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References to Beatles songs in advocacy and judicial opinions

Douglas E. Abrams

In 2019, the Maryland Court of Appeals (the state’s highest court) decided *Board of County Commissioners v. Perennial Solar, LLC*.¹

The court unanimously held that state law preempted local zoning authority concerning solar energy generating systems that require a certificate issued by the state Public Service Commission.²

The court opened its opinion with this musical entree:

“Here comes the sun, and I say, It’s all right.”

– The Beatles, “Here Comes the Sun”³

By citing and quoting the Beatles’ hit song from the band’s 1969 “Abbey Road” album, the unanimous Maryland Court of Appeals followed the lead of other state and federal courts. These courts have filed written opinions that cite and quote one or more of the Fab Four’s songs to help make substantive or procedural points in cases that raised no claims or defenses implicating the British quartet, and that did not concern copyright or trademark, two staples of entertainment industry litigation.

This article surveys the indelible mark that the Beatles (Paul McCartney, John Lennon, George Harrison, and Ringo Starr) continue to leave on courts in the United States more than half a century after the quartet burst onto the American scene with their three television appearances on the Ed Sullivan Show in February of 1964, six years before the band’s breakup.

A Beatles song sampler

“*The Long and Winding Road*”⁴ (from the “*Let It Be*” album (1970))

Atop the roster of judicially cited and quoted Beatles songs is “The Long and Winding Road,”⁵ which courts have invoked to underscore the seemingly slow, and evidently meandering, pace of some civil litigation.

In *Jones v. Barnhart* (2017),⁶ for example, the plaintiff filed his initial federal civil rights complaint in 2010. Nearly seven years of pleadings, amended pleadings, and dueling motions followed.

In denying the plaintiff’s latest motion, the federal district court wrote that “[l]ike an old Beatles’ song, the procedural history of this nearly seven year old case has been a ‘long and winding road.’”⁷

In addition to “The Long and Winding Road,” courts have cited and quoted a host of other Beatles songs, including:

“*Eight Days a Week*”⁸ (from the “*The Beatles*” album (1964)) and

“*Lucy In the Sky With Diamonds*”⁹ (from the “*Sgt. Pepper’s Lonely Hearts Club Band*” album (1967)).

In *Commonwealth v. Knox* (2018),¹⁰ the Pennsylvania Supreme Court affirmed the defendant’s conviction for writing and releasing a rap song that made terroristic threats, and for intimidating witnesses. The song specifically named Pittsburgh law enforcement officers who were scheduled to testify against the defendant at his upcoming trial arising from drug offenses.

The seven-justice state supreme court rejected the defendant’s contention that the rap song constituted speech protected by the First Amendment. The court held instead that the lyrics naming specific law enforcement officers contained unprotected “true threats” because the defendant specifically intended to terrorize or intimidate the named officers with the specter of physical violence.¹¹

Two *Knox* justices filed an opinion concurring and dissenting. Because the defendant’s rap song named the police officers as specific targets of physical violence, the two justices concurred that the song made constitutionally unprotected true threats. The two justices dissented, however, from the majority’s test for distinguishing, in future cases, between music lyrics that are protected by the First Amendment and music lyrics that are unprotected true threats. To illustrate the difficulty in drawing their constitutional line of demarcation, the two dissenters invoked the Beatles:

[M]usic often is rife with hyperbole, boasting, exaggerated attempts at entertainment, overheated invocation of emotion, and nonsensical banter. . . . [T]hat the statements were made in a song . . . complicate[s] the task of determining which lyrical statements objectively should be taken seriously and which should not. . . .

“...courts have cited and quoted a host of other Beatles songs...”

The Beatles, for example, insisted that they “ain’t got nothin’ but love babe, eight days a week.” The hyperbole is obvious. But the exaggeration may not always be so apparent. Artists sometimes employ metaphors that defy clear definition. . . . Song lyrics may even lack any discernible meaning on their own, as in The Beatles’ classic “Lucy in the Sky with Diamonds,” which includes the instruction, “follow her down to a bridge by a fountain where rocking horse people eat marshmallow pies.”¹²

A common theme

By highlighting references to Beatles songs in state and federal judicial opinions, this article continues a theme that I have presented in several prior “Writing It Right” articles. The theme begins in some courts, which in recent years often accent their written opinions’ substantive or procedural rulings with references citing or quoting well-known cultural markers from sports, popular entertainment, or literature.

For example, some courts have referenced terminologies, rules, and traditions of baseball;¹³ football;¹⁴ and other participation and spectator sports that help shape American life, including basketball, golf, and hockey.¹⁵ Other courts have referenced classic television shows and movies.¹⁶ Still other courts have turned to literature by referencing children’s stories, fairy tales, and Aesop’s Fables.¹⁷ I have discussed judicial references to, for example, William Shakespeare’s plays,¹⁸ Charles Dickens’ novels,¹⁹ and Robert Frost’s poems.²⁰


This article turns to contemporary popular music, but the overarching theme remains constant. The theme of my prior “Writing It Right” articles is that the willingness of federal and state courts to reference cultural markers in their written opinions should encourage advocates likewise to enhance their briefs with careful references to similar cultural markers.

Often quoted in these Journal articles is advice from leading judges that is consistent with careful use of cultural references in briefs. “Think of the poor judge who is reading . . . hundreds and hundreds of these briefs,” says Chief Justice John G. Roberts Jr. “Liven up their life just a little bit . . . with something interesting.”²¹

Justice Antonin Scalia similarly urged brief writers “[m]ake it interesting.”²² “I don’t think the law has to be dull.” “Legal briefs are necessarily filled with abstract concepts that are difficult to explain,” Justice Scalia continued.²³ “Nothing clarifies their meaning as well as examples” that “cause the serious legal points you’re making to be more vivid, more lively, and hence more memorable.”²⁴

Conclusion: The Beatles and the contemporary American experience

The Beatles and their songs qualify as cultural markers, and thus as grist for citation and quotation by judges and advocates who seek interesting, memorable expression at the bench and bar. In 2014, the *Boston Globe* concluded that the Beatles’ three appearances on the Ed Sullivan Show a half century earlier remained “cultural milestones.”²⁵ CBS News correspondent Morley

Safer’s 50-year retrospective spoke universally, observing that the Beatles “effectively changed the culture of not only America, but the world.”²⁶ As the most prominent band of the rock era, the Beatles help define the contemporary American experience, and thus invite invocation in advocacy and judicial opinions. 



Douglas E. Abrams, a University of Missouri law professor, has written or co-written six books, which have appeared in a total of 22 editions. Four U.S. Supreme Court decisions have cited his law review articles. His writings have been downloaded more than 50,000 times (in 153 countries). His latest book is Douglas E. Abrams, EFFECTIVE LEGAL WRITING: A GUIDE FOR STUDENTS AND PRACTITIONERS (West Academic 2d ed. 2021).

Endnotes

- 1 212 A.3d 868 (Md. 2019).
- 2 *Id.* at 869.
- 3 *Id.* See <https://www.youtube.com/watch?v=GKdl-GCsNJ0> (Beatles singing “Here Comes the Sun”).
- 4 See <https://www.youtube.com/watch?v=oz3JlMhgfq0> (Beatles singing “The Long and Winding Road”).
- 5 See *infra* note 8.
- 6 2017 WL 1493005 (E.D. Mich. Apr. 26, 2017) (magistrate judge’s opinion).
- 7 *Id.* at * 1. Other recent federal and state decisions that cite and quote “The Long and Winding Road” include *Hughes v. Flicker*, 2017 WL 5643240 * 1 (S.D. Fla. July 10, 2017) (magistrate judge’s opinion); *Vono v. Lewis*, 594 F. Supp. 189, 191–92 (D.R.I. 2009); *In re Smith*, 352 B.R. 702, 703 (Bankr. 9th Cir. 2006) (“This matter is reminiscent of that old Beatles’ standard, ‘The Long and Winding Road,’ a brooding song about a road that never ends. One can only hope that with this opinion, the end of the road is indeed in sight.”); *Mader v. Motorola Inc.*, 1999 WL 519020 * 1 (N.D. Ill. July 14, 1999); *Eastern Shore Title Co. v. Ochse*, 160 A.3d 1238, 1242 (Md. Ct. App. 2017); *Gutierrez v. State*, 2019 WL 629440 * 4 (Md. Ct. Spec. App. Feb. 14, 1999).
- 8 See *Beatles* 1 (CD) (2000), selection No. 8. (Beatles singing “Eight Days A Week”).
- 9 See <https://www.youtube.com/watch?v=naoknj1ebqI> (Beatles singing “Lucy In the Sky With Diamonds”).
- 10 190 A.3d 1146 (Pa. 2018).
- 11 *Id.* at 1158–59.
- 12 *Id.* at 1165–66 (Wecht, J., concurring and dissenting).
- 13 Douglas E. Abrams, *References to Baseball In Judicial Opinions and Written Advocacy*, 72 J. MO. BAR 268 (Sept.–Oct. 2016).
- 14 Douglas E. Abrams, *References to Football In Judicial Opinions and Written Advocacy*, 73 J. MO. BAR 34 (Jan.–Feb. 2017).
- 15 Douglas E. Abrams, *References to Spring’s Championship Sports In Judicial Opinions and Written Advocacy*, 73 J. MO. BAR 168 (May–June 2017).

Continued on page 178

81 *Id.*
82 *Id.*
83 *Id.* at 479 (Breckenridge, J., dissenting).
84 *Id.* at 475.
85 *Id.* at 474.
86 *Id.* at 476.
87 *Id.*
88 *Id.*
89 *Id.* (“[I]n determining whether an action presents more than one claim for relief, the focus is on the number of legal rights asserted in the action.”). In this regard, however, practitioners should heed the warning given in the dissenting opinion. This meaning of “claim” is incongruous with that applied in other judgment-related contexts, *e.g.*, the rules of merger and bar reflected in the doctrine of *res judicata*, which employ a transaction or occurrence-based definition. *See id.* at 488 (Breckenridge, J., dissenting). Therefore, the meaning of claim for purposes of the final-judgment analysis should be kept distinct from the meaning applied in other judgment-related contexts.
90 *See id.* (“Such reasoning might have led the Dispatch to dismiss its remaining claims or to ask the circuit court to deny them on the ground that they were moot.”)
91 *Asel*, 566 S.W.3d at 598.
92 *Jefferson Cnty. 9-1-1 Dispatch*, 645 S.W.3d at 476.
93 *Butala*, 620 S.W.3d at 93 (“An order that fully resolves at least one claim in a lawsuit and establishes all the rights and liabilities of the parties with respect to that claim is, in substance, a judgment.” (Internal quotation omitted)).
94 *Wilson*, 600 S.W.3d at 772 (finding an order did not satisfy the substantive definition of a judgment because it granted declaratory relief on one claim but failed to address a prayer for injunctive relief in relation to the same claim).
95 *Asel*, 566 S.W.3d at 599.
96 *Wilson*, 600 S.W.3d at 772 (“The first criteri[on] for a judgment to be appealable under section 512.020(5) is that it must – in fact – be a judgment.”).
97 *Id.* at 768.
98 *Id.* (“A final judgment resolves all issues in a case, leaving nothing for future determination.”).
99 *Jefferson Cnty. 9-1-1 Dispatch*, 645 S.W.3d at 476.
100 Plaintiffs should exercise care when dismissing alternative counts for the purpose of ensuring a judgment fully resolves all claims. In attempting to appeal from an unfavorable partial summary judgment, the plaintiff in *Bearden*, 593 S.W.3d at 142, attempted to dismiss his remaining claims. Inadvertently, however, the plaintiff “dismissed the entire *cause* rather than limiting his dismissal to specific parties or specific claims.” *Id.* Consequently, “[i]t was as if that suit had never been filed” and the interlocutory partial summary judgment was “treated as though it had never been entered.” *Id.* Plaintiffs seeking to dismiss remaining pending claims to appeal an unfavorable judgment should heed *Bearden* and exercise care not to dismiss the cause but rather specific remaining claims or parties.
101 *Wilson*, 600 S.W.3d at 768.
102 *Chromalloy Am. Corp. v. Elyria Foundry Co.*, 955 S.W.2d 1, 3 (Mo. banc 1997).
103 *Naylor Senior Citizens Hous., LP v. Side Constr. Co.*, 423 S.W.3d 238, 243 (Mo. banc 2014).
104 *Asel*, 566 S.W.3d at 599 n.6 (internal quotation omitted).
105 *Avery Contracting, LLC v. Niehaus*, 492 S.W.3d 159, 162 (Mo. banc 2016)

(internal quotation omitted).

106 *Wilson*, 600 S.W.3d at 768.
107 *Id.*
108 *Id.* at 769.
109 *Id.* 769–70.
110 *Id.* at 771.
111 *Id.*
112 *Id.* at 771–72.
113 *Id.*

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16 Douglas E. Abrams, *References to Television Shows In Judicial Opinions and Written Advocacy (Part 1)*, 75 J. MO. BAR 25 (Jan.–Feb. 2019); Douglas E. Abrams, *References to Television Shows In Judicial Opinions and Written Advocacy (Part 2)*, 75 J. MO. BAR 85 (Mar.–Apr. 2019); Douglas E. Abrams, *References to Movies In Judicial Opinions and Written Advocacy (Part 1)*, 75 J. MO. BAR 222 (Sept.–Oct. 2019); Douglas E. Abrams, *References to Movies In Judicial Opinions and Written Advocacy (Part 2)*, 75 J. MO. BAR 297 (Nov.–Dec. 2019).
17 Douglas E. Abrams, *References to Children’s Stories and Fairy Tales In Judicial Opinions and Written Advocacy*, 76 J. MO. BAR 212 (Sept.–Oct. 2020); Douglas E. Abrams, *References to Aesop’s Fables In Judicial Opinions and Written Advocacy*, 77 J. MO. BAR 24 (Jan.–Feb. 2021).
18 Douglas E. Abrams, *Shakespeare In the Courts*, 77 J. MO. BAR 132 (May–June 2021).
19 Douglas E. Abrams, *Charles Dickens’ Novels In the Courts*, 78 J. MO. BAR 29 (Jan.–Feb. 2022).
20 Douglas E. Abrams, *References to Robert Frost’s Poetry in-Advocacy and Judicial Opinions*, 78 J. MO. BAR 237 (Sept.–Oct. 2022).
21 Bryan A. Garner, *Interviews With Supreme Court Justices: Chief Justice John G. Roberts, Jr.*, 13 SCRIBES J. LEGAL WRITING 5, 18 (2010).
22 ANTONIN SCALIA & BRYAN A. GARNER, *MAKING YOUR CASE: THE ART OF PERSUADING JUDGES* 112 (2018).
23 *Id.* at 111, 122.
24 *Id.*
25 Jeff Jacoby, *Liberals Now Love Goldwater, But His 1964 Loss Won the GOP’s Future*, BOSTON GLOBE (Apr. 20, 2014).
26 Morley Safer, *Capturing History*, CBS NEWS, 60 MINUTES (June 1, 2014).