

Courts Can Make Better Use Of 'The Boss'

Law360, New York (January 02, 2014, 6:05 PM ET) -- Lawyers are among the many people who have been inspired and influenced by Bruce Springsteen's music.

Springsteen usually comes in third — behind Bob Dylan and the Beatles and slightly ahead of Paul Simon — on the list of musicians whose lyrics are most frequently cited in legal articles and judicial opinions. Several law review articles, and at least one symposium, have been dedicated to the characters in his songs, particularly those on the margins, living in the darkness on the edge of town.

These individuals are appealing to law professors and commentators, particularly those interested in social justice, because, as professor Abbe Smith noted in her article "The Dignity and Humanity of Bruce Springsteen's Criminals," Springsteen "takes the least popular, least sympathetic among us, and offers up their stories to teach us something about ourselves." However, when judges cite Springsteen, something seems to get a little lost along the way.

For example, when Springsteen wrote "No Surrender," a song about friendship and adolescence where the narrator reminisces about "learning more from a three-minute record than we ever learned in school," he probably never expected that the lyrics would one day be used by a judge to describe a discovery dispute in a wrongful death lawsuit.

Nonetheless, this is precisely what happened in *Adelman v. Boy Scouts of America*, 276 F.R.D. 681, 700 (S.D. Fla. 2011), when a magistrate judge in Florida invoked the song to describe a party's aggressive approach to discovery: "A 'no surrender' mentality may be perfectly appropriate for a Bruce Springsteen rock-and-roll song, but it is frequently unhelpful in litigation, as illustrated by the unfortunate scenario here."

Similarly, it is unlikely that landlord-tenant disputes were on Springsteen's mind when he wrote the songs on his post-9/11 album, "The Rising." Nonetheless, a Montana Supreme Court judge quoted one of these songs in an opinion on a jurisdictional dispute about where a landlord-tenant lawsuit could be brought. *Fick v. Brown*, 360 Mont. 513, 516 (2011) ("In [plaintiff's] desire to prevail on his claims, he has refused to accept the plain language of the law. 'Sometimes the truth just ain't enough. Or is it too much in times like this.' Bruce Springsteen, *Worlds Apart*, on *The Rising*").

Occasionally, the citations at least make sense. For instance, in *U.S. v. Bullock*, 454 F.3d 637, 638-39 (7th Cir. 2006), defendant appealed his sentence after pleading guilty to five counts of distributing heroin, arguing that a 100-year sentence was unreasonable.

At the outset of its opinion, the court noted: "One hundred years is a long time — one year longer, in

fact, than the standard lyrical shorthand for an unimaginably long sentence.” The court cited Springsteen’s song “Johnny 99” — “Well the evidence is clear, gonna let the sentence, son, fit the crime / Prison for 98 and a year and we’ll call it even, Johnny 99” — along with songs from other artists in support of this proposition.

Similarly, a Connecticut court invoked “Glory Days” as part of its criticism of one of the parties in a divorce proceeding. *Richards v. Richards*, (Conn. Super. 2003). In *Richards*, the husband sought to have his spousal support obligations reduced because, despite having earned millions at his former job, he was currently out of work. The court denied the request, in part because it did not believe the husband was doing enough to find gainful employment. *Id.* at *2

(“The court feels that given his education, experience and relatively good health, he needs to come down from his ‘ivory tower’ and to ‘get his hands dirty’ by doing something more practical, while he awaits more financially rewarding endeavors to hopefully come his way once again.”).

To emphasize the point, the court invoked Springsteen’s song, “Glory Days”: “[A]s he basks in his past glory, perhaps he should consider the sobering message contained in the words of a popular song, that ‘time slips away and leaves you with nothing mister but boring stories of glory days.’” *Id.*

Moreover, in at least one instance, the reference was not only appropriate, but also somewhat poignant. In 2002, a federal court in Maryland cited “The River” in a case involving discrimination in public housing.

In *Thompson v. U.S. Department of Housing and Urban Development*, (D. Md. 2002), the court noted that a consent decree requiring specific remedial action to remedy past instances of discrimination in public housing was useless without effective monitoring to ensure that the specific actions were actually undertaken: “The monitoring and enforcement activities become the very sine qua non of the obligations to remedy past discriminatory activity, without which the residents may come to view the decree as just one more unfulfilled dream, or worse.” *Id.*

To help make this point, the court cited a portion of “The River” in which Springsteen asks: “Is a dream a lie if it don’t come true, or is something worse?” The song, which Springsteen has said was inspired by his sister and brother-in-law, is about dreams unfulfilled and the sometimes-crushing reality of life as it is rather than how it might have been imagined. The same could be said of the fight against discrimination in public housing, at least from the perspective of housing advocates in the court’s decision.

However, more often than not, the Springsteen references in opinions are harder to make. For example, in *Farr Man Coffee Inc. v. Chester*, 45 (S.D.N.Y. 1993), the court considered whether an insurance policy covered the value of 42,100 bags of coffee that were stored in a warehouse in Paraguay until early 1987.

Not exactly the type of facts that might inspire a pulsing, turn-on-the-house-lights rock anthem. Nonetheless, they inspired the court to invoke one of Springsteen’s most popular and iconic songs — “Badlands.”

The court noted that the terms of the insurance policy demonstrated that one of the parties had an insurable interest in the coffee, which somewhat inexplicably led the court to comment: “This reminds one: ‘Talk about a dream, try to make it real, you wake up in the night, with a fear so real, spend your life waiting for a moment that just won’t come, well don’t waste your time waiting.’ Bruce Springsteen:

“Badlands,” from *Darkness on the Edge of Town*-Columbia, 1978.” Really? It does?

One would think that New Jersey courts would make better use of the state’s own local hero in their decisions. Somewhat surprisingly, however, Springsteen has only been cited once in a published decision from a New Jersey court.

In *Fleming v. Correctional Healthcare Solutions Inc.*, 164 N.J. 90, 100 (2000), a wrongful termination lawsuit, the plaintiff/employee was a former guard at a prison who seems to have also been a Springsteen fan, as she described her job as tough, but indicated that she was someone who, “[a]t the end of every hard earned day ... [found] some reason to believe.”

While this reference is more apt than many of the others, it did not even come from a New Jersey judge, but instead came from a litigant. As a result, despite being one of the most famous singers ever to come from New Jersey, and the third most frequently cited songwriter in legal commentary and judicial opinions, Springsteen has yet to be cited in a published opinion by a New Jersey judge. For shame.

It is difficult to explain why Springsteen seems to be so misunderstood by judges, and altogether ignored by New Jersey judges. Our governor is an unabashed Springsteen fan; our president acknowledges that, while he is the president, Springsteen is the boss; and several justices on the U.S. Supreme Court have a close connection to the Garden State. While citing Springsteen, and doing so correctly, need not be a litmus test for potential judges, certainly courts can do better going forward than they have done in the past.

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