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Rap as Threat? The Violent Translation of Music in American Law

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Abstract

In *Commonwealth of Pennsylvania v. Jamal Knox and Rashee Beasley* (2013), the defendants were charged with making “terroristic threats” after their rap song “F* the Police” appeared on YouTube. This unique case (similar only to *U.S. v. Elonis* of the same year) exposes significant issues within the law: ambiguity surrounding the law’s definitions of threat and the problematic assumption at court that rap as evidence is a literal text or confessional. It also, however, reveals a certain consistency in the court’s treatment of music: general dismissal. That mishandling of music, in this case, allowed for a rather drastic translation of “F* the Police” – a court-constituted violence credited to the defendants alone.

Keywords

rap, Judith Butler, terroristic threat, violence, YouTube, criminal law

I never knew hustlers confessed in stereo. Or on video, get caught, you’ll know who turned states. Evidence, murder weapon, confession and fingerprints. Mama always said watch what comes out your mouth. Tight case for the D.A. from here to down south.

Jeru the Damaja, “Ya Playin’ Yaself,” *Wrath of the Math* (PayDay Records 1996).

During the preliminary hearing in March 2013, prosecutor Rachel Fleming successfully ensured a trial in *Commonwealth of Pennsylvania v. Jamal Knox and Rashee Beasley*. The defendants had been charged with making “terroristic threats” after their rap song “F* the Police” appeared on YouTube. She insisted: “And just because you put your threats to music and just because you make them rhyme, you know, it doesn’t mean that they’re not

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threats.”¹ Through close reading, this unique case (similar only to *U.S. v. Elonis* of the same year, which involved violent rap lyrics, posted on Facebook) represents mounting and conflated legal entanglements with rap, adding the ambiguity surrounding the law’s definitions of threat and role of modern media to the problematic use of rap lyrics as evidence, recently the subject of widespread media attention. The case, in this way evidence of rap’s evolving relationship to the law, reveals much about current valuations of rap within American law as well as the music’s place in society more generally. This disclosure depends on an understanding of the law and music’s interplay in the realm of culture.

While scholars of music have for the most part ignored the law’s potential use as a site of study, beyond consideration of copyright law or property law, legal scholars, such as Robert Cover, have offered useful theoretical bridges with the potential to break the perceived boundaries between music and wider fields of legal study, including criminal law. In “Nomos and Narrative,” Cover explained that interpretation of the law, and thus the making of legal meaning, “takes place always through an essentially cultural medium” and is dependent on our “interpretive commitments” or cultural values.² Desmond Manderson, in his pioneering book *Songs without Words: Aesthetic Dimensions of the Law and Justice*, further insists: “In the law, then, we find not only evidence of our beliefs but traces of the aesthetic concerns that have propelled them.”³ As Manderson makes clear, the law is hardly passive in this respect, actively engaging this aesthetic dimension. Music of course similarly participates in social debates, concerns, and values. Given their mutual interaction in the cultural and social realms, the law and music have more direct contact than most scholars in either field recognize. Indeed, music informs aesthetic values and thus the law, while the law with its participation in culture informs music, both in practice and valuation. As law professor Aaron R.S. Lorenz recognizes, the law and music are “mutually constitutive social forces.”⁴

The case of Knox and Beasley, in my analysis, allows access to this exchange as well as changing valuations of rap. It also reveals a certain consistency in the court’s treatment of music in the United States, a general dismissal – one evident in wider treatments of rap,

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1. Christine Vitrano (official court recorder), Trial Transcript *Commonwealth of Pennsylvania v. Jamal Knox and Rashee Beasley*, p. 135. Thank you to Patrick K. Nightingale, esq., for sharing with me this document.
 2. Robert Cover, *Narrative, Violence, and the Law: The Essays of Robert Cover* ed. Martha Minow, Michael Ryan, and Austin Sarat (Ann Arbor, MI: University of Michigan Press, 1992), pp. 99 and 103.
 3. See Desmond Manderson, *Songs without Music: Aesthetic Dimensions of Law and Justice* (New York: Palgrave Macmillan, 2000), p. 27.
 4. Aaron R.S. Lorenz, *Lyrics and the Law: The Constitution of Law in Music* (Lake Mary, FL: Vandeplas Publishing, 2007), p. 2. Lorenz’s statement was prefigured by pronouncements at the Symposium “Modes of Law: Music and Legal Theory – An Interdisciplinary Workshop.” There, Desmond Manderson and David S. Caudill explained, “Postmodern legal theory, and the resurgence of interest in aesthetics generated by it, has further expanded the ways in which law and the arts generally can be seen as mutually constitutive social forces.” Desmond Manderson and David S. Caudill, “Modes of Law: Music and Legal Theory – An Interdisciplinary Workshop Introduction (August 2, 1999),” *Cardozo Law Review* (1999), <http://ssrn.com/abstract=2122870>.

including the recent media coverage of rap's use as evidence as well as scholarship on rap. In 1995 and 2000, in fact, music scholars Robert Walser and Adam Krims, respectively, focused on the *music* of rap, its sound, in order to address "a relatively neglected but crucial aspect of rap music's cultural force."⁵ In Knox and Beasley's case, this denial at court and in society at large paved the way for a rather complicated reconstitution of rap – through the introduction of "F* the Police" as video, transcript, and lyric translation in court testimony. This reconstitution indexes philosopher Judith Butler's reading of the court's resignification of utterances deemed "hate speech." In this process, according to Butler, the court invests speech with violence through the court's own authoritative interpretation and action.⁶ In the trial of Knox and Beasley, the court's translation of rap represents an extreme example of this court-constituted violence. The court, I contend, dismissed rap as art, denied its music, and this treatment obscured a systemic resignification that ultimately doomed the defendants, credited with the violence in some ways performed by the law. In order to make this argument, in what follows I build on my previous work on the misuse of rap lyrics as evidence, published in *Music in American Crime Prevention and Punishment*, by highlighting the ways in which the music itself undermines the court's handling of "F* the Police."

I. True Threat

In November 2012, Jamal Knox and Rashee Beasley, two young African-American men, were arrested in Allegheny County, Pennsylvania. During the preliminary hearing, both the prosecutor Rachel Fleming and defense, Paul Boas for Knox and Lee Rothman for Beasley, situated the defendants' song within a "fuck the police genre."⁷ NWA's "Fuck tha Police" (1988) and Ice-T's "Cop Killer" (1992) are perhaps the best known examples of such a perceived genre, one related to a tradition of the "bad man" in African American storytelling, evident in urban novels as well as film, particularly "blacksploitation."⁸ Though both songs inspired legal opposition, notably police disruption of the musicians' concerts, there was no comparably direct attack on the music at court. To justify special treatment of "F* the Police," Fleming made one significant distinction by pointing out reference within the defendants' video to specific officers, Michael Kosko and Daniel Zeltner, who had previously arrested Knox and Beasley: "I mean, there was talk about

5. Adam Krims, *Rap Music and the Poetics of Identity* (Cambridge: Cambridge University Press, 2000), p. 3. See also Robert Walser, "Rhythm, Rhyme, and Rhetoric in the Music of Public Enemy," *Ethnomusicology* 39(2) (Spring-Summer 1995), 193–217. Walser writes, "... despite widespread debates over the meanings and significance of rap, its musical elements have largely escaped all but the most superficial discussion" (p. 193).
6. Judith Butler, *Excitable Speech: A Politics of the Performative* (New York: Routledge, 1997).
7. Deborah Ann Betzler (official court recorder), Preliminary Hearing Transcript *Commonwealth of Pennsylvania v. Jamal Knox and Rashee Beasley*, pp. 117 and 135. Thank you to Laurie String of the Office of the Public Defender, Allegheny County, PA, for sending me a copy of this transcript.
8. See a succinct discussion in Erik Nielson and Charis E. Kubrin, "Rap on Trial," *Race and Justice* (forthcoming 2014), 10, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=236305. For more information, see Jonathan Munby, *Under a Bad Sign: Criminal Self-Representation in African American Popular Culture* (Chicago, IL and London: The University of Chicago Press, 2011).

N.W.A. and other rappers, you know, who have made fuck the police songs, and there's a whole, you know, fuck the police genre. But it doesn't appear that any of those songs threatened particular police officers."⁹ With this argument, she worked to strip Beasley and Knox's "F* the Police" of its First Amendment protection by framing it as a threat. Judge James J. Hanley, Jr., relied on this distinguishing criterion in his decision to bring the case to trial. In his explanation of that judgment, he also revealed the strong contextual influence of recent violence in Pittsburgh, specifically the 2009 killing of three officers by Richard Poplawski, who was referenced in "F* the Police." The judge ruled: "I don't profess to totally understand the culture of violence that is rap music, but I accept it as part of the genre ... My problem is when they have specific names of officers in a specific action ... If not for the specific references to the officers and to that [meaning Poplawski], I could almost accept everything they said as bluster and attempt to sell records on their behalf. But due to the fact, again, the two officers in that incident are specifically mentioned, I'm holding the charges here today."¹⁰

At the non-jury trial, which took place November 12–21, 2013, a new judge, Jeffrey A. Manning, presided; Almon Burke, Jr., represented Knox; and David Obra defended Beasley. Rachel Fleming reprised her role as prosecutor. Both defendants were officially charged with "terroristic threats," specified at court as "communicating a threat, either directly or indirectly, to commit a crime of violence with the intent to terrorize" Kosko and Zeltner.¹¹ With this wording, Pennsylvania's state definition of "terroristic threats" was outlined for the official court record. This clarification was important given differences in official notions of "threat" between the various state legislations – all of which can be traced back to *Schenck v. United States*, a 1919 Supreme Court case that focused on the distribution of leaflets opposing the draft, reasoned by Justice Oliver Wendell Holmes, Jr., a "clear and present danger."¹² Divergence in definitions of this danger among the states plays a part in current calls for wider legal redress of the prosecution of threats. Indeed, the Marion B. Brechner First Amendment Project (University of Florida), Thomas Jefferson Center for Freedom of Expression (University of Virginia), and the Pennsylvania Center for the First Amendment (Pennsylvania State University) filed a friends-of-the-court brief asking the Supreme Court to review *U.S. v. Elonis*, and the Court has agreed to this reappraisal, set for December 2014.¹³ In addition to questions about the role of social media and the constitutional protection of music, legal scholars have raised concerns about the role of interpretation and intent in definitions of threat. Clay Calvert, Erik Nielson, and Charis E. Kubrin sum up the current state of affairs: "Some courts, for example, find the intent of the speaker important in determining what constitutes a 'true threat,' while others consider intent irrelevant, focusing only on how a

9. Preliminary Hearing Transcript, p. 135.

10. Preliminary Hearing Transcript, pp. 145–6.

11. Trial transcript, p. 12.

12. For the thinking behind this doctrine, see Jeremy Cohen, "Schenck v. United States: A Clear and Present Danger to the First Amendment," unpublished Ph.D. thesis, University of Washington, 1983.

13. Sam Hananel, "Supreme Court Should Decide Whether Rap Lyrics are Free Speech," *Huffington Post*, June 16, 2014.

'reasonable' person would interpret a message."¹⁴ Confounding the confusion, legal scholar Jennifer Rothman argues, "Most circuits have allowed for the admission of the alleged victim's reaction as evidence of how a reasonable person would interpret the statement."¹⁵ The muddle of intent, reaction, and interpretation factored centrally in the Knox/Beasley case.

Fleming began with testimony from Kosko establishing his reaction to the video, the role it played in his move from Pittsburgh, despite Pennsylvania's emphasis on intent rather than reaction as well as Kosko's subjective perspective. Similarly, Zeltner offered testimony describing his perception of the lyrics as well as his response, "They said they wanted to kill us and that, you know, they knew our schedule and where we worked, and that they know they would attack us. And there was gunfire throughout the video, and ... numerous other terms that you would associate with guns, caliber, stuff like that." He continued, "I was upset." In apparent reference to the killings of Poplawski, he explained, "... we've had a lot of issues ... It makes you concerned for your safety."¹⁶ At the time, the police department gave him some time off work and security detail.

Obara laid the foundation for a counter-argument by establishing that another officer, Aaron Spangler, made Kosko aware of the video, and Zeltner was similarly alerted of the video's existence. Burke and Obara also made it clear that the video did not appear until seven months after the defendants' initial arrest by the officers. This point perhaps related to Obara's later argument that a real danger should be "imminent,"¹⁷ latching onto the issue of imminence in the Brandenburg standard for prosecution of speech deemed incitement to violence. Responding to a Ku Klux Klan gathering and a Klansman's suggestion there that the group take lawless action against African Americans, in 1969, the U.S. Supreme Court in *Brandenburg v. Ohio* disqualified from First Amendment protection speech that is "directed to inciting or producing imminent lawless action and is likely to incite or produce such actions."¹⁸ With this crucial step in the development of free speech jurisprudence, the courts cannot sanction advocacy of violence, only speech that meets a three-part test based on violent intent, the imminence of the violent act, and the likelihood of subsequent violence.¹⁹ Such use of Brandenburg is often offered in

14. Clay Calvert, Erik Nielson, and Charis E. Kubrin, "Rap Lyrics Or True Threats? It's Time For The High Court To Decide," *Forbes*, March 24, 2014.

15. Jennifer E. Rothman, "Freedom of Speech and True Threats," *Harvard Journal of Law & Public Policy* 25(1) (2001); see also Lori Weiss, "Is the True Threats Doctrine Threatening the First Amendment? Planned Parenthood of the Columbia/Willamette, Inc. v. American Coalition of Life Activists Signals the Need to Remedy an Inadequate Doctrine," *Fordham Law Review* 72(4) (2004).

16. Trial Transcript, pp. 146–7.

17. Trial Transcript, p. 442.

18. See Sandra Davidson, "Two perspectives on Ice-T: 'Can't Touch Me': Musical Messages and Incitement Law," in *Bleep! Censoring Rock and Rap Music* ed. Betty Houchin Winfield and Sandra Davidson (Westport, CT: Greenwood Press, 1999), p. 23.

19. Davidson, p. 23. See also John P. Cronan, "The Next Challenge for the First Amendment: the Framework for an Internet Incitement Standard," *Catholic University Law Review* 51(425) (Winter 2002), *LexisNexis Academic*, <http://www.lexisnexis.com>, accessed October 1, 2014.

cases involving threat – blurring an already muddy area of the law.²⁰ For the defense, any inclusion of Brandenburg may have been wise, given the prosecution’s consistent failure to win a conviction in cases purporting music functions to incite violence.²¹

With Spangler on the stand, Burke also highlighted the indirect discovery of the video itself. Spangler had been monitoring the activity of Beaz Mooga, supposed alias for Beasley, by becoming “friends” with Mooga through Spangler’s own alias on Facebook. Spangler in this way clicked a link on November 15, 2012 on Mooga’s page that brought up the YouTube video in question.²² In this testimony, a news leak revealing investigation of the video was deemed responsible for the disappearance of the video from YouTube later that day. The court was further able to establish that Mooga had not been the one to upload the video. The offending IP number led investigators to Terrance Hart, a fourteen-year-old boy, who admitted to making the video available online. By establishing this chain of events, Obara argued that there was no intent to communicate a threat. Neither defendant uploaded the video, which Spangler only unearthed through disingenuous means, and the police department then actively preserved the video before it was removed later that day – quickly acting to establish that a crime did in fact occur. Boas, defense for Knox, had similarly argued in the preliminary hearing – in part by alluding to the video’s later transformation (the initial version featured the police officers’ names, a call-out at the start of the song; a second version, accessible after discovery, omitted the specific names and included after the song an interview with Knox and Beasley). He insisted: “The issue is: Can they prove that these individuals communicated this? I mean, writing a song and keeping it to yourself or maybe having it be a draft or a first version that you’re going to later edit, which we know did occur, isn’t a crime. The crime is communicating it with the intent to terrorize or intent to intimidate witnesses.”²³ The defense’s argument was in this way in line with Jennifer Rothman’s contention regarding a case involving a supposed threat, communicated only in private emails: “These types of private communication should not be considered threats since it is highly unlikely that they will reach the potentially threatened party. The simple fact that the speaker chose to convey the alleged threat in a way calculated not to reach the threatened party suggests that the speaker did not intend to threaten the target.”²⁴

While the defense thereby argued that the defendants did not intend to communicate with Kosko and Zeltner, during the preliminary hearing as well as at trial, attorneys for the defendants did not aggressively invalidate the perceived threat of the message itself, ignoring a history of rap key to a fair defense. Without substantial reference, in argument

20. “Critics have observed that when faced with speech that approaches the somewhat blurry line separating threats from incitement, courts may ‘mix and match cases from both lines of precedent as if they were interchangeable.’” Weiss.

21. See Lily E. Hirsch, *Music in American Crime Prevention and Punishment* (Ann Arbor, MI: University of Michigan Press, 2014), chapter 4. See also Robert Firester and Kendall T. Jones, “Catchin’ the Heat of the Beat: First Amendment Analysis of Music Claimed to Incite Violent Behavior,” *Loyola of Los Angeles Entertainment Law Review* 20(1) (2000), *LexisNexis Academic*, <http://www.lexisnexis.com>, accessed October 1, 2014.

22. Trial Transcript, pp. 192–3.

23. Preliminary Hearing Transcript, p. 107.

24. Rothman.

or expert witness testimony, to rap's history, its perceived authenticity and the ways in which market forces shape the genre, the defense did not fully serve the defendants. This failure is all the more disappointing in light of recent high-profile media opposition to rap lyrics as evidence – attention that has done much to highlight rap's complications. This mainstream opposition has also made readily accessible significant insight into the prejudicial impact of rap in the courtroom, all the more reason to seek out expert testimony on rap.

II. Rap as Truth

For there to be an intended message of violence, “F* the Police” must be a sincere communication, a statement of fact. The case of Knox and Beasley was based on this assumption, an assumption with significant precedent in the court system's regular treatment of rap as evidence. As I have discussed in previous publication, since the 1990s more and more rappers – amateurs as well as professionals – have found their work used against them in court as purported confession, intent, or knowledge in respect to a crime.²⁵ The American Civil Liberties Union (ACLU) of New Jersey has recently recorded 18 such cases around the country, though lyrics are also being exploited in less formal ways, as leverage to compel a plea agreement, for example.²⁶ In these cases, the prosecution offers rap music as a written text, reading the lyrics to the jury in even tones or submitting the texts to the jury as hardcopy documents. According to the legal scholar Andrea Dennis, judges and jurors thus “apply a basic method of interpreting language: literal interpretation.”²⁷ Such treatment of rap, responding to the lyrics as texts, akin to a newsletter, ignores the traditions and contexts of rap. As Dennis recognizes, the courts “treat rap music lyrics not as art but as ordinary speech and allow jurors to do the same.”²⁸ In so doing, the courts ignore various facets of rap that undermine and invalidate the idea and use of rap as confessional.

First, in rap, authenticity is dependent on honesty and sincerity in self-representation, local alliances and identity, as well as connections to established and accepted rappers.²⁹ Despite this emphasis on authenticity, however, rap lyrics are hardly authentic or honest confessions. As an evaluative term, authenticity is “ascribed, not inscribed” as a

25. Hirsch.

26. Erik Nielson and Charis E. Kubrin, “Rap Lyrics on Trial,” *New York Times*, January 13, 2014.

27. Andrea L. Dennis, “Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence,” *Columbia Journal of Law and the Arts* (Fall 2007), *LexisNexis Academic*, <http://www.lexisnexis.com>, accessed February 5, 2010.

28. Dennis.

29. See Edward Armstrong, “Eminem's Construction of Authenticity,” *Popular Music & Society* 27(3) (2004), 336. Perkins identifies gangsta rap as especially dependent on ideas of authenticity. He writes, “In an age of mass over-consumption and media hype, gangsta rap no doubt represents a religion and ideology of authenticity.” William Eric Perkins, “The rap attack: an introduction,” in *Droppin' Science: Critical Essays on Rap Music and Hip hop Culture* ed. William Eric Perkins (Philadelphia, PA: Temple University Press, 1996), p. 20.

“fabrication” and “invention.”³⁰ In other words, authenticity is a fluid ideal, constructed within an ever-shifting social context.³¹ Within rap, “keeping it real” is even more complicated.³² Graphically violent lyrics, as in popular music in general, are actually a response to commercial demands. A 2004 study revealed that increasing sales of rap music, especially among white middle-class consumers, corresponded to increasingly violent lyrics.³³ The violent content of rap, especially “gangsta rap,” a type of “reality rap” (don’t let the name fool you),³⁴ therefore does not necessarily relate directly to the composer’s authentic experience. Rather it is often a collaborative response with a producer or label to commercial concerns. Furthermore, the commercially accepted and even commanded brutality in rap is not necessarily interpreted or intended as a simple glorification of gore. Instead, the violence depicted in rap lyrics often signifies power, courage, or skill, building on rap’s use of metaphor, play on words, and boasting.³⁵

The message in rap is thus hardly direct or confessional. By treating rap as a sincere text, the law ignores the traditions and commercial concerns that shape rap and admit evidence with erroneous implications. Still, the perception of the rap genre itself may to a greater extent render impartiality impossible at trial. In *The State v. Rollings* (1992), the court admitted lyrics to implicate the defendants, charged with murder. The defense called Stuart Fischhoff, a professor of psychology. Based on “Implicit Personality Theory,” which recognizes the basis of judgment in inference, he argued that a jury would be more likely to offer a guilty verdict after hearing rap lyrics, no matter the case. He explained that what matters is “the negative personality trait associations conjured up by the inflammatory lyrics” rather than lyric content that linked the defendant to the crime.³⁶ This issue of prejudice has been central to the recent mainstream coverage challenging the use of rap lyrics as evidence, initiated by an op-ed published in the *New York Times* on January 13, 2014. The op-ed authors, Erik Nielson and Charis Kubrin, explain: “across the country, the overwhelming majority of rap artists targeted for prosecution are black or Latino. Using rap lyrics as evidence, then, is not just a matter of art being sacrificed for the sake of an easy conviction. Rather,

30. Allan Moore, “Authenticity as Authentication,” *Popular Music* 21(2) (May 2002), 210. See also Joli Jensen, *Nashville Sound: Authenticity, Commercialization, and Country Music* (Nashville, TN: The Country Music Foundation Press and Vanderbilt University Press, 1998), pp. 7 and 136; and David Grazian, “The Symbolic Economy of Authenticity in the Chicago Blues Scene,” in *Music Scenes: Local, Translocal, and Virtual* ed. Andy Bennett and Richard A. Peterson (Nashville, TN: Vanderbilt University Press, 2004), p. 32.

31. See Phillip Vannini’s and J. Patrick Williams’ discussion of Richard Peterson’s conception of authenticity in “Authenticity in Culture, Self, and Society,” in *Authenticity in Culture, Self, and Society* ed. Phillip Vannini and J. Patrick Williams (Burlington, VT: Ashgate, 2009), p. 2.

32. See, for example, Armstrong, p. 337.

33. Armstrong, p. 336.

34. See Krims, pp. 70–71.

35. Dennis; Cheryl L. Keyes, “Verbal Art Performance in Rap Music: The Conversation of the 80’s,” *Folklore Forum* 17 (1984), 143.

36. See Sean-Patrick Wilson, “Rap Sheets: The Constitutional and Societal Complications Arising From the Use of Rap Lyrics as Evidence at Criminal Trials,” *UCLA Entertainment Law Review* (Spring 2005), *LexisNexis Academic*, <http://www.lexisnexis.com>, accessed February 5, 2010.

the practice also constitutes a pernicious tactic that plays upon and perpetuates enduring stereotypes about the inherent criminality of young men of color; the lyrics must be true because what is written ‘fits’ with what we ‘know’ about criminals, where they come from, and what they look like.”³⁷ The proven prejudice engendered by rap at court might explain the decision to avoid a jury trial in Knox/Beasley, especially given the video component. Rap unfairly casts defendants in a generally violent light making it more likely that they will be convicted of any charge, no matter its merits. Add a video to this already skewed set-up and Knox and Beasley hardly stood a chance. As Nielson has explained, addressing the impact of new media at court: “Even if the defendant dresses up in a coat and ties for his trial to present a respectable image, the video – especially if considered autobiographical – could undo that in a hurry.”³⁸

I should mention that the specific charge of “terroristic threat” has the potential to support this biased view of a defendant as violent Other by invoking the dark menace of terrorism. The charge “terroristic threat” in Pennsylvania, a crime labeled “criminal threat” in other states such as California, was conceived as such before the onset of current concerns about terrorism. For that reason, in “Should Pennsylvania Give ‘Terroristic Threats’ a New Name?” lawyer Matt McClenahen argues that the state should consider a new term, dispense with “terroristic,” in order to avoid the weighty issues that unfairly stigmatize people convicted of far less serious post-9/11 crimes.³⁹

With concerns of prejudice as well as the misuse of rap as confession, the Supreme Court has recently addressed the use of rap lyrics as evidence in the conviction of Vonte Skinner in a 2005 shooting, a case brought to the higher court by the ACLU of New Jersey. Jeanne LoCicero, Deputy Legal Director of the ACLU of New Jersey, which filed an amicus brief in support of the defendant, said “We’re arguing to the New Jersey Supreme Court that it needs to provide guidance to the courts in New Jersey that this is artistic and political expression and you need to do a more searching review when you’re seeking to use this kind of expression against someone.”⁴⁰ This legal review comes on the heels of an unusually thoughtful and well-informed dissent by Justice Nancy M. Saitta in the 2013 Supreme Court case *Deyundrea Orlando Holmes v. The State of Nevada*. While Holmes’ murder and robbery convictions were upheld at court, despite objection to the admittance of rap as evidence, Saitta held that “although the district court made a thorough evaluation of and gave careful consideration to the admission of the lyrics here, the court nonetheless abused its discretion in admitting the rap lyrics at trial. The lyrics were not sufficiently probative as the crimes depicted in the lyrics were dissimilar from the crime alleged. The lyrics did not reflect knowledge of the specific event any more than they describe routine criminal behavior. Moreover, the scant

37. Nielson and Kubrin, “Rap on Trial,” *Race and Justice*, p. 27.

38. Lorne Manly, “Legal Debate on Using Boastful Rap Lyrics as a Smoking Gun,” *New York Times*, March 26, 2014.

39. Matt McClenahen, “Should Pennsylvania Give ‘Terroristic Threats’ a New Name?” *McClenahen Law Firm*, May 11, 2013, <http://www.mattmlaw.com/blog/2013/05/should-pennsylvania-give-terroristic-threats-a-new-name.shtml>.

40. Lauren Williams, “Your Rap Lyrics Can Be Held Against You in a Court of Law,” *Mother Jones*, March 10, 2014.

probative value of the lyrics was far outweighed by the danger of unfair prejudice that they presented.”⁴¹

It is surprising that the defense in Knox/Beasley did not reference such recent activity and attention to rap as evidence at court. Perhaps the defense shared the assumption that rap is autobiographical. As Kubrin maintains, “Judges, prosecutors and others involved treat it [rap] as autobiographical confessions because the assumption is that what rap lyrics are is, in fact, these rhymed confessions.”⁴² Just one example, the former senior prosecutor in the Los Angeles County district attorney’s office Alan Jackson insists, “Just because you put your confession to music doesn’t give you a free pass.”⁴³ To his credit, in the preliminary trial Boas did quote the interview with Knox that followed the second version of the video: “We’re protesting, but we’re entertainers ... This is just a song.”⁴⁴ But Fleming referenced notions of rap’s authenticity, also citing the interview: “I write how I feel at the time.”⁴⁵ At the official trial, there was little mention of any of the issues related to the use of rap lyrics as evidence – the misleading role of authenticity, centrality of commercial concerns, or danger of prejudice. Burke, however, did contend, “Just because lyrics are in a song does not mean that the person writing them is living that for himself ...”⁴⁶

More significant, in my view, the defense made no reference to any aspect of the music itself (apart from Rothman in pre-trial – “The beat had a nice rhyme”), a fault shared by the courts in the admittance of rap lyrics as evidence as well as its recent opposition in the media and related legal scholarship. This general omission within the law and society more generally reveals a wider neglect of rap, a denial of rap as music.⁴⁷ It also unfairly overlooks a potent means of refuting the treatment of rap lyrics as autobiographical or literal text – the role of performance in rap as music. In the case of Knox and Beasley, I argue, such oversight set the stage for a rather drastic reconstitution of “F* the Police” at court.

III. Rap as Music

Rap music is built around the layering of multiple voices or looped tracks.⁴⁸ In this way, as music scholar David Clarke argues in his work on Eminem, rap is akin to philosopher Mikhail Bakhtin’s “concept of the polyphonic novel, where each voice in the narrative retains independence from that of the narrator or author.”⁴⁹ This independence, for Bakhtin, can further retain competition and contradiction, a function of his concept of heteroglossia

41. *Deyundrea Orlando Holmes v. The State of Nevada*, Supreme Court of Nevada, Lexis 69, filed August 22, 2013.

42. “Rap Lyrics as Evidence,” interview with Bob Garfield and Charis Kubrin, *On the Media*, January 17, 2014, <http://www.onthemedial.org/story/rap-lyrics-as-evidence/transcript>.

43. Manley.

44. Preliminary Hearing Transcript, pp. 117–18.

45. Preliminary Hearing Transcript, p. 138.

46. Trial Transcript, p. 440.

47. Hirsch. See also James Parker, “Acoustic Jurisprudence: Listening to the Trial of Simon Bikindi,” unpublished Ph.D. thesis, Melbourne Law School, 2013.

48. David Clarke, “Eminem: Difficult Dialogics,” *Words and Music* (2005), p. 86.

49. Clarke, p. 94.

or the multiple social voices present in any utterance.⁵⁰ Eminem's music, for example, is a special case of such unified contestation through his projection of multiple characters and alter egos, such as Slim Shady, Marshal Mathers, and Eminem – personae that mix in his first three major-label solo albums. These albums also blend short skits involving a host of auxiliary characters based in reality and fiction.⁵¹ Such a cultivation of character, though extended by Eminem, is a characteristic element of rap – an aspect of the tradition of *styling*.⁵² As music sociologist Simon Frith recognizes, this projection of persona involves multiple metaphorical masks: “rap is part of a shared subculture of dressing up and strutting free, of house calls and designer charms. This is the performance of identity in which the face behind the mask (all those masks) is just another mask.”⁵³

The musical setting and its performance conditions the projection of these multiple voices and identities in rap. In other words, text and music are inextricably bound in rap. As Frith argues, song is theater with an implied character and narrative.⁵⁴ It then follows, “the issue in lyrical analysis is not words, but words in performance.”⁵⁵ Musicologist Carolyn Abbate similarly argues, “The text of music is a performance. Thus music is fundamentally different from the written texts that have for the most part shaped critical theory.”⁵⁶ In the context of opera, she recognizes “multiple, decentered voices localized in several invisible bodies,” voices dependent on performance.⁵⁷ The music functions as a constitutive determining voice in performance by dictating the text to some extent. In the context of song, Frith argues that composers and artists (as well as “ghostwriters” in production) choose their words based on sound, “their sound in a particular voice.” In rap, word choice further depends on rhythmic schemes, rhyme, syllabic count, and even the setting of the intended performance, rather than specific meaning.⁵⁸ For example, in the

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50. See M.M. Bakhtin, *The Dialogic Imagination: Four Essays* ed. Michael Lohquist, trans. Caryl Emerson and Michael Holquist (Austin, TX: University of Texas Press, 1981), p. 263. In this way, rap is in some ways representative of Matthew Wilson Smith's broader conception of the *Gesamtkunstwerk* as the history of “un-reconciled dialectical struggles performed under the sign of aesthetic totality.” See Matthew Wilson Smith, *The Total Work of Art: From Bayreuth to Cyberspace* (New York: Routledge, 2007), p. 3.
 51. Steen Kaargard Nielsen, “Wife Murder as Child's Game: Analytical Reflections on Eminem's Performative Self-Dramatization,” *Danish Yearbook of Musicology* 34 (2006), p. 33.
 52. Nielsen, p. 32.
 53. Quoted in Michael Quinn, “‘Never Shoulda Been Let Out the Penitentiary’: Gangsta Rap and the Struggle Over Racial Identity,” *Cultural Critique* 34 (Autumn 1996), 85. See also Jennifer C. Lena, “Social Context and Musical Content of Rap Music, 1979–1995,” *Social Forces* 85(1) (September 2006), 486. Keyes, citing sociologist Eugene Perkins, recognizes regular use of characters from street culture: the street man, hustler, pimp (or mack), working-class man, and militant. Cheryl L. Keyes, *Rap Music and Street Consciousness* (Urbana, IL: University of Illinois Press, 2004), p. 125.
 54. Simon Frith, *Performing Rites: On the Values of Popular Music* (Cambridge, MA: Harvard University Press, 1996), pp. 169–70.
 55. Frith, p. 166.
 56. Carolyn Abbate, *Unsung Voices: Opera and Musical Narrative in the Nineteenth Century* (Princeton, NJ: Princeton University Press, 1991), p. 12.
 57. Abbate, p. 28.
 58. Frith, p. 175.

1980s, Cheryl Keyes recognized in rap regular rhymed couplets and a two-bar melodic bass line,⁵⁹ effectively necessitating “a more condensed way of saying something”⁶⁰ in addition to words that rhyme. Artists may alter certain words to facilitate the rhyme pattern. In MC Lyte’s “I am Woman,” “pretected” replaces “protected” to match “respected.”⁶¹ Rappers also often favor assonance, juxtaposing words with similar vowel sounds to create a more musical quality.⁶² Words are thereby chosen for reasons beyond dictionary definition. The words in their musical setting (rendered in performance) further determine the interpretation of this text and therefore meaning. Frith clarifies: “The point is that as speakers we create meaning through stress; music creates stress; therefore music creates meaning.”⁶³

The music of rap may also work against itself, confounding any single reading of the lyric’s meaning in performance. Indeed, the instrumental track is a significant competing voice in the heteroglossia of rap, a voice, according to some, with even greater sway than the lyrical voice. Robert Walser elaborates, “Even though many rappers and fans stress the primacy of the message delivered by the lyrics, some, like pioneering rapper Melle Mel, argue that the instrumental parts are actually more important than the rap because they create the mood, set the beat, and prompt the engagement.”⁶⁴ This mood does not necessarily support the lyrical component, but can instead underscore the place of contradiction and noise in rap. This reference to the subjective qualification of music as noise,⁶⁵ an evolving construct, here highlights the multiplicity of sound in rap – sirens and other sonic aspects of the urban landscape – as well as rap’s tendency to operate as a music at war with itself. We see this trait in Walser’s reading of Public Enemy’s “Fight the Power,” which features a backing track that hardly “backs”; rather it “creates abrasion” by clashing with the vocals.⁶⁶

With this in mind, treatment of rap as literal text denies the nuances of voice in the *musical performance* of rap, its multiple layers and unified strife. If additional argument is necessary, to some theorists, performance is actually only one of the processes in lyrical music that works to generate meaning. John Shepherd and Peter Wicke maintain: “music is not an object, a ‘thing’ but, indeed, a set of processes, and a set of processes that inevitably involves people.”⁶⁷ At court, it is perhaps easy in some ways to ignore the role of voice and process in rap, especially when rap is admitted as text alone, lyrics without music. However, in Knox/Beasley, the court heard the rap song in a video played at court. So what did those present actually “hear”? In the final section, I will outline the

59. Cheryl L. Keyes, “Verbal Art Performance in Rap Music: The Conversation of the 80’s,” *Folklore Forum* 17 (1984), 145.

60. Doug E. Fresh, quoted in Keyes, *Rap Music and Street Consciousness*, p. 126.

61. Keyes, *Rap Music and Street Consciousness*, p. 127.

62. Keyes, *Rap Music and Street Consciousness*, pp. 126–7.

63. Frith, p. 181.

64. Walser, pp. 193–4.

65. There is overlap here with the idea of rap’s noisiness and an essentialized notion historically of “Jewish noise.” See Ruth HaCohen, *The Music Libel Against the Jews* (New Haven, CT: Yale University Press, 2011). Of course, another overlap between prejudices against rap and “Jewish music” lies in the charge of unoriginality, borrowing or sampling.

66. Walser, p. 197.

67. John Shepherd and Peter Wicke, *Music and Cultural Theory* (Polity Press, 1997), p. 95.

court's translation of "F* the Police" through transcription, citation, and subjective interpretation – a court-sanctioned game of telephone that changed the song, illustrating the court's power to transform and even create violence.

IV. From Violence to Rap and Back Again

Judith Butler writes, "... I want to suggest that the court's speech carries with it its *own* violence, and that the very institution that is invested with the authority to adjudicate the problem of hate speech recirculates and redirects that hatred in and as its own highly consequential speech, often by coopting the very language it seeks to adjudicate."⁶⁸ Despite the court's role in composing and establishing hate, this violence, Butler argues, is solely credited to the defendants. She explains, "The legal effort to curb injurious speech tends to isolate the 'speaker' as the culpable agent, as if the speaker were at the origin of such speech. The responsibility of the speaker is thus misconstrued. The speaker assumes responsibility precisely through the citational character of speech."⁶⁹ We see this process in striking relief in what follows.

Preceding the introduction of Knox and Beasley's video "F* the Police," defined by the prosecution as music, words, and still photographs, Fleming questioned Spangler about his discovery of the rap song and the specific source of his subsequent concern. He answered for the record, "At the time stamp of 22 seconds, this was the first one that I immediately had concern. It states, this first is for Officer Zeltner and all you fed force bitches, and Mr. Kosko, you can suck my dick for knocking my riches."⁷⁰ He continued, identifying the time stamp of 42 seconds, "... it states, we are making prank calls as soon as you bitches show. We are busting heavy, and at that time there were sounds of machine guns and firing bullets within the music."⁷¹ After Fleming asked for Spangler's interpretation of what he heard based on his "training and experience," Obara objected: "Right now we're dealing with a transcription by Officer Morgan Jenkins of what he thinks the words are on a video that he has, and we have Officer Spangler telling us what he thinks the real street meaning behind these lyrics may be."⁷² He added, "... I would object to him translating what the street meaning behind these translated lyrics appears to be."⁷³ Despite discussion of the limits of Spangler's interpretive purview, Spangler was allowed to proceed, isolating places of alarming violence within the video: "At the time stamp of 53 seconds, it states that your shift is over at three. I'll fuck you up where you sleep"; "One minute and 42 seconds, I keep a 40 on my waist that will waste you like a mop nigger with a clip filled to the top. I top with some of these cop killas. Fuck the Police"; "At two minutes three seconds, it states, I ain't carry no 38 dog. I sit with a tec, that's 50 shots nigga"; "At two minutes and 14 seconds, it states like Poplawski, I'm strapped

68. Butler, p. 54.

69. Butler, p. 39.

70. Trial Transcript, p. 196.

71. Trial Transcript, p. 197.

72. Trial Transcript, p. 197.

73. Trial Transcript, p. 198.

nasty.”⁷⁴ Throughout such testimony, Spangler also inserted his translations: “40 refers to a 40 caliber handgun”; “Cop killas refers to a hollow point bullet that is able to penetrate our armored vests”; “strapped nasty” is “carrying multiple weapons.”⁷⁵ In this initial presentation of “F* the Police,” Spangler thereby interpreted the song, offering translation from his perspective, underscored by phrases such as “penetrate *our* armored vests” rather than “penetrate armored vests.” This staging of the song arguably tied “F* the Police” to the reality of violence in Pittsburgh – creating in first-person narrative a direct connection between the video and the police department’s lived context.

After Spangler completed this binding of the song to a specific opponent, the prosecution introduced the video into evidence as well as a copy of Jenkins’ transcribed lyrics, already mentioned by Obara, “as an aid to the Court and witnesses.” At this point, Obara wisely interjected, calling attention to the transcription’s distance from the original rap song: “For the record, I’d just like to note this transcribed copy I hope is not being put into evidence. It’s not authentic. It’s not the transcription of a court reporter. This is Officer Morgan Jenkins’ version of what he believes the words to be.”⁷⁶ Boas had similarly argued in pre-trial: “I just want to note for the record that this is not a transcript. It’s an unofficial attempt.” He further queried, “Would I have ever understood much of this without the aid of the transcript?” Officer Jenkins’ translation of the song arguably enabled the charge of “terroristic threat.” As Boas adduced, “... if it requires a transcript to understand what’s being said, then it’s not much of a communication.”⁷⁷

But the court admitted without real hesitation Jenkins’ transcription in both pre-trial and trial, sanctioning yet another presentation of “F* the Police.” This recourse to transcription has firm foundation in court practice. James Parker, in his study of the musical trial of Simon Bikindi, underlines the similar significance of text, of “speaking for the record.”⁷⁸ Legal scholar Piyel Halder offers an explanation for this reliance: “... auditory reception of oral evidence seems to be locked into a visual mode of estimating and examining testimony. In such a case, I would argue that oral testimony is never purely oral. Rather, it is subject to the conditions of autoptic preference or ‘real evidence’; subject to a logic of visual supplementarity.”⁷⁹ The transcript, official and unofficial, is one manifestation of this visual inclination.

With transcription and interpretation of the violence by Spangler in place, the court viewed and listened to the video. I offer now my own response to the song itself. Taking us even deeper down the rabbit hole of interpretation in some ways, I add to my analysis of the official court transcript my own staging of an aspect of the case. Despite the methodological perils, I want in this way to provide at least some information regarding the music itself, absent from the record thus far.

74. Trial Transcript, pp. 201 and 203.

75. Trial Transcript, p. 203.

76. Trial Transcript, p. 203.

77. Preliminary Hearing Transcript, p. 63.

78. Parker, p. 162.

79. Piyel Halder, “Acoustic Justice,” *Law and the Senses: Sensational Jurisprudence* ed. Lionel Bently and Leo Flynn (London: Pluto Press, 1996), p. 124.

Still unavailable on YouTube, “F* the Police” is accessible without call-out, video montage, or interview at raprehab.com. The three verses and chorus in this version correspond generally to description of the lyric content at trial. The track itself, however, actually begins with a female voice, one that repeats the phrase “DJ, DJ, Motherfucker real” at various points throughout the song. Overlapping this phrase, a male voice chants “If y’all want to beef we can beef.” The chorus of the song sounds subsequently in an even patten until the final line, which differs in timbre and emphasis from delivery of the previous lines:

You dirty bitches won’t keep knockin’ my riches

This ghetto super-star can mitigate, —

Fuck the police.

Notoriously difficult to render in Western discourses on music,⁸⁰ timbre in the chorus – the introduction of a slightly deeper, fuller tone – suggests that the last line may be a sample. Beasley and Knox had no shortage of options in this regard. In addition to the iconic NWA song, there are also more recent songs utilizing the phrase “fuck the police,” with or without slight deviation. Not only that, such recourse to rap’s history would be in keeping with rap as a genre. As Krims maintains, “For not only has it often been observed that rap music is often ‘about’ African-American music and musical memory in general; but it must be added that rap is often also about specifically *rap* music and its own history.”⁸¹ Knox’s current legal representation declined my request to confirm with his client this sampling, citing the trouble public statement has already caused Knox.⁸² And, with distortion, and traditional manipulation of samples, I am hesitant to render my own verdict on this issue. However, if this line is indeed a sample, the source seems most likely the 2009 song “Fuck the Police,” by Lil Boosie (available on YouTube), rather than the original NWA hit. Lil Boosie, a rapper from Louisiana with his own history of legal trouble, achieved some fame with his song “Do tha Ratchet.” In Ferguson, Missouri, Boosie’s “Fuck the Police” achieved wider recognition as a sonic weapon in the recent protests against the Michael Brown shooting.⁸³ Boosie’s song and Knox and Beasley’s subsequent rap share certain traits: both have three verses and a chorus, use a rather austere accompaniment figure, and feature comparable wordings (“dirty bitches”) and themes (reference to the seizure by police of money during searches). In addition to similarities in delivery of the line “Fuck the Police,” these parallels point to Knox and Beasley’s familiarity with Boosie’s song and possible sampling of it. According to this somewhat circumstantial

80. See Krims, p. 53.

81. Krims, p. 43.

82. Patrick K. Nightingale, esq., email to the author, September 21, 2014.

83. Joshua Clover, “Ferguson’s Anthem: How ‘Fuck the Police’ came to narrate the town’s humiliations and violations,” *The Nation*, September 22, 2014, <http://www.thenation.com/article/181461/fergusons-anthem#>.

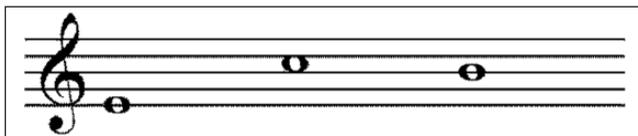


Figure 1. Motive Contour.

case, Beasley and Knox may not have even uttered the phrase in the chorus so central to their supposed threat.⁸⁴

Before the first verse of “F* the Police,” we hear another important layering for our purposes – one that may bolster the allegation of sampling. A constructed, male voice announces in a rich tone indicative of news reporting or mainstream voice-over work, “This is a certified hood classic.” Such framing situates this song within a cultural tradition and supposed canon of rap rather than any immediate lived reality while calling attention in some ways to the history of protest Knox and Beasley index and/or sample. The announcer device itself is part of this history – that is, Knox and Beasley’s song is not the first to include such declaration of its hallowed hood status. The overuse, in fact, of this device – stressed by its place in trap music, recently overloaded “with the most obnoxious ‘hood’ samples”⁸⁵ – in conjunction with the “whiteness” of the announcer’s voice reveals within “F* the Police” a certain ironic distance.

Finally, the trial discussion of the song overlooks a rather solemn instrumental motive. This motive, E-C-B, throughout the song, over a lower turning figure, conjures a rather lachrymose modality around E (see Figure 1). The somber quality of the ostinato can be credited in part to the phrase’s ultimate descent. The prominent E-C-B motive, with the final half-step drop, suggests to me representation in music during the Renaissance of falling tears or sadness more generally, a sort of word painting similarly found in rap.⁸⁶ But, for others, this motive may evoke flamenco, often modal lament with a prominent role for the guitar.⁸⁷ In either reading, this layer undercuts the bravado of the rap lyrics in performance as well as the aggression of the sound of sirens and gunfire that punctuate the song. With this in mind, the chorus especially can be read as protest and pacification rather than active assault. Indeed, the chorus highlights police corruption and the heroics of the protagonists, representative stars or leaders, with the power to make the situation right somehow through mollification (suggested by “mitigate”) and protest (“Fuck the police”). Of course, given the polysemic possibilities, the instrumental track may simply work to destabilize any single reading of the song’s violence.

84. I want to thank here the anonymous reviewers engaged by *Law, Culture and the Humanities* – one of whom drew my attention to the possibility of sampling in the chorus.

85. Josh Anderson, “Damn, Son: A Discourse on Trap,” *Spinning Sounds*, April 5, 2013, <http://spinningsounds.net/2013/04/05/damn-son-a-discourse-on-trap>.

86. Krims, p. 111. Regarding music in the Renaissance, see, for example, Claude V. Palisca, *Humanism in Italian Renaissance Musical Thought* (New Haven, CT: Yale University Press, 1985), p. 363.

87. William Washabaugh, *Flamenco Music and National Identity in Spain* (Farnham: Ashgate, 2012), pp. 8, 21–22, and 30.

At trial, after playing this complicated song on video, Fleming focused the court's attention on the individual contributions of the defendants in the song – working with Spangler to credit each point of concern to either Beasley or Knox. In so doing, Spangler and Fleming reiterated and reperformed those lyrics previously stressed by Spangler:

Fleming: Who said at 2:03, I ain't carry no 38 dog. I spit with a tec?

Spangler: That was Rashee Beasley.⁸⁸

This identification of source is perhaps the most basic response to sound. Musicologist Nina Eidsheim explains, “The auditory cortex carries out most of the lower-level (as well as higher-level) processing of complex sound using hardwired information about the sound's behavior in the physical world. It seems, therefore, that the auditory world of a normal listener is based in a canonical knowledge of sound and its source.”⁸⁹ There was no subsequent mention or exploration of the music itself. On cross-examination, Obara asked, “Now, on direct examination, the Court permitted you to cite the lyrics and testify as to what you believe some of those lyrics meant, correct?” He continued, “Could you please tell me what formal training that you have or that you've received in the form of a lecture or seminar or class in which you've received instruction on how to decipher the real meaning behind rap lyrics?”⁹⁰ Though Obara attempted to invalidate Spangler's testimony, he did not counter it with testimony ascertaining or proposing “the real meaning behind rap lyrics” or the music. He instead relied on the defendants' role, or lack thereof, in communicating the supposed violent message: “The making of an offensive song, and the steps that are necessary to put it out onto social media are the difference between the lightning and the lightning bug.”⁹¹ Acknowledging that the defendants did not hit the send button, the judge admitted, “Interesting argument.”⁹²

And yet, with no sustained recourse to the complications of rap as a genre or the various layers of voice that invalidate the court's readings of the lyrics' threat – the female voice and other males voice(s) or the solemn repeated motive – the trial concluded. The judge found both defendants guilty of terroristic threats: “The rap video by its very nature is a publication, and a publication is what becomes communicated.”⁹³ He also claimed, “It is abundantly clear to me that the conduct of the defendants here is not protected by the First Amendment because it far exceeds what the First Amendment allows.”⁹⁴ As Dan Brooks, *Combat!* blogger, lamented, “Declaring from the bench that the First Amendment

88. Trial Transcript, p. 206.

89. Nina Eidsheim, “Voice as a Technology of Selfhood: Towards an Analysis of Racialized Timbre and Vocal Performance,” unpublished Ph.D. thesis, University of California, San Diego, 2008, p. 193.

90. Trial Transcript, p. 212.

91. Trial Transcript, p. 417.

92. Trial Transcript, p. 418.

93. Trial Transcript, p. 463.

94. Trial Transcript, p. 462.

does not protect a given conduct because the conduct isn't covered by the First Amendment reveals a frightening lack of deliberation ..."⁹⁵

At the defendants' sentencing, about a dozen Pittsburgh Police officers were in the courtroom.⁹⁶ Jamal Knox in that setting told the judge, "As a rapper, you have to put on an image. Like, my business is my product." He added, "I don't want you to look at us as gangsters or anything. We just make music."⁹⁷ Rather, he insisted, "I want the court to look at me as Jamal Knox, a human being." And, as a human being, he swore, "Honest to God, no one was supposed to hear the song."⁹⁸ Beasley, with stage fright, submitted letters to the court. Whatever audacity and daring he exuded in rap did not translate to his then reality.

The court's treatment of music in this case and the judgment itself channels a general valuation of rap as well as the place of music within the law. As Parker has recently recognized, the courtroom itself is hardly constructed for appreciation of music.⁹⁹ Not only that, music has been perceived as an embodiment of emotion, and thus viewed in opposition to the law and its premise of logic and reason. In "Sounds of Prejudice," attorney Erica Schroeder explained: "Music's powerful effect on emotion makes it a dangerous addition to the supposedly logic-and-reason-based setting of the courtroom."¹⁰⁰ The specific genre of rap augments that distance; the lawlessness of rap is hardly a "fit" for the setting's aura of authority. There are generally two responses to rap as this foreign entity at court: first, the courts actually treat rap as a foreign language – in Knox and Beasley, literally translating the lyrics. Or, as legal scholar Jason Powell explains, there is "generally an unfortunate attempt at humor that shows how little courts understand the culture, and how negatively they perceive the genre."¹⁰¹ We see that reaction too in Knox and Beasley. When Fleming described some of the darker subject matter of rap, the judge interjected: "So we leave out, I Get By With a Little Help From My Friends, and We All Live in a Yellow Submarine." Fleming responded, "I know what those songs are but I didn't catch what you meant." In way of explanation, the Judge simply commented, "It was a different generation."¹⁰² This attitude toward rap and general dismissal of music enabled a certain staging and restaging of "F* the Police" that differed from the song itself. The violence established by the court was then credited to the defendants alone.

95. danbrooks, "Pittsburgh rappers arrested for lyrics," *Combat!* March 28, 2014, <http://combatblog.net/?p=6036>.

96. "2 Sentenced in Threatening Rap Video Case," *The CW Pittsburgh*, February 6, 2014, <http://cwpittsburgh.cbslocal.com/2014/02/06/2-sentenced-in-threatening-rap-video-case/>.

97. Clay Calvert, "Supreme Court Should Decide Whether Rap Lyrics are Free Speech," *The Huffington Post*, April 3, 2014.

98. Paula Reed Ward, "Sentence issued for anti-police rap video," *Pittsburgh Post-Gazette*, February 6, 2014.

99. Parker, p. 82.

100. Erica Schroeder, "Sounds of Prejudice: Background Music During Victim Impact Statements," *The University of Kansas Law Review* (January 2010), *LexisNexis Academic*, <http://www.lexisnexus.com>, accessed March 12, 2010.

101. Jason E. Powell, "R.A.P.: Rule Against Perps (Who Write Rhymes)," *Rutgers Law Journal* (Fall/Winter 2009).

102. Trial Transcript, pp. 449–50.

Justice is supposed to be blind. But in this case, it was deaf as well – deaf to the music and deaf to its own voice in the contested performance of rap at court. As Robert Cover observed, “Between the idea and the reality of common meaning falls the shadow of the violence of law, itself.”¹⁰³

103. Robert M. Cover, “Violence and the Word,” Yale Law School Faculty Scholarship, 1986, http://digitalcommons.law.yale.edu/fss_papers/2708. For an interesting discussion of Walter Benjamin’s understanding of the connection between the law and violence, as well as its relationship to the writing of other thinkers, see Catherine Kellogg, “Walter Benjamin and the Ethics of Violence,” *Law, Culture and the Humanities* 9(1) (2011), 71–90.