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LAW REVIEW

[INSERT SONG LYRICS HERE]: THE USES AND MISUSES OF
POPULAR MUSIC LYRICS IN LEGAL WRITING

Alex B. Long*

I. FOR THOSE ABOUT TO ROCK (I SALUTE YOU)¹

The fun is just about to get started,
So throw the switch --
It's rock 'n' roll time.
(Hey!)

-- Guided By Voices, "*Over the Neptune/Mesh Gear Fox*"²

Popular music is a popular topic in legal writing. Law professors and practicing attorneys need little excuse to write about legal issues involving particular musical artists or genres³ when given half a chance, and the legal problems of our favorite artists and the written judicial opinions they produce are a particular source of interest for many lawyers. We may generally care little and understand even less about the vagaries of copyright law, but you tell us that John Fogerty of Creedence Clearwater Revival once got sued for plagiarizing his own songs and that the case actually made it all the way to the Supreme Court,⁴ well, by golly, we might just read your little law review article on the subject, even though we secretly think most law review articles are deadly dull.

But lawyers do more than just find excuses to write about the law and popular music. Quite often, lawyers and judges will use the words of popular music artists in an attempt to grab a reader's attention or advance the writer's thesis. Such uses could range from something as simple as using (or altering) lyrics as the title for a piece of scholarship to using

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¹ AC/DC, *For Those About to Rock (We Salute You)*, on FOR THOSE ABOUT TO ROCK (Sony 1981).

² GUIDED BY VOICES, *Over the Neptune/Mesh Gear Fox*, on PROPELLER (Rockathon 1992); see also CHEAP TRICK, *Hello There*, on IN COLOR (CBS 1977) ("Hello there, ladies and gentlemen ...are you ready to rock?"); RAMONES, *Blitzkrieg Bop*, on RAMONES (Sire 1976) ("Hey, ho, let's go!").

³ See, e.g., A. Dean Johnson, *Music Copyrights: The Need for an Appropriate Fair Use Analysis in Digital Sampling Infringement Suits*, 21 FLA. ST. U.L. REV. 135 (1992); Peter Alan Block, Note, *Modern-Day Sirens: Rock Lyrics and the First Amendment*, 63 S. CAL. L. REV. 777 (1990); see also Alexis A. Lury, *Time to Surrender: A Call for Understanding and the Re-Evaluation of Heavy Metal Music Within the Contexts of Legal Liability and Women*, 9 S. CAL. REV. L. & WOMEN'S STUDIES 155, 156-57 (1999) (noting various censorship attempts by Congress directed toward reducing violence against women and the attempt by Congress to link heavy metal with violence against women).

⁴ *Fogerty v. Fantasy, Inc.*, 510 U.S. 517 (1994).

descriptive passages from songs to help create a link between the song and the legal issue at hand.

It is unclear how many artists would feel upon learning that judges and academics sometimes use their lyrics in order to persuade other elites as to the correctness of their thinking on a legal issue. Popular music artists have always been somewhat ambivalent about having the lyrics to their songs viewed as poetry, tools for social change, or as anything other than a means of self expression.⁵ There are still quarters within academia that posit that at least some popular music lyrics, and rock lyrics in particular, qualify as poetry,⁶ evidence in Jim Morrison's "poetry" to the contrary notwithstanding.⁷ Folk music has long been viewed by the ideological left as a means of effectuating change,⁸ and some genres of rap contain "the most overt social agenda in popular music since the urban folk movement of the 1960s."⁹ But for every artist willing to go on record as claiming poet or social commentator status, there are almost certainly more who reject such labels. Sixties folk legend Phil Ochs is on record as stating that he wrote about political and social issues "out of an inner need for expression, not to change the world."¹⁰ Bob Dylan's discomfort with being the "voice of a generation" is well-documented and ultimately was a factor in his decision to abandon his protest singer roots. For the first half of R.E.M.'s career, no one could understand what Michael Stipe was even talking about.¹¹

Nonetheless, the reliance on popular music lyrics in legal writing is natural. Popular music, in its many forms, covers the spectrum of human emotions and situations. As Johnny Cash put it on the liner notes to his *Unchained* album,

⁵ See generally U2, *Rejoice*, on OCTOBER (Island Records 1981) ("I can't change the word, but I can change the world in me").

⁶ See Kenji Yoshino, *The City and the Poet*, 114 YALE L.J. 1835, 1848 (2005) (recognizing the possibility of classifying popular song lyrics as poetry); Karen Alkalay-Gut, *Literary Dialogues: Rock and Victorian Poetry*, 21 POETICS TODAY 33, 34 (2000) (positing "an extraordinary similarity of subject and technique" between rock lyrics and Victorian poetry); Brent Wood, *Robert Hunter's Oral Poetry: Mind, Metaphor, and Community*, 24 POETICS TODAY 35, 35 (2003) (discussing the "renaissance of oral poetry" with the context of the "poems" of Robert Hunter, lyricist for the Grateful Dead); see also Walter Edwards, *From Poetry to Rap: The Lyrics of Tupac Shakur*, 26 THE WESTERN J. OF BLACK STUDIES 61, 61 (2002) (comparing "linguistic and discourse features of Tupac's poetry with the lyrics of [his] raps"). But see Robert Christgau, *Rock Lyrics are Poetry (Maybe)*, reprinted in STUDIO A 63 (Benjamin Hedin ed. 2004) ("Dylan is a songwriter, not a poet.").

⁷ See generally Lester Bangs, *Jim Morrison: Bozo Dionysus a Decade Later* 219, in MAINLINES, BLOOD FEASTS, AND BAD TASTE: A LESTER BANGS READER (ed. John Morthland) (Anchor Books 2003) (stating generally favorable impression of the Doors, but noting that Morrison was not "so much Baudelaire, Rimbaud, and Villon as he was a Bozo Prince").

⁸ Simon Frith, *The Magic That Can Set You Free': Distinctions, Influences, Continuities*, 1 POPULAR MUSIC 159, 162-63 (1981).

⁹ Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983, 991 (2004).

¹⁰ Frith, *supra* note 8, at 163 (quoting Ochs).

¹¹ See THE ROLLING STONE ENCYCLOPEDIA OF ROCK & ROLL 815 (ed. Holly George-Warren & Patricia Romanowski, 3d ed.) (noting the band's "muffled vocals" and "cryptic" and "passionately vague" lyrics).

I love songs about horses, railroads, land, judgment day, family, hard times, whiskey, courtship, marriage, adultery, separation, murder, war, prison, rambling, damnation, home, salvation, death, pride, humor, piety, rebellion, patriotism, larceny, determination, tragedy, rowdiness, heartbreak, and love. And Mother. And God.¹²

With maybe one or two exceptions, the law has something to say on each of those subjects.

Aside from aiding a writer in the quest to communicate about a particular issue, the use of popular music may also humanize an individual in the eyes of others. During the Samuel Alito confirmation hearings, for example, the news media enthusiastically reported that the conservative Alito was a fan of Bruce Springsteen.¹³ Not willing to cede his blue collar bona fides to the likes of Republican appointee Alito, Senator Richard Durbin took things a step further by using a line from an interview with Springsteen against Alito:

They once asked [Springsteen]: How do you come up with the songs that you write and the characters that are in them? And he said, I have a familiarity with the crushing hand of fate. It's a great line. I want to ask you about the crushing hand of fate in several of your decisions.¹⁴

Perhaps the most surprising revelation of the Alito hearings was not that Senator Durbin's had such knowledge of arcane Springsteen lore but the bombshell that now-Justice Alito had once attended a "ska music festival."¹⁵

This Article examines the many uses and misuses of popular music lyrics in legal writing. Although some discussion of the intersection between law and popular culture is inevitable when discussing this topic, this is not the primary focus of the Article. There already exists a wealth of legal scholarship devoted to the intersection between law and popular culture (including popular music) and how each influences the other.¹⁶ This

¹² JOHNNY CASH, UNCHAINED (American 1996).

¹³ Dale Becker & Dale Russakoff, *Alito, In His Wife's Words*, WASH. POST, Jan. 9, 2006, available at 2006 WLNR 475058.

¹⁴ Suzanne Struglinski, *Quips and Quotes From Alito Hearing*, DESERET MORNING NEWS, Jan. 12, 2006, available at 2006 WLNR 618457.

¹⁵ Becker & Russakoff, *supra* note 13, available at 2006 WLNR 475058. According to the *American Heritage Dictionary*, ska is "Popular music originating in Jamaica in the 1960s, having elements of rhythm and blues, jazz, and calypso and marked by a fast tempo and a strongly accented offbeat." Ska enjoyed a renaissance in the U.K. during the late 1970s and early 1980s. For a representative sample, see THE SPECIALS, *A Message To You Rudy*, on SPECIALS (Two-Tone Records 1979); THE ENGLISH BEAT, *Mirror In The Bathroom*, on I JUST CAN'T STOP IT (Go Feet/London 1980); MADNESS, *One Step Beyond*, on ONE STEP BEYOND (Stiff 1979).

¹⁶ See, e.g., Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527 (1986); Jennifer Jaff, *Law and Lawyer in Pop Music: A Reason for Self-Reflection*, 20 U. MIAMI L. REV. 659 (1985).

includes examinations of how popular songs can inform legal pedagogy;¹⁷ the role of music in the labor movement;¹⁸ the connection between legal narratives in folk protest songs in criminal cases;¹⁹ the extent to which the more accessible lyrics of popular music may lead to increased action in addressing the problem of family violence;²⁰ the image of lawyers in popular music;²¹ the ability of the lyrics of Paul Simon to help lawyers empathize with clients;²² conceptions of the law in Bob Dylan songs;²³ Bruce Springsteen's counterhegemonic humanism (?);²⁴ and phenomenology, Tina Turner, and the law(?).²⁵ While this Article is certainly rooted in popular culture, it is not a law and popular culture article per se.

Instead, the Article focuses primarily upon the ways in which writers utilize the lyrics of popular music artists to help advance a particular theme or argument in legal writing. At first glance, this might seem a fairly simple task. According to one author, the most common practice in linking the law and popular music is to simply "plunder popular songs for references . . . in order to provide a relevant prefatory quotation" in an effort "to be seen as aware of popular cultural developments whilst retaining an academic, high culture position from which to write."²⁶ There is certainly some truth in this statement. Without question, the most common use of popular music in legal writing is to either establish a title for a piece of scholarship or to "provide a relevant prefatory quotation" in order to establish a theme. However, if one digs deeper, one can find numerous instances in which legal writers incorporate the lyrics of popular music into their writing in more creative ways.

In addition, it is worth investigating to at least some extent exactly which artists and which musical forms judges, academics, and practicing attorneys are actually using in their writing. The music we listen to says

¹⁷ Karl Johnson & Ann Scales, *An Absolutely, Positively True Story: Seven Reasons Why We Sing*, 16 N.M. L. REV. 433 (1986).

¹⁸ Michael L. Richmond, *Law, Popular Culture, And Cultural Studies: The Music Of Labor: From Movement To Culture*, 23 LEGAL STUDIES FORUM 211 (1999); see also Wilbur Watkin Lewis, *Admiralty Law and Popular Musical Culture*, 31 J. MAR. L. & COM. 533 (2000) (discussing concepts of admiralty law in popular musical culture).

¹⁹ Michael A. Coffino, Comment, *Genre, Narrative and Judgment: Legal and Protest Song Stories in Two Criminal Cases*, 1994 WIS. L. REV. 679 (1994) (examining law and folk protest music as historical narration).

²⁰ Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 VAND. L. REV. 1665, 1666 (1990).

²¹ Jennifer Jaff, *Law and Lawyer in Pop Music: A Reason for Self-Reflection*, 40 U. MIAMI L. REV. 659 (1986); see also Chase, *supra* note 16, at 559-63 (discussing images of lawyers in mass culture, including popular music).

²² Michael L. Richmond, *Law and Popular Music: An Etude in Two Movements, First Movement - Adagio: The Arc of Love: Divorce and Separation in the Songs of Paul Simon*, 22 LEGAL STUD. FORUM 79 (1998).

²³ Adam Gearey, *Outlaw Blues: Law in the Songs of Bob Dylan*, 20 CARDOZO L. REV. 1401 (1999).

²⁴ David Ray Papke, *Crime, Lawbreaking, and Counterhegemonic Humanism in the Songs of Bruce Springsteen*, abstract available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=887431.

²⁵ Gary Minda, *Phenomenology, Tina Turner, and the Law*, 16 N.M. L. REV. 479 (1986). Actually, the piece describes "the pedagogical basis for developing a consciousness-based approach to law teaching." *Id.* at 480.

²⁶ STEVE REDHEAD, UNPOPULAR CULTURES: THE BIRTH OF LAW AND POPULAR CULTURE 27 (1995).

something about as individuals. Indeed, it may say more about us than does our taste in books, movies, or television. People identify with musical artists in an often intense manner and in many cases we want others to identify us with our artists of choice. Why else would any otherwise normal adult not only purchase but wear a Reba McEntire t-shirt from a concert or place a Grateful Dead bumper stickers on his or her car unless the individual *wants* to be identified with a favorite artists? And if the music we listen to gives us a sense of identification and says something about us as individuals, the music we, the legal profession as a whole, write about may something about who we are as a profession.

In order to understand the uses and misuses of popular music lyrics in legal writing and what these uses tell us about the legal profession, one must first figure out which artists are most frequently cited. Thus, Part II describes what's hot (and what's not) on the legal writing charts by compiling a list of the top ten most popular music artists in legal writing. Based on this chart, I make some observations about what the legal profession's choice of musical artists says about the profession and its writing. Part III chronicles the uses and misuses of popular music lyrics in legal writing. Ultimately, the Article attempts to illustrate the point that despite the sometimes unimaginative and counterproductive use of music lyrics in legal writing, there remains the potential for the lyrics of popular music to serve a useful role in the art of persuasive writing.

II. I'M LOOKING THROUGH YOU²⁷

A. I COUNT THE SONGS THAT MAKE THE LEGAL PROFESSION SING, I COUNT THE SONGS IN MOST EVERYTHING, I COUNT THE SONGS THAT MAKE THE YOUNG LAWYERS CRY, I COUNT THE SONGS, I COUNT THE SONGS²⁸

The methodology used to compile my Top Ten list was simple: I typed in a bunch of artists' names in *LexisNexis*' "US Law Reviews and Journals, Combined" and "Federal and State Cases, Combined" databases and counted up the number of cites.²⁹ This enabled me to count the writing of judges, academics, and, (to a lesser extent) practicing attorneys. In order for a song to count toward the final total, an author had to have used a specific song in order to advance or clarify some idea. I did not count

²⁷ THE BEATLES, *I'm Looking Through You*, on RUBBER SOUL (Capitol 1965).

²⁸ Cf. BARRY MANILOW, *I Write the Songs*, on ULTIMATE MANILOW (Arista 2002).

²⁹ The Top Ten list was current as of January 23, 2006.

instances where an artist's name just happened to be mentioned in a piece³⁰ or where the article mentioned a song that happened to be the subject of a lawsuit or other controversy. Thus, for example, a piece of legal writing explaining why heavy metal musicians cannot be held responsible for the violent acts of their listeners and that introduces the piece by quoting from David Bowie's "*Rock 'n' Roll Suicide*" counted toward David Bowie's final total and fits within the general framework for discussion within this Article.³¹ In contrast, a piece of legal writing that simply references the legal dispute between rapper Vanilla Ice and rock musicians Queen and David Bowie over the former's unauthorized use of the bass line to "*Under Pressure*" did not count toward the final tallies for those artists.³²

There are plenty of flaws in my methodology. Frankly, I'm not too worried about them since popular music, or at least rock 'n' roll, has historically been willing to sacrifice technical proficiency in the pursuit of authenticity and fidelity to the artistic vision.³³ That said, I'll mention a few of my more questionable methods. First, you might take issue with how I define the term "popular music," or more accurately how I have failed to. Ultimately, I decided that the term "popular music" was incapable of definition and chose to trust my instincts. So, for example, I didn't search for Frank Sinatra, even though you might have. I searched for Woody Guthrie on the theory that even though he hasn't been "popular" in the sense of selling a lot of records for decades, he is a folk musician and, as the old saying goes, folk music is just music for folks. That makes it music for popular consumption, which makes it pop music in my book. Plus, I live in Oklahoma.

Another flaw in my methodology is that, due to technological limitations, it was well nigh impossible to search for some artists due to the commonness of their names. Thus, I was unable to search for bands like Yes, X, and the Who.³⁴ In other instances, the fault lies with someone

³⁰ See, e.g., Frank H. Wu, *New Paradigms of Civil Rights: A Review of Essay*, 66 GEO. WASH. L. REV. 698 (1997) (noting that Pulitzer Prize winner Dale Maharidge was supposedly the inspiration for some of Bruce Springsteen's lyrics).

³¹ See Matthew Sampar, Comment, *Rock 'n' Roll Suicide: Why Heavy Metal Musicians Cannot Be Held Responsible for the Violent Acts of their Listeners*, 15 SETON HALL J. SPORTS L. 173, 173 (2005).

³² See, e.g., John Schietinger, *Bridgeport Music, Inc. v. Dimension Films: How The Sixth Circuit Missed A Beat On Digital Music Sampling*, 55 DEPAUL L. REV. 209, 213 (2005). Shockingly, as a result of this exclusion, Vanilla Ice failed to make it into the Top 10.

³³ For example, on the liner notes to his album *Stereo*, Paul Westerberg, former lead singer for the Replacements, notes that "no effort was made to fix what some may deem as mistakes. Tape running out, fluffed lyrics, flat notes, extraneous noises, etc. ... Unprofessional? Perhaps. Real? Unquestionably." PAUL WESTERBERG, *STEREO* (Vagrant Records 2002).

³⁴ Actually, I probably could have searched for Yes by typing in "Yes" and then adding the names of each and every album that the band ever recorded. That would have limited the search nicely. But I don't really like Yes and that would have been a lot of trouble. I actually tried to do that for the Who because I like the Who far more than I like Yes and because I thought the Who might actually have a shot at cracking the Top 10 (unlike X, who I also like more than Yes). But Pete Townshend et al. had an annoying habit of including "the Who" in their album titles, see THE WHO, *WHO'S NEXT* (Decca 1971), or otherwise using common words or phrases in their album titles, see THE WHO, *TOMMY* (Polydor 1969), thus making it difficult to search for their lyrics.

else.³⁵ For example, Paul Simon's numbers are somewhat inflated because for some reason people sometimes cited just him as the recording artist when, in reality, the proper cite should have been to Simon & Garfunkel.³⁶ I probably could have corrected for these kinds of mistakes, but I figured that Simon and Garfunkel already have enough friction in their relationship without me adding further to it. Plus, it would have meant more work for me.

B. ADD IT UP³⁷

So, without further ado, let's check out the Top Ten most frequently cited popular music artists in legal writing.

Artist	Number of Citations in Legal Journals	Number of Citations in Judicial Opinions	Total
1. Bob Dylan	160	26	186
2. The Beatles	71	3	74
3. Bruce Springsteen	64	5	69
4. Paul Simon	51	8	59
5. Woody Guthrie	42	1	43
6. Rolling Stones	35	4	39
7. Grateful Dead	30	2	32
8. Simon & Garfunkel	26	4	30
9. Joni Mitchell	27	1	28
10. R.E.M.	27	0	27

Other artists narrowly missing the cut include Pink Floyd (26), Billy Joel (21), and Johnny Cash (21). The most notable absence, at least in terms of record sales and cultural significance, would be one Mr. Elvis Aron Presley.

³⁵ See BOB DYLAN, *It Ain't Me, Babe*, on ANOTHER SIDE OF BOB DYLAN (Columbia 1964) ("No, no, no, it ain't me, babe.").

³⁶ See, e.g., Michael J. Remington, *The Ever-Whirling Cycle of Change: Copyright and Cyberspace*, 3 N.C. J.L. & TECH. 213, 219 n. 15 (2002) (incorrectly crediting *So Long*, Frank Lloyd Wright from the album BRIDGE OVER TROUBLED WATER to Paul Simon rather than Simon & Garfunkel).

³⁷ THE KINKS, *Add It Up*, on GIVE THE PEOPLE WHAT THEY WANT (Arista 1981); see also VIOLENT FEMMES, *Add It Up*, on VIOLENT FEMMES (Slash 1983).

For a number of reasons alluded to later,³⁸ Bob Dylan’s reign as the King of Pop³⁹ among lawyers is not surprising. What *is* somewhat surprising is Dylan’s appeal outside of academia and the world of practicing attorneys. Judges like Dylan too. A lot. Dylan is by far the most quoted artist in judicial opinions. Indeed, Dylan’s famous observation that “you don’t need a weatherman to know which way the wind blows” has become almost boilerplate language included in the decisions of the California appellate courts when ruling on when an expert testimony before a jury is required.⁴⁰ According to a California appellate court, Dylan states “the correct rule,” and the California courts are simply in harmony with his statement of the law.⁴¹

While it was easy to predict at the outset that Bruce Springsteen was probably going to end up on the charts, Springsteen’s numbers increased dramatically as a result of the *Widener Law Review*’s publication of an entire symposium dedicated to his lyrics. The symposium, entitled “The Lawyer as Poet Advocate: Bruce Springsteen and the American Lawyer,” brought together judges, practitioners, and academics to examine “the parallels presented by Mr. Springsteen, the poet advocate, and the American lawyer.”⁴² As a result, Bob Dylan and Woody Guthrie – two artists who have clearly served as a source of inspiration for Springsteen – saw their numbers increase as well as the authors discussed Springsteen’s work.⁴³

C. I’M LOOKING THROUGH YOU

1. *It Takes a Profession of Thousands To Hold Us Back*⁴⁴

Holla If You Hear Me
-- 2Pac⁴⁵

One of the more striking features of the Top Ten list is the absence of any artists of color and the inclusion of only one female artist, Joni Mitchell. The lyrics of reggae legend Bob Marley and hip hop artists Public Enemy and Tupac Shakur generated a significant number of citations, but not enough to allow these artists to crack the Top Ten. Soul legend Ray

³⁸ See *infra* Parts IIC2 and IIC3 and notes 194-198 and accompanying text.

³⁹ Michael Jackson isn’t on the list either. I’ll leave it to you to speculate why.

⁴⁰ See *Jorgensen v. Beach ‘n’ Bay Realty*, 125 Cal. App. 3d 155 (1981) (first introducing the song).

⁴¹ *Id.*

⁴² Randy Lee, *The Lawyer as Poet Advocate: Bruce Springsteen and the American Lawyer: An Introduction*, 14 WIDENER L.J. 719, 726 (2005).

⁴³ See Abbe Smith, *The Dignity and Humanity of Bruce Springsteen’s Criminals*, 14 WIDENER L.J. 787, 800 n.63 & (2005) (citing Dylan’s *Hurricane* as an example of championing criminals in song and quoting from Guthrie’s *Pretty Boy Floyd*).

⁴⁴ Cf. PUBLIC ENEMY, *IT TAKES A NATION OF MILLIONS TO HOLD US BACK* (CBS 1988).

⁴⁵ 2PAC, *Holla if You Hear Me*, on *STRICTLY 4 MY N.I.G.G.A.Z.* (Jive 1993).

Charles generated only a handful of cites, and Motown legends like the Temptations are MIA. Disco is also dead in legal writing. In some respects, these absences are not particularly surprising; white males still comprise the overwhelming majority of academics and lawyers in practice.⁴⁶

The relative frequency with which Tupac's⁴⁷ lyrics in particular appear in legal scholarship, however, suggests a possible shift in trends. Hip-hop, traditionally thought of as "black music," is now firmly entrenched within the mainstream.⁴⁸ Hip-hop routinely outsells other musical genres.⁴⁹ The overwhelming majority of hip-hop consumers are non-Black.⁵⁰ The language of hip-hop is now spoken commonly and fluently by youth of all races and classes.⁵¹ Consequently, while increased diversity in the legal profession will unquestionably alter the culture of the profession in the coming years, the cultural force that is hip-hop may prove to have at least as significant impact.⁵²

As evidence of this assertion, consider the Seventh Circuit Court of Appeals 2005 decision in *U.S. v. Murphy*.⁵³ In a landmark footnote, the court felt compelled to explain that the court reporter had incorrectly substituted the word "hoe" for "ho" in transcribing a witness' testimony⁵⁴ and that the court was therefore taking the liberty of correcting the mistake.⁵⁵ A "hoe," as the court pointed out, "is a tool used for weeding and gardening."⁵⁶ In contrast, the word "ho" is

a staple of rap music vernacular as, for example, when
Ludacris raps "You doin' ho activities with ho tendencies."⁵⁷

⁴⁶ According to the American Bar Association, 73% of attorneys are male and 88.8% of attorneys are "White, not Hispanic." <http://www.abanet.org/marketresearch/lawyerdem2004.pdf> (visited Jan. 26, 2006). Close to 85% of all law professors are white and only 35% are women, according to the American Association of Law Schools. *Statistical Report on Law School Faculty and Candidates for Law Faculty Positions Tables 2004 – 2005* http://aals.org.cnhost.com/statistics/0405/html/0405_T1B_tit4.html (visited Jan. 26, 2006).

⁴⁷ You have to call him "Tupac" or "2Pac," not "Shakur."

⁴⁸ BAKARI KITWANA, WHY WHITE KIDS LOVE HIP HOP: WANKSTAS, WIGGERS, WANNABES AND THE NEW REALITY OF RACE IN AMERICA (*Basic Civitas Books* 2005).

⁴⁹ Ronald D. Brown, *The Politics of "Mo' Money, Mo' Money" and the Strange Dialectic of Hip Hop*, 5 VAND. J. ENT. L. & PRAC. 59, 59 (2003); Moises Velasquez-Manoff, *Hey, You Guys. Y'all Is Now The Eloquent Alternative*, RICHMOND-TIMES DISPATCH, Feb. 27, 2005, at G10.

⁵⁰ Brown, *supra* note 49, at 64.

⁵¹ See generally Milner S. Ball, *Doing Time and Doing It in Style*, in 7 LAW AND POPULAR CULTURE 303 (Michael Freedman ed. 2005) (explaining that hip-hop has broken through "the boundaries of location, class, race and ethnicity" and is now "the dominant youth culture in the land").

⁵² See generally Butler, *supra* note 9, at 984 (asserting that "Hip-hop foreshadows the future of the United States - one in which no racial group will constitute a majority.").

⁵³ 406 F.3d 857 (7th Cir. 2005).

⁵⁴ Specifically, the defendant had allegedly referred to the witness as "a snitch bitch 'ho[.]'" *Id.* at 859 n.1.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

To date, this represents the only use of lyrics from Ludacris in a published judicial decision and quite likely the only explanation of the meaning of the word “ho” as well. I have no doubt that Judge Terence Evans is, being a federal judge, a pretty hip guy. But the inclusion of Ludcaris lyrics almost certainly came from one of his (presumably younger) law clerks or administrative assistants.

There is already a considerable amount of law and popular culture scholarship discussing the connection between hip-hop and the law.⁵⁸ One feature of hip-hop that may limit its use in legal writing is the sometimes profane nature of its lyrics. To put it delicately, the “gangsta rap” sub-genre of hip-hop in particular contains fairly explicit language that has been the repeated target not just of the conservative element of American society, but of some socially-conscious rappers themselves.⁵⁹ Yet, as one author has implied, the success and widespread appeal of gangsta rap proves Justice John Marshall Harlan’s observation in *Cohen v. California*⁶⁰ that “[o]ne man’s vulgarity is another man’s lyric.”⁶¹ Despite its often profane lyrics, hip-hop and gangsta rap in particular frequently employs some fairly biting social commentary, which lends itself well to use in the discussion of variety of legal issues, most obviously racism and the penal system.⁶² Admittedly, in many instances the posturing of rappers amounts simply to marketing ploys designed to provide a safe fantasy for suburbanites.⁶³ But the lyrics are nonetheless often powerful indictments of the penal system and the judicial process.

While it is unlikely that the volume of Tupac, 50 Cent, or Ludacris lyrics will ever rival those of Bob Dylan in legal scholarship (and almost certainly not in judicial opinions), “rap music vernacular” will become more prevalent as the legal profession becomes more diverse and as hip-hop culture increasingly becomes mainstream.

2. *Baby Boomers Selling You Rumors of Their History ...*⁶⁴

... the kids of today should defend themselves against the
70s
-- Mike Watt, “*Against the 70s.*”

If, as one author has suggested, the purpose of legal writers in including music lyrics in their writing is to signal a desire to be seen as

⁵⁸ See Butler, *supra* note 9; Brown, *supra* note 49; Ball, *supra* note 51, at 311-15.

⁵⁹ Ball, *supra* note 51, at 315.

⁶⁰ 403 U.S. 15, 25 (1971).

⁶¹ Ball, *supra* note 51, at 312 (quoting *Cohen*).

⁶² *Id.* at 313.

⁶³ *Id.* at 314.

⁶⁴ MIKE WATT, *Against The 70s, on BALL-HOG OR TUG BOAT* (Sony 1995).

aware of popular cultural developments,⁶⁵ they have failed miserably in the task. Nearly every artist in the Top Ten enjoyed their greatest commercial success during the 1960s and/or 70s. Dylan, the Beatles, the Grateful Dead, Simon and Garfunkel, and Joni Mitchell are all typically associated with the 1960s and/or 70s, although in some cases they continued recording beyond that point. Despite his commercial success in the 1980s and a career that continues to the present, Paul Simon is most accurately viewed as a 70s artist. The Rolling Stones, like cockroaches, defy extinction,⁶⁶ but did their most meaningful work in the 60s and 70s.⁶⁷ Only three artists are not closely associated with that time period: Woody Guthrie had been confined to a hospital for years before his death in 1967;⁶⁸ R.E.M. did not begin wowing the college kids in the South until the 1980s and enjoyed their greatest commercial success in the 1990s; and Bruce Springsteen, although beginning his recording career in the 1970s, enjoyed his greatest commercial success in the 1980s. With those exceptions, the list essentially reads like a Who's Who of baby boomer favorites.

Music, as the saying goes, is the soundtrack for our lives. And the music that tends to stay with us, the music that has the greatest lasting impact, is the music of our formative years. For those who love music, the strongest connections we feel to songs are those that were with us during adolescence and early adulthood.⁶⁹ If that is the case, one would expect members of a particular demographic group to draw upon the cultural resources most familiar to them when explaining their thoughts to others. And since somewhere around half of all lawyers could be categorized as baby boomers,⁷⁰ it is hardly surprising to see the likes of Paul Simon and Joni Mitchell appearing so frequently in legal writing. Which is not to say that the music of Simon and others from that generation cannot be used effectively in legal writing or that their prevalence in legal writing is necessarily disproportionate to their relative importance in the pantheon of popular music. For example, Professor Michael L. Richmond has

⁶⁵ See *supra* note 26 and accompanying text.

⁶⁶ The cockroach analogy is usually made in reference to Keith Richards in particular, see Sam Farmer & Jerry Crowe, *Stevens and Porter Will Settle Things on the Field*, L.A. TIMES, Feb. 3, 2006, available at 2006 WL 1883352 (quoting Richards as responding "eat them" when asked what he would do to outlive the cockroaches after both survived a nuclear holocaust), but it's fitting for the entire band. See generally Lester Bangs, *1973 Nervous Breakdown: The Ol' Fey Outlaws Ain't What They Used to Be – Are You?* (writing in 1973, "The Rolling Stones lasting twenty, thirty years – what a stupid idea that would be"), in MAINLINES, BLOOD FEASTS, AND BAD TASTE: A LESTER BANGS READER (ed. John Morthland) (Anchor Books 2003); see also *id.* (suggesting that the band "go fertilize a forest").

⁶⁷ See Mark Caro, *The Rolling Stones' Same Old CriticalTune*, CHI. TRIB., Sep. 9, 2005, available at 2005 WLNR 14230937 (noting the tendency of critics to favorably compare the Rolling Stones' releases over the last two decades to their earlier work, only to subsequently recant or tone down that praise upon reflection).

⁶⁸ See generally JOE KLEIN, *WOODY GUTHRIE: A LIFE* 424-64 (Ballantine Books 1980) (describing the last years of Guthrie's life).

⁶⁹ I have a bad feeling that somebody else said pretty much the same thing, but I can't find a cite. If I am using your idea, I apologize, but take solace in the fact that I'm not passing it off as my own idea.

⁷⁰ <http://www.abanet.org/marketresearch/lawyerdem2004.pdf> (visited Jan. 26, 2006).

convincingly used the lyrics of Paul Simon to illustrate how popular music can help lawyers better empathize with their clients.⁷¹ But as lawyers from that g-g-generation⁷² gradually retire from academia and the practice of law, a new generation of lawyers with a different musical soundtrack in their heads is likely to flavor their legal writing with lyrics from their own personal favorites.

At the same time, the absence of certain artists probably says at least as much about the artists themselves as it does the nature of the legal profession. For example, given Elvis Presley's enormous influence on popular culture and boomers' familiarity with his music, one might expect to hear more from the King in legal writing than we do. But unlike Dylan, Simon, and others, Elvis' songs are not memorable primarily for their lyrics. The brilliance of Elvis' "*Mystery Train*," for example, has at least as much to do with the confidence of the performance and the other worldly quality of the production at Sun Studio as it does the universal appeal contained in the lyrics about a train taking a loved one away.⁷³ And even when popular music lyrics can legitimately be classified as clever or even great, they may sometimes have little application in serious legal writing. At first glance, Chuck Berry would seem to be just such an artist. Berry has been dubbed the poet laureate of rock 'n' roll,⁷⁴ yet his lyrics are rarely used in legal writing. This may be because his poetry is often thought of as the poetry of cars, girls, and being young and bored. Important themes all, but only infrequently do they find their way into the courtrooms.⁷⁵

3. *What the World Needs Now Is Another Folk Singer ...*⁷⁶

... like I need a hole in my head.

⁷¹ Richmond, *supra* note 18, at 72.

⁷² THE WHO, *My Generation*, on THE WHO SINGS MY GENERATION (MCA 1966). *But see* GENERATION X, *Your Generation*, on GENERATION X (Chrysalis 1978) ("Your generation don't mean a thing to me.") and CRACKER, *I Hate My Generation*, on THE GOLDEN AGE (Virgin Records 1996) ("I hate my generation").

⁷³ *See generally* Peter Guralnick, *LAST TRAIN TO MEMPHIS 205* (Little Brown & Co. 1994) (quoting Elvis's producer, Sam Phillips, and guitarist, Scotty Moore, on the appeal of "Mystery Train").

⁷⁴ Dave Hoekstra, *Still Master of Reelin' and Rockin'*, CHI. SUN TIMES, Oct. 21, 2001, available at 2001 WLNR 4820249.

⁷⁵ *But see* *Yellow Cab Co. v. Yellow Cab of Elk Grove, Inc.*, 419 F.3d 925, 927 (9th Cir. 2005) (quoting Berry's "*Nadine*" in Lanham Act case involving dispute over use of the phrase "yellow cab"). Yet, if judges and scholars listen a little more carefully, they may notice that themes involving the law appear quite frequently in Berry's work, and are often presented in a very clever manner. *See* CHUCK BERRY, *Brown Eyed Handsome Man*, on THE GREAT TWENTY-EIGHT (MCA 1990) ("Arrested on charges of unemployment, he was sitting in the witness stand/The judge's wife called up the district attorney/Said you free that brown eyed man/You want your job, you better free that brown eyed man."); CHUCK BERRY, *Too Much Monkey Business*, on THE GREAT TWENTY-EIGHT (MCA 1990) ("Same thing every day, gettin' up, goin' to school, no need of me complaining, my objection's overruled"); CHUCK BERRY, *30 Days*, on THE GREAT TWENTY-EIGHT (MCA 1990) ("I done talked to the judge in private early this morning/ And he took me to the sheriff's office to sign a warrant/ Gonna put a false charge agin' ya /That'll be the very thing that'll send ya/ I'm gonna see that you be back home in thirty days."). Thus, perception, rather than reality, regarding the relative weightiness and merit of a particular artist may influence the degree to which that artist is cited in legal writing.

⁷⁶ CRACKER, *Teen Angst (What the World Needs Now)*, on CRACKER (Virgin 1992).

-- Cracker, "Teen Angst (What the World Needs Now)"

Another interesting tendency of lawyers, or at least law professors, when they write is the resort to the lyrics of folk music. Woody Guthrie is, of course, the most famous American folk singer of all time. Simon & Garfunkel got their start in the folk scene, and Bob Dylan's obsession with Woody Guthrie early in Dylan's career is obvious.⁷⁷ So too is legal academia's general fascination with all things folk.

At least two factors help account for legal academics' fixation on folk. Folk music, of course, became identified with the civil rights movement of the 1960s. For many in academia who came of age in the 1960s, it was the civil rights movement that first opened their eyes as to the potential power of the law and that inspired them to become lawyers.⁷⁸ Folk music, therefore, undoubtedly holds a special place in the hearts of some academics. In addition, ideology probably plays no small role in academics' fondness for the lyrics of folk. Folk music may have originally been music sung by, about, and for people of the same working class status, but with the folk revival of the 1950s, it soon became the music of the intellectual left.⁷⁹ Although the degree of liberal proliferation of law school faculties is debatable,⁸⁰ it would be hard to dispute that liberals outnumber conservatives in legal academia. Thus, as both a generational and ideological matter, legal scholars seem particularly predisposed to the lyrics of the folkies.

Another possible explanation for the abundance of artists with roots in folk music in legal writing is the connection between narrative and folk music. Folk music has strong ties to storytelling. Folk artists historically have memorialized in song then-current events and the accomplishments and failures of individuals. From the actions of Pretty Boy Floyd⁸¹ to the in-ring death of boxer Davey Moore⁸² to the wreck of the Edmund

⁷⁷ See BOB DYLAN, *Song to Woody*, on BOB DYLAN (Columbia 1962) ("Hey, hey Woody Guthrie, I wrote you a song"); KLEIN, *supra* note 68, at 442 (mentioning Dylan's visit with Guthrie in the hospital).

⁷⁸ See Joel L. Selig, *Archibald Cox: Conscience Of A Nation* (Book Review), 1 WYO. L. REV. 263, 284 (2001) (noting that the author decided to become a lawyer in order to contribute to the civil rights movement); Lisa A. Stamm, *Franklin D. Cleckley Taking One Giant Step For Mankind*, W. VA. LAWYER (Sep. 1994), at 14 ("To say that the Civil Rights Movement played a large role in [Professor] Frank Cleckley's desire to become a lawyer would be a gross understatement.").

⁷⁹ Frith, *supra* note 8, at 160-61.

⁸⁰ See John O. McGinnis et al., *The Patterns And Implications Of Political Contributions By Elite Law School Faculty*, 93 GEO. L.J. 1167 (2005) (analyzing campaign contributions of legal academics and finding overwhelming tendency of law professors to contribute to Democrats).

⁸¹ WOODY GUTHRIE, *Pretty Boy Floyd*, on FOLKWAYS: THE ORIGINAL VISION (Smithsonian/Folkways Records 1989) ("If you'll gather 'round me, children/A story I will tell/'Bout Pretty Floyd, an outlaw/Oklahoma knew him well.").

⁸² BOB DYLAN, *Who Killed Davey Moore*, on THE BOOTLEG SERIES, VOL. 1-III (Columbia 1991) ("Who killed Davey Moore/Why and what's the reason for?").

Fitzgerald,⁸³ folk musicians frequently employ a narrative structure in their songs.⁸⁴ Although storytelling is certainly not uncommon in rock, country, and hip-hop, it is not as deeply embedded within the art forms as it is within folk music. At the same time, storytelling is a common tool of persuasion for lawyers and is often cited as means of creating empathy for a client.⁸⁵ According to at least one study, “the presentation of evidence in story form is more persuasive [to jurors] than merely reciting facts or than organizing a presentation by witness order.”⁸⁶ Virtually every lawyer would likewise agree that effective narrative can be an important component of persuasive writing.⁸⁷ Storytelling “is designed to engage our curiosity, scrutiny, sympathy, and even empathy.”⁸⁸ Therefore, it is hardly surprising to see the occasional folk ballad find its way into legal scholarship as writers seek to put a human face on the issues they discuss.

Finally, the abundance of artists rooted in the folk tradition may be explained in part by the fact that, well, they are good lyricists. Hopefully, not many legal writers are quoting bad lyrics. And as it just so happens, the artists in the Top Ten with strong ties to folk music are generally recognized as strong lyricists. Although his roots were in folk music, the Paul Simon who achieved his greatest commercial success had little in common with Pete Seeger or Woody Guthrie. “Rhymin’ Simon,” however, could turn a phrase with the best of them. Even Woody Guthrie, the definitive American folk artists, is as well known for his clever wordplay and vivid imagery as he is for his protest and union songs. Guthrie’s immortal line, “some will rob you with a six-gun and some with a fountain pen”⁸⁹ is probably better known than “Pretty Boy Floyd,” the song from which it came, or the actual tale of Floyd himself.

4. *Every Kind of Music But Country*⁹⁰

⁸³ GORDON LIGHTFOOT, *The Wreck of the Edmund Fitzgerald*, on SUMMERTIME DREAM (Reprise 1976) (“The captain wired in he had water coming in/And the good ship and crew was in peril/And later that night when his lights went out of sight/Came the wreck of the Edmund Fitzgerald.”).

⁸⁴ Coffino, *supra* note 19, at 680.

⁸⁵ See, e.g., Phillip H. Miller, *Storytelling: A Technique for Juror Persuasion*, 26 AM. J. TRIAL ADVOCACY 489, 490 (2003); Michael Frost, *Ethos, Pathos & Legal Audience*, 99 DICK. L. REV. 85, 113 & n.117 (1994).

⁸⁶ Miller, *supra* note 85, at 489.

⁸⁷ See Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How To Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 RUTGERS L.J. 459, 459-60 (2001) (stating that “most lawyers reflexively acknowledge that it is important to tell a story to write a good facts section, and that the facts section of a brief plays an extremely important rule in persuading judges”).

⁸⁸ David Dante Troutt, *Screws, Koons, and Routine Aberrations: The Use of Fictional Narratives in Federal Police Brutality Prosecutions*, 74 N.Y.U. L. REV. 18, 70 (1999).

⁸⁹ GUTHRIE, *Pretty Boy Floyd*, *supra* note 81.

⁹⁰ ROBBIE FULKS, *Every Kind of Music But Country*, on COUNTRY LOVE SONGS (Bloodshot Records 1996); see also THE WATERBOYS, *Has Anybody Here Seen Hank?*, on FISHERMAN’S BLUES (Columbia 1990) (paying homage to Hank Williams).

Bob Dylan is supposed to have remarked that judges don't listen to country music.⁹¹ Neither, apparently, do law professors. To the extent academics write about the myriad ways the law addresses the everyday problems faced by everyday people, the language of country music would seem to be a natural tool for illustrating those problems. After all, country music has always purported to be "the music of the people, of the average person with roots in the South, the mountains, the farm, or the ranch, even if they now live in big cities."⁹² It has traditionally been the music of "working-class people and their simple hopes, dreams, and desires."⁹³ Likewise, authenticity has always been a core value of country music.⁹⁴ To the extent that one wishes to make one's argument regarding, for example, the American penal system more persuasive by injecting an air of credibility and authenticity into the argument, the thoughts and words of Merle Haggard, a country outlaw who escaped from prison 17 times before landing in San Quentin,⁹⁵ would seem to be a logical choice. But with the exception of Johnny Cash,⁹⁶ the lyrics of country music appear only infrequently in legal writing.

Of course folk music is likewise theoretically just music for folks and it too places a high value on perceived authenticity.⁹⁷ When Justice William O. Douglas told the whopper that he actually knew folk legend (and hero) Woody Guthrie "from [Douglas'] hobo days" and insisted that Guthrie's "*This Land is Your Land*" be sung at his funeral,⁹⁸ it seems to have been an attempt to make himself appear even more a man of the people than he supposedly already was. Yet despite their shared subject matter, lawyers are, in general, far more inclined to quote from the work of Joan Baez than that of the Dixie Chicks.

But why should that be the case? If one wanted to write about the problems of the working class, the lyrics of country music seem to be more the natural language. The folkies of the 50s and 60s sang about picking a bale of cotton; Johnny Cash actually did it.⁹⁹ Pete Seeger was the Harvard-educated son of a renowned musicologist;¹⁰⁰ Hank Williams never finished

⁹¹ The Honorable Lee R. West, *Oklahoma City University Law School May 11, 2003 Commencement Address*, 29 OKLA. CITY U.L. REV. 453460 (2004).

⁹² David S. Caudill, *Fabricating Authenticity: Law Students as Country Music Stars*, 20 CARDOZO L. REV. 1573, 1576 (1999); see also Ball, *supra* note 51, at 307 (observing that "identification with common people continues to be a singular mark of Country's stars").

⁹³ Caudill, *supra* note 92, at 1575

⁹⁴ *Id.*

⁹⁵ See Ball, *supra* note 51, at 308.

⁹⁶ See *supra* Part IIB.

⁹⁷ See generally Coffino, *supra* note 19, at 689 ("Folk music theoretically originates among the 'common people' ... and is often written from the perspective of the downtrodden.").

⁹⁸ Michael E. Parrish, *The Douglas Letters: Selections From the Private Papers of Justice William O. Douglas*, 5 CONST. COMMENT. 505, 510 (1988) (book review).

⁹⁹ RING OF FIRE xiv (Michael Streissguth ed. 2002).

¹⁰⁰ Minna Bromberg & Gary Alan Fine, *Resurrecting the Red: Pete Seeger and the Purification of Difficult Reputations*, 80 SOC. FORCES 1135, 1140 (2002).

high school.¹⁰¹ And if one wished to write an article about gender and the law from a feminist perspective and wanted to quote some music lyrics to spice things up or to illustrate a point, one could hardly do better than the lyrics of Loretta Lynn.¹⁰² Yet, the First Lady of Country Music, along with most other country artists, rarely makes an appearance in legal scholarship.¹⁰³

Once again perhaps, the distaste for country music and the preference for folk music might be explained both as an ideological and generational matter. Undoubtedly, the preference for folk has something to do with the fact that country music is often the music of conservative Republicans whereas folk music and rock ‘n’ roll are typically associated with the political left.¹⁰⁴ Folk music historically has identified problems and called for change, an outlook quite in keeping with the thinking of many law professors. In contrast, country music often views change itself as the problem.¹⁰⁵

Indeed, it may be that the absence of country music on the legal scholarship charts has a good bit to do with the inherently conservative nature of the music itself. The Nashville music establishment has always been leery of non-traditional artists, and the lyrical content of much the country music that has been popular on the charts for decades is highly circumscribed.¹⁰⁶ While country songwriting often contains a great deal of clever wordplay,¹⁰⁷ there is little in the mainstream of country lyrics to rival the more poetic and emotionally-centered lyrics of Dylan, Springsteen, etc.

Part of the explanation behind legal academia’s preference for folk over country may also have something to do with the elitist nature of folk and academia. Folk music may be about the common people, but it has

¹⁰¹ KURT WOLFF, COUNTRY MUSIC: THE ROUGH GUIDE 158 (Rough Guides 2000).

¹⁰² See generally *id.* at 311 (noting the feminist overtones to some of Lynn’s songs).

¹⁰³ One notable exception to this tendency to ignore country music when discussing women’s issues is Sheila Simon, *Greatest Hits: Domestic Violence in Country Music*, 82 OR. L. REV. 1107 (2003), which argues that society’s evolving attitudes toward domestic violence are reflected both in the law and in country music. *Id.* at 1112.

¹⁰⁴ See generally Caudill, *supra* note 92, at 1584 (equating country music’s self-identity with such themes as security and “how to preserve our families, our relationships, [and] our communities”). Both Presidents Bush are both supposedly country music fans, see Bruce Davidson, *Using Rock to Get Message Across Doesn’t Always Work*, DESERET MORNING NEWS, Aug. 29, 2004, available at 2004 WLNR 17001842 as is noted Yankee conservative blowhard Sean Hannity. *Hannity & Colmes* (Fox Television Broadcast Oct. 13, 2005), available at 2005 WLNR 16651777 (“You know I’m a big country music fan.”). Bill Clinton, in contrast, was an Elvis fan who famously used a Fleetwood Mac song as his campaign’s theme song. Salvatore Caputo, *Old-Time Rock is Definitely Establishment Music Now*, FRESNO BEE, December 13, 1992, available at 1992 WLNR 1409001. Jimmy Carter was famous for palling around with southern rock noodlers the Allman Brothers, see Doug Gross, *Background Music for a Region Struggling with Redemption*, COLUMBIA STATE, Sep. 28, 2004, available at 2004 WLNR 2838708, and once used a Law Day speech to trumpet Bob Dylan as a poet. Davidson, *supra*.

¹⁰⁵ See Caudill, *supra* note 92, at 1584 (noting that country music “expresses our ‘yearning for security, for comfort, for family, for happiness, and, especially in our rootless society, for rootedness’”).

¹⁰⁶ See *id.* at 1577 (noting the narrow confines of acceptable topics in country music).

¹⁰⁷ See Jill Tedford Jones, *The Delight of Words: The Elizabethan Sonneteers and American Country Music*, 24:4 POPULAR MUSIC & SOCIETY 63, 65 (Winter 2000) (comparing Elizabethan and country lyrics and noting country music’s “successes in manipulating the language”).

traditionally been listened to by a primarily urban, educated audience.¹⁰⁸ Country music, on the other hand, has long been about and listened to primarily by non-elites. However, in recent years, country music has achieved broader acceptance and attracted a more diverse audience. No longer a ghetto within the world of popular music, country music is now decidedly mainstream. Consequently, as elite baby boomer law professors retire and country music's popularity increases, there may be the possibility for increased reliance upon the lyrics of country music in legal writing.

There is potentially an ample supply of usable material as well. According to Emmylou Harris, country music "deals with issues that everyone from a blue-collar worker to a Yale literature professor experiences."¹⁰⁹ It simply takes quality songwriting to appeal to both. Despite the often milquetoast quality of much of country music, there remains an imaginative and eloquent segment of artists who can still loosely be classified as "country" and whose lyrics remain a largely untapped resource for legal scholars. The conservative nature of the country music industry in the 1960s and 70s helped inspire the first generation of "country outlaws," consisting of "Waylon and Willie and the boys,"¹¹⁰ who shunned the Nashville establishment.¹¹¹ A new generation of country rebels eventually followed, consisting of, among others, Steve Earle. Like their predecessors, these artists often took a more creative approach to songwriting. Earle's songs in particular contain a cast of characters, including the "good ol' boy gettin' tough,"¹¹² the third-generation bootlegger,¹¹³ and a host of death row inmates,¹¹⁴ who are every bit as rich and varied in nature as Springsteen's.¹¹⁵ Not surprisingly, many of these characters have their fair share of interaction with the legal system.¹¹⁶

¹⁰⁸ Frith, *supra* note 79, at 162.

¹⁰⁹ Ball, *supra* note 51, at 307 (quoting Harris).

¹¹⁰ WAYLON JENNINGS, *Luckenbach, Texas (Back to the Basics of Love)*, on *OL' WAYLON* (RCA 1977).

¹¹¹ See WOLFF, *supra* note 101, at 338-39 (explaining the rise of "outlaw country" as a reaction to the "assembly line studio system" of Nashville). See generally WAYLON JENNINGS, *Are You Sure Hank Done it This Way*, on *DREAMING MY DREAMS* (RCA 1975) ("It's the same old tune, fiddle and guitar/Where do we take it from here?/Rhinestone suits and new shiny cars/ We've been the same way for years/We need to change.").

¹¹² STEVE EARLE, *Good Ol' Boy (Gettin' Tough)*, on *GUITAR TOWN* (MCA Records 1986).

¹¹³ In this case, actually a marijuana dealer rather than a booze runner like his "daddy and his daddy before."

STEVE EARLE, *Copperhead Road*, on *COPPERHEAD ROAD* (Uni Records 1988).

¹¹⁴ STEVE EARLE, *Over Yonder (Jonathan's Song)*, on *TRANSCENDENTAL BLUES* (E Squared Records 2000).

STEVE EARLE, *Ellis Unit One*, on *DEAD MAN WALKING: MUSIC FROM AND INSPIRED BY THE MOTION PICTURE* (Sony Music Entm't 1995); STEVE EARLE & THE DUKES, *Billy Austin*, on *THE HARD WAY* (MCA Records 1990).

¹¹⁵ Yeah, that's right. I said it. See generally WOLFF, *supra* note 101, at 469 (noting the frequent comparisons between Earle and Springsteen);

¹¹⁶ See, e.g., STEVE EARLE, *Tom Ames' Prayer*, on *TRAIN A' COMIN'* (Winter Harvest 1995) ("Judge Parker said guilty and the gavel came down/Like a canon shot/And I went away quietly/And I began to file and plot."); STEVE EARLE, *Billy and Bonnie*, on *I FEEL ALRIGHT* (E Squared 1996) ("The judge said, 'Billy, what you got to say/Before the I have the sheriff carry you away?"). Earle's death-row songs, however, have generated a fair number of citations in legal journals. See, e.g., Dwight Aarons, *Reflections On The Killing State: A Cultural Study Of The Death Penalty In The Twentieth Century United States?*, 70 TENN. L. REV. 391, 436 n.234 (2003).

5. *I Hate Alternative Rock*¹¹⁷

“Alternative rock” is by now a fairly meaningless term concocted to help make more commercially viable a form of music that had previously been unviable. Originally, the term developed as a way to refer to music that had its roots in punk rock.¹¹⁸ The definition apparently doesn’t matter much to judges and law professors because alternative artists are rarely cited. The lyrics of Radiohead, perhaps the most critically acclaimed band of the past ten years often and a band typically classified as “alternative,” barely registers as a blip in legal writing.¹¹⁹ R.E.M., one of the presiding elder statesmen of the genre, is the only “alternative” artist represented in the Top Ten, and even their popularity can be explained in large measure by the fact that lawyers just seem to get a kick out of the title of their song, “*It’s the End of the World as We Know It (And I Feel Fine)*”¹²⁰

In one sense, this is somewhat surprising. Like folk music, much of the earlier punk rock involved social commentary with a decidedly leftist bent.¹²¹ As “punk” mutated into “alternative,” a new, often less aggressive breed of singers and songwriters emerged. These artists were often more eloquent than their punk predecessors, even when not directly commenting on social issues.¹²² Consequently, the lyrics of some “alternative” artists provide a potentially wealthy source of material for commentary on the law and social problems. Yet, while the lyrics of certain artists who might fit loosely under the “alternative” banner (Elvis Costello and U2) have

¹¹⁷ BOB MOULD, *I Hate Alternative Rock*, on BOB MOULD (Rykodisk 1996).

¹¹⁸ See DAVE THOMPSON, ALTERNATIVE ROCK viii (2000) (linking the birth of “alternative” rock to the emergence of punk rock in the 1970s).

¹¹⁹ In fact, as of late January 2006, Radiohead’s lyrics had only been used three times in legal writing, with two of those usages involving the same author and the same song. See Jim Chen, *Biodiversity and Biotechnology: A Misunderstood Relation*, 2005 MICH. ST. L. REV. 51, 59 (quoting from *Fake Plastic Trees*); Jim Chen, *Webs of Life: Biodiversity Conservation as a Species of Information Policy*, 89 IOWA L. REV. 495, 555 n. 432 (2004) (same); Matthew L.M. Fletcher, “*I Shall Hear You No Further*,” 27 VT. L. REV. 565, 582 (2003) (quoting from *Karma Police*).

¹²⁰ R.E.M., *It’s the End of the World as We Know It (And I Feel Fine)*, on DOCUMENT (I.R.S. 1987); William T. Allen et al., *Corporate Control Locations: The Great Takeover Debate: A Meditation on Bridging the Conceptual Divide*, 69 U. CHI. L. REV. 1067, 1082 (2002); Mary Anne Case, *Two Cheers for Cheerleading: The Noisy Integration of VMI and the Quiet Success of Virginia Women in Leadership*, 1999 U CHI LEGAL F. 347, 380 (1999); Kathryn Starshak, *It’s The End Of The World As Musicians Know It, Or Is It? Artists Battle The Record Industry And Congress To Restore Their Termination Rights In Sound Recordings*, 51 DEPAUL L. REV. 71, 71 (2001); Guy McPherson, Note: *It’s The End Of The World As We Know It (And I Feel Fine): 1 Rent Regulation In New York City And The Unanswered Questions Of Market And Society*, 72 FORDHAM L. REV. 1125, 1125 (2004); Robert D. Richards, *Free Speech And The Right To Offend: Old Wars, New Battles, Different Media*, 18 GA. ST. U.L. REV. 671, 695 n.148 (2002); Clay Calvert, *Bono, the Culture Wars, and a Profane Decision: The FCC’s Reversal of Course on Indecency Determinations and Its New Path on Profanity*, 28 SEATTLE UNIV. L. R. 61, 95 (2004); Steven G. Kalar et al., *A Booker Advisory: Into The Breyer Patch*, 29 CHAMPION 8, 8 (2005).

¹²¹ See ROLLING STONE ENCYCLOPEDIA OF ROCK & ROLL, *supra* note 11, at 182 (noting the Clash had “many causes from anti-Thatcherism to racial unity to the Sandinistas”); *id.* at 481 (noting the Jam’s political commitment).

¹²² See *id.* at 213 (1995) (“Elvis Costello arrived as part of a new wave of singer/songwriters who reinvigorated the literate, lyrical traditions of Bob Dylan and Van Morrison with the raw energy and sass that were principle ethics of punk.”); *id.* at 818 (“Paul Westerberg’s angst-ridden confessional songs cast him as a postpunk Bob Dylan”).

generated a fair number of citations,¹²³ these artists have failed to come close to the type of popularity among lawyers enjoyed by Dylan and others.

The relative dearth of alternative performers is most likely explained once again in part by the demographics of the legal profession. Alternative music is part of the soundtrack of GenXers, not the baby boomers who comprise the majority of the legal profession.¹²⁴ Once again, the absence of “alternative” music on the legal writing charts may also have a good bit to do with the more oblique nature of some of the lyrics. Most pop songs aren’t three-minute stories set to song,¹²⁵ and this is particularly true in the case of “alternative” rock. There is a strong strain of more abstract and less linear lyrics in “alternative” music.¹²⁶ For example, despite the occasional flirtation with linear thought, the songs of “alternative” forerunners the Pixies are often verbal collages, loosely tied to some basic theme (often involving aliens and space travel¹²⁷) and set to music. While such lyrics might occasionally be of some use in legal writing, the non-linear qualities of some “alternative” music makes it less likely to be used in legal writing.

III. I HATE MUSIC ... SOMETIMES I DON'T¹²⁸

The lyrics of popular music can be used in any number of ways in legal writing. Among other uses, popular music lyrics can be used to help establish a metaphor or analogy for a legal concept;¹²⁹ as a case study of what a particular artist’s work says about the law;¹³⁰ to restate or illustrate an idea in more colorful or humorous language;¹³¹ to provide the title of a

¹²³ See, e.g., Phillip N. Meyer, “Fingers Pointing at the Moon”: *New Perspectives on Teaching Legal Writing and Analysis*, 25 CONN. L. REV. 777, 783 (1993) (quoting from Elvis Costello’s *Everyday I Write the Book*); Joshua K. Simko, Comment, “Every Artist is a Cannibal, Every Poet is a Thief”: *Why The Supreme Court Was Right to Reverse the Ninth Circuit in Dastar Corp. v. Twentieth Century Fox Film Corp.*, 11 J. INTEL. PROP. L. 355 (2004) (taking title from U2’s *The Fly*).

¹²⁴ The Sex Pistols’ milestone, *Never Mind the Bollocks*, came out nearly fifteen years after Dylan’s first album. SEX PISTOLS, *NEVER MIND THE BOLLOCKS, HERE’S THE SEX PISTOLS* (Virgin 1977). It wasn’t until nearly 15 years later that “alternative” became mainstream with the success of Nirvana’s *Nevermind* album. NIRVANA, *NEVERMIND* (DGC 1991).

¹²⁵ See generally THE CLASH, *Hitsville U.K.*, on SANDINISTA! (Epic 1980) (“The band went in and knocked ‘em dead/In two minutes fifty-nine”).

¹²⁶ See *supra* note 11 and accompanying text (noting the more abstract nature of the early lyrics of R.E.M.).

¹²⁷ See THE PIXIES, *The Happening*, on BOSSANOVA (Elektra 1990) (“They got a ranch they call number fifty-one”); THE PIXIES, *Planet of Sound*, on TROMPE LE MONDE (Elektra 1991) (“I met a guy in a rover/He said it’s one more over/It’s just there where your bound/This ain’t the planet of sound.”).

¹²⁸ THE REPLACEMENTS, *I Hate Music*, on SORRY MA, FORGOT TO TAKE OUT THE TRASH (Twin Tone Records 1981).

¹²⁹ See Daniel Levin, *Federalists in the Attic: Original Intent, the Heritage Movement, and Democratic Theory*, 29 L. & SOC. INQUIRY 105, 108-109 (2004) (comparing the supposed authenticity of country music with the supposed authenticity of originalism); Caudill, *supra* note 92 (analogizing the myth of the golden age of lawyering to the criticism of much of country music that only hard shell country music is authentic).

¹³⁰ Gearey, *supra* note 23, at 1401.

¹³¹ Eric A. Lustig, *IRS, Inc.--The IRS Oversight Board--Effective Reform Or Just Politics? Some Early Thoughts From A Corporate Law Perspective*, 42 DUQ. L. REV. 725, 726 n.3 (2004) (“Of course, taxpayer unhappiness is not limited to Americans, as the Beatles sang in their song ‘Tax Man’”).

piece of legal scholarship;¹³² or to pay homage to a departed colleague.¹³³ Sometimes the resort to popular music lyrics works quite well. Other times it doesn't.

A. I HATE MUSIC ...

1. *I Used to Be Disgusted, Now I Try to Be Amused*¹³⁴

Probably the most common use of popular music in legal writing is to quote or paraphrase lyrics that are somehow consistent with the topic being discussed in order to add some color to the writing or to help establish the writer's theme. Similarly, legal scholars frequently use the lyrics to popular songs as titles for their articles. Thus, for example, if one wishes to bemoan the spoiling of natural resources, one might lead off one's article with the lyrics from Joni Mitchell's "*Big Yellow Taxi*": "Don't it always seem to go/That you don't know what you've got/'Til it's gone/They paved paradise/And put up a parking lot."¹³⁵ The judge who wishes to liven up an opinion involving a railroad accident may pepper the opinion with lyrics from some of the many train songs in American popular music.¹³⁶ The legal scholar who wishes to do something to make it more likely that a reader will actually take the time to choose the writer's article on the subject of trade secrets over the dozens of other articles on the subject (and thereby possibly increase the number of citations to said article!) might borrow from the Beatles and cleverly title the piece, *Do You Want to Know a Trade Secret?*¹³⁷

Given the diverse subject matter covered by popular music, such possibilities are virtually endless. For virtually any legal topic worth

¹³² Jeremy Paul, *The Day, Berry & Howard Visiting Scholar: Response: Losing Our Religion*, 28 CONN. L. REV. 269 (1996) (using the title of an R.E.M. song as part of the title of an article and using lines from that song for the various sections within the article); Alan K. Chen, *Meet the New Boss ...*, 73 DENV. U. L. REV. 1253 (1996) (using the lyrics of a song by the Who to express the author's skepticism about a purported emerging pattern in private law).

¹³³ Thomas C. Galligan, Jr., *Introduction: The Jerry Phillips Papers*, 72 TENN. L. REV. I, i-ii (2005) (quoting from Warren Zevon's *The Wind*).

¹³⁴ ELVIS COSTELLO, (*The Angels Wanna Wear My*) *Red Shoes*, on MY AIM IS TRUE (Columbia 1977).

¹³⁵ JONI MITCHELL, *Big Yellow Taxi*, on LADIES OF THE CANYON (Reprise Records 1970) (quoted in, among others, Jessica Hulting, Casenote, *You Don't Know What You've Got Till It's Gone: Competing Agendas Of Preservationists*, 11 MO. ENVTL. L. & POL'Y REV. 209 (2004)).

¹³⁶ U.S. v. Youts, 229 F.3d 1312 (10th Cir. 2000) (citing the lyric to various train songs in case involving defendant convicted of wrecking a train in violation of federal law). See generally GRATEFUL DEAD, *Casey Jones*, on WORKINGMAN'S DEAD (Warner Bros. 1970) ("Driving that train, high on cocaine/Casey Jones you better watch your speed.")

¹³⁷ ROCHELLE COOPER DREYFUSS, *Do You Want to Know a Trade Secret? How Article 2B Will Make Licensing Trade Secrets Easier (But Innovation More Difficult)*, 87 CALIF. L. REV. 91 (1999) (paraphrasing the Beatles' *Do You Want to Know a Secret?*).

discussing, there is a pop song out there for you.¹³⁸ This includes topics as diverse as transgender issues;¹³⁹ race and sex discrimination;¹⁴⁰ takings clause jurisprudence;¹⁴¹ domestic violence;¹⁴² products liability;¹⁴³ environmental law;¹⁴⁴ copyright infringement;¹⁴⁵ tax reform;¹⁴⁶ the war on terror;¹⁴⁷ Section 1983 claims based on police misconduct;¹⁴⁸ elder law;¹⁴⁹ and statutory interpretation and the legislative process.¹⁵⁰ You can play along at home if you like.

Although it is tempting to dismiss such uses as merely window dressing, such decoration can improve the quality of writing. Style is a critical component of persuasive legal writing, be it a judicial opinion or

¹³⁸ See generally Thilo Tetzlaff, *Why Law Needs Pop: Global Law and Global Music?*, in 7 LAW AND POPULAR CULTURE 316, 317 (Michael Freeman ed. 2005) (stating that “[p]op culture is a way of expressing statements important to civil societies”).

¹³⁹ THE KINKS, *Lola*, on LOLA VERSUS POWERMAN AND THE MONEYGOROUND, PART ONE (Reprise 1970) (“Well I’m not dumb but I can’t understand/ Why she walked like a woman and talked like a man/ Oh my Lola/La-la-la-la Lola la-la-la-la Lola”); LOU REED, *Walk on the Wild Side*, on TRANSFORMER (RCA 1972) (“Holly came from Miami, F-L-A/Hitchhiked her way across the U.S.A./Plucked her eyebrows on the way/Shaved her legs and then he was a she”).

¹⁴⁰ VIOLENT FEMMES, *Black Girls*, on HALLOWED GROUND (Slash 1984) (“I dig the black girls oh so much more than the white girls.”). *But see id.* (“I dig the white boys oh so much more than the black boys.”).

¹⁴¹ JETHRO TULL, *Farm on the Freeway*, on CREST OF A NAVE (Capitol 1987) (“Nine miles of two-strand topped with barbed wire laid by the father for the son/Good shelter down there on the valley floor, down by where the sweet stream run/Now they might give me compensation.”).

¹⁴² DIXIE CHICKS, *Good-Bye Earl*, on FLY (Sony Music Entertainment, Inc. 1999) (“[Earl] walked right through that restraining order and put her in intensive care.”) (quoted in Barbara Stark, *Symposium On Integrating Responses To Domestic Violence: Domestic Violence and International Law: Good-Bye Earl* (Hans, Pedro, Gen, Chou, Etc.), 47 LOY. L. REV. 255 (2001)).

¹⁴³ THE WHITE STRIPES, *The Big Three Killed My Baby*, on THE WHITE STRIPES (Thirdman Records/V2 1999) (quoted in Fletcher, *supra* note 119, at 618 n.41).

¹⁴⁴ RADIOHEAD, *Fake Plastic Trees*, on THE BENDS (Capitol Records 1995) (quoted in Jim Chen, *Biodiversity and Biotechnology: A Misunderstood Relation*, 2005 MICH. ST. L. REV. 51, 59; *see also* GUIDED BY VOICES, *I Am a Tree*, on MAG EARWHIG! (Matador Records 1997)).

¹⁴⁵ U2, *The Fly*, on ACHTUNG BABY (Island Records 1991) (“Every artist is a cannibal/Every poet is a thief”) (quoted in Simko, *supra* note 123, at 335); *see also* UNCLE TUPELO, *Acuff-Rose*, on ANODYNE (Sire Records 1993) (“Name me a song that everybody knows/And I’ll bet you it belongs to [Nashville publishing company] Acuff-Rose.”).

¹⁴⁶ THE BEATLES, *Tax Man*, on REVOLVER (EMI 1966) (“If you drive a car, I’ll tax the street/If you try to sit, I’ll tax your seat/If you get too cold, I’ll tax the heat/If you take a walk, I’ll tax your feet/Taxman”) (quoted in Lustig, *supra* note 131, at 726 n.3).

¹⁴⁷ TOBY KEITH, *Angry American* (*Courtesy of the Red White and Blue*), on UNLEASHED (Dreamworks Nashville 2002) (“Ohhh Justice will be served/And the battle will rage/ This big dog will fight/ When you rattle his cage/ And you’ll be sorry that you messed with/ The U.S. of A./Cause we’ll put a boot in your ass/It’s the American way.”).

¹⁴⁸ I’ll list just three. *See* BRUCE SPRINGSTEEN, *American Skin*, on LIVE IN NEW YORK CITY (Sony 2000) (“Is it a gun? Is it a knife? Is it a wallet? /This is your life,/It ain’t no secret,/You can get killed just for living in your American skin”) (quoted in Daniel P. Tokaji, *Healing The Blind Goddess: Race And Criminal Justice*, 98 MICH. L. REV. 1941, 1941(2000); N.W.A., *Fuck tha Police*, on *Straight Outta Compton* (Ruthless/Priority 1989) (“Fuck tha police/Comin’ straight from the underground/Young nigga got it bad cuz I’m brown./And not the other color so police think they have the authority to kill a minority.”) (quoted in Tobin Romero, Note, *Liberal Discovery On Selective Prosecution Claims: Fulfilling The Promise Of Equal Justice*, 84 GEO. L. J. 2043, 2055 n.82 (1996); THE CLASH, *Know Your Rights*, on COMBAT ROCK (Epic 1982) (“You have the right not to be killed./Murder is a crime, unless it was done by a policeman”).

¹⁴⁹ Patricia E. Dilley, *Hope We Die Before We Get Old: The Attack On Retirement*, 12 ELDER L.J. 245 (2004) (taking title from the Who’s *My Generation*).

¹⁵⁰ THE NEW PORNOGRAPHERS, *The Laws Have Changed*, on ELECTRIC VERSION (Matador 2003) (“Was a crime at the time, but the laws we changed ‘em.”).

legal scholarship. The persuasive value of an argument is often times directly linked with the quality of the accompanying writing.¹⁵¹ The entire purpose of including rhetorical flourishes, such as reciting lyrics from a song, is to grab the reader's attention, thus enabling the writer to be more persuasive. "The power of vivid statements," posits Judge Richard Posner, "rivets attention, crystallizes relevant concerns and considerations, [and] provokes thought."¹⁵² The lyrics of popular music may assist in riveting a reader's attention because they are often more accessible and interesting than the dry style of much of legal writing.¹⁵³ The use of colorful language may also lead to a more personal connection with the reader, which leads to trust, which in turn increases the persuasiveness of writing.¹⁵⁴ And the more entertaining the writing, the greater the likelihood that the writer's message will reach a larger audience.¹⁵⁵

But just because popular music can be used in such a manner doesn't mean that it necessarily should be used in such a manner. Such vivid statements also carry with them the potential to do harm to a writer's argument. Given the often colorless nature of legal writing, vivid statements may sometimes distract the reader from the point the author wishes to make. Particularly in the case of judicial opinions, lighthearted writing may be viewed as lacking the authority appropriate for a court.¹⁵⁶ One may very well question, for instance, whether an Article III judge should really be commenting upon "ho tendencies" in a published opinion.¹⁵⁷ The same may well be true for scholarly writing, where a resort to popular music lyrics may be seen by some readers as an indication that the work in question is not "serious" scholarship.

Closely related is the danger in attributing too much weight to a particular set of lyrics. Somewhere along the way, American culture began attributing considerable power to the lyrics of popular music. Somehow, rightly or wrongly, we began to view music not just as a thing to be enjoyed or even a vehicle to help create communal feelings among strangers, but as

¹⁵¹ Yury Kapgan, *Of Golf and Ghouls: The Prose Style of Justice Scalia*, 9 LEGAL WRITING 71, 72 (2003); Chad Oldfather, *The Hidden Ball: A Substantive Critique of Baseball Metaphors in Judicial Opinions*, 27 CONN. L. REV. 17, 21 (1994).

¹⁵² RICHARD A. POSNER, *CARDOZO: A STUDY IN REPUTATION* 136 (1990) (quoted in Kapgan, *supra* note 151, at 72 (2003)).

¹⁵³ See generally Minnow, *supra* note 20, at 1666 (speculating as to "whether the more intimate and yet more widely accessible languages of literature and popular music lyrics may change minds and prompt actions").

¹⁵⁴ See Kapgan, *supra* note 151, at 80 (arguing that "humanness engenders credibility, and credibility engenders persuasion").

¹⁵⁵ Daniel M. Filler, *From Law to Content in the New Media Marketplace*, 90 CAL. L. REV. 1739, 1170 (2002).

¹⁵⁶ *Id.*

¹⁵⁷ See *supra* note 57 and accompanying text. Indeed, in one instance a judge was censured for publishing an opinion in humorous verse detailing the conviction of woman for solicitation. *In re Rome*, 542 P.2d 676 (Kan. 1975). Of course, such a discussion might be less problematic in an unpublished opinion where any conclusions of law reached about ho tendencies would not be mandatory authority. See generally John B. Borger & Chad M. Oldfather, *Anastasoff v. United States and the Debate Over Unpublished Opinions*, 36 TORT & INS. L.J. 899, 902 n.25 (2001) (discussing the debate over the precedential value of unpublished opinions).

a force capable of inspiring social change, both positive and negative. In the 1980s, the Parents Music Resource Center (PMRC), led by the wives of prominent members of Congress, created a stir by asserting that there was a connection between popular music and teen pregnancies, teen suicide, and rape.¹⁵⁸ Picking up on the PMRC's theme, more lawyers began filing lawsuits based on the underlying premise that a set of lyrics have the power to incite listeners to kill themselves or others.¹⁵⁹ Of course, not all views of the power of popular music were negative. Professor Martha Minow, for example, raised the possibility that music lyrics might actually have the power to *stop* violence.¹⁶⁰

Others have viewed music lyrics as having literary qualities above and beyond those normally ascribed to pop songs.¹⁶¹ One of the more unfortunate premises underlying the often sterile study of music lyrics as poetry was the notion that in order for a popular song to be "meaningful," its lyrics must have some meaning independent of the song. To be a "serious" piece of popular music and not "mere" popular music, the song's lyrics must be able to stand alone as either narrative or poetry. But as novelist Dennis Cooper has argued, "the real genius song lyricists either know consciously or intuitively that great songs can't be divided into words and music without murdering both in the process."¹⁶² In a similar vein, music critic Robert Christgau once said that one of Bob Dylan's most admired and supposedly more literate songs, "*My Back Pages*," is a bad poem, but a great song.¹⁶³ In Christgau's opinion, few of Dylan's lyrics "are tight enough to survive on the page" with no musical accompaniment.¹⁶⁴ If this is true of Dylan, widely regarded as the greatest rock lyricist ever, then a legal writer expects perhaps too much in asking the lyrics of other artists to help make the author's rhetorical point. The lyrics of popular music may carry more weight and force than they are sometimes

¹⁵⁸ Kenneth A. Paulson, *Regulation Through Intimidation: Congressional Hearings And Political Pressure On America's Entertainment Media*, 7 VAND. J. ENT. L. & PRAC. 61, 73, 75 (2004).

¹⁵⁹ See *Davidson v. Time Warner, Inc.*, No. Civ.A. V-94-006, 1997 WL 405907 (S.D. Tex. March 31, 1997) (concluding that Tupac Shakur did not intend to incite imminent and illegal conduct by his recording *2Pacalypse Now*); *McCullum v. CBS*, 249 Cal. Rptr. 187 (1988) (rejecting attempt to hold Ozzy Osbourne liable for causing listener to commit suicide); Clay Calvert, *Framing and Blaming in the Culture Wars: Marketing Murders or Selling Speech*, 3 VAND. J. ENT. L. & PRAC. 128, 129 (discussing lawsuit attempting to hold the band Slayer liable for the murder of a 15-year-old girl).

¹⁶⁰ Minow, *supra* note 20, at 1665-66.

¹⁶¹ See *supra* note 6 and accompanying text.

¹⁶² JAMES GREER, *GUIDED BY VOICES*, 110 (2005) (quoting Cooper); see also Alan Hoffman, *Performed Literature: Words and Music By Bob Dylan*, MLA NOTES, 39:4, at 848 (June 1983) (book review) ("[I]n performance-based rock, the grunts, pauses, peculiarities of pronunciation, off-the-cuff phrasing, and ad-lib instrumental effects are all important factors in hearing understanding the music.").

¹⁶³ Christgau, *supra* note 6, at 63.

¹⁶⁴ *Id.*; see also Hoffman, *supra* note 162, at 848 (contrasting the "performance-based artifact of folk or popular culture" with "the high-art poem or the high-art song, which consists of an exterior 'text' that is 'set' on paper, by a composer.").

given credit for, but ultimately, their powers are somewhat limited by the conventions of the pop song itself.

Another danger in relying upon music lyrics in legal writing is the danger of irritating the reader by the choice of a song or artist. Sometimes music may create a connection with a reader that is so personal in nature that the inclusion of a particular set of lyrics actually harms the persuasive value of the writer's argument. This is particularly true in the case of music, which often leads to strong emotional attachments or adverse reactions in a listener. We often identify with music much more strongly than we do with, say, film. The music we listen to defines us in ways that other art forms do not.¹⁶⁵ As rock critic Lester Bangs once noted, "the deeply personal identifications that occur when that magic confluence causes a certain piece of music to come along at a certain time" can be extremely powerful.¹⁶⁶ In the song *Panic*, singer Morrissey of the Smiths grows so frustrated at the failure of the dj in a disco to play music that says something to Morrissey about his own life that he urges his listeners to "[b]urn down the disco" and "hang the blessed dj."¹⁶⁷ Once in my twenties, I had an entire party turn on me when I suggested that perhaps the Canadian band Rush really wasn't all that good.¹⁶⁸

For these reason, the inclusion of a particular artist or song in persuasive legal writing may often be counterproductive. For instance, I thought about mocking anyone who had ever used lyrics from a Billy Joel song, particularly if that song happened to be "*We Didn't Start the Fire*." I was even going to single out one Mark Avsec, an adjunct professor at Case Western University School of Law, who didn't quote a Billy Joel song, but who actually *dedicated* an article to Joel.¹⁶⁹ Basically, I figured, he was just asking for abuse by doing so.¹⁷⁰ But then I read that in a former life, Avsec had been a songwriter and music producer and had actually produced Donnie Iris' "*Love is Like a Rock*."¹⁷¹ That fact is significant, because when I was 12 years old and surreptitiously listening to album-rock radio

¹⁶⁵ See generally *The Kids in the Hall: Guy That Wants To Get Beaten Up* (CBC Broadcast circa 1990) ("Alright, but tell me this: how can you tell, just by looking at me, that I hate the kind of music you listen to . . .?") (transcribed at <http://www.kithfan.org/work/transcripts/two/beatmeup.html>).

¹⁶⁶ Lester Bangs, *An Instant Fan's Inspired Notes: You Gotta Listen* 366, in MAINLINES, BLOOD FEASTS, AND BAD TASTE: A LESTER BANGS READER (ed. John Morthland) (Anchor Books 2003).

¹⁶⁷ THE SMITHS, *Panic*, on LOUDER THAN BOMBS (Rough Trade Records 1987).

¹⁶⁸ Regrettably, I think my exact words were probably "Rush sucks."

¹⁶⁹ Mark Avsec, *Nonconventional" Musical Analysis And "Disguised" Infringement: Clever Musical Tricks To Divide The Wealth Of Tin Pan Alley*, 52 CLEV. ST. L. REV. 339, 339 n.1 (2004).

¹⁷⁰ At the same time, I recognized that I was setting myself up for abuse for mocking "the Piano Man." See generally *Saturday Night Live: Weekend Update* (NBC Broadcast Mar. 7, 1998) ("We thought everybody hated Iraq. You have to assess the vibe before you make a move like that. You know how that happens. You think you're on the same page with all your friends. You're at a bar when a Billy Joel song comes on. You're like, 'Billy Joel sucks!' And everybody turns on you. 'No, you suck! Billy Joel's good. What about *The Stranger*? You're like, 'Oh, I like *The Stranger*. I like his old stuff.'") (transcribed at <http://www.saturday-night-live.com/snl/weekendupdate/98/3-7.html>).

¹⁷¹ *Id.*

station WSLQ (“Q99”) late at night in Roanoke, Virginia when my parents thought I was sleeping,¹⁷² I was firmly convinced (and am only slightly less so today) that “*Love is Like a Rock*” is about the coolest song ever recorded.¹⁷³ Not only did this Avsec guy – staid corporate attorney and mild mannered adjunct professor – produce the song, he was actually part of the Cruisers, Iris’ band.¹⁷⁴ So, now despite his apparent fondness for Billy Joel, it’s obvious that Avsec was at least at one point probably way cooler than I ever was. After all, it’s not like he quoted Phil Collins or anything. So maybe I shouldn’t automatically tune out the author who quotes from Joel’s “*Only the Good Die Young*.” Maybe that person played keyboards for Nick Lowe in another life and I just don’t know about it.¹⁷⁵ Maybe you think I’m fairly geeky for quoting Morrissey earlier.¹⁷⁶ Maybe you think Rush is pretty good.¹⁷⁷

But that is the risk one runs in quoting *anyone* in their writing. Maybe other listeners/readers will not be as forgiving as I am. The decision to inject a third person into the conversation between the writer and reader may distract the reader and prevent the personal connection the writer is seeking to make from being made. It may also cause the reader not to take the writer seriously. Those risks are probably more pronounced in the case of the quotation of music lyrics than in other cases given the sometimes intensely personal reactions music provokes.

Indeed, the personal connection that one often feels with music may lead a writer to make poor judgments with respect to the use of lyrics. Based on the deeply personal feelings for a song resulting from that “magical confluence” that led one to connect a particular song with a particular time or event, one may incorrectly assume that every reader will intuitively grasp the brilliance, profundity, or humor in the lyrics the writer chooses to cite. “Of course everyone knows who Donnie Iris is,” the writer might say. “Surely,” the writer says, “the brilliance of Morrissey’s observation is obvious.” In reality, not only might the quoted lyrics not resonate as strongly with the reader as with the writer, they may cause the

¹⁷² Or maybe I’m just remembering an old Ramones’ song and inserting myself into it. See RAMONES, *Do You Remember Rock ‘n’ Roll Radio?*, on END OF THE CENTURY (Sire 1980) (“Do you remember lying in bed/With the covers pulled up over your head/Radio playin’ so no one can see?”). But I’m pretty sure I remember hearing Billy Thorpe’s *Children of the Sun*, Aldo Nova’s *Fantasy*, and Billy Squier’s *The Stroke* around the same time.

¹⁷³ If you need proof, see DONNIE IRIS, *Love is Like a Rock*, on KING COOL (MCA 1981).

¹⁷⁴ Not only that, the dude also produced Wild Cherry’s *Play that Funky Music*. Avsec, *supra* note 169, at 339 n.1.

¹⁷⁵ But if you quote lyrics from Pink Floyd’s *The Wall* or *Dark Side of the Moon* albums to me, you’re fair game. See generally JOHN LYDON, *ROTTEN 74* (St. Martin’s Press 1994) (noting that prior to joining the Sex Pistols, Johnny Rotten used to own a t-shirt that had been altered to read “I Hate Pink Floyd”).

¹⁷⁶ You might have a point on that one.

¹⁷⁷ But you’d still be wrong on that one. For other examples of lousy Canadian bands, see APRIL WINE, *CLASSIC MASTERS* (EMI 2002), and TRIUMPH, *CLASSICS* (TML Entertainment 1995). For examples of higher-quality Canadian artists, see NEIL YOUNG, *AFTER THE GOLD RUSH* (Reprise 1970), *THE TRAGICALLY HIP, UP TO HERE* (MCA 1989), and BOB & DOUG MCKENZIE, *Take Off*, on *THE GREAT WHITE NORTH* (Polygram Records 1981) (featuring Geddy Lee of Rush on vocals ... hey, wait a minute ...).

reader to become annoyed or otherwise feel a sense of separation from the writer, a result the writer most assuredly does not want.¹⁷⁸ When lyrics get separated from music, their importance is often lost and it is the unusual set of lyrics that can be enjoyed by just about anyone.

2. *Flirtin' With Disaster (Y'all Know What I Mean)*¹⁷⁹

The lyrics to popular music songs are also frequently used in legal writing to restate an idea, often in a more colorful or humorous manner. Thus, for example, if one wanted to convey the idea that labor unions should take solace in the fact that, despite their decline in the workforce, they still have some sway over workplace matters, one might say, "In this climate, some voice is better than no voice at all. Or, to paraphrase Mick Jagger ..., even if you can't always get what you want; if you try sometimes, you just might find, you get what you need."¹⁸⁰ Or if one wanted to restate in more colorful and recognizable language the point that "people may possess similar amounts of material goods but experience different levels of satisfaction --some may be completely satisfied and others very dissatisfied.," one might go on to say, "Or, as the Beatles pointed out more succinctly, 'Money can't buy me love.'"¹⁸¹

The use of the words of other people to restate the author's point is a time-honored tradition in most all forms of persuasive writing. The injection of highly-recognized or pithy statements can create a more conversational tone, thus strengthening the bond between writer and reader. And if the writer is clever enough to use a quotation that has broad appeal and brings a smile to the faces of most readers, such usage may strengthen the personal connection between writer and reader and thereby strengthen the persuasiveness of the writer's argument. Indeed, a little lightheartedness can be a refreshing change from the turgid style found in much legal writing.¹⁸²

But again, there are dangers in relying upon the lyrical musings of those who populate the pop charts. Numerous authors have questioned, for example, whether it is appropriate for judges to rely on humor in their written opinions (at least where the humor is at the expense of the parties) given the importance that the parties attach to the matter being written

¹⁷⁸ See generally Oldfather, *supra* note 151, at 39 (noting that a metaphor that is not understood by a reader "becomes a nuisance").

¹⁷⁹ MOLLY HATCHETT, *Flirtin' With Disaster*, on FLIRTIN' WITH DISASTER (Epic 1979).

¹⁸⁰ Stephen F. Befort, *A New Voice For The Workplace: A Proposal For An American Works Councils Act*, 69 MO. L. REV. 607, 651 (2004).

¹⁸¹ Grant M. Hayden, *The False Promise of One Person, One Vote*, 102 MICH. L. REV. 213, 237 & 237 n.126 (2003).

¹⁸² Kapgan, *supra* note 151, at 78.

about.¹⁸³ Thus, it might be highly enjoyable for a lawyer to read the opinion of Judge Jerry Buchmeyer of the Northern District of Texas in *Rimes v. Curb Records, Inc.*,¹⁸⁴ which directs that the fact, analysis, and conclusion sections be sung to the tunes of various songs by country music artist LeAnn Rimes; however, it is not clear that Rimes or her former record company who were arguing over the validity of Rime' multi-million dollar recording contract found the opinion quite as humorous as those having no personal stake in the matter.

There are other dangers as well. Nothing is more likely to lessen a writer's credibility than an unfunny joke. Legal writing is easy; comedy is hard. Sometimes the inclusion of lyrics feels like a stretch on the part of the author. Sometimes it just feels like an author is reaching for a way to plug a favorite artist.¹⁸⁵ For example, *United States v. Jackson*,¹⁸⁶ is a fairly routine drug conviction appeal in which the Fifth Circuit Court of Appeals describes the dilemma faced by the defendant, Jackson, when confronted with the presence of a drug-sniffing dog on a bus he was on while in possession of cocaine:

Jackson was thus forced to ask himself what The Clash famously asked two decades ago: "Should I stay or should I go now?" Doubtless Jackson knew that if he stayed on the bus and the dog alerted to him "there would be trouble." But given the officers' ultimate discovery of the cocaine strapped to his waist, the trouble turned out to be "double," notwithstanding his decision to "go."¹⁸⁷

In this instance, the inclusion of the lyrics from "*Should I Stay or Should I Go?*" seems like a long way to go to make the simple point that Jackson faced a difficult choice. Had the court simply remarked that Jackson was forced to ask himself the question posed by the Clash two decades earlier ("should I stay or should I go?"), the inclusion of the lyrics might have been a fairly humorous way of explaining Jackson's dilemma. But by going further and quoting the entire chorus to the song, the court created at least two problems. First and perhaps more importantly, the lyrics do not actually fit the fact pattern. Had Jackson *stayed* on the bus, the dog presumably would have found the cocaine and Jackson would have been arrested. But this is exactly what happened when Jackson decided to

¹⁸³ *Id.* at 78 n. 34 (citing critics of humor in judicial opinions).

¹⁸⁴ 129 F. Supp. 2d 984 (N.D. Tex. 2001).

¹⁸⁵ You're waiting for me to cite this article, aren't you? You think my references to Guided By Voices and Steve Earle are gratuitous, don't you?

¹⁸⁶ 390 F.3d 393 (5th Cir. 2004).

¹⁸⁷ *Id.* at 396 n.3.

go – he acted suspiciously while leaving the bus, the dog sniffed his seat and detected drugs, and he was arrested.¹⁸⁸ Jackson’s trouble was not doubled in any way by leaving. The trouble he experienced by going was exactly what it would have been had he stayed – he was arrested and convicted for drug possession.¹⁸⁹ Furthermore, for those who have never heard of “*Should I Stay or Should I Go?*” or the Clash (or who have heard of the Clash but feel about the band as I feel about Billy Joel), the extended discussion of the lyrics may have harmed the overall style and, consequently, the substance of the court’s opinion.

Contrast the Fifth Circuit’s use of the Clash’s lyrics with the Delaware Chancery Court’s reference to the lyrics of the Clash’s contemporary, Elvis Costello, in *In re Oracle Corp.*¹⁹⁰ The derivative action involved a breach of fiduciary duty claim against two officers of Oracle Corporation for allegedly selling stock in the company at a time when they possessed material, adverse, nonpublic information about the company.¹⁹¹ In discussing the lack of evidence indicating that the officers actually possessed such information, the court borrowed the title of a Costello song to explain why the plaintiff’s allegations failed: “If there is something like ‘less than zero’ outside of Elvis Costello’s music, then there is even less reason to infer that [the officers] ‘knowingly’ possessed material, adverse information.”¹⁹²

Although the Delaware Chancery Court’s use of one of Costello’s more famous song titles might leave some readers scratching their heads and wondering “who this Costello guy is,” the inclusion of the song title is more effective in this instance than is the Fifth Circuit’s use of the Clash’s “*Should I Stay or Should I Go?*” The Costello title, like the Clash’s title, has a certain amount of universal appeal that most any reader should intuitively understand, regardless of whether they have heard the song or not. Indeed, the phrase “less than zero” is a particularly pithy, descriptive phrase that emphasizes the utter futility and worthlessness of a particular thing. The question “should I stay or should I go,” while certainly memorable, does not, standing alone, have the same depth.¹⁹³ Like a good story song, a well-turned descriptive phrase like “less than zero” is easily accessible and has the type of broad appeal that enables it to reach most readers, regardless of whether they have heard of the lyrics’ author.

¹⁸⁸ *Id.* at 395.

¹⁸⁹ Of course, this is arguably as much a flaw in the Clash’s lyrics as it is in the court’s use of the lyrics. If one’s trouble is doubled by staying, as opposed to going, then one is posed with a fairly easy choice. If those are the only two options available, one should of course go. The question, at best, appears rhetorical.

¹⁹⁰ 867 A.2d 904, 953 (Del. Ch. 2004).

¹⁹¹ *Id.* at 905.

¹⁹² *Id.* at 953.

¹⁹³ Although the last chorus where Joe Strummer repeats Mick Jones’ chorus in Spanish is pretty damn cool.

In the *Jackson* court's defense, the lyrics appear in a footnote; thus, they do not constitute an integral part of the opinion. In numerous pieces of legal scholarship, however, academics and practitioners have chosen to incorporate popular music lyrics into their writing in a more prominent manner, sometimes with less than desirable results. I'm not going to cite any examples because, unlike federal judges, (a) not all of the professors necessarily have tenure, (b) they may feel tempted to go back and read some of my scholarship and punch holes in it, and (c) I may actually run into them somewhere. But trust me, they're out there.

Another risk in relying upon popular music lyrics is the danger in unknowingly sounding trite or clichéd. What often makes a particular set of lyrics so tempting to cite is the verisimilitude or cleverness of the lyrics. One of the things that makes the lyrics of Bob Dylan so tempting to cite is that they are often outward-looking observations about the human condition in general, rather than being more introspective in nature. "A hard rain's a-gonna fall";¹⁹⁴ "when you got nothing, you got nothing to lose";¹⁹⁵ "you've gotta serve somebody";¹⁹⁶ "even the president of the United States must sometimes have to stand naked."¹⁹⁷ These are grim observations and dire predictions, sometimes overtly biblical in nature, that can be applied in a variety of settings, not the least of which somehow involves the law and its role in society. They can all be brought back home to the practice of law.¹⁹⁸

But the danger in citing lyrics that seem to say so much is that lots of other people may agree with you and have already used them in lots of different ways both in and out of the legal context to the point that the words no longer have much meaning outside the specific context of their own song. Familiarity can breed contempt. It may very well bring about the end of the world as we know it if you use that R.E.M. song one more time.¹⁹⁹ The journey from Point A to Point B in the law's development may very well have been a long, strange trip, but lately it occurs to me that no one really needs to quote that particular Grateful Dead song again in legal scholarship to make that particular point.²⁰⁰ Thinking about commenting

¹⁹⁴ BOB DYLAN, *A Hard Rain's A-Gonna Fall*, on THE FREEWHEELIN' BOB DYLAN (Columbia Records 1963).

¹⁹⁵ BOB DYLAN, *Like a Rolling Stone*, on HIGHWAY 61 REVISITED (Columbia Records 1965).

¹⁹⁶ Bob Dylan, *Gotta Serve Somebody*, on SLOW TRAIN COMING (Columbia Records 1969).

¹⁹⁷ BOB DYLAN, *It's Alright, Ma (I'm Only Bleeding)*, on BRINGING IT ALL BACK HOME (Columbia Records 1965).

¹⁹⁸ Buwah ha ha. Cf. BOB DYLAN, BRINGING IT ALL BACK HOME (Columbia Records 1965).

¹⁹⁹ See *supra* note 120 and accompanying text.

²⁰⁰ GRATEFUL DEAD, *Truckin'*, on AMERICAN BEAUTY (Warner Bros. 1970); Pamela Samuelson et al., *A Manifesto Concerning The Legal Protection Of Computer Programs*, 94 COLUM. L. REV. 2308, 2310 n.3(1994); *The 1998 Idaho Water Quality Symposium*, 35 IDAHO L. REV. 454, 527 (1999); B.J. Jones, *The Indian Child Welfare Act: In Search Of A Federal Forum To Vindicate The Rights Of Indian Tribes And Children Against The Vagaries Of State Courts*, 73 N. DAK. L. REV. 395, 409 (1997); Jack R. Tuholske, *Can TMDLs Ensure A Clean And Healthful Environment? A Litigator's Perspective: The Montana TMDL Litigation*, 22 PUB. LAND & RESOURCES L. REV. 3, 3 (2001); Daniel M. Serviss, *The Evolution Of The "Entire Controversy" Doctrine And Its Enduring Effects On The Attorney-Client Relationship: What A Long, Strange Trip It Has Been*, 9 SETON HALL CONST. L.J. 779, 779 (1999); Patrick J. Borchers, *Jurisdictional Pragmatism: International Shoe's Half-Buried*

upon the changing nature of a particular field of the law by observing that “the times they are a-changin’”²⁰¹ You’d better think twice. It might not be alright.²⁰²

B. ... SOMETIMES I DON’T

Despite the sometimes questionably use of popular music lyrics in legal writing, the vivid imagery of some popular music may lend itself well to lawyers’ attempts to make or advance an argument.

1. *Like A Song I Have to Sing*²⁰³

Legal analysis frequently requires a lawyer to compare dissimilar situations or concepts. Lawyers reason by analogy. They distinguish past precedent. Likewise, metaphors and similes are the bread and butter of songwriting. Therefore, it is only natural that lawyers employ popular music lyrics in their writing to help make connections for their readers.

Jean Cocteau once said that “All good music resembles something. Good music stirs by its mysterious resemblance to the objects and feelings which motivated it.” It is natural then that music sometimes makes explicit those resemblances and comparisons that are sometimes mysterious in nature. “Metaphors explicitly or implicitly identify one phenomenon with another phenomenon from which the first is literally distinct.”²⁰⁴ Sometimes braggadocios (“I’m the King of Rock, there is none higher,”²⁰⁵ “I’m a streetwalkin’ cheetah with a heart full of napalm”²⁰⁶), other times more poignant (“Rust never sleeps”²⁰⁷) or dramatic in nature (“River deep, mountain high”²⁰⁸), metaphors are a particular vivid tool for songwriters.

Legacy, 28 U.C. DAVIS L. REV. 561, 564 (1995); David Amidon, *Return Of The Prodigal Lawyer: "What A Long, Strange Trip It's Been..." From The Grateful Dead's "Truckin'"*, 49 B.B.J. 16, 16 (2005).

²⁰¹ BOB DYLAN, *The Times They Are A-Changin'*, on THE TIMES THEY ARE A CHANGIN' (Columbia Records 1964). By my count, there are approximately 43 law journal articles that quote or cite this song.

²⁰² Cf. BOB DYLAN, *Don't Think Twice, It's Alright*, on THE FREEWHEELIN' BOB DYLAN (Columbia Records 1963). Honest to God, about two weeks after I came up with the somewhat lame attempt at a joke, I realized that Canadian power pop supergroup the New Pornographers had actually used a similar line before in one of their songs. See THE NEW PORNOGRAPHERS, *Testament to Youth in Verse*, on ELECTRIC VERSION (Matador 2003) (“Baby, think twice, maybe its not all, maybe its not alright.”). Now, I had only heard the song maybe three times when I came up with that line, but it’s entirely possible that this was a case of an unconscious plagiarism on my part. For more on unconscious plagiarism, see *Bright Tunes Music Corp. v. Harrisongs Music, Ltd.*, 420 F. Supp. 177 (S.D.N.Y. 1976) (finding composer George Harrison's had infringed on the copyright of the song *He's So Fine* by unconsciously copying the song in writing *My Sweet Lord*).

²⁰³ U2, *Like A Song*, on WAR (Island Records 1983).

²⁰⁴ Bernard J. Hibbits, *Making Sense of Metaphors: Visuality, Aurality, and the Reconfiguration of American Legal Discourse*, 16 CARDOZO L. REV. 229, 233 (1994).

²⁰⁵ RUN D.M.C., *King of Rock*, on KING OF ROCK (Profile Records 1985).

²⁰⁶ IGGY AND THE STOOGES, *Search and Destroy*, on RAW POWER (CBS 1973).

²⁰⁷ NEIL YOUNG, *Hey Hey, My My (Into The Black)*, on RUST NEVER SLEEPS (Reprise 1979).

²⁰⁸ IKE AND TINA TURNER, *River Deep, Mountain High*, on RIVER DEEP-MOUNTAIN HIGH (A&M 1969).

The law and literature field contains a great deal of debate as to the proper role, if any, of metaphors in legal writing. One of the most common criticism of the use of metaphors in legal writing is the concern that metaphors are often imprecise and therefore sometimes misleading.²⁰⁹ Closely related is the concern, noted by Justice Cardozo, that once a metaphor becomes established and gains currency, it has the tendency to enslave rather than illuminate the thought process.²¹⁰ One additional concern with the use of metaphors is that sometimes such use is simply an unnecessary flourish that leads to bad writing. Take, for example, the following passage from an unpublished federal opinion:

The Beatles once sang about the long and winding road. This 1992 case has definitely walked down it, but at the end of the day, the plaintiffs and their counsel were singing the Pink Floyd anthem "Another Brick in the Wall" after consistently banging their collective heads against a popular procedural wall - Northern District of Illinois Local Rule 12 governing the briefing and submission of summary judgment motions.

The court's use of the "Long and Winding Road" and "procedural wall" metaphors coupled with the reference to Pink Floyd in this instance is counterproductive for several reasons. First, while the music of the Beatles is ubiquitous enough within American society that it transcends any number of age or cultural barriers, the music of Pink Floyd is not nearly so universally loved.²¹¹ In order to be effective, a metaphor must not only be descriptive, but it must easily accessible for the listener.²¹² The music of Pink Floyd simply has not entered the public consciousness in the way the music of the Beatles has, nor is it able to transcend age and cultural barriers in the way the music of the Beatles does. Consequently, the "*Another Brick in the Wall*" reference is likely to be lost on a sizeable portion of the readers of the opinion and may, in fact, be off-putting. Second, the court's use of metaphor does little to assist the reader in understanding the court's meaning in any meaningful way. If one of the purposes of metaphors is to allow people "to understand one phenomenon in relationship to another and to illuminate some salient details while shading others,"²¹³ the "Long and Winding Road" metaphor just barely serves this purpose. Litigation often

²⁰⁹ Robert L. Tsai, *Fire, Metaphor, and Constitutional Myth-Making*, 93 GEO. L. J. 181, 189 (2004).

²¹⁰ Hibbits, *supra* note 204, at 234; Oldfather, *supra* note 151, at 26.

²¹¹ See *supra* note 175 and accompanying text (noting the distaste of Pink Floyd shared by myself and Johnny Rotten).

²¹² See Oldfather, *supra* note 151, at 39 ("A metaphor will be less effective when a reader has an incomplete or nonexistent understanding of it.").

²¹³ Tsai, *supra* note 209, at 188.

takes a lot of twists and turns and may take a long time. We get it. There is nothing particularly *wrong* with the Beatles metaphor; however, if one assumes that one of the purposes of metaphors is to make a point in a more concise manner,²¹⁴ then the inclusion of the metaphor fails this purpose. Finally, it just isn't very funny. Humor may well have its place in legal writing, but in this instance the court asks the reader to go through several steps in order to reach a punch line that ultimately falls flat.

Contrast that example with the California courts' use of the "you don't need a weatherman to know which way the wind blows" metaphor used to explain under what circumstances expert testimony is required.²¹⁵ The metaphor is effective in that it serves the purpose of metaphors of "making abstract concepts more concrete"²¹⁶ and aids in understanding; the court's use of it is also pretty darn funny. Both the inherent truthfulness and applicability of Dylan's statement are so spot-on that even one who dislikes or is ambivalent toward Dylan would be hard pressed to quibble about a court's use of the phrase.

Such musical metaphors are, however, fairly uncommon in judicial writing.²¹⁷ There is no "Stairway to Heaven"²¹⁸ or "Freebird"²¹⁹ legal metaphor comparable to the status occupied by the venerable "marketplace of ideas" or "wall between church and state" metaphors. Despite the proliferation of "*Stairway to Heaven*," "*Freebird*," and other classic rock chestnuts on the radio, there are relatively few songs that possess both the qualities of descriptiveness and familiarity necessary to allow for the use of an effective metaphor. "*This Land is Your Land*," perhaps.²²⁰ "*Born to Run*," maybe.²²¹ But few others.²²²

²¹⁴ See Oldfather, *supra* note 151, at 23-24 (arguing that it is).

²¹⁵ See *supra* note 40 and accompanying text.

²¹⁶ Oldfather, *supra* note 151, at 21. The actual standard, according to the California courts, is that expert testimony is not required where a question is resolvable by common knowledge." Jorgensen v. Beach 'n' Bay Realty, 125 Cal. App. 3d 155 (1981). (internal quotations omitted).

²¹⁷ But see Andrew M. Jacobs, *God Save This Postmodern Court: The Death of Necessity and the Transformation of the Supreme Court's Overruling Rhetoric*, 63 U. CIN. L. REV. 1119, 1178 & 1178 n.321 (1995) (using the title of the R.E.M. album *Fables of the Reconstruction* as a metaphor for "the conservative attempt at reconstructing classical necessity"). They also appear occasionally in law and popular culture scholarship. See F. Patrick Hubbard, *Justice, Creativity, and Popular Culture: The "Jurisprudence" of Mary Chapin Carpenter*, 27 PAC. L.J. 1129 (1996). See generally Sanford Levinson & J.M. Balkin, *Law, Music, and Other Performing Arts*, 139 U. PA. L. REV. 1597 (1991) (comparing the task of statutory interpretation to the task of a music performer performing someone else's work).

²¹⁸ LED ZEPPELIN, *Stairway to Heaven*, on LED ZEPPELIN IV (Atlantic Records 1971). Yeah, I know, technically, the album really isn't titled "IV," but that's what a lot of people call it. Quit being so snobby.

²¹⁹ LYNYRD SKYNYRD, *Freebird*, on PRONOUNCED LEH-NERD SKIN-NERD (MCA 1973).

²²⁰ Mark Allan Jackson, *Is This Song Your Song Anymore?: Revisioning Woody Guthrie's "This Land is Your Land,"* in 20 AMERICAN MUSIC 249, 250 (2002) (noting that "'This Land' has entered the bloodstream of our nation's cultural body" and "contains vivid ... references").

²²¹ Pick your favorite line. To me, it seems like the "The highway's jammed with broken heroes/On a last chance power drive" line has almost limitless potential. BRUCE SPRINGSTEEN, *Born to Run*, on BORN TO RUN (Columbia Records 1975).

²²² But see Jonathan A. Beyer Note, *The Second Line: Reconstructing the Jazz Metaphor in Critical Race Theory*, 88 GEO. L.J. 537 (2000) (suggesting the use of jazz as a metaphor for reconstructive scholarship).

While musical metaphors appear only infrequently in legal writing, the need to explain concepts in relation to other concepts in a compelling manner is nonetheless a task shared by both lawyers and songwriters. And the descriptive character of many popular music lyrics sometimes lends itself well to legal writing. When used effectively in this manner, lyrics may be every bit as effective a tool to further communication and comprehension as a legal metaphor or more formal analogy.

For instance, federal Magistrate Judge Paul W. Grimm borrows one of Bruce Springsteen's lines to help demonstrate the importance of permitting a prevailing party in a discrimination case to obtain attorney's fees for time spent in enforcing and monitoring a consent decree.²²³ Without enforcement lawsuits, Judge Grimm explained, the promise of discrimination-free housing would remain merely an unfulfilled dream.²²⁴ Two decades earlier, the main character in the Springsteen song "*The River*" asked the question, "Is a dream a lie if it don't come true or is it something worse,"²²⁵ leaving little doubt in the listener's mind as to what the correct answer really was. The court's inclusion of this lyric helps bring to life the court's "unfulfilled dream" metaphor. But it is the manner in which the opinion does so that is particularly impressive. The opinion does not introduce the line by trumpeting "as Bruce Springsteen once said" or by overtly stating the connection. Instead, Judge Grimm simply begins a footnote with the relevant line and includes no explanation.²²⁶ Standing alone, the line describing lost hope brought about the premature onset of adulthood and its attendant responsibilities is a killer. But when the court juxtaposes the words of a former resident of the public housing at issue expressing his own dashed hopes with the rhetorical question of the protagonist of "*The River*," the plight of the two individuals – one fictional and one real – becomes especially poignant. According to the former tenant, the former city commissioner "told us to dream, dream about what this neighborhood could be [but] he didn't tell us ... that the dream meant we wouldn't be included."²²⁷

Occasionally, a legal writer approaches popular music in a truly creative manner. For example, in his 2004 article *Much Respect: Toward A Hip-Hop Theory of Punishment*, Professor Paul Butler, relied heavily on hip-hop lyrics to advance his rather bold thesis that "hip-hop can be used to inform a theory of punishment that is coherent, that enhances public safety, and that treats lawbreakers with respect. Hip-hop can improve the ideology

²²³ *Thompson v. HUD*, No. Civ.A MGJ-95-309, 2002 WL 31777631 (D. Md. Nov. 21, 2002).

²²⁴ *Id.* at *4.

²²⁵ BRUCE SPRINGSTEEN, *The River*, on THE RIVER (Columbia Records 1980).

²²⁶ *Thompson*, 2002 WL 31777631, at *4 n.2.

²²⁷ *Id.* (quoting newspaper article).

and administration of justice in the United States.”²²⁸ In some respects, Butler’s article is in keeping with conventional law and popular culture scholarship. But although Butler draws an explicit link between hip-hop and crime and punishment, the article transcends the traditional boundaries of law and popular culture literature. It is essentially a call for moving beyond the traditional theories of punishment²²⁹ that uses the lyrics of hip-hop to advance Butler’s vision of the appropriate alternative. The alternative, Butler suggests, is the hip-hop theory of punishment, which more directly takes into account the unintended third-party effects “when too many people are absent from their communities.”²³⁰

Explicit comparisons between a particular form of popular music and an area of the law are fairly common in law and popular culture scholarship. Five years prior to Butler’s piece, David S. Caudill published a highly entertaining piece, *Fabricating Authenticity: Law Students as Country Music Stars*,²³¹ which analogized the myth of the decline of authenticity in country music to the myth of the loss of professionalism in the practice of law.²³² But Butler’s use of the hip-hop genre is slightly different. Butler may give credit to hip-hop for the theory, but I suspect the theory of punishment he advances is largely his own. In effect, Butler uses hip-hop’s commentary on the justice system and its effects on the certain segments of society to advance his own argument with respect to the proper goals of punishment. The language of hip-hop is a particularly effective vehicle for illustrating some of the real-world consequences of policy choices related to the law. The narrative and descriptive qualities of hip-hop lyrics may make hip-hop an effective persuasive tool in legal writing, regardless of a reader’s familiarity with the music. As Butler’s article demonstrates, the greater the ability of lyrics to put a human face on the law’s subjects, the greater the potential utility for legal writing such lyrics have.

2. *What’s So Funny ‘Bout (Parody, Satire, and Legal Writing)?*²³³

Butler’s use of lyrics in a sometimes humorous yet persuasive manner illustrates another potential use of popular music lyrics. In the case of judicial opinions, the humor rarely takes center stage, but is instead a

²²⁸ Butler, *supra* note 9, at 984.

²²⁹ See *id.* (noting the four theories of punishment as retribution, deterrence, incapacitation, and rehabilitation).

²³⁰ *Id.*

²³¹ Caudill, *supra* note 92; see also Hubbard, *supra* note 217 (discussing the “jurisprudence” of Mary Chapin Carpenter).

²³² Caudill, *supra* note 92 at 1576.

²³³ Cf. ELVIS COSTELLO & THE ATTRACTIONS, (*What’s So Funny ‘Bout*) *Peace, Love and Understanding*, on ARMED FORCES (Columbia 1978); see also R.E.M., *Laughing*, on MURMUR (I.R.S. 1983).

more subtle component of some opinions. In contrast, legal scholarship, not being restricted by such niceties as the need to actually settle legal disputes, is much freer to explore the humorous aspects of the law, the practice thereof, and legal scholarship. Regardless of the venue, judges, academics, and practicing attorneys have frequently turned to popular music to help bring smiles to the faces of their readers as they attempt to convince the readers of the rightness of their positions.

Popular music has a longstanding relationship with comedy. Musical parody and satire have long pedigrees in popular music.²³⁴ Although it has lost some of its cachet in recent years, the novelty song – a song written and recorded almost exclusively for comedic effect, rather than to target another song or adopt the style of another song for comedic effect²³⁵ -- has traditionally been a staple of radio.²³⁶

While judges are naturally disinclined to engage in the open and obvious social commentary of satire, humor sometimes finds its way into judicial opinion writing.²³⁷ And while, as noted, there are a number of potential concerns associated with the use of humor in judicial opinions and legal scholarship,²³⁸ the use of humor can be an effective tool of persuasion.²³⁹ Well-executed humor can make legal writing more accessible and hence persuasive.²⁴⁰ If used correctly, the lyrics of popular music, like other references to popular culture, may aid in the venture.

But it is in legal scholarship that a writer's humorous instincts may be best turned loose. Sometimes, the humor may liven up a piece of scholarship, rather than serving as the centerpiece. Thus, for example, a writer might cleverly use song titles or lyrics to mark the beginning of each new section in a piece of legal scholarship in order to give the writing a somewhat lighthearted touch.²⁴¹ Satire in particular has a rich and distinguished history in legal scholarship.²⁴² The satirist's criticism of his or her intended target can be a means of provoking increased debate on a

²³⁴ Charles J. Sanders & Steven R. Gordon, *Strangers in Parodies: Weird Al and the Law of Musical Satire*, 1 FORDHAM ENT. MEDIA & INTELL. PROP. L. FORUM 11, 11 (1990).

²³⁵ See Laura R. Bradford, *Parody And Perception: Using Cognitive Research To Expand Fair Use In Copyright*, 46 B.C. L. REV. 705, 720 (2005) (noting different conceptions of the term "parody").

²³⁶ Buddy Blue, *The Good Doctor Specializes in Funny Bones*, SAN DIEGO UNION-TRIBUNE, Apr. 28, 2005, available at 2005 WLNR 6759902. By the way, the author of this article, Buddy Blue, was formerly a member of the Beat Farmers, a band that knew a thing or two about novelty songs. See THE BEAT FARMERS, *Happy Boy*, on TALES OF THE NEW WEST (Slash 1985) ("My little dog Spot got hit by a car/Hubba hubba hubba hubba hubba/Put his guts in a box and put him in a drawer/Hubba hubba hubba hubba hubba/Well I'm a happy boy").

²³⁷ See *supra* note 184 (discussing court order directing opinion be sung to various LeAnn Rimes tunes).

²³⁸ See *supra* notes 156-157 and accompanying text.

²³⁹ J.T. Knight, Comment, *Humor and the Law*, 1993 WIS. L. REV. 897, 908. For further discussion on the subject of the appropriateness of employing humor in legal writing, see Thomas E. Baker, *A Compendium Of Clever And Amusing Law Review Writings*, 51 DRAKE L. REV. 105, 135-37 (2002) (collecting law journal articles debating the pros and cons of judicial humor).

²⁴⁰ Knight, *supra* note 239, at 903.

²⁴¹ You're waiting for me to cite this article again, aren't you? See *supra* note 185. Ha! See Gil Grantmore, *Lex and the City*, 91 GEO. L.J. 913 (2003) (using song title and lyrics to mark the beginning of each new section).

²⁴² Peter Goodrich, *Satirical Legal Studies: From The Legists To The Lizard*, 103 MICH. L. REV. 397, 400 (2004).

particular issue and causing readers to re-evaluate prior thinking. As satire in the law involves “an attempt to link law to life,”²⁴³ it is essential that the satire be accessible. The use of popular culture, and in particular popular music, may aid in this endeavor. And then again, sometimes it’s just a nice change of pace to read funny legal scholarship.²⁴⁴

In his (in)famous(?) “*Pomobabble*” trilogy,²⁴⁵ my colleague Dennis Arrow “sought,” in the words of one author, “to attack and maybe even to kill postmodernism” through satire.²⁴⁶ In his quest, Arrow frequently summoned the forces of popular music, often with humorous effect,²⁴⁷ such as when he somehow free associated his way from an article comparing the symptoms of postmodernism with those of paranoia to Frank Lloyd Wright to Lou Reed’s Velvet Underground to Chuck Berry, Beethoven, Nirvana, professional wrestling, the Dixie Chicks, Catharine Mackinnon, George Orwell, and the Beatles’ “*Everybody’s Got Something to Hide Except Me and My Monkey*,” all within the space of one footnote.²⁴⁸

Of course, Arrow’s work satirized post-modernism by using just about any means at his disposal (including a tray liner from McDonald’s, which actually reproduced the lyrics to the McDonald’s jingle, “*You Deserve a Break Today*”)²⁴⁹), not simply the lyrics of popular music. His was a scattershot approach that just happened to spray out occasional blasts of Sheryl Crow, Peter, Paul & Mary, or the Grateful Dead at his intended victims. In contrast, Professor Jim Chen used almost exclusively the lyrics of popular music (and in particular rock ‘n’ roll) in his nine-page, mini-rock opera of constitutional commentary parody *Rock ‘n’ Roll Law School*.²⁵⁰ Chen’s piece almost certainly holds the record in legal scholarship for the average number of song citations per page. Chen finds various ways to summarize the Supreme Court’s constitutional jurisprudence through the lyrics of, among others, R.E.M., the Who, the Rolling Stones, and Smokey

²⁴³ *Id.* at 422.

²⁴⁴ See Knight, *supra* note 239, at 897 (noting the “long-held criticism” that law reviews are “esoteric, inaccessible, and boring”).

²⁴⁵ Dennis W. Arrow, *Pomobabble: Postmodern Newspeak and Constitutional “Meaning” for the Uninitiated*, 96 MICH. L. REV. 461 (1997); Dennis W. Arrow, *Spaceball (or, Not Everything That’s Left is Postmodern)*, 54 VAND. L. REV. 2381 (2001); Dennis W. Arrow, “Rich,” “Textured,” and “Nuanced”: Constitutional “Scholarship” and Constitutional Messianism at the Millenium, 78 TEX. L. REV. 149 (1999).

²⁴⁶ Stephen M. Feldman, *An Arrow to the Heart: The Love and Death of Postmodern Legal Scholarship*, 54 VAND. L. REV. 2351, 2351 (2001).

²⁴⁷ But see Goodrich, *supra* note 242, at 487 (referring to Arrow’s original piece as an “unreadable diatribe”).

²⁴⁸ Arrow, *Pomobabble*, *supra* note 245, at 599 n.43.

²⁴⁹ *Id.* at 482 n.20. The relevant passage is “Feed me, please me, tempt me, tease me.” *Id.* Cf. U2, *Hold Me, Thrill Me, Kiss Me, Kill Me*, on BATMAN FOREVER: MUSIC FROM THE MOTION PICTURE (Warner Bros. 1995).

²⁵⁰ Jim Chen, *Rock ‘n’ Roll Law School*, 12 CONST. COMM. 315 (1995). The term “rock opera” was first used in conjunction with the work of the Who, a band I was unable to search for when doing my search of my citations to lyrics. See *supra* notes 34 and accompanying text. So, in order to make it up to them, if you’d like to learn more about rock operas, see THE WHO, *A Quick One While He’s Away*, on HAPPY JACK (Decca 1966) (the mini-opera), THE WHO, TOMMY (Polydor 1969) (the first opera), and THE WHO, QUADROPHENIA (MCA 1973) (the other opera).

Robinson.²⁵¹ In fact, Chen probably also holds the record more generally for most articles published that somehow utilize the lyrics to popular music.²⁵² *Rock 'n' Roll Law School* followed closely on the heels of Chen's constitutional law parody, *The Constitutional Law Songbook*,²⁵³ which, in Chen's words, made "fair use of the Beatles' "Yellow Submarine."²⁵⁴

Given the highly personal nature of music, the decision to publish a humorous piece with music as the centerpiece may limit the potential audience of the work. That said, Professor Eugene Volokh uses popular music lyrics to great effect in his *Hum a Few Bar Exam*, which presents students with exam questions based on music lyrics.²⁵⁵ Most of the songs Volokh uses should be known by anyone who has ever listened to a classic rock radio station for more than a couple of hours, so the music references are accessible. Plus, they are used quite effectively in setting up most of the "questions" on the exam, such as when the student is presented with the lyrics to Bob Marley's "*I Shot the Sheriff*" in an Evidence exam and asked whether the singer's admission to having shot the sheriff could be used as prior bad acts evidence to help establish that the singer also shot the deputy.²⁵⁶ The decision to limit the scope of the piece to one particular artist narrows the reach of the piece even further. For example, no one other than a Dylan fan is going to pick up a piece titled *Intimations of Contemporary Law & Politics in the Early Oeuvre of Robert A. Zimmerman*.²⁵⁷ And no one but a Dylan aficionado is actually going to read the thing to learn about the authors' theory regarding the secret code embedded in Dylan's lyrics.²⁵⁸ But if there are specialized journals for virtually every field of law, why not the occasional specialized article devoted to a particular artist, particularly if the artist happens to be the bard from Hibbing, Minnesota and the darling of legal academia? For those so inclined to go on the journey, the authors demonstrate, in meticulous detail, how Dylan's lyrics accurately predicted "otherwise unforeseeable events in American law, politics, and culture,"²⁵⁹ including the rise of Paula Jones,²⁶⁰ the Clinton impeachment,²⁶¹ and the Microsoft anti-trust case.²⁶² Honestly.

²⁵¹ Chen, *supra* note 250, at 318-21. He even manages to correctly identify the theme song for all untenured junior professors: David Bowie's "*Five Years*" ("Five years, that's all we've got. Five years"). *Id.* at 315 (quoting DAVID BOWIE, *Five Years*, on THE RISE AND FALL OF ZIGGY STARDUST AND THE SPIDERS FROM MARS (RCA 1972)).

²⁵² See, e.g., Chen, *Biodiversity*, *supra* note 119 (quoting Radiohead lyrics); Chen, *Webs of Life*, *supra* note 119 (same); Jim Chen, *Diversity in a Different Dimension: Evolutionary Theory Affirmative Action's Destiny*, 59 OHIO ST. L.J. 811, 874 (1998) (quoting from Joan Baez' version of "*Wildwood Flower*").

²⁵³ JIM CHEN, *The Constitutional Law Songbook*, 11 CONST. COMM. 263 (1994).

²⁵⁴ Chen, *supra* note 250, at 316 n.11; see also Jim Chen, *Rational Basis Revue*, 17 CONST. COMM. 447 (2000) (putting to music the issues underlying Supreme Court decisions).

²⁵⁵ Eugene Volokh, *Hum a Few Bar Exam*, 2 GREEN BAG 2D 125, 126 (1998).

²⁵⁶ *Id.* at 126.

²⁵⁷ Steven Lubet & Alex J. Lubet, *Intimations of Contemporary Law & Politics in the Early Oeuvre of Robert A. Zimmerman*, 3 GREEN BAG 2D 459 (2000).

²⁵⁸ *Id.* at 459.

²⁵⁹ *Id.*

IV. GIMME THREE STEPS TOWARDS THE DOOR ... AND
YOU'LL NEVER SEE ME NO MORE²⁶³

And if you're saying goodbye
Please don't you think me bitter
For recalling every rhyme
From the book, the page, the line, the word, the letter.
-- The White Stripes, *Wasting My Time*.²⁶⁴

Is this it?
-- The Strokes, *Is This It*²⁶⁵

This is the end, beautiful friend, the end.
-- The Doors, *The End*.²⁶⁶

Probably the most famous song by the Northern Irish band the Undertones is “*Teenage Kicks*,” a pitch-perfect, four-chord ode to teen lust.²⁶⁷ Despite its simplicity, the song was meaningful enough to legendary

²⁶⁰ *Id.* at 460.

²⁶¹ *Id.*

²⁶² *Id.* at 462.

²⁶³ LYNRYD SKYNYRD, *Gimme Three Steps*, on PRONOUNCED LEH-NERD SKIN-NERD (MCA 1973); *see also* CHEAP TRICK, *Good Night Now*, on CHEAP TRICK AT BUDOKAN (CBS 1979) (“Goodnight now, ladies and gentlemen/Goodnight now, ladies and gents/It’s the end of the show/You know it’s time to go.”).

²⁶⁴ By the same token, please don’t be bitter towards me. In the words of rock critic Lester Bangs [I]t’s harder than hangnails to ... even have a little moronic fun these days without some codifying crypto-academic ... swooping down to rape your stance and leave you shivering fish-naked in the cultural welfare line. So I wouldn’t blame you for hating me for this article at all

Lester Bangs, *Everybody’s Search for Roots (The Roots of Punk, Part 1)*, in MAINLINES, BLOOD FEASTS, AND BAD TASTE: A LESTER BANGS READER (ed. John Morthland) (Anchor Books 2003).

²⁶⁵ THE STROKES, *Is This It*, on IS THIS IT (RCA 2001).

²⁶⁶ THE DOORS, *The End*, on THE DOORS (Elektra/Asylum 1967).

²⁶⁷ THE UNDERTONES, *Teenage Kicks*, on THE UNDERTONES (Sire 1979). The lyrics are as follows:

Teenage dreams, so hard to beat,
Every time she walks down the street,
Another girl in the neighborhood,
Wish she was mine, she looks so good.

[chorus]
I wanna hold her, wanna hold her tight,
Get teenage kicks right through the night

I’m gonna call her on the telephone,
Have her over cuz I’m all alone,
I need excitement, oh I need it bad,
And it’s the best I’ve ever had.

[chorus]
(Alright)

BBC radio personality John Peel that the song was played during his funeral.²⁶⁸ According to Peel, he was so overcome with emotion upon hearing the song for the first time while listening to it in his car that he was forced to pull over so that he could cry.²⁶⁹ Peel was responsible for helping to discover and make popular dozens of musical artists in the United Kingdom and United States whose cachet was improved and lives were changed upon receiving the Peel seal of approval.²⁷⁰ Peel's life had itself been forever changed as a teenager upon hearing Elvis Presley's "*Heartbreak Hotel*,"²⁷¹ a song with clever lyrics certainly, but lyrics that hardly rival those of Dylan or others in terms of poetic value, complexity, or social consciousness.²⁷² Sometimes all we want from the music we listen to is teenage kicks, but those kicks, once attained, can stay with us through our lives.

"*Teenage Kicks*" has universality and verisimilitude to burn, but it's unlikely anyone is ever going to use it to advance any sort of argument in legal writing.²⁷³ The band is fairly obscure and the lyrics are juvenile. It is doubtful that even a fan as rabid as John Peel, armed only with the lyrics, could bring the song to life to someone who had never heard it. The personal connection we feel toward certain music is not attributable to lyrics alone, but to melody, performance, production, and the timing that introduced the song to you at that particular point in time in your life. Why then should we expect a set of lyrics, divorced from context, to bring our writing to life?

But sometimes they do. There are most definitely risks in trying to work popular music lyrics into legal writing, but occasionally the attempt pays off in the form of more interesting and persuasive writing. So, be careful, but keep on rockin' in the free world.²⁷⁴ Peace, I'm out.²⁷⁵

[Third verse same as the first]

[chorus]

[Fourth verse same as the second]

[chorus]
Alright!

[chorus]
Alright!

²⁶⁸ Jill Lawless, Associated Press, *Influential BBC Radio DJ John Peel Mourned*, SPRINGFIELD STATE J. REG., Oct. 27, 2004, available at 2004 WLNR 13861727.

²⁶⁹ Dover Mic, *The Peel Good Years Are Over*, Nov. 6, 2004, available at 2004 WLNR 6704154.

²⁷⁰ Tom Sinclair, *Bands' Best Friends*, ENTERTAINMENT WEEKLY, Nov. 5, 2004, at 80; Jeff Miers, *Bell Tolls for John Peel*, BUFFALO NEWS, Nov. 5, 2004, available at 2004 WLNR 6713080.

²⁷¹ ELVIS PRESLEY, *Heartbreak Hotel*, on ELVIS: THE KING OF ROCK 'N' ROLL (RCA 1992).

²⁷² You already know the lyrics, and if you don't, why are you reading this?

²⁷³ Other than me, I mean.

²⁷⁴ NEIL YOUNG, *Rockin' in the Free World*, on FREEDOM (Reprise 1989).

²⁷⁵ Cf. WU-TANG CLAN, *Wu-Revolution*, on WU-TANG FOREVER (Relativity 1999) ("Peace, we out.").

