

RAP SHEETS: THE CONSTITUTIONAL AND SOCIETAL COMPLICATIONS ARISING FROM THE USE OF RAP LYRICS AS EVIDENCE AT CRIMINAL TRIALS

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I. INTRODUCTION

It is no secret that rap artists have a long and storied history with the American judicial system. For over 20 years, rappers have encountered legal troubles ranging from civil suits for defamation and copyright infringement; to criminal charges stemming from violations of obscenity laws, gang violence, and narcotics distribution; to the oft-acrimonious relationship between rappers and law enforcement. This paper does not attempt to examine the broader history of rappers' run-ins with the law, but instead focuses on what is one of the most controversial issues within the hip-hop community today: the use of artists' rap lyrics as evidence at criminal trials. A recent pattern and practice of state prosecutors using rappers' song lyrics against them in court has caused much concern in the hip-hop industry, and has given rise to many serious constitutional and policy questions. Though hardly a comprehensive analysis of the issue, what follows is an in depth discussion of this particular prosecutorial practice, which I hope will further the ongoing public discourse regarding both the procedure itself, and the broader legal and social issues inherent within it.

Part II introduces the topic with a brief narrative history of the rise of contemporary hip-hop culture, and an examination of its increasing impact on American popular culture. It is the author's belief that only with a firm grasp of rap music's past can we begin to analyze the issues of today with a level head. Next, Part II describes how hip-hop materi-

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alized into a culture synonymous with gang violence, narcotics distribution, social unrest and general distrust. This section describes rap primarily from the point of view of the industry and the artist. Viewing rap through this lens simplifies the task of pointing out and focusing on the external conditions — such as the influence of corporate labels — that shaped hip-hop culture into the relatively bastardized, and yet increasingly popular, art form it is today.

Part III begins with an analysis of how certain dogmas of hip-hop culture (such as “keeping it real”) actually work against rapper-defendants when they come to trial. In it, I attempt to address the quandaries surrounding how courts and juries perceive rapper-defendants, in light of the defendant’s chosen career and artistic work up to the point of trial. Part III then surveys recent instances in which rappers’ lyrics were admitted as evidence at trial, and what role the lyrics played in the court’s decisions.

Part IV discusses the prejudicial effect of rap lyrics on juries, relying primarily on a study conducted by Dr. Stuart Fischhoff of the California State University, Los Angeles. Fischhoff’s study, the only one of its kind to date, posits that juries in criminal trials are far more likely to render guilty verdicts against defendants who have been known to compose or recite violent rap lyrics, regardless of whether the lyrics were composed for recreational or professional purposes.

Part V concludes by raising the more difficult policy questions arising from the use of rap lyrics as evidence, and critiques some of the misguided societal views of rapper as both artists, and criminal defendants.

II. A NARRATIVE HISTORY

While this paper is tailored towards dissecting the issue of the use of rap lyrics as evidence, it would only be prudent to first detail the background of the music and culture at issue, which has given rise to so many legal controversies in the last quarter-century. We cannot begin to understand the policy and legal issues raised by the use of rap lyrics in court until we take a long, hard look into the cauldron in which the relationship between hip-hop and the American justice system was forged.¹

¹ In this part I will refrain from discussing the musicological evolution of hip-hop, as I find it beyond the scope of this paper. I will instead focus on the evolution of hip-hop in its social context, primarily as a facet of popular culture.

The Birth of Hip-Hop Music

Few can seriously dispute that the most prevalent contribution that African-Americans have made to American popular culture in the last half-century has been the creation of hip-hop. The exact birth date and birthplace of hip-hop music is often contested, but most hip-hop historians place the time around 1974, and the place as The Bronx, New York.² The hip-hop movement was created at a time when gang violence ran rampant in the streets, and police protection in the inner-city was sporadic, if not non-existent.³ Inner-city youths believed that the violence had to be stemmed, and in order to do that, their voices needed to be heard.

As history would have it, it was the Jamaican immigrant population, who had settled in the Bronx throughout the 1960s and early 1970s, which spawned the hip-hop movement in New York City.⁴ "Rapping" evolved out of a Jamaican art form known as "toasting", which derived simply from words (often rhymed) being spoken over previously-recorded music, the spoken lines in time with the rhythm. Early street lyricists would recite their own form of urban poetry, chronicling their poverty-inspired sagas and frustrations, to instrumental beats and harmonies that were already on record. Afrika Bambaataa, a notable disc jockey from the Bronx and founder of the Zulu Nation,⁵ helped introduce this new sound to the public by hosting "hip-hop jams" at the Bronx River Community Center.⁶ The advent of the cassette tape around this time allowed for the recording of this new kind of music, and it was through a widespread practice of tape exchanges that "rapping" was distributed to the masses in the inner city.⁷ The new sound spread like wildfire through the streets of New York. It wasn't long before the inner city community discovered the social utility of this new art form; harnessing adolescent angst and rage against the establishment that they felt had abandoned them, "rapping" gave

² See generally Henry A. Rhodes, *The Evolution of Rap Music In America*, Yale Teacher's Institute. at <http://www.yale.edu/ynhti/curriculum/units/1993/4/93.04.04.x.html>; See also RANDY LIGHT, *THE VIBE HISTORY OF HIP-HOP* (Random House 1999); DAVID TOOP, *RAP ATTACK #3*, (Serpent's Tail Publishing 2000); and NELSON GEORGE, *HIP-HOP AMERICA* (Penguin Books 1999).

³ RHODES, *supra* note 3.

⁴ *Id.*

⁵ Zulu Nation was an organization whose goal was to replace gang rumbles with non-violent forms of expression such as rap, dance, and graffiti art. *Id.*

⁶ *Id.*

⁷ William Eric Perkins, *The Rap Attack: An Introduction*, Droppin Science, in *CRITICAL ESSAYS ON RAP MUSIC AND HIP-HOP CULTURE*, (Temple Univ. 1998), §1, 1, available at: http://www.temple.edu/tempress/chapters/996_ch1.pdf (last visited Nov. 12, 2004) ; See also TOOP, *supra*, note 3 at 78.

urban youths — and even rival gangs — a creative and nonviolent way to express themselves through music.

Rapping, or “emceeing” as it is often called, allowed for street poets young and old to “battle” one another by way of showcasing their analogical and metaphorical dexterity, using their words (and not their fists) as weapons. Laden with punning witticisms and hyperbolic bragadocio, the lyrics of early rap told stories of how one rapper’s style, content, or delivery on the microphone was superior to his adversary’s.⁸ “Verbal virtuosity” would soon become the prime symbol of social status in these circles.⁹ Rap competitions would be held in both parks and club venues where rappers could exhibit their verbal skills to large audiences.

“Battle” rap lyrics eventually evolved to spawn more narrative and less antagonistic forms, through which rappers were able to convey stories through song. These first rap songs told tales of struggle and survival, yet expressed a certain optimism for the future of inner-city youth, complete with positive morals and food for thought. Urban listeners, familiar with the down and out conditions that early rappers often described, sympathized with this new musical movement and distributed rap tapes far and wide in an effort to ensure that their messages were heard.

It was not long before rappers began to file *en masse* into the doors of recording studios to lay down their tracks and release their art into the mainstream. Rap music’s first commercial hit came in 1979 with the Sugar Hill Gang’s “Rapper’s Delight,” a tune that remains popular today.¹⁰ Set to the beat of Chic’s disco classic “Good Times,” the song received generous airplay on local radio stations, and would be the first rap song to break Billboard’s Top 40, eventually peaking at #37 on the Hot 100 charts.¹¹

Rap Finds a New Home

Despite the popularity of the upbeat “Rapper’s Delight,” and other positive themed rap tunes like Grandmaster Flash’s anti-crime-inspired “The Message” and anti-drug-inspired “White Lines (Don’t Do It!),” it appeared rap music was merely an inner-city pop culture

⁸ *Id.*

⁹ Mark S. Hamm & Jeff Ferrell, *Rap, Cops, and Crime: Clarifying the ‘Cop Killer’ Controversy*, (Academy of Criminal Justice Sciences 2004), available at: <http://www.axt.org.uk/hatemusic/rappin.htm> (last visited Nov. 12, 2004).

¹⁰ RHODES, *supra* note 3.

¹¹ Top 100, BILLBOARD, Jan. 5, 1980, Vol. 92 Issue 1.

fad that was destined to phase out.¹² Many music and culture critics predicted that the genre would have a quick demise.¹³ Record company executives had other plans, however. Having seen the craze that "Rapper's Delight" had spawned in the inner city, major record labels realized it would be a worthwhile venture to attempt to market this newfangled rap craze to the masses. However, to appeal to a larger (read: white) record-buying audience, the corporate music world decided to adapt (or "co-opt", as David Toop refers to it) the rap genre in such ways as were fit for mass consumption, which in turn would guarantee bigger profits.¹⁴ Since most of record-buying America in the late 1970s and early 1980s had been receptive to stereotypical black figures in motion pictures (i.e. "blaxploitation" figures like Shaft, Foxy Brown, and SupaFly), black artists who were destined to be commercially successful rappers would ultimately be forced to assume the image of social misfits.

Street rappers of this early era, most of whom were destitute, and all of whom were desperate to have their voices heard in the mainstream, were easily tempted by promises of wealth beyond their imagination, and were quick to sign record contracts with any label that would make them an offer. However, at this early stage in rap's commercial career, record labels refused to sign acts unless they "had a certain image" or "[rapped] about certain things."¹⁵ In many cases, aspiring rap stars were told from the door, "If you don't talk bad English and purport sex and violence, you won't get a deal."¹⁶ Getting the big money from record industry contracts would often equate to "selling out" one's artistic integrity.¹⁷ Once signed, artists often had to follow a strict set of guidelines put forth by the labels that fronted them money to get their album started. Record company executives used these guidelines to fashion a "rap image."¹⁸ While the foundational messages of early rap lyrics (chronicling struggle and survival) remained constant in early commercial rap songs, one sensed that the music had distinctively changed from its relatively humble beginnings.

¹² See TOOP, *supra* note 3, at xi.

¹³ Perkins, *supra* note 8.

¹⁴ TOOP, *supra* note 3, at 206.

¹⁵ AL SHARPTON, *The Hip-Hop Generation*, in AL ON AMERICA 249 (2002), available at: <http://www.daveyd.com/FNVDec302002.html> (last visited Dec. 1, 2004); See also TOOP, *supra*, note 3, at 206 ("With rap becoming big business, there was an inevitable shift of focus to the marketing of personality MC's").

¹⁶ SHARPTON, *supra* note 16.

¹⁷ Michael L. Sapps, *And the Winner Is . . . Not the Real Hip-Hop That We Know*, (July 7, 1994), in THE ART FORM, Vol. 1.1, available at: http://www.etext.org/Zines/ASCII/Dub/_dub1_ (last visited Nov. 12, 2004).

¹⁸ David Samuels, *The Last Days of Rap*, THE NEW REPUBLIC, Nov. 16, 1991.

"Reality Rap"

The new commercialized "reality rap" was immediately popular, and ushered in a new audience to the genre. White, middle-class residents of suburban America were fascinated and intrigued by rappers' depictions of inner-city life. It was as if they were being afforded a glimpse into a dark world of violence, crime, poverty and death which — while it may have appeared distant and foreign — might have only been located a few miles from their home. This was exactly what record producers were shooting for, an image that would bring criminality and fear into white suburban homes.¹⁹

In 1984, the rap group RUN-DMC released its self-titled first album, which appealed to white audiences by providing them with an image of two rappers struggling to make it in the ghetto. What many white audiences did not know was that the group's members were staunchly middle-class; one had college-educated parents and the other was a mama's boy from a good Catholic school background. Like most commercial rap acts of this period, RUN-DMC was a commodity to be sculpted, packaged, and sold to the public. Bill Adler, former rap publicist notes that "neither [RUN nor DMC] was deprived and neither was ever with a gang, but on stage they became the biggest, baddest, streetest [sic] guys in the world."²⁰

It did not take long for rap's new image to have a snowball effect. As white suburban tastes increasingly began to determine the nature and direction of the hip-hop art form, "white demand began to create groups that were more defiantly black . . . which [would give] white America a harder, more abrasive rap".²¹ Enter Public Enemy, a rap group packaged and marketed to white America as being a band of angry Afro-centric militants. Their songs, such as "Fight the Power," "9-1-1 is a Joke," and "By the Time I Get to Arizona," touched on a myriad of controversial themes, from inciting race wars, to black aggression spawned by neglect and suppression by the white majority, to assassinating white political leaders with racist agendas, respectively. Public Enemy's lyrics were noticeably more political than many of their reality rap predecessors, which made them appealing to white intellectuals, and dangerous to the Establishment who viewed them as a threat to public peace and safety. What many people did not know is that while Public Enemy's lyrics portrayed them as having their roots in the

¹⁹ TOOP, *supra*, note 3, at 120.

²⁰ David Samuels, *The Rap on Rap: the 'Black Music' that Isn't Either*, THE NEW REPUBLIC, Nov. 11, 1991, at 27.

²¹ *Id.*

cruel inner-city streets, all of the group members were children of successful professionals from middle-class Long Island.²²

The Advent of "Gangsta Rap"

As the rap snowball descended the cultural mountainside, it only gained speed. By 1988, conscious manipulation of black stereotypes became rap's "leading edge."²³ In that year, a Los Angeles-based rap group calling themselves N.W.A.²⁴ burst onto the hip-hop scene with a vengeance, destined to change the worldview of rap forever. The first major hit of their debut album *Straight Outta Compton* was entitled "F__k the Police."²⁵ With lyrics that can only be described as ultra-violent,²⁶ this song broke new ground with its overtly anti-establishment messages and liberal use of obscenities. The rest of the album reflected the group's commitment to the African-American urban experience by both explaining and exploiting the injustices and oppression that they felt were a part of living in the ghettos of South Central Los Angeles. The album depicts a city rife with gang violence, pimping, child abandonment, AIDS, and drugs; where African-Americans are selected out for mistreatment by police; and where a life of crime is the only way to survive.²⁷ *Straight Outta Compton* climbed the popular music charts, and sold over a million copies in its first three months.²⁸

A few years later, rapper Ice-T, also a South Central Los Angeles native, took N.W.A.'s "F__k the Police" message one step further when he composed a song entitled "Cop Killer."²⁹ The controversy surrounding the song's theme made headlines, and the album on which the

²² Samuels, *supra*, note 19.

²³ *Id.*

²⁴ N.W.A. stands for "Niggaz With Attitude"

²⁵ N.W.A., *F-k the Police*, on *STRAIGHT OUTTA COMPTON* (Priority Records 1988).

²⁶ *Id.* "F__k the Police" contains the following passage: "Fuck the Police coming straight out of the underground/A young nigger got it bad' cause I'm brown/ And not the other color/Some people think/They have the authority to kill the minority. . . / A young nigger on the warpath/ And when I'm finished, it's gonna be a bloodbath/ Of cops dying in L.A./ Yo, Dre I've got something to say: Fuck the Police!"

²⁷ See Hamm & Ferrell, *supra*, note 10; Perhaps borrowing from the more positive Afrocentric themes put forth earlier by Public Enemy and Arrested Development, a more brutal black power rhetoric muscled its way into gangsta rap. For example, gangsta rap group Da Lench Mob, in their song "Goin Bananas", recites the following: "We're having thoughts of overthrowing the government / It's open season on crackers, you know; the morgue will be full of Caucasian John Does / Oh my god, Allah, have mercy; I'm killing them devils because they're not worthy to walk the earth with the original black man / I won't rest until they're all dead." Da Lench Mob, *Goin Bananas*, on *PLANET OF DA APES* (Priority Records 1994).

²⁸ *Recording Industry Association of America: Gold & Platinum, Searchable Database*, at <http://www.riaa.com/gp/database> [Searchword: N.W.A.] (last visited Dec. 3, 2004).

²⁹ Ice-T, *Cop Killer*, on *BODY COUNT* (Warner Brothers 1994).

song was featured, Ice-T's *Body Count*, was taken off of several consumer shelves as a result. At about this same time on the East Coast, new menacing rap groups such as Kool G Rap and DJ Polo would borrow the west coast's "gangsta" themes to create songs like "Live and Let Die",³⁰ in which Kool G Rap describes how he brutally murders two undercover police officers in the course of a drug deal. The New York-based gangsta rap group Onyx would find commercial success with songs that glorified (if not directly advocated) gun-toting criminal lifestyles, such as "Throw Ya Gunz (In the Air)".³¹

Research established in 1994 that, compared to other music genres such as soul, country, heavy metal, pop, and classic rock, music videos for gangsta rap songs contained *twice* the amount of lyrical and visual violence.³² While conservative America, under the presidency of George Bush, Sr., expressed moral outrage at this new pop culture phenomenon, the sales of gangsta rap albums continued to skyrocket. Hip-Hop reporter David Samuels later explained gangsta rap's immediate popularity by claiming that when "more rappers were packaged as violent black criminals, the bigger their white audience became."³³

Unfortunately, outsiders began to believe — often incorrectly — that the gangsta rappers were the true voice of a frustrated black community. Their belief was only furthered by hip-hop artists like Chuck D (of Public Enemy) who lent credibility to the music by calling rap "Black America's TV station" and "the CNN of the streets".³⁴ Rapper icon KRS-One even went so far as to say that rap music was "the last voice of black people".³⁵ By listening to rap, middle-class white America was led to feel as if they were "eavesdroppers" on the "putative, private conversations of the inner city".³⁶ It appeared for the time being that the record companies had been successful in using gangsta rap music as their tool to sell stereotypes and prejudices to the American public. Whatever ties existed between rap music and the real inner-city, suburban America perceived them as gospel truths.³⁷

³⁰ Kool GRap, *Live and Let Die*, on LIVE AND LET DIE (Cold Chillin Records, 1992).

³¹ Onyx, *Throw Ya Gunz (In the Air)*, on BACDAFUCUP (Def Jam Records 1993).

³² J. Tapper, E. Thorson & D. Black, *Variations in Music Videos as a Function of their Musical Genre*, J. BROADCASTING ELECTRONIC MEDIA, at 103-114 (1994).

³³ Samuels, *supra*, note 19, at 25.

³⁴ Darrell Bowling, Young, *Gifted and Wack: Black Rappers' One-Note Theme of Negative Images*, at <http://www.msnbc.msn.com/id/3677687/> (last visited Nov. 10, 2004).

³⁵ TOOP, *supra* note 3, at 197.

³⁶ Samuels, *supra* note 21, at 28.

³⁷ *Id.*

Hip-Hop As Popular Culture (1990-Present)

The 1990s saw the arrival of many new forms and styles of rap music. These styles ranged from marijuana-promoting raps, courtesy of bands such as Cypress Hill, to the sexually-driven, obscenity-laden songs found on albums like 2 Live Crew's *As Nasty as They Wanna Be*, Slick Rick's *The Great Adventures of Slick Rick*, and Snoop Dogg's debut album *Doggystyle*. As demand for more coarse lyrics grew, rappers were compelled to latch onto any negative image that would sell records. In his book chronicling the evolution of hip-hop culture, writer David Toop recalls how "reality rap was pervaded by an air of unreality as the financial rewards escalated."³⁸

Defying societal conventions with their lyrics, rappers in the 1990s became the rebels of their generation, more rebellious than Bruce Springsteen or Guns N' Roses ever were in their prime.³⁹ This pivotal decade would also witness the advent of the cable MTV show "Yo! MTV Raps" as well as the Black Entertainment Channel, both of which increased mainstream exposure to hip-hop culture (vis-à-vis music videos).

The mid-1990s found Sean Combs (a.k.a. "Puff Daddy/P. Diddy") capitalizing on a rap concept that would later come to be known as "bling bling" or "ghetto fabulous" rap; it was a style that emphasized flashy jewels, fancy cars, mansions, yachts and personal Lear Jets as the only real symbols of American success.⁴⁰ While rapping about a lust for the finer things in life was not new to the genre of rap music, many rappers who followed this new model would take it a step further by suggesting to youth that they were not worthy unless they pursued frivolous materialism, decked themselves out in designer name-brand clothing, or wore diamond-encrusted platinum jewelry. Plenty of these rappers made sure to note that their path to success entailed hustling, drug dealing and thievery.⁴¹ The ultimate message: crime pays. Often-times rappers would act as if serving time for a crime was a rite of

³⁸ TOOP, *supra* note 3, at xii.

³⁹ Calvin Sims, *Gangster Rappers: The Lives, The Lyrics*, N.Y. TIMES, Nov. 28, 1993, §4, at. 3.

⁴⁰ See generally Commentary, Adissa Banjoko, *Hip-Hop and the New Age of Ignorance*, Davy D's Hip Hop Corner, §4, at 3, at <http://www.daveyd.com/ageofignorance.html> (last visited Nov. 20, 2004).

⁴¹ Iconic rappers such as The Notorious B.I.G. and Jay-Z admittedly began their rap careers, and subsequently built their rap empires, with money made from dealing crack cocaine. See Notorious B.I.G., *Juicy*, on READY TO DIE (Bad Boy Records 1994); See also Jay-Z, *Public Service Announcement*, on THE BLACK ALBUM (Roc-A-Fella Records 2003).

passage in the hip-hop community; the way a rapper “earns his stripes.”⁴²

Despite years of saturation of these negative images, and despite the trend in rap music during the last few years toward the promotion of ever more vile, deviant, and sociopathic behavior, Americans continue to buy into the culture at an ever-increasing rate. By 1998, hip-hop had overtaken country music to become America’s biggest-selling format.⁴³ In 2002, hip-hop records garnered 13.8 percent of 2002’s album purchases.⁴⁴ Today, hip-hop is a multi-billion dollar industry, producing not only music, but apparel, motion pictures, and popular magazines.⁴⁵ Hip-hop culture also serves as a thematic backdrop for the marketing of almost every form of consumer good available.⁴⁶ In 1993, rap music was the subject of one of the most important copyright cases to reach the U.S. Supreme Court in decades.⁴⁷ Rap has even made an impact on the writing style of our nation’s esteemed judiciary, as a recently publicized court opinion has shown.⁴⁸ In an article enti-

⁴² See Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983 (2004); See also Dorian Lynskey, *I’m Going to Jail? That’s Great! Time in Prison Becoming a Rather Good Career Move for Stars of Hip-Hop*, THE GUARDIAN ONLINE, Sept. 2, 2005 at <http://www.guardian.co.uk/arts/fridayreview/story/0,12102,1560551,00.html> (last visited October 1, 2005).

⁴³ TOOP, *supra* note 3, at xii.

⁴⁴ Bora Rhee, *Rap Culture: The Dark Side — Shootings, Drugs and Misogyny: What is Hip-Hop Trying to Say?*, HILARY ONLINE MAGAZINE, at <http://www.hilary.com/thought/rap.html> (last visited on Nov. 12, 2004).

⁴⁵ See, e.g., *Phat Fashions, L.L.C. v. Phat Game Ath. Apparel, Inc.*, 2002 U.S. Dist. LEXIS 15734 (E.D. Cal.) (granting summary judgment in favor of apparel company owned by hip-hop mogul Russell Simmons in action against trademark infringer).

⁴⁶ See Ronald D. Brown, *The Politics of ‘Mo Money, Mo’ Money’ and the Strange Dialectic of Hip Hop*, 5 VAND. J. ENT. L. & PRAC. 59 (2003).

⁴⁷ *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 572 (1993) (explaining that the musical parody at issue was from “popular rap music group” 2 Live Crew).

⁴⁸ Michigan Circuit Court Judge Deborah Servitto rapped part of her recent decision dismissing a defamation case brought against famed rapper Eminem by his former schoolyard bully DeAngelo Bailey. Bailey was the subject of one of Eminem’s verses in the song entitled *Brain Damage*:

Eminem says Bailey used to throw him around
Beat him up in the john, shoved his face in the ground
Eminem contends that his rap is protected
By the rights guaranteed by the First Amendment
Eminem maintains that the story is true
And that Bailey beat him black and blue
In the alternative he states that the story is phony
And a reasonable person would think it’s baloney
The Court must always balance the rights
Of a defendant and one placed in a false light
If the plaintiff presents no question of fact
To dismiss is the only acceptable act
The lyrics are stories no one would take as fact

tled “The Hip-Hop Generation”, former presidential candidate and activist Rev. Al Sharpton writes that “America’s culture is intertwined with hip-hop culture, from its language to its clothing to its music. You cannot turn on a television or watch a contemporary movie and not see the influence of hip-hop.”⁴⁹ Anyone who tests out the Reverend’s hypothesis for themselves will find that in most cases it holds true.

PART III: RAP PERSONAS – FACT OR FICTION?

The mass appeal of hip-hop culture, combined with the success of packaged rap acts that cultivate fashionable images, has no doubt fueled many popular conceptions about the character of certain rap artists. Today, we as a society have come to expect the content of rap lyrics to accurately depict the true lifestyle of the artists who profess them, and our views of particular rappers’ mental states and dispositions have been molded accordingly.⁵⁰ Having fostered these pre-conceived notions of rap music and rap artists, it often comes as little or no surprise to the public when rappers known to glorify crime and violence get arrested for the kinds of illegal activities they profess in their lyrics.

In this section I will attempt to first identify certain aspects of hip-hop culture which pose significant problems for rappers who may be subsequently put on trial. The following passages describe instances in which rappers’ lyrics have come back to haunt them in court. I conclude by introducing a recent study addressing the possible prejudicial effect that the use of lyrics as evidence has on juries, as well as the policy and constitutional implications that arise from such use. These themes will be further developed in Parts III and IV.

They’re an exaggeration of a childish fact
Any reasonable person could clearly see
That the lyrics could only be hyperbole
It is therefore this Court’s ultimate position
That Eminem is entitled to summary disposition.

Bailey v. Mathers, No. 2001-3606-NO, (Mich.Cir.Ct. Oct. 17, 2003); *See also* United States v. Murphy, Case Nos. 04-2032, 04-2292, & 04-2309 (7th Cir., May 4, 2005)(referencing the lyrics of rapper Ludacris when Circuit Court Judge Evans deliberately changes the spelling of the word “hoe”, as it appears in the trial transcript, to the word “ho”, a staple of rap music vernacular).

⁴⁹ SHARPTON, *supra* note 16.

⁵⁰ SUMMARY, UNIV. ARK. CRIMINAL JUSTICE INST., *First Amendment – Rap Lyrics Constituting a Threat: True Threat Exception*, in UNIV. ARK. CRIM. JUSTICE. INST. LEGAL BRIEFS, Spring 2002, available at <http://www.cji.net/cji/Publications/LegalBriefs/Spring2002.pdf>

The Trouble With "Keepin' It Real"

With new hardcore rap artists such as 50 Cent breaking *Billboard* and Nielsen SoundScan sales records,⁵¹ it is evident that gangsta rap is still alive and well in American pop culture. But as opposed to yesterday's gangsta rap predecessors who, in large part, were artists commercially packaged as "gangstas" merely to sell records, it appears that more and more rappers today have legitimate criminal records.⁵² It comes as no surprise that when more rappers have rap sheets, the distinction begins to blur between: (a) rap lyrics as sheer art or entertainment; and (b) rap lyrics as a testament to the speaker's real-life experience. This begs the question: How do we, as listeners, know when to separate the rap fantasy from the rap reality? More importantly, how are juries confronted with rapper-defendants supposed to draw this distinction?

Unfortunately for rapper-defendants, drawing distinctions between fact and fiction in rappers' daily lives has been made ever more difficult by certain beliefs and constructs which the rap industry has carefully crafted for itself. Record labels have always depended on a given rapper's "authenticity" to sell records.⁵³ Indeed, as hip-hop author and Faculty Fellow at the University of Pennsylvania William Perkins once asserted, rap culture "represents an ideology and religion of authenticity."⁵⁴ In the hip-hop community, the "authenticity" of rappers is often measured in terms of their "street credibility" which in turn depends on how much they "keep it real." The ideal of "keepin' it real" demands that artists rap only about first-person, true to life experiences; their art must imitate their life. In the rap industry, and among the majority of rap consumers, rappers who claim to "keep it real" are given more respect and acknowledgement (and not surprisingly, sell more records) than rappers who are known to "fake jax" or "fake moves" (that is, to rap about things they know little or nothing about, or have no first-hand experience with). Indeed, one sign that a rapper is "keepin' it real" is to explicitly call out other rappers as "fakers" or

⁵¹ 50 Cent's debut gangsta rap album *Get Rich or Die Tryin'* sold 1.5 million copies in its first week and a half of release, and within nine months had sold over 6 million copies. *Recording Industry Association of America*, at <http://www.riaa.com> [Searchword: 50 Cent].

⁵² At the very least, more of rappers' criminal records are being reported by the media. Marshall "Eminem" Mathers, Calvin "Snoop Dogg" Broadus, Jamal "Shyne" Barrow, and Sean "Puffy" Combs provide examples of rappers who have faced recent criminal charges. Now that so many rap figures have become household names due to their staple-status in pop culture, high profile rappers are often getting a seemingly disproportionate amount of attention from the media while they are in the midst of legal battles.

⁵³ See Samuels, *supra*, note 19, at 29.

⁵⁴ Perkins, *supra* note 8.

"narrators"⁵⁵ in a song's lyrics, while claiming that their own experiences are genuine. Rappers' self-endorsement of their "real" image often carries over to their interviews with hip-hop magazines and rap radio stations. In order to sell more records, rappers must maintain their "street" image at all costs.⁵⁶

Rappers On Trial

A paradox thus arises when rappers who claim to "keep it real" are put on trial. If the content of a rapper's song lyrics truly embody the rapper's lifestyle and frame of mind, as rappers so often claim they do, would it then be inappropriate to use their song lyrics as evidence against them in the event they are ever put on trial? How much and to what extent does one's songwriting reflect the content of one's private life? When, if ever, can a rapper's lyrics ever be looked upon as a testimonial or a confession? These are the types of questions the next few passages will attempt to address.

Of course, when rapper-defendants are questioned by authorities about the malevolent and criminal content of their lyrics, the most common cry is, "It's just entertainment!"⁵⁷ A common plea of rap artists on trial is that their "rap persona" is merely a fictional identity built from a hyperbolic extension of their own personal emotions and experiences. In essence, they claim to be role playing. Like professional wrestlers,⁵⁸ their "art" is not to be taken at face value. Thus, so the argument goes, to accuse rappers of committing a crime simply because they had rapped about crime in a song, would be akin to charging actors Robert DeNiro or James Gandolfini for multiple homicides based on the murders they have committed in their capacity as on-screen mobsters.⁵⁹

But are rappers and screen actors really in the same class of artists/entertainers? We do not label DeNiro and Gandolfini killers. Similarly,

⁵⁵ The term "narrator" as a synonym for "fake" rapper spawns from the accusation that these rappers merely "tell a story" without actually having *lived* the story.

⁵⁶ A recent Law & Order episode addresses the issue of rap lyrics used as evidence. In this episode, the rapper on trial was willing to take the fall for a murder of a rap producer that his best friend committed. The reason he gave for taking the fall was that he refused to be a snitch, and thus have his street credibility tainted. See *Law & Order* (NBC television broadcast, Jan. 12, 2005).

⁵⁷ Dome. "Some MC's Say That Their Lyrics Reflect What They See and Live: What Do You Think?" *Editorials on Hip-Hop Culture and Consciousness: Thoughts, Viewpoints, and Perspectives*. Available At: <http://www.daveyd.com/ageofignorance.html>

⁵⁸ See *Ventura v. Titan Sports*, 65 F.3d 725, 728 n.2 (8th Cir. 1995) (explaining that professional wrestling is actually a stage show, not a sport).

⁵⁹ In *Russell Simmons Presents: Hip-Hop Justice* (Court TV television broadcast, Oct. 7, 2004), rapper LL Cool J makes just this analogy.

we do not label a writer like Salman Rushdie as a devil-worshipper because he wrote "The Satanic Verses," nor do we accuse author Bret Easton Ellis of being mentally unstable merely because he wrote "American Psycho."⁶⁰ But perhaps our refraining from doing so stems from the fact that neither Rushdie nor Ellis ever went on record — as so many rappers do — with the claim that their works depicted their own real-life thoughts and actions. Rushdie's and Ellis' works never purported to be autobiographies. Yet to the contrary, unless otherwise noted, every rap song is assumed to be autobiographical. This is not a blind assumption on our part; record-buying America demands "authenticity", and rappers invite this assumption with their constant refrains of "keepin' it real."

Here we can begin to see the inherent problem faced by rappers each and every time they enter a courtroom. For example, when Marshall Bruce Mathers III (a.k.a. rapper "Eminem"/"Slim Shady") stands before a court charged with assault, a crime often depicted in his many violently-themed songs, who does the judge and jury believe stands before them — Mr. Mathers III or Eminem? Are these persons one and the same? If not, who is the *real* Slim Shady, and how likely is *he* to have committed the crime he is charged with?

Lyrics As Evidence

Rules of evidence vary from state to state, but generally, the admissibility of evidence at trial is ultimately left to the discretion of the presiding judge. Notwithstanding certain exemptions and statutory mandates, the main prerequisite concerning the admissibility of any piece of evidence is its *relevance* to the case at bar. If a given piece of evidence bears no relevance whatsoever to establishing a fact that forms an essential element of the crime(s) charged, it cannot be admitted, for lack of probative value.⁶¹

However, where the value of evidence for its proper purpose is slight, but there is a great likelihood that it will be used for an improper purpose by a finder of fact, a court may, in its discretion, exclude the evidence even though it would otherwise be admissible. In this situation, the probative value of the evidence is said to be outweighed by its improper prejudicial effect.⁶²

⁶⁰ Julie Hilden "Is Rap Music On Trial Along With Sean 'Puffy' Combs?" CableNewsNetwork.com at <http://archives.cnn.com/2001/LAW/02/columns/fl.hilden.puffy.02.06/> (Feb. 6, 2001).

⁶¹ See Fed. R. of Evid. 402, stating that if evidence is found to be relevant, material, and competent (and is not barred by an exclusionary rule), then it is admissible.

⁶² Fed. R. of Evid. 403

What is deemed “relevant” in any given case usually boils down to what a good lawyer can prove. Theoretically, *anything* could qualify as “relevant” evidence if lawyers were given the latitude to draw enough tenuous connections to convince a judge of its probative value. Evidence of a defendant’s past crimes or previous bad acts, however, is generally inadmissible to prove the defendant’s bad character.⁶³

In cases where rappers are on trial, the admissibility of their lyrics as evidence against them hinges primarily on (1) the charges of the defendant, (2) what the prosecution intends for the lyrics to prove in relation to these charges, and (3) whether or not the lyrics should be accorded protection by the First Amendment. Music as a form of political expression is generally given First Amendment protection in all instances, unless certain exceptions are made evident.⁶⁴

The passages that follow cite several recent cases where the prosecution has either used, or attempted to use, rap lyrics against a rapper-defendant. By looking at each factual scenario in isolation, and analyzing how each case is adjudicated, we can not only see where admission of lyrics as evidence is appropriate, but we can begin to forecast the types of dangers that lie ahead for rapper-defendants if and when their lyrical evidence is found admissible.

Cases Where Rap Lyrics Bear Direct Relevance to the Charges at Issue

*Jones v. State (2002)*⁶⁵

In 2001, Blake Jones was a 15-year old student at Fayetteville High School in Arkansas. Jones had a prior criminal history, and had spent time in and out of juvenile hall for multiple offenses.⁶⁶ During one of his stints in juvenile hall, Jones frequently wrote letters to a fellow classmate and confidante, Allison Arnold. Jones also sent Arnold rap songs he had written, often saying he was “expressing himself through a poem”.⁶⁷ These raps would often contain violent lyrics, though none were addressed to Ms. Arnold personally. When Jones returned to

⁶³ Fed. R. of Evid. 404 and 405 (stating that such evidence *is* admissible only when it tends to establish motive, identity, a common scheme or plan, the absence of mistake or accident, or intent).

⁶⁴ Examples of such exceptions would be the “true threat” or “fighting words” exception, described later in the provided case law. *See supra* notes 74-96.

⁶⁵ 347 aRK. 409 (Ark. 2002)

⁶⁶ *Id.* at 412.

⁶⁷ *Id.*

Fayetteville, he continued to write to Ms. Arnold, but received no response.⁶⁸

Angered by Ms. Arnold's disregard for his letters, Jones wrote Arnold a violent rap song in which he mentioned her directly. The lyrics read, in part:

You gonna keep being a bitch, and I'm gonna click / You better run, bitch, cuz I can't control what I do. / I'll murder you before you can think twice, cut you up and use you for decoration to look nice. / I've had it up to here, bitch, there's gonna be a 187⁶⁹ on your whole family, trick. / Then you'll be just like me, with no home, no friends, no money. / You'll be six feet under, beside your sister, father and mother.⁷⁰

Jones handed this poem to Ms. Arnold while in school. Within fifteen minutes of receiving the poem, Arnold asked to be excused from class, and then alerted her principal, who in turn contacted the police.⁷¹ Jones was subsequently arrested for making terroristic threats.

At trial in Arkansas juvenile court, witness testimony confirmed that Jones had a history of writing rap songs. Finding that Jones' rap song was a criminal threat made with the intent of causing Arnold fear, the judge granted the prosecution's petition of Adjudication for Delinquency.⁷²

On appeal to the Arkansas Supreme Court, Jones alleged that the First Amendment of the United States Constitution protected his right to create such rap songs. The prosecution contested this assumption, claiming that Jones' rap song did not constitute protected free speech, as it fell within an exception to First Amendment protection.

The United States Supreme Court has recognized several exceptions to the blanket protection for expressive speech,⁷³ one such exception being the "true threat" exception. While the Supreme Court has

⁶⁸ *Id.*

⁶⁹ "187" is a well-known police code for murder that is frequently mentioned in "West Coast" gangsta rap songs. It comes from Cal. Pen. Code § 187(a) (West Supp. 2004), which defines murder as "the unlawful killing of a human being, or a fetus, with malice aforethought."

⁷⁰ Chip Rowe, "Rap Lyrics: Free Speech or Not Free Speech?" at <http://www.chiprowe.com/articles/free-speech-quiz-two.html>.

⁷¹ *First Amendment — Rap Lyrics Constituting a Threat: True Threat Exception*, CJI Legal Briefs, (Crim. Just. Inst., U.Ark.Sys., Little Rock, Ark.), Spring 2002, at 3, available at <http://www.cji.net/cji/Publications/LegalBriefs/Spring2002.pdf>

⁷² Laurel Hoehn, *Journal of Juvenile Law: Digest — First Amendment*, 24 J. JUV. L. 204, (2003/2004).

⁷³ *R.A.V. v. City of St. Paul*, 505 US 377 (1992).

never set forth a test for defining what exactly constitutes a “true threat”, several lower courts have formulated their own definitions.

The Arkansas Supreme Court in *Jones* ultimately chose to use the test as set forth by the Eighth Circuit Court of Appeals in *United States v. Dinwiddie*, a test which listed five factors to determine if expressive speech constitutes a “true threat,” and thus is not protected speech. These factors include: (1) the recipient’s reaction; (2) whether the threat was conditional; (3) whether there was direct communication with the recipient; (4) whether the author had previously made similar threats to the victim; and (5) whether the recipient believed the maker of the threat had the propensity to engage in violence.⁷⁴

Applying the *Dinwiddie* factors to the facts at hand, the *Jones* court found that (1) Ms. Arnold’s upset reaction was immediate and unequivocal; (2) no condition was placed on Jones’ threat in the rap song; and (3) Jones directly communicated the threat by passing the rap song to Arnold.⁷⁵ While the fourth factor was not met (because Jones had never made previous vicious statements directed at Arnold), the court believed that this was outweighed by the importance of the fifth factor, which was met since Arnold knew of Jones’ criminal past and thus believed Jones was capable of carrying out the threat.⁷⁶ In the end, the Arkansas Supreme Court upheld the lower court’s ruling, finding that Jones’ rap lyrics constituted a “true threat,” and thus the rap song was not protected by the First Amendment.⁷⁷

Doe v. Pulaski County Special School District (2001)⁷⁸

The following case bears facts similar to *Jones v. State*, and yet was decided the other way. In 2000, Plaintiff Doe was upset after his girlfriend, K.G., had broken up with him to be with another boy.⁷⁹ Doe responded by writing a four-page rap song about his ex-girlfriend which contained threatening lyrics. The song made specific mention of Doe raping, sodomizing and ultimately killing K.G. with a knife by hiding under her bed.⁸⁰ Though Doe never physically showed K.G. his rap song, he did describe its contents to her over the phone. Some time later, a friend of Doe’s confiscated the rap lyrics and reported its con-

⁷⁴ Hoehn, *supra* note 73, at 207.

⁷⁵ CJI Legal Briefs, *supra* note 72, at 4.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ 263 F.3d 833 (8th Cir. 2001)

⁷⁹ CJI Legal Briefs, *supra* note 72, at 3.

⁸⁰ *Id.*

tents to K.G.⁸¹ K.G. released the contents of the song to school officials, and Doe was subsequently expelled.

Oddly enough, this case was not initially brought to court as a criminal charge against Doe for making a terroristic threat. Instead, it was brought by Doe, in an attempt to set aside his expulsion. Doe, like Jones, claimed his rap song was protected by the First Amendment. The district court in Doe, like the *Jones* court, applied the five-factor test of *U.S. v. Dinwiddie*⁸². The district court held that the rap song did not amount to a "true threat" because: (1) Doe never showed the letter to K.G; (2) K.G. had no knowledge of any prior violent behavior by Doe; and most importantly (3) Doe and K.G. continued to see one another socially at church functions even after K.G. knew about the rap song.⁸³ The district court therefore found that the school district violated the United States Constitution when it expelled Doe for exercising his free speech rights in composing his rap lyrics.⁸⁴

In Re George T. (2004)⁸⁵

Back in March 2001, the nation was still reeling from the school shootings at Santee High School near San Diego, which left two dead and thirteen wounded. Only a few days after this horrific ordeal a troubled 15-year-old at Santa Teresa High School in Santa Clara County, California, known to us only as George T., decided to write a poem.⁸⁶ The poem was entitled "Faces (Dark Poetry)" and contained the following lyrics, in part:

I am Dark, Destructive, & Dangerous / I slap on my face of happiness but inside I am evil!! / For I can be the next kid to bring guns to kill students at school. / So parents watch your children cuz I'm BACK!!⁸⁷

⁸¹ *Id.*

⁸² Hoehn, *supra* note 73 at 207.

⁸³ Doe n. Pulaski Special Sch. Dist., 263 F.3d at 837-38.

⁸⁴ In 2002, the Eighth Circuit, sitting *en banc*, reversed and remanded the District Court's decision. The Court of Appeals concluded that the boy intended to communicate the letter and the fact that the boy did not personally deliver the letter did not dispel its threatening nature. Based on the tone of the letter, and the situation surrounding its communication, the court was not surprised that those who read it interpreted it as a threat. The court went on to hold that most, if not all, normal 13-year-old girls (and probably most reasonable adults) would be frightened by the message and tone of the letter and would fear for their physical well-being if they received it. Since the letter amounted to a true threat, the school did not violate the boy's First Amendment rights by initiating disciplinary action.

⁸⁵ 33 Cal. 4th 620 (2004).

⁸⁶ *Id.* at 624-25.

⁸⁷ *Id.*

After his honors English class had ended for the day, George T. handed this poem to two fellow classmates, Mary and Erin, along with a note that read, "[This poem] describes me and my feelings. Tell me if it describes you and your feelings."⁸⁸ Almost immediately after reading the poem, Mary handed it back to George T. and hurried off campus. She would later contact her English teacher and inform him of George T's threatening poetry.⁸⁹ The authorities were subsequently notified.

In his juvenile court hearings, George T. testified that the poem "Faces" was not intended to be a threat, and because Mary and Erin were his friends, he did not think they would have taken his poem as such. He thought of poetry as art; he stated that he was very much interested in the subject of poetry, particularly as a medium to describe "emotions instead of acting them out."⁹⁰ He told the court, "I would like them to know that it was just dark poetry. . . [which is] usually just an expression. It's creativity. It is not like you're actually going to do something like that."⁹¹ Despite his pleas, the juvenile court found George T. guilty of making criminal threats, then deemed him a ward of the court and sentenced him to 100 days in juvenile hall. The Court of Appeal affirmed.⁹²

Claiming that the lower court's finding infringed upon his First Amendment rights, George T. fought his case all the way up to the Supreme Court of California. That court reversed the lower courts, finding that not only was it possible that the protagonist in George T's poem was fictional, but that the poem itself was too ambiguous to constitute a criminal threat under California statutory law.⁹³ The court stated that only the last two lines of the poem could arguably be construed to be a threat: "For I can be the next kid to bring guns to kill students at school. So parents watch your children cuz I'm BACK!!"⁹⁴ The court proceeded to state:

[H]owever the poem was interpreted by Mary and Erin. . . the fact remains that 'can' does not mean 'will'. . . While the protagonist in 'Faces' declares that he has the *potential* or *capacity* to kill students given his dark and hidden feelings, he does not actually threaten to do so. While perhaps discomfiting and unsettling, in this unique context

⁸⁸ *Id.*

⁸⁹ *Id.* at 626.

⁹⁰ *Id.* at 628.

⁹¹ *Id.* at 628-29.

⁹² *Id.* at 629.

⁹³ *Id.* at 636.

⁹⁴ *Id.* at 635.

this disclosure simply does not constitute an actual threat to kill or inflict harm.⁹⁵

Going Forward

Evidently, when rap lyrics are directly related to the criminal charge at hand, such as in the cases above, a very strong case can be made for the admissibility of the rap lyrics as evidence.⁹⁶ Whether or not the First Amendment protects these lyrics is a matter for the courts to decide. However, there seems to be much *less* of an argument to be made for admitting rap lyrics into evidence when a rapper-defendant's previous rap songs relate to crime or violence in a far more general or anonymous fashion. When these types of lyrics are used, it appears that their only purpose is to assassinate the character and good name of the defendant, a practice which is generally not allowed vis-à-vis the rules of evidence, as noted with few exceptions.⁹⁷

The following cases cite instances where the rap lyrics at issue and the crime being charged were *unrelated*, and depict how the courts came to their decision as to whether or not they should admit the evidence.

Recent Cases Where Lyrics Were Not Directly Related to Charges At Issue

State v. Moore (1999)

On November 25, 1998, 19-year-old Joshua Adam Moore, a Caucasian male from the suburb of Torrance, California, was charged with two separate counts of armed robbery. The first count arose from incidents committed the previous day. The second count, however, spawned from a robbery of a Fullerton, California video store several months earlier on August 29, 1998, in which \$190 was stolen as well as a gangster/hip-hop movie entitled *Caught Up*.⁹⁸ It was this second count which stirred the most controversy.

Moore admitted to being the driver of the "getaway" vehicle for the November 24 robbery, but claimed that he did not know a crime

⁹⁵ *Id.* at 636 (emphasis added).

⁹⁶ In *Jones, Doe and George T.*, the raps lyrics were the actual basis for the crime and/or spoke to specifics of the crime.

⁹⁷ Using rap lyrics to impeach a witnesses' character after said defendant gives testimony or makes argument alleging good character, contrary to recorded lyrics, is one such exception.

⁹⁸ Nick Schou, *Bad Rap: Is Joshua Moore Serving a 12-year Sentence Because of His Taste in Music?* ORANGE COUNTY WKLY available at <http://www.ocweekly.com/ink/01/26/cover-schou.php> (Mar. 2-8, 2001)

had been committed until after the fact.⁹⁹ The charge arising from the events of August 29 (the earlier robbery) were brought against Moore because he fit witness descriptions of the robber, and because the police found a .45 caliber plastic BB gun under his car seat at the time of his arrest.¹⁰⁰ Moore alleged he had no involvement whatsoever with the earlier robbery in Fullerton, and claimed that the BB gun belonged to his close friend Gary Johnson, who Moore claimed had accidentally left it in his car. For his alibi, Moore claimed that on the day of the Fullerton robbery, he was working as a cashier at the Las Vegas Golf & Tennis shop in Huntington Beach—almost an hour away from Fullerton.¹⁰¹

Moore had every reason to think that he would be cleared of the Fullerton robbery charge, as sales receipts and cash-register printouts from the Golf & Tennis shop indicated that he was engaged in two sales around the time of the robbery, one at 11:30 a.m. and another at 12:05 p.m. The Fullerton robbery took place at 11:50 a.m., making it virtually impossible for Moore to have been at the crime scene at the time of the robbery.¹⁰² What is more, two employees at the store asserted in declarations that Moore had been at work that day.¹⁰³ One stated that he “never missed a day of work, was always on time, and never left early.”¹⁰⁴

A search of Moore’s home after his arrest did not yield any hard evidence linking Moore to the earlier Fullerton robbery.¹⁰⁵ What it did yield, however, was evidence that Moore was an avid listener of gangsta rap. Detective Linda King of the Orange County Sheriff’s Department found pieces of paper torn out of Moore’s notebooks which contained gangsta rap lyrics, admittedly written by defendant Moore, that described drive-by shootings and .45-caliber weapons.¹⁰⁶ The lyrics to several other rap songs were found, linking Moore to a rap group named FCP (“First Class Players”). Moore’s own rapper-pseudonym was “J-Mo.” Further searches of Moore’s home revealed pictures of him holding the same .45 caliber plastic BB gun found in his automobile the night of his arrest; in them, he had struck “gangster-style”

⁹⁹ *Id.*

¹⁰⁰ A .45 caliber pistol which was believed to be the weapon used in the August 29 robbery.

¹⁰¹ Schou, *supra* note 100.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

poses.¹⁰⁷ Among the pictures were also shots of Moore's friend Gary Johnson, a hip-hop aficionado and fellow member of FCP, who went by the rapper-pseudonym "G-Bone."¹⁰⁸

Deputy district attorney Cheri Pham prosecuted Moore for both the August 29 and the November 24 robberies. At trial, Pham used Moore's history as both a rap listener and an aspiring rap artist, as circumstantial evidence against him in the August 29 robbery of the Fullerton video store. Calling attention to the fact that a .45 caliber pistol was used to commit the Fullerton robbery, Pham recited lyrics to a song allegedly written by Moore entitled "I'm Ready For War." The song began with the lyrics, "None will survive when I got the .45."¹⁰⁹

Next, Pham called Gary Johnson ("G-Bone"), Moore's rapper friend, to the stand to testify. The following is an excerpt from the direct examination:

Pham: Rap groups. . . Okay. Are you into rap music?

Johnson: Yes I am.

Pham: Do you know if the defendant is into rap music?

Johnson: Yes, he is.

Pham: Has the defendant ever written any lyrics to rap music?

Johnson: Yes, he has.

Pham: Do those lyrics include using guns, robbing people, etc.?

Johnson: Uh-huh, yes.

Pham: I have nothing further.¹¹⁰

In her closing arguments, Pham brought up Moore's history of rapping yet again, telling the jury:

Mr. Moore admitted he knew "187" meant murder and "211" meant robbery and used those two code words in his rap lyrics. . . Mr. Moore is a man who likes to make his life reflect reality. He likes rap music because it reflects real life, because real life is full of crimes. Well, on Aug. 29, 1998 and Nov. 24, 1998, that's exactly what he did. He wanted to make his life real, and he committed those two robberies.¹¹¹

The jury agreed with Pham, and on November 4, 2000, sentenced Moore to 12 years in state prison. To this day, Moore maintains his innocence concerning the August 29 Fullerton robbery. "We were just four guys from Southeast Los Angeles trying to get somewhere doing what we love to do—make music," Moore explained after being incar-

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

cerated at Wasco State Prison near Bakersfield.¹¹² “Other rappers receive awards for their songs. Not me: I got 12 years in prison.”¹¹³ Moore’s lawyer, Daryl Dworakowski, believed that the facts were clearly on his side in what appeared to be an open-and-shut case, and admits that he was “blind-sided” by the district attorney’s use of Moore’s rap lyrics. After the verdict, Cynthia Moore, the defendant’s mother, was quoted as saying: “My son is in jail because. . .he listened to rap music. . .That’s what put him in prison for 12 years.”¹¹⁴ Moore’s case is currently on appeal.

State v. Miller (2002)

The high-profile case of Corey Miller (a.k.a. rapper “C-Murder”) made headlines in the hip-hop and pop culture community in 2002. As the story goes, on January 12, 2002, a 16-year-old named Steve Thomas snuck out of his house and used a fake ID to attend the 18-or-older Club Platinum in Harvey, Louisiana.¹¹⁵ Corey Miller, a rap superstar in his own right, and a local rap legend from the ghettos of New Orleans, was to be at Club Platinum that same evening to promote his new album *Trapped in Crime*. Young Steve Thomas was apparently an avid fan of Miller.¹¹⁶

The details of what happened next are unclear. What is known is that at some point late in the evening, an argument involving Steve Thomas and some members of Corey Miller’s entourage eventually escalated to a full scale melee.¹¹⁷ Shots were fired. When the smoke cleared, young Steve Thomas had been fatally shot in the chest. While the murder weapon was never found, and not a single witness out of 300 patrons in the club that evening could definitively identify a shooter, Corey Miller was arrested six days later and charged with the murder of Steve Thomas.¹¹⁸ No other suspects were taken into cus-

¹¹² Nick Schou, *Bad Rap Vol. 2: Big J-Mo’s Friend Says He’s Ready to Testify For the Defense*, ORANGE COUNTY WKLY, March 30-April 5, 2001, available at <http://www.ocweekly.com/printme.php?&id=23519> (last visited Nov. 16, 2004).

¹¹³ *Id.*

¹¹⁴ Schou, *supra* note 100.

¹¹⁵ Jon Zahlaway, *Corey ‘C-Murder’ Miller Arrested on Murder Charge*, Live Daily Music News, available at <http://www.livedaily.com/news/4243.html> (last visited Nov. 12, 2004).

¹¹⁶ Lia Haberman, *Murder Conviction for C-Murder: Maybe C-Murder Should Have Chosen A More Friendlier-Sounding Moniker?*, Entertainment! Online News, at <http://www.livedaily.com/news/4243.html> (last visited Nov. 14, 2004).

¹¹⁷ Joe Darby, *Gangsta Rapper Gets Life Sentence*, TIMES PICAYNE (New Orleans, LA), Oct. 1, 2003, at National 1, available at <http://pub12.ezboard.com/fpoliticalpalacefrm17.showPrevMessage?topicID=491.topic>.

¹¹⁸ Court documents show that Corey Miller was charged by his rapper pseudonym, “C-Murder.”

tody. Miller supporters and general rap supporters alike claimed that Miller was the target of police profiling, and that he was arrested because the authorities in Louisiana wanted to make a statement to the black community that anyone, no matter how famous, could be arrested at any time.¹¹⁹ The State, however, always maintained that Miller was behind the shooting.

Miller's lyrics and rapper pseudonym played a central part of jury selection, with defense lawyers quizzing potential jurors on their views about rap and whether they could be impartial toward a murder suspect whose nickname is C-Murder. One man was dismissed after he described rap as "just about drugs and shooting the cops."¹²⁰ After the jury had been selected, two witnesses for the prosecution placed Corey Miller at the time and place of the shooting. The witnesses claimed to have seen Miller raise his hand towards the deceased. However, no witnesses could testify that they actually saw Miller do the shooting.¹²¹ The defense offered nine witnesses of its own to rebut the prosecution's testimony. These witnesses alleged different sets of whereabouts for Miller at the time of the shooting, none of which were in the immediate vicinity of the crime. No hard evidence was presented by the prosecution linking Miller to the murder.¹²²

Manipulating what appeared to be a key asset to the prosecution, assistant district attorney Douglas W. Freese often used Miller's rapper name "C-Murder" when referring to the defendant and his background.¹²³ Miller was one of four brothers who grew up in a violent New Orleans housing project while the city's murder rate hovered near the nation's highest. Freese made sure to point out that C-Murder's lyrics depicted, often boastfully, the grim world of violence, drugs and crime from which he was spawned.¹²⁴ Despite the objections of Miller's attorney, who contested admissibility on grounds of relevance, Freese was permitted by the court to read some of C-Murder's more inflammatory lyrics to the jury.¹²⁵

It took the jury no longer than four hours of deliberation to convict Corey Miller of second-degree murder, which carries an automatic life sentence in Louisiana. After the trial, Percy Miller, Corey Miller's

¹¹⁹ *Russell Simmons Presents: Hip-Hop Justice*, *supra*, note 56.

¹²⁰ Associated Press. *Opening Day for C-Murder Trial*, FoxNews Channel Online, at: <http://www.foxnews.com/story>, (on file with author).

¹²¹ Darby, *supra* note 111.

¹²² *Russell Simmons Presents: Hip-Hop Justice*, *supra* note 56.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Andrew Blejwas, *New Show Highlights Profiling of Rap Stars*, Southern Poverty Law Center, at http://www.tolerance.org/news/article_tol.jsp?id=1082 (Oct. 8, 2004).

father, told Associated Press reporters that his son's image as a gangster who boasts about his life of crime and violence was merely an act; it should not have been considered in the case. "He's a rapper," the elder Miller said. "That's just a character he's playing."¹²⁶

It was later discovered that the prosecution's two key witnesses in the *Miller* trial had previous criminal records (unbeknownst to the defense) and were also given special consideration for their testimony. A retrial was granted, which Miller is currently awaiting.

State v. Parker (2004 — Case Has Not Yet Come To Trial)

On July 31, 2000, outside a Jewish hospital in Louisville, Kentucky, 18-year old Laknogy McCurley was killed in a drive-by shooting.¹²⁷ The bullets that killed Ms. McCurley were believed to have been shot from a car containing local members of the Victory Park Crips gang, also known as the "Rat Pack."¹²⁸ The leader of the Victory Park Crips, one Kenneth Parker, is suspected of having been directly involved with the murder. Parker is currently awaiting trial on multiple counts of murder, assault, robbery and drug charges, all directly related to his gang involvement with the Victory Park Crips.¹²⁹

Key evidence for the prosecution includes an 18-song rap CD found by police, which they believe was recorded by Parker and his fellow gang members. Investigators from the Commonwealth Attorney's office have printed out specific lyrics that Parker rapped on the CD:

Victory Park, quick to shoot a nigga in the heart / Where the gangs stay sharp, where we practice murder as an art by letting the guns bark / We conscious murderers / We bang.¹³⁰

Believing that "lyrics define the rapper" and that "the songs may very well be indicative of what's going on through an individual's mind," Prosecutor Alex Daythorne wishes to submit this lyrical evidence to a jury in the Parker case. Should Parker be convicted, he will likely face the death penalty.¹³¹

¹²⁶ Associated Press, *Opening Day for C-Murder Trial*, FoxNews Channel Online, at <http://www.foxnews.com/story/0,2933,97750,00.html> (last updated 09/18/2003).

¹²⁷ Dina Kaplan., *Admitted Gang Member Says Victory Park Crips Murdered 18-Year-Old Honor Student*, WAVE 3 TV Online, at <http://www.wave3.com/global/Story.asp?s=2197231> (Aug. 19, 2004).

¹²⁸ *Id.*

¹²⁹ Associated Press, *Kentucky Rapper/Gang Leader Faces Death Penalty With the Use of Lyrics to be Used as Evidence*, at http://www.hiphopdirectory.com/html_data/newsrouter1.html (last modified Apr. 1, 2005).

¹³⁰ *Id.*

¹³¹ *Id.*

Where Do We Go From Here?

The cases cited above all have potentially grim consequences, ranging from 12 years in prison to death by lethal injection. When there is little or no "hard" evidence linking a rapper-defendant to a particular crime, should we allow prosecutors to pull from their bag of tricks any rap song, poem, or rhyming rant which a rapper-defendant may have jotted down on some notebook paper? When, if ever, is it appropriate to connect a certain defendant's unrelated action (such as writing rap lyrics) to his personality characteristics or behavior (such as his intent or disposition to commit a crime)? Part IV attempts to tackle this question.

PART IV: PRIDE AND PREJUDICE

The Prejudicial Effect of Rap Lyrics on Juries

Even if rap lyrics are deemed somewhat relevant to a prosecution's case, the next issue to be decided by the judge is whether the probative value of the lyrical evidence outweighs the unfair prejudicial impact that admission of such evidence would have on the jury. As stated earlier, if the value of evidence for its proper purpose is slight, but the likelihood that it will be used for an improper purpose by a finder of fact is great, a court may exclude the evidence even though it would otherwise be admissible.¹³²

Prior to 1999, no research had ever been conducted analyzing whether rap lyrics could introduce bias into a jury's perception of a rapper-defendant. However, that same year, Dr. Stuart Fischhoff of the California State University, Los Angeles completed one such study following his participation as an expert witness at a murder trial in Bakersfield, California, where the defendant on trial was a rapper.¹³³ The background of the Bakersfield case, as well the results of Dr. Fischhoff's findings, follow below.

State v. Rollings (1992)

In 1992, Offord Rollings III, an 18-year-old African-American student-athlete, was arrested for murdering a former girlfriend who had attended his high school.¹³⁴ The prosecution presented evidence in the form of a portfolio that was found in the defendant's home after the

¹³² Fed. R. Evid. 403.

¹³³ See generally Stuart Fischhoff, *Gangsta' Rap and A Murder in Bakersfield*, 29 J. APPLIED SOCIAL PSYCHOL. 79, 795-805 (1999), available at: <http://www.calstatela.edu/faculty/sfischho/rap.html> (last visited April 20, 2005).

¹³⁴ *Id.*

murder. The portfolio contained inflammatory gangsta rap lyrics of a decidedly violent and misogynistic nature.¹³⁵ Rollings claimed the lyrics were written purely for commercial and entertainment purposes. Counsel for the defense argued against the admission of the rap lyrics into evidence, asserting that the evidence would unfairly bias the jury against the defendant.¹³⁶ The judge responded by demanding proof from the defense that the prejudicial value of the lyrics would outweigh their probative value. No such hard proof could be offered. What the defense did do, however, was call Dr. Stuart Fischhoff to give psychological testimony concerning rap lyrics' impact on "Implicit Personality Theory" and how it might affect the jury.¹³⁷

In psychology, "implicit personality theory looks at how we form judgments of people based on what we observe about them and what we infer they might do or might be because we think that certain traits tend to co-occur (e.g. fat people are happy, or quiet people are thoughtful)."¹³⁸ In the present case, "the implicit personality theory connection would be that people who write ugly, violent gangsta' rap lyrics may be predisposed to murder."¹³⁹ Dr. Fischhoff's testimony aimed to demonstrate that the mere fact that "authoring violent rap lyrics would arouse in jurors not only a connection between writing such lyrics and committing a murder, but also call up other negative personality characteristics."¹⁴⁰

Fischhoff's testimony suggested that jurors would be more inclined to render a guilty verdict after hearing such image-impairing lyrics, not because the lyrics themselves linked the defendant to the crime, but because of "the negative personality trait associations conjured up by the inflammatory lyrics."¹⁴¹ This, the defense argued, definitively suggested that the consequences of admitting Rollins' portfolio of rap lyrics as evidence would prejudice the jury so much as to outweigh any possible probative value the lyrics contained. Despite Fischhoff's testimony, the judge admitted the rap lyrics into evidence, and the jury convicted Rollins of murder.¹⁴²

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 796.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 797.

¹⁴¹ *Id.*

¹⁴² It should be noted that none of the jurors in Rollins' trial were black, nor were any admitted fans of the gangsta rap musical genre. *See id.* at 795-805.

Fischhoff's Study

Following the guilty verdict, Dr. Fischhoff felt compelled to conduct precisely the type of empirical research that the judge in *Rollins* was looking for. That is, he sought to conduct a study pertaining to how juries might regard a murder defendant who had actually written violent, misogynistic rap lyrics (as opposed to a similar defendant who did not). Fischhoff desired to learn how juries perceived gangsta rap lyricists, and specifically, how they perceived them in terms of their personality traits.¹⁴³

To create a sample group of "potential jurors," Fischhoff surveyed 134 individuals representing a large cross-section of society.¹⁴⁴ Each participant was randomly assigned one of four conditions, and each condition provided descriptive biographic information about a "Target Male." For each of the four conditions, factual information describing Offord Rollins was used. That is, for each of the four conditions, the Target Male was listed as an 18-year-old African American student-athlete from Southern California with a good academic record who plans to attend college on an athletic scholarship. What separated one condition from another was the following: *Condition 1* made no mention of the Target Male being accused of murder, nor did it mention any involvement of the Target Male writing rap lyrics. *Condition 2* stated that the Target Male had been accused of murder, and still did not make any mention of rap lyrics. The Target Male in *Condition 3* was not accused of murder, but each person in this group received a set of rap lyrics which were purportedly written by the Target Male. The Target Male in *Condition 4* was both accused of murder and alleged to have written the particular set of provided rap lyrics. The set of rap lyrics given to those surveyed in Conditions 3 and 4, taken directly from the portfolio in the *Rollins* case, was as follows:

Id [sic] die before / my dick starts to fizz / pulled it out / and my head smelled like fish / rush to the shower / to wash my dick / Let me go, Let me go / Bitch let me go / She wouldn't let me go / So I slaped [sic] the ho / don't get mad / You fruit cocktail / See my rhymes / Now you happy / like a fag in jail / sayin [sic] my name wrong / you trick silly rabbit / come in my face again / I'm gonta grab it / so watch your / chains and Nugget / cause with the Steel / in my hand I'm ruggit [sic] /

¹⁴³ *Id.* Note that the following facts and figures pertaining to this study all cite back to this same reference.

¹⁴⁴ This included 56 males and 78 females, ranging in age from 18-56, with the mean age being 27.6 years. None of these individuals were familiar with the *Rollins* case. *See id.*

put the guard up for your gold teeth / you littel [sic] fink / talk one more line / then I'm a sluggit [sic]¹⁴⁵

Each individual surveyed was asked to respond to the conditions they were provided by filling out a series of nine bipolar adjective scales (scaled from 1-6) concerning their first impressions of the Target Male. The nine (murder trial-relevant) scales were: *caring-uncaring*, *selfish-unselfish*, *gentle-rough*, *likable-unlikable*, *conceited-modest*, *truthful-untruthful*, *sexually nonaggressive-sexually aggressive*, *capable of murder-not capable of murder*, *not a gang member-a gang member*.¹⁴⁶

The results of Dr. Fischhoff's study were striking. Not only did the results show that a Target Male who wrote gangsta rap lyrics was seen as more likely to have committed a murder than a Target Male who did not author such lyrics, but participants given Conditions 3 and 4 (who saw the rap lyrics attributed to defendant) judged their Target Male far more negatively than their counterparts in Conditions 1 and 2 (who were not given the rap lyrics).¹⁴⁷ Thus, the research indicated that potential jurors were "significantly inclined" to judge a gangsta rap lyricist *not* accused of murder more harshly and with more disdain than a non-gangsta rapper who *was* accused of murder. The moral of the study: The rap lyrics were more damning to the Target Male than the actual charge of murder.

We may infer from the unambiguous results of these findings that people who write inflammatory gangsta lyrics invite a strong association with inferences about other negative traits. Indeed, it appears that — at least when it comes to gangsta rappers — the public firmly believes that the artist's "creative" expression is actually an *authentic* expression of their personality. After reading Fischhoff's study, one could even argue that authoring rap lyrics vies with being charged with murder in terms of how a person perceives the target individual's personality traits. The results of the study clearly indicate that showing rap lyrics at a trial has the distinct potential of exerting a "significant prejudicial impact" on a juror's evaluation.¹⁴⁸

PART V: CONCLUSION

What will become of the appeal granted to alleged video-store robber Joshua Adam Moore? Or the retrial granted to rap star Corey "C-Murder" Miller? Will the 18-song rap CD recorded by the Victory

¹⁴⁵ *Id.* at 800.

¹⁴⁶ *Id.* at 799.

¹⁴⁷ *Id.* at 800-02.

¹⁴⁸ *Id.* at 803.

Park Crips gang be found admissible in the *Parker* murder case in Kentucky? If so, what effect might hearing this CD have on the jury? According to Fischhoff's study, admissibility of the rap CD as evidence could very easily lead to Parker's one-way ticket to a lethal injection. With a prejudicial value so extreme, it is a wonder that lyrics are ever admitted outside of the narrow context in which the lyrics themselves are on trial (i.e., in obscenity or criminal threat cases).

Viewed by many African-Americans as the only purely black musical medium in America today, rap is no doubt a vital part of our popular culture.¹⁴⁹ Writer Jeffrey Kahan once wrote that music should serve as "an emotional looking-glass".¹⁵⁰ If so, then it must "reflect the entire palette of human feelings — among them anger, aggression and sexuality."¹⁵¹ Opponents to rap music claim that the suggestive lyrics found in rap songs serve no other purpose than to destabilize democratic society by provoking civil unrest, violence, and murder. As such, opponents argue that rap lyrics should not be afforded any special protection, and rapper-defendants should not be allowed to hide behind their allegedly-fictitious "gangsta" stage personas when they make their living by chronicling and confessing their criminal lives on tape. New York State prosecutor Matthew Bogdanus, who defends the use of rap lyrics as admissible evidence at trial, is quoted as saying "Here's what we're going to put in the mind of every artist. . .don't shoot people. And if you do it, don't brag about it, whether you brag about it speaking, whether you brag about it writing, whether you brag about it singing. You don't acquire some extra protection because you're an artist."¹⁵²

Unfortunately, as the rate at which lyrics are being admitted into evidence against rapper-defendants escalates, it is less likely that tomorrow's rappers will feel comfortable recording controversial or seemingly violent songs. Murray Richman, attorney for Jamal "Shyne" Barrow, a rap artist who was convicted of attempted murder after his gun-promoting lyrics were read aloud in court, states that allowing rap lyrics into evidence "would put in the mind of every artist that you've got to be careful what they write about, because it goes to the question of your intent."¹⁵³ The entire hip-hop community may now feel forced to dull their lyrics down accordingly. This type of chilling effect could

¹⁴⁹ See Jeffrey B. Kahan, *Bach, Beethoven, and the (Home)Boys: Censoring Violent Rap Music in America*, 66 S. CAL. L. REV. 2583, 2586 (1993).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Shyne's Lyrics Could Jail Him*, Yahoo News U.K. & Ireland Edition, at http://uk.news.yahoo.com//dotmusic_news/17307.html (Jan. 11, 2001).

¹⁵³ *Id.*

potentially jeopardize the future of the multi-billion dollar rap industry, since the industry currently thrives on the controversy it stirs. Kahan claims that since rap is so “politically vulnerable to the mainstream’s distaste, [it] requires protection as political speech in order to thrive.”¹⁵⁴

Aside from the economic and cultural arguments behind protecting rap lyrics, there are larger questions at stake about our society and its perception of the interrelationships between pop culture artists and crime. These questions must be answered if society is to rid itself of biases that may one day lead to great injustices being levied, and our First Amendment rights being abridged. Does the average American assume that horror writers like Stephen King or Wes Craven are disposed to violence and murder simply because such themes often appear in their work?¹⁵⁵ After all, such writers make their living by exploiting and glorifying the most vile and sociopathic instincts and behaviors of man. Yet, our society does not condemn horror writers by identifying them with their artistic product as it generally does with rappers. Even though most rap lyrics are written for entertainment purposes, and are designed to create an atmosphere of reality-based fantasy, much like one would find in a movie or book, society often looks upon rap lyrics, and their authors, with an almost visceral distrust and sense of disdain. If society is led to believe that all art is truly an extension of the personal, political and cultural environment in which it is created, then it seems only natural for society to assume that people who write violent gangsta rap songs may be disposed to such violence, and in extreme circumstances, even murder. Perhaps society’s opinion of a horror writer’s character would be different if a horror writer were to stand trial for crimes of which they have so often wrote about in their novels — but that case has yet to come before us.

It appears that more and more, prosecutors are combing through lyrics to see if there is any correlation between the artist’s words and their subsequent behavior. Prosecutors seek to use these lyrics to prove the culpability and motives of rapper-defendants. The fact that so many rappers make a point to say they are “keeping it real” or that what they are rapping is “reflecting reality” can be haunting if and when their words are turned against them. The dilemma for rappers is to escape their hostile street environment and yet remain true to where they came from, lest they be labeled “fake.” How do rap artists maintain credibility with their fan base and yet keep their hands clean?

¹⁵⁴ Kahan, *supra* note 143, at 2588.

¹⁵⁵ Fischhoff, *supra* note 135, at 804.

Often rap artists walk the line with tough music and tough names, like "C-Murder".¹⁵⁶ What we as a society imbedded with stereotypes must remember, however, is that "image" does not translate into "guilt" when crime occurs. When charged with a crime, a defendant is innocent until proven guilty beyond a reasonable doubt. The burden of proof is on the State, and that burden is often cumbersome. To the extent that a particular rapper-defendant's song lyrics are unrelated to any element of the crime the rapper-defendant is being charged with, it is this author's firm belief that such evidence should be inadmissible. An assumption that one's artistic identity translates directly or proportionally to one's real-life identity rests on shaky ground. In the event such evidence is admitted, however, we must therefore acknowledge that if such lyrics represent the *strongest* evidence put forth by the State, there is much room left for reasonable doubt.

Standing alone, violent lyrics should not condemn their author to prison (or much worse, a death sentence); without more, society should not mechanically conclude that the mere authorship of coarse lyrics is sufficiently reflective of a defendant's morally reprehensible nor potentially culpable character. As *Los Angeles Times* columnist Robert Hilburn once said: "The creative energy of black street music shouldn't be buried under racism and misinterpretation."¹⁵⁷ In that vein, perhaps the solution to this vexing lyrical dilemma starts by "deprogramming" mainstream America. If we "unlearn" the stereotypes, biases, and racist attitudes that underlie our feelings towards hip-hop and "gangsta" rap music, we can begin to look at rapper-defendants as no different from the horror authors and other producers/composers of criminally-inspired popular artistic creations in America. Perhaps then, rappers can start off with the clean slate that they, as all criminal defendants, deserve; one from which their lawyers can mount a zealous defense.

¹⁵⁶ For the record, it should be noted that Corey Miller (aka "C-Murder") officially changed his stage name to "C-Miller." United Press International, *C-Murder Changes Stage Name*, at http://www.softcom.net/webnews/wed/bh/Uus-cmurder.RQXR_FA6.html (Apr. 6, 2005).

¹⁵⁷ Robert Hilburn, *Getting a Bad Rap*, L.A. TIMES, Jun. 24, 1990, Calendar at 8.