

Gibberish Alert

Monday, September 26, 2011

It was twenty years ago today ... we were driving down the 5 ("the 5" is the California way of saying I-5), on a stretch in Orange County where the Pacific Ocean kisses the highway, a persistent, teasing beauty. Well, except for the San Onofre nuclear reactor. We were arguing over the lyrics to Nirvana's "Smells Like Teen Spirit." **Nevermind** -- maybe the last truly great piece of rock art -- had just come out. Grunge had shown up on the scene wearing a dirty flannel shirt and mumbling. The debate was whether Cobain was singing, "here we are now/give us taters." He wasn't. But it did sound that way to some of us, and one could dream up a crazy world where those lyrics would work just fine.

The list of misheard rock lyrics is long and honorable: "there's a bathroom on the right," "'scuse me, while I kiss this guy," "then I told you about our kid/how he's not a tomato." Early critics of rock decried nonsensical or puerile lyrics. That "It was twenty years ago today" opening line to this post is obviously cribbed from "Sgt. Pepper's Lonely Hearts Club." The Beatles' lyrics were usually clear, but not always. Bob Dylan thought that in "I Wanna Hold Your Hand" the Beatles were singing "I get high." Apparently, that mattered a lot at the time. Lennon corrected Dylan, telling him that the lyrics were actually "It's such a feeling, that my love/I can't hide/I can't hide." Dylan's response? Those lyrics make no sense. Why hide your love? Lennon later wrote a song that sort of answered that question. The point is that even the best writers are capable of descending into gibberish. This weekend's **Wall Street Journal** furnished examples of anti-Beatles criticism over the years, including insults from Noel Coward, William F. Buckley, and even [James Bond](#). Most of those criticisms now seem as nonsensical as the lyrics they attacked.

What's wrong with dopey lyrics? We learned this weekend that REM was breaking up. First, we didn't know they were still together. Second, we have to admit that we liked them better in their early years, when we could never understand what their lead singer, Michael Stipe, was saying. After REM tidied up their production values and rendered their lyrics understandable, the songs became a lot less interesting. In music, sound trumps sense. Not all song lyrics need intelligence or even intelligibility.

We were reminded last week that it's different in the law. In [Stanard v. Nygren](#), No. 09-1487 (7th Cir. September 19, 2011), the Seventh Circuit administered a judicial whupping to a lawyer who could not author an intelligible complaint. It's not a drug or device case. Actually, it's not easy to say what the case is about, which is part of the problem. The interesting thing about the case for us is the standard of review for a district court's refusal to permit an amended complaint. The plaintiff argued for de novo review and the defendant argued for abuse of discretion. The defendant prevailed, and rightly so. Leave to amend under Fed. R. Civ. P. 15(a)(2) is discretionary. The ruling in *Stanard* is good news for all of us who spend most of our time representing defendants. It should be just a little bit easier for us to argue that it's time for the court to pull the plug on a case and dismiss with prejudice.

Of course, *Stanard* is a pretty unusual case. The plaintiff lawyer filed complaints that not only flunked *Twlqbal*, but they were so unintelligible that they did not come close to supplying the "short and plain statement of the claim showing that the pleader is entitled to relief" as required by Fed. R. Civ. P. 8(a)(2). The complaints did not give the defendant fair notice of the claims against it and the grounds supporting such claims. Note that we said "complaints" in the plural. The plaintiff lawyer had multiple opportunities to cobble together a decent complaint and utterly failed. The court actually called the complaints "gibberish." [Slip op.](#) at 15. The court listed the following problems:

- * Lack of punctuation
- * Near incomprehensibility
- * Failure to follow basic directions
- * Failure to put defendants on notice
- * Grammatical and syntactical errors

Ouch. There are good ways to get famous and bad ways to get famous. This is a bad way. The court quoted a 345 word sentence from the complaint that leaves one dizzy. The plaintiff lawyer also invoked absurd legal theories. For example, the complaint cited the Constitutional

proscription against cruel and unusual punishment. That probably won't get one very far in a non-criminal case. Moreover, the plaintiff lawyer repeatedly blew deadlines.

The Seventh Circuit concluded that the district court had bent over backward to give the plaintiff lawyer a chance to comply, and had no difficulty in deferring to the district court's decision that enough was enough. The appellate court's decision was made almost comically easy because the plaintiff lawyer "failed to file a reasonably coherent brief on appeal." Slip op. at 20. He "cites 81 cases, but almost all of them are completely irrelevant to the issues presented here." *Id.* at 21. In short, the plaintiff lawyer's performance was "alarmingly deficient." *Id.* Thus, the Seventh Circuit not only held that "the district court was well within its discretion to deny leave to file the second amended complaint and to dismiss the case with prejudice," but also referred the plaintiff lawyer for possible discipline. *Id.*

Let's face it, we see bad, vague, overlong, substance-less complaints every week, but few are as execrable as the monstrosities filed in *Stanard*. That being said, the Seventh Circuit has announced a useful principle: the district court can exercise reasonable discretion to see that there's no there there, and then end the case once and for all. A Court of Appeals is unlikely to reverse. Rock lyrics can consist of little more than "yeah, yeah, yeah," and they can even be "stupid and contagious." But we have a right to expect something more from court filings.