

2012

WHY THE LAW NEEDS MUSIC: REVISITING NAACP V. BUTTON THROUGH THE SONGS OF BOB DYLAN

Renee Newman Knake

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WHY THE LAW NEEDS MUSIC: REVISITING *NAACP V. BUTTON* THROUGH THE SONGS OF BOB DYLAN

*Renee Newman Knake**

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INTRODUCTION

The law needs music,¹ a truth revealed by revisiting the United States Supreme Court's opinion in *NAACP v. Button*² through the

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1. I am certainly not the first to identify connections between law and music. See, e.g., Desmond Manderson & David Caudill, *Modes of Law: Music and Legal Theory—An Interdisciplinary Workshop Introduction*, 20 *CARDOZO L. REV.* 1325, 1325-26 (1998-1999) (citing articles on law and music from Jerome Frank, Richard Posner, and Jack Balkin); see also Randy Lee, *The Lawyer as Poet Advocate: Bruce Springsteen and the American Lawyer: An Introduction*, 14 *WIDENER L.J.* 719, 726

songs of Bob Dylan and the play *Music History*.³ The Court decided *Button* in 1963,⁴ just a few months before the debut of Dylan's acclaimed album, *The Freewheelin' Bob Dylan*.⁵ In *Button*, the Court held that the First Amendment protected the National Association for the Advancement of Colored People's ("NAACP") legal assistance to individuals for the enforcement of constitutional and civil rights. The decision was a victory for the NAACP, yet success in the courtroom did not translate entirely to success on the ground. Indeed, in the same year, NAACP Mississippi Field Secretary Medgar Evers was assassinated,⁶ and the Birmingham Sixteenth Street Baptist Church was bombed.⁷ These events serve as reminders of law's inadequacies, in that the constitutional protection of legal services in *Button* did little to stop the needless loss of life and violence that was characteristic of racial desegregation efforts. Not only did tragedy persist, but the NAACP's long-term vision for racial equality has never been completely realized. Playwright Sandra Seaton focuses on the law's inadequacies in her drama *Music History*, also set in the turbulence of 1963. Her characters endure the law's failings firsthand when a University of Illinois student, Walter, the beloved of Etta, is killed during his work on the voter rights campaign in Mississippi.

(2005); Sheila Simon, *Jazz and Family Law: Structures, Freedoms and Sound Changes*, 42 IND. L. REV. 567, 567 (2009).

2. 371 U.S. 415 (1963).

3. See SANDRA SEATON, *MUSIC HISTORY* (2010) (on file with author).

4. It has been said that "[n]o individual person had more influence than Dylan on audiences in the 1960s." LAWRENCE J. EPSTEIN, *POLITICAL FOLK MUSIC IN AMERICA FROM ITS ORIGINS TO BOB DYLAN* 181 (2010). Thus it seems only fitting that his music be explored in the context of the *Button* decision. See also MIKE MAROUSEE, *CHIMES OF FREEDOM: THE POLITICS OF BOB DYLAN'S ART* 4 (2003) ("Few ages of social change have been as well-served artistically as the American sixties were by Dylan. His songs give us the political/cultural moment in all its dynamic complexity:").

5. *THE FREEWHEELIN' BOB DYLAN* (Columbia Records 1963), was a commercial success, reaching twenty-three on the U.S. charts, and eventually going platinum. See RECORDING INDUSTRY ASSOCIATION OF AMERICA (RIAA), http://www.riaa.com/goldandplatinumdata.php?table=SEARCH_RESULTS&artist=Bob%20Dylan&format=ALBUM&go=Search&perPage=50 (last visited May 17, 2011). Rolling Stone listed it as number ninety-seven among the five-hundred greatest albums of all time in 2003. See *500 Greatest Albums of All Time*, ROLLING STONE, <http://www.rollingstone.com/music/lists/500-greatest-albums-of-all-time-19691231/the-freewheelin-bob-dylan-bob-dylan-19691231> (last visited Aug. 1, 2011).

6. *NAACP History: Medgar Evers*, NAACP, <http://www.naacp.org/pages/naacp-history-medgar-evers> (last visited May 17, 2011).

7. *Six Dead After Church Bombing*, WASH. POST, Sept. 16, 1963, available at <http://www.washingtonpost.com/wp-srv/national/longterm/churches/archives1.htm>.

Music of the 1960s captured the struggle inherent in attempts to achieve equality when the law proved impotent, particularly as evidenced by Bob Dylan's work in 1963. This Essay, written for the Fordham University School of Law *Bob Dylan and the Law Symposium*, offers three connections between the law and music using the work of Dylan as an illustration. First, Dylan's music criticizes the existing cultural and legal regime in a manner that empowers social change in the wake of the law's failure (though, admittedly, Dylan may not have intended such a result). Second, while both the legal opinion and the songs memorialized the history of the civil rights era, the music is unique in its continued influence on modern culture. Third, *Button* and Dylan remind us about the importance of exercising our free speech rights, whether the speech involves offering legal assistance to minorities shut out from the political process at the ballot box, or singing a song silenced by record and television network executives.

In short, Dylan shows us why the law needs music.

This Essay proceeds in three parts. Part I opens with a summary of the Court's decision in *NAACP v. Button*, focusing particularly on the expanded understanding of First Amendment rights related to access to the law that flow from this legal opinion. Part II explains the inspiration for this Essay, Seaton's play *Music History*, which reveals the influence of music on law and culture during the civil rights movement. Part III examines the intersections between *Music History*, the *Button* case, and Dylan's songs of 1963 to demonstrate the importance of music to the law.

I. NAACP v. BUTTON

NAACP v. Button, a seminal case in the civil rights movement, established that the NAACP's assistance to individuals in the enforcement of constitutional and civil rights is protected by the First Amendment.⁸ The case was one of many brought by a NAACP lawyer, Robert Carter, in an effort to end segregation.⁹ The NAACP

8. *NAACP v. Button*, 371 U.S. 415, 444 (1963).

9. *Id.* at 420. *See also* *NAACP v. Alabama*, 357 U.S. 449 (1958) (holding that freedom of association fell under protection of the Fourteenth Amendment's right to privacy, so group did not have to disclose membership lists to state without compelling justification); *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (overturning "separate but equal" doctrine, ending segregation in public schools); *Sweatt v. Painter*, 339 U.S. 629 (1950) (holding that student had right to legal education equivalent to that available to students of other races where it was not available in a separate school); *Sipuel v. Bd. of Regents*, 332 U.S. 631 (1948) (per curiam) (holding that the Equal Protec-

challenged a Virginia statute that banned the “improper solicitation of any legal or professional business,” which was understood to forbid organizations such as the NAACP from soliciting prospective clients.¹⁰ The NAACP was in the practice of meeting with parents of students discriminated against by Virginia public schools and supplying the parents with forms to request the NAACP’s assistance in litigating their claims.¹¹ Virginia’s highest court held that the NAACP was in violation of the state law.¹²

On appeal to the Supreme Court, the decision was reversed.¹³ In a 6-3 opinion authored by Justice Brennan, the Court held that the activities of the NAACP staff and lawyers are modes of expression and association protected by the First Amendment.¹⁴ Further, the Court observed that in the context of the NAACP’s objectives, litigation is a “form of political expression” because it may be the only mechanism for a minority person, excluded from the ballot box and the legislative process, to express grievances and enforce rights.¹⁵

II. ON *MUSIC HISTORY* AND THE LAW

Before exploring the connections between Dylan’s music and the Supreme Court’s decision in *Button*, let me say a few words about the inspiration for this Essay. My inquiry into music’s intersection with the law was sparked by the play *Music History*, created by Sandra Seaton, a playwright and librettist, who authored the script during her

tion Clause required a state-run law school to provide a legal education for all students regardless of race).

10. *Button*, 371 U.S. at 425-26. The professional conduct of lawyers is regulated by state courts, and limitations on solicitation and other efforts to obtain clients were not uncommon during that era. For example, at that time, all fifty states also banned any advertising by lawyers. Though a blanket ban on advertising was struck down on First Amendment grounds by the Supreme Court in *Bates v. Arizona State Bar*, 433 U.S. 350 (1977), many jurisdictions maintain regulations on client solicitation and advertising which have been upheld by the Court. *See, e.g.*, *Florida State Bar v. Went for It, Inc.*, 515 U.S. 618 (1995) (upholding a state’s thirty-day ban on the solicitation of accident victims by lawyers).

11. *Button*, 371 U.S. at 421.

12. *Id.* at 425-26.

13. *Id.* at 428-29.

14. *Id.*

15. *Id.* at 429-30 (“Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts. Just as it was true of the opponents of New Deal legislation during the 1930’s, for example, no less is it true of the Negro minority today. And under the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.”).

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year as a writer-in-residence at the Michigan State University College of Law.¹⁶ Seaton's drama focuses on the role of music in the lives of African-American characters who were active in the civil rights movement during 1963. One of the main characters, Walter, has just returned to the University of Illinois campus after working with the Student Non-Violent Coordinating Committee ("SNCC")¹⁷ on a voter registration campaign in Mississippi. He is preparing to go back despite protests from his girlfriend, Etta. The two endeavor to reconcile "social pressures and racial segregation as they come to terms with themselves and each other in this coming-of-age drama that connects the personal and the political, the desire for personal fulfillment and a commitment to social change."¹⁸

Music becomes a central force throughout the play, both in cultivating the relationship between Walter and Etta and their comprehension of the world around them, and also in facilitating the audience's understanding of the ways in which the law can fail. These ideas are poignantly conveyed in a scene where Walter is preparing to say goodbye to Etta, heading back to Mississippi to continue work on the SNCC voter registration campaign. Walter is engaged in a heated conversation with Etta:

Walter: You think this is easy, Etta. You know I don't want to go. I don't want to leave you. Not now.

Etta: But you have to play by the rules, all your great rules.

Walter: Look, Etta, I don't make the rules. They're not mine to break. Even if I could, like some kind of king on a throne, it just wouldn't be right.

Etta: . . . Leave me here. Go off and fight your great crusade. Go on. Keep running off copies of the Mississippi constitution. Who's gonna read it anyway? You and . . . oh yeh. Larry. That's right.

16. Sandra Seaton served as the inaugural Writer-in-Residence at the Michigan State University College of Law during 2010-2011. She is the author of *The Bridge Party*, *A Bed Made In Heaven*, and *From the Diary of Sally Hemmings*. See *Sandra Seaton Biography*, CENTRAL MICHIGAN UNIVERSITY, http://www.grad.cmich.edu/seaton/Sandra_Seaton.htm (last visited May 18, 2011).

17. The SNCC, founded in 1960, was a grassroots organization started by college students engaging in sit-ins to protest against racial segregation. See *What is SNCC?*, SNCC, <http://www.sncc50thanniversary.org/sncc.html> (last visited Sept. 6, 2011). By using non-violent, direct confrontation and voter registration campaigns in the South, the SNCC contributed to the end of racial segregation. See *id.*

18. Playbill, MUSIC HISTORY, (on file with author).

Nobody else. Except, Larry, wait a minute, that's right. Larry can't see.¹⁹

The audience knows, from an exchange between Walter and Etta earlier in the scene, that Larry was blinded in a childhood accident.²⁰ The audience realizes, as does Etta, that the only one who will *read* the law *cannot see*. At this moment in the play Etta, perhaps unwittingly, divulges one of the law's haunting realities: at times, even those who read the law cannot see.

This scene from *Music History* exposes how the law may exist on the books, and the law may be read, but this is futile if the law is not seen—that is, if the law is not applied and enforced. The *NAACP v. Button* decision offers another example of one who reads the law but cannot see. For example, consider Justice Brennan, author of the majority opinion in *Button*.²¹ He repeatedly sided with the rights of minorities and the oppressed in his legal opinions.²² And yet he refused to hire female clerks to work in his chambers.²³ In the 1960s, he said he might have to resign if a woman became a Supreme Court Justice.²⁴ He did not hire a female clerk until 1974, and only then because of threats that the Court would be sued for hiring discrimination.²⁵ Justice Brennan could read the law, yet in his own chambers, as Etta puts it, he could not *see*. Or consider the University of Mississippi Law School, where NAACP leader Medgar Evers was denied admittance because of his race. Here was an institution devoted to reading the law and yet it, too, could not *see*.

Seaton's drama sits at a distinctive intersection of history, law, music, and fiction. I happened to read the script for the first time while

19. SEATON, *supra* note 3, at 43.

20. SEATON, *supra* note 3, at 40.

21. NAACP v. Button, 371 U.S. 415, 415 (1963).

22. See SETH STERN & STEPHEN WERMIEL, JUSTICE BRENNAN: LIBERAL CHAMPION xiii (2010) ("Brennan interpreted the Constitution expansively to broaden rights as well as create new ones for minorities, women, the poor, and the press. His decisions helped open the doors of the country's courthouses to citizens seeking redress from their government and ensured that their votes would count equally on Election Day.").

23. See *id.* at 386-87 ("When Yale Law School Dean Louis Pollak wrote him in September 1966 to say that he would begin looking for 'the appropriate young man (or woman)' as his clerk, Brennan replied, 'While I am for equal rights for women, I think my prejudices are still for the male.'").

24. See *id.* at 388 ("If a woman ever got nominated to the Court, Brennan predicted, he might have to resign.").

25. See *id.* at 401 ("Barnett called Berzon . . . with the news that she would be clerking for Brennan after all beginning in the fall of 1974. He did not mention that she would be Brennan's first female clerk.").

also writing an article about *NAACP v. Button*.²⁶ I was immediately struck by the intersections between the play and the legal opinion. As I read her play, I was reminded of music's role in history, and I wondered about its influence on the law.

Next, I began researching the music written and performed in 1963, finding none more prominent than Bob Dylan's work.²⁷ Thinking about the songs that Bob Dylan wrote and performed during that year caused me to reexamine the *Button* opinion in several ways. His music and this legal decision intersect not only in historical time, but also in their pursuit of justice — whether Dylan intended it or not. He famously disclaimed any motivations as a protestor or reformer,²⁸ though his music certainly inspired protest and reform. Indeed, Seaton's Walter might very well have attended the July 6, 1963, SNCC voter rights rally in Greenwood, Mississippi, where Bob Dylan performed *Only a Pawn in Their Game*.²⁹ Walter also likely would have greatly appreciated the consequences of the Court's decision in *NAACP v. Button*.

26. See Renee Newman Knake, *Attorney Advice and the First Amendment*, 68 WASH. & LEE L. REV. 639, 665 (2011) (relying upon *NAACP v. Button* to support argument that attorney advice warrants First Amendment protection). I also rely heavily on *Button* in a forthcoming article where I argue that corporations hold a First Amendment right to own and invest in law firms. See Renee Newman Knake, *Democratizing the Delivery of Legal Services: On the First Amendment Rights of Corporations and Individuals*, 73 OH. ST. L.J. (forthcoming), available at <http://ssrn.com/abstract=1800258>.

27. See discussion *supra* note 4 and accompanying text. See also EPSTEIN, *supra* note 4, at 181. Epstein calls "Dylan's presence in the 1960s . . . enormous," citing statistics from a survey conducted about the influence of Dylan. *Id.* He notes that "72 percent of the respondents asserted their admiration for and his influence on them. Of the respondents, 69 percent used to quote Dylan's songs." *Id.* (citation omitted). Regarding "the reasons for Dylan's influence: Those who say they admired and were influenced by Dylan are quick to mention either the political aspects of his songs or his open expression of personal sensitivity." *Id.* (citation omitted).

28. See, e.g., MAROUSEE, *supra* note 4, at 55. According to Marqusee, Dylan "introduced an early performance [of *Blowin' In the Wind*] with the caveat: 'This here ain't a protest song or anything like that, cause I don't write protest songs . . . I'm just writing it as something to be said, for somebody, by somebody.'" (citation omitted).

29. See EPSTEIN, *supra* note 4, at 160 ("On July 6, Dylan appeared in Greenwood, Mississippi, at a voter rights rally and first performed 'Only a Pawn in Their Game,' about the murder of civil rights organizer Medgar Evers."). See also MAROUSEE, *supra* note 4, at 74 (A few weeks after the assassination of Medgar Evers, "the twenty-one-year-old Bob Dylan arrived in Greenwood, Mississippi, to give his support to a SNCC voter registration drive").

III. REVISITING *NAACP v. BUTTON* THROUGH THE SONGS OF BOB DYLAN, OR WHY THE LAW NEEDS *MUSIC HISTORY*

Seaton's *Music History* intersects the theater with music, history, and the law. Her work reminds us why it can be important, at times, to look beyond a legal opinion to understand the law's successes, and also to address law's inadequacies. In the same ways that literature and the theater can illuminate the law, so can music.³⁰ Examining the music history surrounding *NAACP v. Button*, in particular the work of Dylan, demonstrates why this is so. First, many of Dylan's songs capture the struggle inherent in efforts to achieve equality, whether as a challenge to the status quo or as an impetus for change. Second, his music preserves the history of *Button* for modern culture in a way that the legal opinion does not and, perhaps, even delivers a form of justice in the aftermath of the law's failure. Third, *Button* and Dylan remind us about the importance of exercising our First Amendment rights, whether the speech is in the form of litigation or song. Several Dylan songs that were prominent during the year the Court decided *Button* illustrate these points, including *Blowin' In the Wind*,³¹ *Only a Pawn in Their Game*,³² and *The Lonesome Death of Hattie Carroll*.³³

30. As I have written elsewhere, literature can be a worthy tool for reconciling ethical dilemmas with one's role in the law. See, e.g., Renee Newman Knake, *Beyond Atticus Finch: Lessons on Ethics and Morality from Lawyers and Judges in Postcolonial Literature*, 32 J. LEGAL PROF. 37, 65 (2008) [hereinafter Knake, *Beyond Atticus Finch*] (“[L]iterature presents one possible tool in our effort to identify and reconcile the tension between lawyers’ obligations to the law and lawyers’ own moral compasses.”); Renee Newman Knake, *Resolving Ethical Dilemmas in James Welch’s The Indian Lawyer*, 33 AM. INDIAN L. REV. 13, 29 (2008-2009) (“The use of literature to analyze legal ethics issues sets the reader free to imagine and to be creative in ways that traditional law school instruction often ignores, if not outright discourages.”). For further discussion of ways that other scholars have utilized literature, music, and other fields to explore the law, see Knake, *Beyond Atticus Finch*, *supra*, at 42 and Manderson & Caudill, *supra* note 1, at 1325-26.

31. BOB DYLAN, *Blowin' in the Wind*, on THE FREEWHEELIN' BOB DYLAN (Columbia Records 1963). Peter, Paul and Mary performed Dylan's *Blowin' in the Wind* at the 1963 March for Jobs and Freedom in Washington, D.C. William Ruhlman, *Peter, Paul and Mary—A Song to Sing All Over This Land*, GOLDMINE, Apr. 12, 1996, available at <http://www.peterpaulandmary.com/history/f-ruhlmann1.htm>. Dylan sang two songs, *With God on Our Side* and *Only a Pawn in Their Game*. See *Tour*, BOB DYLAN.COM, <http://www.bobdylan.com/tour/1963-08-28-lincoln-memorial-march-washington-washington-rights-march> (last visited Sept. 6, 2011).

32. BOB DYLAN, *Only a Pawn in Their Game*, on THE TIMES THEY ARE A-CHANGIN' (Columbia Records 1964). It was first performed on July 6, 1963. See *Songs*, BOB DYLAN.COM, <http://www.bobdylan.com/songs> (last visited May 10, 2011). He has performed it only six times, the last on October 10, 1964. See *id.* The album went gold in November 1994. See RIAA, *supra* note 5.

Additionally, Dylan was censored from performing *Talkin' John Birch Paranoid Blues*³⁴ on *The Ed Sullivan Show*. I take up a brief discussion of these songs below and explore their intersections with Seaton's *Music History* and *NAACP v. Button*.

A. Music's Influence in Advancing Law: *Blowin' in the Wind*³⁵

Yes, 'n' how many years can some people exist
 Before they're allowed to be free?
 Yes, and how many times can a man turn his head,
 Pretending he just doesn't see?³⁶

Music of the 1960s served as a catalyst in the civil rights movement. While perhaps not as instrumental as television in shifting popular culture,³⁷ music "was no longer an intermission in the serious politics; it was a motivator, an explainer, and as much a binding force as ideology or program. Above all, it was a weapon in the ceaseless battle against white terror that had to be waged town by town throughout the South."³⁸ Dylan's music is known for the "difficult and troubling

33. BOB DYLAN, *The Lonesome Death of Hattie Carroll*, on THE TIMES THEY ARE A-CHANGIN' (Columbia Records 1964). The song was first performed on October 26, 1963. See *Songs*, BOBDYLAN.COM, *supra* note 32. The album went gold in November 1994. See RIAA, *supra* note 5.

34. BOB DYLAN, *Talkin' John Birch Paranoid Blues*, on THE BOOTLEG SERIES VOLUMES 1-3 (RARE AND UNRELEASED) 1961-1991 (Columbia Records 1991). *Talkin' John Birch Paranoid Blues* was written by Dylan in 1962 and performed only thirteen times, the last on February 12, 1965. See *Songs*, *supra* note 32. The album went gold in August 1997. See RIAA, *supra* note 5.

35. DYLAN, *Blowin' in the Wind*, *supra* note 31.

36. *Id.*

37. But see Louis Cantor, *Bob Dylan and the Protest Movement of the 1960's: the Electronic Medium is the Apocalyptic Message*, in CONCLUSIONS ON THE WALL: NEW ESSAYS ON BOB DYLAN 78 (Elizabeth M. Thomson ed., 1980). Cantor observes that

[w]hile a great deal has been written about how the coverage of protest demonstrations by television cameras actually altered considerably the very event that they were covering, very little has been said to suggest that the same kind of thing may have occurred when Dylan's songs radically altered the consciousness of those who were already politically inclined to participate in those demonstrations."

Id.

In other words, "[s]ince music was so important to the whole youth movement, many were no doubt converted to Dylan's message because they were originally attracted to his songs. In short, if with television, the medium altered the message, with Dylan's songs, the medium frequently became the message. *Id.*

38. MAROUSEE, *supra* note 4, at 44 ("Song took on a special importance in the civil rights movement because of the African American musical tradition — already well-adapted to collective expressions of suffering and celebration — as well as the con-

questions of the possibility of overcoming or opposing the law [that] run through his work.”³⁹ This is particularly evident in his work during 1963, perhaps best epitomized by the lyrics of *Blowin’ in the Wind*.⁴⁰ As one commentator has observed:

The song is delicately poised between hope and impatience. It is filled with a sense that a long-awaited transformation is both imminent and frustratingly out of reach. The ambiguous refrain—“the answer, my friend, is blowin’ in the wind”—gropes for the unnamable. In this it touches a mood explored in Dylan’s work through the rest of the decade. The “answer” is here, and not here; it exists, a force felt all around us, but remains elusive.⁴¹

In many ways, Dylan’s music is emblematic of the NAACP’s success in moving the law forward. It is also representative of ways that the law (no matter how it may evolve) at times can never redress the wrongs and injustices that have been endured and, in many ways, continue to pervade our society.

Song became an important mechanism for change,⁴² in part because singing “was likely to remove doubts activists held about the propriety of civil disobedience and cast the civil rights movement into terms appealing to observers of the struggle as well.”⁴³ Similarly, songs that emerged during “the civil rights movement were examples of purposeful communication that enabled civil rights activists to set forth a definition of themselves and their undertaking that gave impetus to movement activities.”⁴⁴ According to one of Dylan’s biographers, however, “[w]hat spurs his writing is racist violence, the brutality and madness of the white backlash.”⁴⁵ In other words, “Dylan himself never saw the song as a rallying cry but as a challenge—to the es-

scious efforts of political activists, black and white, to place music at the service of the movement.”).

39. Adam Geary, *Outlaw Blues: Law in the Songs of Bob Dylan*, 20 CARDOZO L. REV. 1401, 1401 (1998-1999).

40. DYLAN, *Blowin’ in the Wind*, *supra* note 31.

41. MAROUSEE, *supra* note 4, at 55.

42. See, e.g., KERRAN L. SANGER, “WHEN THE SPIRIT SAYS SING!”: THE ROLE OF FREEDOM SONGS IN THE CIVIL RIGHTS MOVEMENT 8 (1995) (“Such willingness to change self-definition is an important step toward doing so but the activists were also faced with finding a vehicle for such change. They argued for singing as that vehicle.”).

43. *Id.* at 156.

44. *Id.* at 3.

45. MIKE MAROUSEE, WICKED MESSENGER: BOB DYLAN AND THE 1960S 52 (2005).

tablishment and the movement, to the apathetic and the active.”⁴⁶ On writing *Blowin’ in the Wind*,⁴⁷ Dylan observed, “I still say that some of the biggest criminals are those that turn their heads away when they see wrong and they know it’s wrong. I’m only 21 years old and I know that there’s been too many wars You people over 21 should know better.”⁴⁸ For Dylan, “[t]he first way to answer these questions in the song is by asking them. But lots of people have to first find the wind.”⁴⁹

B. Critiquing and Redeeming the Law: *Only a Pawn in Their Game*⁵⁰ and *The Lonesome Death of Hattie Carroll*⁵¹

Today, Medgar Evers was buried from the bullet he caught
 They lowered him down as a king
 But when the shadowy sun sets on the one
 That fired the gun
 He’ll see by his grave
 On the stone that remains
 Carved next to his name
 His epitaph plain:
 Only a pawn in their game.⁵²

William Zanzinger killed poor Hattie Carroll . . .
 In the courtroom of honor, the judge pounded his gavel
 To show that all’s equal and that the courts are on the level . . .
 And handed out strongly, for penalty and repentance
 William Zanzinger with a six-month sentence.⁵³

There were many important legal decisions involving the NAACP’s work, but of course, *NAACP v. Button* was among the most critical in deploying litigation as a mechanism for achieving social justice in the American system of democracy. In writing about the legacy of the NAACP, William Eskridge has observed that one of the most significant twentieth century changes in our nation’s Constitution was not due to an amendment or some new discovery of original intent by the Supreme Court; rather, the constitutional protection

46. *Id.* at 61.

47. DYLAN, *Blowin’ in the Wind*, *supra* note 31.

48. Album Liner Notes, THE FREEWHEELIN’ BOB DYLAN (Columbia Records 1963).

49. *Id.*

50. DYLAN, *Only a Pawn in Their Game*, *supra* note 32.

51. DYLAN, *The Lonesome Death of Hattie Carroll*, *supra* note 33.

52. DYLAN, *Only a Pawn in Their Game*, *supra* note 32.

53. DYLAN, *The Lonesome Death of Hattie Carroll*, *supra* note 33.

of individual rights was due to large, identity based social movements like the NAACP.⁵⁴ As Susan Carle explains, the case “essentially legalized the public impact litigation techniques that are at the core of [our modern] conceptions of how to use law as an instrument for social change.”⁵⁵ Yet one must also acknowledge, as Professor Eskridge does, that while the NAACP is considered the “defining experience for [identity-based social movements] in the United States” it also has been the “most violently oppressed, most dramatically resistant, and most tragically unsuccessful. The normative triumph of the civil rights movement was” — in his words — “the greatest yet most incomplete.”⁵⁶ The drama, *Music History*, and the songs of Bob Dylan reveal these inconstancies in moving ways by exposing how law can be an incomplete remedy to injustice (even the perpetrator of injustice) while at the same time, perhaps, offering an alternative sort of remedy.

Both the legal opinion and the songs memorialized the history of the civil rights era, yet the music is unique in its continued influence in modern popular culture. Two songs written and first performed by Dylan in 1963 tell the stories of racist murders: one the famed leader, NAACP Mississippi Field Secretary Medgar Evers, and one an unknown barmaid. In both, Dylan takes the legal system to task, criticizing a structure that purports to be impartial but in reality is not. Yet, he does more than merely offer a critique, as his lyrics also expose the complexity and multi-layered nature of the law’s failings. Sandra Seaton’s *Music History* also tells the story of a murder, as Walter is killed at the play’s end by a bombing during a voting rights rally in Mississippi. She also holds the legal and cultural establishment accountable, offering a harsh assessment of the law while simultaneously delivering an element of justice that the law fails to achieve.

Medgar Evers was assassinated on June 12, 1963, in Jackson, Mississippi, the same day President Kennedy announced his plan to press

54. See William Eskridge, *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062, 2064 (2002). Eskridge explains: “Rarely did important constitutional doctrine or theory change because of formal amendments to the document’s text, and rarer still because scholars or judges ‘discovered’ new information about the Constitution’s original meaning.” *Id.* Rather, Eskridge’s “thesis is that most twentieth century changes in the constitutional protection of individual rights were driven by or in response to the great identity-based social movements (‘IBSMs’) of the twentieth century.” *Id.*

55. Susan D. Carle, *From Buchanan to Button: Legal Ethics and the NAACP (Part II)*, 8 U. CHI. L. SCH. ROUNDTABLE 281, 282 (2001).

56. Eskridge, *supra* note 54, at 2072.

for new civil rights legislation.⁵⁷ Evers was very involved in the NAACP as the Mississippi Field Officer, and his rejected University of Mississippi Law School application was the focus of the NAACP's campaign to desegregate the school.⁵⁸ In *Only a Pawn in Their Game*, Dylan not only condemns a system where an activist like Evers is murdered, but also a system that perpetuates the ignorance of the "poor white man" that is "used in the hands of all of them like a tool." To borrow Dylan's words, "them" is the elite class of "deputy sheriffs, the soldiers, the governors [that] get paid [a]nd the marshals and cops [that] get the same."⁵⁹ They literally make their career by cultivating ignorance and racism. For Dylan, the murderer, Byron De La Beckwith, is as much a victim as Medgar Evers. And the culprit is not Beckwith, but those in power who allow him to be "taught in his school/From the start by the rule/That the laws are with him/To protect his white skin/To keep up his hate/So he never thinks straight/'Bout the shape that he's in."⁶⁰ Dylan says "But it ain't him to blame/He's only a pawn in their game."⁶¹ This song has been called "remarkable in Dylan's seeming understanding of, if not sympathy for, the killer as simply a pawn of southern society's racism."⁶²

In *The Lonesome Death of Hattie Carroll*, Dylan again stands up to the façade of justice.⁶³ The song is about the murder of an African-American hotel worker who died shortly after a drunken, unprovoked assault by a wealthy white man at a charity ball. As Dylan puts it, "Zanzinger killed poor Hattie Carroll/With a cane that he twirled around his diamond ring finger/At a Baltimore hotel society gath'rin'."⁶⁴ Dylan goes on to explain that "Zanzinger, who at twenty-four years/Owns a tobacco farm of six hundred acres/With rich wealthy parents who provide and protect him/And high office relations in the politics of Maryland/Reacted to his deed with a shrug of his shoulders."⁶⁵ In contrast, "Hattie Carroll was a maid of the kitchen . . . /Who carried the dishes and took out the garbage/And never sat once at the head of the table/And didn't even talk to the people at the

57. *NAACP History: Medgar Evers*, *supra* note 6.

58. *Id.*

59. DYLAN, *Only a Pawn in Their Game*, *supra* note 32.

60. *Id.*

61. *Id.*

62. EPSTEIN, *supra* note 4, at 160.

63. See BOB DYLAN, *The Lonesome Death of Hattie Carroll*, *supra* note 33.

64. *Id.* Dylan omitted the "t" from the real defendant's name, Zantzinger.

65. *Id.*

table who just cleaned up all the food from the table.”⁶⁶ To be sure, Dylan takes some license with the facts. Yet, Dylan reminds his audience that William Zantzinger was charged with murder, but ultimately received only a six-month sentence of manslaughter.⁶⁷ The sentence was handed down on August 28, 1963—the same day Martin Luther King gave his “I Have a Dream” speech at the March on Washington, where Dylan and other artists of the day performed.⁶⁸ The song “contains perhaps the most articulate criticism of a law that claims to be impartial, but operates to protect the rich, white male.”⁶⁹

Just like the lawyers for the NAACP who fought for their right to advise clients, Dylan’s music fights the existing legal regime, effectively empowering social change. Dylan’s music simultaneously uncovers the law’s vulnerabilities, and in many ways, his music is symbolic of the NAACP’s encounter with the law. As one commentator notes, “Dylan’s songs provide an acute perspective on the difficult conjunctions that exist between ethics and law. In his early ‘protest songs’ there is an opposition to the law of the State that is associated with the failure of the rule of law.”⁷⁰ In contrast, it is interesting to consider ways that Dylan’s music proves more successful in delivering social change in the wake of the law’s failure. For example, consider David Simon’s interview of William Zantzinger in the 1980s about *The Lonesome Death of Hattie Carroll*. Zantzinger observed that the song helped to ruin his reputation and left him embittered.⁷¹ Whatever one may think about the law’s remedy of a six-month jail sentence for the death of Hattie Carroll, the song’s memorial of her murder brings about a form of justice that the law cannot. Her story continues to be retold, and Zantzinger could never escape the consequences of his actions, even long after he served the jail time.

66. *Id.*

67. *Id.*

68. See William Zantzinger: *Tobacco Farmer Who Inspired a Song by Bob Dylan*, TIMES (London), Jan. 12, 2009, available at <http://www.timesonline.co.uk/tol/comment/obituaries/article5495674.ece>; *Tour*, BOBDYLAN.COM, <http://www.bobdylan.com/tour/1963-08-28-lincoln-memorial-march-washington-washington-rights-march> (last visited Aug. 15, 2011).

69. Geary, *supra* note 39 at 1402 n.7.

70. *Id.* at 1401.

71. See David Simon, *A Lonesome Death*, THE NEW YORKER, Jan. 26, 2009, available at http://www.newyorker.com/talk/2009/01/26/090126ta_talk_simon. In an interview about the song, Zantzinger asserted that “[t]he song was a lie. Just a damned lie.” *Id.* According to Simon, Zantzinger “knew the song and its equivocations. He knew precisely the historical role to which it had consigned him.” *Id.*

Another role of music can be to “prevent further atrocities by providing a record of events that forms a collective memory, or by raising the collective conscience of the perpetrators.”⁷² The law’s script is the very sterile text of the Court’s written opinion, a narrative that is unlikely to be revisited with great frequency by the public. But the music’s lyrics and melody continue to draw us all together in the present moment every time the song is played to reflect upon a significant period of our legal history, our cultural history, and our music history. Indeed, Dylan’s music has been described “as a revival of the constitution” having its source in “the folk revival and civil rights movement of the early sixties.”⁷³

In reminding us about the history, and these individual lives, Dylan’s music also has a humanizing effect on the law, similar to the experience of literature⁷⁴ and the theater. Just as a play like *Music History* enhances our capacity for sensitivity to oppression or injustice, so too can music.⁷⁵ Both cultivate imagination and new experiences. They allow the audience member or the listener to enter a world closed off by court opinions and even news accounts because one is able to consider a character’s or singer-songwriter’s internal observations and emotions.⁷⁶ These non-law sources, like music and theater, remind us that the subjects of these court opinions are people, and that the outcomes can impact generations: friends, families, mothers, fathers, lovers. Drama and music also permit us to explore difficult questions and cultivate the voices of outsiders.⁷⁷

Thinking about *NAACP v. Button* in this light — and how that judicial opinion revolutionized the use of litigation to further social — change, there is an incredible parallel. The Supreme Court upheld the use of litigation to give voices to outsiders and to finally allow for

72. Susan Tiefenbrun, *Representation of International Humanitarian Laws in the Film The Pianist: On the Curative Role of the Arts During Genocidal War*, 28 T. JEFFERSON L. REV. 43, 44 (2005).

73. Geary, *supra* note 39, at 1402 (citation omitted).

74. *See supra* note 30 and accompanying text.

75. *See* Knake, *Beyond Atticus Finch*, *supra* note 30, at 37.

76. *See id.* *See also* Todd Butler, *Bedeviling Spectacle: Law, Literature, and Early Modern Witchcraft*, 20 YALE J.L. & HUMAN. 111, 127 (2008) (“[P]erformance contributes to the growth of compassion by inviting one to consider more deeply and effectively the experiences of others.”).

77. *See, e.g.*, DAVID MAMET, THEATRE 69 (2010) (“Drama is about finding previously unsuspected meaning in chaos, about discovering the truth that had previously been obscured by lies, and about our persistence in accepting lies. In great drama we recognize that freedom may lie beyond and is achieved through the painful questioning of what was before supposed unquestionable.”)

questioning of dominant thought, just as music and theater do. “In this sense, dramatic performance can . . . forc[e] observers to consider (or reconsider) their relationship to that which appears before them. Such arguments [endorse] theater’s place in the law precisely because they support the assertion that performance might catalyze rather than undermine more considered judgments.”⁷⁸ The same argument can be made for music’s place in the law.

**C. On the Importance of Exercising First Amendment Rights:
*Talkin’ John Birch Paranoid Blues*⁷⁹**

Well, I fin’ly started thinkin’ straight
When I run outa things to investigate
Couldn’t imagine doin’ anything else
So now I’m sittin’ home investigatin’ myself!
Hope I don’t find out anything . . . hmm, great God!⁸⁰

Another notable intersection between *NAACP v. Button* and Dylan’s music is their mutual reminder about the importance of exercising our free speech rights — whether the speech involves offering legal assistance to a minority barred from the political process, or singing a song silenced by television network and record executives. Just as the NAACP lawyer was exercising First Amendment rights to advise prospective litigants about their civil rights, so too was Bob Dylan furthering free speech values — not only in choosing to write and record certain songs, but also in his performance of them.⁸¹

Dylan’s song *Talkin’ John Birch Paranoid Blues* was originally to be included on his *Freewheelin’* album, but the studio executives cut it due to the potentially controversial subject matter.⁸² The lyrics are satirical and narrated by a paranoid anti-Communist.⁸³ He becomes a member of the John Birch Society and looks for “Reds” in places ranging from his bed to his toilet, ultimately searching for himself.⁸⁴

78. Butler, *supra* note 76, at 126.

79. DYLAN, *Talkin’ John Birch Paranoid Blues*, *supra* note 34.

80. *Id.*

81. See Ian Inglis, *The Ed Sullivan Show and the (Censored) Sounds of the Sixties*, 39 J. POPULAR CULTURE 558, 558 (2006) (“Issues surrounding the censorship of popular music have provoked some of the most complex debates about freedoms of speech and expression in recent years.”).

82. See *id.* at 561.

83. *Id.* at 560.

84. *Id.* (“The song, which Dylan had frequently performed at appearances in and around New York before the show, satirized the extreme right-wing, anti-Communist organization, comparing its policies to those of Hitler.”).

Dylan was scheduled to appear and to perform this song on *The Ed Sullivan Show* in May 1963.⁸⁵ While the selection was initially approved by the network during rehearsals, executives then told Dylan he could not perform the song because John Birch Society members threatened libel litigation.⁸⁶ It is important to understand the magnitude of an appearance on *The Ed Sullivan Show*. It was “the most important and influential TV entertainment show in the US”⁸⁷ during the 1960s (our modern *American Idol*⁸⁸) with an average audience of approximately forty million viewers.⁸⁹ In essence, an appearance on *Ed Sullivan* guaranteed a successful music career, and at the time Dylan was not widely known.⁹⁰ He could have performed another song, but rather than have his song choice dictated, Dylan chose to forgo this lucrative media appearance entirely. In the wake of the controversy, Columbia Records ordered that the song be removed from the album.⁹¹ Even in the face of silencing by record and network executives, however, Dylan continued to sing the scandal-burdened song at live performances, including Carnegie Hall on October 26, 1963.⁹²

85. See ANTHONY SCADUTO, BOB DYLAN 139 (2001) (“[W]hen he sang it for Sullivan and Bob Precht, producer of the show, they were delighted . . .”).

86. See Inglis, *supra* note 81, at 561 (“However, just hours before transmission, Dylan was told by CBS network editor Stowe Phelps that he could not sing [*Talkin’ John Birch Paranoid Blues*] as the lyrics might be considered libelous. Asked to perform another song in its place, Dylan refused and left the studio; he was never to appear on the show.”).

87. *Id.* at 559.

88. *American Idol* has been called one of the most successful shows in television history, though notably viewership even for the season finale episodes pales compared to the weekly audience for *The Ed Sullivan Show*. See *id.* (stating that *The Ed Sullivan Show*’s average weekly audiences were around 40 million). *American Idol* season finale episodes range between 23-30 million viewers. *Fox Season Ratings*, TV SERIES FINALE, <http://tvseriesfinale.com/tv-show/fox-tv-show-ratings-19840/> (last visited Aug. 15, 2011).

89. Inglis, *supra* note 81, at 559.

90. See *id.*

91. See *id.* at 561 (“Columbia Records insisted that the track be deleted from the *Freewheelin’* album.”).

92. See SEAN WILENTZ, BOB DYLAN IN AMERICA 93-94 (2010). Of course Dylan could have chosen to appear on the show and play the song in defiance of the network executives’ direction (at least until the producers cut the live feed). Some might criticize this decision as a self-compromise of Dylan’s free speech rights. But the fact remains that he did refuse to perform as a protest to this network censorship. Interestingly, for Dylan, a nonappearance seemed to have a similar effect as an appearance. See CINTON HEYLIN, DYLAN: BEHIND THE SHADES REVISITED 116 (2001) (observing that Dylan’s refusal to appear on the show in the wake of censorship “probably did Dylan more good, by portraying him as a rebel and counterculture hero, than if he had appeared on the show and performed”).

Dylan's rejection of *The Ed Sullivan Show* under the threat of censorship reminds us of the importance of free speech protections, as does his performance when others allowed themselves to be censored at the March on Washington. Dylan sang *Only a Pawn In Their Game* at the March, where he "stress[ed] the reality of the state's collaboration with racism"⁹³ while the other speakers adhered, for the most part, to consensual silencing on this issue.⁹⁴

First Amendment scholar, Ronald K.L. Collins, wrote about another musician, Nina Simone, who sang of the tragedies of 1963.⁹⁵ In particular, Simone's *Mississippi Goddam* tells the story of the assassination of Medgar Evers and the Sixteenth Street Church bombing.⁹⁶ Collins says that songs like these "inspire people to step forward when others stand back in complicit silence," and he observes that singing and performing these songs serves an important role in preserving our free speech interests.⁹⁷ The first time Simone sang *Mississippi Goddam* live over the air on *The Steve Allen Show* in 1964, it was controversial.⁹⁸ Using the word "goddam" in that context was considered a real "message of dissent."⁹⁹ But her performance "inspire[d] people to step forward when others stand back in complicit silence."¹⁰⁰ Songs like Bob Dylan's and Nina Simone's help ensure that the events of 1963 remain part of our collective consciousness, our present awareness, not just a faded history. And that is true of the theater as well. For the law to advance, we must continue to be inspired in this way. In *Music History* and in Dylan's songs, we are inspired to step forward, to refuse to remain complicit in the law's failings, to open a conversation, to remember the legacy of the past, and at the same time, to recognize the work that remains to be accomplished.

93. MAROUSEE, *supra* note 4, at 10-11.

94. *Id.* at 4.

95. Ronald Collins, *Nina Simone's song of protest*, FIRST AMENDMENT CENTER (June 7, 2010), <http://www.firstamendmentcenter.com/commentary.aspx?id=23027> ("The offending words were muffled on the broadcast, but Allen's setup had effectively dismantled the censorship. Though slightly obscured, the infuriated message of dissent came over the airwaves and into Americans' homes.").

96. *Id.*

97. *Id.*

98. *See id.*

99. *Id.*

100. *Id.*

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WHY THE LAW NEEDS MUSIC

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CONCLUSION

Seaton's *Music History* and Bob Dylan's songs of 1963 inspire and cultivate our capacity to appreciate music's significance to the law by connecting us to the humanizing stories of Etta and Walter, Hattie Carroll, and Medgar Evers. These works reveal circumstances where the law fails and, at the same time, they demand that as we remember the music history, we do not forget the legal history of the civil rights era and the legacy of cases like *NAACP v. Button*. By memorializing and publicizing racist murders, Dylan's songs instill an element of justice unachieved by the law. His songs challenge the establishment for turning its head, refusing to see the consequences when law goes unapplied or unenforced. Dylan's songs, the *Button* decision, and scenes from *Music History* show us why the law needs music. They do this by critiquing (and in some ways curing) the law's inadequacies, memorializing the legacy of the NAACP, and protecting freedom of speech.