

Marvin Gaye Family Lawyer: How I Won the 'Blurred Lines' Trial (Guest Column)

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Richard Busch describes overcoming a disadvantage heading into court against Pharrell Williams and Robin Thicke — who he says are "bullies" — plus what he regards as the other side's biggest mistake.



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Richard Busch, attorney for the Marvin Gaye family

The column appears in the March 21 issue of Billboard.

I was surprised. When **Robin Thicke** and **Pharrell Williams** decided to launch a lawsuit seeking declaratory relief that "Blurred Lines" wasn't a copyright infringement of **Marvin Gaye's** "Got to Give It Up," I didn't know they'd do this. My opinion is that they believed the Gayes didn't have resources and the wherewithal to fight. My belief then was they were being bullies. I bet now they regret it.

At the time, **Mark Levinsohn** was the Gayes' transactional lawyer who reached out to their side to discuss trying to resolve the issue. He then brought me on board. We had worked together on the **Eminem** digital download case.

After Mr. Thicke and Williams filed the lawsuit, it was our opinion that Pharrell Williams and his lawyer **Howard King** wanted to litigate this in the press by continually saying that all they did was take a feeling. And if they did any copying, it was only a genre. We didn't view it like this at all. Yes, it involved a big, popular song, but this was a straight-up copyright claim over compositional elements that we believed had been taken.

Read more ['Blurred Lines' Jury Orders Robin Thicke and Pharrell Williams to Pay \\$7.4 Million](#) [2]

That's not to say we weren't handicapped. In fact, we tried this case with one-and-a-half arms tied behind our back thanks to the judge's ruling to not allow the full Gaye recording to be played to the jury. The court held that our claim was limited to

elements found on the lead sheet deposited with the Copyright Office, and had we lost, there certainly would have been an appeal. But we were able to overcome the disadvantage by preparing excerpts from the recording of what the court found to be arguably protected and have it compared to excerpts from “Blurred Lines.” In the end, this focused the jury on the music and allowed for a good comparison.

The court’s ruling may have contributed to the other side’s biggest mistake in my view. They focused heavily on allegedly specific note-for-note differences between the lead sheets and the recording, arguing that because there supposedly wasn’t identity, there wasn’t protection, but I don’t think this was a good idea because the jury instructions didn’t say there needed to be identity. I knew I could highlight this in closing arguments and say what they were doing was a colossal waste of time. Plus, I don’t think it’s a good idea to tell the jury, “Yes, we may have copied, but don’t find us liable because there’s not a perfect match.”



The key to victory for us was the music. We had two great musicologists — **Judith Finell** and **Ingrid Monson** — who broke down the songs and showed that there was copying, not just of feeling. Robin Thicke and Pharrell Williams also were not able to keep their story straight. Most people paid attention to Thicke’s inconsistency — he went from saying he told Pharrell to create a song like “Got to Give It Up” to saying he wanted to have that feeling to saying he wanted to evoke the era to not having any conversations at all. They might have had an excuse for Thicke, but what was Pharrell’s explanation for what I believe were inconsistent and irreconcilable statements? We showed his taped deposition at trial. It was powerful.

I am my own biggest critic who broods over any mistakes, and if I was nervous, it was only because of how strongly I wanted to do right by **Nona** and **Frankie Gaye**, but let me tell you something: When I do a trial, it’s like an individual battle each day amid a larger war. And we felt we won each day.

On the Friday before the verdict, when the jury had a specific question on damages regarding the calculation on how to award profits, I felt really confident. But by the end of the day, when the jury hadn’t reached verdict, I wondered if we were maybe too excited. It was the longest weekend of my life. I did everything possible to distract myself. I went to the movies. I walked on the beach. I did a *Sons of Anarchy* marathon on Netflix.

Then, Tuesday finally came. We didn’t start this case. But we made sure to finish it.

(As told to Eriq Gardner)

Links:

[1] [http://pinterest.com/pin/create/button/?url=www.hollywoodreporter.com/thr-esq/marvin-gaye-family-lawyer-how-780743&media=http://www.hollywoodreporter.com/sites/default/files/imagecache/blog_post_349_width/2013/05/richard_busch_a_p.jpg&description=Marvin Gaye Family Lawyer: How I Won the ‘Blurred Lines’ Trial \(Guest Column\)](http://pinterest.com/pin/create/button/?url=www.hollywoodreporter.com/thr-esq/marvin-gaye-family-lawyer-how-780743&media=http://www.hollywoodreporter.com/sites/default/files/imagecache/blog_post_349_width/2013/05/richard_busch_a_p.jpg&description=Marvin%20Gaye%20Family%20Lawyer%3A%20How%20I%20Won%20the%20%27Blurred%20Lines%27%20Trial%20(Guest%20Column))

[2] <http://www.hollywoodreporter.com/thr-esq/blurred-lines-jury-orders-robin-779445>

[3] <http://www.hollywoodreporter.com/package/blurred-lines-trial>