

EX POST

To Billy Ray & Bill

WITH ALL DUE RESPECT

David G. Epstein & Frederick C. Moss

AFTER the usual orientation presentation on class preparation, first year students at the Dedman School of Law of Southern Methodist University heard fifteen¹ of their professors “sing” the following, more or less to the tune of “Achy, Breaky Heart.”²

David Epstein and Fred Moss teach first year courses and other stuff at the Dedman School of Law at Southern Methodist University. Additionally, Fred plays guitar in a band and David plays www.bluegrasscountry.org on his computer. The authors explain the title:

“Billy Ray” is, of course, Billy Ray Cyrus, described recently by Voice of America as follows: “It has been eleven years since Billy Ray Cyrus earned world-wide attention with his breakthrough single, Achy Breaky Heart. Since 1992, the 41 year old country singer has recorded six albums, and has also become a respected actor.” 2003 WL 59715535 (July 21, 2003). “Breakthrough!” “Respected Actor.” Those are the words of Voice of America – your tax dollars at work. For most readers our age, “Bill” is “William Prosser.” Cf David J. Jung, *Commentary on William Lloyd Prosser, Strict Liability to the Consumer in California*, 50 *Hastings L.J.* 861 (1999) (“For a generation of law students and lawyers, William L. Prosser ... was Mr. Torts. Law professors knew that Prosser had other talents as well; he was a satiric lyricist with a deadly aim, whose songs performed at the Association of American Law Schools, skewered the foibles of his colleagues, his profession, himself.”). For most readers with the good fortune to have attended or taught at the University of Iowa Law School, “Bill” is Bill Hines, who for more than a generation has not only been “Mr. Dean” but also directs the annual law school musical. Past shows include “The Wizard of Laws”, “My Fair Law Student”, “Legal Methods Man” and “Late Night at the Law School.” 5/15/03 *U-Wire*, 2003 WL 55289275.

- 1 Lack Bloom, Bill Bridge, Jane Dolkart, David Epstein, Julia Forrester, Jeff Gaba, George Martinez, Tom Mayo, Fred Moss, Xuan-Thao Nguyen, Vicki Palacios, Ellen Pryor, Paul Rogers, Dan Shuman, and Mary Spector.
- 2 A brief note on the various strange markings in the lyrics. They are designed to keep a choir of law professors more or less together while “singing” (loosely speaking, of course) the song. (Aside: Is “a choir of law professors” the best generic name for singing law professors? Somehow phrases like “gaggle of geese” and “murder of crows” seem more colorful.) A word that is underlined is either emphasized or expanded. Take your pick. Be flexible. Hopefully all of the professors arrive at and leave this word at the same time. A “/” is a rest beat. Thus, one sings the first verse, “Don’t use

CHORUS

Don't use canned briefs / Those easy, sleazy briefs /
The worst thing to do, don't you know ///
And if you use canned briefs / those easy, sleazy briefs /
Down the toilet your career will go ///

First you read the case / with care not with haste /
Read, read, read, and read a'gin ///
The cases won't be long / not reading's clearly wrong /
What <we³ would call> ori-gin-al sin ///

Then pick up your pen / and on your brief begin /
Remember that a brief is just your notes ///
Write who is suing whom / for what, in which courtroom /
And who got which judges' votes ///

What pleadings did they file? / was it a jury trial? /
What were the facts in dispute? ///
What did the parties do? / who was it that got screwed? /
Which one deserves to get the loot? ///

What did they contend to justify their ends? /
What were the questions for the court? ///
Look for precedent, how prior cases went /
Is it "P" or "D" the law supports? ///

canned briefs, rest (silently rest, not out loud), Those easy, sleazy briefs, rest" Three "/"s in a row means: remain silent for 3 beats. This is designed to get the choir to start together at the beginning of the next line. The "< ... >" around the three words in the last line of the first verse is to remind the choir that these words must be pronounced as if they were one word (i.e., very quickly) in order to for the rest of the words to fit into the musical measure of that line. In performance, after 15 minutes of rehearsal, this all worked surprisingly well.

- 3 Originally, we had the phrase "good Baptists" instead of "we." In light of what "good Baptists" are doing with the Ten Commandments and separation of church and state in Alabama and with higher education and college athletics at Baylor University, we decided that any such reference would be tacky – piling on. Besides, "we would call original sin" is easier to sing.

To Billy Ray & Bill

Under stare decisis / the info that is nicest /
Is, what's the law of the case? ///
Distinguish holding from dictum / or you will be the victim /
Of our screaming in your face ///

Your briefs will be crummy / you'll feel like a dummy /
Like the profs are whales and you are Jonah ///
Just try and try and try / you'll get it by and by
Then you can spend your nights at Ozona⁴ ///

CHORUS

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The worst thing to do, don't you know ///
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Surely, U.S. News & World Report will give SMU some kind of credit for this.⁵ 

⁴ "Ozona" is the name of a local bar, popular with SMU law students. There is probably a local bar that students from your law school prefer. And the name of that bar is probably easier to rhyme with than "Ozona." Rhyming "Jonah" with "Ozona" is only one of the reasons that this song is a more significant literary accomplishment than *The Whiffenpoof Song* or other better known songs that mention a student bar. Anybody can come up with words that rhyme with "Mory's" (not that Meade Minnigerode and George Pomeroy did come up with words that rhyme with Mory's. www.yale.edu/whiffenpoofs/whiffsong.html).

⁵ Editors' note: Against our better judgment, we have placed a recording of the SMU scholars' performance on our web site. *Hear* www.greenbag.org.