *Penry v. Johnson*, 532 U.S. 782 (2001).

<sup>46</sup> See generally *Atkins v. Virginia*, 536 U.S. 304 (2002).

<sup>47</sup> *Id.*

<sup>48</sup> See *id.* at 309. For a more exhaustive discussion of *Atkins*, see Timothy S. Hall, *Mental Retardation and Criminal Culpability After Atkins v. Virginia*, 29 U. DAYTON L. REV. 355 (2004).

<sup>49</sup> *Ford v. Wainwright*, 477 U.S. 399, 400 (1986).

<sup>50</sup> *THE GREEN MILE* (Castle Rock Entertainment 1999).

which he was convicted, raise issues concerning the incidence of error in the capital trial and sentencing process, racial disparities in the capital sentencing system, and public comprehension of the death penalty.

## 2. *Minority Report*

The use of post-sentence civil commitment as a social response to the sexually violent is a fairly recent legal development, and is extremely controversial, although it is apparently constitutional.<sup>51</sup> Issues of preemptive detention and prediction of criminal activity are important concepts in this area. In teaching this material, one of the core issues is the distinction between criminal law, which may only punish for past actions, and civil commitment, which may not hospitalize an individual for past acts, but rather out of a desire to prevent future harm. I use the film *Minority Report*,<sup>52</sup> loosely based on the Philip K. Dick story of the same name,<sup>53</sup> to explore these issues. Although not directly depicting individuals with mental illnesses, the story, and in some ways the film, focuses on the dangers of society's dream of preventive justice.<sup>54</sup> In my experience, the discussion tends to center on the ways in which supposedly scientific evidence can be misused in the adversarial process, or for dubious societal goals.

## D. Other Courses

Many of these issues are relevant to more than a specialty course in law and mental health. Issues of competence arise in courses such as Contracts (competence to contract); Family Law, Trusts and Estates (competence to make a will or make medical decisions); Health Law (medical decision making); Torts (professional liability and individual liability issues); Disability Law (mental disability); Criminal Law (*mens rea* and the insanity defense); Criminal Procedure (competence to stand trial); and many others.

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<sup>51</sup> See, e.g., *Kansas v. Hendricks*, 521 U.S. 346 (1997) (upholding Kansas SVP commitment law against substantive due process, ex post facto, and double jeopardy challenges); *Kansas v. Crane*, 534 U.S. 407 (2002).

<sup>52</sup> *MINORITY REPORT* (Twentieth Century Fox 2002).

<sup>53</sup> PHILIP K. DICK, *The Minority Report*, in *THE MINORITY REPORT AND OTHER CLASSIC STORIES* (2002).

<sup>54</sup> *Id.*

### E. Benefits of Using Film in Mental Health Law Class

The large body of work exploring the experience of the mentally ill can help students develop an empathy with the mentally ill. Many law students have no experience, or only limited experience, with the mentally ill, and are often reluctant to voice their images and perspectives on mental illness. Films such as *Shine*, *A Beautiful Mind*, and others can help the instructor elicit student perspectives on mental illness, and help students overcome the fear of being seen as insensitive or biased.<sup>55</sup> Also, explicit use of filmic images of mental illness can help students identify social stereotypes of individuals with mental illness, as well as lead to insight into their own preformed impressions of mental illness, which may have been created by some of the same films we discuss in class.

Because of the power of the images presented in films, it is important to remind the students (and ourselves) to try to maintain a critical distance from the material. Viewing films in class is different from the recreational viewing of films as entertainment, and it is worthwhile to remind students of this as the course progresses. With the proper critical mindset, film can be used to expose and explore our preconceptions of mental illness and those suffering from mental illness.

#### How to assign materials

One of the issues which I have struggled with is how to assign films or scenes as coursework. This is particularly true in shortened courses, such as the two-hour seminar format at my school, or in courses where presentations of student research papers take up much of the semester, cutting into the time available for presentation of other topics. Some options for making these materials available to students include:

- a. Show selected film clips in class as a basis for discussion;
- b. Assign students to rent and watch films before classroom discussion of a certain subject;
- c. Make films available at the reserve desk of the law library.

There are advantages and disadvantages to each of these options, and I have used a combination of several of them in the past.<sup>56</sup> In cases where the students need to view the entire film in order to

<sup>55</sup> See, e.g., *A BEAUTIFUL MIND*, *supra* note 16; *SHINE*, *supra* note 14.

<sup>56</sup> Professors seeking to incorporate video into their classes should also check their schools' policies on fair use of copyrighted materials, in order to prevent unintentional infringement on the legal rights of the owners of the works.

appreciate the issues to be discussed, such as *A Beautiful Mind*, I generally ask the students to rent and watch the film before class. However, I also put a copy of the film on reserve in the law library. This particularly works well at the beginning of the semester, as I post my syllabus and first assignments well in advance of the start of the semester on my course web site, and students can watch these movies over the semester break. During the semester, students may be less willing to devote a portion of their leisure hours to activity perceived as class preparation. Some faculty members who make extensive use of film schedule specific times for showings of films that will be discussed in class. Of course, this requires additional instructor time, or the dedication of a technology support staff member to set up and run the video equipment.

The use of film clips in class has the disadvantage of taking scarce class discussion time for an essentially passive activity. This also limits the length of the clips that can be shown, but it guarantees that all of the students will have seen the film clip, leaving the film images fresh in the students' mind during the discussion of the film. In a two-hour course especially, one is wary of taking too much time away from class discussion, but if the course is scheduled in long contiguous periods such as 100 minutes, once a week, a technique which provides breaks in the class and can serve to restart discussions is helpful. The instructor must carefully select film clips to adequately raise the legal issue for discussion, while considering the time necessary for coverage of the substantive course material.

## CONCLUSION

Film is likely the most popular art form of the 21st century. Film is a powerful medium, one that speaks to many students. Following this, it can be a useful adjunct to traditional classroom materials in many courses. If used carefully and thoughtfully, film can bring new insights and perspectives into the classroom, and can serve as a springboard for critical discussion and reflection on the perspectives and biases brought to this subject by students as well as professionals. I hope that this essay inspires others to make use of this medium, and that you find using film to teach mental health law as interesting, challenging, and rewarding as I have.<sup>57</sup>

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<sup>57</sup> I invite anyone experimenting with the use of film to illustrate mental health issues to contact me to share your stories, whether successful or not.

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**APPENDIX: SELECTED MENTAL HEALTH LAW RESOURCE LIST**

Although there is not much literature on using film to teach law classes, there is a substantial literature on portrayals of mental health in the movies, and on using movies to teach psychological and psychiatric concepts. I have relied on these sources in the preparation of this paper, and present here a bibliography of teaching mental health concepts with film.

For a filmography indexing movies by DSM diagnostic category, see Professor Susan Nicosia's web page at <http://faculty.dwc.edu/nicosia/moviesandmentalillnessfilmography.htm> (last visited Aug. 12, 2005).

Professor Nicosia also maintains a bibliography of resources relevant to mental health issues in the movies at <http://faculty.dwc.edu/nicosia/moviesandmentalillnessbibliography.htm> (last visited Aug. 12, 2005).

Another article discussing film in teaching law and mental health was published in the journal *Teaching of Psychology*. See D. Anderson, *Using Feature Films as Tools for Analysis in a Psychology and Law Course*, 19 *TEACHING PSYCHOL.* 155 (1992).

For a wide range of information on film, the Internet Movie Database is an excellent online resource. See *The Internet Movie Database*, <http://www.imdb.com> (last visited Aug. 12, 2005).