

# ANNOTATED BIBLIOGRAPHY

## DECRIMINALIZING ADOLESCENT FASHION & CULTURE FOR YOUTH OF COLOR

Cultural expression is essential for young people, and yet Black and Latine youth are punished for engaging in that cultural expression. Young people express themselves through a myriad of activities: music and art, like graffiti, and through clothing, tattoos, jewelry, and hair. The resources in this annotated bibliography provide assistance for advocates who aim to decriminalize cultural expression for youth of color.

**These articles, books, and cases are cited in reverse chronological order. Please find the most recent articles at the beginning of each section.**

### I. Books, Articles, and Other Resources

Kristin Henning, Chapter 3: “Hoodies, Headwraps, and Hip Hop: Criminalizing Black Adolescent Culture” in *The Rage of Innocence: How America Criminalizes Black Youth*, Penguin Random House (2021).

Charis Kubrin, *Rap on Trial: Experts, Legal Guide, and Legal Resources*, available: [endrapontrial.org](http://endrapontrial.org) (updated 2021).

National Women’s Law Center, *Dress Coded: Black girls, Bodies, and Bias in DC Schools* (2018), available: <https://nwlc.org/press-release/dress-codes-hurt-learning-for-black-girls-in-d-c-new-nwlc-report-finds/>

Erik Nielson and Andrea L. Dennis, *Rap on Trial: Race, Lyrics, and Guilt*, The New Press (2019).

Pamela Bridgewater, andré douglas pond cummings, and Donald F. Tibbs, eds., *Hip Hop and the Law*, Carolina Academic Press (2015).

Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 Columbia J. L. & Arts 1 (2007).

### II. Cases

*Elonis v. United States*, 575 U.S. \_\_\_\_ (2015).

*In re S.W.*, 45 A.3d 151 (DC 2012).

### III. Empirical Research

Adam Dunbar, Charis E. Kubrin, and Nicholas Scurich, *The Threatening Nature of “Rap” Music*, 22(3) *Psychology, Pub. Policy & L.* 280 (2016).

Carrie B. Fried, *Who’s Afraid of Rap: Differential Reactions to Musical Lyrics*, 130 *New Directions for Youth Development* 13 (2011).

Stuart P. Fischhoff, *Gangsta’ Rap and a Murder in Bakersfield*, 29(4) *J. of Applied Soc. Sci. & Criminology* 795 (1999).

#### I. Books, Articles, and Other Resources

**Kristin Henning, Chapter 3: “Hoodies, Headwraps, and Hip Hop: Criminalizing Black Adolescent Culture” in *The Rage of Innocence: How America Criminalizes Black Youth*, Penguin Random House (2021).**

- In Chapter 3 of *The Rage of Innocence*, Kristin Henning writes about her own experience defending Black youth charged with criminal offenses based on their dress, as well as other nationally-known stories of youth of color criminalized for their hair, clothing, or music. Henning cites laws banning sagging pants, unequal enforcement of school dress codes, and policies that discriminate against Black hair. She also writes about internet surveillance of teenagers and the ways gang labelling unfairly harms youth of color.
- **About *The Rage of Innocence*:** Drawing upon twenty-five years of experience representing young people in Washington, D.C.’s juvenile courts, Henning confronts America’s irrational and manufactured fears of Black youth and makes a compelling case that the nation’s obsession with policing and incarcerating Black America begins with Black children. Unlike White youth, who are afforded the freedom to test boundaries, experiment with sex and drugs, and figure out who they are and who they want to be, Black youth are seen as a threat to White America and denied the privilege of healthy adolescent development. Weaving together powerful narratives and persuasive data, Henning examines the criminalization of Black adolescent play and sexuality, the demonization of Black fashion, hair, and music, and the discriminatory impact of police in schools. *The Rage of Innocence* lays bare the long-term consequences of racism and trauma that Black children experience at the hands of police and their vigilante surrogates and explains how discriminatory and aggressive policing has socialized a generation of Black teenagers to fear and resent the police.

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**Charis Kubrin, *Rap on Trial: Experts, Legal Guide, and Legal Resources*, available: [endrapontrial.org](http://endrapontrial.org) (updated 2021).**

- EndRapOnTrial.org is dedicated to providing resources for those seeking information about the practice of using rap lyrics as evidence as confessions of illegal behavior or the defendant’s knowledge, motive, or identity.
- EndRapOnTrial.org provides a list of potential expert witnesses and legal advisors. Additionally, the site links to relevant research and appellate briefs.
- *The Rap on Trial Legal Guide*, co-authored by Jack Lerner and Charis Kubrn, is a resource for attorneys responding to rap lyrics introduced at any stage of criminal proceedings. It includes explanations of conventions that may be unfamiliar to lawyers and an overview of empirical research on rap and bias, legal grounds for evidentiary and First Amendment challenges to admitting lyrics into trial, and suggestions for jury selection. The latest version was released in 2021.

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**Erik Nielson and Andrea L. Dennis, *Rap on Trial: Race, Lyrics, and Guilt*, The New Press (2019).**

- Over the last three decades, as rap became increasingly popular, prosecutors saw an opportunity: they could present the sometimes violent, crime-laden lyrics of amateur rappers as confessions to crimes, threats of violence, evidence of gang affiliation, or revelations of criminal motive—and judges and juries would go along with it. Detectives have reopened cold cases on account of rap lyrics and videos alone, and prosecutors have secured convictions by presenting such lyrics and videos of rappers as autobiography. Now, an alarming number of aspiring rappers are imprisoned. No other form of creative expression is treated this way in the courts.
- *Rap on Trial* places this disturbing practice in the context of hip hop history and exposes what’s at stake. It’s a gripping, timely exploration at the crossroads of contemporary hip hop and mass incarceration.

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**Pamela Bridgewater, andré douglas pond cummings, and Donald F. Tibbs, eds., *Hip Hop and the Law*, Carolina Academic Press (2015).**

- What is important to understanding American law? What is important to understanding hip hop? Wide swaths of renowned academics, practitioners, commentators, and performance artists have answered these two questions independently. And although understanding both depends upon the same intellectual enterprise, textual analysis of narrative storytelling, somehow their intersection has escaped critical reflection. *Hip Hop and the Law* merges the two cultural giants of law and rap music and demonstrates their relationship at the convergence of Legal Consciousness, Politics, Hip Hop Studies, and American Law. No matter what your role or level of experience with law or hip hop, this book is a sound resource for learning, discussing, and teaching the nuances of their relationship.
- Topics include Critical Race Theory, Crime and Justice, Mass Incarceration, Gender, and American Law: including Corporate Law, Intellectual Property, Constitutional Law, and Real Property Law.

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**Andrea L. Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 Columbia J. of L. & the Arts 1 (2007).**

- Courts treat rap music lyrics not as art but as ordinary speech and allow jurors to do the same. Courts presume that lyrics are depicting true-life, self-referential stories. However, contrary to this dominant judicial analysis, the assessment of the admissibility and evidentiary utility of rap music lyrics requires awareness and understanding of the complexities of the art form. This article analyzes the complexities of rap music lyrics and reveals that rap lyrics are neither inherently truthful, accurate, self-referential depictions of events, nor necessarily representative of an individual's mindset.
- When courts permit the prosecutor to admit rap music lyrics as criminal evidence, they allow the government to obtain a stranglehold hold on the case. Prosecutors may offer the music lyrics as substantive evidence. For example, the prosecutor may cast defendant-authored music lyrics as an autobiographical depiction of actual events, hence permitting the lyrics to be treated as inculpatory statements or a confession. Relatedly, the music lyrics may be offered as evidence of the defendant's intent, knowledge, motive, or identity respecting the crime charged. The second avenue consists of the prosecutor using the lyrics to construct a narrative framework or theory of the case. Such narrative frameworks are used to satisfy juror expectations—both conscious and unconscious.
- This article proposes two solutions. Courts should interpret the meaning and import of defendant-authored rap music lyrics from the perspective of the defendant in light of factors derived from the social constraints and artistic conventions governing the composition of rap music lyrics. This analytical point-of-view and these factors would help to reveal the evidentiary reliability and propriety, or lack thereof, of the lyrics. Additionally, courts should permit defendants to offer expert testimony providing a complete base of knowledge within which judges and jurors may evaluate the admissibility, credibility, and weight of rap music lyrics as criminal evidence.
- Part I documents the admission of rap music lyrics composed by defendants as substantive evidence in criminal cases. Part II seeks to debunk the judicial assumptions revealed in Part I by discussing the commercialization of the rap music industry, notions of authenticity in rap music, and the artistic conventions of rap music lyrics. Part III applies the information from Parts I and II to demonstrate that defendant-authored rap music lyrics are of questionable evidentiary quality. Part IV suggests a framework that may be employed when evaluating the admissibility and credibility of lyrical evidence. It then proposes that expert testimony be the means for presenting to judges and jurors the information set forth in Parts I and III.

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## **II. Cases**

***Elonis v. United States*, 575 U.S. \_\_\_ (2015).**

- Anthony Elonis posted self-written rap lyrics on Facebook and was subsequently charged with making threats to injure various individuals named in the lyrics. At trial, Elonis requested a jury instruction that the Government was required to prove that Elonis intended to communicate a “true threat.” The trial court denied this instruction and instead told the jury that Elonis could be found guilty if a reasonable person would foresee that his statements would be interpreted as a threat. Elonis was convicted and appealed.
- The Supreme Court held that the prosecution must prove there is a subjective intent to threaten. An objective reasonable person standard does not go far enough to separate innocent, accidental conduct from purposeful, wrongful acts. The Court held that, in this case, an objective standard would risk punishing an innocent actor because the crucial element that makes this behavior criminal is the threat, not merely the posting.

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***In re S.W.*, 45 A.3d 151 (DC 2012).**

- SW was charged with making threats to his neighbor’s property for singing a rap with lyrics he made up that included “we’ll set this block on fire” the day after an abandoned house on their block caught on fire. On appeal, S.W. argued that the evidence was insufficient as a matter of law to convict him. On appeal, the Court stated that words that are threatening on their face can be rendered benign by their context. As part of this context, the Court cited the relationship between S.W. and his neighbor, the fact that S.W. had nothing to do with the previous day’s fire, and that S.W. was performing to a laughing audience. The Court stated that the alleged victim’s subjective response does not change the objective calculus as to whether the threat was real. The Court held that there was not sufficient evidence to find that S.W. posed a true threat, and his conviction was overturned.

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For more cases, see the *Rap on Trial Case Compendium*, created as part of the *Rap on Trial: Experts, Legal Guide, and Legal Resources*, available: <https://ipat.law.uci.edu/rap-on-trial-case-compendium/> (accessed April 2022).

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### **III. Empirical Research**

Adam Dunbar, Charis E. Kubrin, and Nicholas Scurich, *The Threatening Nature of “Rap” Music*, 22(3) *Psychology, Pub. Policy & L.* 280 (2016).

#### **Purpose**

- Only a handful of studies have examined whether rap lyrics are evaluated using stereotypes, yet these studies were conducted in the 1990s—a period of heightened scrutiny for rap—and used nonoptimal methods.

- This study presents 3 experiments that examine the impact of genre-specific stereotypes on the evaluation of violent song lyrics by manipulating the musical genre (rap vs. country) while holding constant the actual lyrics.

### Study 1:

- Participants were 126 U.S. residents with a mean age of 33.5. The majority (86.5%) of participants were White and 6.3% were Black.
- Participants were asked to read lyrics from the folk song *Bad Man's Blunder* by the group Kingston Trio. These are the same lyrics used in Fried's (1999 – see annotation below) study. Participants were either told the lyrics were from a rap song or a country song.
- After reading the lyrics, participants were asked to answer a series of questions on a scale of 1 (strongly disagree) to 5 (strongly agree). Questions measured whether participants believed the lyrics were based on real life experiences or were made up, whether they were offensive, and whether they should be regulated (e.g. be banned or given a mandatory warning label).
- **Results:** Study 1 found that participants deemed identical lyrics more literal, offensive, and in greater need of regulation when they were characterized as rap compared with country music.

### Study 2:

- Study 2 used the same approach described above for Study 1, but used a different set of violent lyrics. These lyrics were from *A Boy Named Sue* by Johnny Cash.
- Different participants were used in Study 2. This sample included 244 U.S. residents with a similar mean age and racial makeup.
- **Results:** Again, Study 2 found that participants deemed identical lyrics more literal, offensive, and in greater need of regulation when they were characterized as rap compared with country music.

### Study 3

- In Study 3, researchers randomly assigned participants to 1 of six groups. The different groups were told the song lyrics were either country, rap, or were not told a genre. They were also told the race of the song writer (Black or White). Researchers used the same lyrics as in Study 1, and asked the participants to answer the same questions.
- There were 325 participants in Study 3 with similar demographics to the prior two studies. used the same approach but experimentally manipulated the race of the author of the lyrics.
- **Results:** Rap was evaluated more negatively than both country or a control condition with no label. However, no effects were found for the race of the lyrics' author nor were interactions were detected. Collectively, these findings highlight the possibility that rap lyrics could inappropriately impact jurors when admitted as evidence to prove guilt.

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**Carrie B. Fried, *Who's Afraid of Rap: Differential Reactions to Musical Lyrics*, 130 *New Directions for Youth Development* 13 (2011).**

### Purpose

- This research examines the recent public outcry against violent rap songs. It was hypothesized that rap music receives more negative criticism than do other types of music, regardless of the actual content of the lyrics.

### **Method**

- Participants read a violent lyrical passage and were led to believe that it was either a rap song or a country song. They then responded to how offensive and dangerous they thought the song was.

### **Results**

- The results support the hypothesis. When a violent lyrical passage was represented as a rap song, reactions to the lyrics were significantly more negative. Age, whether or not the participants had children, and the participants' music tastes and buying habits were all significantly related to whether or not this biased judgment occurred.

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**Stuart P. Fischhoff, *Gangsta' Rap and a Murder in Bakersfield*, 29(4) *J. Applied Social Science & Criminology* 795 (1999).**

### **Purpose**

- The present study explores the biasing effects of gangsta' rap lyrics on subject perceptions of a murder trial defendant's personality.

### **Method**

- Participants were 134 students at California State University, Los Angeles with a mean age of 27.6 years. Selections of assignment ensured that Asian, White, Black, and Hispanic people were equally represented across the study.
- Each participant was given one of four scenarios involving an individual. The first described an 18 year old African American male who sings at parties to make extra money. The second gave the same description as the first and added that he was accused of murder. The third gave the same description as the first, but added rap lyrics the individual wrote. The fourth gave the same description as the second, but added the same rap lyrics as the third scenario.
- Participants were then asked to respond to questions asking how well specific words described the individual in the scenario.
- The lyrics were those actually authored by a defendant in a murder trial on which the present author was a psychological consultant for the defense.

### **Results**

- Results strongly indicate that the defendant was seen as more likely to have committed a murder than had he not been presented as authoring such lyrics. Surprisingly, results also show that the writing of such rap lyrics was more damning in terms of adjudged personality characteristics than was the fact of being charged with murder.