



Judge Mark W. Klingensmith of Florida's Fourth District Court of Appeal has always had rock and roll pumping through his veins. He played in a band during law school that covered The Pretenders, Aerosmith, and Led Zeppelin, and when it came time to brainstorm thesis topics for his LLM degree at Duke University's School of Law, the relationship between music and law made his shortlist. While he ultimately chose a different thesis subject, he couldn't get the music out of his head. Klingensmith ended up spending years studying the use of musical lyrics in judicial opinions and recently published his findings in *Lyrics in the Law: Music's Influence on America's Courts* (Lexington Books, 2019).

The book provides an alphabetized catalog of artists by genre (except for The Beatles and Bob Dylan who, of course, get their own chapters). But it reads like a dictionary thumping with energy, undeniably in tune with pop culture; Klingensmith excerpts hundreds of judicial opinions to show us a little-seen side of the third branch. The collection

of musicians is as diverse as the country these opinions reflect: Taylor Swift, Stevie Wonder, Gilbert and Sullivan, Dolly Parton, Hank Williams, and Jay-Z are all at this party. And like a benefit concert, the proceedings from sales of the book go to a good cause – in this case, to the Martin County (Florida) Legal Aid Society.

As with any good music, there are revelations here, too: Klingensmith's comprehensive analysis demonstrates how judges use lyrics to illustrate their reasoning, bridging the gap between laypersons and the judiciary and making the court's work more accessible to the public. The book also explores the reality that judges come to cases steeped in the musical culture of their youth, as impartial arbiters but also individuals with distinct (musical) identities. In the following interview, Klingensmith talks about his book and how and why judges so frequently turn to lyrics in their writing. On these points and many others, you may find yourself nodding and singing along.

— AMELIA ASHTON THORN



HOW DID YOU BECOME INTERESTED IN THE USE OF LYRICS IN LEGAL OPINIONS?

Many years ago, while I was researching for an opinion I was writing, I came across a song quote in a particular case. I didn't think too much about it then. But as time passed, I realized I was running into more and more of such quotes. And I thought, "Well, this is certainly happening in the judiciary a lot more than I thought."

When I came to Duke Law for my Master's in Judicial Studies, I knew that one requirement was a thesis, and I thought about song lyrics in opinions as an option. So I started accumulating lyrics I found and putting them in a file on my computer. I ultimately went with another thesis topic, but this bank of research was still there. At some point I realized this topic was perhaps even larger than a thesis.

I started diving into more opinions to see how judges were using lyrics in their writings. Over time, I accumulated a lot of lyrics. From 2013 until the end of 2016, I probably looked at over 2,000 cases containing either a lyric or a song title.

After that, I turned to putting it all together. I wanted to demonstrate what value these lyrics bring — not just to lawyers, but to nonlawyers and music fans. As I distilled these cases, I noticed that judges were using lyrics in a lot of different ways. Some used the lyrics for humor.

Other judges used them, as Professor Long said in a law review article, "to let their freak flag fly."

But I also found that there were other things that judges were doing in their opinions. They were using these lyrics to bridge an understanding gap. When judges write a judgment or an opinion or order, we're not just writing it for the lawyers. We're also writing it for the parties and perhaps for the public at large. So in that respect, pop culture generally, including music, has crept into the jurisprudence and has become a valuable tool to make judicial writing more understandable to a wider audience.

DID YOU START TO RECOGNIZE ANY TRENDS IN TERMS OF ARTISTS, GENRE, OR TIME PERIOD?

Considering whether the trial court erroneously suppressed evidence seized pursuant to a warrant, Judge Glenn Harrell opened his opinion with the lyrics to "Our House," though slightly altered to reflect the facts of the case: *Our house is a very, very, very fine house // With two [cops] in the yard; ... // Now everything is [seized] 'cause of you.*

QUOTING CROSBY STILLS & NASH'S "OUR HOUSE" IN MARSHALL V. STATE

When a defendant asked the court to delay going to trial, Judge Jonathan Goodman denied the motion using the "Two Sides to Every Story" lyrics — *there must be two sides to every story // And who's to say who is right and who is wrong* — to show that, while Willie Nelson might not know who should decide which party is right, the jury decides here.

QUOTING WILLIE NELSON'S "TWO SIDES TO EVERY STORY" IN FOX V. SUNSET WAVERUNNER TOURS, INC.

Judges tend to cite songs from what I called their "formative years." I researched the quoting judge's law school graduation year and found that generally the years right before college and into law school form a timeframe that makes up the "formative years" for a particular judge. Judges tend to cite music that was popular or released during that period. For example, there is a core group of judges who quote Bob Dylan and who went to school in the '60s and the '70s. Those judges likely grew up listening to Dylan and developed a social consciousness by listening to his songs. As a general matter, people tend to like the music that was popular in their youth, and that certainly holds true for judges as well.

The one caveat to that, however, was rap music. The age range for judicial citation to rap music is all over the board, which leads me to a couple of conclusions. One conclusion is that judges have very eclectic musical tastes, or try to familiarize themselves with many musical styles. You can't put judges in a group and say that all judges like a certain type of music. Another conclusion is that these judges have law clerks with a wide range of musical tastes. Or, perhaps, judges are simply way cooler than anybody would ever imagine.

WHAT MAKES A SONG QUOTABLE?

A song is quotable if the artist is able to take a concept and distill it into a short phrase that conveys the facts in a memorable and concise way. For example, Kenny Rogers' songs are very popular sources for quotes for that reason — particularly for his verse "know when to hold them // know when to fold them" from "The Gambler." It is very alliterative and easily recognizable, and helps convey the distinct message that someone should avoid wasting time on a fruitless endeavor.

DID ANYTHING SURPRISE YOU WHILE YOU WERE COMPILING AND ANALYZING YOUR RESEARCH?

Actually, one of the things that really surprised me was the amount of times that the judiciary quotes Kenny Rogers.

Another thing that surprised me were the number of eclectic songs out there that judges have chosen to quote. One ▶



of those songs is by the group Adrenaline Mob called "Judgment Day." Again, not a band that someone would think is likely to be quoted by a judge. I think the phrase the judge used from the song was: "You went and lived it up // Now ya pay // Collection on your judgment day." The judge who quoted the phrase effectively used these lyrics to make a point about the dangers of over-litigating a case, especially in the family court arena. In that particular case, the parties had litigated their case to the nth degree, running up massive attorney's fees with really very little to show at the end of the case.

ARE THERE ANY JUDGES THAT STOOD OUT TO YOU AS "EXPERT" SONG-QUOTERS?

Judge Jonathan Goodman out of the Southern District of Florida quotes songs often and well. I spoke to him about why he quotes songs, and he told me that when Chief Justice Roberts quoted Bob Dylan in a case he thought to himself, "Well, if it's good enough for the Chief Justice, it's good enough for me."

He told me that he's very careful about how he quotes lyrics and that he doesn't do it in all cases, such as serious injury cases or most criminal cases. When he does quote lyrics, he takes great care to do it in a way that also fleshes out the legal analysis because he doesn't want the parties to think that, by quoting a song, he's minimizing their case. He also quotes lyrics at the beginning of his order or as section headers to set the stage for the rest of the opinion.

Another strong song-quoter is Judge Ed Carnes from the Eleventh Circuit. One of my favorite quotes comes from one of his cases, *Butler v. Sheriff of Palm Beach County*. Judge Carnes quotes the Jim Croce lyric to convey that there are some things that you just don't do: "You don't tug on Superman's cape // You don't spit into the wind // You don't pull the mask off the old Lone Ranger // And you don't mess around with Jim." Judge Carnes said, "He could have added a fifth warning to that list: 'And you don't let a pistol-packing mother catch you naked in her daughter's closet.'" I thought that was very well done.

Judge Paul Grimm used Bruce Springsteen's "The River" to make the point that discrimination-free housing placement for residents of public housing is "nothing more than a dream" without the aid of enforcement lawsuits to identify and redress illegal behavior by asking: *Is a dream a lie if it don't come true // or is it something worse?*

QUOTING BRUCE SPRINGSTEEN'S "THE RIVER" IN *THOMPSON V. U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT*

Writing about a mortgage subsidy program plagued by fraud allegations, Judge Janice Rogers Brown drew a parallel to Jimi Hendrix's "Love or Confusion" noting that the case raised a similar question: *Is this [fraud] // or is it... just confusion?*

QUOTING JIMI HENDRIX'S "LOVE OR CONFUSION" IN *U.S. EX REL. K & R LTD. PSHIP V. MASSACHUSETTS HOUS. FIN. AGENCY*

Judge Emilio Garza from the Fifth Circuit was another one. There's a case called *United States v. Abner* with more than 20 Talking Heads song titles sprinkled into the opinion.

Judge Philip Straniere out of Staten Island Civil Court in New York is another example. A favorite is an order from a case called *Colonial Credit Corp. v. Beyers*, where he referenced a bunch of Rolling Stones songs.

Judge Gregory Todd out of Montana's 13th District Court did the same thing, but sprinkled numerous Beatles references throughout an order. In that case, the defendant — while asking for probation or some other lenient sentence — had said to the judge, "Like The Beatles said, just 'Let It Be.'" After that, Judge Todd, apparently a huge Beatles fan, wrote his sentence recommendation using about 20 or 30 Beatles songs. I thought that was pretty clever.

WHY IS LYRIC QUOTATION VALUABLE?

I agree with Judge Goodman that you have to do it in such a way that it serves the writing and not the writer. If you quote lyrics in the wrong way, it can come across as if you're making light of the parties or of the case, so you have to be thoughtful about it. But if it's the right case, quoting lyrics can be very effective in terms of bridging that

understanding gap between the layman and the attorneys.

Sometimes there are consequential results from using a song lyric. Although quotes are never used to decide cases, they are sometimes used to help provide a degree of understanding of the analysis. For example, one judge quoted Johnny Cash in an order to help determine the meaning of the word "whenever" as used in a state constitutional provision. Again, the case wasn't decided because of Johnny Cash, but it did help corroborate the judge's ruling in terms of his interpretation of the word. As another example, Judge Stanley Marcus out of the Eleventh Circuit used Simon & Garfunkel's "I Am a Rock" to decide an issue of maritime jurisdiction where the question was whether an interdiction occurred at sea near a rock or an island. According to the song, as Judge Marcus pointed out, it can be both. He even went on to quote the entire song in his opinion. So, again, I think there is value



to using lyrics, but judges have to be careful about how it's done.

In some cases, a song lyric is used so frequently, and in so many jurisdictions, that it becomes a legal maxim in and of itself. A good example of that is from Bob Dylan's "Subterranean Homesick Blues"—"you don't need a weatherman // to know which way the wind blows." That was first used in California but is now widely used elsewhere, including in Florida, to express the concept that there are some evidentiary issues that are so widely known and commonly accepted that an expert opinion on that topic is unnecessary. But there are several other verses that have become legal maxims as well that I discuss in the book.

Referencing pop culture also allows judges to show in some way that they are not disconnected from society. They try to convey to litigants that they don't just issue rulings from some ivory tower, but indeed they watch TV and listen to the same songs on the radio as anyone else does. So, when judges make rulings, they are ruling from the modern world, the same world that the litigants live in.

DO YOU THINK THE DECISION TO QUOTE HAS ANYTHING TO DO WITH WHETHER YOU ARE APPOINTED OR ELECTED?

I absolutely think it has a lot to do with whether you're a federal judge versus an elected judge. I haven't counted, but I think that most of the song quotes from the book are from federal judges because they have that freedom that comes with life tenure, so they're not susceptible to somebody waging an election campaign against them saying, "Oh, he doesn't take his job or these cases seriously." A lot depends upon who is looking over the judge's shoulder. As an appellate court judge, there are certain constraints on me where I'm not necessarily free to write an opinion with a song quote. I have to get the agreement from other panel members before the opinion's wording is approved. In a dissent, I have a lot more freedom. But I think there is certainly a federal versus state difference — probably because of the autonomy that federal judges have at all levels.

In a case in which the plaintiff claimed he was wrongfully incarcerated, Judge Amy Berman Jackson wrote about the difficulty of valuing 'lost freedom' by quoting the signature song from the Broadway musical "Rent" to imagine how one quantifies the worth of a year of liberty:
In daylights, in sunsets, in midnights, in cups of coffee // in inches, in miles, in laughter, in strife?

QUOTING JONATHAN LARSON'S
"SEASONS OF LOVE" IN
SINGLETARY V. DISTRICT OF COLUMBIA

—
Judge Henry N. Brown Jr. noted that the parties in one case had been before his court five times already over the course of ongoing domestic litigation, quoting a throwaway Herman's Hermits line — *Second verse // same as the first* — to emphasize that nothing had changed in the case.

QUOTING HERMAN'S HERMITS'
"I'M HENRY THE VIII, I AM"
IN *MARTIN V. MARTIN*

But I don't use lyrics often, especially now that I've written this book. John Mayer has a song where he says — "I want to run through the halls of my high school // I want to scream at the top of my lungs" — and he said he can't really do that now because it's in the song! If I put song lyrics in opinions now, my colleagues will probably say, "Oh, yeah, it's like your book."



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I think you're going to start to see a lot more of this from other judges because the practice and this writing style is also starting to seep into U.S. Supreme Court opinions by other justices, not just Chief Justice Roberts. Justice Elena Kagan is a brilliant writer, and she tends to subtly bring pop culture into her opinions, including songs. Justice Samuel Alito also has incorporated song lyrics into his opinions. And, as Judge Goodman said, when you start seeing U.S. Supreme Court justices quoting songs, I think you're going to start seeing other judges at the state and federal level doing it in their writing as well.

DO YOU USE LYRICS IN YOUR OPINIONS?

A couple of times. I did a draft opinion in an injunction case that had to do with someone posting a song on a blog or some other social media that had some violent lyrics and was perceived as threatening. I thought it was important to make the point that just because you post a song doesn't make it a threat. You're taking certain things out of context. I included a bunch of songs like AC/DC "Shoot To Thrill." I mean, you can take a lyric as an example — "Put in the bullet, pull the trigger" — but anybody who knows AC/DC and the song knows that that song has nothing to do whatsoever with violence. It's a metaphor for something else. I decided to not include those references in the final version however.