

# Just Let Me Read Some of That Rock 'n Roll Music

Fred S. McChesney

I WAS PLEASED TO READ Gregory Maggs' review of my book *Money for Nothing: Politicians, Rent Extraction and Political Extortion*, in the first issue of the *Green Bag* 2d.<sup>1</sup> The book discusses legislators' penchant for and success at extorting money from the citizenry by threatening to impose onerous legislation (e.g., taxes) and then forbearing (for a price) from doing so. Professor Maggs obviously has read the book carefully and thoughtfully.

I was sorry, however, that such a careful and thoughtful reader was nonetheless deprived of the full text of the book that I wrote. Professor Maggs' describes the book as "concise," and lauds its "accessibility" – again proof of his perspicacity. But my thoughts were even more concise and accessible before all the 1960s and 1970s musical poetry (also known as "rock and roll") that I had quoted in my book was expunged in the editing process. As will be explained, it was not really the publisher's fault,

that day the music died; the property rights entailed in musical citations are too uncertain. Sadly, that uncertainty causes compositions deserving quotation not to be quoted.

Like all good poetry, good rock and roll has the potential not just to move one emotionally, but also to summarize lofty thoughts in a line or two. (Thus, great songs are like cartoons, of which there are several reprinted in my book.) A handful of words like "The paths of glory lead but to the grave" is not only beautiful but profound. Popular songs are likewise capable of combining eloquence and profundity. How better to describe a lover's self-delusion upon being cheated than, "When a lovely flame dies, smoke gets in your eyes"?<sup>2</sup>

Legal writers, addicted to citations, need more sources blending truth with concision. Thus, I have frequently used lyrics from modern popular songs to summarize legal points. In an article about the *de facto* corporation

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1 Gregory E. Maggs, *More Than One Cent for Tribute*, 1 GREEN BAG 2D 101 (1997).

2 Otto Harbach & Jerome Kern, *Smoke Gets in Your Eyes* (T.B. Harms Co., ASCAP).

doctrine – a legal principle that neither courts nor commentators have succeeded in summarizing or explaining very well – I quoted one eminent commentator, who wrote in the *Harvard Law Review*:

[W]hat the courts do is of far more importance than what they say; and if we find that the courts, although vigorously asserting that a certain body is not a corporation *de jure* or *de facto*, give the stockholders the same rights and immunities as if it were a *de facto* corporation, and if we further are unable to find any other theory on which the rights and immunities can be supported, we may be justified in saying that the courts have in reality done what they insist that they are unwilling to do, and have treated the organization as a *de facto* corporation.<sup>3</sup>

Juxtaposed to all that verbiage, I appended the following lyric:

*When the final showdown came to pass  
A law book was no good.*<sup>4</sup>

Concise and (in this particular area of law) true. Courts can't explain what they are doing; they just do it. A law book is no good. Boom. Who expressed it better, the *Harvard Law Review* or Gene Pitney?

Law journals don't even blink when song lyrics are quoted. As I discovered, however, it is different with books. In my book manuscript, I invoked many a song lyric. But all the lyrics ended up on the production room floor, because it was decided at the eleventh hour that I needed permission to quote even a single line from any song. The book's very title, of course, is borrowed from the Dire Straits classic, *Money for Nothing*. The publisher wanted me to change the title, too, but I successfully resisted. However, absent written permissions, it vetoed any inclusion of song lyric

snippets in the text. Rather than delay publication for months while I wrote off for and awaited permissions, I caved.

So was excised the music to accompany many other aspects of the political extortion process that I described. For example, it is often claimed that when politicians propose legislation that would harm well-heeled groups, take contributions from those groups, and then withdraw the offending legislative proposal, it was all just a mistake. The pols were not really intending extortion; being fallible humans and having decided that the proposal was a bad one, they did the honorable thing and withdrew it. The book deals with this defense at some length, showing why the whole process is indeed advertent – politicians themselves jocularly label such attempts to squeeze their constituents "juice bills." But my point all came down to the song, quoted in the manuscript:

*Look at them yoyos  
... That ain't working ...  
Lemme tell you  
Them guys ain't dumb.*<sup>5</sup>

Snipping that line from the published book felt like omitting the punch line of a joke.

Another part of the book discusses how the political extortion process is a disincentive to the accumulation of wealth in the first place. I analogize extraction in America to the impoverishing impact of nationalizations in the Third World, where firms are reluctant to invest in the first place for fear of subsequent expropriation. The point is crucial to understanding the deleterious effects of the games politicians play. Economist Gordon Tullock explained it well:

3 E. Merrick Dodd, *Partnership Liability of Stockholders in Defective Corporations*, 40 HARV. L. REV. 521, 531-32 (1927).

4 Hal David & Burt Bacharach, *The Man Who Shot Liberty Valance* (Famous Music Corp., ASCAP). The song was popularized by Gene Pitney in 1962.

5 Mark Knopfler/String, *Money for Nothing* (Almo Music Corp., ASCAP).

One way of minimizing loss by theft is to have little or nothing to steal. In a world in which theft was legal, we could expect this fact to lead to a reduction in productive activities ...<sup>6</sup>

But Bob Dylan put it much more pithily, as I quoted in the manuscript:

*When you ain't got nothing  
You got nothin' to lose.*<sup>7</sup>

Dylan's lyric went the way of all the others in my manuscript, down the drain.

As a final example of what was lost, consider a related point in the book. The specter of political expropriation causes people to reduce production, as Bob Dylan and Gordon Tullock indicate. Potential expropriation also causes worried potential victims to produce in ways that are inefficient but less likely to be discovered and so less subject to extortion attempts. The economic implications are several. At the margin, for instance, resources shift from more valued uses in the "legitimate" economy to less valuable ones in the "underground" economy.

But time and money are also spent to dodge the political extortion attempts that do materialize. Much extortion arises in the world of taxation, where politicians are constantly proposing new taxes that they ultimately (after being paid by would-be victims of the tax change) do not impose. The tax-extortion game forces holders of private wealth into lots of role-playing, the book points out, such as pretending to be less prosperous than is in fact the case.

Again, the economics of the situation are straightforward. But demonstrating how it all works consumes several pages of the book. To conclude the discussion, I let Creedence Clear-

water Revival summarize the phenomenon:

*Some folks are born, silver spoon in hand  
Lord, don't they help themself'  
But when the tax man comes to the door  
Lord, the house look like a rummage sale.*<sup>8</sup>

Ixnay, said the publisher, and out Creedence went.

Why? It wasn't that rock and roll was too low-brow for my Ivy-League-University press. My editor at Harvard knew all the songs I was quoting, even correcting one mistake in my reproduced lyrics. No, the problem was fear of liability for using the lyrics. The book quotes liberally from other *written* work – books, journal articles – for which no permissions were required. But song lyrics, I was told, were another matter altogether. No permission, no publication.

I am a great respecter of property rights, having paid Bill Watterson (creator of "Calvin and Hobbes") and other cartoonists sizable sums for use of their cartoons in the book. And intellectual property is not my academic beat. I am told, however, that the real problem with songs is not a different set of property rights over lyrics (as compared to other printed works), but uncertainty as to where "fair use" ends and "unauthorized use" begins. (Note from the above quotations that the book manuscript included only a few lines of the song, not the entire work, as is necessarily involved in reprinting a cartoon.) Rather than run risks, presses insist on permissions.

Unclear property rights lead to such unfortunate situations. Most authors – including lyricists – are delighted to have their works quoted in snippets, as long as the entire work is not pirated. The Maggs review quoted liberally from my own book, which I was naturally

6 Gordon Tullock, *The Welfare Costs of Tariffs, Monopolies and Theft*, 5 W. ECON. J. 224, 229 n.11 (1967).

7 Bob Dylan, *Like a Rolling Stone* (ASCAP).

8 J.C. Fogerty, *Fortunate Son* (Jondora Music, BMI).

pleased to see, even if nobody asked my permission. The very notion of “fair use” derives, at least partly, from the belief that often authors would naturally grant permission anyway. This is particularly likely when users do not value using the contribution enough to incur the transaction costs (as opposed to permission fees) of obtaining any permission. The transaction costs can be substantial, particularly if, as is often the case for songs, it is unclear from whom to seek any permission.<sup>9</sup> Thus, the perhaps inadvertent side effect of book publishers requiring a permission is that material the owner would probably be happy

to have published remains unquoted.

That is what happened in my case. It is difficult to believe that owners of the songs I quoted in my manuscript would have been displeased to have a few words of their lyrics quoted. But it is likewise hard to fault the Harvard University Press for not quoting them, given the uncertainty about what use needs to be authorized. As Johnny Cash put it way back in 1958,

*I don't like it  
But I guess things happen that way.*

JB

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<sup>9</sup> The final song quoted here, in the next paragraph, appears on a Johnny Cash collection that does not identify the song's publisher or licensor, i.e., those to whom one would naturally apply for any permission. This is not uncommon, in my experience. I have often had university librarians, using traditional sources as well as the Internet, report back to me that they are unable to determine where to seek permission to use song lyrics.