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# Rap on Trial

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## Abstract

In criminal proceedings across the United States, rap music lyrics are being introduced as evidence of a defendant's guilt. In this article, we draw attention to this disturbing practice, what we call "rap on trial," and explore its context, describe its elements and contours, and consider its broader significance. We first offer historical context, demonstrating that although the widespread use of rap lyrics in criminal trials may be a relatively recent phenomenon, it resides within a long tradition of antagonism between the legal establishment and hip-hop culture, one that can be traced back to hip-hop's earliest roots. We then offer examples of recent cases in which rap music has been used as evidence in trials against amateur rappers, almost all of whom are young men of color, in order to illustrate the specific ways that prosecutors present the music to judges and juries, as well as to highlight the devastating effects it can have on defendants. In the final section, we consider the elements of rap music that leave it vulnerable to judicial abuse and the artistic, racial, and legal ramifications of using this particular genre of music to put people in jail. We conclude with recommendations for further research in this area, pointing out specific areas where scholarship would most effectively expose what it means to put rap on trial.

## Keywords

criminal trials, rap music, hip hop, bias in the criminal justice system, race and public opinion, race/ethnicity, critical race theory

187, 187 it's murder nigga.  
(Mind of a maniac!) No dreams when I murk the nigga.  
200 shots out the drop top.  
Watch me work the shots. . . .

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Five gone in six months,  
These niggas scared now.

Any nigga who ever tried to play me? They dead now. (Lil Boosie, 2009)

In May 2012, Torrence Hatch—the Baton Rouge, Louisiana, rapper better known to fans as Lil Boosie—stood trial for his alleged role in the 2009 murder of East Baton Rouge resident Terry Boyd. Charged with first-degree murder, Hatch was accused by authorities of paying his friend Mike “Marlo Mike” Loudon US\$2,800 to kill Boyd. However, with no physical evidence tying Hatch to the crime, prosecutors built their tenuous case largely on a prior confession from Loudon (a statement he later recanted at trial) and, controversially, Hatch’s rap lyrics, which they claimed provided evidence of his involvement in the murder. Over defense attorneys’ objections, District Judge Mike Erwin allowed prosecutors to play for the jury explicit lyrics from a number of songs, including “Bodybag” and “187” (excerpted above), which Hatch produced in collaboration with fellow Louisiana rapper Christopher Dorsey, also known as B.G.<sup>1</sup>

Focusing on lyrics that mentioned “Marlo Mike” or depicted scenes of cold-blooded killing, prosecutors worked hard to close the gap between Torrence Hatch the artist and Lil Boosie the rapper—in effect, blurring the distinction between reality and entertainment in the hopes that jurors would find Hatch guilty of the crimes chronicled by Boosie. As a local defense attorney who was following the case noted at the time, “Right now, rap is on trial, Boosie’s rap music is on trial” (as cited in Weiss, 2012a) and indeed it was this aspect of the case that drew widespread attention from major media outlets across the country. Fortunately for Hatch, this emphasis on his music, rather than more traditional forms of evidence, was also what kept him from spending a lifetime in jail; his defense team rested without calling a single witness, and after just an hour of deliberation, the jury came back with a unanimous verdict of not guilty (Weiss, 2012b).

Torrence Hatch may have escaped conviction, but the broader issue his case raises is the use of rap lyrics as evidence, a practice that is occurring in courtrooms across the country. Rather than treating rap music as an art form whose primary purpose is to entertain, prosecutors have become adept at convincing judges and juries alike that the lyrics are either autobiographical confessions of illegal behavior or evidence of a defendant’s knowledge, motive, or identity with respect to the alleged crime. Over the last two decades, a number of high-profile performers—including Snoop Dogg, Beanie Sigel, and even Lil Boosie’s collaborator, B.G.—have had their lyrics used against them in criminal proceedings. But less visible are the amateur rappers who have increasingly seen their art form introduced as evidence against them. Commenting on this phenomenon, Brick (2006) writes, “Set to drumbeats or scrawled in notebooks, the rhymes of minor stars, aspiring producers and rank amateurs are being accepted as evidence of criminal acts, intent and mind-set.” As Dennis (2007) demonstrates, these artists are often far less fortunate than Lil Boosie, thanks in large part to the advantage that prosecutors gain when they use rap lyrics, particularly those containing depictions of violence or otherwise illicit behavior, as evidence.<sup>2</sup> She describes this advantage in stark terms: “When courts permit the prosecutor to admit rap music lyrics as criminal evidence, they allow the government to obtain a stranglehold on the case” (p. 2).

Our objective in this article is not only to draw attention to the practice of using rap lyrics as evidence in criminal proceedings but to explore its context, describe its elements and contours, and consider its broader significance. As we argue, “rap on trial” has significant implications for how we define creative expression as well as for free speech and the right of all Americans to receive a fair trial. In the sections that follow, we begin by offering historical context, demonstrating that although the use of rap lyrics in criminal trials may be a relatively recent phenomenon, it resides within a long tradition of antagonism between the legal establishment and hip-hop culture, one that can be traced back to hip-hop’s earliest roots. We then offer examples of recent cases in which rap music has been used as evidence in trials against amateur rappers, almost all of whom are young men of color, in order to illustrate the specific ways that prosecutors use the music as well as to highlight the devastating effects it can have on defendants. In the final section, we consider the elements of rap music which leave it vulnerable to judicial abuse and the artistic, racial, and legal ramifications of using this particular genre of music to put people in jail. We conclude with recommendations for further research in this area, pointing out specific areas where scholarship would most effectively expose what it means to put rap music on trial.

### “Some Wish to Destroy This Scene Called Hip-Hop”<sup>3</sup>: *The Resistance to Rap and Hip-Hop*

Although it is common to use the terms *rap* and *hip-hop* interchangeably, there is an important distinction to be made between them. While rap is a particular form of musical expression—defined by Keyes (2002) as a “musical form that makes use of rhyme, rhythmic speech, and street vernacular, which is recited or loosely chanted over a musical soundtrack” (p. 1)—hip-hop refers to a much broader artistic and cultural movement that took shape in the early 1970s and included rap but also other elements such as graffiti, break dancing, DJing, and double dutch (Chang, 2005; Gaunt, 2006; Guevara, 1996; Keyes, 2002; Krims, 2000; Toop, 2000).

Central to hip-hop in its earliest moments was its capacity to serve as a vehicle for sociopolitical resistance, primarily among young men and women of color. As Rose (1994) argues, hip-hop is intrinsically political, as it “gives voice to the tensions and contradictions in the public urban landscape . . . and attempts to seize the shifting urban terrain, to make it work on behalf of the dispossessed” (p. 22). The importance of seizing this “shifting terrain” was especially evident in the territoriality of the 1970s New York gang culture from which hip-hop sprang, and it soon came to characterize early hip-hop performances as well, with DJs, break dancers, and graffiti writers all engaged in ritualized battles over the spaces in which they practiced their art (Nielson, 2010).

The battles for space that were taking place within hip-hop culture were in many ways mirrored by another battle: one between hip-hop and the police. Break-dancers, for example, were often hard pressed to find practice space because many potential locations were known to be under police surveillance (Rose, 1994) and even if they did find suitable space, they risked being arrested for disturbing the peace or

“attracting undesirable crowds” (Kelley, 1997, pp. 67–68; see also Baner, 2004). And graffiti artists found themselves the targets of “an all-out war on graffiti,” with one city official describing it as “one of the worst forms of pollution we have to combat” (“Garelik calls,” 1972). To combat this “pollution,” the city established a special police “vandal squad” (Austin, 2001; Chang, 2005) and eventually began erecting military-style razor wire fences around train stations and putting attack dogs behind them (Castleman, 1982). Consistent with the rhetoric of “war,” police often resorted to outright violence; one of the most notorious cases of police brutality in New York City history was the 1983 fatal beating of Black artist Michael Stewart by transit police who caught him in the act of tagging a subway wall (Chang, 2005; Nielson, 2013b).

Although not intrinsically dangerous, graffiti—like other elements of hip-hop—provoked a visceral fear among many citizens that marginalized groups were pushing the city into lawlessness. In 1979, conservative sociologist Nathan Glazer put it this way: “While I do not find myself consciously making the connection between the graffiti makers and the criminals who occasionally rob, rape, assault, and murder passengers, the sense that all are a part of one world of uncontrollable predators seems inescapable” (p. 4). While directed at graffiti, Glazer’s comments are more broadly instructive because they suggest a refusal, or an inability, to draw distinctions between artistic expression and real-world violence—a reaction that often characterized the response to hip-hop as a whole and would foreshadow the reaction to rap music in particular just a few years later.

Early rappers were subject to the same police scrutiny as other hip-hop performers, but rap in its first years was less visible, allowing it to remain what Nas once called “a ghetto secret.” As such, it flew beneath the mainstream radar—that is, until the release of the smash hit “Rapper’s Delight” in 1979, when rap’s profile suddenly began to grow far beyond the confines of the “ghetto” and into “the public sphere of worldwide cultural discourse” (Dimitriadis, 1996, p. 179). When that happened, it was exposed to a much broader audience, and just as when the graffiti-covered trains began rolling through downtown New York, the response from authorities was often hostile (Forman, 2002; Nielson, 2010). This hostility began to increase when rappers, generally accustomed to performing party-based tracks with little or no overtly political content, changed the rules. Echoing Black Arts poets from a decade before, they started using their music to provide pointed social critique.

One of the earliest examples was the 1982 track “The Message” by Grandmaster Flash and the Furious Five, which took aim at the conditions faced by America’s urban poor, chronicling the daily obstacles they must overcome to survive. From the opening verse, a sense of entrapment looms over the song:

Got no money to move out, I guess I got no choice.  
 Rats in the front room, roaches in the back,  
 junkies in the alley with a baseball bat.  
 I tried to get away but I couldn’t get far,  
 ‘cause a man with a tow truck repossessed my car.

The song's power and resonance come not only from its candid depiction of inner-city life but also its ability to capture the physical and emotional suffering wrought by American inequality. "The Message" conveys dejection and hopelessness, but importantly, it also offers glimpses of rebellion and resistance boiling just beneath the surface. The hook opens with "Don't push me 'cause I'm close to the edge./I'm trying not to lose my head," and the rest of the song is punctuated with warnings—collectively, a kind of *message*—that when people are forced to endure poverty and violence, with no meaningful opportunities to improve their lives, they are as likely to fight the power as they are to bend beneath it.

"The Message" is frequently cited as one of the catalysts for rap's move toward socially conscious themes in the years to follow (Watkins, 2005). It wasn't immediate, but by the mid- to late 1980s, a number of rappers began to regard their music as a form of entertainment that could be used to educate listeners and challenge mainstream narratives. Following the "edutainment" model, many performers became self-styled teachers, a role they embraced not only with their lyrics but also with names like Wise Intelligent (from Poor Righteous Teachers), Professor X (from X Clan), Professor Griff (from Public Enemy), and KRS-One, who referred to himself as "The Teacha" (Harris, 2005). Frequently drawing on Black Nationalist and Afrocentric themes, these rappers demonstrated a clear commitment to "message rap" (a term coined after "The Message") or "conscious rap," which Michael Eric Dyson (2007) describes as "rap that is socially aware and consciously connected to historic patterns of political protest and aligned with progressive forces of social critique" (p. 64; see also Forman, 2010).

Socially conscious rappers of the late 1980s and early 1990s, an era now commonly referred to as "the golden age" of rap music, used their music to address a wide range of topics, including racism, inequality, and political activism, and as a result, scholars frequently recognized that rap was becoming part of "a culture of resistance" (Lusane, 1993, p. 41).<sup>4</sup> According to Allen, Jr. (1996), it demonstrated "a resurgence of a nationalism and political progressivism reminiscent of African American popular culture in the late 1960s and early 1970s" (p. 159), a resurgence that led Rose (1994) to articulate her optimism about rap's "profound potential as a basis for a language of liberation" (p. 144). Today, even as mainstream rap music has deviated from its golden age roots and often appears to accommodate institutions of power as much as contest them (Spence, 2011), it is still typical for scholars, journalists, and fans alike to follow Martinez (1997) by framing it as "an expression of oppositional culture" (p. 268).

Nowhere is this oppositional nature clearer than in rap's consistent antipathy toward the criminal justice system. Once the "golden age" arrived, rappers who wanted to expose America's inequalities began showering critical attention on all facets of the justice system. By the late 1980s, groups like Public Enemy, Boogie Down Productions, Ice-T, and Niggaz With Attitude (N.W.A.) were launching scathing attacks at law enforcement agencies and the judiciary. Two albums in particular—Public Enemy's (1988) *It Takes a Nation of Millions to Hold Us Back* and N.W.A.'s (1988) *Straight Outta Compton*—went platinum with their fearless assaults on America's police, whether it was the Federal Bureau of Investigation (FBI) or Central

Intelligence Agency in Public Enemy's "Louder than a Bomb" or the Los Angeles Police Department in N.W.A.'s "Fuck tha Police." Thanks in large part to the success of these albums, many artists began following suit, and to this day, rap is largely defined by its hostility toward law enforcement.

Of course, going after the police has made rappers targets (something Public Enemy's logo, a silhouetted figure in crosshairs, appears to acknowledge).<sup>5</sup> Gangsta rappers were particularly controversial. Drawing on well-established traditions of the outlaw or "bad man" in African American storytelling—evident in orally transmitted ballads called "toasts," the urban novels of Iceberg Slim and Donald Goines, and the "blacksploitation" films of the 1970s (Keyes, 2002; Nelson, 2005; Perry, 2004; Quinn, 2005)—these rappers, reflecting the rage in their communities over police abuses, often crafted revenge narratives, such as N.W.A.'s song "Fuck tha Police."

Police responded. In the case of "Fuck tha Police," Milt Ahlerich, assistant director of the FBI, was infuriated by N.W.A.'s lyrics and, in an unprecedented move, sent a letter expressing his displeasure to N.W.A.'s label, Ruthless Records. It is rumored that shortly thereafter the FBI took measures to disrupt the distribution of *Straight Outta Compton* and tried to get N.W.A. dropped from Ruthless Records (Blecha, 2004). What is certainly true is that the FBI's response triggered a reaction from police departments across the country who worked collectively to disrupt N.W.A.'s concerts (Marsh & Pollack, 1989), setting a precedent for the kind of police-driven venue resistance to rap that is still commonplace today (Nielson, 2010).

Law enforcement's interest in rap music didn't stop with N.W.A. For example, artists across the country such as LL Cool J, Too Short, and, most famously, 2 Live Crew were being arrested for performances that authorities regarded as lewd or profane.<sup>6</sup> And, perhaps most notably, in 1992, Ice-T's group Body Count was targeted for the song "Cop Killer"<sup>7</sup> after local police across the country launched a campaign to force Time Warner to pull it from the shelves, sometimes taking matters into their own hands to stop its distribution.<sup>8</sup> Soon, this kind of fury at the local level went national, with politicians at the highest levels attacking the album; as a result, stores across the country took it off their shelves and the song was ultimately removed from future copies of the album.

In the decades since, the rap industry has undergone significant changes, one of which has been a decline of socially conscious messages in mainstream hip-hop. Convinced that tales of sex and violence were the most profitable among rap's White consumer base, in the early 1990s, record companies began pressuring artists to focus on gangsta-style lyrics that were largely devoid of the kinds of social or political commentary that many "golden age" rappers provided (Kubrin, 2005; Weitzer & Kubrin, 2009). This pressure, combined with massive consolidation among record companies and radio stations in the years thereafter (Rose, 2008; Spence, 2011), has drastically limited the variety in mainstream rap music, with a marked lyrical emphasis on what Sharpley-Whiting (2007) calls the "'pimp-playa-bitch-ho' nexus" (p. xvii) or what Rose (2008) terms the "gangsta-pimp-ho trinity" (p. 13). Although there are still many rappers taking up overtly political causes—Lupe Fiasco, The Coup, Immortal Technique, Brother Ali, Talib Kweli, Jasiri X, Rebel Diaz, and dead prez just to name

a handful—these rappers are often relegated to hip-hop’s “underground” where they can build loyal followings but rarely achieve the kind of exposure enjoyed by mainstream acts. As a result, some critics have suggested that mainstream (or “commercial”) rap music is no longer a force of opposition. Whitlock (2012), for instance, goes so far as to call hip-hop “the lobby of the prison industrial complex,” while Rose (2012) argues that it’s “the cultural arm of predatory capitalism” (see also Gilroy, 2013).

Despite rap’s shifting trajectory, we’d be hard pressed to find much difference in law enforcement’s response to the music. In fact, in 2004, the *Miami Herald* revealed that police departments across the country had established task forces, clear throwbacks to New York’s anti-graffiti “vandal squads,” that were surveilling, and often harassing, hip-hop performers who visited their cities (White & McDonnell, 2004). In his book *Decoded*, Jay-Z (2010) recounts being followed around New York City by the same “hip-hop cop” for 7 years and, at one point, being arrested for no other reason than so police could, in his words, “paint the picture of me as a menace to society” (p. 162). When he considers the reason that rappers are singled out for this type of harassment when people in other professions aren’t, he says, “The difference is obvious, of course: Rappers are young black men telling stories that the police, among others, don’t want to hear” (p. 162).

But, as Jay-Z (2010) also notes, rap music has been remarkably resilient in the face of public protest, political demonization, and police pressure. Speaking of the rappers who faced widespread opposition, he says, “We kept winning” (p. 155). Although authorities were able to quash New York’s graffiti movement, readily apparent in the spotless grey cars that now roll through the city, rap music exploded in popularity despite (and perhaps *because of*) the outright contempt of America’s institutions of power. Indeed, rap music has become a multibillion dollar industry, one that has transformed popular culture in profound ways. Far from a “ghetto secret,” it now has global reach, inspiring millions of youth, regardless of their race, ethnicity, religion, or language. Even Barack Obama, the President of the United States, is an avowed rap fan who drew upon the power of hip-hop to energize his campaigns and, ultimately, win two national elections (Gosa, 2010; Nielson, 2009). Fittingly, Jay-Z and his wife, Beyoncé, had prized seats for both inaugurations, with Beyoncé singing the national anthem to inaugurate Obama’s second term.

And yet, even with worldwide influence, rap continues to face powerful, and growing, opposition from the legal establishment. As we describe subsequently, rap music is facing a new battle.

### *“For Every Rhyme I Write, it’s 25 to Life”<sup>9</sup>: Rap Lyrics Take the Stand*

Despite rap’s remarkable resilience, a new battle against it has begun, one that, we argue, is potentially more concerning. This new battle is a movement that effectively criminalizes rap music in the judiciary, as evidenced by prosecutors’ widespread use of rap lyrics as evidence in criminal trials. Our research, as well as our experience as expert witnesses in such trials, suggests that rap lyrics are of questionable evidentiary value and that their use in court can result in unfair prejudice, a view shared by others



(e.g., Dennis, 2007; J. Powell, 2009; Wilson, 2005). Before we discuss the implications of this disturbing trend, however, we first describe the movement to put rap on trial.

As we noted at the outset of this article, in some respects, this practice is nothing new as famous rappers have seen their lyrics used against them in criminal proceedings. But these have been relatively isolated cases, and with widespread name recognition and the resources to retain experienced counsel, most well-known performers have been acquitted, or their lyrics were ultimately excluded. Far more alarming is that in the past several years, the use of rap lyrics as evidence at trial has become an increasingly common practice, with most cases today involving amateur rappers who imitate the conventions of commercially successful gangsta rap and find themselves behind bars as a result. Examples abound.

In 2006, rap lyrics constituted, as one journalist described, “a recurring sidelight of the trial” (Brick, 2006) that involved Ronell Wilson, a young African American man charged with killing two detectives in Brooklyn. Wilson, while operating as a member of a drug gang on Staten Island, was accused of killing the detectives while they were working undercover, seeking to buy an assault weapon. When the police arrested Wilson a day after the detectives were shot, they found scraps of paper in his pocket with handwritten rap lyrics discussing a killing. Prosecutors claimed the lyrics amounted to a confession written after the shootings. Wilson’s defense lawyer countered that many men in their early 20s composed violent rap lyrics and that such lyrics frequently reflect boastful fantasies, common to the point of irrelevance (Brick, 2006). Despite these claims, the prosecutor’s “lyrics as confessional” argument was persuasive, as the judge overseeing the case ruled that the lyrics were acceptable as evidence. Wilson was ultimately found guilty, and at a hearing in September 2013, a jury sentenced Wilson to death. He is the only person in New York to be sentenced to the federal death penalty in more than 50 years.

In 2011, a 32-year-old African American man who rapped about selling prescription drugs in online videos was convicted of drug possession in Houma, Louisiana. Clyde Smith, along with his girlfriend and friends, was allegedly driving 19 miles over the speed limit when his car was stopped by police who performed a search and found (legally acquired) prescription pill bottles from clinics in Texas. The group was taken in, questioned, and eventually Smith was charged with intent to distribute. In court, prosecutors claimed the group made trips to Houston to buy pain medication and sell it in Louisiana. Among the evidence presented during the trial were videos Smith made with local rap group The Rico Gang, in which prosecutors said Smith, who performed as “G-Red” or “Tattoo Face,” admitted to his crimes (Heisig, 2011). The Assistant District Attorney zeroed in on statements Smith made in a video for the track “B.M.F. Freestyle,” a song in which he raps about going to Texas to buy drugs: “Another trip to Texas . . . we going doctor shopping . . . I’m Domino’s, I’m Pizza Hut. Call your (expletive) up because you know I deliver” (as cited in Heisig, 2011). He played these videos for the jurors during closing arguments over strong objections from Smith’s defense attorney.

Earlier in the trial, Smith testified that his subject matter is often fiction and that while he raps about real life, he also raps about what he has witnessed other people do:

“It’s nothing but entertainment. I sometimes rap about real life. But I know a lot of people that sell drugs. I try to touch on what I saw” (as cited in Heisig, 2011). Smith’s attorney argued he made the videos months before his arrest and that the content was fiction: “How stupid would that be to rap about what he was doing?” In her closing arguments, she maintained that the videos would unfairly sway the jury and argued that “rap was on trial” (Heisig, 2011). In the end, her concerns appeared justified. Despite the fact that Smith had prescriptions for all of the drugs in his possession, that he had medical conditions justifying their use, and that no pills were missing from any of the containers, he was found guilty. What’s more, because he had a prior record, he was sentenced to an alarming 30 years in prison. According to his attorney, the rap lyrics were “the primary motivator for the guilty verdict.” Despite having a very strong defense, she knew that the rap videos were likely to seal the outcome: “I knew when the jury saw them, it was over,” she said. “That’s why I fought so hard to keep them out” (as cited in Nielson, 2012).

In April 2013, Anthony Johnson of San Antonio, Texas, was charged with the murder of his business partner, Romuald Rodrique Ngande. Johnson, a young African American man characterized as a “wannabe San Antonio music mogul,” and Ngande, a music producer, had an ongoing dispute over the management of their hip-hop record label, So Fly Entertainment (Kapitan, 2013). On the day of the murder, the two had been arguing when Johnson claimed he shot Ngande in self-defense. While in jail, Johnson wrote rap lyrics, which were seized by prosecutors and later used in court:

Feel like I’m in a cage, mind full of rage  
 Tryina’ live a good life, way above minimum wage  
 Makin’ 7 digits, getting multi millionaire paid  
 Don’t live for tomorrow, always cherish today  
 You only grow older, but wisdom comes with age  
 Gotta stay in yo lane, not everybodys the same  
 Its real ouchea, ppl takin it for a game  
 I’m a beast, I’m a beast, that cannot be tamed

Johnson’s attorney argued against imbuing the lyrics with any real meaning: “We’re talking about a bunch of guys who think they’re hip-hop stars in San Antonio. They’re not living the dream—they’re living in a dream. They started to believe in their own image . . . when in fact it wasn’t (real)” (as cited in Kapitan, 2013). These rap lyrics helped convict Johnson of the murder, as jurors rejected his self-defense claim. Johnson was later sentenced to 40 years in prison.

Wilson’s, Smith’s, and Johnson’s dilemmas are characteristic of most cases involving rap lyrics in criminal trials, where prosecutors attempt to portray the lyrics as accurate depictions of past behavior or imply that they are reflections of a criminal disposition. A more sinister tactic, however, involves criminalizing the lyrics themselves. Nowhere is this more evident than in the case against Olutosin Oduwole, a Black student at Southern Illinois University, whose rap lyrics alone were viewed as such a danger to the public that he was charged with attempting to make a terrorist

threat. The Oduwole case was so unsettling in its blatant criminalization of rap lyrics that it independently drew the attention of both authors and became the catalyst for their subsequent collaboration in this article.

In 2011, the first author was contacted by a lawyer who had come across her study, “Gangstas, Thugs, and Hustlas: Identity and the Code of the Street in Rap Music” (Kubrin, 2005), which examines rappers’ portrayals of violence through a content analysis of lyrics on over 400 rap songs. She eventually served as an expert witness in a case involving his client, Olutosin Oduwole, an aspiring rapper (stage name Tosin), charged with making a terrorist threat. In July 2007, Oduwole’s car ran out of gas, forcing him to abandon it on the Edwardsville campus of Southern Illinois University where he was a student. When school authorities found his car, among the many items they retrieved was a discarded piece of paper lodged between the seats. On one side of the paper were scribbled rap lyrics, written in verse, with lines such as “follow that thang to da ground when she drop it; pop it mami, pop it.” The other side of the paper also had rap lyrics jotted down (“I Lead she a follower, / I’m single ~~and~~ I’m not wit her, but she / gott a throat deeper than a Sword/Swallower . . .”). These lyrics were followed by six unrhymed lines of text at the bottom of the paper—upon which the entire case rested. The six lines read:

glock to the head of  
SEND \$2 to . . . paypal account  
if this account doesn’t reach \$50,000 in the next  
7 days then a murderous rampage similar to the  
VT shooting will occur at another ~~prestigious~~  
highly populated university. THIS IS NOT A JOKE!

Upon discovering this piece of paper, the police searched Oduwole’s apartment where they found a handgun, which was legally acquired but forbidden in a campus dorm. The police also discovered numerous spiral-bound notebooks filled with, among other things, Tosin’s violent and misogynistic rap lyrics. All of this, in combination with the officers’ learning that Oduwole had been trying to purchase additional guns, led the police to charge Oduwole with attempting to communicate a terrorist threat. Tosin copped to the gun possession charges but adamantly denied he was a terrorist planning to carry out acts of violence. He and his defense claimed the six lines of text were simply notes for a new rap song, reflecting the early stages of the lyrical process.

Four years later and despite repeated attempts by the defense to have the case dismissed, in October 2011, Oduwole went to trial in Madison County, Illinois. Around that time is when the first author was contacted about serving as an expert witness on the case. The attorney asked whether she would review the notebooks with rap lyrics and provide her opinion regarding the six lines of text in question. After reviewing 146 pages of Tosin’s rap lyrics, she testified in front of a jury, describing first what rap music is, and in particular, defining and discussing the subgenre of gangsta rap. She provided evidence that Tosin was indeed an aspiring gangsta rapper,

as reflected in his desire to market himself as “a hood symbol” and “G”; his frequent references to lyrics written by well-known artists such as Tupac, Lil Wayne, Young Jeezy, Rick Ross, Three 6 Mafia, Trick Daddy, 50 Cent, and Bounty Killa; and most importantly, the lyrical content of his raps. From her content analysis of Oduwole’s lyrics and in comparison to her own research, she explained that the themes found in Tosin’s lyrics were consistent with those found in gangsta rap more generally, namely, establishing credibility as a skilled rapper, money and material wealth, misogyny and the objectification of women, and most prominently, violence.

She then explained to jurors why violence and the threat of violence are commonplace in gangsta rap, citing, among other reasons, the need for aspiring artists to create a persona worthy of respect in the rap community and record industry conditions that often push would-be artists toward violent themes. Given these points, she argued it was predictable that Tosin’s lyrics would be extremely violent and that the themes of violence portrayed in his raps would be consistent with those found in popular gangsta rap songs: portraying a violent persona, being prepared to use violence if necessary, violent retaliation, and the glorification of guns and other weapons. Finally, she testified on the lyrical process involved in creating rap music, noting that lyrics can reflect different stages of creative development (thus, they may be incomplete or reflect only rough ideas, and not all lyrics rhyme or flow), that lyrics are often written on random pieces of paper or whatever may be available at the time an idea strikes, and that rappers often include unrhymed Intros and Outros in their lyrics, which can serve the critical function of introducing or concluding a song by emphasizing an important message. In making each point, she offered several examples from Tosin’s notebooks. At the end, she rendered her final opinion—that the six lines in question represent initial ideas or concepts for a song or may constitute the Intro or Outro to a song.

The jury wasn’t convinced. After deliberating for less than 3 hours, they declared Oduwole guilty, and he was sentenced to 5 years in prison. The verdict drew widespread scrutiny from journalists and academics alike. In fact, the second author wrote multiple op-eds featuring this case, which appeared in *The Atlantic*, *The Huffington Post*, and *The Root*, and it was at this point that both authors, who were put into contact with one another by Oduwole’s attorney, began working together to draw attention to this important issue.

Since then, the outright criminalization of rap lyrics has continued. Two years later, prosecutors in Massachusetts followed suit. In June 2013, police arrested 18-year-old high school student and aspiring rapper Cameron D’Ambrosio for posting angry rap lyrics to his Facebook page in the wake of the Boston Marathon bombings. Among his lyrics was the line, “fuck a boston bombinb [*sic*] wait til u see the shit I do, I’m a be famous for rapping, and beat every murder charge that comes across me” (as cited in Knefel, 2013). Although it was clear to many observers, including representatives of the *American Civil Liberties Union* (ACLU), that D’Ambrosio’s lyrics were typical rap posturing that didn’t amount to a legitimate threat, he was nevertheless held in jail for over a month without bail. Despite the prosecutor’s attempt to take this to trial, D’Ambrosio was released after a grand jury decided not to indict him.

Said Evan Greer of Boston's Center for Rights and Fight for the Future, which organized an online petition supporting D'Ambrosio that gathered 90,000 signatures: "While today is a major victory for Cam, the chilling effect that this case has already had on free speech cannot be undone" (Valdmanis, 2013).<sup>10</sup>

The practice of using rap lyrics as evidence in criminal trials is not exclusive to the United States. Rappers across the Middle East and North Africa, for example, often using their music to challenge entrenched regimes across the region, have found themselves jailed for their lyrics (Nielson, 2013a). But using rap lyrics to lock people up is also happening in countries with long traditions of protecting art and free speech. As Quinn (2012) has observed, authorities in the United Kingdom are using violent grime music (a British genre with clear hip-hop influences) as evidence in criminal trials as well, and there are similar cases popping up across the globe, revealing that the criminalization of rap is not solely an American phenomenon. To offer just one recent example, in March 2013, a jury convicted two Toronto men of murder after the trial featured rap videos. According to one article about the case, prosecutors relied on gritty YouTube rap videos, violent lyrics, graffiti, tattoos, and intercepted jail letters as evidence that the defendants associated with street gangs operating in the area where the murder took place. Defense lawyers unsuccessfully attempted to have the rap-related evidence excluded, arguing that the defendants, Lavare Williams and Chael Mills, "may have an affinity for gangster rap but it doesn't make them violent gang members . . . M.O.B. is a rap group, not a street gang" (B. Powell, 2013). One detective, testifying as a gang expert, countered that gangs use videos to communicate to other gangs, stake territory, and threaten rivals. Both defendants received an automatic life sentence—one with no parole eligibility for 25 years.

These examples illustrate the use of rap lyrics as evidence of wrongdoing in criminal proceedings, but they offer only a glimpse at the overall scope of this practice (see Dennis, 2007; ACLU of New Jersey, 2013, for a discussion of additional cases). For one, they reflect only cases that have received media attention. In fact, we both are currently testifying in new cases involving the use of rap lyrics, neither of which has reached the national media. Our point is that this is not an isolated practice. Although it is impossible to know the true number of cases where rap lyrics are introduced as evidence (opinions involving rap lyrics may be unpublished, indictment proceedings may be sealed, etc.), several indicators suggest this practice is on the rise: from the increasing number of cases reported in the media, to news articles with titles such as "More Rap Lyrics Showing Up in Court" (Caruso, 2006), to the growing number of commentaries on the topic by academics (Dennis, 2007; Fischhoff, 1999; Fried, 1999; Hirsch, 2012; Nielson, 2012, 2013a, 2013c; Nielson & Kubrin, 2014; J. Powell, 2009; Wilson, 2005). One final piece of evidence is the recognition among some prosecutors that this tactic is effective, so effective that they have begun promoting it. A 2004 training manual produced for the National District Attorneys Association advises that "through photographs, letters, notes, *and even music lyrics*, prosecutors can invade and exploit the defendant's true personality" (Jackson, 2004, p.16; emphasis added; see also Lyddane, 2006). The exact number of criminal cases that involve rap lyrics as evidence may be up for debate, but what is less debatable, we argue, is the potentially

harmful impact this practice may have. In the following section, we consider what this trend means for the right to artistic freedom as well as the social justice and Constitutional implications of rap music on trial.

### *“Freedom of Speech . . . Just Watch What You Say!”<sup>11</sup>: The Implications of Rap on Trial*

The movement to criminalize rap lyrics reflects a broader effort to redefine the meaning of rap music. Rather than treat rap as an art form whose primary purpose is to entertain, prosecutors have successfully convinced judges and juries that the lyrics are either autobiographical confessions of illegal behavior—the “lyrics as confessional” argument—or evidence of a defendant’s knowledge, motive, or identity with respect to the alleged crime—the “circumstantial evidence” argument (see also Dennis, 2007, pp. 8–12). Especially noteworthy is that rap music is the only genre to be treated this way in the court system. To quote a recent amicus brief, filed by the New Jersey ACLU in *The State of New Jersey v. Vonte L. Skinner* (yet another case in which rap lyrics were introduced as evidence at trial), rap music “has been the focus of the vast majority of cases analyzing the use of fictional expressions as evidence of character or motive and intent in criminal proceedings” (2013, p. 2). To illustrate this point, Dennis (2007) notes that in her extensive research, she could identify only one case in which defendant-authored lyrics introduced as evidence were *not* rap lyrics.<sup>12</sup>

As scholars who study rap music, the problem from our standpoint is that the fictional characters portrayed in rap songs are often a far cry from the true personality of the artists behind them. The near-universal use of stage names within rap music is the clearest signal that rappers are fashioning a character, yet the first-person narrative form and rappers’ frequent claims that they are “keepin’ it real” (providing authentic accounts of themselves and “the ‘hood’”) lend themselves to easy misreading by those who are unfamiliar with rappers’ complex and creative manipulation of identity, both on and off the stage.<sup>13</sup> This is particularly problematic with gangsta rap, where artists take on a criminal persona and offer embellished, graphic accounts of violence, sexual conquest, and other illicit activity. If audiences don’t appreciate that these are genre conventions, they can easily begin to conflate artist with character and fiction with fact.

But they are indeed genre conventions. While one can find isolated examples of rappers with real-life connections to crime (just as with virtually any art form), it would be a mistake to extend this characterization to rappers generally. Even casual fans of rap music understand that, just as in gangster films, horror novels, or even in pro wrestling, exaggerated depictions of violence are hallmarks of gangsta rap. In fact, gangsta rap is *defined* by its use of violent themes: *Merriam-Webster’s Dictionary* defines gangsta rap as “rap music with lyrics explicitly portraying the violence and drug use of urban gang life and typically expressing hostility toward whites, women, and civil authority”; *Collins Dictionary* defines it as “a style of rap music, usually characterized by lyrics about Black street gangs in the US, often with violent, nihilistic, and misogynistic themes”; and the *Oxford English Dictionary* defines it as

“a style of rap music, originating in south-central Los Angeles, featuring aggressive and confrontational lyrics centring on the violence of gang culture.” Research, including our own, confirms these definitions. Kubrin (2005), for example, has documented that violent lyrics are pervasive in rap music. Her study found that nearly 65 percent of the over 400 randomly sampled rap songs from the time period 1992–2000 (the heyday of gangsta rap) made reference to some aspect of violence and that many songs were quite graphic in their violent depictions.

There are several reasons why violence has come to define gangsta rap, which has, in turn, significantly influenced mainstream rap music today. For one, rap, like African American creative expression more generally, is characterized by call-and-response patterns, which are not only evident in the songs themselves but also in the way rap calls and responds to its artistic predecessors. The outlaw figure is found throughout African American folklore, music, literature, and film, and through their tales, gangsta rappers are giving new life to a figure that has, in various permutations, existed for more than a century. Gangsters, hustlers, and especially pimps are revered in gangsta rap music, “elevated to the status of hero” (Kelley, 1996, p. 141), because within the music and throughout Black culture, they have always been viewed as a “rare example of black male authority over his domain” (George, 1998, p. 36).

It is this sense of authority that helps explain the appeal of gangsta rap. Often perceiving themselves to be social outcasts and targets for policing and institutional discrimination, rappers crafted a form that gave voice to the conditions in urban America that many people were not willing to confront, all while constructing themselves as figures of power within these urban spaces (Alexander, 2010). Central to this construction is the formation of a violent identity, a necessary precursor to gaining respect within the rap community. Hence, gangsta rappers project images of toughness in their music, referring to themselves as assassins, hustlers, gangstas, madmen, mercenary soldiers, killas, thugs, and outlaws (Kubrin, 2005). To bolster this image, rappers describe how dangerous they are—or can be—and flaunt their willingness to use preemptive violence to survive in lawless urban settings. Scarface’s (1994) line “I gotta get this muthafucka befo’ he gets to me” encapsulates this logic, reflecting the frequent survival-of-the-fittest rhetoric that rappers employ to illustrate how power is maintained within the creative universe of gangsta rap (Kubrin, 2005; McPherson, 2005).

This rhetoric has also laid the blueprint for success within the hip-hop industry (Weitzer and Kubrin, 2009). Audiences quickly responded to gangsta rap’s dark, sordid, and realistic-sounding tales of urban life and it wasn’t long before it became the most popular (and most profitable) subgenre of rap. As a result, beginning in the early 1990s, record companies began moving away from the politically conscious music that had once helped to define mainstream rap and instead started pressuring new acts to adopt gangsta-type rhetoric while at the same time marginalizing those who wouldn’t—a trend that continues today (Hurt, 2006; Kitwana, 1994; Rose, 2008). This meant that a long line of successful performers began adopting a “commercial gangsterism” (Perry, 2004), essentially a persona manufactured by artists who had no meaningful connections to gangs or street life but who willingly conformed to gangsta



conventions to secure recording deals with major record labels (Price, 2006; see also Krims, 2000, p. 71). As rapper Andy Cat from Ugly Duckling stated in an interview with Paul Edwards (2009), “A lot of rap is autobiographical—it’s talking about where you’re from, and your life, and all that, but I got news for you, [many classic hip-hop artists], they used to make it all up. They weren’t going out killing people every night—it’s called creativity” (p. 9).

To give just one example of this creative license, consider contemporary rapper Rick Ross (whose given name is William Leonard Roberts II), one of the most successful artists today. Although he promotes himself as a drug kingpin with deep ties to the criminal underworld—his stage name is taken from the notorious Los Angeles drug trafficker “Freeway” Rick Ross—he is hardly what he markets himself to be. Before beginning his rap career, he not only attended college (as have many gangsta and gangsta-inspired rappers) but at one point worked as a prison guard in Florida. Understandably, he tried to deny his past to protect his “authentic” criminal image, but when employment records and photos of him in a prison guard uniform surfaced on *The Smoking Gun*, he was forced to come clean (“Screw Rick Ross,” 2008).

Hence, although “keepin’ it real” has long been the mantra of gangsta rap, it is often a “marketing pose” (Watkins, 1998, p. 185; see also Jeffries, 2011) reproduced by performers who have few meaningful connections to the criminal worlds they rap about (Perkins, 1996; see also Diallo, 2007). Even rappers who do come from the environments they depict in their music have acknowledged that their tales are not to be taken literally. Jay-Z (2010), for instance, well known for dealing drugs on the dangerous streets of New York before becoming an established musician, criticizes people for reading rap as autobiography. He sees this kind of reading as “the failure, or unwillingness, to treat rap like art, instead of acting like it’s just a bunch of niggas reading out of their diaries” (pp. 55–56).

Jay-Z’s (2010) blunt critique is remarkably applicable to the way courts have denied rap music the status of art. Rap is widely regarded in the academy as what Henry Louis Gates, Jr. (2009) describes as “a new vanguard of American poetry” (p. xxvi); it has been featured prominently in a number of major literature anthologies and it is regularly taught in universities across the country. Yet in the judiciary it is often reduced to “just a bunch of niggas reading out of their diaries.” As Dennis (2007) notes, “Courts assume that defendant-lyricists do not use poetic devices or the devices play a minimal role in understanding the lyrics. Rarely do judicial decisions explicitly acknowledge that the lyrics may employ metaphor, exaggeration, and other artistic devices” (p. 14).

It follows, then, that if rap lyrics are treated as mere diaries or journals, no special skill or training is necessary to analyze them and consequently juries may hear false or misleading testimony about rap from witnesses—often police officers presenting themselves as gang experts—who lack the basic qualifications to offer it.<sup>14</sup> And, predictably, their testimony centers on the illicit behavior described within the lyrics, particularly violence, absent any acknowledgment of the genre conventions just discussed. Yet are we to believe, for example, that Calvin Broadus, Jr., armed with a veritable arsenal of weapons, has ever gone on a hunting expedition for police officers



like his rap alter ego, Snoop Dogg, describes in the song “187 (Deep Cover)”? And when Lil Wayne, Redman, Eminem, and Meek Mill call themselves serial killers in their songs, do we suspect that the artists behind the lyrics are actually pathological murderers? Probably not—if rappers were guilty of even a tiny fraction of the violence they project in their music, we’d all be in big trouble, a point both of us have stressed in our work and have explained to jurors while testifying. Unfortunately, judges and juries do not always understand this, an ignorance prosecutors either share or exploit. In case after case, the results have been devastating for the accused.

Research conducted by social scientists helps to explain why. Experimental research routinely reveals that strong biases in judgment and decision making exist among individuals, including in the courtroom. In particular, studies find that individuals involved in criminal proceedings—including police officers, attorneys, judges, and jury members—run the risk of developing confirmatory bias or the tendency to favor information that confirms their preconceptions or beliefs regardless of whether the information is true (Kassin, Dror, & Kukucka, 2013, p. 45; Tversky & Kahneman, 1974). When applied to issues of race and culture, confirmatory bias can reify existing stereotypes, such as, for example, that young men of color are inherently dangerous. Relatedly, research has uncovered additional biases in the courtroom, including implicit racial bias, which is driven by attitudes and stereotypes that individuals have about members of different races (Kang et al., 2012). Conventional wisdom has been that attitudes and stereotypes about social groups, including minorities, are explicit in the sense that they are both consciously accessible through introspection and endorsed as appropriate by the person who possesses them. However, recent research undermines these conventional beliefs by demonstrating that attitudes and stereotypes may also be implicit, meaning that people may not be consciously aware of them. Consequently, they can function automatically, including in ways that the individual would not endorse as appropriate. Findings from studies of confirmatory bias and implicit racial bias reinforce decades of sociological research on race-based attributions and punishment including, among other things, racial disparity in sentencing decisions (see, e.g., Bridges & Steen, 1998).

In the context of rap music in the courtroom, two studies in particular are illustrative. In 1999, psychologist Stuart Fischhoff published the findings of an experiment intended to determine the impact that gangsta rap lyrics might have on potential jurors. His test subjects were presented with basic biographical information about a hypothetical 18-year-old African American man, but only some were shown a set of violent, sexually explicit rap lyrics that he had written (lyrics that had actually been used as evidence in a 1995 murder trial). Subjects were then asked about their perceptions regarding the young man’s personality (caring–uncaring, selfish–unselfish, gentle–rough, likable–unlikable, conceited–modest, truthful–untruthful, sexually nonaggressive–sexually aggressive, capable of murder–not capable of murder, and not a gang member–gang member). Fischhoff found that the lyrics exerted “a significant prejudicial impact” on his test subjects; for example, subjects who read the lyrics were significantly more likely to think the man was capable of committing murder. More striking was that when Fischhoff told some subjects that the man was being prosecuted for murder,

he found that “exposure to the lyrics evoked a negative reaction in participants that was more intense than the reaction to being told that the young man was on trial for murder” (p. 803). In his discussion of the results, Fischhoff writes, “it seems that people may indeed be inclined to identify an artist with his/her artistic product” but, importantly, he goes on to suggest that race or ethnicity “may also be found to serve as a moderating influence on such social judgments” (p. 804; see also Kubrin & Weitzer, 2010).

Another study provides some support for Fischhoff’s (1999) hypothesis that race or ethnicity plays a role in how people respond to rap lyrics. Social psychologist Carrie B. Fried devised an experiment in which she presented two groups of people an identical set of violent lyrics. One group was told the lyrics came from a country song; the other was told they came from a rap song. As Fried (1999) hypothesized, responses were significantly more negative when the lyrics were represented as rap, essentially revealing that “[t]he same lyrical passage that is acceptable as a country song is dangerous and offensive when identified as a rap song” (pp. 715–716). Fried emphasizes an important racial dimension; whereas country music is traditionally associated with white performers, rap “primes the negative culturally held stereotype of urban Blacks” (p. 716).

Here is where a critical implication of putting rap on trial begins to surface. As Todd Boyd argues, in these trials, authorities are often prosecuting a young man of color, “someone who already looms as a threatening stereotype in the minds of society” (as cited in Nielson, 2012). In each of the cases described in this article, excluding D’Ambrosio, the individual being accused and tried was a young, African American male, and across the country, the overwhelming majority of rap artists targeted for prosecution are Black or Latino. Using rap lyrics as evidence, then, is not just a matter of art being sacrificed for the sake of an easy conviction. Rather, the practice also constitutes a pernicious tactic that plays upon and perpetuates enduring stereotypes about the inherent criminality of young men of color; the lyrics must be true because what is written “fits” with what we “know” about criminals, where they come from, and what they look like (Nielson, 2012).

As Paul Butler argues, “Some people have always had a hard time conceptualizing the young black men who are the primary creators of hip hop as ‘artists’” (as cited in Nielson, 2012). Many of these skeptics appear to be concentrated within the criminal justice system, which raises serious questions about the equal application of First Amendment protections. If rap music, which clearly resides within a wide range of artistic traditions, can effectively be criminalized, what does that mean for the future of the genre? After spending over a year in prison, Olutosin Oduwole, the young man whose lyrics were deemed a terrorist threat, was released after the 5th District Appellate Court of Illinois threw out his conviction, determining that a discarded piece of paper left inside a car did not constitute an attempt to make a terrorist threat. In an interview shortly after, he lamented, “I still continue to make music. But now I’m a bit more aware of what I’m writing and making sure everything stays away from violence” (as cited in Suhr, 2013). Oduwole’s comments speak to the potential chilling effect of putting rap on trial as more and more aspiring rappers find

themselves locked up for their lyrics. Without the First Amendment protecting these artists, it would not be surprising if they began following Oduwole by modifying their art to avoid prosecution. And in such a climate, we are left with a freedom of speech that comes with racial caveats, or as Ice T ironically put it, “Freedom of Speech . . . Just Watch What You Say!”

### “Lemme Hear You Say Fight the Power”<sup>15</sup>: Sustaining Rap’s Resistance?

As a critical element of broader hip-hop culture, rap music exposes some of the most salient social, cultural, and political problems in contemporary American society. More than any other contemporary music genre, it has faced robust and sustained opposition. But this opposition has not gone unchallenged. In fact, rap music has been remarkably resilient in the face of public protest, political demonization, and police pressure. Rap music has actually flourished, in the process transforming popular culture and spreading its influence to diverse audiences around the globe.

Yet as we have argued in this article, rap now confronts a new and perhaps more menacing battle, one that is taking place in courtrooms across the nation. Behind courtroom doors, prosecutors are introducing rap lyrics as evidence in criminal trials, judges are ruling the lyrics admissible, and juries are convicting young men of color after hearing those lyrics. And while our focus in this article has been on prosecutors’ use of rap lyrics as evidence during jury trials, there are in fact several scenarios in which rap lyrics can be used throughout the criminal justice process. Prosecutors can present them during grand jury proceedings, at sentencing hearings, or use them as leverage to compel the defendant to accept a plea bargain. There have even been cases in which *defense* attorneys have presented rap lyrics as evidence; for instance, one defense attorney whose client was claiming self-defense used the victim’s rap lyrics to argue that the the victim, and not the defendant, was the aggressor. In this case, it was the prosecutor who argued during the trial that “What an artist does and what an artist creates does not reflect on reality” (as cited in Leonard, 2010). Our point is simply that this practice may be more widespread and varied than is currently understood.

Yet as more and more of these cases make the news, we are beginning to understand just how prevalent this practice is—and how malicious its impact may be. As we have argued throughout, putting rap on trial has significant implications for how we define art, as well as for free speech and the right for all citizens to receive a fair trial. Unfortunately, there is little doubt this practice will only escalate in the coming years. As opportunities for amateur rappers to disseminate their work expand, including through such Internet-based venues as Facebook, Twitter, and YouTube, so do opportunities for “getting caught,” which is why we feel a sense of urgency to speak out now.

Recent appellate decisions in Maryland, Massachusetts, and New Jersey that have overturned convictions based upon the improper use of rap lyrics—as well as attention to the broader issue by organizations such as the ACLU—offer reassurance that some people within the judiciary share our concerns.<sup>16</sup> Yet, overall, appellate outcomes present a bleak picture. The Nevada Supreme Court, for example, recently ruled that

violent rap lyrics were admissible as evidence, an outcome that is far from uncommon.<sup>17</sup> As Dennis (2007) notes, “defense appeals of trial court admission decisions fall on deaf ears,” and “even when an appellate court deems the evidence erroneously admitted, the error usually does not prompt reversal” (p. 30).<sup>18</sup> In sum, then, despite the thorny legal issues involved in using rap lyrics as evidence and over the concerns of defense attorneys who argue that such evidence is unfairly prejudicial, judges generally permit such evidence at trial; and at least among amateur rappers, these trials typically result in convictions, convictions that stand little chance of reversal in appellate courts.

For all these reasons, we issue a call to scholars to critically examine the growing movement to turn rap lyrics against their authors. An important first step, we believe, involves quantifying the extent to which this practice has occurred and continues to occur. We have argued this is not an isolated practice and that the number of cases where rap lyrics are introduced as evidence in criminal trials appears to have grown over the recent past. But we do not know the exact number of cases that exist. A critical next step, therefore, would be to create a database that reflects the universe of such cases. This database could contain important information about each case, including defendant characteristics, case characteristics, jury characteristics, court characteristics, and even information about the locale in which the case was tried. Such data would allow researchers to begin to identify social patterns that may exist among the cases as well as the elements, contours, and context of rap on trial. A second worthwhile area for future research involves analysis of the news media reporting surrounding the cases where lyrics have been used at trial. Of interest is the way in which the news media choose to frame the various issues involved as well as any differences in framing that exist across mediums. A third area for research might be to assess whether the criminalization of rap music has had a chilling effect on the genre, particularly at the amateur level. Are up-and-coming artists, following Olutosin Oduwole, shying away from violent themes because they fear future prosecution? Interviews with rappers would be an important first step in answering this question.

Finally, although we view the judiciary’s use of rap music as fertile ground for research in and of itself, we also see it as a potential point of scholarly convergence for researchers from a variety of fields and critical perspectives. It is clear, for instance, that the pervasive use of rap in courts has a number of implications for, and connections to, the significant body of work dedicated to racial disparities in the criminal justice system. It also opens up new opportunities for legal scholars to consider evidentiary practices and First Amendment protections as well as for researchers interested in African American creative traditions to explore the complex relationships among Black expression, popular culture, and the State. To quote dead prez, “it’s bigger than hip hop,” and so as we look ahead, we encourage scholars to view rap on trial through a lens that is wider than hip-hop culture, one that accounts for the many dynamics that shape American culture.

In the short term, however, we offer some more focused recommendations regarding how to treat rap lyrics as evidence in criminal courts, many of which are consistent with recommendations offered by Dennis (2007) and the New Jersey

Amicus Brief (2013). Perhaps most importantly, trial courts must take a more informed approach to the admission and evaluation of rap music lyrics in criminal matters. It is our position that because rap is a form of artistic expression entitled to First Amendment protections, it is critical for courtroom players to be cognizant of rap as a complex, highly sophisticated form of poetry with lyrics that, by convention, rely heavily upon hyperbole and metaphor. As a result, these players must likewise be careful not to assume that the lyrics are autobiographical or inculpatory, thereby conflating fact with fiction. To ensure that juries understand rap music in its proper context, the defendant should, at the very least, be entitled to call expert witnesses who can offer testimony that explains the artistic traditions and constraints that inform the composition of rap lyrics.

Of course, these suggestions matter little if we redefine rap music as something other than an art form whose primary purpose is to entertain. The movement to put rap on trial does just this, effectively denying rap's status as art, and potentially silencing a genre that, in many cases, continues to offer important social and political commentary. Yet Public Enemy's rallying cry, "fight the power," may be instructive, once again. A critical part of this fight involves educating the public that rap music is far more than a series of autobiographical confessions or "a bunch of niggas reading out of their diaries." It means acknowledging rap music as a complex form of creative verbal expression with intricate artistic devices and genre conventions, an art form that continues to be studied in schools and universities across the world. Once we understand rap within this creative tradition, it becomes difficult to disagree with Georgetown Professor Paul Butler, who, as cited in Nielson (2012), recently exposed the double standard of putting rap on trial this way: "Using lyrics as evidence against hip-hop artists is as preposterous as bringing organized crime charges against the author of *The Godfather* or gang charges against the director of *Scarface*. It's art . . ."

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### **Notes**

1. "187" is the police code for homicide. It is derived from section 187 of the California Penal Code, which defines the crime of murder.
2. Amateurs are particularly vulnerable to this tactic, one reason being they lack the name recognition that signals them as artists. Beanie Sigel's defense attorney confirms this

- vulnerability, noting that he has had “a tougher time downplaying the significance of rap lyrics written by other, less-famous clients” (as cited in J. Powell, 2009, p. 522).
3. From Boogie Down Productions’ (1988) “Stop the Violence”
  4. “Golden age” is admittedly a problematic term. Although it is frequently referenced in hip-hop discourse, both scholarly and popular, there is no real consensus about when it occurred or, more importantly, which types of rap exemplified the era. Dyson (2007) emphasizes the Afrocentric and Black nationalist acts, while Cobb (2007) adds performers like Too Short and 2 Live Crew, hardly known for their socially conscious contributions.
  5. In fact, the Public Enemy silhouette is of a man wearing a beret—clearly intended to evoke images of the Black Panther-style resistance of a generation earlier—and it was this kind of militancy that began to draw the attention of institutions of power within the United States, particularly law enforcement agencies.
  6. In fact, sales of 2 Live Crew’s 1989 album *As Nasty as They Wanna Be* were being declared illegal in some jurisdictions, and mere association with the group could become grounds for prosecution. According to Blecha (2004), as late as 1997, three owners of a music venue in Oxford, Mississippi, were given 6-month jail terms for merely booking a concert with 2 Live Crew.
  7. It is important to note that “Cop Killer” was not a rap song nor was Body Count a rap group. However, coverage of the controversy surrounding the song frequently suggested it was indeed a rap song and there’s little doubt that previous criticism of Ice T’s rap music (most famously from Tipper Gore in her 1990 op-ed titled “Hate, Rape, and Rap”) contributed to the uproar surrounding “Cop Killer.”
  8. For instance, in Greensboro, North Carolina, local police were so incensed by the song that they threatened to stop responding to emergency calls to a record store that continued to sell it (Lipsitz, 1998).
  9. From Mobb Deep’s (1995) “Shook Ones, Pt. II”.
  10. Since the D’Ambrosio case, there have been others in which rappers have been prosecuted based solely on the content of their lyrics or videos, including Rashee Beasley and Jamal Knox in Pittsburgh (Ward, 2013) and Darren John in Mississauga, Ontario (Ballingall, 2013).
  11. The subtitle of Ice-T’s 1989 album, *The Iceberg*.
  12. This is not to say that artists from other genres have not found themselves in legal trouble as a result of their music. Two well-known examples are Judas Priest and Ozzy Osbourne, both of whom were sued (unsuccessfully) by parents who claimed that their children were influenced to commit suicide after listening to recordings by the iconic heavy metal artists. It is important to note, however, that these cases (and others like them) are very different from the ones we’re presenting in this article. Judas Priest and Ozzy Osbourne were accused of creating music that caused members of their audience to act in a particular way. Unlike rappers, they were never accused of writing autobiography with their lyrics and were therefore never held responsible for carrying out the actions described in their songs.
  13. Not all rappers use stage names; Kanye West and Kendrick Lamar are two notable examples of artists who do not.
  14. The second author testified in a 2013 trial—*The People of California v. Alex Joseph Medina*—in which the prosecutor, with the help of his gang expert, attributed a number of lyrics

to the defendant that he didn't actually compose. They were, instead, the defendant's handwritten transcriptions of lyrics from other artists, something the prosecutor either missed or tried to conceal.

15. From Public Enemy's (1989) "Fight the Power."
16. *Hannah v. State of Maryland* (reversal in 2011); *Commonwealth v. Lamory Gray* (reversal in 2012); *State of New Jersey v. Vonte L. Skinner* (reversal in 2012).
17. *Holmes (Deyundrea) v. State of Nevada* (conviction affirmed in 2013).
18. A recent New Jersey Amicus Brief (2013) supports Dennis's claim with recent data; the brief identifies 18 cases in which the admissibility of rap lyrics as evidence was analyzed. In 14 of those cases (nearly 80%), the lyrics were admitted into evidence.

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