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## When the Law Doesn't Work

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# When the Law Doesn't Work

## **Cover Page Footnote**

Spears-Gilbert Professor of Law, College of Law, University of Kentucky.

## WHEN THE LAW DOESN'T WORK

*Richard H. Underwood\**

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### INTRODUCTION

I read in the paper that the former governor's son shot his ex-girlfriend.<sup>1</sup> She's dead. She had a restraining order, but the law didn't work.<sup>2</sup> Another story says that Rand Paul thinks mountain-top removal just needs some rebranding.<sup>3</sup> "I don't think anybody's going to be missing a hill or two here or there," he says.<sup>4</sup> That reminds me: did you know that the mountains on the back of the West Virginia quarter may be blown up? One was already being mined *illegally*

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1. Jennifer Hewlett, *Steve Nunn Pleads Guilty to Murder; Sentenced to Life*, KENTUCKY.COM (June 29, 2011, 12:00 AM), <http://www.kentucky.com/2011/06/29/1782361/steve-nunn-pleads-guilty-in-court.html>.

2. Ashlee Clark, Bill Estep & Amy Wilson, *Nunn Slits Wrists After Ex-Fiancée Slain*, KENTUCKY.COM (Sept. 11, 2009, 8:00 AM), <http://www.kentucky.com/2009/09/11/930998/nunn-slits-wrists-after-ex-fiancee.html>.

3. See Steve Benen, *Mountaintop-Removal Just Needs Some Rebranding*, POLITICAL ANIMAL (July 29, 2010, 11:30 AM), [http://www.washingtonmonthly.com/archives/individual/2010\\_07/024952.php](http://www.washingtonmonthly.com/archives/individual/2010_07/024952.php).

4. *Id.*

when permission was granted for it to be destroyed.<sup>5</sup> Seems like there is a lot of law, but it's not working. On another page it says, "West Virginia Mine Methane Blast Worst in a Quarter Century!"<sup>6</sup> What happened to the law? (I hope to connect this up. Be patient.)

I'm not a "Dylanologist," or even a devotee.<sup>7</sup> I guess I was invited because I've written a lot of articles dealing with the "true facts" behind Southern murder ballads. You could say that these articles are in the "true crime" genre.<sup>8</sup> Since a tiny bit of my work has dealt with the "true facts" behind old ballads, I hoped to find some Dylan songs I could trace back to "true crime" to relate Dylan to the law in that way. Then, I tried to see what he had to say about the law in his songs. Here, I will look at *Ballad of Hollis Brown*,<sup>9</sup> *Ballad of Donald White*,<sup>10</sup> *The Lonesome Death of Hattie Carroll*,<sup>11</sup> *Hurricane*,<sup>12</sup> and

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5. See Dianne Bady, *Drawn and Quartered: State Two Bits and DEP Fits*, WINDS OF CHANGE NEWSLETTER (Ohio Valley Env'tl. Coal., Huntington, W.V.), Dec. 2008, available at [http://www.ohvec.org/newsletters/woc\\_2008\\_12/article\\_10.html](http://www.ohvec.org/newsletters/woc_2008_12/article_10.html).

6. Kim I. Hartman, *West Virginia Mine Methane Blast Worst in a Quarter Century*, DIGITAL JOURNAL (Apr. 6, 2010), <http://www.digitaljournal.com/print/article/290116>. From Rand Paul, this memorable quote: "Is there a certain amount of accidents and unfortunate things that do happen, no matter what the regulations are?" Bill Estep & Jack Brammer, *Safety Advocate: Paul's Comments on Federal Coal Mine Regulations 'Idiotic'*, KENTUCKY.COM (Aug. 3, 2010, 12:00 AM), <http://www.kentucky.com/2010/08/03/1374129/safety-advocate-pauls-comments.html>.

7. My colleague, Mike Healy, is both. He wanted me to mention him and a song called *Idiot Wind*. BOB DYLAN, *Idiot Wind*, on BLOOD ON THE TRACKS (Columbia Records 1975). I just did. I must admit that my first thought was that *Bob Dylan and the Law* seemed a bit far out. I could hear the folks at the American Bar Association, not to mention ABOVE THE LAW, <http://www.abovethelaw.com>, weighing in about the gap between law teaching and practical legal training. At the University of Kentucky, there is a person who uses Bob Dylan lyrics in her clinical legal instruction, and I have used my ballad studies in my Evidence classes; but if there is a jurisprudence of Bob Dylan, I am not familiar with it. I am hoping to learn something, but I fear it may be like Swift said:

As learned commentators view  
In Homer more than Homer knew

Jonathan Swift, *On Poetry: A Rhapsody*, in THE WORKS OF JONATHAN SWIFT 602 (1902).

8. I am writing these articles for fun. Doing book supplements and serious journal articles gets old after thirty years. I am actually a Professional Responsibility and Evidence person.

9. BOB DYLAN, *Ballad of Hollis Brown*, on THE TIMES THEY ARE A-CHANGIN' (Columbia Records 1964).

10. BOB DYLAN, *Ballad of Donald White*, on BEST OF BROADSIDE 1962-1988 (Smithsonian Folkways Recordings 2000).

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*Percy's Song*.<sup>13</sup> I am throwing in *Talking Bear Mountain Picnic Massacre Blues*<sup>14</sup> too, just for fun. I found a copy of the news story that supposedly inspired it.

Dylan was not concerned with “true facts” as such (as I will point out in my comments, some of his most powerful and effective songs dispensed with “true facts” to tell the story he wanted to tell). In fact, in his early days, after reading the paper or watching a television show, he was supposedly inspired to write some bleak, depressing songs that touched on the failure of the system, and the *failure of the law*. He started out being enamored of Woody Guthrie, so it is not surprising that he would have sung and written songs about a seemingly failed system and ruined lives.<sup>15</sup> We believe in the rule of law, but a lot of times the law does not work very well. When Bob Dylan set out for New York, there were a lot of failures of the law to sing about. There still are.

I grew up in the fifties and sixties, and I remember the “folk revival.” “My friends and I spent many an afternoon”<sup>16</sup> trying to learn to play the banjo and guitar using the Pete Seeger books. We all thought Dylan was cool. I still remember the girl who tried to pass off the *It Ain't Me Babe*<sup>17</sup> lyrics to our aging English teacher as her original poetry. We ratted her out! Anyway, as we drifted into the late sixties, and I drifted off to Vietnam, I put away such things.<sup>18</sup> The

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11. BOB DYLAN, *The Lonesome Death of Hattie Carroll*, on THE TIMES THEY ARE A-CHANGIN' (Columbia Records 1964).

12. BOB DYLAN, *Hurricane*, on DESIRE (Columbia Records 1976).

13. BOB DYLAN, *Percy's Song*, on BIOGRAPH (Columbia Records 1985).

14. BOB DYLAN, *Talkin' Bear Mountain Picnic Massacre Blues*, on THE BOOTLEG SERIES VOLUMES 1-3 (RARE AND UNRELEASED) 1961-1991 (Columbia Records 1991).

15. He was actually a bit young to be truly alienated. You have to teach law at a state university law school for thirty years to be truly alienated.

16. BOB DYLAN, *Bob Dylan's Dream*, on THE FREEWHEELIN' BOB DYLAN (Columbia Records 1963).

17. BOB DYLAN, *It Ain't Me Babe*, on ANOTHER SIDE OF BOB DYLAN (Columbia Records 1964).

18. Incidentally, if you are my age and if you suffer from heart disease like I do, you may take a little comfort in *Last Thoughts on Woody Guthrie*, which is relevant, I guess, because of one of Dylan's lyrics. BOB DYLAN, *Last Thoughts on Woody Guthrie*, on THE BOOTLEG SERIES VOLUMES 1-3 (RARE & UNRELEASED) 1961-1991 (Columbia Records 1991). You may also find comfort in his mention of ordering an aspirin and Coke in *Chronicles*. BOB DYLAN, *Chronicles* 177 (2004). “According to the American Medical Association, controlled, double-blind tests of aspirin and Coca-Cola reveal that the concoction can relieve pain, reduce swelling, thin the blood, and lessen the chance of a heart attack in some men.” *Urban Legends: Coke and As-*

electrified Dylan was not my cup of tea, or maybe I was in a foreign country when all that was going on. I did not know that Dylan had been born again until I started catching up for this conference, and I did not know about the album with the Santa song.<sup>19</sup> I will have nothing further to say about the album with the Santa song.

I guess I got back into the old music that Greil Marcus and others claim inspired Dylan when I married my wife, Virginia, who is from southwest Virginia. Her father was a coal miner, and she grew up in a “coal camp” called Clinchco,<sup>20</sup> in Virginia. She went to Berea College at the age of seventeen, with two dollars in her pocket. Her mother was dying of cancer, and her father, who only had one lung left because of the “black lung,” was in a tuberculosis sanitarium. We go back to southwest Virginia from time to time, and I am familiar with the old towns mentioned in Greil Marcus’s book in which he talks about Dock Boggs and his influence on Bob Dylan.<sup>21</sup> These are not places strange to me like they were to Greil Marcus or to Bob Dylan when he went there. They are pretty much just down the road. Corporations stripped off the trees, then dug up or scraped off the coal, and now they have gone back and put these scary pumps in people’s yards to suck out natural gas. The folks who live there get nothing out of it, of course, except poisoned water to drink. They do not even have gas from the wells in their towns. It goes to neighboring towns. These folks are the involuntary sacrifice for our national well-being, I guess. The law, and there is a lot of it, does not seem to work for them.

Just down the road from one of these pumps is a slate pile. This is the crap that is left behind when you dig up the coal. My wife told me about two little boys who were sent by their alcoholic parents to get a jar of moonshine from an adjacent holler. They got halfway home, but by then they had drunk the whole jar, and they laid down on the slate pile and died from the noxious fumes. No one paid, including the coal company that dumped that stuff literally in the middle of town. The law did not work. I guess that would have made a good Bob Dylan song for the folks in New York City.

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*pirin*, ALL-LIES, <http://www.all-lies.com/legends/business/products/coke/cokeandaspirin.shtml> (last visited Aug. 7, 2011).

19. BOB DYLAN, *Must Be Santa*, on CHRISTMAS IN THE HEART (Columbia Records 2009).

20. “Shifty” Powers of the much decorated “Easy Company” was its most famous citizen.

21. See generally GREIL MARCUS, *THE OLD, WEIRD AMERICA: THE WORLD OF BOB DYLAN’S BASEMENT TAPES* (Picador 5th ed. 2001)(1997).

### I. DYLAN'S TRADITIONAL SONGS

As I went back through Dylan's discography, I was actually surprised by the number of traditional tunes he sang, which some people seem to think he wrote, even though there was often nothing really original there except his voice and style.<sup>22</sup> I came across one post in which an enthusiastic fan gushed something to the effect that only Bob Dylan could have written something as weird as *Love Henry*.<sup>23</sup> Like most of the New York set, he was influenced by Harry Smith's *Anthology of American Folk Music*.<sup>24</sup> In the early sixties, he started to do topical songs, which some people call his protest or finger-pointing songs. These apparently made him a figure in the Civil Rights Movement. As time passed, the stuff that made him unique was not his traditional tunes but his original lyrics that were sometimes set to traditional tunes and sometimes not.

I guess you could say that a lot of Dylan's old songs have something to do with the law. The traditional songs which came from *Old, Weird America* involve murder (mostly violence against women), suicide, and bad judges.

I have had people ask me about the "true facts" behind these songs, and I have to explain to them that some of the traditional songs are traceable to true crime, like *Delia*<sup>25</sup> and *Frankie and Albert*<sup>26</sup>; but, some are not, like *Little Sadie*,<sup>27</sup> and *In Search of Little Sadie*<sup>28</sup> (both variants of *Bad Lee Brown*), and *Pretty Polly*.<sup>29</sup> Dylan got his *Little Sadie* from Clarence Ashley, and his *Pretty Polly* from Dock Boggs.

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22. For an interesting discussion, see Matthew Zuckerman, *If There's An Original Thought Out There, I Could Use It Right Now: The Folk Roots of Bob Dylan*, EXPECTINGRAIN.COM <http://www.expectingrain.com/dok/div/influences.html> (last visited Aug. 7, 2011).

23. BOB DYLAN, *Love Henry*, on WORLD GONE WRONG (Columbia Records 1993). The song is a variation of Child Ballad Number 68, a traditional Scottish folk song. Other versions include *Young Hunting*, *Earl Richard*, *The Willow Tree*, and *Henry Lee*. Pete Seeger's version was *A False Knight Upon The Road*. PETE SEEGER, *A False Knight Upon the Road*, on THE BITTER AND THE SWEET (Columbia Records 1962).

24. See MARCUS, *supra* note 21, at Ch. 4.

25. BOB DYLAN, *Delia*, on WORLD GONE WRONG (Columbia Records 1993).

26. BOB DYLAN, *Frankie and Albert*, on GOOD AS I BEEN TO YOU (Columbia Records 1992).

27. BOB DYLAN, *Little Sadie*, on SELF PORTRAIT (Columbia Records 1970).

28. BOB DYLAN, *In Search of Little Sadie*, on SELF PORTRAIT (Columbia Records 1970).

29. BOB DYLAN, *Pretty Polly*, on THE MINNESOTA TAPES (Wanted Man Music 1961).

These southern tunes are frightful in their misogyny.<sup>30</sup> The African-American community provides similar songs of the type, impossible to connect to a specific murder. Here is one by Robert Johnson:

'F I send for my baby, man and she don't come,  
'F I send for my baby and she don't come,  
All the doctors in Hot Springs sure can't help her none.  
And if she gets unruly, thinks she don't wan' do,  
If she gets unruly and thinks she don't wan' do,  
Take my .32-20 now and cut her half in two.<sup>31</sup>

You can find a lot of wife-shooting and girlfriend-killing in the law reports around the turn of the century (nothing has changed since then). The appellate opinions are rather matter-of-fact about the whole thing.

The prisoner was convicted of the premeditated and deliberate murder of his wife. The killing with a deadly weapon, a shotgun, was admitted. There are no exceptions to the evidence . . . . It is true the provocation which led to the crime was such that it induced the jury to attach to their verdict a recommendation for mercy . . . . That is a matter for the consideration of the Chief Executive of the state.<sup>32</sup>

My point here is that when Dylan does a traditional song like *Little Sadie* or *Love Henry*, or *Seven Curses* about a corrupt judge (a variant of the old "slack your rope hangman" genre)<sup>33</sup> he really is not adding anything profound. He does not even seem to be expressing an opinion. But then he redefined himself, and for a time wrote some very powerful songs about what happens to folks when the system and the Law fail them.

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30. See C. Kirk Hutson, "Whackety Whack, Don't Talk Back": *The Glorification of Violence Against Females and the Subjugation of Women in Nineteenth-Century Southern Folk Music*, 8 J. WOMEN'S HIST. 114, 114-15 (1996). Violence against women is hardly an exclusively southern phenomenon. See Jeffrey S. Adler, "My Mother-in-Law Is To Blame, But I'll Walk on Her Neck Yet": *Homicide In Late Nineteenth-Century Chicago*, 31 J. SOC. HIST. 253 (1997).

31. ROBERT JOHNSON, ROBERT JOHNSON: THE NEW TRANSCRIPTIONS 66 (1986). A .32-20 is a twenty gauge shotgun cut down at the barrel and stock to give you a "sawed-off" thirty-two inches in length. You can hang it up and down your chest with a cord or string for easy concealment under a coat.

32. State v. Stackhouse, 67 S.E. 764, 764-65 (N.C. 1910).

33. See, e.g., JUDY COLLINS, *Anathea*, on JUDY COLLINS #3 (Elektra Records 1963).



One “trad”<sup>34</sup> song stands out for me. That is *The Ballad of Hollis Brown*.<sup>35</sup> For my money, this is one of Dylan’s best. It is reported that the music was derived from the traditional tune *Pretty Polly*,<sup>36</sup> but the lyrics were supposedly inspired by a news story Dylan read<sup>37</sup> about a poor farmer in South Dakota who killed his whole family before killing himself. I guess you can call this a “failure of the system” song, if you want to.

I was not able to find the alleged newspaper article—I cannot relate the “true facts.” Some have suggested that it might have been inspired by Tom Rush’s *Poor Man* or maybe *The Murder of the Lawson Family*.<sup>38</sup> It may also have been based on the Johnson Family massacre in Harris, Minnesota, in 1936.<sup>39</sup> The South Dakota of Hollis Brown could have driven anyone to despair.<sup>40</sup> This kind of thing happened a lot in *Old, Weird America*<sup>41</sup>:

Hamilton Ontario, June 12, 1873 . . . . About 7 o’clock this morning a man named Fields attempted to split open the head of his wife with an ax. She escaped from the house, but not before receiving a cut which will probably prove fatal. Fields then deliberately cut the throats of his two children, aged three and five years. Field had been drinking hard for some time.<sup>42</sup>

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34. Mike Seeger categorized *Hollis Brown* as trad’ (i.e., traditional song). See HOWARD SOUNES, *DOWN THE HIGHWAY: THE LIFE OF BOB DYLAN* 404 (Grove Press 2001).

35. BOB DYLAN, *Ballad of Hollis Brown*, *supra* note 9.

36. See MARCUS, *supra* note 21, at 177.

37. *Id.*; see also *Hollis Brown’s South Dakota*, THE CELESTIAL MONOCHORD (Mar. 15, 2006), [http://www.celestialmonochord.org/2006/03/hollis\\_browns\\_s.html](http://www.celestialmonochord.org/2006/03/hollis_browns_s.html).

38. See Lyle Lofgren, *Hollis Brown Revisited*, THE CELESTIAL MONOCHORD (Apr. 3, 2007), [http://www.celestialmonochord.org/2007/04/hollis\\_brown\\_re.html](http://www.celestialmonochord.org/2007/04/hollis_brown_re.html); see also A CHRISTMAS FAMILY TRAGEDY: LEGENDS OF THE 1929 LAWSON FAMILY MURDERS (Break of Dawn Productions 2007). I guess any time there is a mass murder in the South, someone writes a song. One of the Lawson family members also set up a museum and sold tickets—this is America after all.

39. *Hollis Brown’s South Dakota*, *supra* note 37. There is a website on this creepy crime (wife and seven children slain, and the husband missing—there were rumors of severed heads, and the like). See *75-Year-Old Murder Mystery*, STORIES.I.TELL (July 3, 2008), <http://stories-i-tell.blogspot.com/2008/07/75-year-old-murder-mystery.html>.

40. See *Hollis Brown’s South Dakota*, *supra* note 37.

41. Greil Marcus talks a lot about violence in traditional music, and tells a story about how Dock Boggs scared the hell out of Mike Seeger by telling the latter about Boggs’s plan to kill his (Boggs’s) wife’s entire family. MARCUS, *supra* note 21, at 164–65.

42. *North Carolina Farmer Kills His Wife and Shoots Himself—The Wagner Trial*, N.Y. TIMES, June 13, 1873.

We have just heard of a series of outrages and murders in Alexander County, the most atrocious that ever blackened the annals of crime in North Carolina. It seems that there was living in the Bushy Mountain, near the line dividing Alexander from Wilkes, a family named LAND, consisting of James Land, his wife, daughter and two sons. Our informant states that one of the young men had a disagreement with his sister one day last week, and she left the house and did not return until about night. On attempting to enter the house she was shot and killed by her brother with whom she had quarreled. Her father, mother and two brothers then collected wood and burned the body almost literally to ashes for the purpose of concealing the crime. On Wednesday the inhuman father, mother and brothers were arrested, taken to Taylorsville and confined in the same room of Alexander Jail. On Friday night, the 26th, Mrs. LAND was brutally murdered by her husband and two sons. The father and two sons coolly confessed the murder next morning, and expressed no regrets, though the stark body of the wife and mother lay before them horribly mutilated. The father was during the day separated from the sons, as it was feared he, too, would be murdered.

We learn that the family are fanatical on the subject of religion, and are thought to be insane, which, for the credit of humanity, we hope may be established.<sup>43</sup>

I certainly agree with those who see real poetry in *The Ballad of Hollis Brown*.<sup>44</sup> What I don't get is the notion that "[y]ou can't help but empathize with the protagonist, asking yourself, 'What would I do for my suffering family?'"<sup>45</sup> While some studies have blamed familicide on the economy or on a parent's desire to stop their children's suffering,<sup>46</sup> it's almost impossible to generalize.<sup>47</sup> Most of these

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43. *Horrible Murders in North Carolina—Two Women Killed and the Body of One Burned*, N.Y. TIMES, Mar. 7, 1869, at 3.

44. See Lawrence Epstein, *Rhymes With Bob Dylan*, THE BEST AMERICAN POETRY (Feb. 24, 2010), [http://blog.bestamericanpoetry.com/the\\_best\\_american\\_poetry/2010/02/rhymes-with-bob-dylan-by-lawrence-j-epstein.html](http://blog.bestamericanpoetry.com/the_best_american_poetry/2010/02/rhymes-with-bob-dylan-by-lawrence-j-epstein.html). The last lines—"There's seven people dead on a South Dakota Farm . . . Somewhere in the distance [t]here's seven new people born," DYLAN, *The Ballad of Hollis Brown*, *supra* note 9—may have inspired similar lyrics—"another little baby child is born"—in Elvis Presley's *In The Ghetto*. See ELVIS PRESLEY, *In the Ghetto* (RCA Records 1969).

45. *Ballad of Hollis Brown*, WIKIPEDIA, [http://en.wikipedia.org/wiki/ballad\\_of\\_hollis\\_brown](http://en.wikipedia.org/wiki/ballad_of_hollis_brown) (last visited Aug. 2, 2011).

46. See Catharine Skipp, *Inside the Minds of Family Annihilators*, NEWSWEEK (Feb. 11, 2010, 7:00 PM), <http://www.newsweek.com/2010/02/10/inside-the-minds-of-family-annihilators.print.html>.

people are just nuts,<sup>48</sup> and in any event they “don’t do it because they love you.”<sup>49</sup> If you want to empathize, you are on your own as far as I am concerned.

## II. THE FINGER-POINTING SONGS

Some of Dylan’s topical or finger-pointing songs deal with the same subjects—killers, bad judges, and locked up prisoners. But Dylan is no reporter.<sup>50</sup> He takes a lot of poetic license in his topical or finger-pointing songs. He is not documenting true crime, but is instead going for an effect. I want to talk about just a few of them: *The Ballad of Donald White*,<sup>51</sup> *The Lonesome Death of Hattie Carroll*,<sup>52</sup> and *Hurricane*.<sup>53</sup>

### A. *The Ballad of Donald White*<sup>54</sup>

To me, this one is obscure.<sup>55</sup> I think it appears in one of the bootleg albums. Of the song Dylan reportedly said:

47. See Daniel A. Cohen, *Homicidal Compulsion and the Conditions of Freedom: the Social and Psychological Origins of Familicide in America’s Early Republic*, 28 J. SOC. HIST. 725 (1995); Laura James, *Stop Blaming the Economy for Family Annihilators*, CLEWS, <http://www.laurajames.com/clews/2009/04/on-the-futility-of-comprehending-the-family-annihilator.html> (last visited Aug. 15, 2011).

48. See Sophie Hannah, *What Drives a Father to Destroy His Family?*, MAIL ONLINE (Feb. 6, 2010), <http://www.dailymail.co.uk/home/you/article-1247997/what-drives-father-destroy-family.html>; Violence Policy Center, AMERICAN ROULETTE: MURDER-SUICIDE IN THE UNITED STATES (May 2006).

49. *Family Annihilators Don’t Do It Because They Love You*, THE LAST PSYCHIATRIST, (Feb. 15, 2010) [http://thelastpsychiatrist.com/2010/02/family\\_annihilators\\_dont\\_do\\_it\\_1.html](http://thelastpsychiatrist.com/2010/02/family_annihilators_dont_do_it_1.html).

50. In that regard, he was at the other end of the spectrum from Phil Ochs. Ochs’ first album was *All The News That’s Fit To Sing*, (Elektra Records 1964), and Dylan once suggested that Ochs was a journalist and not a folk singer. See Chris Dahlen, *Phil Ochs: The Best of Phil Ochs: 20th Century Masters*, PITCHFORK.COM (Feb. 4, 2002), <http://pitchfork.com/reviews/albums/5940-the-best-of-phil-ochs-20th-century-masters/>; *Dylan: “Get out of the car, Ochs”*, LIFE OF A REBEL (Aug. 21, 2010), <http://phil-ochs.blogspot.com/2010/08/dylan-get-out-of-car-ochs.html>.

51. DYLAN, *Ballad of Donald White*, *supra* note 10.

52. DYLAN, *The Lonesome Death of Hattie Carroll*, *supra* note 11.

53. DYLAN, *Hurricane*, *supra* note 12. There were others, like “Oxford Town,” “Only a Pawn in Their Game,” (which was not about the Associate Dean; it was about the murder of Medgar Evers,) “The Death of Emmett Till,” and “Who killed Davey Moore?”

54. DYLAN, *Ballad of Donald White*, *supra* note 10.

55. The music supposedly came from a Canadian tune called *Peter Emberley*.

I'd seen Donald White's name in a Seattle paper in about 1959. It said he was a killer. The next time I saw him was on a television set. My gal Sue said I'd be interested in him so we went and watched . . . . Donald White was sent home from prisons and institutions 'cause they had no room. He asked to be sent back 'cause he could find no room in life. He murdered someone 'cause he couldn't find no room in life. Now they killed him and when they did I lost some of *my* room in my life. When are some people gonna wake up and see that sometimes people aren't really their enemies but their victims?<sup>56</sup>

This song is being used in connection with an anti-death penalty documentary called *The Life Penalty*.<sup>57</sup> In any event, the song attacks our overcrowded and failed prison system. Again, the law is not working. It is society's fault, according to Dylan. How the young oversimplify (this is one of his early songs).

But there is some truth here. Lots of folks are making money on the incarceration business, and they support "Tough on Crime" politicians who want to lock everybody up, but resist tax increases to pay for the consequences. Between prisons and Medicaid, there is no money left for education.<sup>58</sup> I need a raise.

### B. *The Lonesome Death of Hattie Carroll*<sup>59</sup>

This is another of Dylan's great poetic pieces. William Zantzinger killed poor Hattie Carroll With a cane that he twirled around his diamond ring finger<sup>60</sup>

Phil Ochs sang his praises of the work in *The Art of Bob Dylan's 'Hattie Carroll,'* an article in *Broadside*.<sup>61</sup> The villain of the piece died in 2009.<sup>62</sup> The song was iconic during the Civil Rights movement

56. THE DYLAN COMPANION 65 (Elizabeth Thomson & David Gutman eds., Da Capo Press 2d. ed. 2001)(1990).

57. THE LIFE PENALTY (Wild Berry Productions Apr. 2008).

58. See generally Robert Lawson, *Turning Jails into Prisons—Collateral Damage from Kentucky's "War On Crime,"* 95 KY. L.J. 1 (2006–2007); Robert Lawson, *Difficult Times in Kentucky Corrections—Aftershocks of a "Tough on Crime" Philosophy,* 93 KY. L.J. 305 (2004–2005).

59. DYLAN, *The Lonesome Death of Hattie Carroll*, *supra* note 11.

60. *Id.*

61. Phil Ochs, *The Art of Bob Dylan's "Hattie Carroll,"* BROADSIDE, July 20, 1964, at 2, available at <http://web.cecs.pdx.edu/~trent/ochs/hattie-carroll.html>.

62. Brent Lancaster, *The Lonesome Death of William Zantzinger*, BRENT'S BLOG, THE TIMES NEWS.COM (Jan. 12, 2009, 1:17 PM) <http://brentsblog.freedomblogging.com/2009/01/12/the-lonsome-death-of-william-zantzinger/628/>.

of the 1960s. The law in Charles County, Maryland did not protect Hattie Carroll from the racism and brutality of the times.

It is interesting to look at the “true facts” of the case, from which Dylan departed considerably. Zantzinger was drunken and boorish, even managing to knock down his own wife. However, the cane was apparently a toy cane.<sup>63</sup> Zantzinger had been disorderly in a restaurant before attending a ball at the Emerson Hotel.<sup>64</sup> He called employees names, using racial epithets, and struck at them with the cane.<sup>65</sup> When Mrs. Carroll was too slow to get him a drink he verbally assaulted her and struck her with the cane.<sup>66</sup> After this disturbing episode she told other employees that she felt “deathly ill.”<sup>67</sup> She was taken to the hospital where she died of a stroke.<sup>68</sup> She was known to have suffered from hypertension.<sup>69</sup> Zantzinger was initially charged with murder, but the charges were reduced to manslaughter on the theory that the caning alone could not have caused her death.<sup>70</sup> One Dylan biographer went so far as to say that the song “verge[d] on the libelous” because of its tenuous grasp of the facts of the case.<sup>71</sup> I doubt if a libel jury would have had much sympathy for William Zantzinger.

### C. *Hurricane*<sup>72</sup>

This song is praised for its powerful theatrical structure—a script with stage directions to boot. I suppose even the very cattle in the fields know that the song is about boxer “Hurricane” Carter’s conviction for the Lafayette Grill triple-murders in Paterson, New Jersey in 1966. Dylan was recruited to write a song that would help free him for his “wrongful” conviction. Dylan raised over \$100,000 for Carter’s defense team at a Madison Square Garden Concert. The song had an amazing effect, and most people take it as the “true facts.”

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63. *See id.*

64. *See* Douglas Martin, *W.D. Zantzinger, Subject of Dylan Song, Dies at 69*, N.Y. TIMES, Jan. 10, 2009, at B8, available at <http://www.nytimes.com/2009/01/10/US/10zantzinger.html>.

65. *See id.*

66. *See id.*

67. *Id.*

68. *See id.*

69. *See id.*

70. *See id.*

71. *See id.* (citing CLINTON HEYLIN, BOB DYLAN: BEHIND THE SHADES REVISITED 124 (2001)).

72. DYLAN, *Hurricane*, *supra* note 12.

Carter's conviction was reversed, but he was convicted again on a retrial. Ultimately, he would be granted yet another trial on the order of Federal Judge H. Lee Sarokin. The prosecution did not pursue a third trial. Many think that Dylan's version, which was based, pretty much, on an interview with Carter, was to the real facts of the case what the movies *Braveheart* and *JFK* were to real history.<sup>73</sup>

I do not have much more to say about the song, since one of my colleagues is going to comment on it extensively.<sup>74</sup>

### III. BAD JUDGE BALLADS

At the close of *The Lonesome Death of Hattie Carroll*, Dylan paints a picture of a sanctimonious judge banging his gavel and laying down equal justice for the "man who killed for no reason," to show that "even the nobles get properly handled."<sup>75</sup> The "ladder of the law has no top and no bottom."<sup>76</sup> That'll be six months! That was a powerful take on disparate sentencing.

#### A. *Percy's Song*<sup>77</sup>

This is a good example of how Dylan could rework a traditional song.<sup>78</sup> I first heard this while preparing for this conference. Apparently it was recorded for *The Times They Are A-Changin'*, but it ended up as an outtake. It is a lovely song, with elements of *The Two Sisters*.<sup>79</sup> Supposedly Dylan got the melody from Paul Clayton's variant called *The Wind and the Rain*.<sup>80</sup> The lyric "turn, turn to the rain and the wind" is repeated, as Dylan tells the story of a friend's car crash and manslaughter conviction, resulting in a Draconian ninety-

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73. There are a number of web pages devoted to attacking the song, as well as the movie version starring Denzel Washington. See, e.g., Mike Cleveland, "*Hurricane*" Leads Me to Question Dylan's Judgment, THE GRAPHIC WITNESS, INC., <http://graphicwitness.com/carter/cleveland.html> (last visited Sept. 12, 2011).

74. See Michael Perlin, *Tangled up in Law: Jurisprudence of Bob Dylan*, 38 FORDHAM URB. L.J. 1433 (2011).

75. DYLAN, *The Lonesome Death of Hattie Carroll*, *supra* note 11.

76. *Id.*

77. DYLAN, *Percy's Song*, *supra* note 13.

78. "The amount of 'inspiration' varies from song to song—it may be a tune, barely altered, or just a fragment from a tune; it might be a verse or a couplet, or just a distinctive turn of phrase." Zuckerman, *supra* note 22.

79. My favorite version of this child ballad was done by Pentangle. PENTANGLE, *Cruel Sister*, on CRUEL SISTER (Transatlantic Records 1970).

80. See CLINTON HEYLIN, BOB DYLAN: BEHIND THE SHADES REVISITED 146 (2001).

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nine year sentence.<sup>81</sup> It was an accident, but the cold judge does not care.

I have lived in Lexington, Kentucky for thirty years, and in that time, there have been two Commonwealth Attorneys. I know them both well. The first thought that deaths associated with DUIs were for the civil side of the courts. The current prosecutor, and many others in Kentucky, is likely to go for a murder charge. What is a proper charge and sentence? I must say, I am glad that I am not a judge, or a prosecutor for that matter.

**B. *Talkin' Bear Mountain Picnic Massacre Blues*<sup>82</sup> (how I finally found some "true facts" and a source for a song).**

My understanding is that this song was one of his earliest, and it was a topical song about a real event. Supposedly Noel Stookey (Paul Stookey of Peter Paul and Mary) handed Dylan a copy of the *New York Herald Tribune* that contained a story about a Father's Day boat cruise and picnic gone bad.<sup>83</sup> Dylan had come from Minnesota, and had only been in New York for about a year. Much to Stookey's edification and delight, the next day Dylan produced his Woody Guthrie style talkin' blues about the fiasco, which is far from blue. His "facts" are wildly exaggerated, with "6,000 people fighting," the boat "sinking down in the water," and "people splattered about the ground. Some were on land, some were afloat . . ." <sup>84</sup> What happened was that a group from Harlem sponsored a cruise up the Hudson for a Father's Day picnic at Bear Mountain. Somebody counterfeited a mess of extra tickets, and 2800 would-be picnickers tried to board the boat. Actually, there probably would have been enough room for everybody, but the boat, the Hudson Bell, was late and too many people were allowed out on the pier. When word got out that someone had counterfeited tickets, and that some people would not be allowed to board, the mood of the crowd got ugly and there was a stampede to board—a lovely mob scene with lots of pushing and shoving and a little crushing. There were a few fires, too. If you be-

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81. DYLAN, *Percy's Song*, *supra* note 13.

82. DYLAN, *Talkin' Bear Mountain Picnic Massacre Blues*, *supra* note 14.

83. See ROBERT SHELTON, NO DIRECTION HOME: THE LIFE AND MUSIC OF BOB DYLAN 109 (rev. ed. 2011); HOWARD SOUNES, DOWN THE HIGHWAY: THE LIFE OF BOB DYLAN 94 (2001)

84. DYLAN, *Talkin' Bear Mountain Picnic Massacre Blues*, *supra* note 14.

lieve what you read on the Internet, a bunch of people were killed<sup>85</sup>— but they weren't. Less than a dozen people were taken to the hospital, and they were all released the same day, none seriously injured. As a massacre it was rather disappointing. So I guess it's okay to enjoy the song. The song ends this way:

Now it don't seem to me so very funny,  
 What some people will do for money.  
 There's a new gimmick every day,  
 To take somebody's money away.  
 I think we oughta send all them people on a boat,  
 Send 'em up to Bear Mountain.<sup>86</sup>

Looking at my "201K," I have some candidates in mind. Of course, there are those who have Bob Dylan in mind as a candidate.<sup>87</sup>

**TALK'N FORDHAM UNIVERSITY LAW SCHOOL BOB DYLAN AND  
 THE LAW CONFERENCE BLUES<sup>88</sup>**

I was *Read'n the Paper* the other day,  
 same *Scary Stuff* I'm sorry to say.  
*Rand Paul* yapp'n  
 what a *Clown*,  
 an' former *Governor's Son* shot his *Girlfriend Down*.  
*Mountains Blown Up*,  
*Poisoned Water Courses*,

85. See Oolong, *Talkin' Bear Mountain Picnic Massacre Blues*, EVERYTHING2.COM (Aug. 21, 2001), <http://everything2.com/title/talkin%2527+bear+mountain+picnic+massacre+blues> ("[The song] was scandalously based (albeit loosely) on a real incident in which rather a lot of people died. This may well be the main reason it didn't make it into "The Freewheelin' Bob Dylan," for which it was originally recorded . . .").

86. DYLAN, *Talkin' Bear Mountain Picnic Massacre Blues*, *supra* note 14.

87. See Michael Musto, *Joni Mitchell Slags off on Bob Dylan and Madonna*, VILLAGE VOICE (Apr. 26, 2010, 12:30 PM), [http://blogs.villagevoice.com/dailymusto/archives/2010/04/joni\\_mitchell\\_s.php](http://blogs.villagevoice.com/dailymusto/archives/2010/04/joni_mitchell_s.php); Melinda Newman, *Mitchell: Dylan's a 'fake'*, TODAY (Apr. 23, 2010, 3:35 PM), <http://today.msnbc.msn.com/id/36741933/ns/today-entertainment/t/mitchell-dylans-fake/>.

88. By Professor Underwood, after reading the newspaper in Lexington, Kentucky shortly before his departure for the Conference, to the tune of Dylan's *S. BOB DYLAN*, *Subterranean Homesick Blues*, on BRINGING IT ALL BACK HOME (Columbia Records 1965). Italicized Lyrics put on cards and dropped in the manner of Dylan's *Subterranean Homesick Blues* video, available at [http://www.youtube.com/watch?v=d\\_ujAXxNxU0](http://www.youtube.com/watch?v=d_ujAXxNxU0).



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Leav'na *Moonscape* behind,  
for build'n *Weird Golf Courses*.  
Hope a *Hard Rain* don't fall.  
If that ain't enough to  
*Get you Pack'n*,  
*Ken Feinberg* his  
*Affidavit* is *Retract'n*.  
Well, just when things were get'n *Real Dark*,  
*Sam Levine*  
invited me to *New York*.  
*Jurisprudes* talk'n about Bob Dylan.  
Sounds crazy to me,  
but I'm still goin'.  
*Goodbye Lexington*.  
*Hello New York*.  
*Lincoln Center*.  
Green pastures of *Fordham University*.  
*BEDBUGS!*  
Wait a minute, I got one more.  
It's whatcha call a *res ipsa loquitor*.  
*COBRA!*