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Centering the People's Voice in Teaching and Learning First-Year Criminal Law

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THE CRIMINAL LAW PRACTITIONER

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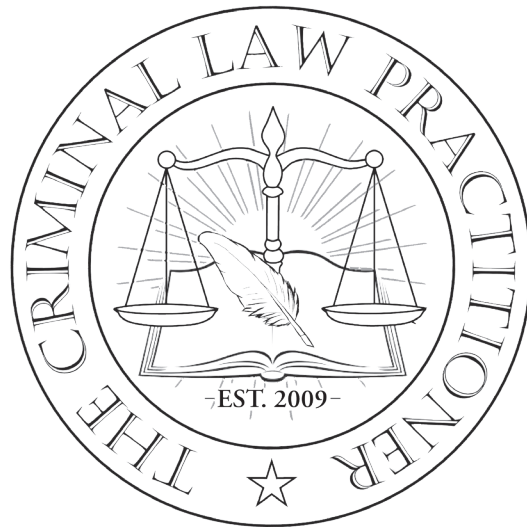
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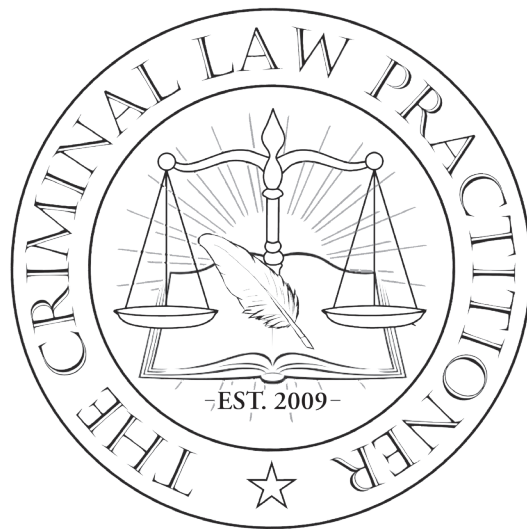
*Centering the People's Voice in Teaching and Learning
First-Year Criminal Law*

Fareed Nassor Hayat



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PRACTITIONER



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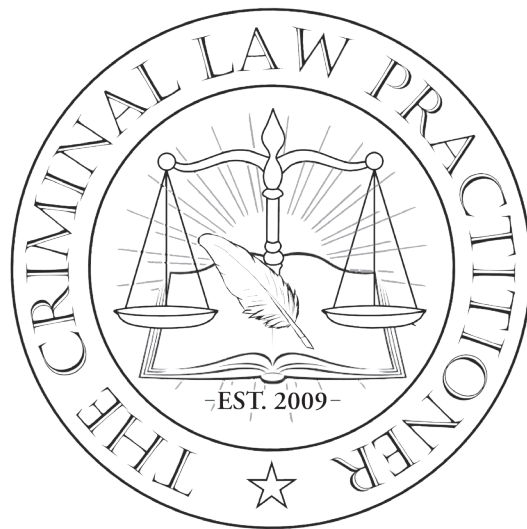
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CENTERING THE PEOPLE'S VOICE IN TEACHING AND LEARNING FIRST-YEAR CRIMINAL LAW

BY FAREED NASSOR HAYAT¹

ABSTRACT

Traditional legal teaching is premised on creating an educational environment that systematically discourages inquiry into the unspoken values of the legal system and fosters a classroom where first-generation students of color feel repeatedly "less than." In my first-year criminal law course, I attempt to disrupt this tradition by transforming the classroom to include those it has historically excluded, marginalized, and oppressed. However, students who come from backgrounds that have been historically underrepresented in law school and the practice of law continue to struggle at disproportionate rates in comparison to their non-marginalized and wealthy counterparts. I strive to create an academic environment supportive of all students but specifically focused on fostering an environment supportive of first-generation students of color. This article proposes a people-centered approach to teaching first-year criminal law that elevates the people's voice by using rap music to understand complex legal concepts. Incorporating rap music transforms the classroom and the practice of law to include those it has previously excluded and provides a people-centered means to expand legal education more broadly.

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INTRODUCTION

My first-year criminal law course is designed to capture the creative energies of a subject people through the use of rap music.² As described by Critical Race Theorist and Professor of Law Derrick Bell, “[r]ap burst forth precisely where it did, when it did because that’s where the long, long night of poverty and discrimination, of violent marginality remained a hurting truth nobody else was telling. That’s where the creative energies of a subject people were being choked and channeled into self-destruction.”³ By incorporating rap music in teaching substantive criminal law, I attempt to overcome the choked and challenged self-destruction that first-generation students of color experience as imposter syndrome.⁴ Through rap music, I employ a people-centered lens to learning criminal law and engaging with our criminal legal system. My approach goes beyond that which is traditionally taught in law school courses and tested on the Bar exam. The traditional approach is not representative of reality and especially not the reality of marginalized students. First-generation students of color enter law school disconnected from the law as it has historically been taught—the racialized person stands before the law as an abstract, rights-bearing subject, making the law unable to apprehend the unjust social realities in which many people live.⁵

My first-year criminal law course is substantively similar to many criminal law courses taught across the country but extends beyond crime and punishment to connect to the marginalized student’s perspective. I teach the purposes of punishment, constitutional constraints on punishment, the basic elements of a crime (*actus reus*, *mens rea*, causation, and concurrence), homicide (premeditated and depraved heart murder, voluntary and involuntary manslaughter, and reckless and negligent homicide), inchoate offenses (attempt, solicitation, accomplice liability, and conspiracy), and defenses (self-defense, necessity, duress, and insanity). I teach students to assess criminal law from the perspective of the common law and the Model Penal Code. In addition to learning the basics of criminal law, students are taught to think critically about how issues of difference, including sexual orientation, race, class, gender, and disability, interact with the criminal legal system. What makes my course different from most criminal law courses across the nation is the use of rap music as a tool to understand the rationales of the law and the people’s role in

² TERRY McMILLIAN, *BREAKING ICE: AN ANTHOLOGY OF CONTEMPORARY AFRICAN-AMERICAN FICTION* viii (1990).

³ DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* 22 (1993) (citing John Wideman, *The Architectonics of Fiction*, 13 *CALALLOO LITERARY J.* 1, 44 (1990)).

⁴ See Sara L. Ochs, *Imposter Syndrome & the Law School Caste System*, 42 *PACE L. REV.* 373, 379 (2022) (arguing that Imposter syndrome is a “psychological experience of intellectual and professional fraudulence,” and “those who experience imposter syndrome fear others will eventually discover they are not as smart, accomplished, or successful as their external qualifications suggest them to be and constantly worry they will be exposed as frauds.” (citing Katherine Hawley, *Conspiracy Theories, Impostor Syndrome, and Distrust*, 175 *PHIL. STUD.* 969, 974 (2019)); see also Katherine M. Cafilisch, *Impostor Syndrome: The Truth About Feeling Like a Fake*, *AM. SOC’Y FOR MICROBIOLOGY* (Aug. 14, 2020), <https://asm.org/articles/2020/august/imposter-syndrome-the-truth-about-feeling-like-a-f>; Karina K. L. Mak, et al., *Impostor Phenomenon Measurement Scales: A Systematic Review*, 10 *FRONTIER PSYCH.* 1, 1–2 (2019).

⁵ ANGELA Y. DAVIS, *ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE* 21 (2005) (“[H]e/she comes under the authority of the law as the abstract juridical subject, as a rights-bearing individual, not as a member of a racialized community that has been subjected to conditions that make him/her a prime candidate for legal repression.”).



shaping and being subjected to the law.⁶ The course is designed to teach first-generation students and students of color in a way that centers, rather than ignores, their specific needs to enhance their ability to learn the law and perform well in law school. Highlighting some of the musical and linguistic culture of the first-generation students of color and how their thinking is not deficient, but instead, fundamental to the creation of law, values their experience, and enhances their ability to excel in law school.

As students enter the lecture hall for my class, rap music directly related to the substantive material plays, along with the accompanying music video. At the beginning of each class, students share their impressions of the music and connect the lyrics directly to the substantive material and the cases they read for the day.⁷ The use of music builds on the writings of Derrick Bell and Paul Butler who argue that using hip-hop and rap to inform the law and punishment is fundamental.⁸ Those scholars, and many others, highlight the participatory nature of the law and how normal citizens are tied to and understand complex legal principles.⁹ Through the artist's lyrics, the music demonstrates the logic of the legal doctrine and allows students to connect the substantive legal rules to real people. The music centers a non-traditional law school student's experience and is interdisciplinary.

After the discussion, the class is led through an agenda. While acknowledging that law students are self-directed learners, a coherent and clear agenda creates feelings of safety, reduces anxiety, and creates clear expectations.¹⁰ Next, a review of substantive law occurs, allowing students to reflect, recall, and apply the material from the previous class. Students are called to participate randomly in a Socratic fashion.¹¹ Students present their briefs of the day's cases, in which they provide the facts of each case, the rules that the court considers as their basis for the decision, the holding of the case, the

⁶ *Criminal Law (CRGL) 0103*, FORDHAM UNIVERSITY: 2023-2024 ACADEMIC BULLETIN, <https://bulletin.fordham.edu/courses/crgl/> (last visited 05/20/2024) (describing that the class seeks to “look beyond the headlines to understand what criminality is” and will interrogate how “societal perspectives (...) impact current issues.”).

⁷ *Modalities*, SUNY CORTLAND, <https://web.cortland.edu/andersmd/learning/modalities.htm> (last visited Nov. 25, 2022) (noting that the class begins by incorporating three learning modalities – auditory, visual, and interactive).

⁸ See BELL, *supra* note 2, at 22 (writing that it is not enough to be “aware” of what is going on around you, “[y]ou must be with it, “like the rappers,” whose music most lawyers would not listen to “unless one of the groups gets tossed in jail for bodacious language.”); Paul Butler, *Much Respect: Towards a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983, 984 (2004) (theorizing that hip-hop can be used to inform a theory of punishment that is coherent, that enhances public safety, and that treats lawbreakers with respect).

⁹ Butler, *supra* note 7, at 989 (noting that there is a symbiotic relationship between popular culture and the law, especially criminal law as “[h]ip-hop offers a fresh way of analyzing persistent unresolved problems in criminal law theory, including how to determine cause, the relationship between responsibility and blame, and the appropriate response of the state to law-breaking,” and “[c]onsidering the growing influence of hip-hop culture, and the personal experience of many citizens of the hip-hop nation with criminal justice, its perspective deserves examination.”).

¹⁰ See Lindsay A. Phillips, et al., *Adult Student Preferences: Instructor Characteristics Conducive to Successful Teaching*, 23 J. ADULT & CONTINUING EDUC. 50, 55 (2017).

¹¹ See Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320, 2322–23 (2017) (explaining that the Socratic Method teaches students to analyze, criticize, and reason upon the cases, but is subjected to the criticism and suggestion of the instructor and fellow students). See also DANIEL R. COUILLETTE & BRUCE A. KIMBALL, ON THE BATTLEFIELD OF MERIT: HARVARD LAW SCHOOL, THE FIRST CENTURY 314, 358 (2015) (citing C.C. LANGDELL, A SUMMARY OF THE LAW OF CONTRACTS 11–12 (1880)); *The Harvard Law School*, HARV. ADVOC., Feb. 5, 1875, at 146–47).



emerging rules, the impact the rule will have on the people, and, finally, the deciding court's policy rationale. PowerPoint slides supplement the students' presentation and more importantly, succinctly state the rule for the class to compare and, if needed, amend their version of the rule. The teaching techniques used in class make lectures accessible to multiple learning styles.

The experience of the people, the artist, their music, and many of the criminal defendants are used in assessing and applying concepts of criminal law. Within each case, the unwritten racial implications and the social and political components are highlighted and explored throughout the semester. The final exam is a culmination of the acquired skills in which students apply criminal law through a lens that accounts for the criminal defendant's perspective. By elevating the voice of the voiceless, such as the criminal defendant, the battered wife, the immigrant, and the exploited, a people-centered approach to teaching and learning first-year criminal law is accomplished.

In Part I of this Article, I explore traditional legal education and the gap created in educating first-generation students of color. I argue that legal education must be advanced and expanded to include the experiences of first-generation students of color to ensure an equitable educational setting. In Part II, I assert that first-generation students of color are disadvantaged in their legal education much like rappers are due to anti-rap attitudes in the criminal legal process. Simply put, anti-rap attitudes produce stereotypes, tropes, and anti-Black attitudes. Some first-generation students, especially those from marginalized Black communities, are intimately familiar with this trauma, and like rappers, are subjected to harm caused. Through examples, I demonstrate that rap music is used in criminal courts to convict criminal defendants where traditional substantive evidence is lacking. Similarly, stereotypes are used to silence and deprioritize the diverse views of students of color, particularly Black students. Finally, in Part III, I explore the final exam in my first-year criminal law course that challenges students to reject racist tropes of Black dangerousness and instead, effectively separate the criminal defendant from artistic expression, while using rap music to demonstrate a mastery of criminal law.

Ultimately, I posit that the use of rap music can aid in better understanding the criminal defendant and elevate the cultural experiences of first-generation students of color to enhance their legal education. Specifically, I demonstrate that using rap lyrics in understanding the law allows some often-neglected first-generation students of color to center their experience to tackle complex legal issues. In the end, this Article recognizes that law school is supposed to be hard, but unlike the traditional first-year criminal law course, my class centers on the student of color and their first-generation law school experience in mastering the law.

I. TRADITIONAL LEGAL EDUCATION AND FIRST-GENERATION LAW STUDENTS OF COLOR

Traditional legal education, commonly known as the "Harvard case method," faces criticism for creating "an educational environment that systematically discourages inquiry into the unspoken premises about the legal system, the larger social order, the role of lawyers, and creat[ing] a climate inhospitable to serious attention to



public interest values or the participation of minority viewpoints in the law and legal institutions.”¹² The majority of students at elite law schools come from the top income brackets in the country and are generally educated and socialized to see the law as a coherent moral system.¹³ By contrast, non-elite students approach the law as outsiders, understanding it as a force that acts upon them and their communities.¹⁴ First-generation students from marginalized backgrounds may experience this as “perspective lessness”—the idea that legal education should be purely objective and not address conflicts of individual values, experiences, and world views.¹⁵ What is understood as “objective” or “neutral” is often the embodiment of a white middle-class worldview and does not adequately represent how students of color and students from low-income backgrounds experience the world.¹⁶ It forces minority students to balance multiple intersecting identities as they negotiate social and academic discourses of equity and opportunity in order to struggle for power in mainstream society.¹⁷ This is especially challenging in the context of law school, given the intrinsic elitism of both the legal education system and the legal profession.¹⁸

Furthermore, this traditional view fails to highlight the relevance of legal education to the problems of American contemporary society, leaving first-generation students of color feeling bored or uninterested in their studies.¹⁹ These students are also the ones most likely to understand and think critically about the law as an institution that systematically targets and harms members of their own communities while also having the potential to create change and further progress. When it comes to ‘using the master’s tools to dismantle the master’s house’, the rule of law could be seen as one of the master’s favorite tools to reinforce its power and privilege.²⁰ In that sense, the “master’s house” is legal doctrine—the black-letter law—employed by lawmakers to keep a democracy

¹² Barbara Bezdek, *The CUNY Law Program: Integration of Doctrine, Practice & Theory in the Preparation of Lawyers*, 9 J. PRO. LEGAL EDUC. 59, 60 (1991) (asserting that the CUNY LAW Program was self-consciously designed to express longstanding critiques of American legal education).

¹³ In fact, more than three-quarters of the students at the nation’s top 20 law schools come from the top one-fourth of the socioeconomic population, and well over half of the students at these schools come from the top ten percent. Richard H. Sander, *Class in American Legal Education* 88 DENV. UNIV. L. REV. 631, 637 (2011).

¹⁴ Gregory Louis, *The Jurisprudence of Trousered Apes*, 69 UCLA L. REV. DISC. 146, 158 (2021) (“[T]he Essay uplifts and sketches an alternative perspective on law it calls, ‘The Jurisprudence of Trousered Apes.’ It is the understanding that first-generation lawyers such as the author and those whom the author teaches uniquely contribute to legal analysis, capturing the law as experienced by those oppressed by it rather than contemplated by elites enveloped in its tutelary cocoon.”).

¹⁵ Kimberlé Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT’L BLACK L.J. 1, 2, 10 (1988) (arguing that “[m]inority perspectives are devalued not simply in the discussion of doctrine, but in the construction of doctrine as well.”).

¹⁶ Limarys Caraballo, *Being “Loud”: Identities-in-Practice in a Figured World of Achievement*, 56 AM. EDUC. RSCH. J. 1281, 1281 (2019) (arguing that marginalization is perpetuated by uninterrogated norms about curriculum and achievement, in which mainstream norms and academic conventions about culture, language, and literacy are framed as “neutral” and “standard” and their raced, classed, and gendered nature is masked.).

¹⁷ *Id.* at 1282.

¹⁸ Bennett Capers, *The Law School As A White Space*, 106 MINN. L. REV. 7, 29 (2021) (arguing that law schools’ architectural history exude a type of privilege and grandiosity that is often associated with whiteness and serves to marginalize first-generation students of color).

¹⁹ See Arthur Kinoy, *The Present Crisis in American Legal Education*, 24 RUTGERS L. REV. 1, 1 (1969).

²⁰ Will Rhee, *Using the Master’s Tool to Dismantle His House: Derrick Bell, Herbert Wechsler, and Critical Legal Process*, 3 CONCORDIA L. REV. 1 (2018).



functioning as they want it.²¹ The traditional approach is what is taught in law school courses and tested on the bar exam²² and believed to be the basis for success on the bar.²³ However, it is not representative of reality and, in particular, not of marginalized students' realities.

First-generation students of color enter law school disconnected from the law as it is taught. Their law school education can leave them struggling to feel like they belong²⁴ and believe that they can dismantle the master's house using the master's tools.²⁵ Derrick Bell would say this is not possible—he wrote that only the master can control the rule of law.²⁶ However, training lawyers, especially lawyers who come from marginalized communities, to be better for their clients is an act of resistance. Education is one of the greatest tools we have to further this process.

But how do we use the law as a vehicle for progressive change while simultaneously emphasizing the importance of acknowledging the limits of the law? Scholar, activist, and freedom fighter, Angela Y. Davis, lamented in *Abolition Democracy* that “we naturally assume that justice and equality are necessarily produced through the law. But the law cannot on its own create justice and equality.”²⁷ Arthur Kinoy suggests that one of the principal ways law schools can avoid falling into the trap of teaching law that is not representative of the reality of first-generation students is to ensure that clinical education is at the heart, rather than in the periphery of, the core curriculum of the law school.²⁸ Clinical education, he says, most successfully models the exciting ways the law can be used to impact real social issues that students experience in their everyday lives.²⁹

²¹ See generally *Id.*

²² Douglas K. Rush & Hisako Matsuo, *Does Law School Curriculum Affect Bar Examination Passage? An Empirical Analysis of Factors Related to Bar Examination Passage During the Years 2001 Through 2006 at A Midwestern Law School*, 57 J. LEGAL EDUC. 224, 227 (2007) (arguing that law school administrators and faculty typically blame low bar examination passage rates on the failure of law students to take courses in bar examination subjects during the second and third years of their legal education).

²³ Notwithstanding this belief, researchers have not been able to support the opinion with empirical data. See Robert R. Kuehn, David R. Moss, *A Study of the Relationship Between Law School Coursework and Bar Exam Outcomes*, 68 J. LEGAL EDUC. 623, 624–25 (2019) (“[p]rovides the missing empirical evidence regarding the relationship between law school experiential and bar-subject coursework and bar exam outcomes. It reports the results of a study of ten years of bar exam performance by J.D. graduates of two law schools and the associations between the courses those graduates took in law school and their performance on the bar exam”).

²⁴ Elizabeth Bodamer, *Do I Belong Here? Examining Perceived Experiences of Bias, Stereotype Concerns, and Sense of Belonging in U.S. Law Schools*, 69 J. LEGAL EDUC. 455, 466 (2020).

²⁵ Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, SISTER OUTSIDE: ESSAYS AND SPEECHES, 110 (1984); see Teri A. McMurtry-Chubb, *Writing at the Master's Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41, 54 (2009) (arguing that teaching students of color to “think like lawyer” confirms white supremacy) (citing WENDY LEO MOORE, REPRODUCING RACISM: WHITE SPACE, ELITE LAW SCHOOLS AND RACIAL INEQUALITY, 38, 48–49, (“[t]he process of teaching students how to “think like lawyers” within this structure, a structure already historically organized around the analytical processes of elite white male judges, leads directly to the replication of a racist and elitist legal structure.”)).

²⁶ See Caraballo, *supra* note 16; Will Rhee, *Using the Master's Tool to Dismantle His House: Derrick Bell, Herbert Wechsler, and Critical Legal Process*, 3 CONCORDIA L. REV. 1, 3–4 (2018).

²⁷ Davis, *supra* note 4, at 87.

²⁸ Kinoy, *supra* note 18, at 5–10.

²⁹ See Frank Askin, *Tribute to Arthur Kinoy*, 56 RUTGERS L. REV. 1, 2–3 (2003) (quoting Kinoy: “The great challenge to the American law school today . . . [is] to structure within the heart of the law school, law



Rather than focusing on reading and re-reading excerpts of cases that were decided decades ago, law professors should train their students to function as lawyers today.³⁰

The City University of New York (“CUNY”) School of Law, where I previously taught, is one rare example of a law school created with the dual mission to “practice law in the service of human needs and transform the teaching, learning, and practice of law to include those it has excluded, marginalized, and oppressed.”³¹ CUNY’s curriculum, when initially designed, sought to contrast the traditional method by incorporating discussions of social justice into every legal course and recognizing that one’s work as a lawyer is carried on in relation to one’s values.³² Clinical training and professional skills instruction were integrated into the course of study throughout the entire curriculum, and the subject matter was taught in such a way as to integrate rather than dichotomize different fields.³³ It sought to pursue three principal goals: (1) to reform legal education along a humanistic model; (2) to educate and train public service lawyers; and (3) to admit students from groups that have been historically underrepresented among lawyers and who would otherwise lack a chance to attend law school.³⁴

Especially relevant to this mission is CUNY’s Equity Line Program (“E-Line”), which seeks to level the playing field for students of all backgrounds.³⁵ Recruiting students from low-income backgrounds also means that many of these students are the first in their family to pursue any form of higher education. First-generation college students bring both tremendous skills and unique challenges to law school.³⁶ Although little research has been done on the experiences of first-generation college students in law school, what has been studied shows that the challenges they face during their undergraduate degrees persist through law school.³⁷ First-generation students are more likely to be ethnically diverse, older than traditional college students, have dependent

clinics, directed and guided by teachers of law which involve large numbers of students in taking on major cases and situations involving the relationship of the processes of the law to the fundamental problems of contemporary society. The activity of the clinic . . . would provide a fascinating teaching tool for probing into the most fundamental theoretical, substantive, and conceptual problems, all within the context of the throbbing excitement of reality. It would provide the ‘salt and the yeast’ without which everything is ‘flat and tasteless.’”) (citing *The Present Crisis in American Legal Education*, 24 RUTGERS L. REV. 1 (1969).

³⁰ Crenshaw, *supra* note 14, at 7.

³¹ See, e.g., City Univ. of N.Y. School of L. Communications, *Professor Lisa Davis Heads to U.S. Department of State*, CITY UNIV. OF N.Y., <https://www.law.cuny.edu/about/> (last visited Apr. 15, 2024).

³² Bezdek, *supra* note 11, at 61.

³³ *Id.* at 62.

³⁴ Matthew S. Steffey & Paulette Wunsch, *A Report on CUNY’s Experiment in Humanistic Legal Education: Adrift toward Mainstream*, 59 UMKC L. REV. 155, 155 (1991).

³⁵ See *New Pilot Program Seeks to Address Systemic Inequities*, CITY UNIV. OF N.Y. (Sept. 14, 2022), https://www.law.cuny.edu/newsroom_post/new-pilot-program-seeks-to-address-systemic-inequities/ (last visited Apr. 15, 2024) (“The Equity Line (E-Line) pilot is another effort to further the Law School’s access mission and to respond to inequities within higher education. Studies have shown that students facing obstacles created by systemic racism, disparities in access to education and resources, and the challenges of competing priorities, such as working or caregiving, benefit from programs steeped in foundation-building, small-group or one-on-one support, and a more flexible curriculum. This systems-based approach informed the pilot’s focus on the first semester. E-Line takes that critical window and expands it, enhances connections, and allows students more time to get the building blocks in place.”).

³⁶ Jacqueline M. O’Bryant & Katherine Traylor Schaffzin, *First-Generation Students in Law School: A Proven Success Model*, 70 ARK. L. REV. 913, 913–56 (2018).

³⁷ *Id.*, at 913-914.



children, come from low-income families, live off-campus, and attend classes part-time.³⁸ Financial challenges underpin many first-generation students' struggles. First-generation students tend to spend more time working for pay and less time studying than students who were not the first in their families to go to college.³⁹

Professors Jacqueline M. O'Bryant and Katharine Traylor Schaffzin argue that "[t]he expectations of first-generation students in their education are generally lower than those of continuing-generation students."⁴⁰ Lower expectations arise at least partially because first-generation students do not enter higher education with the same degree of cultural and social capital that continuing-generation students do.⁴¹ For example, students who have lawyers in their families tend to have an easier time adjusting to law school and have the resources and networks necessary to succeed in their law careers.⁴² First-generation students are less likely to have access to these opportunities and may struggle to adjust to this unknown educational environment.⁴³

Evidence demonstrates that some of the students who start out law school with low "success-predictors," such as low Law School Admission Test ("LSAT") scores and GPAs, are the same students that struggle in law school and fail to pass the bar exam.⁴⁴ First-generation college students are on average admitted to law school

³⁸ *Id.* (citing Kara Balemian & Jing Feng, *First-Generation Students: College Aspirations, Preparedness and Challenges* 9-10 (2013) <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=41fb806ab5308a5b3bac273608313c19ae66b1d5>. See Patrick T. Terenzini, et al., *First-Generation College Students: Characteristics, Experiences, and Cognitive Development*, 37 RSCH. HIGHER EDUC. 1, 8 (1996).

³⁹ Terenzini, et al., *supra* note 38, at 8.

⁴⁰ *Id.* See also EMILY FORREST CATALDI, ET AL., U.S. DEP'T OF EDUC. NAT'L CTR. FOR EDUC. STAT., FIRST GENERATION STUDENTS: COLLEGE ACCESS, PERSISTENCE, AND POSTBACHELOR'S OUTCOMES 2 (2018) ("All of these factors and interactions among them increase first-generation students' risk of failing to persist in postsecondary education relative to that of many of their continuing-generation peers.").

⁴¹ CATALDI, ET AL., *supra* note 39, at 2 (2018) ("When they do enroll, first-generation students cannot benefit from their parents' college going experience—a valuable source of cultural capital that helps students navigate college (e.g., understanding the significance of the syllabus, what "office hours" means, or how to cite sources in written assignments). This lack of cultural capital negatively affects even those first-generation students who are academically well prepared for college." (citations omitted)).

⁴² See Karen Sloan, *Having Lawyer Parents Boosts Job Prospects, Salaries for Law Grads*, REUTERS (Oct. 20, 2021), <https://www.reuters.com/legal/transactional/having-lawyer-parents-boosts-job-prospects-salaries-law-grads-2021-10-20/> (noting that according to data published by the National Association for Law Placement (NALP), employment outcomes for first-generation college students fall below those of their peers with lawyers in their families, and disparities in outcomes by race and ethnicity persist).

⁴³ *Id.* (noting that the overall employment rate among first-generation college students who received their J.D. in 2020 was eighty-eight percent, three percent lower than for graduates with a parent or guardian with a bachelor's degree, and almost five percent lower than graduates with a lawyer parent); see CATALDI, ET AL., *supra* note 39, at 2 (2018) ("A considerable body of research indicates that students whose parents have not attended college often face significant challenges in accessing postsecondary education, succeeding academically once they enroll, and completing a degree[.]").

⁴⁴ See Lily Knezevich & Wayne Camara, *The LSAT Is Still the Most Accurate Predictor of Law School Success*, LSAC (last visited Apr. 15, 2024), <https://www.lsac.org/data-research/research/lSAT-still-most-accurate-predictor-law-school-success> ("LSAT scores are significantly stronger in predicting academic success in law school compared to either SAT or ACT scores in predicting undergraduate success. For undergraduate programs, prior grades have consistently been better than test scores in predicting subsequent academic success. However, undergraduate grades are weaker predictors of law school grades, whereas the LSAT is far superior in predicting academic success in law school.").



based on lower LSAT scores than their peers.⁴⁵ They also tend to rely more on student loans, spend more time working and less time studying, and generally spend less time on law school co-curricular activities, such as the law review and assisting faculty with research.⁴⁶ Summer “bridge” programs, such as the Pipeline program at CUNY,⁴⁷ the Tennessee Institute for Pre-Law (“TIP”) program at the University of Memphis,⁴⁸ and the UCLA School of Law Fellows Program,⁴⁹ may be an effective way to foster academic success for first-generation college students. Each of these pipeline programs admit first-generation students, introduce the culture of law school, provide LSAT preparation, and provide a network of similarly situated first-generation law students.⁵⁰

Ultimately, the fact that students who enter law school with low academic indicators are the ones who continue to struggle academically indicates that something is missing from the currently-existing support system. Law schools can fulfill their purpose of providing access and ensuring justice for students from underrepresented backgrounds by providing effective support systems that ensure their success in law school and beyond. I suggest educating this group of students in a way that centers, rather than ignores, their specific needs. Highlighting the culture, music, and language of first-generation students of color values their experience, enhances their ability to excel in law school, and shows how their thinking is not deficient but rather fundamental to the creation of law.

⁴⁵ O’Bryant & Schaffzin, *supra* note 36, at 932.

⁴⁶ *Id.* at 919–20.

⁴⁷ *Pipeline to Justice*, CUNY SCH. OF L., <https://www.law.cuny.edu/admissions-and-aid/pipeline-to-justice/> (last visited Mar. 4, 2024) (explaining that CUNY Law’s “Pipeline to Justice” program advances the school’s commitment to diversifying the legal profession by preparing underrepresented students to earn a juris doctorate degree through offering “a second chance at admission to excellent, public interest-focused students whose LSAT scores do not reflect their achievements or potential.”).

⁴⁸ *Transitional Initiatives Program*, UNIV. OF MEMPHIS CECIL C. HUMPHREYS SCH. OF L., (last visited Mar. 4, 2024), <https://www.memphis.edu/law/about/tip.php>. See also Jacqueline M. O’Bryant & Katherine Traylor Schaffzin, *First-Generation Students in Law School: A Proven Success Model*, 70 ARK. L. REV. 913, 937–40, 946 (2018) (explaining that the Tennessee Institute for Pre-Law (TIP) at the University of Memphis Cecil C. Humphreys School of Law is an “alternative admission program for diverse Tennessee or border county residents who are not admitted to law school through the regular admission process but whose law school applications show potential for academic success.” The purpose of the program is “to increase the law school admission of capable, underrepresented individuals by providing them the skills and support they need to successfully complete the program and excel in law school.” It consists of a five-week simulation of the first year of law school that takes place in the time leading up to their first year. At the end, “[c]ompletion status and admission recommendations are based on whether the student has performed or demonstrated the ability to perform “C” or better work in law school.” Students who successfully complete the program are admitted to the law school. The program has been extremely successful in responding to the challenges that first-generation college students face in law school).

⁴⁹ *Academic Outreach Resources*, UCLA SCH. OF L. <https://law.ucla.edu/life-ucla-law/diversity-inclusion/outreach> (last visited Mar. 4, 2024) (providing early academic development support to “high-potential” undergraduate students and college graduates with the objective of increasing their academic competitiveness for admission to law school, specifically focusing on students who have overcome economic and/or educational hardships and challenges or come from economically or educationally underserved communities).

⁵⁰ *Pipeline to Justice*, CUNY SCH. OF L., <https://www.law.cuny.edu/admissions-and-aid/pipeline-to-justice/> (last visited Mar. 4, 2024); *Transitional Initiatives Program*, UNIV. OF MEMPHIS CECIL C. HUMPHREYS SCH. OF L., (last visited Mar. 4, 2024), <https://www.memphis.edu/law/about/tip.php>; *Academic Outreach Resources*, UCLA SCH. OF L. <https://law.ucla.edu/life-ucla-law/diversity-inclusion/outreach> (last visited Mar. 4, 2024).



II. ANTI-RAP ATTITUDES IN THE LAW

Rap music describes a particular experience of those traditionally marginalized.⁵¹ Using rap music in teaching criminal law can enhance first-generation law students' educational experience. Rap music consistently tops charts and influences sports, clothing, popular culture, film, and language.⁵² The cultural norms of traditionally marginalized communities are articulated through hip-hop culture and rap music.⁵³ Hip-hop culture is defined by five pillars: DJing, MCing, B-Boying/Breaking, graffiti, and knowledge.⁵⁴ Unfortunately, anti-rap music attitudes have used this cultural phenomenon to harm criminal defendants.⁵⁵ Prosecutors in today's criminal courts use rap lyrics as statements against interest or admissions of guilt to convict criminal defendants.⁵⁶ Instead of creative expression, criminal defendants' rap lyrics are cited as evidence of criminality.⁵⁷ This Part will briefly explore the use of rap lyrics in criminal prosecutions, then attempt to demonstrate how rap lyrics can be used as a tool for first-generation students of color, rather than a weapon against criminal defendants, to enhance the marginalized student law school experience.

In the United States, there is an institutionalized false narrative in our society that young Black men are intellectually inferior to white people, inherently violent, and more likely to commit crimes than white people.⁵⁸ The criminal legal system stands

⁵¹ Kevin Scot Johns, *For Whom the Bell Tolls: Bell v. Itawamba Targets Rap Music and Students' Free Speech Rights*, 71 EMORY L.J. 1321, 1335 (2022) (arguing that hip hop culture created a new reality for marginalized young people).

⁵² See generally TRICIA ROSE, *BLACK NOISE: RAP MUSIC AND BLACK CULTURE IN CONTEMPORARY AMERICA* (1994). See also Andrea L. Dennis, *Poetic (in)justice? Rap Music Lyrics As Art, Life, and Criminal Evidence*, 31 COLUM. J. L. & ARTS 1, 17 (2007) ("By 2003, rap music was the second most purchased musical genre behind rock-and-roll; in the years since, it has consistently battled country music for second place behind rock-and-roll.").

⁵³ *Bell v. Itawamba Cnty. Sch. Bd.*, 774 F.3d 280, 282 (5th Cir. 2014) ("Rap has been defined as a 'style of black American popular music consisting of improvised rhymes performed to a rhythmic accompaniment.'"). See also *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 572 (1994).

⁵⁴ See *The Pillars of Hip Hop*, THE HIP HOP FUNDAMENTALIST (May 18, 2011), <https://thehiphopfundamentalist.wordpress.com/2011/05/18/the-pillars-of-hip-hop/> (noting that "because of many mainstream artists, Hip-Hop is being portrayed negatively. People think Hip-Hop is about getting high, being violent, objectifying women, and making money. It is not. Record companies are instigating this kind of negativity, exploiting a beautiful culture, and soiling our youth's state of mind and morals. It is so important to really learn about Hip-Hop and the way it is socially conscious and positive, and the way it has brought people together.").

⁵⁵ 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, 83 (2019).

⁵⁶ See *Matter of Quintero*, 541 P.3d 1007, 1033–34 (Wash. Ct. App. 2024) (where the trial court's admission of rap lyric over defense objection allowed the jury to convict on the impermissible character evidence found in the lyrics. Thus the appellate court concluded that the lyrics should have been excluded under Evidence Rule 403).

⁵⁷ *Id.* (noting that the admitted lyrics posed a significant risk that the jury would use them to conclude Mr. Quintero was a violent person who had a violent character and criminal propensity).

⁵⁸ Carroll Bogert & Lynnell Hancock, *Superpredator: The Media Myth That Demonized*, THE MARSHALL PROJECT, <https://www.themarshallproject.org/2020/11/20/superpredator-the-media-myth-that-demonized-a-generation-of-black-youth> (last visited Mar. 29, 2024) (explaining that John J. DiIulio Jr. coined the term in November 1995 in *The Weekly Standard* arguing that "30,000 young 'murderers, rapists, and muggers' would be roaming America's streets, sowing mayhem. They place zero value on the lives of their victims, whom they reflexively dehumanize as just so much worthless 'white trash.'").



on this assumption and is used as a tool of continued oppression.⁵⁹ This was designed intentionally to uphold a white supremacist social structure, where white people's interests are systemically favored in exchange for Black people's suffering.⁶⁰ There exists an idea that Black people were "destined by their role in the nation's history to serve as a catalyst for stability and progress," forcing them to endure much of this nation's most horrific standards and policies that still exist today.⁶¹ The criminal legal system maintains the divisions in society that have been accepted as "normal:" a system that disproportionately targets, polices, and incarcerates Black people.⁶²

While this system of oppression is maintained in a myriad of ways, in recent years, rap music has been the latest tool used to subjugate Black criminal defendants.⁶³ One of the fundamental components of American law is the jury trial.⁶⁴ Prosecutors, with the approval of trial courts across the country, introduce rap music lyrics to foster prejudice against the criminal defendant.⁶⁵ Prosecutors play into jurors' already-held beliefs about stereotypes associated with Blackness.⁶⁶ These biases and tendencies have been well-documented in sociological and psychological studies and are not without consequences.⁶⁷ Jurors carry these biases with them when they enter the courtroom.⁶⁸ Rap lyrics are especially used as evidence of gang affiliation and drug trafficking.⁶⁹ Gang affiliation automatically prejudices the jury's perception of the accused person and increases the likelihood of conviction.⁷⁰ Sociological studies demonstrate this phenomenon and show how this bias is exploited in the courtroom against criminal

⁵⁹ See Phyllis Goldfarb, *Matters of Strata: Race, Gender, and Class Structures in Capital Cases*, 73 WASH. & LEE L. REV. 1395, 1443 (2016) (citing Michael Fraser, *Crime for Crime: Racism and the Death Penalty in the American South*, 10 SOC. SCI. J. 1, 1 (2011) ("[w]ith their system of absolute control now gone, Southern whites were forced to utilize another tool to exercise oppression: the criminal justice system.")).

⁶⁰ See BELL, *supra* note 2, at 174 ("[W]e all know that black rights, black interests, black property, and even black lives are expendable whenever their sacrifice will further or sustain white needs or preferences.").

⁶¹ *Id.* at 189.

⁶² Cedric Merlin Powell, *The Structural Dimensions of Race: Lock Ups, Systemic Chokeholds, and Binary Disruptions*, 57 U. LOUISVILLE L. REV. 7, 29 (2018) (arguing that all of the present-day forms of racial oppression are slavery relics, specifically "American cops are the enforcers of a criminal justice regime that targets black men and sets them up to fail").

⁶³ Donald F. Tibbs & Shelly Chauncey, *From Slavery to Hip-Hop: Punishing Black Speech and What's "Unconstitutional" About Prosecuting Young Black Men Through Art*, 52 WASH. U. J.L. & POL'Y 33, 42 (2016) (arguing that criminalizing rap music is rooted in a desire to punish young Black men and further "contribute to our problem of mass incarceration by criminalizing these individuals for what they say, rather than what they do").

⁶⁴ U.S. CONST. amend. VI.

⁶⁵ Mikah K. Thompson, *Blackness as Character Evidence*, 20 MICH. J. RACE & L. 321, 325 (2015).

⁶⁶ *Id.* at 334.

⁶⁷ See, e.g., Samuel Sommers & Phoebe Ellsworth, *White Juror Bias: An Investigation of Prejudice Against Black Defendants in the American Courtroom*, 7 PSYCH. PUB. POL'Y & LAW 201, 201 (2001).

⁶⁸ Mikah K. Thompson, *Blackness as Character Evidence*, 20 MICH. J. RACE & LAW 321, 334 (2015).

⁶⁹ Tibbs & Chauncey, *supra* note 63, at 35 (citing Erik Nielson, *Prosecuting Rap Music*, HUFFPOST (May 26, 2013, 4:41 PM), http://www.huffingtonpost.com/erik-nielson/prosecuting-rap-music_b_2956658.html (describing how policing and prosecutorial decision making involves prosecutors using amateur rap music videos to prosecute and convict Black men)).

⁷⁰ Mitchell Eisen, et al., *Probative or Prejudicial: Can Gang Evidence Trump Reasonable Doubt?* 62 UCLA L. REV. DISC. 2, 2 (2014).



defendants.⁷¹ This truth highlights the importance of incorporating discussions of race, music, and prejudice in the classroom.

Legal scholars have demonstrated the implicit biases against Black people in the criminal legal system.⁷² In one study, participants read a violent lyrical passage and were led to believe that it was either part of a rap song or a country song.⁷³ The lyrics were not from an actual rap song.⁷⁴ The lyrics were from an American folk song that tells the tale of a young man killing a police officer and feeling no remorse.⁷⁵ The subjects' reactions to the lyrics identified as rap were significantly more negative than their reactions to the same lyrics identified as country.⁷⁶ Additionally, participants in older age groups, participants who reported being parents, and participants who reported not having purchased music albums in the last six months tended to rate the lyrics identified as rap lyrics significantly more negatively than the exact same lyrics identified as country.⁷⁷ These tendencies are likely a result of the idea that rap fans are young, urban Black males, and the association of rap with violence and crime.⁷⁸

Another study examined how negative attitudes toward rap are associated with responsibility stereotypes and predict anti-Black legal policies and behaviors among Black and white participants.⁷⁹ Negative attitudes about rap were significantly related to reluctance to send children to school with children of another race.⁸⁰ For white respondents, attitudes toward rap music were associated with negative attitudes and beliefs about Blacks, including stereotypes that convey that Blacks are responsible for negative life outcomes, have lower levels of innate ability, and were negatively associated with perceptions of discrimination.⁸¹ Additionally, Tyson's (2006) Rap Attitude and Perception ("RAP") Scale was used to assess participants' beliefs about rap and hip-hop's more social and cultural components.⁸² The responsibility stereotype and endorsement of separatism were related to negative perceptions of rap and hip-hop, and anti-rap attitudes were negatively related to support for affirmative action.⁸³ The authors determined that these results showed that stereotypes of rap may be used to guide attributional judgments when it comes to evaluating the deservingness of Black people in America.⁸⁴

⁷¹ *Id.* at 2.

⁷² See generally L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage*, 122 *YALE L. J.* 2626, 2626 (2013); Andrea D. Lyon, *Race Bias and the Importance of Consciousness for Criminal Defense Attorneys*, 35 *SEATTLE U. L. REV.* 755, 755 (2012).

⁷³ Carrie B. Fried, *Who's Afraid of Rap: Differential Reactions to Music Lyrics*, 29 *J. APPLIED SOC. PSYCH.* 705, 705 (1999).

⁷⁴ *Id.* at 710.

⁷⁵ *Id.*

⁷⁶ *Id.* at 708.

⁷⁷ *Id.* at 712–15.

⁷⁸ *Id.* at 716–17.

⁷⁹ Christine Reyna, et al., *Blame it on Hip-Hop: Anti-Rap Attitudes as a Proxy for Prejudice*, 12 *GRP. PROCESSES & INTERGROUP RELS.* 361, 361 (2009).

⁸⁰ *Id.* at 368.

⁸¹ *Id.*

⁸² *Id.* at 372.

⁸³ *Id.* at 371.

⁸⁴ *Id.*



The criminal legal system is not immune from these biases. There is a consistent pattern of courts admitting defendant-composed rap music lyrics, rarely finding the lyrics unfairly prejudicial as to warrant exclusion, even where the courts acknowledge the lyrics may have a prejudicial evidentiary effect.⁸⁵ Rule 401 of the Federal Rules of Evidence states that to be relevant, evidence must have a tendency to make a fact of consequence in determining the action more or less probable than it would be without the evidence.⁸⁶ Federal Rule of Evidence 403 requires attorneys moving to exclude evidence to show that the probative value of the relevant evidence is substantially outweighed by a danger of “unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.”⁸⁷ Despite the extensive scientific research showing that associating criminal defendants with rap music lyrics creates bias that specifically affects Black Americans, courts have consistently held rap music lyrics as admissible evidence against the Black defendant.⁸⁸

In one rare example, *State v. Leslie*, the court came to the opposite conclusion.⁸⁹ The defendant, Jamaal Leslie, raised a defense of justification based on the allegation that the victim, Brandon Crawford, grabbed a gun at the moment that Leslie grabbed his own gun and shot him.⁹⁰ To support this defense, Leslie’s defense counsel attempted to introduce the victim’s rap video to prove he had violent tendencies and used guns.⁹¹ Leslie attempted to support this claim with evidence that the group that Crawford was a part of, the Detroit Boys, was violent and carried guns, and that Crawford talked about guns in his music.⁹² Crawford’s girlfriend supported this claim and added that Crawford often rapped about personal things.⁹³

The Iowa Court of Appeals rejected the contention that what the victim rapped about was related to personal life experiences.⁹⁴ The court said that “the rap videos are a form of artistic expression.”⁹⁵ It went on to say that the danger of unfair prejudice outweighed any potential probative value of the rap videos.⁹⁶ This is exactly the kind of reasoning that critics of the prejudicial nature of rap music lyrics in the courtroom propose.⁹⁷ However, these critiques usually come from the context of rap music lyrics used

⁸⁵ Dennis, *supra* note 52, at 12.

⁸⁶ Fed. R. Evid. 401(a)-(b).

⁸⁷ Fed. R. Crim. P. 11.

⁸⁸ Sam Levin, *When Rap Lyrics Are Used Against You in Court: “They Silenced Me for 21 Years,”* THE GUARDIAN (Sept. 2, 2022), <https://www.theguardian.com/us-news/2022/sep/03/california-mckinley-mac-phipps-rap-music-black-rappers>.

⁸⁹ *State v. Leslie*, No. 12–1335, 2014 WL 70259, at *6 (Iowa Ct. App. 2014) (finding that Leslie could not show he was prejudiced by the district court’s decision to preclude him from showing the rap videos to the jury.)

⁹⁰ *Id.* at *2.

⁹¹ *Id.* at *5.

⁹² *Id.* at *1.

⁹³ *Id.* at *2.

⁹⁴ *Id.* at *4.

⁹⁵ *Leslie*, No. 12–1335, 2014 WL 70259, at *4 (“[R]ap videos are a form of artistic expression.”).

⁹⁶ *Id.* at *4, *5.

⁹⁷ *Id.* (citing Dennis, *supra* note 52) (“To the extent that individuals associate rap music with crime and criminal behaviors, they negatively perceive defendants who are involved with rap music,” and also noting that rap lyrics frequently contain stereotypical images and themes that have negative associations).



against defendants to unjustly exemplify their propensity to participate in violence and criminal activity.⁹⁸ In this case, the defendant tried to use the court's usual predisposition of allowing this kind of evidence to support his claim that he was acting in self-defense.⁹⁹ Instead, the court said that it was unfairly prejudicial because rap is a form of artistic expression that does not reflect factual events.¹⁰⁰ This outcome highlights how unfairly this standard is applied. When criminal defendants want to use rap lyrics of alleged victims, courts recognize that rap is art and unduly prejudicial.¹⁰¹ When prosecutors use rap music to prove elements of crimes charged, courts are often willing to find the lyrics to be more probative than prejudicial and admit the rap music into evidence at trial.¹⁰²

The opposite example is found in *Holmes v. State*, where the defendant, Deyundrea "Khali" Holmes, was arrested and charged with first-degree murder and robbery.¹⁰³ While in jail awaiting extradition, he wrote eighteen rap songs, a stanza from one of which was admitted, over objection, at trial.¹⁰⁴ The District Court determined that the jury could reasonably view the rap lyrics authored by the defendant as factual, not fictional, and that, if it did, the jury could find that the lyrics amounted to a statement by the defendant that tended to prove his involvement in the charged robbery.¹⁰⁵ The court acknowledged that admitting the lyrics carries the risk of it being misunderstood as criminal propensity evidence, but it determined that the probative value of the lyrics was not substantially outweighed by the danger of unfair prejudice.¹⁰⁶ On appeal, the Supreme Court of Nevada recognized that defendant-authored rap lyrics may employ metaphor, exaggeration, and other artistic devices, but, here, the lyrics describe details that mirror the crime charged, and the ruling was affirmed.¹⁰⁷

Finally, in *United States v. Foster*, a verse written by the defendant, containing the phrases "I'm the biggest Dope Dealer" and "more Dollars than your average business [sic] man," and using cocaine trafficking code words of "key" and "rock," was ruled as relevant to the charge of possession with intent to distribute cocaine.¹⁰⁸ The verse rebutted the defendant's protestations of naivete, even though the defendant alleged

⁹⁸ *Id.* at *4, *5.

⁹⁹ *Id.* at *6.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See Lutes, et. al., *supra* note 55, at 94 (where researchers examined a systematic sample of criminal cases, both published and unpublished, in the state and federal courts of the United States during the five-year period from January 1, 2012 to January 1, 2017. They found 160 cases that presented a proffer of rap lyrics as evidence in various stages of criminal cases, including pretrial evidentiary rulings (i.e., motions in limine, motions to suppress), criminal trials, and appeals from criminal convictions). They found that when there is a lot of other evidence to back up a gang-related motive or intent, courts are not ready to rule out rap lyrics as proof. Even though Federal Rule of Evidence 403 objections (and state-law objections similar to Federal Rule of Evidence 403) say that rap lyrics would be more harmful than helpful in this situation, appeals courts defer to the trial court's wide range of discretion to admit rap lyrics as evidence, despite defense objections that the lyrics would add up to too much)).

¹⁰³ *Holmes v. State*, 306 P.3d 415, 417 (Nev. 2013).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 419 (finding that rap features do not exempt such writings from jury consideration where, as here, the lyrics describe details that mirror the crime charged).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 417–19.

¹⁰⁸ *United States v. Foster*, 939 F.2d 445, 449–50, 456 (7th Cir. 1991).



that the verse was written for eventual incorporation into a rap song.¹⁰⁹ Foster argued that the lyrics were fictional, and the court responded that in the lyrics he “exhibited knowledge of an activity that is far from fictional. He exhibited some knowledge of narcotics trafficking, and in particular drug code words.”¹¹⁰

Professor Andrea Dennis argues that rap lyrics should not be seen as inherently inculpatory because when viewed in light of social constraints and artistic conventions, there is evidence that, at times, rap music lyrics may falsely or inaccurately depict the occurrence of events.¹¹¹ She argues that, “[c]ourts fail to perceive that admitting defendant-authored rap music lyrics is a “back door” method of admitting excludable character and propensity evidence.”¹¹² She proposes a balanced approach, where judges begin their analysis from the point of view that lyrics are metaphorical rather than literal and invoke the use of expert testimony to determine the meaning of certain lyrics rather than allowing the jury to make this determination for themselves.¹¹³

This is what the defense attempted to do in *United States v. Wilson*, where the defendant offered an expert witness regarding rap lyrics.¹¹⁴ However, the court found that they failed to describe the bases and reasons for including the expert’s opinions, so it denied admission of the expert’s testimony at trial.¹¹⁵ It went on to say that “proposed testimony by expert in hip hop culture that ostensible handwritten confession to certain aspects of charged murder was not necessarily rooted in actual events, but was instead based on imagination and fantasy, rather than on reality, would not assist jury in determining whether lyrics constituted admission of defendant’s guilt, and thus was not admissible in death penalty case.”¹¹⁶ These rulings show that there is still significant hesitation amongst the judiciary to consider rap lyrics as fictional, artistic expressions, rather than factual admissions of guilt.

The outcomes of *Leslie*, *Holmes*, *Foster*, and *Wilson* clearly demonstrate a tendency among the judiciary to use rap music lyrics against defendants by treating them as admissions of guilt rather than fictional forms of artistic expression.¹¹⁷ In an attempt to limit the impact of the lyrics “as a prophylactic measure, courts willingly provide juries

¹⁰⁹ *Id.* at 455–56.

¹¹⁰ *Id.* at 456.

¹¹¹ Dennis, *supra* note 52, at 24.

¹¹² *Id.* at 27.

¹¹³ *Id.* at 32.

¹¹⁴ *United States v. Wilson*, 493 F. Supp. 2d 484, 486 (E.D.N.Y. 2006).

¹¹⁵ *Id.* at 489.

¹¹⁶ *Id.* at 485.

¹¹⁷ Lutes et. al., *supra* note 55, at 104 (“The decision in *Leslie* illustrates a double standard in criminal cases. When rap lyrics are offered against a defendant for reasons relevant to the case-- ranging from membership in a gang for sentencing enhancement purposes to circumstantial evidence of the commission of an *actus reus* or of the accused’s motive, opportunity, or intent--courts generally admit the evidence over the objection of the defense that lyrics are merely a form of artistic expression. But when a criminally accused person seeks to introduce rap evidence to bolster his defense, courts credit the prosecution’s claim of rap lyrics being a form of artistic expression such that their probative value is outweighed by their potentially prejudicial effect. This conclusion is further bolstered by comparing the decision in the *Leslie* case to the decision in *United States v. Moore*”); *Leslie*, 843 N.W.2d at 490-493 (where the court denied the admissibility of the evidence because it represented artistic expression and not a factual account of circumstances pertinent to the judicial proceedings.).



with limiting instructions and admit the lyrics.”¹¹⁸ While there are various efforts across the country to reduce the ability of prosecutors to introduce rap lyrics as evidence,¹¹⁹ it is a practice that continues to be used in courts across the United States and its impacts are unmeasurable.¹²⁰

The admission of rap lyrics as evidence often has irrevocable consequences for those accused of crimes. Based on the impact of the lyrics, “jurors are often influenced by extralegal factors in determining guilt or innocence.”¹²¹ Extensive research has shown that juries are much more likely to find a defendant guilty if the prosecution introduces evidence showing that the accused is or was involved in criminal gang activity.¹²² The use of so-called “gang experts” exacerbates this issue.¹²³ While courts almost universally reject hip-hop experts on behalf of criminal defendants,¹²⁴ they regularly admit gang experts on behalf of the prosecution.¹²⁵

“Gang experts” offer testimony that is both sociological and psychological in nature,¹²⁶ “[y]et their ‘expertise’ is not based on any principles of psychology or sociology.”¹²⁷ They collect names, photos, interview individuals (presumed gang

¹¹⁸ Dennis, *supra* note 52, at 12.

¹¹⁹ Kim Bellware, *California Makes It Harder To Use Lyrics As Evidence Against Rappers*, WASH. POST (Mar. 4, 2024), <https://www.washingtonpost.com/lifestyle/2022/10/02/california-rap-lyrics-law/> (In September 2022, California Governor Gavin Newsom signed the Decriminalizing Artistic Expression Act into law, requiring judges to ask whether there is sufficient proof that the artistic expression is directly part of the criminal act on trial before admitting rap lyrics into evidence. A federal law, the Restoring Artistic Protection (“RAP”) Act, was introduced earlier this year and is nearly identical to California’s law).

¹²⁰ Michael Levenson, *Judge Overturns Murder Convictions, Citing Use of Rap Lyrics at Trial*, N.Y. TIMES (Mar. 4, 2024), <https://www.nytimes.com/2022/10/04/us/california-racial-bias-gary-bryant-diallo-jackson.html> (detailing that a judge in California vacated the murder convictions of two Black men in October 2022 based on the finding that prosecutors had injected racial bias into the original trial by introducing the men’s rap lyrics as evidence against them and repeating a racial slur).

¹²¹ Barbara F. Reskin & Christy A. Visher, *The Impacts of Evidence and Extralegal Factors in Jurors’ Decisions*, 20 L. & SOC’Y REV. 423, 435–37 (1986).

¹²² Eisen, et al., *supra* note 70 (In one study, half of participants were shown a trial where evidence that the defendant was a gang member was introduced and the other half were shown a trial where there was no evidence of gang involvement. Before deliberations, 13% of the jurors were planning on convicting the defendant who was not an alleged gang member, whereas 36% of the jurors were planning on convicting the defendant who was an alleged gang member. After deliberations, those numbers changed to 0 and 10%, respectively).

¹²³ *Id.* at 10.

¹²⁴ See Fareed Nassor Hayat, *Preserving Due Process: Require the Frye and Daubert Expert Standards in State Gang Cases*, 51 N.M. L. REV. 196, 201 (2021) (citing Christopher McGinnis & Sarah Eisenhart, *Interrogation is not Ethnography: The Irrational Admission of Gang Cops as Experts in the Field of Sociology*, 7 HASTINGS RACE & POVERTY L. J. 111, 125 (2010)) (“According to some sociologists, these universal assertions gang experts make are questionable: ‘[b]y relying on other law enforcement agencies’ criteria for identifying gang members, research indicating that individual gangs can be, and often are, quite unique has been ignored.’ Several criminal Defendants have offered Malcolm Klein, a sociologist who studies gangs, as an expert in the area of gangs (his services have never been sought by a prosecutor). Klein’s testimony is often excluded on the grounds that it is irrelevant because he does not have experience with the gang at bar. In other words, many courts consider his testimony irrelevant because it is too universal.”).

¹²⁵ Hayat, *supra* note 124, at 201; see, e.g., *United States v. Robinson*, 978 F.2d 1554, 1564–65 (10th Cir. 1992) (allowing police officer to testify to the philosophy of gang membership); *People v. Valdez*, 68 Cal. Rptr. 2d 135, 142 (Ct. App. 1997) (demonstrating that, in general, where a gang enhancement is alleged, expert testimony concerning the culture, habits, and psychology of gangs is permissible).

¹²⁶ McGinnis & Eisenhart, *supra* note 124, at 125.

¹²⁷ Hayat, *supra* note 124, at 202.



members and informants), and identify what they believe to be the membership, psychology, language, customs, policies, and structures of street gangs.¹²⁸

The law disproportionately discriminates against Black people based on rap lyric testimony that unreliably points to gang criminal behavior and fails to consider the structural racism and cycle of crime that some communities experience.

The law does not care about the conditions that lead some communities along a trajectory that makes prison inevitable. Even though each individual has the right to due process, what is called the blindness of justice enables underlying racism and class bias to resolve the question of who gets to go to prison and who does not.¹²⁹

The system is designed to function this way and relies on things like admitting rap music lyrics and testimony by “gang experts” as evidence against criminal defendants to ensure that Black people continue to be disproportionately targeted and incarcerated.¹³⁰ Expressed through rap music, Black culture becomes a tool of oppression for criminal defendants wielded by prosecutors. Future criminal defense attorneys must be trained in law school to reclaim and reframe how their communities are spoken about, how their art forms are described and utilized, and how those who look and sound like them should or could be treated if all truly are to be equal before the law. First-generation law students of color are especially equipped to distinguish the negative aspects of rap music in criminal prosecution and use their cultural understanding of the criminal defendant/artist in providing effective representation.

III. A PEOPLE-CENTERED FIRST-YEAR CRIMINAL LAW FINAL EXAM

Students in my criminal law class are taught to use rap music to analyze criminal allegations, presume innocence, and require the government to fulfill the burden of proof beyond a reasonable doubt. They are specially equipped to uphold due process and the protection of future clients’ constitutional rights. Unlike criminal prosecutions in which rap music is used to violate constitutional rights and unjustly punish criminal defendants, in my criminal law class, those same lyrics are used to center the first-generation students’ cultural experience.

¹²⁸ See *id.* at 212. (“Rather than use a verifiable scientific method or established standards for statistical analysis, they use “factor tests” or simply state conclusions that, often times, are fabricated or simply wrong. Their methods and conclusions lack reliability, reproducibility, and acceptance in the relevant scientific community. Police gang experts, quite frankly, are not experts at all. What they offer by way of opinion testimony in gang criminal trials about rap music is the equivalent of modern day “armchair” anthropology—pseudo-science—that amounts to violations of criminal defendant’s due process rights to fair trials).

¹²⁹ DAVIS, *supra* note 4, at 5.

¹³⁰ See Tibbs & Chauncey, *supra* note 63, at 63 (arguing that prosecutorial scheme[s], “to use rap lyrics to expose ‘the real defendant [as] a criminal wearing a do-rag and throwing a gang sign,’ is not only disconcerting, but it is also of grave constitutional concern: it specifically targets Black men for what they say, rather than for what they do.”).



My criminal law class culminates in a final exam that typically uses a real-life criminal prosecution from the headlines. The exam has two parts. Students complete thirty multiple choice questions. Thereafter, students are given a short break prior to the substantive essay question. Students are encouraged to use a people-centered approach to demonstrate their mastery of criminal law doctrine.¹³¹ Students are challenged to use the tools learned throughout the semester while specifically applying critical perspectives in offering their legal analysis.¹³² While students can use the traditional skills acquired through their education, i.e. critical thinking, IRAC application, and close reading, first-generation students of color's language, culture and experience enhance their ability to perform on the exam as well.¹³³

In a prior final exam, I used the criminal prosecution of Brandon Duncan and Aaron Harvey as the basis for the essay question.¹³⁴ In the actual case, the prosecution alleged that Duncan and Harvey were guilty of conspiracy to commit murder by making a rap song that violently described a killing done by his alleged gang—The Lincoln Park Bloods (“LPB”).¹³⁵ Prosecutors did not allege that Duncan or Harvey were involved in the actual murder.¹³⁶ There was no evidence that they even knew the murder had occurred.¹³⁷ The actual murderer was not identified or charged. Harvey had moved to Las Vegas two years earlier.¹³⁸ Neither Harvey nor Duncan had criminal records.¹³⁹ But, based on his rap album, if convicted under the 1988 California Gang Statute, the STEP

¹³¹ See generally Jocelyn Simonson, *The Place of “The People” in Criminal Procedure*, 119 COLUM. L. REV. 249, 286–87 (2019) (putting forth “an alternative vision of criminal procedure that conceives of public participation as a valuable input on both sides of every criminal case . . . the public, or the ‘community,’ does not always stand in opposition to a defendant who asserts an individual right or invokes a procedural rule. Instead, there is a facet of the local public that is on the side of many defendants—and potential defendants—as part of their own visions of justice and community.”).

¹³² See generally, Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301, 307 (1987) (defining Critical Legal Studies as a way to reject the idea of piecemeal reform).

¹³³ Jeffrey Metzler, *The Importance of IRAC and Legal Writing*, 80 U. DETROIT MERCY L. REV. 501, 501 (2003) (“On a basic level, IRAC is simply an acronym for organizing a legal argument that involves a description of the *Issue*; an explanation of the legal *Rule*; an *Application* of that rule to the facts of the case; and finally, a statement of your *Conclusion*.”).

¹³⁴ *Duncan v. City of San Diego*, 401 F. Supp. 3d 1016, 1023 (S.D. Cal. 2019). See Kristina Davis, *Rapper ‘Tiny Doo’ and College Student Arrested Under Controversial Gang Law Get Day In Court Against Police*, SAN DIEGO UNION-TRIB. (May 22, 2018), <https://www.sandiegouniontribune.com/news/courts/sd-me-tiny-doo-20180522-story.html>.

¹³⁵ *Duncan*, 401 F. Supp. 3d at 1023–24, 1031 (noting that the San Diego District Attorney’s Office was investigating the Lincoln Park Bloods (“LPK”) for gang-related drug trafficking and shootings).

¹³⁶ *Id.* at 1024–25; David Garrick, *Two Men Jailed Under Controversial Gang Law Will Get \$1.5-Million Payout From San Diego*, L.A. TIMES (Feb. 5, 2020), <https://www.latimes.com/california/story/2020-02-05/gang-law-payout-san-diego>.

¹³⁷ Garrick, *supra* note 136.

¹³⁸ Teruv Fugyeriam, *He Once Faced The Possibility Of Life In Prison. Now He’s a UC Berkeley Graduate*, THE UNION DEMOCRAT (June 28, 2021), https://www.uniondemocrat.com/lifestyle/article_62c0139a-d873-11eb-9a4d-b37d-37fb112d.html.

¹³⁹ Sara Libby, *Guilt by Association: Facebook Pics Could Help Send a Young Man to Prison for Life*, VOICE OF SAN DIEGO (Mar. 4, 2015), <https://voiceofsandiego.org/2015/03/04/facebook-posts-help-send-young-man-no-record-prison-life/>.



Act, he faced a potential life sentence.¹⁴⁰

After completing the short break, students listened to Duncan's four-minute rap song "*Left, Left, Left*."¹⁴¹ The song describes members of the LPB committing robberies and murders.¹⁴² The lyrics are graphic and intense, and students were given a disclaimer that the content of the song was offensive and described violent crime.¹⁴³ The song played. After the song plays once, students are given five minutes to jot down notes before the song plays again. After the song plays a second time, students are given exam materials that include instructions, the factual scenario, the statute, the lyrics from the song, and the essay question.

The factual scenario:¹⁴⁴ The prosecutor alleges that between November 15th and December 10th members of the street gang, LPB, took several steps in furtherance of a gang conspiracy to commit murder and robbery on behalf of the gang.¹⁴⁵ Fellow gang members shared Duncan's music, photos of the album cover, photos of tattoos, and descriptions of targets and their whereabouts.¹⁴⁶ Specifically, on December 11th, co-defendants—Smith and Miller—sat outside of a rival gang member's barbershop, in a car, across the street listening to Duncan's song "*Left, Left, Left*."¹⁴⁷

It is alleged that the barbershop is a well-known hangout for a rival gang. It is alleged that Smith and Miller exited their car, with firearms secured under their jackets, and began to approach the barbershop. Before entering the shop, a rival member recognized Smith and Miller as members of LPB. The rival gang member screamed out to members inside the barbershop "smoke those fools they are coming" as he pulled out his own gun and began shooting in Smith and Miller's direction. Miller ran into the barbershop fearing for his life. Smith turned toward the shooter and unloaded, shooting the man in the eye, critically wounding him, but not killing him. An innocent passerby, traveling by car, witnessed the shootout and in an attempt to avoid bullets, accelerated her car, crashing into a streetlight, and dying from her injuries. Smith entered the barbershop with his firearm in hand. Miller and Smith exited the barbershop without incident. They ran past their car and made their getaway. Once police arrive, they

¹⁴⁰ See California Step Act, CAL. PENAL CODE § 186.22(a), (b)(1) (West 2024) ("A person who actively participates in a criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.; Except as provided in paragraphs (4) and (5), a person who is convicted of a felony committed for the benefit of, at the direction of, or in association with a criminal street gang, with the specific intent to promote, further, or assist in criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the person has been convicted." and described violent crime).

¹⁴¹ MITCHY SLICK, ET AL., *Left, Left, Left, on STRONG ARM ROBBERY*, VOL. 2 (2015).

¹⁴² *Id.*

¹⁴³ Throughout the semester, students are given a disclaimer highlighting the use of offensive language and asked to understand the necessity of using the language in the course materials for the semester. Hurtful or harmful language is not used in class discussions. In the transcript of the song, and in the text of the final, the harmful language is censored.

¹⁴⁴ Fareed Nasser Hayat, Final Examination (5/10/2024) (Criminal Law, Seton Hall University School of Law) (on file with author).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*



reviewed the surveillance footage and recovered the car parked across the street still running and playing “*Left, Left, Left*” on the sound system. Detectives obtained a warrant for fifteen members of the LBP, including Duncan. In the arrest warrant the police alleged “Duncan’s lyrics—which talk about various criminal activities—show that he was directly benefiting from the gang’s crimes in record sales and furthering the purpose of the gang through his music by influencing violence.”¹⁴⁸

Specifically in his song “*Left, Left, Left*,” Duncan raps: “we train to murder ni**as, left, right, left right, ends meet is not enough for Lincoln, fuck around and be hazy ni**a . . . Left, left, left they go’n get, they go’n get, thorn up, fuck you and yo homeboys life, we are an army ni**a, we go’n smash you ni**a, we getting any ni**a in the way, we dumping leaving ni**as heads slumped in . . . Left, left, left.”¹⁴⁹

In a police interrogation: “Duncan calls his music purely artistic fiction. He tells detectives, ‘I said I had a million dollars on a couple of raps, too. Obviously, I don’t have that. It’s entertainment. It’s not real.’ Smith, Miller, Duncan and twelve others are arrested and charged with three counts: Conspiracy to violate the Gang Statute; Murder and Attempted Murder.”¹⁵⁰

The essay question: Can Duncan be convicted of conspiracy to commit murder and attempted murder under the gang statute? Can Duncan be convicted of murder and attempted murder? What are Duncan’s potential defenses?¹⁵¹

The statute: “Any person who actively participates in any criminal street gang, with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, assists, or benefits from any felonious criminal conduct by members of that gang is guilty of conspiracy to commit that felony.”¹⁵²

Students were asked to fully analyze the charges under the common law. The exam was three hours and closed book.¹⁵³ Although the factual scenario was exaggerated, the issues were real. Real people were being prosecuted and convicted for little more and sometimes less than the facts alleged on the final exam. Real lives, freedom and the protection of the Constitution depend on future lawyers’ ability to focus on the law and use their lived experience in advocating on behalf of clients. Real lives depend on students’ mastery of criminal law doctrine, skill, and creativity.

The final was challenging. It was intended to test students’ ability to state specific legal doctrine while requiring students to effectively identify the issues and apply facts to the law. To demonstrate a mastery of the criminal doctrine taught in the course, students had to exclude aspects of the music that did not fulfill elements of the crime and not allow the lyrics or racist perceptions of Black male criminality to overcome potential defenses, specifically self-defense. The successful student focused on the relevant evidence and did not allow the perceived dangerousness of the defendants and their rap music to determine constitutional principles.

¹⁴⁸ *Id.*

¹⁴⁹ SLICK, ET AL., *supra* note 141.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Fared Nasser Hayat, Final Examination (5/10/2024, Seton Hall University School of Law) (on file with author).

¹⁵³ *Id.*



Multiple students were very close to perfect in doing so. Most students were somewhere in the middle. An effective answer first recognized the issue: Whether Duncan can be found guilty of manslaughter and attempted murder?¹⁵⁴ Second, an effective answer recognized that because Duncan was not present and unaware of the manslaughter and attempted murder, he could only be found guilty through the actions of Smith and Miller. Third, an effective answer analyzed manslaughter and attempted murder (*actus reus*, *mens rea*, causation, and concurrence) through the actions of Smith and Miller. Fourth, an effective answer considered whether Smith and Miller had a valid self-defense claim.¹⁵⁵ Fifth, an effective answer recognized that the STEP Act Gang Statute¹⁵⁶ was a modification of the Accomplice Liability¹⁵⁷ Doctrine and analyzed the elements of the statute (Actus Reus, Mens Rea, Causation and Concurrence). Sixth, an effective answer looked at any additional defenses that Duncan may have had (such as void for vagueness or abandonment).¹⁵⁸ Finally, an effective answer offered a conclusion based on the above analysis. The grade was based on the application of the rules, identification of the issues and the use of the facts.

Students who recalled the presumption of innocence and required the prosecutor to prove each element of the crimes charged beyond a reasonable doubt were successful on the exam. Students who did not allow the violence of the song to take the place of the elements of the crimes charged did well on the exam. Students who recalled the doctrine of first aggressor and self-defense¹⁵⁹ offered defenses that could possibly justify Smith and Miller's actions. Students who shared the experiences of Duncan, understood how his relationship in his community before college and the rap lyrics he wrote and recited were not the whole of his person or made him guilty of manslaughter, conspiracy to murder, or attempted murder. The final was designed so that first-generation students of color could use their lived experience in assessing the allegations, choosing the relevant facts, and providing the best legal analysis on behalf of their fictional client. As the exams were graded blindly, it is difficult to know which students were most successful on the final exam. Unofficial conversations with students demonstrated that first-generation students felt empowered and equipped to do well on the exam.

After the exam, I sent an email to the students explaining that Duncan had adequate counsel in the real case. The case was dismissed under a vagueness argument.¹⁶⁰ Thereafter, Duncan sued the city of San Diego and the local police department for civil rights violations. I explained that while prosecution for rap lyrics seems extreme, it really is not uncommon at all.¹⁶¹ Other young men of color have been regularly

¹⁵⁴ CAL. PENAL CODE § 192 (West 2024).

¹⁵⁵ Cal. Jury Instr.--Crim. 5.50, Cal. Jury Instr.--Crim. 5.50

¹⁵⁶ CAL. PENAL CODE § 186.22 (West 2024).

¹⁵⁷ CAL. PENAL CODE § 31 (West 2024).

¹⁵⁸ *Duncan v. City of San Diego*, 401 F. Supp. 3d 1016, 1023 (S.D. Cal. 2019).

¹⁵⁹ Cal. Jury Instr.--Crim. 5.50, Cal. Jury Instr.--Crim. 5.50

¹⁶⁰ *Duncan*, 401 F. Supp. 3d at 1023.

¹⁶¹ Lutes, et al., *supra* note 55, at 85 (scholars have noted that the legal system has increasingly used rap lyrics as evidence as if the words were "truthful and autobiographical" (quoting Nicholas Stoia, et al., *Rap Lyrics as Evidence: What Can Music Theory Tell Us?*, 8 RACE & JUST. 331, 355 (2018)); Erik Nielson, *Prosecuting Rap Music*, HUFFINGTON POST (May 26, 2013 4:41 PM), http://www.huffingtonpost.com/erik-nielson/prosecuting-rap-music_b_2956658.html. See generally Sean-Patrick Wilson, *Rap Sheets: The*



prosecuted and convicted for rap lyrics, oftentimes with little other evidence tied to the actual alleged crime. I thanked the students for their attentiveness throughout the semester and reiterated to the entire class that the lessons learned through our people-centered approach should shape their practice of law.

CONCLUSION

What I aimed to teach in first-year criminal law informed law students generally, but first-generation law students of color specifically, that their voice and experience enhance their ability to advocate on behalf of clients. Their understanding of the law, coupled with their appreciation of rap music, enhances their ability to practice criminal law most effectively. Students learned to use their lived experience to answer future legal questions, regardless of the substantive area of law. Students learned to question statutes, lawmakers, policies, rationales, and the carceral mindset—to learn the law, use the law, change the law.

In sum, I was able to center the people's voice in the teaching and understanding criminal law by incorporating rap music from the very beginning of the class. I taught students to analyze the law by understanding the people's role in shaping the law and challenge the problematic trend of allowing rap music to fulfill elements of crimes charged. To create an academic environment supportive of all students, I used the experience and culture, through rap music, of first-generation students of color, to challenge the criminal legal system. I created an educational environment that systematically encouraged inquiry into the unspoken values behind the criminal legal system and fostered a classroom where first-generation students of color felt valued, present, and heard. Law school is supposed to be hard, but unlike the traditional first-year criminal law course, my class centers the student of color and their first-generation experience in learning the law. Law schools in general, but criminal law courses in particular, can avoid falling into the trap of teaching law that is not representative of the reality of first-generation students by highlighting the voice of the people. As Kinoy noted,¹⁶² rather than focusing on reading and re-reading excerpts of cases that were decided decades ago, law teachers should train their students to value the diverse experience of those who are most impacted by the law and read cases and apply concepts of criminal law with those people's experience centered. The marginality of being unheard in the traditional criminal law course is overcome where the creative energies of a subject people, first-generation students of color, are channeled into the best possible lawyers.

Constitutional and Societal Complications Arising from the Use of Rap Lyrics as Evidence at Criminal Trials, 12 UCLA ENT. L. REV. 345, 345 (2005) (tracing the history of using rap lyrics as evidence in criminal trials).

¹⁶² See Kinoy, *supra* note 18, at 1.

