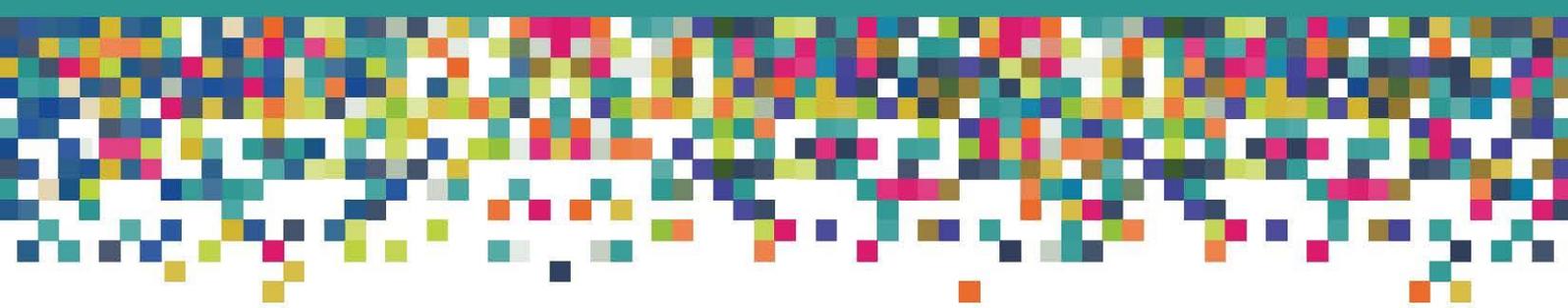




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## RAP MUSIC AS EVIDENCE

*A Prosecutorial Tactic of Institutionalizing Racism*

**Claire Ruder**



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## Abstract

*Rap music is increasingly being introduced as evidence within criminal trials, and this phenomenon correlates with higher conviction rates and longer sentences; the majority of defendants in these cases are Black<sup>1</sup> men (Nielson & Dennis, 2019; Dennis 2007). I aim to investigate the extent to which this phenomenon further institutionalizes racism into the U.S. criminal justice system. To do this, I applied Critical Discourse Analysis to the concluding arguments from the transcripts of three criminal trials in which rap music videos and lyrics were used as evidence against five defendants. Within concluding arguments, the prosecution and the defense summarize the evidence in an address to the jury. This afforded a comparison of the ways in which rap is framed by both parties. In my analysis, I find that the state utilizes rap music to reinforce racialized stereotypes and to obscure the artistic value of rap music. The defense relies on reframing devices in an attempt to disarm the prejudicial impact that these stereotypes cause, such as making implicit stereotyping explicit and using hypothetical scenarios to conjure empathy for the defendant. Connections to hegemonic discourses such as nationalism and post-racism reveal rap as evidence to be a camouflaged method of institutionalizing racism within the site responsible for enacting the oppressive power structures of the prison-industrial complex: the courtroom.*

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<sup>1</sup>Throughout this dissertation I will capitalize “Black” when used to mean race or culture. This decision follows the recent change made by the Associated Press editorial guidelines, which “[convey] an essential and shared sense of history, identity and community among people who identify as Black” (Daniszewski, 2020).

## INTRODUCTION

Darrell Caldwell, a 26-year-old from Los Angeles, creates rap music under the alias Drakeo the Ruler. His sound is described in the *Washington Post* as “a smoggy alien sunset, evoking paranoia in paradise, dystopia at the magic hour, an endless summer dissolving into the end of days” (Richards, 2018). Just after the release of his celebrated 2018 album, *Cold Devil*, Caldwell was indicted for a range of criminal charges related to the 2016 murder of 24-year-old Davion Gregory, including five counts of attempted murder, conspiracy to commit murder, and murder in the first degree. Gregory’s actual shooter was apprehended and confessed, but this did not absolve Drakeo of the charges. L.A. prosecutor Jackie Lacey asserted that the Stinc Crew, Caldwell’s rap group, was a gang collectively responsible for Gregory’s murder (Weiss, 2019). In the shooters’ confession to an undercover cop, he says that “we were there to go after Drakeo’s rap rival, RJ” (Weiss, 2019). Although this alleged target, RJ, did not attend the party where the shooting took place, Lacey proposes a theory; Gregory’s death was a conspiracy by the Stinc Crew to murder RJ, but they accidentally shot the wrong person. Caldwell faced a life sentence for a shooting that he did not commit, based on a theory that he is a part of a gang that conspired to kill someone else, all verified by a vague pronoun reference in the shooters’ confession and Drakeo’s music.

The state's theory tying Drakeo’s involvement to Gregory’s murder balances on a depiction of rap music that did not align with my understanding of rap as an avid listener of the genre with a music journalism background. The details of this case reveal that this warped representation of rap music favors the prosecution. Claiming the Stinc Crew is a criminal gang on the basis that members make music together is reductive as it ignores the creative reasons that young artists collaborate. Beyond mischaracterizing rap music, the connection that is drawn between a rap crew and a criminal gang poses harm to a Black artist on trial like Drakeo. By repeatedly displaying imagery of a group of young Black men holding guns or wearing ski-masks, the prosecution situates the defendant within imagery perpetuated by the racialized moral panic surrounding gangs, which is framed in news articles as an alarming problem “flowing from urban to suburban” areas (Hu & Dittman, 2019: 30). Through stereotyping, media depictions of gangs dehumanize the people within them by grouping Black and Latinx people together

as collectively hyper-violent, cruel, and dangerous to white suburban areas or to vulnerable children (Hu & Dittman, 2019).

Quantitative studies conducted by Fischhoff (2006); Fried (1996, 1999); Dunbar (2020); and Dunbar, Kubrin, and Scurich (2016); provide empirical evidence that rap music's association with racial stereotypes has a damaging impact on the impartiality of jurors. Fried (1996, 1999) developed a study that tests the impact of genre on the discernment of harm, later repeated by Dunbar, Kubrin, & Scurich (2016) which reproduced these conclusions; Lyrics presented as rap music, are deemed "more literal, offensive, and in greater need of regulation" compared to the same lyrics when they are presented as country music (Dunbar, Kubrin, & Scurich, 2016: 280). Fischhoff sought to determine how exposure to "gangsta' rap lyrics" impact a jurors perception of the defendant in a murder trial (2006). He determined that exposure to an excerpt of these lyrics resulted in the perception that a defendant is more likely capable of committing a murder (Fischhoff, 2006). Fischhoff was surprised to find that some subjects perceive the lyrics as a worse reflection on the defendant's character than the murder charge itself (2006).

*Rap on Trial*, written by Erik Nielson and Andrea L. Dennis, traces the history of a novel prosecution tactic that is now becoming routine; through their research, they have found over 500 cases in which rap music has been introduced as evidence, spanning district and federal levels, dating back to 1991 (2019: 12). Only 1-2% of these defendants are white and less than 5 defendants are women; most are young Black men, followed by young Latino men, from the ages of 18 to 25 (2019: 71).

Rap lyrics have external prejudicial impacts on a jury and judge that must be considered carefully against their probative value within a criminal case. When compared to white defendants and controlling for differences in criminal history, Black defendants receive greater sentencing severity "on average 19.1 percent longer" (U.S. Sentencing Commission, 2017). This is due to racial disparities in the charges brought on by federal prosecutors, mandatory minimum sentencing requirements, and racialized gang-related penal codes (Ingraham, 2017). We must be critical of the role that racial prejudice plays in conviction rates, possibilities of bail, probation requirements, and considerations of appeal. By exposing a judge and jury to rap lyrics, even when the defendant didn't write them (Nielson & Dennis, 2019: 136); or when the defendant composed them years before the alleged crime (Weiss, 2019); the prosecution

can allude to poisonous stereotypes of Black and Latino men that have palpable impacts on trial outcomes. How does this novel prosecution tactic reflect current shifts in the modes of domination through which institutional racism operates? Rap has exploded in commercial success and global cultural power; why has the use of this tactic increased simultaneously with the exponential rise of rap music? This phenomenon exists within societal power structures that must also be addressed to effectively understand the use of rap as evidence.

## THEORETICAL FRAMEWORK

Rap music as evidence is as much a part of the U.S. courts and institutional processes as it is a part of pop culture and the social conception of race. The literature that I have selected will situate this phenomenon within fluctuating relationships between perceptions of race and systems of institutional and cultural power. I will begin this section by reviewing important debates within the study of rap music, and by discussing the prison-industrial complex and racialized surveillance as important aspects of institutional racism which frame this dissertation. Then, I will examine the fallacy of post-racism and the ways in which tough-on-crime and post-race discourse reinforce hegemony and obscure inequality. Lastly, I will consider how the relationship between pop culture and the state is instrumental in producing discourse which conceptualizes the ways in which we understand race and identity. After this, I will briefly outline a conceptual framework that will utilize aspects of this theory to frame my research question and objectives.

### **Rap and Realness**

Rap music began as an artform that reflected and engaged with the struggles of Black and Latinx urban communities during the 70s and 80s; in the following decades, hip-hop studies emerged as a field dedicated to understanding the contradictions that surround the genre and its public reception (Rose, 2008). Hip-hop studies examines hip-hop music and subcultures in light of the ways in which they negotiate with societal power-structures. One of the central contradictions that Hip-hop studies considers, is the constantly shifting relationship between rap and reality (Neal, 2004). Tricia Rose, a sociologist and founder in the field, analyzes the polysemic phrase, “Just Keeping it Real”, by examining the paradigm of music that audiences deem to be fiction versus music that they deem to be real (Rose, 2008). “Keeping it real” can

refer to artists speaking honestly about dire circumstances within poor Black communities, or it can refer to rejecting the “hyper-consumption” that increasingly pervades imagery within rap music; Rose (2008: 134) sees that it is most used, however, as a defense from critics that say hip-hop encourages violence, homophobia, and sexism through its lyrics.

There exists an ubiquitous expectation that rappers must ‘keep it real’ because realness is a genre convention of rap music. The belief that rap is confessional, however, is damaging because it leads rappers to defend the veracity of their lyricism “no matter how manufactured, invented, distorted, or insanely stereotypical it may be” (Rose, 2008: 137). This is reinforced by fans that attack a rappers’ artistic credibility if they are found to be stretching the truth (Light, 2004; Rose, 2008). This is consequential because reductive or dramatized depictions of “the ghetto” are derived for entertainment, but they are sold to the world as “unmediated truth”, reducing Black urban communities, and Black men, to criminality and misogyny (Rose, 2008: 138). This is reinforced by corporate music industry interests which profit from promoting this glamorized, hyperbolic depiction of a self-destructive-yet-stylized Black livelihood (Blair, 2004). Although the stronghold that music industry giants have on what kind of music is created has lessened as the barriers to making music have become more affordable, Universal Music, Sony BMG, and Warner Music, are still the most influential forces in music. These pressures ensure that rappers maintain their facade of realness, regardless of the degree to which it perpetuates stereotypes.

Although negative stereotypes can be found in any subgenre of hip-hop, most notoriously in gangsta rap, it is misplaced to frame the discussion of these stereotypes as though hip-hop music is to blame. Stereotypes are a natural heuristic that we rely on to process signs and signifiers and turn them quickly into meaningful messages (Hall, 2013). However, advertisements, magazines, news reporting, and other mass media, have utilized this mental shortcut in ways that create pervasive, demonizing understandings of the other. Activist and feminist theorist bell hooks says, “Difference can seduce precisely because the mainstream imposition of sameness is a provocation that terrorizes” (1992: 22-3). Capitalistic enterprises produce and co-opt difference through representing race in ways that are made ahistorical, flattened of complexities, and commodified for the pleasure of the hegemonic classes. From Tipper Gore in the 80’s to Criminal Behavioural Orders against Drill rappers in the U.K., there

have been calls to censor hip-hop since the genre's origin (Hancox, 2018; Klein, 2011). The public hysteria surrounding hip-hop points to themes within lyrics and music videos that portray sex, violence, homophobia, and other derogatory or shocking content, but the notion that hip-hop should be censored circumvents discussions of the root of these themes. Capitalism, white supremacy, and patriarchy led to the hegemonic norms that rappers are blamed for espousing in an offensive style; calls to censor rap music insinuate that Black creativity is to blame (hooks, 1992: 89).

### **The Fallacy of Post-racism**

Within the past half-century the U.S. prison system has grown exponentially, resulting in the highest rates of incarceration in the world (Heitzeg & Brewer, 2008). The "punishment economy" was established during the 1980's when the Reagan administration promoted economic deregulation, which catalyzed the neoliberal globalized version of capitalism that exists today (Davis, 2003: 90). This coincided with the stripping of welfare agencies, despite the increasing need for assistance as many workers lost their jobs due to deindustrialization (Sudbury, 2005; Nielson & Dennis, 2019). Growing privatization has also occurred in prisons; for-profit prisons have increased 47% from 2000 to 2016, and private prisons hold 8.5% of incarcerated people in the U.S., excluding immigration detention, where the rate is much higher at 73% of incarcerated people (Bureau of Justice, 2018; Gotsch & Basti, 2018). Civil rights activist and Critical Race theorist Angela Davis, in *Are Prisons Obsolete?*, explains the prison-industrial complex as a term for the rapid growth of prisons which necessitates "understandings of the punishment process that take into account economic and political structures and ideologies, rather than focusing myopically on individual criminal conduct and efforts to 'curb crime'" (2003: 85). The prison-industrial complex examines the intersections of power between government, corporations, politicians, and media, as each of these groups profit under capitalism from this exponential and racialized growth of the punishment apparatus; popular discourses are constructed by these groups to divert attention from their growing power (Davis, 2003).

"Tough on crime" discourse, according to mass-incarceration researcher Marc Mauer, asserts individualism, acts to politicize crime, and promotes conservative ideology (1999: 13). This discourse is no longer used solely with respect to criminal justice policy, however. It is

“consistent with increasingly harsh attitudes and policies toward welfare recipients, immigrants, and other politically unpopular and marginalized groups,” and it can also be found in “school expulsion policies, homeless ‘removal’ and other areas as well” (Mauer, 1999: 14). Tough on crime discourse operates to justify the rapidly expanding prison system, as it emphasizes personal responsibility in crime over social factors. This discourse is racialized when referenced to explain disproportionate Black and Latino representation in prison populations, because the narrative claims that people from these racial backgrounds make poorer life-choices, or are inherently more criminal than white people.

The belief that the punishment economy is not racialized fits within the larger hegemonic umbrella of post-racial discourse. The fallacy that America is post-race, borrows many ideals from tough on crime discourse, particularly notions of fairness within society, and growing American individualism. “Post-racial America” is based on the premise that racial equality is legislated through the Civil Rights Act of 1964, and therefore, issues of racism have been institutionally eradicated (Ferguson, 2019). Racism within institutions did not disappear. Instead, racism has become coded through laws which render race less visible, but result in consequences which disparately benefit the white and wealthy or disparately harm marginalized groups. Afforded by ‘the war on drugs’, and worsened as politicians benefited from the popularity of tough on crime discourse among voters, cities adopted stop and frisk practices, ‘three strike’ policies, mandatory minimum sentences, and investments in prisons and police (Nielson & Dennis, 2019: 41). Herman Gray, a sociology professor and Black cultural studies theorist, writes within his essay “Race after Race” that post-raciality asserts “a future in which race is benign, if not inert” (2019: 24). The belief that race no longer plays a role in privilege within America constructs its “own racial order of things, which it claims to diminish if not eliminate” (Gray, 2019: 24) Gray is highlighting the discursive power that notions of post-raciality possess, as post-racial discourse informs and “operates through knowledge, practices, and technologies— codes and algorithms— that take hold of genomes, zip codes, credit scores” (2019: 24). Although post-race discourse would assert that a color-blind approach is equal, by ignoring racial-difference, technology, machine learning programs, and criteria for credit-worthiness have bias embedded into their design. Post-racial discourse, and the apparatuses that utilize it, do more than result in racially-disparate impacts: They govern our “bodies, morals, manners, and norms” (Gray, 2019: 24).

## **Racialized, and Racializing, Surveillance**

Surveillance acts as a powerful method of control that simultaneously asserts norms; historically, surveillance is a constant state of being for Black people in America. Simone Browne, in her book *Dark Matters: On the Surveillance of Blackness*, links surveillance practices to “the production of norms pertaining to race” (2015: 16). Surveillance is a practice of othering, meaning, a practice which produces difference through representing race, identity, and culture in ways that erase history and nuance (Pickering, 2001). “Incarceration [is] a condition of colonization and captivity”, and it is also an extreme mode of surveillance; we would be remiss to understand the prison economy solely as a modern institution, considering the imperial U.S. is founded on incarceration (Browne: 43). Police surveillance signifies whom the state determines to be ordinary and acceptable, versus whom the state labels as other; Browne calls this practice “*racializing surveillance*”, because racialized surveillance produces a social understanding of Blackness as innately suspicious (2015: 16, italics added).

Studying racialized surveillance through resistance is important as dominant power is not a total force enacted on passive subjects; Rap music directly confronted the oppressive surveillance practices that plagued communities like the Bronx, and Compton, the East and West Coast hubs in which gangsta rap was developed. N.W.A.’s infamous track “Fuck tha Police” (1988) became a protest anthem for the Rodney King riots in against police brutality in Los Angeles (Kennedy, 2017). Police responded to this moment of resistance by escalating surveillance in Black communities, and then, by tracking and targeting rappers specifically. The New York City Police Department compiled the “Black binder” in the late 1990’s, and distributed it to other police departments across the U.S. (Nielson, 2010: 1254-1255). This binder contained detailed information, including social-security numbers and photos, collected on popular rappers and their entourage; this practice echoed the COINTELPRO program during the civil rights era in which the FBI and other police-organizations monitored Black artists and activists (Nielson, 2010). This racialized and racializing surveillance fundamentally changes the ways in which Black people behave, perceive themselves, and experience the world. Bartky, within “Foucault, Femininity, and the Modernization of Patriarchal Power”, describes the process through which “a generalized male witness comes to structure a woman’s consciousness of herself as a bodily being” (1990: 105). This awareness stems from the internalization of the constant perception of being watched, which in turn

becomes a part of one's own perception as this way of seeing is embedded into the construction of the self. The historic persecutorial surveillance of Black bodies implanted itself in the identity of Black Americans, who surveil their own thoughts and performativity because of the ever-present voyeur of white supremacy. W.E.B. Du Bois refers to this effect of seeing oneself from the view of others as “double-consciousness” (Du Bois, 2007: xiv).

Black respectability is a form of self-policing that is engrained through panoptic institutions and spaces such as the education system, work-place environments, and public space. Kerrison, Cobbina, and Bender study the racialized surveillance of Black youth through examining the ways in which Black millennials living in Baltimore grapple with the demands of “Black Respectability” politics, which they define as “Black citizens’ individual and collective responsibility to prioritize self-policing, polish, and propriety” (2018: 7). The authors find that “a poor respectability performance can, and justifiably according to certain polls, cast actors as criminally other and at risk of confronting state violence” (da Silva, 2013; as cited in Kerrison, Cobbina, & Bender, 2018: 8). When Black men are shot by police and media reporting focuses on the hoodie they were wearing, they deem a Black man’s ‘improper’ respectability performance as adequate justification for pulling the trigger— like the shooting of Freddie Gray in 2015, Tamir Rice in 2014, Trayvon Martin in 2012, and tragically, many others (Nguyen, 2015). Although the phrase ‘self-policing’ may give the impression of agency, Black people are up against the threat of sanctioned violence.

### **Popular Culture and the State**

Popular culture and the state are sites of constant ideological transformation. Stuart Hall interrogates the term popular culture, and he argues that all cultural practices and artifacts can be understood through negotiation, as they cannot be determined to be purely dominant or purely resistant (2018). The word “popular” can mean that which is most-consumed, implying a lack of critical interrogation, or, that which is for the masses, implying an anti-elite nature; in the case of popular culture, it is aspects of both, and this tension will always be in flux (Hall, 2018: 940). Through this, Hall states that viewing all popular culture through “relations” to other forms, groups, and practices, requires that analysis does not separate an artifact from the actions that it is attached to, such as the production, consumption, or circulation of that artifact (2018: 931).

The ideological struggles taking place through pop culture discourse and state discourse are not on a binary between hegemony and resistance, but a perpetual negotiation (Watkins, 2004). To understand negotiations between discourses, it is necessary to first address the interactions between discourse and reality. Within *The Archeology of Knowledge*, Foucault describes history as a field “made up of the totality of all effective statements”, and each of these statements, which can be text, music, speech, video, websites, and all other media, are themselves events which sit within “the occurrence that is proper to them” (2013: 29). By defining history as a culmination of documentation of the past, it is possible to understand that history is not reality, but rather, a certain reflection of reality (Foucault, 2013). Each statement represents reality from a specific point of view within a moment of context, making each statement a piece of discourse (Foucault, 2013). Pop culture produces these discursive statements on a mass scale, and we are immersed in them constantly. Consequently, pop culture is one of the most influential institutions in ‘writing’ history, which, through Foucault’s definition of history, is also the means of constructing reality. Conversely, the state on every level produces discourse, such as laws, constitutions, and speeches on to the masses; these statements have widespread consequential actions attached to them, like incarcerating people, or distributing welfare, and these statements also create history and therefore reality. The state and pop culture are also regularly understood through one another, because discourses, and the occurrence that each discursive event sits within, are understood intertextually by nature.

Rap music discourse, and the contradictions and struggles over meaning that it encompasses, is an example of this intertextuality. Rap music is popular culture and it has tangible political impacts which are visible when you examine it within the occurrence that it originated in: the state oppression of Black urban communities, which has been long-standing, but heightened under the growing punishment economy. The state responded to rap through laws steeped in language that further racialized criminality, and these statements from the state, and from pop culture, derive meaning in relation to one another.

A core theoretical basis of critical race theory is understanding that race is a social construct; discourse that is produced by both pop culture and by the state are vital to constructing how we define, see, relate to, and even live, race. Moments of tension within and between discourse are vital to examine because they reveal so much about reality. Tensions within popular media

cultures “are central to how we (re)produce and experience” race; popular culture is a valid, and necessary, site to examine in order to better understand the modes through which racial inequality is enacted, perpetuated, and resisted (Watkins, 2004: 558). The spaces in which tensions within popular discourse overlap with tensions within state discourse are even more concentrated and contextualized; this is the space that my analysis will focus on.

### **Conceptual Framework**

The discursive relationship between media produced by pop culture and the state is a crucial foundation for approaching the objectives of this research. State discourse establishes why rap music is an effective conduit for furthering the prison-industrial complex and surveillance of Black communities, while pop culture discourse simultaneously purports rap music as an effective avenue for Black creatives to achieve success. Both fit within post-racial discourse within the U.S., as the state adopts a position of colorblind equality, and pop culture does the same through heralding singular examples of Black success, like Cardi B, as proof of a post-racial society. As it fits within the assumptions of post-race, tough on crime discourse is an important lens for analyzing stereotypes connected to individualism and fairness. Black defendants on trial within the U.S. criminal justice system are congenitally tied to stereotypes of Black criminality. Therefore, the presence (or absence) of connections to tough on crime discourse and its underlying racialized assertions will indicate specific ideological positions.

Keeping it real, one of the most central cultural debates in rap music, is an important discourse of focus because the difference between autobiography and fiction is relevant to considering rap music as evidence of a crime. I will look for reflections of the central tensions within keeping it real, which include; depictions of rap as reflective of the lived-experience of Black men; depictions of ‘realness’ in rap as a rejection of capitalistic genre conventions in mainstream rap; and, depictions of rap as a defense against lyrics that contain vulgar and offensive genre conventions. Each of these positions also assume specific representations of rap music, race, criminality, and justice, and these assumptions will indicate the underlying ideological positions of a speaker.

On a broader level, I will be focusing on moments of tension. Hall (2018), Foucault (2013), and Watkins (2004), write about the importance of tension within discourse; this will be vital to the

process of examining the relationship between rap music and institutional racism embedded in the trial process. Tension between discursive elements within texts indicates that negotiations between aspects of hegemony and aspects of resistance are taking place, and these negotiations must be analyzed with relation to each texts' occurrence. This framework will be used to center my research procedure and process in the most relevant theoretical concepts, serving to guide the research process rather than limit the scope of my analysis.

## RESEARCH OBJECTIVES

Rap music presented as evidence within criminal trials is an under-researched yet increasingly widespread prosecutorial tactic. I aim to add to the body of knowledge that exists on this topic by specifying my research on the proceedings that take place within a courtroom. To accomplish this, I will apply Critical Discourse Analysis to the concluding arguments in the transcripts of three different criminal cases that encompasses five different defendants on trial. I will do this through examining how rap lyrics as evidence are framed by the prosecution and the defense within each trial, while providing a specific focus on connections within the texts to relevant societal discourses and racialized stereotypes. As the purpose of using CDA will be to examine the actions and ideologies of underlying discourses, my research question is this:

To what extent does the use of rap lyrics as evidence in criminal courts institutionalize racism in the U.S. justice system?

Past research has established that this phenomenon relies on constructing racialized stereotypes to characterize young Black defendants in ways that will likely prejudice jurors. Determining the extent to which this occurs through an in-depth discursive analysis will provide rich contextual information surrounding how rap lyrics are used during a trial. I will measure this extent by considering the methods through which racialized stereotyping takes place, and then examining the importance of rap music in the construction of these stereotypes. I will also weigh the implicit or explicit nature of stereotyping, and examine the possibility that prejudicial harm could be mitigated by analyzing the defense's response in each case.

## METHODOLOGY

Critical Discourse Analysis (CDA) is a methodology and theory that analyzes social practices and societal power through focusing on a specific moment of discourse (Fairclough, Graham, Lemke, & Wodak, 2004). It is centered around a deep critical reading of a text or texts, which involves coding for patterns in linguistic, interactional, and interdiscursive elements that are then related to other discourse and situated within broader power structures (Fairclough, 2001). The trial transcripts that I will analyze are documents of discourse occurring on a micro-level, that is, within individual and group interactions that make up the “social practices of discrimination” which occur locally; these interactions fit within the “global (macro) level” through which institutional racism takes place (van Dijk, 2018: 146). This is not the only relationship between discourse and racism, however; cognitive processes, otherwise known as internal prejudices, are also “acquired and learned” through discourse (van Dijk, 2018: 146). CDA is able to consider cognitive, micro, and macro levels of racism, through a procedure of analysis that is cyclical. Meyer considers this process a kind of “hermeneutic circle”, because deriving the meaning of a text can only occur through examining it through context, or, in light of other cognitive, micro, and macro information (2001: 18). It becomes cyclical through the focus on isolated components of a text, such as format, sentence structure, and grammar. The hermeneutical process can be difficult to trace due to its cyclical nature, therefore, a concrete procedure is critical to ensure that analysis is always grounded in the texts, and remains consistent throughout.

CDA is distinctive from discourse analysis because it is critical; by this, I mean that it assumes a normative approach to social science research and it is used to better understand a specific problem or inequality (Fairclough, 2001). This, in itself, can pose difficulties, as societal problems are contested. A critique of CDA then, is that “in the first place it is prejudiced on the basis of some ideological commitment, and then it selects for analysis such texts as will support the preferred interpretation”, which could also have the effect of excluding alternative interpretations (Widdowson, 1995, cited in Meyer, 2001: 4). I would argue, however, that applying CDA through a procedure that remains properly grounded in the textual surface of the discourse would invalidate an ideological claim that is unfounded. Research that is normative should not be invalidated on the basis of having ideals, so long as the researcher is

forthcoming about what these ideals are. In the case of this dissertation, my intention is to better understand the processes through which racism is institutionalized with the intent of informing solutions towards achieving a society that is free of institutional racism.

Considering underlying ideological commitments within research relates to the core question that discourse analysis methods pose;

Is it possible to perform any research free of a priori value judgements, and is it possible to gain insight from purely empirical data without using any pre-framed categories of experience?  
(Meyer, 2001: 5)

The efficacy of critical discourse analysis balances on the acknowledgement that the researcher will inevitably approach research from a specific point of view or bias. By giving thorough care throughout the research process to reflexivity and procedure, I believe that CDA exposes and incorporates bias rather than concealing its inevitable role in critical analysis. As argued by Fairclough, Graham, Lemke, & Wodak, the position of the critical researcher is embedded in social life, therefore, what Widdowson refers to as prejudice, can be viewed as “critical reflections” which are as much about the text and society as they are “critical self-reflections on our own positions, motivations, and actions” (2004: 1).

### **Ethics and Reflexivity**

Attempting to adopt a neutral position would only serve to conceal the factors that shape my hermeneutical understanding; instead, I aim to carefully consider my personal system of representation through the research process. Stuart Hall describes our “different ways of organizing, clustering, arranging and classifying concepts”, and relationships between those concepts, as a unique and moldable “system of representation” through which we derive all meaning (2013: 3). My perspective is shaped on the basis of my intersecting identities; I am a white, cisgender and heterosexual woman. I am able-bodied, and grew up in a middle-class family. Both of my parents are college-educated. I have had the means to attend university, and pursue a postgraduate degree internationally. My systems of representation have also been shaped by my education. A shortcoming in my higher education that I believe is necessary to include: I have never taken a course solely focused on race. Media studies is an interdisciplinary field that has introduced me to works from Kimberlé Crenshaw, Patricia Hill

Collins, and other seminal critical race theorists. However, this basic knowledge is an insufficient foundation for authoring an entire dissertation predicated on race and structural racial inequality. Therefore, I have done my best to establish this foundation through extensive background reading guided by my academic advisor. I also aim to be reflexive in my relationship to rap music. I listen to hip-hop frequently but most of the time, I am not listening with a critical lens. I have tried to balance this by educating myself on rap music's negative externalities which have been exacerbated by the genre's commercialization.

Because of these factors, I am estranged from understanding the experiences of those that are impacted by rap used as evidence: in particular, the five young Black men whose lives were drastically affected by the verdicts of the three trials that comprise the data for this study. Trial transcripts are a part of the public domain unless a judge motions to seal them to protect the identity of someone involved in the trial. However, due to the personal nature of criminal cases and the social stigma that accompanies a criminal record, I will redact information that could be used to identify the defendants. I have created a code to anonymize the transcript excerpts and my notes throughout the research process. The only copies of the original transcripts are stored on an encrypted LSE server with password protection. Lastly, as a safeguard for conducting CDA, I have performed an intercoder reliability test in which I asked another person to code a random selection of the sample texts. I noted and discussed the differences, and used these results to strengthen my codebook.

## **Sampling**

I relied on convenience sampling in which my dataset was determined based on availability, because accessing transcripts proved to be a difficult process. I created an account on PACER, or Public Access to Court Electronic Records, which is the U.S. database through which federal-level criminal, appellate, and bankruptcy cases are made available to the public (this excludes district cases). Downloading these transcripts costs hundreds of dollars each, so PACER was not a viable source of data. Although there are a handful of high-profile cases that receive media scrutiny like *Drakeo the Ruler*, the majority of cases in which rap is introduced as evidence are not publicized, making case details difficult to find. The book *Rap on Trial* (2019), discussed earlier, is the most in-depth research on this phenomenon to date; I consulted this book to assist in creating a list of potential trials to seek copies of (Dennis & Nielson). I

used information on this list to search the internet and generate a database of contact details for those involved in each trial.

Through reaching out to public defenders, prosecutors, law firms, writers, non-profit organizations, and the authors of *Rap on Trial* (2019), I have obtained four transcripts in full and primary evidence that was used for a fifth case. Four transcripts proved to be extensive, consisting of 51 PDF documents. The parameters of this dissertation would not allow for an in-depth reading with that much data. To account for this, I have limited my analysis to the concluding arguments presented by the defense and the prosecution. I selected this component of the trial as it affords close comparison between each case; the formatting is standardized because the prosecution and the defense have equal time limits to speak, and the concluding arguments contain condensed presentations of the evidence. This allows me to focus on rap lyrics, how they are framed, and how they are contextualized in relation to other components of the trial. I have chosen to exclude the fourth transcript from my data set because rap is not mentioned in the concluding arguments of this case. I cannot measure how rap is used to institutionalize racism when rap music is not grappled with within the sample. This also affords a greater depth of analysis because my sample is less voluminous.

### **Design of Research Tools**

Fairclough describes a three-dimensional procedure for applying discourse analysis in a way that is specifically designed for inquiries of social change (2010). I selected this technique because it dictates that the explanation of discursive patterns should be “political” with careful attention given to “power and domination” (Fairclough, 2010: 94). As institutional racism is the social problem I aim to address, these dimensions of discourse and interdiscursivity will be central to my analysis. O’Halloran designed a diagram of “the scope and foci of” this approach adapted from Fairclough (Fairclough, 2010; O’Halloran, 2011: 447). The diagram visualizes the analytical process of relating dimensions of discourse and dimensions of analysis (see Figure 1). This research procedure is flexible, in the sense that it does not dictate a starting place or end. Rather, it creates bi-directional connections between language, the processes of “production and interpretation of a text”, and surrounding “social practices” through three lenses of analysis: Description, interpretation, and explanation (Fairclough, 2010: 94-6; O’Halloran, 2011).

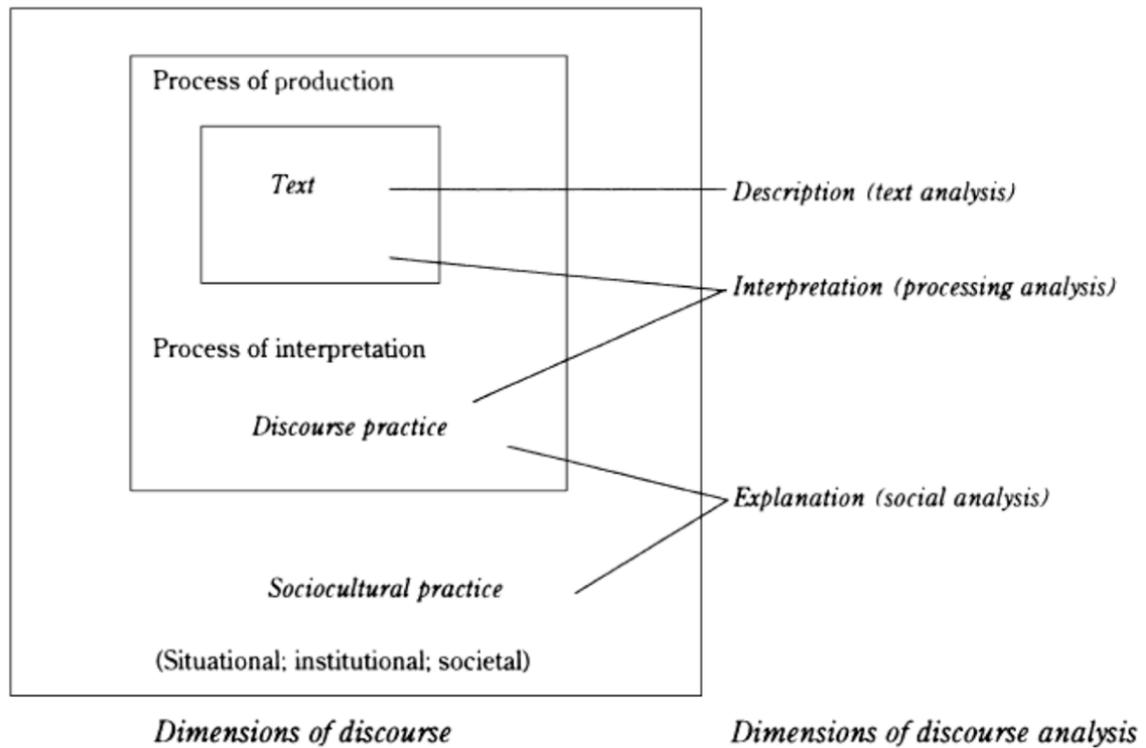


Figure 1. A visualization of implementing discourse analysis (O'Halloran, 2011)

Through employing this procedure throughout the research process, my analysis is organized as follows; first, I will examine how rap is framed in each case. Second, I will examine the racialized stereotypes presented by the state and the approaches taken by the defense to disarm the prejudicial impact of these stereotypes. Lastly, I will consider overlaps in speech of the defense and the prosecution: Both denounce rap music throughout each case. Then, I will reconsider my research question, and examine the extent that rap as evidence institutionalizes racism.

RESULTS AND ANALYSIS

Within the closing argument of a trial, "lawyers consciously or unconsciously construct narratives—theories of a case—that they hope will resonate with the jury, causing jurors to adopt their interpretations of what happened and to reject the interpretation presented by the opposing side" (Delgado & Jean, 2017: 45). The narratives or theories that the prosecution and the defense present are not based on what they deduce to be closest to what actually happened. The popular perception of the ethos of criminal law is that the justice system is about uncovering the truth regarding guilt or innocence, due to popular media depictions such as the TV show "Law & Order". However, the actual goal of each lawyer is to persuade. This is the driving reason for the vast differences in the narratives presented by the defense, versus by the prosecution, despite both parties relying on the exact same evidence, testimony, and other trial materials to create a theory of what happened. Theories are aimed at the jury, which is a group of local citizens that are selected to watch and listen over the course of the case, and at the end, decide guilt or innocence. As of 2019, across all states, the jury must be unanimous in their decision or the case is eligible for retrial.

The cases and defendants are coded and I have included a chart below to clarify which defendants are tried in each case. The verdict, and the true guilt or innocence of the defendants, is not my focus. I will only summarize the premise of each case, and I will not go into more detail than necessary to contextualize the discourse analysis.

Case 1	Defendant A, B, C
Case 2	Defendant D
Case 3	Defendant E

Figure 2. Table specifying the defendants tried in each case.

**Rap as Evidence: Three Cases**

*Case 1*

Some 20, some 40. I'm 4 Double 0," and you know from Tom Walker, 4 Double 0 is a--is a gang, a Blood gang, a Blood set of a set of Bloods, and that's what these guys espouse to be, and, of course, "We all loyal. You can't break the code." That's what these gang members are telling the

world. We're loyal to each other. We're in this gang, and we're loyal to each other, and we're gonna put it out there on the Internet so everybody knows it. Okay? (Case 1 prosecutor, p. 1763)

Gangs are so powerful. Whether you're officially in the gang, whether you're an associate, it's the point it's just that power that you have. It's the terror that you put in the hearts of people who ain't got nothing to do with that gang life, 'cause you don't know what's gonna happen. You don't want to be killed for no reason... (Case 1 prosecutor, p. 1845)

The first case is complex, spanning several alleged offences that occurred in multiple different locations, with three defendants on trial. The theory presented by the state claims Defendants A, B, and C are in a gang, and all acts that occurred were driven by revenge against a rival gang. The prosecution relies on two rap music videos to show that the defendants were gang members. The first quote exhibits how the prosecution introduces a lyric, and then explains each line in a way that fits within the narrative that they are presenting. They interpret meaning of the lyrics strictly in relation to "Bloods" and "this gang", and they ignore other aspects of the words such as alliteration, repetition, or cadence (Case 1 prosecutor, p. 1763). Instead, they frame "Some 20, some 40. I'm 4 Double 0" as coded enemy messaging. By stating, "we're gonna put it out there on the internet so everyone knows it", the prosecution denies the jury the ability to see creative value within the lyrics, instead presenting it as though the defendant is boasting about gang-life (Case 1 prosecutor, p. 1763). This framing obscures the potential that the defendants are striving for a music career, and further lessens the ability of the jury to perceive this music as an art form.

The second quote shows how the gang narrative that is embedded in the prosecution's translation of the defendant's lyrics is extended to personally include the jury. Even though the prosecutor is colorfully re-telling the testimony of a witness, they switch to the pronoun "you" to accomplish two discursive tasks: one, separating the jury from the defendants, and two, positioning the jury as potential targets of gang violence. This is reinforced by speaking in broad terms of gang power, insinuating those "who ain't got nothing to do with that gang life" could be "killed for no reason" (Case 1 prosecutor, p. 1845). This makes jurors fearful, as well as righteous in giving a guilty verdict even considering that this will put the defendants in jail for life. Characterizing the defendants as a group of powerful killers that inspire "terror", reduces the ability of the jury to empathize with the defendants. A rap music video is effective

evidence of this characterization, so long as it is stripped of performance and artistic potential and framed as a profession of one's criminality.

### *Case 2*

Corporal Goodwin told you that he heard a male voice, angry, continually repeating himself using the F word; your boy is done. Ladies and gentleman, does any of that profanity and popping shots sound reminiscent of the Defendant's lyrics? Do you think those words might have come from the Defendant's mouth? So, you see, if he isn't the one who fired, it doesn't matter. He willfully participated with the intent to make this crime succeed. (Case 2 prosecutor, pp. 28-9)

In the second case, rap lyrics are introduced to show that Defendant D had knowledge of and an expressed interest in firearms. This correlation was important for the prosecution to exhibit because the gun used in the alleged shooting was never found. This is how the rap lyrics were officially introduced as evidence, however, this excerpt shows that the lyrics serve other purposes; the prosecutor uses rhetorical questions to make a connection in the jurors minds between what witnesses heard on the phone call and the defendant's rap. Portraying rap as a reflection of the way the defendant speaks, frames rap as testimony and not creativity. By stating, "if he isn't the one who fired, it doesn't matter", the prosecutor is arguing that writing violent rap lyrics, and speaking with slang, curse words, and an angry tone, exudes guilt: Even if Defendant D did not shoot (Case 2 prosecutor, pp. 28-9). Although the prosecutor provides solid legal basis for why aiding a crime is equally punishable for the crime itself, the prosecutors depiction uses discourse that mirrors Hillary Clinton's description in 1996 of gang members as "superpredators— no conscience, no empathy" (Caldwell & Caldwell, 2011). They describe Defendant D's voice as "irate", "deep", "very angry", and even "vicious" (Case 2 prosecutor, p. 28). These descriptors fit the narrative that the prosecutor is establishing, that Defendant D is a "shadowy" hoodie-wearing predator that relishes in violence (Case 2 prosecutor, p. 26): "They saw Defendant D's face because he was a participant in this crime watching the entire scene unfold, loving every minute of it" (Case 2 prosecutor, p. 32).

### *Case 3*

They are asking you to see that the Defendant is a rapper and absolutely nothing else matters. That if he's a rapper, it's perfectly okay to write a note that threatens a VT style massacre on a

university campus. That because he's a rapper, it's okay that he created a movie maker file that threatens to kill more people than were killed at Virginia Tech. (Case 3 prosecutor, p. 153)

The third case is centered on a struggle of interpretation. Defendant E is an aspiring rapper, and took prolific notes on his lyrics, ideas, and business strategies. His car was impounded because he couldn't afford to fill up the gas and it was parked in a public space. Within his car was a page with notes scribbled on it, and one of the lines said this, "If this account doesn't reach \$50,000 in the next seven days, there will be a murderous rampage" (Case 3, p. 10). Defendant E claims it is an idea for a rap skit, whereas the state claims it is a genuine threat to commit a mass shooting. The state supports this claim citing the automatic weapons that Defendant E had purchased legally, and a deleted computer imovie file with similar wording (which the defendant claims was for a music video). In the quote above, the prosecutor warns the jury that they would be affording the Defendant special privileges "because he's a rapper" (Case 3 prosecutor, p. 153). This statement fits within broader post-racial discourse which presumes any equitable action to balance oppression is actually preferential treatment of minorities. Because of this connection, "Rapper" could be interpreted as a coded way of indicating "Black", which insinuates that a white defendant would not get away with an innocent verdict if they were in his place (Case 3 prosecutor, p. 153). Therefore, regardless of whether Defendant E intended to make a threat, the prosecution calls on the jurors to find him guilty to ensure fairness. By addressing the Defendant as a rapper, but deeming the note a threat, the prosecutor labels rap as an identity for the defendant rather than a creative pursuit. This is echoed throughout the text, particularly through rhetorical questions such as: "Why do you need guns while you're making rap? Why do you need a ski mask in summer while making rap? Why do you need a loaded gun on campus or bullets in that gun for that matter?" (Case 3 prosecutor, pp. 120-1). These questions direct the discussion away from the genre conventions of gangsta rap, in which displaying guns or masking one's identity are the norm, and instead, reinforces the notion that Defendant E is threatening *because* he is a rapper.

## **The Defense: Approaches to Disarming Prejudicial Stereotypes**

Each case contains stereotyping in implicit and explicit forms. As noted previously, stereotyping is not an inherently negative linguistic tool; however, when stereotyping is racialized it is harmful, and in the case of criminal trials, highly prejudicial. The defense approaches rap music and its relationship with race in a way that appears to understand the danger of prejudicial impact, because throughout the texts defense attorneys directly address components of these stereotypes: such as mentions of hoodies and ski masks, and conflating rap music with gangs. The defense then has to grapple with the harm that prejudicial stereotypes can have on the perception of guilt of their defendant. In the process of analysis, some patterns emerged in the different methods the defense used.

First, the defense takes stereotypes that are implicitly referenced within the prosecution's closing arguments, or other moments within the trial, and makes them explicit. Second, the defense attempts to disarm the prejudicial impact of these stereotypes through reframing them within a different context. The contexts that are selected by the defense to reframe imbue normative assumptions into what and whom the defense believes is most important, or most persuasive, in determining innocence. Third, the defense attempts to counteract the link the prosecution is establishing between rap and criminality, by associating nationalism and innocence.

### *Making Stereotypes Explicit*

Now, State of Tennessee, they can't have it both ways. They can't tell you, if you live on the eastside, you're in a gang; but if you live on the west side, you're not; or vice versa. They can't tell you if you live in certain neighborhood, you're in a gang. But neither can they tell you that because you made a rap video, you're in a gang. (Case 1 defender, p. 1798)

Knox County Attorney General's Office conjured up this whole rap video gang idea. You know why? 'Cause we want to scare you. Did y'all see that "Six Double 0" video? You know what? Everybody's running around. They got guns. They're doing this stuff, and they're doing their music. (Case 1 defender, p. 1832)

Beyond credible debate that Defendant E — Defendant E is a rapper. He's not only that, he's a enterprising motivated gangster rapper. He is respected and well-liked by his peers. He is feared by nobody. No fellow student, no faculty member, nobody. (Case 3 defender, p. 129).

In case 1, rap music is used as evidence to tie the Defendants A, B, and C to gangs, and in case 3, the lyrics themselves are considered a threat. There is an overlap in language used by the defense in the quotes above. The choice of words, “scare” and “feared”, indicate the defense is aware that the relationship portrayed between gangs, threats, and rap music, arouses fear in jury members (Case 1 defender, p. 1832; Case 3 defender, p. 129). Fear works in favor of the prosecution, therefore, the defense tries to explain why fear should not have bearing in the jurors’ decision. In case 1, the defense acknowledges the jury’s fear; they mention guns, they mention music, and they leave room for jurors’ to interpret what “stuff” refers to. Rather than linking these aspects of the video to gangsta rap genre conventions, they tell the jury that regardless of the fear that this video inspires, the state cannot use a rap music video as sole proof of gang affiliation (Case 1 defender, p. 1798). This does not attempt to dispel stereotypes. Instead, it frames fear as an unjustified factor in decision-making. In case 3, the defense addresses concerns about the fear of gangsta rap by attempting to dispel it, saying Defendant E “is feared by nobody” (p. 129). This quote is an example in which the defense attempts to highlight the performance aspect of gangsta rap by imploring the jury to judge Defendant E based on the dedication and skill behind that performance, not on the persona he portrays. This addresses the stereotype that rapping is an identity rather than an performative art-form. By calling Defendant E an “enterprising motivated gangster rapper”, this may appear to jurors as an oxymoron, which could help a prejudiced jury realize they are conflating the shocking lyrics that gangsta rap entails with the actual beliefs and intent of Defendant E (Case 3 defender, p. 129).

### *Hypothetical Reframing*

I don't look under the passenger seat of my friends' cars when I get into them. Maybe I should. Maybe he should. But they didn't find any palm prints or fingerprints or DNA of Defendant B on that gun. It was just under his seat. (Case 1 defender, p. 1809)

Writing down his old -- his own private thoughts, and he's -- they're criminalizing that. God forbid that should be us. You could be mad or angry at your spouse or your boyfriend or your girlfriend or your child for that matter. You could write down some things that you would never say to them, and you could stuff them in your drawer, and if you were con -- and there was some other suspicious activity that the police were investigating you for, they could come into your house and seize that note, and that would be evidence to support a crime of

threatening your child or attempting to plan abuse of your spouse. I mean, that is not right. Doesn't a person wish to avoid detection if they're going to be a ransom note writer? (Case 3 defender, pp. 140-1)

DEFENDANT E deleted that. He -- he threw it out. Don't let there be any mistake about that. He didn't like it obviously. He deleted it. Deleting is -- is the opposite of communication, right? If you wrote out something awful, and you were going to send it to your worst enemy -- you wrote a letter, you have two choices. You can send it to your enemy, or you can crunch it up and throw it in the paper, is that evidence of intent to threaten your enemy? It's the opposite. (Case 3 defender, p. 144)

Critical race theorist Derrick Bell uses the term interest convergence to mean that people believe what benefits them; considering this, it is a plausible explanation that the prosecution and the defense use an array of tools to frame these cases depending on what they believe to be the jury's identities, backgrounds, and interests (Bell, 1980). It is possible, then, to consider aspects of the narratives presented in the texts which are included because the state and the defense perceive them to have a more empathetic connection to the jury. This has a normative bearing, in that it reveals what attorneys believe jurors care about most with respect to questions of guilt or innocence, and what the attorneys believe themselves.

Within the defense's attempts to mitigate the negative externalities of stereotypes, not all of the tactics they use are effective, and often do not attempt to be reparative; some of these tactics are further damaging as they reinforce negative stereotypes. This could be done with the intention of connecting more deeply with the jury, even if it is at the expense of the jury's perception of the defendant. The quotes inserted here each consider a hypothetical scenario framed using the personal "I" and grouping language such as "us". This first establishes that the attorney and the jurors are in a separate group than a defendant on trial for a crime— the "us" is trustworthy or relatable. Getting "angry at your spouse, or your boyfriend" is presented as the normal version of the events that occurred in this case (Case 3 defender, pp. 140-1). This use of language relegates the defendant to abnormal, criminal, and unintelligent. The defendant's status as other has been emphasized throughout the trial because of racialized stereotyping, so rather than repairing this ostracized categorization, this approach confirms it. This could establish a connection and build trust between the defense attorney and the jurors, who already perceive the defendant in a negative light. The defense then reframes the situation

in question through inserting themselves into it, and asking hypothetically: 'What would I do?', 'what if this happened to me?'. In the first quote, the defense has previously established themselves as a group including the jury through collective language. In the second and third quotes, the defense uses direct address, saying "you" (Case 3 defender, pp. 140-1, 144). This framing appeals to each individual jurors, but it also appeals to their fear, inserting the possibility that this could happen to them.

### **Relating Nationalism and Innocence**

It don't matter whether or not you like it. It matters whether or not you, as a free citizen in the United States of America, have the wherewithal and the gumption to stand up for your rights, my rights, their rights, everybody's rights in this country, and say you know what? That's free expression. (Case 1 defender, p. 1832)

Men and women died and spilled their blood so that we have this Bill of Rights, and, you know what's contained in that Bill of Rights? The very First Amendment. (Case 1 defender, p. 1828)

Wouldn't it be interesting if we had the individual who wrote The Star Spangled Banner, Francis Scott Key, if we brought him in for trial and charged him with being a terrorist and we put him up on the witness stand and we said Mr. Francis Scott Key, we went through your notebook, sir, and what is this talk about the rockets red glare? What, do- -you have some kind of an obsession for rockets? No, ma'am, I was just writing about what was going on at that time. But you talked about rockets as though you were obsessed and fascinated with them. (Case 2 defender, pp. 45-6).

The stereotypes perpetrated by the state link rap and criminality by purporting rap itself to be criminal; this opens the possibility to depict what the opposing forces are, or rather, to depict what jurors should associate with innocence. A pattern of nationalist discourse is replete throughout the defenses' speech in each case. This discourse mostly centers around "free expression", but encompasses a vast range of American nationalist imagery such as religious language; notions of bravery, service, and citizenship; and the national anthem as depicted in case 2 (Case 2 defender, pp. 45-6). The first quote asks the jurors to have the "gumption" to uphold constitutional values over that which they dislike. This serves to remind the jury that even the Other deserves fairness or righteousness. The second quote utilizes nationalist imagery as a reframing device. By choosing Francis Scott Key to use in this hypothetical

example, the defense assumes that the jury holds traditional American values, in which the national anthem cannot be associated with criminality or guilt. Nationalism is operationalized as a tool to remind jurors of fairness: A fundamental element of the American dream. This is juxtaposed with how the defense desires rap as evidence to be framed: as the criminalization of creativity. Both examples here, and others throughout the texts (Case 3, p. 126; Case 3, p. 140; Case 2, p. 48), are instances in which the defense tries to appeal to the jury through nationalism and traditional moral world-views in order to differentiate speech from innocence, even when the speech in question is rap music that is promoting values antithetical to theirs.

### **Dissociation from Rap Music**

Is it in poor taste? Not if you're a gangster rapper. Is it in poor taste if you're like you and me? Yeah, it is. You know, if -- if you're not into that genre, it very well could be. Is it typical gangster rap? Yes. Can we relate to it? Probably not. (Case 3 defender, p. 144)

So, Defendant E is not in all likelihood like you or I, and I realize that maybe some of us don't identify him for whatever reason. Certainly we don't identify with his immersion in this particular type of musical form... (Case 3 defender, p. 147)

A consistent pattern that throughout the sample texts is the use of grouping language: in particular, "we". In case 3 (p. 147), the defense states "certainly we don't identify with his immersion in this particular type of musical form", which groups themselves with the jury by explicitly stating they "certainly" share the same opinion. Collective language binaries, such as "us" and "we", are an effective tool for the prosecution because it incorporates the jury into the world-view that they are presenting, which ultimately is the view that a defendant is guilty beyond reasonable doubt. However, any time "we", or other grouping language is used, there is another implicit group which is excluded from "we". Sometimes the other is explicit, like in this quote from case 3 which states, "Is it in poor taste? Not if you're a gangster rapper", which is juxtaposed with, "Is it in poor taste if you're like you and me? Yeah, it is." (Case 3 defender, p. 144). Discussing taste and preference in this way establishes what is considered acceptable; the defense is presuming that the jury will also find this music in "poor taste", and the defense tries to ensure the jury thinks that they are similar, and therefore trustworthy. This defense attorney goes on to say "maybe some of us don't identify him for whatever reason",

broadening the possible differences that exist between themselves and Defendant E (Case 3 defender, p. 147). Here, the other is first and foremost the defendants, but it extends to those that like or create rap music, and can be read in some situations as an extension to Black people as a whole; societal discourses referenced by the speaker in each instance help to specify this.

I hope I never have to see that video again. It's not my kind of music. (Case 1 defender, p. 1824)

One man's treasure is another man's garbage. (Case 1 defender, p. 1832)

The worst thing that they can say about him is that he wrote rap and he had some reference to guns. (Case 2 defender, p. 45)

The prosecution stands to strengthen their narrative by vilifying rap music because defendants are inherently associated with rap when it is used as evidence to prove their guilt. This makes the defense's task harder. Then why, throughout each of these cases, is the defense one of the most flagrant arbiters of distancing themselves from rap, going so far as to call rap music 'garbage'? Vilifying rap like this could further ostracize a defendant from the jury, so, why would a defense attorney repeatedly do this? A possible explanation is that rap music is so damaging to a jury's mindset and opinion of a defendant, that the defense attorney believes it could harm the perceptions of their own trustworthiness, even though attorneys have no personal ties to the evidence presented in a case. Appearing trustworthy is crucial in having persuasive power. This pattern of distancing oneself from rap music through grouping language and open dislike, found in dialogue by both the prosecution and the defense, reinforces what is found in these studies. Another possibility is that prejudice against rap music exists to the extent that the defense is unable to set aside their own prejudices related to the genre.

## DISCUSSION

The three cases that I analyze reveal vastly different uses of rap lyrics and videos within trials. For the first case, rap videos are evidenced to connect the Defendants A , B, C, to a gang; the second case, rap lyrics are the alleged crime of a threat to commit a campus shooting; and in the third case, lyrics that reference guns and gun violence are evidenced to claim Defendant E had an interest in firearms. These represent three entry-points for rap as evidence in a criminal trial, all of which passed each different states' standards of evidence that exist to protect defendants from prejudicial impact. However, the justifications for introducing rap as evidence in each case do not encompass the discursive ways that rap music is wielded by the prosecution. Throughout the texts, prosecutors use discourse that references stereotypes such as Black criminality, and the 'superpredator' image of Black youth and gangs. They draw connections between post-race discourse and the genre of gangsta rap. They also depict writing rap music, or being a rapper, as a fixed aspect of the defendants' identity. The way in which rap is framed obscures its creative value, which also obscures why creative works should be afforded even greater protections than other forms of speech acts.

The defense understands that racialized stereotypes produce fear; fear is a deleterious emotion to rationality, and rationality is necessary for judiciously weighing evidence against presumed innocence. The defense addresses this fear, but fear is only one aspect of racialized stereotyping. Why do police use lethal force regularly against Black men that are engaging in normal daily activities? Yet, white supremacist Dylan Roof shoots 9 Black church-goers during service, and then is taken to McDonald's by police officers after he was apprehended. Racialized policing is a byproduct of this fear, however, it is media, and the widespread representations media produce, that can be traced to the construction of this fear. Media are responsible for the images, phrases, and networks of meaning that we call upon when completing a stereotype of the other. These stereotypes can be found in all media: state-produced, and culturally-produced.

Connections in the texts to post-race discourse reveal that the state frames rapping and gang activity similarly: as though they give Black men unfair privilege that is not afforded to others. The prosecution describes gangs in case 1 as "so powerful", and in case 3, they claim the defense is proposing a double standard— "if he's a rapper, it's perfectly okay to write a note

that threatens a VT style massacre on a university campus” (Case 3 prosecutor, p. 153). Portraying gangs as dominant in society ignores the reality of gang members, who typically join at a young age and are from poor backgrounds (Hu & Dittman, 2019). Similarly, the claim that rap music affords rappers greater societal privileges than other people is not representative of reality. Hyper-successful examples like Jay-Z, Kanye West, or Cardi B, are easy to point to as examples that society is equal, or that success is achievable for any rapper if they work hard enough. Societal barriers like poverty are harder to overcome than success stories suggest, and the music industry profits off of maintaining this illusion.

Nationalist discourse is designed to be a part of the proceedings of criminal trials, such as the phrases, “your Honor”, or “the State”, and the act of swearing on a bible. However, the detailed imagery and the ways that nationalism is operationalized extends further than these overt acts. The defense in case 1 references war and veteranship, saying “men and women died and spilled their blood”, and paternalism and the neoliberal notion that choice equates to American freedom when he later says, “my daddy used to say that's why they make Fords and Chevrolets, because you got a choice in this country” (Case 1 defender, p. 1828). If rap is associated with guilt, and nationalism with innocence, then it is possible through these discursive connections that rap is portrayed as anti-American. Through introducing rap as evidence, the prosecution creates stereotypes that attach rap to depictions of race. In the mind of a juror with strong nationalist values, particularly a juror with no partiality towards rap music, this insinuates that Blackness is anti-American. When the defense then references righteousness, constitutionality, and the protection of freedoms in relation to the defendant, they are hoping to associate nationalism with the defendant in a way that interrupts discursive connections to anti-Americanism. However if these connections were effective, then no evidence to the contrary could sway this degree of prejudice, as the defendant is considered guilty by being Black.

Freedom of expression is an important debate surrounding rap as evidence, because creativity is provided special protection by the First Amendment. This has become increasingly relevant when rap is considered evidence of the crime itself, such as within case 2. The Supreme Court considered this very issue in *Elonis v. U.S.* (2015). Anthony Elonis was imprisoned for threatening to kill his ex-wife because of a rap that he posted on Facebook, but Elonis claimed

he had no intent to threaten her; he was given a guilty verdict as the court deemed his threat legitimate. However, the Supreme Court held the decision of the lower courts, stating that the intent of the defendant should not be considered in determining a “true threat”: Only whether the person who perceives the threat is deemed reasonable in their assumption (*Elonis v. U.S.*, 2015). Although this decision makes the process of determining a true threat more objective, as a persons’ intent is subjective criteria, those who create speech deemed socially unacceptable, or fearful, are at risk of being silenced. Because of this concern, the *Elonis v. U.S.* (2015) decision should emphasize a careful consideration of meaning when the evaluation of creative speech is called into question, particularly when that speech is rap music, as the prosecution utilizes stereotypes that augment fear. Dishearteningly, creativity is avoided as a lens of interpretation of rap as evidence in case 1, 2, and 3. The growing pattern of using rap music as evidence of a true threat should be a grave concern because of the risk of a negative “impact on the creative output of society” (Dennis, 2007: 40).

## CONCLUSION

Analyzing the variety of links between the framing of rap, hegemonic discourse, and racialized stereotypes, shows how introducing rap music is an effective tactic for introducing prejudicial stereotyping practices into a trial and circumventing evidence protections. This is a phenomenon that institutionalizes racism into the U.S. Justice system through legal means, making it incredibly effective and difficult to counteract. The Black Lives Matter movement has organized and shaped recent discourse surrounding racial inequality and catalyzing institutional change on a global scale. This new discourse centers the names, lives, and stories of victims of police brutality and racial violence. The movement also rejects societal expectations of Black respectability by embracing emotion and acknowledging Black pain and suffering. Hopefully, this research has subscribed to this ethos by attempting to better understand the ways in which Black Americans are oppressed by state forces in ways concealed by power.

By conducting a critical discourse analysis on the primary texts that detail trial proceedings, this research has produced empirical findings that speak to the processes that take place within a criminal trial, which enact the racialized oppression that the prison economy thrives on. This

makes criminal trials a vital site of struggle in dismantling racism, and a rich site for research. Repeating this research by sampling other sections of a trial would provide a deeper understanding of different ways that rap is framed by examining different actors. For example, sampling the testimony and cross-examinations of experts that interpret rap, particularly comparing gang experts versus rap experts, could produce valuable results. I also believe repeating the design of this study by consulting different cases would create a more thorough, nuanced understanding of the discourses of this phenomenon; seeking a larger dataset of cases to analyze will grow the body of knowledge on how rap is used in constructing and reinforcing stereotypes as a method of institutionalizing racism. The solutions to this phenomenon are not simple. It would be far too broad to ban all rap music from being used as evidence, and there are many instances in which it provides valid insights as evidence into a criminal trial. However, rap music's high potential to prejudice a juror must be given far more weight in evidence admissibility considerations than it currently is, and the process of interpretation within the trial must be far more scrupulous.

## REFERENCES

- Bartky, S. L. (1990). *Femininity and Domination: Studies in the Phenomenology of Oppression*. London: Routledge.
- Blair, M. E. (2004). Commercialization of the Rap Music Youth Subculture. M. A. Neal & M. Forman (Eds.). *That's the Joint!: The Hip-hop Studies Reader* (pp. 497-524). New York, NY: Routledge.
- Browne, S. (2015). *Dark Matters: On the Surveillance of Blackness*. Durham, NC: Duke University Press.
- Bureau of Justice Statistics. (2018). *Prisoners in 2016*. Retrieved August 2020 from: <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6187>
- Caldwell, B., & Caldwell, E. C. (2011). "Superpredators" and "Animals" — Images and California's "Get Tough on Crime" Initiatives. *Journal of the Institute of Justice & International Studies*, 11, 61-75.
- Davis, A. Y. (2003). The Prison Industrial Complex. *Are Prisons Obsolete?* (pp. 84-105). New York, NY: Seven Stories Press.
- Daniszewski, J. (2020, June 19). The decision to capitalize Black. Retrieved August, 2020, from <https://blog.ap.org/announcements/the-decision-to-capitalize-black>
- Delgado, R., and Jean, S. (2017). *Critical Race Theory: An Introduction* (3rd Edition). New York, NY: NYU Press.
- Dennis, A. L. (2007). Poetic (In)Justice? Rap music lyrics as art, life, and criminal evidence. *The Columbia Journal of Law & the Arts*, 31(1), 1-41. Retrieved May 2020 from <https://ssrn.com/abstract=1104756>.
- Du Bois, W. (2007). Introduction. B. H. Edwards (Ed.). *The souls of Black folk* (pp. v-xxiv). Oxford: Oxford University Press.
- Dunbar, A. (2020). Art or Confession?: Evaluating Rap Lyrics as Evidence in Criminal Cases. *Race and Justice*, 10(3), 320-340.
- Dunbar, A., Kubrin, C. E., & Scurich, N. (2016). The Threatening Nature of "Rap" Music. *Psychology, Public Policy, and Law*, 22(3), 280-292.
- Elonis v. United States, No. 575 slip op. at No. 13-983 (June 1, 2015).
- Fairclough, N., Graham, P., Lemke, J., & Wodak, R. (2004) Introduction, *Critical Discourse Studies*, (1), 1-7.
- Fairclough, N. (2001). Critical discourse analysis as a method in social scientific research. R. Wodak & M. Meyer (Eds.). *Introducing Qualitative Methods: Methods of critical discourse analysis* (pp. 121-138). Sage.
- Fairclough, N. (2010). *Critical discourse analysis : The critical study of language*. London: Routledge.
- Ferguson, R. A. (2019). On the Postracial Question. R. Mukherjee, S. Banet-Weiser, & H. Gray (Eds.), *Racism Postrace* (pp. 72-86). Durham: Duke University Press.
- Fischhoff, S.P. (1999). Gangsta' Rap and a Murder in Bakersfield. *Journal of Applied Social Psychology*, (29), 795-805.
- Foucault, M. (2013). *Archaeology of Knowledge* [VLe Books]. (Originally published 1969).
- Fried, C. (1996). Bad Rap for Rap: Bias in Reactions to Music Lyrics. *Journal of Applied Social Psychology*, 26(23), 2135-2146. Retrieved Jan. 2020 from: <http://endrapontrial.org/wp-content/uploads/2015/08/Fried-1996.pdf>
- Fried, C. (1999). Who's Afraid of Rap: Differential Reactions to Music Lyrics. *Journal of Applied Social Psychology*, 29(4), 705-721. Retrieved January 2020 from: <http://endrapontrial.org/wp-content/uploads/2015/08/Fried-1999.pdf>
- Gotsch, K., & Basti, V. (2018). *Capitalizing on Mass Incarceration: U.S. Growth in Private Prisons*. Wahsington, DC: The sentencing Project Retrieved August 2020 from

<https://www.sentencingproject.org/publications/capitalizing-on-mass-incarceration-u-s-growth-in-private-prisons/>

- Gray, H. (2019). Race After Race. R. Mukherjee, S. Banet-Weiser, & H. Gray (Eds.), *Racism Postrace* (pp. 23-37). Durham, NC: Duke University Press.
- Hall, S. (2013). Representation, Meaning and Language. S. Hall, S. Nixon, & J. Evans (Eds.). *Representation: Cultural Representations and Signifying Practices* (2nd ed., pp. 1-47). (Original work published 1997). London: SAGE Publishing.
- Hall, S. (2018). Popular culture, politics and history. *Cultural Studies*, 32(6), 929-952.
- Hooks, B. (1992). Eating the Other: Desire and Resistance. *Black Looks: Race and Representation* (pp. 21-41). Boston, MA: South End Press.
- Hu, X., & Dittmann, L. (2019). How Does Print Media Describe Gang Members. *Journal of Criminal Justice and Popular Culture*, 19(1), 19-36.
- Ingraham, C. (2017, November 16). Black men sentenced to more time for committing the exact same crime as a white person, study finds. Retrieved July 2020 from <https://www.washingtonpost.com/news/work/wp/2017/11/16/black-men-sentenced-to-more-time-for-committing-the-exact-same-crime-as-a-white-person-study-finds/>
- Kennedy, G. (2018, January 13). The moment N.W.A changed the music world. Retrieved August 2020 from <https://www.latimes.com/entertainment/music/la-et-ms-nwa-parental-discretion-20171205-htlstory.html>
- Kerrison, E. M., Cobbina, J., & Bender, K. (2018). Your Pants Won't Save You. *Race and Justice*, 8(1), 7-26.
- Klein, A. A. (2011). The Relationship Between Race and Film Cycles. *American Film Cycles Reframing Genres, Screening Social Problems, and Defining Subcultures* (pp. 138-175). Austin, TX: University of Texas Press.
- Light, A. (2004). About a Salary or Reality?— Rap's Recurrent Conflict. M. A. Neal & M. Forman (Eds.), *That's the Joint!: The Hip-Hop Studies Reader* (pp. 137-147). New York, NY: Routledge.
- Mauer, M. (1999). Why are tough on crime policies so popular? *Stanford Law Political Review*, 11(1), 9-22.
- Meyer, M. (2001). Between Theory, Method, and Politics: Positioning of the Approaches to CDA. R. Wodak & M. Meyer (Eds.). *Introducing Qualitative Methods: Methods of critical discourse analysis* (pp. 14-31). Sage.
- Heitzeg, N. A., Brewer, R. M. (2008). The Racialization of Crime and Punishment Criminal Justice, Color-Blind Racism, and the Political Economy of the Prison Industrial Complex. *American Behavioral Scientist*, (51)5, 625-644. doi:10.1177/0002764207307745
- Neal, M. A. (2004). No Time for Fake Niggas: Hip-hop Culture and the Authenticity Debates. M. A. Neal & M. Forman (Eds.). *That's the Joint!: The Hip-Hop Studies Reader* (pp. 57-61). New York, NY: Routledge.
- Nielson, E., Dennis, A. L.. (2019). *Rap on Trial: Race, Lyrics, and Guilt in America*. New York, NY: New Press.
- Nielson, E. (2010). "Can't C Me": Surveillance and Rap Music, *Journal of Black Studies* 40(6), 1254-1274.
- Nguyen, M. (2015). The Hoodie as Sign, Screen, Expectation, and Force. *Signs*, 40(4), 791-816.
- N.W.A. (1988). *Fuck tha police. Straight Outta Compton*.
- O'Halloran, K. (2011). Critical Discourse Analysis. J. Simpson (Ed.). *The Routledge Handbook of Applied Linguistics* (pp. 445-459). Abingdon: Routledge.
- Pickering, M. (2001). The Concept of the Other. *Stereotyping: The politics of representation* (pp. 47-69). New York, NY: Palgrave.

- Richards, C. (2018, August 31). Listening to Los Angeles rap music feels like eavesdropping on the future. Retrieved July 2020 from: [https://www.washingtonpost.com/lifestyle/style/listening-to-los-angeles-rap-music-feels-like-eavesdropping-on-the-future/2018/08/30/2a99701e-ab8b-11e8-b1da-ff7faa680710\\_story.html](https://www.washingtonpost.com/lifestyle/style/listening-to-los-angeles-rap-music-feels-like-eavesdropping-on-the-future/2018/08/30/2a99701e-ab8b-11e8-b1da-ff7faa680710_story.html)
- Richards, C. (2020, June 10). The most urgent rap album of 2020? Drakeo the Ruler just phoned it in from jail. Retrieved August 2020 from [https://www.washingtonpost.com/lifestyle/style/the-most-urgent-rap-album-of-2020-drakeo-the-ruler-just-phoned-it-in-from-jail/2020/06/09/730a5c38-a5b1-11ea-b473-04905b1af82b\\_story.html](https://www.washingtonpost.com/lifestyle/style/the-most-urgent-rap-album-of-2020-drakeo-the-ruler-just-phoned-it-in-from-jail/2020/06/09/730a5c38-a5b1-11ea-b473-04905b1af82b_story.html)
- Rose, T. (1994). *Black Noise: Rap Music and Black Culture in Contemporary America*. Hanover, NH: University Press of New England.
- Rose, T., & American Council of Learned Societies (2008). *The hip hop wars: what we talk about when we talk about hip hop— and why it matters*. New York, NY: Basic Civitas Books
- Sudbury, J. (2005). Celling Black Bodies: Black Women in the Global Prison Industrial Complex. *Feminist Review*, 80, 162-179.
- United States Sentencing Commission. (2017). Demographic Differences in Sentencing: An Update to the 2012 Booker Report. <https://www.ussc.gov/research/research-reports/demographic-differences-sentencing>
- Watkins, S. C. (2004). Black Youth and the Ironies of Capitalism. M. A. Neal & M. Forman (Eds.), *That's the Joint!: The Hip-hop Studies Reader* (pp. 557-579). New York, NY: Routledge.
- Weiss, J. (2019, July 17). Stabbing, lies, and a twisted detective: Inside the murder trial of Drakeo the Ruler. Retrieved July 2020 from <https://www.thefader.com/2019/07/11/drakeo-the-ruler-murder-trial-los-angeles-report>
- van Dijk, T. A. (2018). Discourse and Racism. D. T. Goldberg & J. Solomos (Eds.). *A Companion to Racial and Ethnic Studies* (pp. 145-159). Wiley-Blackwell.

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