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[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing

Alex B. Long

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* Associate Professor of Law, Oklahoma City University School of Law. Thanks to Dennis Arrow, Jim Chen, Barry Johnson, Chad Oldfather, and Eugene Volokh for their comments on an earlier draft. Thanks also to Mike Wrubel and Brett Schuman for their contributions. Huge thanks to Patti Monk for her tireless reference assistance. Dedicated to Robert Pollard for helping me to remember and Robert Rogan, Chris Clark, John Morris, Scott Renk, Todd Pruner, and a handful of others for helping to make the dream a reality, however briefly.
IV. Gimme Three Steps Towards the Door . . . And You’ll Never See Me No More

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. Legal writers need little excuse to write about legal issues involving particular musical artists or genres 3 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 Credence 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

1. AC/DC, For Those About to Rock (We Salute You), on FOR THOSE ABOUT TO ROCK WE SALUTE YOU (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!").
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 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. There are still quarters within academia that posit that at least some popular music lyrics, and rock lyrics in particular, qualify as poetry, evidence in Jim Morrison's "poetry" to the contrary notwithstanding. Folk music has long been viewed by the ideological left as a means of effectuating change, and some genres of rap contain "the most overt social agenda in popular music since the urban folk movement of the 1960s." 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." Bob Dylan's discomfort with being the "voice of a generation" is well-documented and

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


7. See generally Lester Bangs, Jim Morrison: Bozo Dionysus a Decade Later, in MAINLINES, BLOOD FEASTS, AND BAD TASTE: A LESTER BANGS READER 219 (John Morthland ed., 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. See Simon Frith, The Magic That Can Set You Free: Distinctions, Influences, Continuities, 1 POPULAR MUSIC 159, 162–63 (1981) ("The radical tradition of American folk music was primarily the creation of a group of metropolitan, left-wing bohemians . . .").


10. Frith, supra note 8, at 163 (quoting Ochs).
ultimately was a factor in his decision to abandon his protest singer roots.¹¹ For the first part of R.E.M.'s career, no one could understand what Michael Stipe was even talking about.¹²

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, "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."¹³ 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.¹⁴ 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."¹⁵

Perhaps the most surprising revelation of the Alito hearings was not that Senator Durbin had such knowledge of arcane Springsteen lore but the bombshell that now-Justice Alito had once attended a " ska music festival."¹⁶

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This Essay 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 Essay. 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. This includes examinations of how popular songs can inform legal pedagogy, the role of music in the labor movement; the connection between legal narratives in folk protest songs in criminal cases; the extent to which the more accessible lyrics of popular music may lead to increased action in addressing the problem of family violence; the image of lawyers in popular music; the ability of the lyrics of Paul Simon to help lawyers empathize with clients; conceptions of the law in Bob Dylan ska is "[p]opular 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." AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1629 (4th ed. 2000). Ska enjoyed a renaissance in the United Kingdom during the late 1970s and early 1980s. For a representative sample, see THE SPECIALS, A Message to You Rudy, on THE 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 Records 1979).


21. See, e.g., Martha Minow, Words and the Door to the Land of Change: Law, Language, and Family Violence, 43 VAND. L. Rev. 1665, 1666 (1990) ("I wonder whether words by lawyers and judges differ from words by journalists, and whether the more intimate and yet more widely accessible languages of literature and popular music lyrics may change minds and prompt actions.").

22. See, e.g., Jaff, supra note 17, at 659 (discussing the unflattering images of lawyers found in much popular music); see also Chase, supra note 17, at 559–63 (discussing images of the legal system in mass culture, including popular music).

songs;\(^{24}\) Bruce Springsteen's counterhegemonic humanism (?);\(^{25}\) and phenomenology, Tina Turner, and the law (?).\(^{26}\) While this Essay is certainly rooted in popular culture, it is not a law and popular culture essay per se.

Instead, the Essay 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 simply to "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."\(^{27}\) 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 something about us 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 also wear, a Reba McEntire t-shirt from a concert or place a Grateful Dead bumper sticker on his or her car unless the individual wants to be identified with a favorite artist? And if the music we listen to gives us a sense of identification and says something about us as individuals, then the music we, the legal


profession as a whole, write about may say 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 Essay 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 You

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 Songs

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. This enabled me to count the writing of judges, academics, and, (to a lesser extent) practicing attorneys. In order for a song to

28. The BEATLES, I'm Looking Through You, on RUBBER SOUL (Capitol Records 1965).
29. Cf. BARRY MANILOW, I Write the Songs, on ULTIMATE MANILOW (Arista Records 2002) ("I write the songs that make the whole world sing, I write the songs of love and special things, I write the songs that make the young girls cry, I write the songs, I write the songs.").
30. The Top Ten list was current as of January 23, 2006.
31. Despite the limited sample of practitioner writing, some interesting uses of music lyrics in legal writing did emerge. For example, the issue in Irwin v. Grateful Dead Production, Inc., No. A099413, 2004 WL 226286 (Cal. Ct. App., Feb. 26, 2004), concerned a dispute between the estate of Grateful Dead guitarist/singer Jerry Garcia and a guitar manufacturer over ownership of a guitar. In their appellate brief, the attorneys for Garcia's estate flavored their writing with numerous lyrics from Grateful Dead songs. See, e.g., Brief of Respondent Deborah Koons Garcia, Co-executor of the Estate of Jerome J. Garcia, Irwin v. Grateful Dead Productions, Inc., 2004 WL 226286, (No. A099413) ("On the morning of the evidentiary hearing, Irwin thought to himself: I Need A Miracle."); id. ("The litigation train had left the Terrapin Station too long ago to allow Irwin to terminate it unilaterally on the morning of the evidentiary hearing."). Although there are a number of potential dangers inherent in referencing
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 instances where an artist’s name just happened to be mentioned in a piece 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 Essay. 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.

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. 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.

lyrics in legal writing, see infra Part III.A, the dangers in this instance were probably limited given the fact that the case was heard in the Bay Area of California, home of the Dead.


35. 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).
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. In other instances, the fault lies with someone else. 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. I probably could have corrected for these kinds of mistakes, but I figured that Simon & Garfunkel already have enough friction in their relationship without me adding further to it. Plus, it would have meant more work for me.

Finally, there was no way I could look up every artist who had ever recorded a song. I had to make some judgment calls about who to exclude. That resulted in at least two problems. First, I forgot a few artists when I first compiled the list. Fortunately for me, neither the Indigo Girls (14 cites) nor Jimmy Buffet (7 cites) produced enough cites to crack the Top 10. Second, the list is potentially underinclusive given the judgment calls I made in terms of limiting my search. Therefore, for all I know Asia’s 1982 classic *Heat of the Moment* or Styx’s epic *Lady* may be huge among legal writers, and I just flat out missed it.

B. Add It Up

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

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36. 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 "Who" in their album titles, (see, e.g., *The Who, Who’s Next* (Decca Records 1971)), or otherwise using common words or phrases in their album titles (see THE WHO, *TOMMY* (Polydor Records 1969)), thus making it difficult to search for their lyrics.

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


<table>
<thead>
<tr>
<th>Artist</th>
<th>Number of Citations in Legal Journals</th>
<th>Number of Citations in Judicial Opinions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bob Dylan</td>
<td>160</td>
<td>26</td>
<td>186</td>
</tr>
<tr>
<td>The Beatles</td>
<td>71</td>
<td>3</td>
<td>74</td>
</tr>
<tr>
<td>Bruce Springsteen</td>
<td>64</td>
<td>5</td>
<td>69</td>
</tr>
<tr>
<td>Paul Simon</td>
<td>51</td>
<td>8</td>
<td>59</td>
</tr>
<tr>
<td>Woody Guthrie</td>
<td>42</td>
<td>1</td>
<td>43</td>
</tr>
<tr>
<td>Rolling Stones</td>
<td>35</td>
<td>4</td>
<td>39</td>
</tr>
<tr>
<td>Grateful Dead</td>
<td>30</td>
<td>2</td>
<td>32</td>
</tr>
<tr>
<td>Simon &amp; Garfunkel</td>
<td>26</td>
<td>4</td>
<td>30</td>
</tr>
<tr>
<td>Joni Mitchell</td>
<td>27</td>
<td>1</td>
<td>28</td>
</tr>
<tr>
<td>R.E.M.</td>
<td>27</td>
<td>0</td>
<td>27</td>
</tr>
</tbody>
</table>

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 Aaron Presley.

For a number of reasons alluded to later, Bob Dylan's reign as the King of Pop 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 included in the decisions of the California appellate courts when ruling on when an expert testimony before a jury is required. 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.

Although 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

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40. See infra Parts II.C.2–3 and notes 201–05 and accompanying text (describing why Dylan's lyrics are particularly applicable to use in legal writing).

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


43. Id. But see Peter Nate Swisher, A Realistic Consensus Approach to the Insurance Law Doctrine of Reasonable Expectations, 35 TORT & INS. L.J. 729, 757 (2000) (stating that a judge may not rely upon Jimmy Buffet's Changes in Latitudes, Changes in Attitudes as precedential authority).
together judges, practitioners, and academics to examine "the parallels presented by Mr. Springsteen, the poet advocate, and the American lawyer." 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.

C. I'm Looking Through You

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

Holla If You Hear Me

—2Pac

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 Charles generated only a handful of cites, and Motown legends like the Temptations are MIA from the Top Ten. 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.

The relative frequency with which Tupac's lyrics in particular appear in legal scholarship, however, suggests a possible shift in trends. Hip-hop,


45. See, e.g., 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); see also id. at 814 n.157 (quoting from Guthrie's Pretty Boy Floyd).

46. Cf. PUBLIC ENEMY, IT TAKES A NATION OF MILLIONS TO HOLD US BACK (Columbia Records 1988).

47. 2PAC, Holla if You Hear Me, on STRICTLY 4 MY N.I.G.G.A.Z. (Jive Records 1993).


49. You have to call him "Tupac" or "2Pac," not "Shakur."
traditionally thought of as "black music," is now firmly entrenched within the mainstream.\textsuperscript{50} Hip-hop routinely outsells other musical genres.\textsuperscript{51} The overwhelming majority of hip-hop consumers are non-Black.\textsuperscript{52} The language of hip-hop is now spoken commonly and fluently by youth of all races and classes.\textsuperscript{53} Consequently, although 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 an impact.\textsuperscript{54}

As evidence of this assertion, consider the Seventh Circuit Court of Appeals 2005 decision in \textit{U.S. v. Murphy}.\textsuperscript{55} 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' testimony\textsuperscript{56} and that the court was therefore taking the liberty of correcting the mistake.\textsuperscript{57} A "hoe," as the court pointed out, "is a tool used for weeding and gardening."\textsuperscript{58} 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.'"\textsuperscript{59}

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 Ludacris’s lyrics almost

\begin{flushleft}
\textsuperscript{52} See Brown, supra note 51, at 64 (stating that young non-Black consumers purchase nearly 80% of rap music).
\textsuperscript{53} See Milner S. Ball, Doing Time and Doing It in Style, in \textit{7 Law and Popular Culture} 303, 311 (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").
\textsuperscript{54} See Butler, supra note 9, at 985 (asserting that "[h]ip-hop foreshadows the future of the United States—one in which no racial group will constitute a majority").
\textsuperscript{55} United States v. Murphy, 406 F.3d 857 (7th Cir. 2005).
\textsuperscript{56} Specifically, the defendant had allegedly referred to the witness as "a snitch bitch 'ho[].'" \textit{Id.} at 859 n.1.
\textsuperscript{57} \textit{Id}.
\textsuperscript{58} \textit{Id}.
\textsuperscript{59} \textit{Id}.
\end{flushleft}
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. 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. 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* that "'[o]ne man's vulgarity is another man's lyric.'" 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 a variety of legal issues, most obviously racism and the penal system. Admittedly, in many instances the posturing of rappers amounts simply to marketing ploys designed to provide a safe fantasy for suburbanites. But the lyrics are nonetheless often powerful indictments of the penal system and the judicial process.

Although 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" may become more prevalent as the legal profession becomes more diverse and as hip-hop culture increasingly becomes mainstream.

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60. See Ball, supra note 53, at 311–15 (discussing the "art and culture we know as hip-hop" or "Gangsta Rap"); Brown, supra note 51, at 49–65 (discussing the popularity, politics, and growth of hip-hop culture); Butler, supra note 9, at 984–1016 (discussing a hip-hop theory of punishment).

61. See Ball, supra note 53, at 314–15 (discussing the risk of popular culture's embrace of "Gangsta Rap").

62. See *Cohen v. California*, 403 U.S. 15, 25 (1971) (addressing the issue of whether a state may, consistent with the First and Fourteenth Amendments, make the simple public display of a single four-letter expletive a criminal offense).

63. Ball, supra note 53, at 312 (quoting *Cohen*).

64. See, e.g., id. at 313 (referring to "violence, crime and prison" as "facts of Gangsta Rap").

65. See id. at 314 (stating that Gangsta Rap can "bear witness against oppression . . . in prison and on ghetto streets," but "it can also attract listeners for whom prison" is a sort of fantasy).
2. Baby Boomers Selling You Rumors of Their History

... 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 aware of popular cultural developments, 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 & 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, but did their most meaningful work in the '60s and '70s. 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; 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

66. MIKE WATT, AGAINST THE 70S, ON BALL-HOG OR TUG BOAT (SONY 1995).
67. See supra note 27 and accompanying text (quoting STEVE REDHEAD, UNPOPULAR CULTURES: THE BIRTH OF LAW AND POPULAR CULTURE (1995)).
68. The cockroach analogy is usually made in reference to Keith Richards in particular, but it’s fitting for the entire band. See Sam Farmer & Jerry Crowe, STEVENS AND PORTER WILL SETTLE THINGS ON THE FIELD, L.A. TIMES, Feb. 3, 2006, available at 2006 WLNR 1883352 (quoting Richards as responding "I'll eat them" when asked what he would do to outlive the cockroaches after both survived a nuclear holocaust); Lester Bangs, 1973 NERVOUS BREAKDOWN: THE OL' F'LY OUTLAWS AIN'T WHAT THEY USED TO BE—ARE YOU?, in MAINLINES, BLOOD FEASTS, AND BAD TASTE: A LEITER BANGS READER (JOHN MORTHLAND ED., 2003) (writing in 1973, "The Rolling Stones lasting twenty, thirty years—what a stupid idea that would be"); see also id. (suggesting that the band "go fertilize a forest").
69. See Mark Caro, THE ROLLING STONES' SAME OLD CRITICAL TUNE, CHI. TRIB., Sept. 9, 2005, available at 2005 WLNR 14230937 (noting the tendency of critics to compare favorably the Rolling Stones' releases over the last two decades to their earlier work, only to recant subsequently or tone down that praise upon reflection).
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. 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, it is hardly surprising to see the likes of Paul Simon and Joni Mitchell appearing so frequently in legal writing. This 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 convincingly used the lyrics of Paul Simon to illustrate how popular music can help lawyers better empathize with their clients. But as lawyers from that g-g-generation 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 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’s songs are not memorable primarily for their lyrics. The brilliance of Elvis’s *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. And even when popular music lyrics can legitimately be

71. 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.


73. See Richmond, supra note 23, at 79 (arguing that a lawyer needs to empathize with a client to best serve them, and that the music of Paul Simon can help an attorney achieve that end).


75. See generally PETER GURALNICK, LAST TRAIN TO MEMPHIS 205 (1994) (quoting Elvis’s producer, Sam Phillips, and guitarist, Scotty Moore, on the appeal of *Mystery Train*).
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, 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 courtroom.

3. What the World Needs Now Is Another Folk Singer

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

—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. 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 defined their generation. The ideas and themes of folk music resonated with the social and political issues of the time, making it a natural choice for legal academics who were also steeped in the counterculture of the 1960s.


77. But see Yellow Cab Co. of Sacramento v. Yellow Cab of Elk Grove, Inc., 419 F.3d 925, 927 (9th Cir. 2005) (quoting Berry’s Nadine in a 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, e.g., 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 yourjob, 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 complainin’, 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.

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

79. See, e.g., BOB DYLAN, Song to Woody, on BOB DYLAN (Columbia 1962) ("Hey, hey Woody Guthrie, I wrote you a song"); see also KLEIN, supra note 70, at 424–25 (mentioning Dylan’s visit with Guthrie in the hospital).
rights movement that first opened their eyes to the potential power of the law and that inspired them to become lawyers.\textsuperscript{80} 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.\textsuperscript{81} Although the degree of liberal proliferation of law school faculties is debatable,\textsuperscript{82} 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 Floyd\textsuperscript{83} to the in-ring death of boxer Davey Moore\textsuperscript{84} to the wreck of the Edmund Fitzgerald,\textsuperscript{85} folk musicians frequently employ a narrative structure in their songs.\textsuperscript{86} Although storytelling is certainly not uncommon in rock, country, and hip-hop, it is not

\begin{footnotes}
\item[80] See Joel L. Selig, \textit{Book Review, Commentary, and Appreciation}, 1 \textit{WYO. L. REV.} 263, 284 (2001) (reviewing \textsc{Kenneth Gormley}, \textit{Archibald Cox: Conscience of a Nation} (1997) and noting that the author decided to become a lawyer in order to contribute to the civil rights movement); Lisa A. Stamm, \textit{Franklin D. Cleckley: Taking One Giant Step For Mankind}, \textit{W. VA. LAWYER} (Sept. 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.").

\item[81] See \textsc{Stephen Frith}, \textit{supra} note 8, at 160–63 (discussing the differences between the origins of folk music and the 1950s folk music revival).

\item[82] See generally John O. McGinnis et al., \textit{The Patterns And Implications of Political Contributions By Elite Law School Faculty}, 93 \textit{GEO. L.J.} 1167 (2005) (analyzing campaign contributions of legal academics and finding that law professors overwhelmingly contribute to Democrats).

\item[83] See \textsc{Woody Guthrie}, \textit{Pretty Boy Floyd}, \textit{on \textsc{Folkways: The Original Vision}} (Smithsonian Folkways Records 1990) ("If you'll gather 'round me, children/A story I will tell/Bout Pretty Floyd, an outlaw/Oklahoma knew him well.").

\item[84] See \textsc{Bob Dylan}, \textit{Who Killed Davey Moore?}, \textit{on \textsc{The Bootleg Series, Vol. 1–3: Rare and Unreleased}}, 1961–1991 (Columbia 1991) ("Who killed Davey Moore/Why and what's the reason for?").

\item[85] See \textsc{Gordon Lightfoot}, \textit{The Wreck of the Edmund Fitzgerald}, \textit{on \textsc{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.").

\item[86] See \textsc{Coffino}, \textit{supra} note 20, at 680 (noting the importance of narrative to folk protest singers).
\end{footnotes}
as deeply embedded within those 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 a means of creating empathy for a client.\textsuperscript{87} 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."\textsuperscript{88} Virtually every lawyer would likewise agree that effective narrative can be an important component of persuasive writing.\textsuperscript{89} Storytelling "is designed to engage our curiosity, scrutiny, sympathy, and even empathy."\textsuperscript{90} 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 artist, 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"\textsuperscript{91} is probably better known than "Pretty Boy Floyd," the song from which it came, or the actual tale of Floyd himself.

\begin{footnotes}

\textsuperscript{88} Miller, supra note 87, at 489.

\textsuperscript{89} See Brian J. Foley & Ruth Anne Robbins, \textit{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 role in persuading judges").


\textsuperscript{91} Guthrie, \textit{Pretty Boy Floyd}, supra note 83.
\end{footnotes}
Bob Dylan is supposed to have remarked that judges don't listen to country music. Neither, apparently, do law professors. To the extent that academics write about the myriad ways the law addresses 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." It has traditionally been the music of "working-class people and their simple hopes, dreams, and desires." Likewise, authenticity has always been a core value of country music. 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 seventeen times before landing in San Quentin, would seem to be a logical choice. But with the exception of Johnny Cash, 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. When Justice William O. Douglas told the whopper that he actually knew folk legend (and hero) Woody Guthrie "from [Douglas's] hobo days" and insisted that Guthrie's This Land is Your Land be sung at his funeral, it seems to have been an attempt to make himself appear even more a man of the people than he supposedly already was.

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92. 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 (Capitol Records 1990) (paying homage to Hank Williams).


94. David S. Caudill, Fabricating Authenticity: Law Students as Country Music Stars, 20 CARDozo L. REV. 1573, 1576 (1999); see also Ball, supra note 53, at 307 (observing that "identification with common people continues to be a singular mark of Country's stars").

95. Caudill, supra note 94, at 1575.

96. See id. (discussing the importance of authenticity).

97. See Ball, supra note 53, at 308 (discussing Merle Haggard and other "Outlaw Country" singers).

98. See supra Part II.B (noting that Johnny Cash had twenty-one references).

99. See Coffino, supra note 20, at 689 ("Folk music theoretically originates among the 'common people' . . . and is often written from the perspective of the downtrodden.").

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.\(^1\) Pete Seeger was the Harvard-educated son of a renowned musicologist;\(^2\) Hank Williams never finished high school.\(^3\) 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.\(^4\) Yet, the First Lady of Country Music, along with most other country artists, rarely makes an appearance in legal scholarship.\(^5\)

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.\(^6\) Folk music historically has identified problems and called

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4. See id. at 310 (noting the feminist overtones to some of Lynn’s songs).
5. One notable exception to this tendency to ignore country music when discussing women’s issues is Sheila Simon, Greatest Hits: Domestic Violence in American 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.
6. See Caudill, supra note 94, at 1584 (equating country music’s self-identity with such themes as security and "how to preserve our families, our relationships, [and] our communities" (quoting Bruce Feiler, Leaving the Country Behind, WASH. POST, Apr. 5, 1998, at G1)). Both Presidents Bush are supposedly country music fans, as is noted Yankee conservative Sean Hannity. See Bruce Davidson, Using Rock to Get Message Across Doesn’t Always Work, DESERET MORNING NEWS (Salt Lake City), Aug. 29, 2004, at A6, available at 2004 WLNR 17001842 (mentioning that both Presidents Bush favor country music); 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. See Salvatore Caputo, Old-Time Rock is Definitely Establishment Music Now, FRESNO BEE, Dec. 13, 1992, at H19, available at 1992 WLNR 1409001 (describing President Clinton’s musical tastes). Jimmy Carter was famous for palling around with southern rock noodlers the Allman Brothers, and once used a Law Day speech to trumpet Bob Dylan as a poet. See Doug Gross, Background Music for a Region Struggling with Redemption, COLUMBIA STATE, Sept. 28, 2004, at E1, available at 2004
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.\textsuperscript{107}

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 of the country music that has been popular on the charts for decades is highly circumscribed.\textsuperscript{108} Although country songwriting often contains a great deal of clever wordplay,\textsuperscript{109} 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 traditionally been listened to by a primarily "urban, educated audience."\textsuperscript{110} 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.'"\textsuperscript{111} It simply takes quality songwriting to appeal to both. Despite the often milquetoast quality of much of country music, there

\textsuperscript{107} WLNR 2838708 (noting the presence of southern rock musicians on the Carter campaign trail); Davidson, \textit{supra} (quoting Carter as describing Dylan as a "friend" and "poet").

\textsuperscript{108} See Caudill, \textit{supra} note 94, 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'") (quoting Bruce Feiler, \textit{Leaving the Country Behind}, WASH. POST, Apr. 5, 1998, at G1).

\textsuperscript{109} See id. at 1577 (noting the narrow confines of acceptable topics in country music).

\textsuperscript{110} Frith, \textit{supra} note 8, at 162.

\textsuperscript{111} Ball, \textit{supra} note 53, at 307 (quoting Harris).
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," who shunned the Nashville establishment. 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," the third-generation bootlegger, and a host of death row inmates, who are every bit as rich and varied in nature as Springsteen's. Not surprisingly, many of these characters have their fair share of interaction with the legal system.

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

113. See WOLFF, supra note 103, at 338-39 (explaining the rise of "Outlaw music" 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 Victor 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.").

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

115. In this case, actually a marijuana dealer rather than a booze runner like his "daddy and his daddy before." STEVE EARLE, Copperhead Road, on COTTONHEAD ROAD (Uni Records 1988).

116. See, e.g., STEVE EARLE, Over Yonder (Jonathan's Song), on TRANSCENDENTAL BLUES (E-Squared Records 2000) (articulating a death row inmate's thoughts on his final day); STEVE EARLE, Ellis Unit One, on DEAD MAN WALKING: MUSIC FROM AND INSPIRED BY THE MOTION PICTURE (Columbia Records 1996) ("Well, I've seen 'em fight like lions, boys/I've seen 'em go like lambs/And I've helped to drag 'em when they could not stand/And I've heard their mammas cryin' when they heard that big door slam/And I've seen the victim's family holdin' hands."); STEVE EARLE & THE DUKES, Billy Austin, on THE HARD WAY (MCA Records 1990) ("Court appointed lawyer/Couldn't look me in the eye/He just stood up and closed his briefcase/When they sentenced me to die.").

117. Yeah, that's right. I said it. See generally WOLFF, supra note 103, at 469 (noting the frequent comparisons between Earle and Springsteen).

118. See, e.g., STEVE EARLE, Billy and Bonnie, on I FEEL ALRIGHT (E-Squared 1996) ("The judge said, 'Billy, what you got to say/Before I have the sheriff carry you away?'"); STEVE EARLE, Tom Ames' Prayer, on TRAIN A COMIN' (Winter Harvest 1995) ("Judge Parker said guilty and the gavel came down/Just like a cannon shot/And I went away quietly/And I began to file and plot."). 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) (noting that Earle penned the lyrics to one song "after witnessing the execution of his
5. I Hate Alternative Rock

"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.\(^1\)\(^2\) 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 and a band typically classified as alternative, barely registers as a blip in legal writing.\(^1\)\(^2\)\(^1\)\(^2\)\(^1\)\(^2\)\(^1\) 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).*\(^1\)\(^2\)

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\(^{119}\) BOB MOULD, *I Hate Alternative Rock,* on BOB MOULD (Rykodisc 1996).

\(^{120}\) See DAVE THOMPSON, *ALTERNATIVE ROCK,* at viii (2000) (linking the birth of alternative rock to the emergence of punk rock in the 1970s).


In one sense, this is somewhat surprising. Like folk music, much of the earlier punk rock involved social commentary with a decidedly leftist bent. As "punk" mutated into "alternative," a new, often less aggressive breed of singers and songwriters emerged. These artists often were more eloquent than their punk predecessors, even when not directly commenting on social issues. 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 generated a fair number of citations, 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. Once again, the absence of alternative music

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123. See ROLLING STONE ENCYCLOPEDIA OF ROCK & ROLL, supra note 12, at 182 (noting The Clash had "many causes[] from anti-Thatcherism to racial unity to the Sandinistas"); id. at 481 (noting the political commitment reflected in many of The Jam's songs).

124. 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 [sic] ethics of punk."); id. at 818 ("Paul Westerberg's angst-ridden confessional songs cast him as a postpunk Bob Dylan . . .").


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, 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. 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 travel) and set to music. Although 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’t

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; as a case study of what a particular artist’s work says about the law; to restate or illustrate an idea in more colorful or humorous language; to provide the title of a piece of legal scholarship; or

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

128. See supra note 12 and accompanying text (noting the more abstract nature of R.E.M.’s early lyrics).

129. See, e.g., 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.”).

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

131. See, e.g., Caudill, supra note 94, at 1579–80 (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); Daniel Levin, Federalists in the Attic: Original Intent, the Heritage Movement, and Democratic Theory, 29 L. & Soc. Inquiry 105, 108–09 (2004) (comparing the supposed authenticity of country music with the supposed authenticity of originalism).

132. See, e.g., Gearey, supra note 24, at 1401 (describing Bob Dylan’s songs as different perspectives "on the difficult conjunctions that exist between ethics and law").

133. See, e.g., 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’...”).

to pay homage to a departed colleague. Sometimes the resort to popular music lyrics works quite well. Other times it doesn’t.

A. I Hate Music . . .

I don’t know where you get your nerve,
I don’t know how you choose your words.
Speak the ones that suit your worst,
Leave you grounded, sad, and cursed.

—Guided By Voices, *The Best of Jill Hives*  

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

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." 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

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Scholar: Response: Losing Our Religion, 28 CONN. L. REV. 269, 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).


139. See, e.g., GRATEFUL DEAD, Casey Jones, on WORKINGMAN’S DEAD (Warner Bros. 1970) ("Driving that train, high on cocaine/Casey Jones you better watch your speed.").
American popular music. 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?*

Sometimes references to a set of lyrics is almost unavoidable. The issue confronting the Eleventh Circuit Court of Appeals in *United States v. McPhee* was quite literally whether an object in the ocean was a rock or an island. Therefore justice virtually demanded a reference to Simon & Garfunkel’s *I Am a Rock*.

Given the diverse subject matter covered by popular music, such possibilities are virtually endless. For virtually any legal topic worth discussing, there is a pop song out there for you. This includes topics as diverse as transgender issues; race and sex discrimination; takings clause jurisprudence; domestic violence; products...
liability; environmental law; copyright infringement; tax reform; the war on terror; Section 1983 claims based on police misconduct; elder law; and statutory interpretation and the legislative process. 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 legal scholarship. The persuasive value of an argument is often directly linked with

 Bye Earl).

149. See, e.g., THE WHITE STRIPES, The Big Three Killed My Baby, on THE WHITE STRIPES (Thirdman Records/V2 1999) ("The Big Three killed my baby/no money in my hand again."); see also Fletcher, supra note 121, at 618 n.41 (quoting The White Stripes' song The Big Three Killed My Baby).

150. See, e.g., RADIOHEAD, Fake Plastic Trees, on THE BENDS (Capitol Records 1995) ("Her green plastic watering can/For her fake Chinese rubber plant/In the fake plastic earth."); GUIDED BY VOICES, I Am a Tree, on MAG EARWHIG! (Matador Records 1997) ("Don't strip off my bark—I have been stripped of it before."); see also Jim Chen, Biodiversity and Biotechnology: A Misunderstood Relation, 2005 Mich. St. L. Rev. 51, 59 (quoting Radiohead's song Fake Plastic Trees).

151. See, e.g., U2, The Fly, on ACHTUNG BABY (Island Records 1991) ("Every artist is a cannibal/Every poet is a thief."); 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."; see also Simko, supra note 125, at 335 (quoting U2's The Fly).

152. See, e.g., 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."); see also Lustig, supra note 133, at 726 n.3 (quoting The Beatles' Tax Man).

153. See, e.g., 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.").

154. I'll list just three: BRUCE SPRINGSTEEN, American Skin, on LIVE IN NEW YORK CITY (Sony 2001) ("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."); 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."); 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.


156. See, e.g., THE NEW PORNographers, The Laws Have Changed, on ELECTRIC VERSION (Matador Records 2003) ("It was a crime at the time, but the laws we changed 'em.").
the quality of the accompanying writing. 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." The lyrics of popular music may assist in riveting a reader's attention because they often are more accessible and interesting than the dry style of much of legal writing. 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. And the more entertaining the writing, the greater the likelihood that the writer's message will reach a larger audience.

But just because popular music can be used in such a manner doesn't mean that it necessarily should be. 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. One may very well question, for instance, whether an Article III judge should really be commenting upon "ho tendencies" in a published opinion. The same may well be true for scholarly writing, where a

157. See Yury Kapgan, Of Golf and Ghouls: The Prose Style of Justice Scalia, 9 LEGAL WRITING 71, 72 (2003) (discussing the importance and distinction of writing style in a judicial opinion); Chad M. Oldfather, The Hidden Ball: A Substantive Critique of Baseball Metaphors in Judicial Opinions, 27 CONN. L. REV. 17, 21 (1994) ("An opinion that is well-written and enjoyable to read will doubtless be more persuasive than one that possesses equal logical force but yet is not as well-written.").

158. RICHARD A. POSNER, CARDozo: A STUDY IN REPUTATION 136 (1990), quoted in Kapgan, supra note 157, at 72.

159. See Minow, supra note 21, 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").

160. See Kapgan, supra note 157, at 80 (arguing that "humanness engenders credibility, and credibility engenders persuasion").

161. See Daniel M. Filler, From Law to Content in the New Media Marketplace, 90 CAL. L. REV. 1739, 1770 (2002) (reviewing FEDWA MALTI-DOUGLAS, THE STARR REPORT DISROBED (2000)) ("Entertaining legal writing causes more people to hear these messages... and may amplify law's expressive voice.").

162. See id. ("When a court's language is evidently unserious, it is unlikely that readers will take the opinion seriously. An opinion written in rhyme does not look like authoritative judicial action... ").

163. See supra note 56 and accompanying text (referencing a Seventh Circuit case that quoted lyrics by Ludacris). Indeed, in one instance a judge was censured for publishing an opinion in humorous verse detailing the conviction of a woman for solicitation. See In re Rome, 542 P.2d 676 (Kan. 1975) ("Because of his unusual role a judge should be objective in his task
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 of 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 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.164 Picking up on the PMRC’s theme, more lawyers began filing lawsuits based on the underlying premise that a set of lyrics has the power to incite listeners to kill themselves or others.165 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.166

Others have viewed music lyrics as having literary qualities above and beyond those normally ascribed to pop songs.167 One of the more unfortunate premises underlying the often sterile study of music lyrics as poetry is 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 and mindful that the damaging effect of his improprieties may be out of proportion to their actual seriousness."


166. See Minow, supra note 21, at 1665–66 (asking whether the more widely accessible language of music might change minds and prompt actions).

167. See supra note 6 and accompanying text (referencing authors who have seen similarities between popular music and poetry).
alone as either narrative or poetry. But as novelist Dennis Cooper has argued, "the real genius song lyricists know either consciously or intuitively that great songs can't be subdivided into words and music without murdering both in the process." In a similar vein, music critic Robert Christgau once said that *My Back Pages*, one of Bob Dylan's most admired and supposedly more literate songs, is a bad poem, but a great song. In Christgau's opinion, few of Dylan's lyrics "are tight enough to survive on the page" with no musical accompaniment. 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 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. 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. In the song *Panic*, singer Morrissey of the

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168. JAMES GREER, GUIDED BY VOICES: A BRIEF HISTORY: TWENTY-ONE YEARS OF HUNTING ACCIDENTS IN THE FORESTS OF ROCK AND ROLL 110 (Black Cat 2005) (quoting Dennis Cooper); see also Alan Hoffman, *Performed Literature: Words and Music By Bob Dylan*, MLA NOTES, 39:4, at 848 (June 1983) (book review) ("[In performance-based rock, the grunts, pauses, peculiarities of pronunciation, off-the-cuff phrasing, and ad-lib instrumental effects are all important factors in hearing and understanding the music.").

169. Christgau, *supra* note 6, at 63.

170. *Id.; see also* Hoffman, *supra* note 168, 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").


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." 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.

For these reasons, 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. Basically, I figured, he was just asking for abuse by doing so.

But then I read that in a former life, Avsec had been a songwriter and music producer and had actually produced Donnie Iris’s *Love is Like a Rock*. That fact is significant, because when I was twelve years old and surreptitiously listening to album-rock radio station WSLQ ("Q99") late at night in Roanoke, Virginia, when my parents thought I was sleeping, I was firmly convinced (and am only slightly less so today) that *Love is Like a Rock* was about the coolest song ever recorded. Not only did this Avsec guy—staid corporate

173. THE SMITHS, Panic, on LOUDER THAN BOMBS (Sire Records 1987).
174. Regrettably, I think my exact words were probably "Rush sucks."

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."

*Id.*

178. 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 Records 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.
179. If you need proof, see DONNIE IRIS, Love is Like a Rock, on KING COOL (MCA
attorney and mild mannered adjunct professor—produce the song, he was actually part of the Cruisers, Iris’s band. So, 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 you think I’m fairly geeky for quoting Morrissey earlier. Maybe you think Rush is pretty good.

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. Ultimately, the purpose of much legal writing is to persuade. Therefore, the ultimate test for a writer should be whether the inclusion of a phrase or a set of lyrics helps to advance the writer’s argument. 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. 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 reader to become annoyed or otherwise feel a sense

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180. Avsec, supra note 175, at 339 n.1. Not only that, the dude also produced Wild Cherry's Play that Funky Music. Id.

181. You might have a point on that one.

182. But you'd still be wrong on that one. For other examples of lousy Canadian bands, see April Wine, Classic Masters (EMI Special Products 2002), and Triumph, Classics (MCA Records 1995). For examples of higher-quality Canadian artists, see Neil Young, After the Gold Rush (Reprise 1970), The Tragically Hip, Up to Here (MCA Records 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...).

183. See Eugene Volokh, Academic Legal Writing 94 (2d ed. 2005) ("[I]f you think some . . . phrase can make a point more vivid, use it, but only after considering both (1) whether the phrase really adds something, and (2) whether the . . . phrase might weaken your point more than . . . enhance[] it.")
of separation from the writer, a result the writer most assuredly does not want. 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)

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, "[i]n 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." 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, "[o]r, as the Beatles pointed out more succinctly, ‘Money can’t buy me love.’"

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.

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

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184. See Oldfather, supra note 157, at 39 (noting that a metaphor that is not understood by a reader "becomes a nuisance").
185. MOLLY HATCHET, Flirtin’ With Disaster, on FLIRTIN’ WITH DISASTER (Epic 1979).
188. See Kappan, supra note 157, at 78 (contrasting the use of humor with the traditional formal style of legal writing).
that the parties attach to the matter being written about. 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., which directs that the facts, 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 Rimes's 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. For example, United States v. Jackson is a fairly routine drug conviction appeal in which the Fifth Circuit 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."

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

189. Id. at 78 n. 34 (citing critics of humor in judicial opinions).
191. See id. at 985-88 (citing to LEANN RIMES, How Do I Live, on YOU LIGHT UP MY LIFE: INSPIRATIONAL SONGS (Curb Records 1997) and LEANN RIMES, I Need You, on I NEED YOU (Curb Records 2001)).
192. 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?
193. United States v. Jackson, 390 F.3d 393 (5th Cir. 2004).
194. Id. at 396 n.3 (quoting THE CLASH, Should I Stay or Should I Go, on COMBAT ROCK (Epic 1982)).
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 *go*—he acted suspiciously while leaving the bus, the dog sniffed his seat and detected drugs, and he was arrested. 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. 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.* 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." 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."

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

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195. See id. at 395.
196. See id. at 396. 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.
198. Id. at 905.
199. Id. at 953.
should I go," while certainly memorable, does not, standing alone, have the same depth.\textsuperscript{200} 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.

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 often are outward-looking observations about the human condition in general, rather than being more introspective in nature. "A hard rain's a-gonna fall";\textsuperscript{201} "when you got nothing, you got nothing to lose";\textsuperscript{202} "you've gotta serve somebody";\textsuperscript{203} "even the president of the United States must sometimes have to stand naked."\textsuperscript{204} 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.\textsuperscript{205}

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

\begin{itemize}
\item \textsuperscript{200} Although the last chorus where Joe Strummer repeats Mick Jones' chorus in Spanish is pretty damn cool.
\item \textsuperscript{201} \textsc{Bob Dylan}, \textit{A Hard Rain's A-Gonna Fall}, \textit{on 'The Freewheelin' Bob Dylan} (Columbia Records 1963).
\item \textsuperscript{202} \textsc{Bob Dylan}, \textit{Like a Rolling Stone}, \textit{on Highway 61 Revisited} (Columbia Records 1965).
\item \textsuperscript{203} \textsc{Bob Dylan}, \textit{Gotta Serve Somebody}, \textit{on Slow Train Coming} (Columbia Records 1979).
\item \textsuperscript{204} \textsc{Bob Dylan}, \textit{It's Alright, Ma (I'm Only Bleeding)}, \textit{on Bringing It All Back Home} (Columbia Records 1965).
\item \textsuperscript{205} Buwah ha ha. \textit{Cf. Bob Dylan, Bringing It All Back Home} (Columbia Records 1965).
\end{itemize}
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.206 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.207 Thinking about commenting upon the changing nature of a particular field of the law by observing that "the times they are a-changin’"?208 You’d better think twice. It might not be alright.209

206. See supra note 122 and accompanying text (discussing the use of R.E.M.’s song in legal writing).

207. GRATEFUL DEAD, Truckin’, on AMERICAN BEAUTY (Warner Bros. 1970); see 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) (quoting the line to describe a lawyer’s transition from private practice to in house counsel); Patrick J. Borchers, Jurisdictional Pragmatism: International Shoe’s Half-Buried Legacy, 28 U.C. DAVIS L. REV. 561, 564 (1995) (quoting the line to describe the Supreme Court’s personal jurisdiction jurisprudence); 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) (quoting the line to describe the “plight of the existing Indian family exception”); Pamela Samuelson et al., A Manifesto Concerning The Legal Protection Of Computer Programs, 94 COLUM. L. REV. 2308, 2310 n.3 (1994) (quoting the line to describe the time the authors of the article spent together in order to do their analysis); 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) (quoting the line to describe the development of the "entire controversy doctrine"); Jack R. Tuholske, A Litigator’s Perspective: The Montana TMDL Litigation, in CAN TMDLS ENSURE A CLEAN AND HEALTHFUL ENVIRONMENT?, 22 PUB. LAND & RESOURCES L. REV. 1, 3 (2001) (quoting the line to describe "the Total Maximum Daily Load (TMDL) litigation"); Jake Tuholske, Endangered Species Act and the Bull Trout Controversy, in THE 1998 IDAHO WATER QUALITY SYMPOSIUM, 35 IDAHO L. REV. 453, 527 (1999) (quoting the line to describe the bull trout litigation).

208. 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.

209. Cf. BOB DYLAN, Don’t Think Twice, It’s All Right, 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 Records 2003) (“Baby, think twice, maybe it’s not all, maybe it’s 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, 180–81 (S.D.N.Y. 1976) (finding composer George Harrison had infringed on the copyright of the song He’s So Fine by unconsciously copying the song in writing My Sweet Lord).
Despite the sometimes questionable 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

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 "[a]ll 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." Sometimes braggadocios ("I'm the King of Rock, there is none higher," "I'm a streetwalkin' cheetah with a heart full of napalm"), other times more poignant ("Rust never sleeps") or dramatic in nature ("River deep, mountain high"), metaphors are a particular vivid tool for songwriters.

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 criticisms of the use of metaphors in legal writing is the concern that metaphors are often imprecise and therefore sometimes misleading. Closely related is the

210. U2, Like A Song, on War (Island Records 1983).
213. RUN-D.M.C., King of Rock, on KING OF ROCK (Profile Records 1985).
215. NEIL YOUNG, Hey Hey, My My (Into The Black), on RUST NEVER SLEEPS (Reprise 1979).
217. See Robert L. Tsai, Fire, Metaphor, and Constitutional Myth-Making, 93 GEO. L.J. 181, 189 (2004) (stating that "the same metaphor can be reconfigured and redeployed" and
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.\textsuperscript{218} 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.\textsuperscript{219}

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.\textsuperscript{220} In order to be effective, a metaphor must not only be descriptive, but it must also be easily accessible for the listener.\textsuperscript{221} It might be possible, for example, to construct an effective "This Land is Your Land" metaphor given the fact that Woody Guthrie's classic has "entered the bloodstream of our nation's cultural body." However, 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.

\textsuperscript{218} See Hibbits, supra note 212, at 234 ("[A] good metaphor may be so compelling that it altogether subverts its referent's original meaning."); Oldfather, supra note 157, at 26 ("[A] metaphor that might once have allowed an escape from previously restricted reasoning about an issue can create anew the very problem it was employed to solve by limiting thinking as much as it was limited before.").


\textsuperscript{220} See John Lydon, Rotten 74 (St. Martin's Press 1994) (noting that prior to joining the Sex Pistols, Johnny Rotten owned a t-shirt that had been altered to read "I Hate Pink Floyd").

\textsuperscript{221} See Oldfather, supra note 157, at 39 ("A metaphor will be less effective when a reader has an incomplete or nonexistent understanding of it.").

\textsuperscript{222} Mark Allan Jackson, Is This Song Your Song Anymore?: Revisioning Woody Guthrie's "This Land is Your Land", 20 Am. Music 249, 250 (2002).
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,"223 the "Long and Winding Road" metaphor just barely serves this purpose. Litigation often 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,224 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.225 The metaphor is effective in that it serves the purpose of metaphors by "making abstract concepts more concrete"226 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.227 There are relatively few songs that possess both the qualities of descriptiveness and familiarity necessary to allow for the use of an effective

223. Tsai, supra note 217, at 188.
224. See Oldfather, supra note 157, at 23–24 (arguing that it is).
225. See supra note 42 and accompanying text (describing how Dylan’s words have become almost boilerplate in California appellate courts).
226. Oldfather, supra note 157, 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, 163 (1981) (internal quotations omitted).
metaphor. Although 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. Without enforcement lawsuits, Judge Grimm explained, the promise of discrimination-free housing would remain merely an unfulfilled dream. 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," 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. Standing alone, the line describing lost hope brought about by 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."

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

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229. *Id.*

230. *SPRINGSTEEN, supra* note 228.


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 and administration of justice in the United States." 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 punishment 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."

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, 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. 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.

233. Butler, supra note 9, at 984.
234. See id. (noting the four theories of punishment as retribution, deterrence, incapacitation, and rehabilitation).
235. Id.
236. Caudill, supra note 94; see also Hubbard, supra note 227 (discussing the "jurisprudence" of Mary Chapin Carpenter).
237. See Caudill, supra note 94, at 1576 (explaining that "real lawyering and real country music are not about profit, but about values").
2. What's So Funny 'Bout (Parody, Satire, and Legal Writing)?

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 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.

Although judges are naturally disinclined to engage in the open and obvious social commentary of satire, humor sometimes finds its way into judicial opinion writing. And although, as noted, there are a number of potential concerns associated with the use of humor in judicial opinions and legal scholarship, the use of humor can be an effective tool of persuasion. Well-executed humor can make legal writing more accessible and hence more persuasive. 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.

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239. See supra note 190–91 and accompanying text (discussing a court order directing that the opinion be sung to various LeAnn Rimes tunes).

240. See supra notes 162–63 and accompanying text (expressing concern over the effect of humor on the legitimacy of a court's opinion).


242. See Knight, supra note 241, at 903 (pointing out that the most accessible works are the most memorable).

Satire in particular has a rich and distinguished history in legal scholarship.\textsuperscript{244} As satire in the law involves "an attempt to link law to life,"\textsuperscript{245} 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.\textsuperscript{246}

In his (in)famous(?) "Pomobabble" trilogy,\textsuperscript{247} my colleague Dennis Arrow "sought," in the words of one author, "to attack and maybe even to kill postmodernism" through satire.\textsuperscript{248} In his quest, Arrow frequently summoned the forces of popular music, often with humorous effect,\textsuperscript{249} 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' Every还要's Got Something to Hide Except Me and My Monkey, all within the space of one footnote.\textsuperscript{250}

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),\textsuperscript{251} not simply the lyrics of popular music. 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.\textsuperscript{252} Chen's piece almost certainly holds the record in

\textsuperscript{244} See Peter Goodrich, Satirical Legal Studies: From the Legists to the Lizard, 103 Mich. L. Rev. 397, 400 (2004) (outlining the history of satire in legal scholarship).

\textsuperscript{245} Id. at 422.

\textsuperscript{246} See Knight, supra note 241, at 897 (noting the "long-held criticism" that law reviews are "esoteric, inaccessible, and boring").


\textsuperscript{249} But see Goodrich, supra note 244, at 487 (referring to Arrow's original piece as an "unreadable diatribe").

\textsuperscript{250} See Arrow, Pomobabble, supra note 247, at 599 n.43 for the lengthy footnote.

\textsuperscript{251} See id. at 482 n.20 ("Feed me, please me, tempt me, tease me."). Cf. U2, Hold Me, Thrill Me, Kiss Me, Kill Me, on Batman Forever: Music From the Motion Picture (Warner Bros. 1995).

\textsuperscript{252} Jim Chen, Rock 'n' Roll Law School, 12 Const. Comment. 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 note 36 and accompanying
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 Robinson.²⁵³ In fact, Chen probably also holds the record more generally for most articles published that somehow utilize the lyrics to popular music.²⁵⁴ Rock 'n' Roll Law School followed closely on the heels of Chen's constitutional law parody, The Constitutional Law Songbook,²⁵⁵ which, in Chen's words, made "fair use of the Beatles' Yellow Submarine."²⁵⁶

Given the highly personal nature of music, the decision to publish a humorous piece with music as the centerpiece may limit the work's potential audience. That said, Professor Eugene Volokh uses popular music lyrics to great effect in his Hum a Few Bar Exam,²⁵⁷ which presents students with exam questions based on music lyrics.²⁵⁸ 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.²⁵⁹
IV. *Gimme Three Steps Towards the Door . . . And You'll Never See Me No More*\(^{260}\)

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*.\(^{261}\)

Is this it?  

—The Strokes, *Is This It*\(^{262}\)

This is the end, beautiful friend. This is the end.  

—The Doors, *The End*.\(^{263}\)

Probably the most famous song by the Northern Irish band the Undertones is *Teenage Kicks*, a pitch-perfect, four-chord ode to teen lust.\(^{264}\) Despite its

\(^{260}\) **LYNYRD SKYNYRD**, *Gimme Three Steps, on PRONOUNCED LEH-NERD SKIN-NERD* (MCA Records 1973); *see also CHEAP TRICK, Good Night Now, on AT BUDOKAN* (Epic 1979) ("Goodnight now, ladies and gentlemen/Goodnight now, ladies and gents/That's the end of the show/You know it's time to go.").


\(^{262}\) **THE STROKES**, *Is This It, on IS THIS IT (RCA 2001).*

\(^{263}\) **THE DOORS**, *The End, on THE DOORS (Elektra 1967).*

\(^{264}\) **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.
simplicity, the song was meaningful enough to legendary BBC radio personality John Peel that the song was played during his funeral. 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. 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. Peel’s life had itself been forever changed as a teenager upon hearing Elvis Presley’s Heartbreak Hotel, 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. Sometimes all we want from the music to which we listen 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. 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

[chorus]
(Alright)
[Third verse same as the first]
[chorus]
[Fourth verse same as the second]
[chorus]
Alright!
[chorus]
Alright!

Id.


267. See, e.g., Tom Sinclair, Bands’ Best Friends, ENT. WEEKLY, Nov. 5, 2004, at 80 (summarizing Peel’s influence in the music industry); Jeff Miers, Bell Tolls for John Peel, BUFFALO NEWS, Nov. 5, 2004, at G16, available at 2004 WLNR 6713080 (listing specific artists Peel assisted).


269. You already know the lyrics; and if you don’t, why are you reading this?

270. Other than me, I mean.
feel toward certain music is not attributable to lyrics alone, but rather to melody, performance, production, and the circumstances 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. Peace, I'm out.

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