

American University Washington College of Law

Digital Commons @ American University Washington College of Law

Upper Level Writing Requirement Research
Papers

Student Works

2022

Liberty and Justice for All?: A Pathfinder on the Use of Lyrics as Evidence in Civil and Criminal Trial

Stephanie Washington

American University Washington College of Law, stephanienwashington21@gmail.com

Follow this and additional works at: https://digitalcommons.wcl.american.edu/stu_upperlevel_papers



Part of the [Criminal Law Commons](#), [Criminal Procedure Commons](#), [Evidence Commons](#), [Law and Race Commons](#), and the [Legal Writing and Research Commons](#)

Recommended Citation

Washington, Stephanie, "Liberty and Justice for All?: A Pathfinder on the Use of Lyrics as Evidence in Civil and Criminal Trial" (2022). *Upper Level Writing Requirement Research Papers*. 64.

https://digitalcommons.wcl.american.edu/stu_upperlevel_papers/64

This Article is brought to you for free and open access by the Student Works at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Upper Level Writing Requirement Research Papers by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

Liberty and Justice for All?: A Pathfinder on the Use of Lyrics as Evidence in Civil and Criminal
Trial

By Stephanie Washington

Table of Contents

PRIMARY SOURCES:

Case Law	3
<i>United States v. Foster</i>	3
<i>United States v. Stuckey</i>	5
<i>Holmes v. State</i>	7
<i>State v. Leslie</i>	9
<i>Wade v. Rock against Racism</i>	10
<i>State v. Skinner</i>	10
<i>United States v. Pierce</i>	12
<i>Canady v. Wisconsin</i>	14
<i>United States v. Bey</i>	16
Legislation	17
California: Decriminalizing Artistic Expression Act.....	18
Federal: Restoring Artistic Protection Act	19
New York: AB 8681	20
Federal Evidence Rule 401	20
Federal Evidence Rule 403	21
Federal Evidence Rule 404	21
SECONDARY SOURCES:	
American Law Reports	22
<i>Admissibility of Rap Lyrics or Videos in Criminal Prosecution</i>	22
<i>Proof in Civil and Criminal Trials of Admissibility of Evidence of Rap Lyrics or Videos</i>	23
Amicus Briefs	23
Brief of ACLU of N.J. in Support of Defendant-Respondent at 17–18, <i>State v. Skinner</i>	23
Legal Guide	24
<i>Rap on Trial Legal Guide</i>	24
Experimental Research/Evidence on Juror and Judicial Bias	24
<i>Bad Rap for Rap: Bias in Reactions to Music Lyrics</i>	24
<i>Who’s Afraid of Rap: Differential Reactions to Music Lyrics</i>	25

<i>Rap Lyrics as Evidence: An Examination of Rap Music, Perceptions of Threat, and Juror Decision Making</i>	25
<i>Imagining Violent Criminals: An Experimental Investigation of Music Stereotypes and Character Judgments</i>	26
<i>Rap and Race: It's Got a Nice Beat, but What About the Message?</i>	27
<i>Gangsta' Rap and a Murder in Bakersfield</i>	27
<i>Seeing Black: Race, Crime, and Visual Processing</i>	28
Scholarly Articles	28
<i>The 'Rhyme or Reason' Behind Prosecutorial Use of Rap Lyrics as Evidence Criminal Trial...</i>	29
<i>Every Rhyme I Write": Rap Music as Evidence in Criminal Trials</i>	29
<i>[Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing</i>	29
<i>When Music Takes The Stand: A Content Analysis of How Courts Use and Misuse Rap Lyrics in Criminal Cases</i>	29
<i>Rap Music and the True Threats Quagmire: When Does One Man's Lyric Become Another's Crime</i>	30
<i>African American Music as Rebellion: From Slavesong to Hip-Hop</i>	30
Books	30
<i>Rap On Trial: Race, Lyrics, And Guilt In America</i>	31
<i>Black Noise: Rap Music and Black Culture In Contemporary America</i>	31
Advocacy Groups	31
Black Music Action Coalition	31
Protect Black Art	32
Author's Alliance	32
Pen America and the Literary Action Coalition	32
Experts	33
Charis E. Kubrin & Jack I. Lerner	33
Andrea L. Dennis & Erik Nelson	33
Current Awareness	33
<i>California restricts use of rap lyrics in criminal trials after Gov. Newsom signs bill, NBC News</i>	33

This Rap Song Helped Sentence a 17-Year-Old to Prison for Life, New York Times 34

What to Know About Young Thug’s Indictment and the Controversial Use of Rap Lyrics in Criminal Cases, Time 34

Law 360 35

Major Music Magazines 35

INTRODUCTION

From its inception, Hip-Hop was designed to reflect the realities of disenfranchised communities through its use of graphic imagery and “offensive” language.¹ When "gangsta rap" gained commercial success in the late 1980s, moral panic began to ensue across the nation.² The moral panic surrounding Hip-Hop has tried to chill Black and Brown artistry through censorship and ultimately plays a significant role in the way society views those engaged in Hip-Hop culture.³

Although this issue could be analyzed through several lenses like First Amendment law and Intellectual Property protections for artists, this research focuses on Criminal Procedure/Evidence and Critical Race Theory.

Defendants in these types of trials often make three arguments against the use of evidence including undue prejudice, lack of relevance, and impermissibility as character evidence.⁴ Judges generally determine that the probative value of the lyrics outweighs the prejudicial effects and are admissible under their discretion.⁵

STATEMENT OF PURPOSE

This pathfinder is designed to assist those conducting research into the modern-day litigation tactic of using lyrics as evidence in civil and criminal trials. While this legal

¹ Clarence Lusane, Rhapsodic Aspirations: Rap, Race and Power Politics, 23 BLACK SCHOLAR 37, 39.

² Hits Daily Double, Black Music Month: F*CK THA POLICE, Hits Daily Double, (June 19, 2020), <https://hitsdailydouble.com/news&id=321935&title=BLACK-MUSIC-MONTH:-FUCK-THA-POLICE>

³ Stereo Williams, The Conservative War on Hip-Hop: White Scapegoating and Black Respectability, Daily Beast, (Published May 29, 2018, Updated June 11, 2018), <https://www.thedailybeast.com/the-conservative-war-on-hip-hop-white-scapegoating-and-black-respectability>.

⁴ See Generally, Admissibility of Rap Lyrics or Videos in Criminal Prosecution, 43 A.L.R.7th Art. 1, (2019); Cite to Federal Evidence rules 402, 403, 404.

⁵ Brief of ACLU of N.J. in Support of Defendant-Respondent at 17–18, State v. Skinner, No. A-57/58-12 (071764), 2012 WL 3762431 (N.J. Aug. 31, 2012) The ACLU of New Jersey found that, as of 2013, there were eighteen cases in the United States where rap lyrics were submitted as evidence. The research found that in fourteen of the eighteen cases, the lyrics were admitted.

phenomenon spans many areas of law this pathfinder focuses on evidence rules, the purpose and application of the use of lyrics as evidence, and its connection to race and culture.

This litigation tactic has been widely criticized for its reliance on racial stereotypes and attack on the First Amendment rights of African Americans.⁶ The practice derived from the 1990s War On Crime era has been used in at least 500 cases to date mostly involving defendants who identify as African American men.⁷ Rap lyrics, music videos, and album images have been introduced as evidence linking rappers to several criminal charges even when there is little other evidence linking them to the crime.⁸ This practice plagues professional and amateur artists alike across the diaspora.⁹

First, this pathfinder will provide a brief synopsis of *United States v. Foster*¹⁰, the first case to successfully use the tactic in support of finding the defendant guilty beyond a reasonable doubt, and other similar cases. Then, it will discuss enacted and pending legislation that addresses the racial prejudice created by the practice. Once primary sources have been addressed, it will turn to secondary sources that include statistics that demonstrate the judicial and juror bias embedded into the practice. Further, it will provide sources of commentary, advocacy groups, and current awareness that discuss the effects of this practice on Rap Artists and a path forward to ensure the American legal system is without prejudice.

⁶ See Erik Nielson & Andrea L. Dennis, *Rap On Trial: Race, Lyrics, And Guilt In America*, 8–10, (2019).

⁷ Cady Lang, *What to Know About Young Thug's Indictment and the Controversial Use of Rap Lyrics in Criminal Cases*, Time, (June 29, 2022), <https://time.com/6192371/young-thug-rap-lyrics-evidence-court/>.

⁸ Jaeah Lee, *This Rap Song Helped Sentence a 17-Year-Old to Prison for Life*, New York Times, (March 30, 2022), <https://www.typeinvestigations.org/investigation/2022/03/30/this-rap-song-helped-sentence-a-17-year-old-to-prison-for-life/>.

⁹ Jesse Bernard, *The criminalisation of rap in Brazil is having fatal consequences*, Crack Magazine, (December 8, 2019), <https://crackmagazine.net/article/long-reads/the-criminalisation-of-rap-in-brazil-is-having-fatal-consequences/> (describing how artists in Brazil, UK and Jamaica are experiencing targeted treatment from police).

¹⁰ *United States v. Foster*, 939 F.2d 445 (7th Cir. 1991).

PRIMARY SOURCES:

Due to the novelty and relative controversy surrounding the use of lyrics as evidence, there are many news articles and scholarly works on the topic. These primary sources were found by searching through secondary sources and taking note of which case(s) were mentioned throughout. *United States v. Foster* was mentioned in most articles as the origin of the practice. Once *Foster* was found in a case database, relevant cases were found by searching cases that cite *Foster*. While some cases were unrelated to the practice itself, most of the time, *Foster* is used to justify the use of lyrics as evidence consistent with the purpose stated in the origin case. Case law is the best source to find common arguments used by the defense and prosecution and to determine under what circumstances lyrics will be admitted as a matter of law. Case law shows that generally rap lyrics are used to provide evidence of motivation and intent in relation to cases regarding narcotics and violent crimes. This collection of cases focuses on the purpose of the tactic, judicially recognized issues concerning the tactic, and commonly used judicial restraint to eliminate bias presented by the use of lyrics as evidence. This analysis will include references to Westlaw's Key numbers and Key cite feature. Key cite leads the researcher to cases and secondary sources that cite the aforementioned case while Key numbers lead the researcher to cases on a similar topic.

Case Law:

***United States v. Foster*, 939 F.2d 445, 448 (7th Cir. 1991).**

- This is the first step for research on this topic. *Foster* establishes precedent that rap lyrics may be used as evidence to prove motive and intent. The Supreme Court cures the biases against the defendant through a limited-purpose jury instruction

- Foster has received some negative treatment by being declined to follow its precedent regarding the admissibility of drug profile evidence. This case has 594 citing references according to Key Cite. Most of the references include appellate court documents, cases, and secondary sources. This is a great place for a researcher to begin the hunt for relevant cases on point. The most relevant key number for this research is 110k1169.1(2.1) Admission of evidence, In general, Particular Offenses and Prosecutions, In general . This certain issue will allow the researcher to see how other types of evidence are treated in comparison, particularly how other art forms are treated.

Facts: Foster disembarked from an Amtrack train and appeared nervous as he struggled to carry two hard-sided suitcases. Foster was approached by law enforcement and agreed to give them a few moments of his time. While talking to them, one of the suitcases fell over emitting a white powder from its seam. At the agent's request, Foster identified himself and disclaimed ownership of the bags by telling the agents he agreed to carry them to baggage claim as a favor to a young black male. Foster did claim ownership of the duffel bag strapped across his chest that included a notebook that disclosed weights, money, names, and the following handwritten verse.

“Key for Key, Pound for pound I'm the biggest Dope Dealer and I serve all over town. Rock 4 Rock Self 4 Self. Give me a key let me go to work more Dollars than your average bussiness sic man”

The Petitioner's bag was searched and the agents found contraband. The legal issue at trial was whether Foster was aware that he was transporting drugs. The State entered the lyrics found in the notebook. Foster challenged the evidence.

Legal Issue & Analysis: The court admitted evidence under rule 404 (b). Despite the government's objections, the *Foster* Court determined that a jury instruction that displayed that the lyrics were admitted for the limited purpose of evidence of motive and intent was sufficient to remove the bias associated with the lyrics.

Relevant Case: *Huddleston v. United States*, 485 U.S. 681, 691 (1988). (Undue Prejudice Test and Application in Foster)

The *Huddleston* Court came up with a 4-part test to protect defendants from undue prejudice. (1) the evidence must be admissible for a proper purpose under Rule 404 (b); (2) the evidence must be relevant under Rule 402; (3) the evidence must survive Rule 403; (4) the evidence must be the subject of a jury instruction if requested under Rule 105, that the evidence is to be considered only for the proper purpose for which it is admitted. The Court determined this test was done with due care.

***United States v. Stuckey*, No. 05-1039, 2007 U.S. App. LEXIS 2436, at *473 (6th Cir. Oct 14, 2007).**

- This case is useful to the researcher to see the Application of the precedent of *Foster*. The Government admitted this evidence as raw, autobiographical fact; establishing precedent that when the lyrics and the details of the crime match they will be portrayed as fact to the juror. *Stuckey* deviated from the precedent of *Foster* when determining that undue prejudice would be cured through hip hop's commercial success. This is great for the researcher looking to show how the use of lyrics could be used as an admission of guilt.
 - *Stuckey* has received some negative treatment in regard to the standard of probative value needed to admit rap lyrics. The case includes 150 citing

references most of which are trial and appellate court documents. This case also allows a view of the filings for this case. The most relevant key number is 110k338(7) (Evidence calculated to create prejudice against or sympathy for accused). This great place to start for research connecting the juror's emotions and evidence presented at trial.

Facts: Stuckey was charged and convicted with "murder to prevent a person from providing information concerning a federal crime to federal authorities." The State provided eyewitness testimony and rap lyrics that expressed Stuckey's negative feelings for "snitches." The lyrics described details similar to the crime Stuckey was convicted of.

Legal Analysis: Stuckey argued that the lyrics were irrelevant, improper evidence of prior bad acts, and substantially more prejudicial than probative. The Supreme Court affirmed the relevancy of the evidence by concluding that someone writing about killing snitches makes it much more probable that they may have killed a government witness. The Supreme Court also concluded that the district court did not abuse its discretion because they were correct when they determined the lyrics were not evidence of a prior bad act but rather evidence of statements about a characterization of a certain genre of people. The Court compared the lyric's admissibility to a confession that had been given to a third party.

Additionally, Stuckey argued that the lyrics are fictional and that the admission is unfairly prejudicial because they are fictional and use "extreme words, imagery, and graphic language." The district court held that the bias was cured through a limiting instruction to the jury and a voir dire to help the jurors understand that "we don't convict people for murder simply because they have written lyrics about murder." The State included the lyrics as raw, autobiographical facts. Although the district court argued that the limiting instruction would

cure bias, they failed to give the instruction. The Supreme Court decided that the district court did not plainly err by not giving the jury limiting instructions. The Court reasoned that because rap is a mainstream genre, jurors are unlikely to believe a rapper is violent because he raps about violence.

Relevant Case: *State v. Hanson*, 731 P.2d 1140, 1144 (Wash. App. 1987).

State v. Hanson was a case from the court of appeals that held the defendant's violent fictional writings were inadmissible to prove the defendant has a propensity for violence. The Court distinguished this case from *Stuckey* because of the detail and similarity to the crime.

***Holmes v. State*, 306 P.3d 415, 416 (Nev. 2013).**

- *Foster* set the precedent that limiting instructions cure the bias that could be incurred as result of the use of lyrics. Yet, Nevada used a combination of the *Foster* and the *Stuckey* precedent by reasoning that Hip-Hop's commercial success plays a role in curing juror bias through jury instructions. This is great for the researcher looking to argue that this practice places a lot of trust on jurors to understand rap music.
 - *Holmes* has received little negative treatment in regard to the standard of probative evidence and its prejudicial effect. This case has 141 citing references. Most of the references are appellate court documents and cases. The most relevant key number is 110XVII (M) Statements, Confessions, and Admissions by or on Behalf of the Accused. This is relevant to the researcher looking to argue that lyrics are taken as confessions.

Facts: Holmes and associates robbed two guys and, in the process, shot one of them. The unharmed one managed to call the police and flee. The police were unable to confirm who

committed the murder but were able to find a cigarette butt near the crime scene. Holmes gave DNA to the California parole, and it matched the DNA found on the cigarette butt. Nevada authorities traveled to California to interview Holmes and he denied being there when the robbery took place. While in jail, Holmes wrote eighteen rap songs, a stanza from one of which was admitted over objection at his trial. The admitted lyrics are as follows:

“But now I'm uh big dog, my static is real large. Uh neighborhood super star. Man I push uh hard line. My attitude sh*tty n*gga you don't want to test this. I catching slipping at the club and jack you for your necklace. F*ck parking lot pimping. Man I'm parking lot jacking, running through your pockets with uh ski mask on straight laughing.”

Legal Analysis: The district court determined that the jury could reasonably determine if the lyrics are factual or fictional and that if it did, the lyrics would amount to a statement by Holmes. If so, the lyric would be deemed relevant and presumptively admissible. The lower court acknowledges that “gangsta rap” carries a risk of being misunderstood and or misused as criminal propensity and bad act evidence. Ultimately, the district court decided that the probative value of the lyrics outweighed the danger of unfair prejudice. The district court instructed the jury that, “Statements of the defendant that have been admitted into evidence... may be confessions, admission, or neither.” The court also gave the limiting instruction that the lyrics were not admitted to prove that the defendant is a person of bad character or that he has a disposition to commit a crime. Holmes argued that the lyric is fraught with the risk of misinterpretation and requires heightened admissibility requirement. The Supreme Court rejected that argument stating the popularity of rap would shield it from undue prejudice similar to the *Stuckey* court. Holmes also argues that the jury instructions aren't sufficient to prevent the lyrics from misuse and that the jurors may misunderstand the genre and accept the artistic expression

as autobiographical fact. The Supreme court determined the jury instructions were enough to cure the bias.

Relevant case: *Lisle v. State* 937 P.2d 473, 484 (1997): (Presumption of Jurors)

The Supreme Court relied on *Lisle v. State* to bolster the notion that jury instructions cure bias because this case established a presumption that jurors follow the instructions.

***State v. Leslie*, 843 N.W.2d 476, 476 (Iowa Ct. App. 2014).**

➤ *Leslie* is a great case for researchers who want to understand the scope of this practice.

Iowa Court of Appeals holds that the lyrics must be closely related to the case to be entered into evidence, similar to most courts who deal with this issue

- There is no indicated negative treatment for this case. *Leslie* only has 10 citing references most of which are appellate court documents and secondary sources.

There are also no key numbers for this case.

Facts: Leslie was convicted for the murder of a young man. Leslie attempted to appeal his sentence by employing a self-defense argument. Leslie faced the challenge of insufficient evidence to prove that claim and tried to submit the deceased's rap lyrics to prove that he had a gun on him when Leslie killed him.

Legal Analysis: The district court held that Leslie failed to prove the probative value outweighed the undue prejudice that would cause. The Court of Appeals determined the district court did not err when deciding the evidence was unfairly prejudicial when “ it appeals to the juries sympathies, arouses a sense of horror, provokes its instinct to punish or triggers other mainsprings of human action that may cause a jury to base its decision on something other than

the established propositions in the case.” The district court determined that the lyrics would only show the deceased was associated with a gang who may have been armed and violent rather than proof he had a weapon the night Leslie killed him. The Court distinguished *Holmes* from this case because the lyrics in *Holmes* were used to prove details of the crime rather than a propensity for violence.

***Ward v. Rock Against Racism*, 491 U.S. 781, 790 (1989).**

- This is the case that established music’s constitutional right as free speech.
 - Because this case established music’s right as free speech this case is cited over 13,000 times. *Ward* has some negative treatment from state legislatures refusing to follow the law or declining to extend the protection beyond the original context. The most relevant key number from this case is 92k1893 Music (3).

The facts of this case are largely unrelated to the use of Rap lyrics as evidence but refer to the right to play music out loud in a public setting. This case establishes that music as a form of communication and expression is protected under the First Amendment.

***State v. Skinner*, 95 A.3d 236, 238 (N.J. 2014).**

- The *Skinner* Court sets a standard for the appropriate proximity of the lyrics to the details of the crime. *Skinner* holds that rap lyrics that are written too far in advance of the crime are inadmissible. This is a great case for the researcher looking into reform in the courtroom.
 - *Skinner* has received some negative treatment from courts who have declined to follow or declined to extend the holding of this case. This case has 273 citing references most of which are appellate court documents and cases. The most

relevant key number for this case is 110k673(5): Limiting effect of evidence of other offenses. This is a great place to start for the researcher exploring the relationship between rap lyrics and prior bad act evidence.

Facts: Lamont Peterson was shot seven times in his head, back, and torso. In the ambulance, Peterson told the police that Vonte Skinner shot him. When the police questioned the Defendant, Skinner mentioned being at the scene but denied involvement in the shooting. The police searched the car the Defendant left at the scene and found three notebooks with “violent and profane” rap lyrics authored by Skinner. Although it was not clear when each verse was written the State conceded that many were composed before the circumstances underlying the instant offense took place.

The trial court concluded that the lyric was relevant because they tended to prove the State’s theory of the case and found them admissible under N.J.R.E. 404 (B) to provide insight into the Defendant’s alleged motive and intent. The State read the jury extensive passages from the Defendant depicting violence, death, and dismemberment unconnected to the facts of the instant offense. During closing arguments, the prosecutor compared “street code” to a “sub-culture of violence” and insinuated that the “sub-culture of violence” would take over regular culture if the jury did not convict. The jury convicted the Defendant, and he was sentenced to an aggregate thirty-year sentence with an eighty-five percent parole qualifier. The appellate court reversed his conviction based on the admission of his rap lyrics as evidence. The majority believed the State had access to less prejudicial evidence concerning the motive and intent of the Defendant. The Supreme Court of New Jersey affirmed the decision of the appellate court.

Legal analysis: The Court understood that the Defendant's motive was in dispute, but the lyric was only used to bolster the credibility of a testifying witness which the Court explicitly

discouraged. The Court used the Cofield test to assess the admissibility of lyrics under 404 (b). The first prong of the Cofield test requires that the wrong, or bad act evidence pertains to a material issue in the dispute. The State suggested that the lyrics were admitted to prove motive and intent. However, the State had the testimony of an eyewitness to establish the motive and the nature of the crime itself proves the intent to kill. The second prong requires that it must be similar in kind and reasonably close in time to the offense charged. The State conceded that this prong was not met. The third Cofield prong requires that proof of prior crime evidence be demonstrated by clear and convincing evidence. Clear and convincing evidence was absent that the crimes and bad acts about which the defendant wrote in rap form were acts that he committed. Thus, the lyrics can only be regarded as fictional accounts as the State has produced no evidence otherwise. The final Cofield prong requires that the probative value of the lyrics not be outweighed by their prejudicial effect. The State chose to present several verses of the defendant's because they glorify violence and the defendant's apparent disregard for human suffering. In this case, the lyrics could be viewed as an example of a propensity toward committing and at the very least glorifying, violence and death. That prejudicial effect overwhelms the probative value the lyrics may have.

***United States v. Pierce*, 785 F.3d 832, 836 (2d Cir. 2015).**

- The Pierce Court uses rap lyrics in conjunction with the tattoos of the Defendant, music videos, and social media posts. This case showcases the modern use of the lyrics as evidence.
 - This case has received little negative treatment through the courts' use of the case to distinguish one from another. Most of the citing references are appellate court documents, cases, and secondary sources. The filings and the history of the case

could be particularly helpful as this case involved several different parties. The most useful key number is 92k2102 Freedom of Speech, Expression, and Press, Judicial Proceedings, Criminal Proceedings Admissibility of evidence. This is a good starting point for the researcher looking to analyze how rap lyrics, videos, and tattoos are used during RICO prosecution.

Facts: Pierce, Colon, and Meregildo were members of a gang called the Courtlandt Avenue Crew (CAC) by the government, engaged in the trafficking of crack cocaine, heroin, and marijuana. The leader of the gang was murdered, and Meregildo assumed a leadership role in CAC until he was arrested in January 2011, then passed on the operation to Colon who was arrested on the current charges. The government entered physical evidence like seized drugs and firearms that were used in the commission of the murders, but also introduced a rap video and social media posts from the Defendants that allude to the sale of narcotics and violent acts

Legal Analysis: The government used photographs of Colon's tattoos to prove intent to harm members of a rival gang and loyalty to the deceased members of his community. Colon argues that the admission of the rap video violated his First Amendment rights based on the *Street v. New York* holding that the courts should not "sustain a conviction that may have rested on a form of expression, however distasteful, which the constitution tolerates and protects." 394 U.S. 576, 594 (1969). The Court finds that this challenge is meritless because the speech was not the basis of prosecution but was used to establish the existence and Colon's participation in the alleged RICO enterprise. Colon also argues that the lyrics were fictional and artistic expressions that should not be used against him for lack of probative value. The government argued that the lyrics establish a motive for violence against the rival gang and association with CAC establishing probative value. The Court accepted the government's argument.

Cases Currently being Litigated:

- These two cases are cases to watch as the use of lyrics changes in the courtroom and in the legislature. These cases are mentioned in several articles and legislative histories for related bills.

***Canady v. Wisconsin*, No. 2021AP1002-CR, 2022 Wisc. App. LEXIS 935, at *1 (Wis. Ct. App October 19, 2022).**

- This case has no negative treatment to date. Canady has been cited 243 times in mostly appellate court documents but this case has been cited by a substantial number of cases as well. There are no Key Numbers to recommend for this research path.

Facts: On July 29, 2014, Semar McClain was found dead from a single gunshot wound to the head. A witness testified to seeing McClain with other people including Canady one to two hours before his body was discovered. They said they appeared to be trying to “one-up each other.” McClain was carrying a .380 caliber pistol and a member of the group was asking him to display his gun. The gun was never recovered. Another witness testified that he saw Canady with McClain, but he did not see Canady with a gun. During a search of Canady’s residence, the police discovered a .380 caliber pistol in a cooler and a .38 revolver in a teddy bear. A .38 caliber bullet was recovered from McClain’s body, but no bullet casing was found at the scene of the murder. McClain’s Stepfather testified that after McClain’s death he directed law enforcement to Canady’s SoundCloud to listen to a song that he believed was about his son's murder. There was a dispute at the trial court level about whether the song mentioned Semar's name like his Stepfather told law enforcement. The trial court entered the song recording and brief recitation of

the lyrics, despite the debate around if Semar's name was said in the SoundCloud recording. His most recent post-conviction motion requested discovery from a laptop computer seized during the search of his residence. He has also requested a new trial based on the ineffective assistance of trial counsel because the trial court erred in admitting the written rap lyrics. The judgment of the trial court was affirmed on October 19, 2022.

Legal Analysis: Canady argued that his counsel was ineffective because his counsel failed to obtain the track recording pre-trial and strip out the rhythm of the music and leave only the vocal track. The laptop was reported to have nothing of evidentiary value by the Wisconsin State Police department. Trial counsel failed to gain access to the laptop in the overnight period between two trial dates and failed to request a limiting instruction regarding the use of rap lyrics at trial. The Court found the trial court counsel to be deficient for not finding the vocal-only track on the laptop at the time of trial. Despite that finding, the Court found there was no undue prejudice to the Defendant because the jury would still have to make a determination from an unclear lyric. The Court determined that the trial court counsel was not deficient for the failure to request a jury instruction due to the possibility that a jury instruction would just highlight the evidence.

Canady was convicted at the trial court level and sentenced to life in prison with extended supervision eligibility after fifty years. This case is mentioned in the legislative history of the Restoring Artistic Protection Act introduced to Congress in 2022.

***United States v. Bey*, NO. 16-290, 2017 U.S. Dist. LEXIS 65644, at *1, (E.D. Pa. Apr. 28, 2017).**

- Bey has no negative treatment to date. There are currently nine citing references for this case, and five of them are citing decisions. There are no relevant key numbers to recommend.

Facts: The Defendant was arrested in Philadelphia and was charged with being a felon in possession of a firearm. The government motioned to admit evidence of Bey's 2002 conviction for a firearm offense, separate firearms offense, three music videos, and one audio clip from songs written and performed by the Defendant. The motion was denied.

Legal Analysis:

The Court is obliged to view rule 404 (B) as a rule of general exclusion that carries no presumption of admissibility consistent with the Third circuit. The Court applied a four-part test that requires.

1. the proponent of the evidence must identify a proper Rule 404(B) purpose for admission that is "at issue" in or relevant to the case,
2. explanation of how the proffered evidence is relevant to that purpose,
3. The court must evaluate pursuant to rule 403 whether evidence is sufficiently probative, and the probative value is not outweighed by the prejudicial nature of prior bad act evidence.

4. At the defendant's request, the court must provide a limiting instruction advising that evidence is admissible for limited purposes.

The Court decided the rap lyrics did not meet prong one because the theory the government presented against the Defendant had no requirement of knowledge or intent, ending their analysis at prong one. The Pennsylvania Eastern District court continues to litigate this issue with several different state agencies and government employees. The most recent filing on the docket is *Bey-Cousin v. Powell*, No. 2:19-cv-01906-JDW, 2021 U.S. Dist. Lexis 216269, at *1 (E.D. Pa. Nov. 9, 2021). The Court continues to block the admission of the Defendant's lyrics into evidence to "encourage free expression in all its forms."

Legislation:

Starting research with a standard google search allowed the search to present relevant information regarding the use of rap lyrics as evidence. The recent arrest of Jeffrey "Young Thug" Williams and Sergio "Gunner" Kitchens revived the debate around this practice creating an influx of research and legislation on the topic. The Times article "What to Know about Young Thug's Arrest" by Cady Lang, provides an extensive discussion on recently introduced legislation on the federal level called the "Restoring Artistic Protection" Act. After being introduced to the legislation from a secondary source, a google search of the bill presented related legislation from various states looking to protect the same rights. The most accurate resource for legislation is the official website of the respective legislature. The official site provides basic information like the language of the bill and legislative history. It also shares the members of the legislature that voted for and against it, committee meeting documentation, and transcripts of the conversations surrounding the bill.

Enacted Legislation:

California: Cal. Evid. Code § 352.2 (West 2022) (effective Jan. 1, 2023)¹¹ .

The Californian Legislature intended to provide a framework that ensures that an accused person's creative expression will not be used to introduce stereotypes or activate bias against the defendant nor as character or propensity evidence. This legislation also intends to enforce that the use of rap lyrics and other creative expression to prove motive or intent is not sufficient justification to overcome the prejudice the tactic creates. This bill requires a court in a criminal proceeding where a party seeks to admit as evidence a form of creative expression, to consider specified factors when balancing the probative value of evidence against the substantial danger of undue prejudice. The Decriminalizing Artistic Expression Act was passed on September 30, 2022.

Legislative History¹²:

The last amendment to this bill included the following additions:

1) Directed that in a criminal trial or proceeding where a form of creative expression is admitted as evidence of guilt, upon the request of a party, the court shall instruct the jury as follows or admonish the jury with a substantially similar instruction:

a) "In evaluating the evidence of creative expression that has been introduced, this evidence should be viewed with caution and close scrutiny; and

¹¹ Language of bill can be found here:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB2799 .

¹² The language highlighted in the text can be found in the final assembly analysis that can be found here:

https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB2799 .

b) "You should not use the evidence to support a finding that the defendant has the propensity to commit a crime or as character evidence."

2) Defined a "creative expression" as the expression or application of creativity or imagination in the production or arrangement of forms, sounds, words, movements, or symbols, including, but not limited to, music, dance, performance art, visual art, poetry, literature, film, and other such objects or media.

3) Provided that in addition to this jury instruction, the court may provide the jury with any additional instructions it may deem necessary.

The author of this bill cited several different sources as arguments in support of this bill including Dennis & Nielson's Book Rap of Trial: Race, Lyrics, and Guilt in America, New York Times article "The Lyrics and the Sentence," and the similar pending bill in the New York State Legislature.

Pending Legislation:

Federal: Restoring Artistic Protection Act, H.R. 8531, 117th Cong (2022).¹³

Status as of December 10, 2022: This bill was introduced in the House on July 27, 2022, by Representative Henry Hank Johnson and Representative Jamaal Bowman. The Constitutional Authority for this bill is enacted pursuant to U.S. Const. art.1, sec. 8, cl. 18. The Federal act ultimately has the same goals as the recently passed California bill and uses similar language. The language will likely change as the bill matures in the legislative process.

¹³ The language of the bill can be found here: <https://www.congress.gov/bill/117th-congress/house-bill/8531/text>.

New York: Assemb. 8681, 238th Gen. Assemb. Reg. Sess. (N.Y. 2021)¹⁴.

Status: This bill has passed the senate and is now waiting to be voted on by the assembly. If passed, the next steps include delivering the bill to the Governor of New York.

Legislative Intent: The purpose of this bill is to protect freedom of speech and artistic expression through enhanced free speech protections provided by the New York State Constitution. This bill was designed to ensure that criminal defendants are tried based on evidence of criminal conduct and not the provocative nature of art.

Legislative Function: This bill establishes an assumption of the inadmissibility of evidence of a defendant's creative or artistic expression against such a defendant in a criminal proceeding; requiring the proffering party to affirmatively prove that the evidence is admissible by clear and convincing evidence.

Relevant Federal Evidence Rules:

Fed. R. Evid. 401.:

This Evidence rule establishes the test for relevancy requiring that evidence is deemed relevant if (a) it has any tendency to make a fact more or less probable than it would be without evidence and (b) the fact is of consequence in determining the action. Through database searches of the rule, the notes to decision lead to relevant case law in areas of interest such as copyright, racial discrimination, gangs and gang memberships generally, racketeering, and informants.

Fed. R. Evid. 403.:

¹⁴ The language of the bill can be found here: <https://www.nysenate.gov/legislation/bills/2021/S7527>.

Rule 403 allows courts to exclude relevant issues if the probative value is outweighed due to unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. Since the relevancy determination is left up to the court, this is the rule that almost all defendants choose to back up any argument about why rap lyrics should be left out of the trial. Note to decision of interest for this rule includes constitutional matters, unfair prejudice, what constitutes unfair prejudice, the necessity that prejudice is unfair, and experts generally.

Fed. R. Evid. 404.:

This rule discusses how there is a strong presumption against evidence that speaks to the character of the defendant and prior bad acts. This rule lays out the exceptions for prosecutors and witnesses under very specific circumstances. The Notes of Advisory Committee on Rules help provide clarity on the procedural use of the exceptions and arguments for the current language of the rule. Relevant notes of decision for this rule include defenses, harmless prejudicial and plain error, aggression or violence, extrinsic evidence of crimes wrongs or acts, and clear and convincing evidence.

SECONDARY SOURCES:

By starting the research with a plain Google Search, this research path began with a plethora of secondary sources for the layperson, including mostly articles that recount the history of using rap lyrics as evidence and a few key cases where defendants have suffered as a result. While reading these articles, legal commentary was at the root of most of the sources written by reputable news brands. Most of the articles pointed to law review articles and the book, “Rap on Trial: Race, Rap, and Guilt in America.” Through a quick search on legal databases, you will

find articles, legal encyclopedias, and cases that mentioned this book and lead to other secondary sources on the same topic. After that search is exhausted, one should begin a search for secondary sources that mention *United States v. Foster*. All sources will not be on point with the topic at hand, but this search helps you find a variety of small issues within the practice. This path focuses specifically on the racial and cultural impacts of this practice, but some articles discuss this practice and its relations to threats of violence, free speech and obscenity, and possible reforms to the rules of evidence.

American Law Reports (A.L.R.)

The A.L.R.s were found through consulting with a research specialist in the Pence Law Library. Research specialists will enhance your search, especially when dealing with a new and emerging topic.

Jason B. Binimow, Annotation, *Admissibility of Rap Lyrics or Videos in Criminal Prosecution*, 43 A.L.R. 7th Art. 1 (2019).

This A.L.R. entry collects and discusses cases that have considered the admissibility of rap lyrics or videos in criminal prosecution. It separates the cases into two separate grounds for objections: Constitutional and Evidentiary Objections. Evidentiary objections are the most prominent for this type of case which is reflected by the research collected in this entry. This entry includes a table for relevant rules and case law organized by authority. This would help a researcher determine how the practice differs across jurisdictions.

Monique C.M. Leahy, Annotation, *Proof in Civil and Criminal Trials of Admissibility of Evidence of Rap Lyrics or Videos*, 194 Am. Jur. Proof of Facts 3d 169 (2022).

This entry is focused on the admissibility and use of rap lyrics or videos and provides a practice guide for attorneys in civil and criminal trials involving the admissibility of rap lyrics and videos. It provides details regarding pleadings, discovery, and litigation testimony. This A.L.R takes more of a critical legal studies approach by tackling issues like racial bias, artistic expression, and social media concerning the entry of rap lyrics and videos as evidence. This source is most helpful to the researcher that is looking to connect social implications to case law.

Amicus Brief:

Brief of ACLU of N.J. in Support of Defendant-Respondent at 17–18, *State v. Skinner*, No. A-57/58-12 (071764), 2012 WL 3762431 (N.J. Aug. 31, 2012).

This brief is discussed in part with the previous analysis of *State v. Skinner*. While collecting research for this brief, the ACLU of New Jersey found that as of 2013 there were eighteen cases in the United States that the court examined whether rap lyrics were admissible as evidence in a criminal trial. In fourteen of eighteen cases, the lyrics were admissible. This brief is useful to the researcher looking to connect the practice to judicial bias

Legal Guides:

While searching for relevant news articles, the names of legal experts on the topic came up consistently. By running a google search of legal experts on the topic you will likely find the body of academic work that made them an expert.

Jack I. Lerner, Charis E. Kubrin et al., Rap on Trial Legal Guide 1 (Version 1.1 2022).

The Rap on Trial Legal Guide is authored by Professors at the University of California-Irvine Intellectual Property, Arts, and Technology Clinic. This guide teaches attorneys step by step how to defend a case that might include rap lyrics or videos as evidence. The guide urges the defense to become familiar with long-standing traditions of rap and how lyrics are used as a tool for commercial success rather than testimonial purposes. It also introduces and demonstrates how experimental research can be used to prove the societal disapproval of rap lyrics and how it could affect the jury. This guide also includes a brief bank and case compendium for practicing attorneys.

Experimental Research/ Evidence Regarding Juror and Judicial Bias:

Carrie B. Fried, *Bad Rap for Rap: Bias in Reactions to Music Lyrics*, 26 J. APPLIED SOC. PSYCHOL. 2135 (1996).

This experiment took place four years after Ice T's "Cop Killer" was released and public outcry against violent rap songs swept the nation. The research suggests that when lyrical passages are presented as either rap or sung by a Black artist, subjects find the lyric objectionable, worry about the consequences of the lyrics, and support some form of governmental regulation. When the same lyric is presented as country or folk music or associated with a White artist, reactions to the lyrics are less critical on all fronts. The findings are discussed in terms of various models of racism and stereotypes. This

experiment is cited in several books and guides on the topic and the legislative history of the California bill referenced earlier. This source is the basis for most of the studies in this niche area, and the best place to start to get an overview of all the social implications of the practice.

Carrie B. Fried, *Who's Afraid of Rap: Differential Reactions to Music Lyrics*, 29 J.

APPLIED SOC. PSYCHOL. 705 (1999).

As a companion experiment, Fried hypothesized that rap music receives more negative criticism than other types of music regardless of the actual content. The experiment required that participants read a violent lyrical passage and were led to believe it was either a rap song or a country song. When a violent lyrical passage was presented as a rap song, the reactions were significantly more negative. The results varied on age, whether the participant had children or not and the participant's music tastes and buying habits. The results support the hypothesis.

Adam Dunbar, *Rap Lyrics as Evidence: An Examination of Rap Music, Perceptions of Threat, and Juror Decision Making*, (2017) (unpublished Ph.D. dissertation, University of California, Irvine) (available at <https://escholarship.org/uc/item/2c6478vr>).

This experiment included three studies that ultimately picked up where Fried left off and applied those results to a courtroom context. Experiment one was a direct replication of Fried's Bad Rap for Rap experiment, and it yielded similar results to the 1999 version of this experiment. Experiment two found that the "genre effect" discovered by Experiment one was not limited to one set of lyrics. Experiment three examined the adjudicative consequences of using rap lyrics as evidence in a criminal trial. The experiment required

that the participants evaluate the rap lyric in a non-trial setting and in a setting where the verdict was given already. The results revealed that participants who believe a defendant is guilty are more likely to treat rap lyrics as an admission of guilt compared to when the lyrics were not presented in the trial context. This essay discusses the potential consequences of introducing rap lyrics as evidence at trial. This source is crucial for the researcher looking to connect juror bias to the litigation practice.

Adam Dunbar & Charis E. Kubrin, *Imagining Violent Criminals: An Experimental Investigation of Music Stereotypes and Character Judgments*, 14 J. EXPERIMENTAL CRIM. 507 (2018).

This experiment aims to answer if negative stereotypes about rap music shape jurors' attitudes about the defendant, unfairly influencing outcomes. It aimed to replicate and extend the research of Fischhoff and Fried. Participants were presented with lyrics and asked to make judgments about the songwriter. All participants read the same lyrics but were told they were from a country, heavy metal, or rap song depending on what group they were randomly assigned to. Writers of violent "rap" lyrics were perceived more negatively than writers who pen identical country and heavy metal lyrics. No differences in judgments were detected between white and black songwriters; however, when race information was not provided, participants who inferred the songwriter was Black judged him more negatively than the participants who inferred he was white. This experiment concluded that its findings have implications for racial disparities in the criminal justice system. This source is also imperative to connect juror bias to convictions based on this practice.

Rachel E. Sullivan, *Rap and Race: It's Got a Nice Beat, but What About the Message?*, 33 J. BLACK STUD. 605 (2003).

This essay examines Black and White adolescents' attitudes toward rap music. This study aims to address the alleged "deleterious effects" of rap. This experiment used a survey of fifty-one adolescents in a mid-western city to examine racial differences in preferences for and interpretations of rap music. The results found that racial differences in the popularity of rap music are limited but reveal that African American youth are more likely to see rap music as life-affirming. While both groups seem to have favorable opinions of rap, their commitment to it and its significance in their lives vary by race. This source is helpful to the researcher who wants to explore the relationship between rap and the common socio-economic stature of the defendant in these cases.

Stuart P. Fischhoff, *Gangsta' Rap and a Murder in Bakersfield*, 29 J. APPLIED SOC. PSYCHOL. 795 (1999).

This study explored the biasing effect of "gangsta' rap" lyrics on the subject's perceptions of a murder trial defendant's personality. The lyrics were authored by a defendant in a murder trial where Fischhoff was a psychological consultant for the defense. The results strongly suggest that the defendant was seen as more likely to have committed murder when he was presented as authoring those lyrics. The results also reveal that the writing of such lyrics was more damning with respect to adjudged personality characteristics than the fact of being charged with murder. This is an imperative source for the researcher looking to connect juror bias to the practice.

Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876, 876 (2004).

This study used police officers and undergraduates as participants, the authors analyzed the influence of stereotypic associations on visual processing in five studies. Study one demonstrates that Black faces influence participants' ability to spontaneously detect degraded images of crime-relevant objects. Conversely, Studies two-four demonstrates that activating abstract concepts (i.e., crime and basketball) induces biases toward black male faces. Results find that the processing biases may be related to the degree to which a social group member is physically representative of the social group. Taken together these studies indicate that some associations between social groups are bi-directional and operate as visual tuning devices that produce shifts in perception and are likely to influence decision-making and behavior. This study is valuable for a researcher looking for facts regarding implicit bias in the justice system.

Scholarly Articles:

Robert Nothdurft, *The 'Rhyme or Reason' Behind Prosecutorial Use of Rap Lyrics as Evidence Criminal Trials*, 2 Crim. L. Prac. 112, (2014).

This article describes the prosecutorial methods used to admit rap lyrics into evidence and how prosecutors use the lyrics once admitted. Nothdurft analyzes this litigation tactic through the lens of Federal Rules 401, 403, and 404.

Reyna Araibi, “Every Rhyme I Write”: Rap Music as Evidence in Criminal Trials, 62 Ariz. L. Rev. 805, (2022).

This note is a critical assessment of the use of rap music in criminal trials as evidence against defendants. The note highlights the history of rap and its connection to race. It also reviews several empirical judgments to show how the connection affects the judgments people make about rap artists. Then, Araibi examines which evidentiary avenues prosecutors use to admit rap lyrics. The note concludes with an argument that the defendant is unduly prejudiced under Federal Rule of Evidence 403 and provides policy recommendations on the issue.

Alex B. Long, [Insert Song Lyrics Here]: The Uses and Misuses of Popular Music Lyrics in Legal Writing, 64 Wash & Lee L. Rev. 531, (2007).

Long focuses on the phenomenon of using song lyrics used to advance a particular theme of argument in legal writing. It describes the most popular artists in legal writing and chronicles the uses and misuses of popular music lyrics in legal writing.

Erin Lutes et. al., *When Music Takes The Stand: A Content Analysis of How Courts Use and Misuse Rap Lyrics in Criminal Cases*, 46 Am. J. Crim. L. 77, (2019).

This article offers a qualitative content analysis of how prosecutors proceed in cases that use rap as evidence. They found that its most common uses include proving gang affiliation for sentencing enhancement purposes; as circumstantial evidence of the commission of a crime, as direct evidence of having communicated a threat; to prove motive, knowledge, intent, identity, or character; or to establish the commission of the

crime. Each theme is examined and analyzed with the respect to the function of rap evidence within each case.

Clay Calvert et. al., *Rap Music and the True Threats Quagmire: When Does One Man's Lyric Become Another's Crime?* 38 Colum. J.L. & Arts 1, (2014).

Calvert evaluates rap lyrics through the lens of the true threat doctrine. Rap although protected by the First Amendment, its rights lay in the balance of whether it constitutes a true threat of violence. The author offers suggestions for how to clarify the doctrinal issues of the true threat doctrine with rap illustrating and supporting those ideas.

Megan Sullivan, *African American Music as Rebellion: From Slavesong to Hip-Hop*, 3 DISCOVERIES 21, at 36 (2001)

[https://pdfs.semanticscholar.org/5f90/f91bda7b35c0c56816e40c62cde58bb10e18.pdf? ga=2.195978732.1748009900.1571619982-1288669308.1571619982.](https://pdfs.semanticscholar.org/5f90/f91bda7b35c0c56816e40c62cde58bb10e18.pdf? ga=2.195978732.1748009900.1571619982-1288669308.1571619982)

This article discusses the connection between the slave trade to the African American musical tradition as a form of defiance. The author analyzes African American music and its role in the abolitionist movement, World War One, and the Civil Rights era. This is great for the researcher looking to argue that rap lyrics admitted as literal meaning are unacceptable because of the traditions of African American music.

Books:

When searching for secondary sources, it's particularly important to start with a large number of relevant sources and determine the similarities based on a survey of the sources.

Throughout case law, legislative history, and law review articles on the topic many sources were

presented. These books were found through their consistent reappearance in primary and secondary sources.

Erik Nielson & Andrea L. Dennis, *Rap On Trial: Race, Lyrics, And Guilt In America*, (2019).

This book shares the stories of rap artists that have been impacted by the use of rap lyrics as evidence and the social implications of rap that generally produce prejudice against a defendant when using this practice. First, this book insinuates that because of the changes to the legal and political landscape post 9/11 among other factors have led to the dismissal of basic checks and balances in the criminal trial process. Additionally, the authors explain how society looks to the criminal justice system to control black speech and creative endeavors. Then, it discusses the importance of this movement beyond rap and how to win over allies to support the end of this practice. This book concludes that the use of lyrics in criminal trials is a racial issue with First Amendment implications rather than the latter.

Tricia Rose, *Black Noise: Rap Music and Black Culture In Contemporary America*, (1994).

Rose critically studies the musical, social, and cultural relationship between rap music, black culture, and American society. It also discusses the way rap music and Black culture interact as a form of resistance.

Advocacy Groups:

Black Music Action Coalition:

This is advocacy organization was made to address systemic racism within the music business. The Coalition advocates on behalf of black artists, songwriters, managers, and other industry professionals. Their website is regularly updated with legislation news, bills the group has co-sponsored, and action letters that describe the work they do.

Art on Trial: Protect Black Art

Art on trial is an open letter that urges prosecutors to voluntarily end this practice in their jurisdiction and legislators to explicitly limit how creative expression can be used against defendants on trial. This letter is signed by over one hundred artists, industry leaders, and legal experts. The letter was published in the New York Times and Atlanta Journal-Constitution. This petition was created by 300 Elektra Entertainment whose founder, Kevin Liles, is at the forefront of the movement.

Author's Alliance

This advocacy group specializes in the issues of Authorial Reputation and Integrity, Managing Authors' Rights, Authorship Law & Policy, and Reaching Audiences. Their website offers free legal resources regarding relevant legal issues for authors. This alliance hosts talks with industry professionals and posts blogs on various topics.

Pen America and the Literary Action Coalition:

The Literary Action Coalition consists of twenty-one New York Literary organizations in support of "Rap Music on Trial" legislation designed to strengthen free speech protections by limiting the use of art created by the defendant as evidence against them. Pen America and the Literary Action Coalition condemn this practice as a danger to

people's first amendment rights. The full letter and the occasional blog post on the issue can be found on their website under the advocacy and action section of the website.

Experts on the Topic:

Charis E. Kubrin & Jack I. Lerner:

Charis E. Kubrin is a Professor of Criminology, Law, and Society at the University of California, Irvine. She researches the neighborhood correlates of crime with an emphasis on race and violent crime. Her research explores the intersection of music, culture, and social identity as it applies to hip-hop and youth of color in disadvantaged communities. Professor Jack Lerner is the director of the Intellectual Property, Arts, and Technology Clinic at UC-Irvine. These two professors co-authored the Rap on Trial legal guide discussed in a previous section. Lerner and Kubrin are quoted regularly as experts on the topic.

Andrea L. Dennis & Erik Nielson:

Andrea L. Dennis is a Professor at the University of Georgia School of Law and was formerly an assistant federal public defender. Her scholarship explores criminal defense lawyers, race, and criminal justice among other things. Professor Erik Nielson is a Professor of Liberal arts at the University of Richmond. His area of expertise includes African American Literature, Composition, Latin American Literature, Rap music, and Shakespeare. Dennis and Nielson co-authored the nationally acclaimed Rap on Trial: Race, Lyrics, and Guilt in America.

Current Awareness:

News Articles:

Variety, *California restricts use of rap lyrics in criminal trials after Gov. Newsom signs bill*, NBC News, (Sept. 30, 2022), <https://www.nbcnews.com/news/nbcblk/california-restricts-use-rap-lyrics-criminal-trials-gov-newsom-signs-b-rcna50271>.

This news article discusses supporters of the bill and quotes the Black Music Action Coalition stating this bill is a "crucial step in the right direction." Variety showcases advocacy efforts for further action through the Federal RAP Act. Legal expert Jack Lerner warns against the judicial system's focus on hip hop as a genre as it could have a chilling effect on recording artists.

Jaeah Lee, *This Rap Song Helped Sentence a 17-Year-Old to Prison for Life*, New York Times, (March 30, 2022), <https://www.typeinvestigations.org/investigation/2022/03/30/this-rap-song-helped-sentence-a-17-year-old-to-prison-for-life/>.

The investigative piece recounts Tommy Canady's case previously mentioned in the primary sources section including quotes from the trial from Canady, and the prosecution. The article reviews Fischhoff's study and analyzes this practice in the instant case and several other similar cases. In conclusion, the article provided an update on Mr. Canady's case and final thoughts from the Defendant.

Cady Lang, *What to Know About Young Thug's Indictment and the Controversial Use of Rap Lyrics in Criminal Cases*, Time, (June 29, 2022), <https://time.com/6192371/young-thug-rap-lyrics-evidence-court/>.

This article chronicles the timeline of "Young Thug's" May 9, 2022 arrest on state racketeering charges. It reviews the eighty-eight-page indictment and shares lyrics cited in the indictment.

Lang provides a brief history of the racial implications of this practice and recent comments from state politicians on the matter. Finally, the article concludes by discussing the origins of the legal trend and what it means for other artists in the future.

Blogs:

Law 360:

Law 360 understands that the use of lyrics as evidence is a hot topic among critical legal theorists and is following legislation and cases that involve the admission of rap lyrics as evidence. Law 360 is a great source for unbiased reporting focused on the way the legal landscape will change as a result. This is a great way for the researcher to keep up with the small changes to the current precedent in the most accurate way.

Major Music Magazines:

Since this issue is intertwined with artistic expression, music outlets regularly focus on this topic as their editorial piece. Major outlets like Variety, Complex, Times, and Rolling Stone will likely include pieces that are more “pro-artists” rather than unbiased. These articles are helpful to the researcher who prefer a big-picture analysis of the issue.

CONCLUSION:

This is an emerging area of law that is being shaped daily. The best way to get a full overview of this issue is to start with secondary sources, particularly music magazines. These

articles focus on the social and cultural implications of this practice. When applying a critical legal lens to research, it is important to understand what issues this problem creates for a targeted group of society. When looking to understand what circumstances lyrics are proffered as evidence, case law is important. The case law provides a body of research that explains common arguments between the prosecution and the defendants. It's useful to see what laws are implicated by this practice. Additionally, Law review articles on the topic break down the intricacies of the use of rap lyrics in criminal court. This is useful when a researcher needs to make an informed decision on policy recommendations on the issue. Finally, experimental studies are important to bridge the gap between social issues and the actual practice of using lyrics as evidence. The studies supply data that illustrate the severity of the bias that will inevitably take place in the courtroom when lyrics are admitted.