

THIS PROGRAM IS INTENDED FOR INFORMATIONAL PURPOSES ONLY. NOTHING SHOULD BE CONSTRUED OR TAKEN AS LEGAL ADVICE. 2025 ELI WRITING CONTEST ESSAY WRITTEN BY ANGELINA CRAIG:

WORDS ON TRIAL: THE USE OF RAP LYRICS AS EVIDENCE

Hip-hop was born in the Bronx, New York, as a powerful genre reflecting the realities of Black individuals confronting systemic poverty, violence, racism, and opportunities for new beginnings.¹ Within hip-hop, rap emerged as a central genre, using storytelling, rhythm, and lyrics to amplify these experiences.² Beyond revolutionizing the music industry, hip-hop has reshaped perceptions of Black culture, with its lyrics bringing critical attention to the struggles of marginalized communities.³ However, in the American justice system, rap lyrics—though rooted in artistic expression—are often misused as evidence or wrongly interpreted as confessions of guilt, especially for artists with real or perceived ties to criminal activity.⁴

The use of lyrics from artists such as Young Thug, Gunna, Boosie, Snoop Dogg, and Bobby Shmurda as courtroom evidence underscored a concerning trend of disproportionately targeting Black men in hip-hop, irrespective of their status or success.⁵ This practice not only criminalizes the cultural expressions of Black artists but also reinforces harmful stereotypes linking Black identity with criminality.⁶ By selectively scrutinizing rap lyrics, the justice system infringes on these artists' First Amendment rights, stifling their ability to speak on complex social issues without fear of legal repercussions.⁷ The pattern reveals broader issues of bias within the legal system, where Black artistic expression is more likely to be treated as incriminating evidence rather than protected speech under the First Amendment.⁸

This essay explores the criminalization of an artist's creative expression as a profound threat to their constitutional rights and personal freedom. To combat this, it calls for the adoption of the Restoring Artists Protection Act (RAP Act), introduced in Congress to protect the weaponization of lyrics in legal proceedings.

RAP MUSIC

Rap music, created by Black artists to reflect Black experiences and originally intended for Black audiences, has served as a powerful vehicle for storytelling and cultural expression since

¹ Kimani Krienke, *NYC Celebrates 50 Years of Hip-Hop: A Bronx-Born Phenomenon That Took Over the World*, TIME OUT (Aug. 11, 2023), <https://www.timeout.com/newyork/music/nyc-celebrates-50-years-of-hip-hop-a-bronx-born-phenomenon-that-took-over-the-world>.

² Fernando Orejuela, *Timeline of African American Music: Rap and Hip-Hop*, CARNEGIE HALL, <https://timeline.carnegiehall.org/genres/rap-hip-hop>.

³ Ronald L. Morris, *Fight the Power: Hip Hop and Civil Unrest in the Era of Black Lives Matter*, 51 YOUTH & SOC'Y 884 (2021), <https://doi.org/10.1177/0044118X211001096>.

⁴ Paige M. Walker, *Restricting the Use of Rap Lyrics as Evidence in Courts: A Targeted Approach to Tackling Discrimination in Criminal Procedure*, 28 LEWIS & CLARK L. REV. 431 (2024).

⁵ Sharon Waxman, *Rap Lyrics on Trial: Why the First Amendment May Not Protect Young Thug, Gunna*, THE WRAP (Sept. 28, 2022), <https://www.thewrap.com/rap-lyrics-on-trial-analysis-young-thug-gunna-rap-act/>.

⁶ Andrea L. Dennis, *Lyrics in Limine: Rap Music and Criminal Prosecutions*, COMM. LAW. (Winter 2023), https://www.americanbar.org/groups/communications_law/publications/communications_lawyer/2023-winter/lyrics-limine-rap-music-and-criminal-prosecutions/.

⁷ *Id.*

⁸ *Id.*

its emergence in the 1970s and 80s.⁹ Many hip-hop artists draw on deep-rooted storytelling traditions using hyperbole, metaphor, and fictionalized narratives to convey complex life experiences. Through rap, artists have documented and confronted the realities of police brutality, mass incarceration, gang violence, and the War on Drugs, often adopting a raw, unapologetic tone that questions government actions and law enforcement practices.¹⁰ For example, in 1992, Ice-T's song "Cop Killer," served as a stark critique of police violence and a commentary on the anger that many people within the Black community felt toward law enforcement's systemic misconduct. Similarly, Childish Gambino's "This is America" in 2018 addresses the pervasive issues of race, violence, and inequality in the United States.¹¹

Rap has often faced backlash and misunderstanding, leading to censorship attempts, criminal charges, parental advisory labels, and obscenity lawsuits, as some political efforts sought to suppress its influence.¹² Therefore, when rap lyrics are introduced as evidence in legal proceedings, they are frequently stripped of their context, reframing artists as criminals rather than storytellers and erasing cultural and social messages embedded in their work.¹³

RAPPERS ON TRIAL

Prosecutors seek to connect artist's words with real-world violence. In 1996, superstar rapper Snoop Dogg was tried for murder in California and ultimately acquitted. During the trial, prosecutors used lyrics from his song "Deep Cover," including the line "Cause it's 1-8-7 on an undercover cop" as evidence against him. Although the song has been written for the film *Deep Cover*, which follows the story of an undercover police officer, prosecutors argued that Snoop's lyrics reflected violent intent.¹⁴

In 2014, the case *State v. Skinner*, in New Jersey brought similar issues to light. Vonte Skinner was charged with attempted murder, after police found notebooks in his car filled with rap lyrics he had written, depicting violent scenes.¹⁵ The trial court allowed these lyrics as evidence under New Jersey's Rule of Evidence 404(b), which generally prohibits introducing evidence of unrelated crimes or actions unless they demonstrate motive or intent.¹⁶ Prosecutors argued that Skinner's lyrics reflected a street culture rooted in violence and retribution, aligning with the state's theory of the defendant's motive and intent in the attempted murder case.¹⁷ The New Jersey Supreme Court noted that most lyrics were unrelated to the attempted murder and that the state did not contextualize the lyrics, despite their use of slang and other nuanced language.¹⁸ Applying a four-part test from *State v. Cofield*, the court assessed whether the lyrics

⁹ Walker, *supra* note 4, at 431.

¹⁰ 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. UNIV. J.L. & POL'Y. 33, 51 (2016).

¹¹ Marlow Stern, *Childish Gambino's "This Is America" Explained*, TIME (May 7, 2018), <https://time.com/5267890/childish-gambino-this-is-america-meaning/>.

¹² See generally, *Miller v. California*, 93 S.Ct. 2607 (1973); *Davidson v. Time Warner, Inc.*, No. Civ.A. V-94-006, 1997 WL 405907 (Dist. Ct. S.D. Tex.) (cataloging various instances where rap artists have faced First Amendment challenges).

¹³ Walker, *supra* note 4 at 431.

¹⁴ Kim Bellware, *California Makes It Harder to Use Lyrics as Evidence Against Rappers*, WASH. POST (Oct. 2, 2022, 9:00 AM), <https://www.washingtonpost.com/lifestyle/2022/10/02/california-rap-lyrics-law/>.

¹⁵ *State v. Skinner*, 95A.3d 236, 249-52 (N.J. 2014).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

were relevant, similar to the offense, clear and convincing, and not overly prejudicial before deciding on their admissibility.¹⁹ A weak connection to the attempted murder charge posed a high risk of unfair prejudice without much probative value.²⁰

Despite *Skinner* being a landmark case limiting the use of rap lyrics in trials, many states have not adopted its standards, including Georgia. In Fulton County, Georgia, rap lyrics continue to be used in criminal indictments.²¹ This became particularly controversial in 2022 when rapper “Young Thug,” legally known as Jeffery Lamar Williams and “Gunna,” known as, Sergio Kitchens, were arrested alongside twenty-five others on a 56-count indictment.²² The charges alleged that Young Thug’s record label, Young Stoner Life Records (YSL), was actually a front gang known as Young Slime Life, involved in various criminal activities.²³ Prosecutors cited seventeen excerpts from Young Thug’s lyrics, aiming to portray him as an active gang member whose lyrics evidenced his connection to alleged crimes.²⁴

Some lyrics used phrases like “slime” and “slat,” which are common in hip-hop culture but were framed by the prosecution as gang identifiers linked to criminal activity.²⁵ Uncommonly, before the trial the court ruled that the First Amendment did not shield artistic expression from being used as evidence, allowing prosecutors to leverage Young Thug’s creative work as a foundation for their case.²⁶

LYRICS AS EVIDENCE IN CRIMINAL TRIALS

In criminal proceedings, prosecutors have increasingly used rap lyrics to imply a defendant’s intent, motive, or knowledge of crimes, a practice that has grown in both frequency and controversy.²⁷ A 2019 Arizona State University study revealed that prosecutors overwhelmingly use rap lyrics as evidence against defendants and rap lyrics have appeared in over 500 criminal cases to depict rappers as threats within their communities.²⁸ Prosecutors often leverage jurors’ implicit biases against rap music, aligning the defendant’s real-life actions with lyrics or imagery from their music.²⁹ This practice poses significant legal and ethical challenges, as it risks equating fictionalized storytelling with factual evidence, thus blurring the line between art and reality.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Jeff Weiss, *Why Young Thug Is the 21st Century’s Most Influential Rapper*, BBC (Oct. 21, 2019), <https://www.bbc.com/culture/article/20191021-why-young-thug-is-the-21st-century-s-most-influential-rapper>.

²² *Id.*

²³ *Id.*

²⁴ Jennifer Zhan, *Here Are the Rap Lyrics Being Used in the YSL Trial*, VULTURE (Nov. 27, 2023), <https://www.vulture.com/article/young-thug-lyrics-ysl-indictment.html>.

²⁵ Weiss, *supra* note 21.

²⁶ Sophie Zelony, *From Art to Evidence: The Admissibility of Rap Lyrics in Criminal Trials*, VAND. J. ENT. & TECH. L. (Dec. 13, 2023), <https://www.vanderbilt.edu/jetlaw/2023/12/13/from-art-to-evidence-the-admissibility-of-rap-lyrics-in-criminal-trials/>.

²⁷ Briana Younger, *The Controversial Use of Rap Lyrics as Evidence*, NEW YORKER (Sept. 20, 2019), <https://www.newyorker.com/culture/culture-desk/the-controversial-use-of-rap-lyrics-as-evidence>.

²⁸ *Id.*

²⁹ See generally, *Miller v. California*, 93 S.Ct. 2607 (1973) *Davidson v. Time Warner, Inc.*, No. Civ.A. V-94-006, 1997 WL 405907 (Dist. Ct. S.D. Tex.); *Ward v. State*, 794 S.E.2d 246 (2016); *Joynes v. State*, 797 A.2d 673 (2002); *Holmes v. State*, 306 P.3d 415 (Nev. 2013).

Prosecutors must satisfy the requirements in the Federal Rules of Evidence to admit lyrics as evidence by establishing that the lyrics are not inadmissible hearsay, are relevant, and not inadmissible character evidence. Once achieved, prosecutors most often use rap lyrics as evidence to demonstrate (1) gang affiliation for sentence enhancements, (2) circumstantial proof of a crime, (3) direct threats, (4) motive, intent, identity, or character, and (5) factors that may have incited the crime.³⁰

In *State v. Hopson*, the court relied on rap lyrics to demonstrate the defendant's awareness of the criminal activity involved.³¹ Similarly, in *United States v. Foster*, the court admitted rap lyrics as evidence, reasoning that the act of writing these lyrics indicated the defendant's familiarity with specific drug-related terminology.³²

However, Under the Federal Rules of Evidence (FRE), Rule 403, permits courts to exclude evidence if its "probative value is substantially outweighed by a danger of . . . unfair prejudice."³³ The risk of unfair prejudice is high due to society's implicit racial bias towards rap music and Black men.³⁴

Some states have instituted guidelines for using rap lyrics in court. For instance, Arkansas's Criminal Trial Handbook for Lawyers (section 92:36) states that rap lyrics may be admissible to demonstrate intent if they pertain to the crime in question.³⁵ No other genre of music is specified in the handbook, reflecting an exclusive scrutiny on rap music.³⁶ Additionally, federal circuits and some state courts have adopted an inclusionary stance on Rule 404 (b), allowing rap lyrics to be used as character evidence if they served to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."³⁷ In such cases, a lower threshold of similarity between the lyrics and alleged crime may be required to invoke Rule 404 (b), which increases the likelihood of including this type of evidence.³⁸

Conversely, states like New Jersey, Illinois, and South Carolina maintain that a substantial nexus between the lyrics and the alleged crime must be demonstrated to avoid undue prejudice under Rule 403. These states mandate that, to admit rap lyrics, the probative value must clearly outweigh the risk of inflaming juror bias, thus imposing a stricter standard.³⁹

Despite rap's use of exaggeration and fictional storytelling, jurors frequently misinterpret these lyrics as literal admissions or evidence of violent tendencies.⁴⁰ This misunderstanding is compounded by cultural biases, leading jurors to believe that rappers, particularly Black men, are

³⁰ 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, 79-80 (2019).

³¹ *State v. Hopson*, No. 66957-5-I, *5 (2012).

³² *United States v. Foster*, 939 F.2d 445, 455 (7th Cir. 1991).

³³ FED. R. EVID. 403.

³⁴ Walker, *supra* note 4 at 431.

³⁵ JOHN WESLEY HALL, JR., 3 A TRIAL HANDBOOK FOR ARKANSAS LAWYERS §92:36 (4th ed. 2023).

³⁶ *Id.*

³⁷ Vidhaath Sripathi, *Bars Behind Bars: Rap Lyrics, Character Evidence, and State v. Skinner*, 24J. GENDER, RACE & JUST. 207, 212 (2021).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Kailyn Brown, *Rap Lyrics Are Being Used in Court Against Hip-Hop Artists. Scholars Say That's a Dangerous Precedent*, HARV. CRIMSON (Dec. 12, 2023), <https://www.thecrimson.com/article/2023/12/12/rap-lines-used-in-court-hip-hop-justice-ysl/>.

more prone to criminal behavior than artists in other genres.⁴¹ A 1999 study by Dr. Stuart P. Fischhoff demonstrated that when participants were presented with a hypothetical case involving an 18-year-old Black male accused of murder, those who were shown rap lyrics associated with the defendant were more inclined to presume his guilt.⁴² In this context, rap lyrics serve less as concrete evidence and more as a narrative tool that frames the defendant in a way that may trigger juror's biases, giving the lyrics minimal probative value.⁴³

Such prejudices amplify the need for legislation like the RAP Act, which aims to protect artistic expression from misuse in criminal trials and combat the systemic biases facing Black artists.⁴⁴ Until courts implement safeguards, prosecutors will continue to use defendant's art against them.

FIRST AMENDMENT PROTECTION

The First Amendment broadly protects free speech, including both artistic and political expression, as essential elements of a democratic society.⁴⁵ Rap music, originating as a voice for marginalized communities and a platform for social critique, exemplifies this protected form of political speech.⁴⁶ As an art form, rap often address systemic inequality, racism, and lived experiences within the Black communities.⁴⁷ However, the criminal justice system has increasingly targeted rap lyrics as evidence of criminal behavior, effectively criminalizing Black men for their creative expression and the narrative they convey.⁴⁸

Courts have been divided on how to apply this principle to artistic works in criminal trials. Traditionally, artistic works such as movies, novels, or plays are considered fictional and symbolic, benefiting from broad protections against use in court.⁴⁹ Rap, however, has often been treated differently, facing harsher scrutiny. This selective application of the First Amendment highlights a double standard: while other art forms enjoy the presumption of fiction, rap lyrics are viewed as autobiographical confessions, undermining the expressive rights of rap artists.

THE RESTORING ARTISTIC PROTECTION ACT (RAP)

The Restoring Artistic Protection Act seeks to remedy lyrics as evidence by creating safeguards to ensure that lyrics and other creative expressions are only admitted as evidence if they meet

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Press Release, Rep. Hank Johnson (GA-04), Congressmen Johnson, Bowman Introduce Bill to Protect Artists' 1st Amendment Rights (July 27, 2022), <https://hankjohnson.house.gov/media-center/press-releases/congressmen-johnson-bowmanintroduce-bill-protect-artists-1st-amendment>; Restoring Artistic Protection Act of 2022, H.R.8531, 117th Cong. (2022).

⁴⁵ FREEDOM OF EXPRESSION IN THE ARTS AND ENTERTAINMENT, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/other/freedom-expression-arts-andentertainment> (last visited Feb. 14, 2023).

⁴⁶ Mariam K. K. Daramy, *Black Power Edutainment: The Political Roots of Hip-Hop Music*, Al Jazeera (Feb. 10, 2024), <https://www.aljazeera.com/features/2024/2/10/black-power-edutainment-the-political-roots-of-hip-hop-music>.

⁴⁷ *Id.*

⁴⁸ KENDRICK LAMAR, *ALRIGHT* (Top Dawg Entertainment, Aftermath Entertainment, & Interscope Records 2015).

⁴⁹ O. Huff, *Rap on Trial: The Case for Nonliteral Interpretation of Rap Lyrics*, 5 SAVANNAH L. REV. 335, 335 (2018).

strict legal standards, such as proving a direct connection to the alleged crime.⁵⁰ Introduced by Democrat Georgia Congressman Hank Johnson and Jamaal Bowman, Democrat Congressman of New York in 2022.⁵¹ The bill would amend the Federal Rules of Evidence.⁵² Creative and artistic expressions will be admissible:

- (1)(A) if the expression is original, that defendant intended a literal meaning, rather than a figurative or fictional meaning; or
- (B) if the expression is derivative, that the defendant intended to adopt the literal meaning of the expression as the defendant's own thought or statement;
- (2) that the creative expression refers to the specific facts of the crime alleged;
- (3) that the expression is relevant to an issue of fact that is disputed; and
- (4) that the expression has distinct probative value not provided by other admissible evidence.⁵³

CONCLUSION

The troubling trend of criminalizing Black creativity underscores the need for reform. To truly protect the rights of Black artists and ensure fair treatment within the justice system, legislative action, such as the Rap Act, is essential. Until such protections are codified, the legal system will continue to impose unfair and discriminatory practices that criminalize not just the individual, but the art form itself, perpetuating a cycle of silencing Black voices.

⁵⁰ Neena Rouhani, *Federal Bill Limiting Use of Rap Lyrics in Court Reintroduced in Congress*, BILLBOARD (Nov. 9, 2023), <https://www.billboard.com/articles/news/rap/november-9-2023-rap-act-reintroduced/>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ H.R. 8531, 117th Cong. (2022).