

RAP EXEGESIS: INTERPRETING THE RAPPER IN AN INTERNET SOCIETY

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The law and literature movement has had limited influence on the work of lawyers and judges. But a rap lyric's dual quality as aesthetic and "truth" document makes it uniquely amenable to literary interpretation. The competing problems: lyrics are meant to be heard and not read, and the ambition of the contemporary rapper is no longer to be didactic or suggest authenticity. The #rapgame has changed. This Article argues that the Internet rapper is the paradigm of creative identity. The guiding questions for this Article are how the law should respond to the individual who lives life as art, and if the social knowledge project will lead to the crowdsourcing of how we interpret both rappers and legal texts.

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I. INTRODUCTION

The Supreme Court recently denied certiorari in *Bell v. Itawamba County School Board*, the latest case at the intersection of First Amendment “true threats” doctrine and rap music.¹ In 2011, then-high school senior Taylor Bell posted original lyrical content as a means of responding to the perverse behavior of two gym coaches (school officials never challenged these broader allegations of sexual harassment). Bell sublimated his feelings of anger and resentment through the lyrical violence of a rap, which he posted on Facebook. Specifically, he warned that these teachers would “get a pistol down [their] mouth,” a line that Fifth Circuit Judge Rhesa Barksdale cited as particularly threatening.²

Read in full, the uploaded lyric possesses the flow and cadence of a rap song, includes the common tropes and signifiers of a “battle,” and riffs on the kinds of language that one would expect of a neophyte to the genre (the Snoop-esque moniker “T-Bizzle”; zeitgeisty use of OMG, etc.). It is clearly a rap, and it would be inconsistent with the artistic conventions of the form for Bell to have qualified his diaristic post in the subjunctive, *e.g.*, “In a different world I wish that I could get a pistol down their mouth,” or to contextualize it as an ephemeral whim, “I daydream in passing about getting a pistol down their mouth.” Doing so would interrupt the rhythm, and detract from the generality and open texture representative of most *any* kind of song lyric. And as noted by the submitted academic amicus brief to the Supreme Court, Bell’s use of the “pistol-whip” rhyme might actually help the author tap into the rap canon. It is a reoccurring motif, and a range of rappers from Waka Flocka Flame to Bay Area veteran E-40 have used it for purely metaphorical effect.³ One

¹ *Bell v. Itawamba*, *cert denied*, 136 S. Ct. 1166 (2016) (No. 15-666), 2016 WL 763687.

² *Bell v. Itawamba Cnty. Sch. Bd.*, 799 F.3d. 379, 384 (5th Cir. 2015).

³ Brief for Erik Nielson et al. as Amici Curiae Supporting Petitioner at 16, *Bell v. Itawamba*, *cert denied*, 136 S. Ct. 1166 (2016) (No. 15-666), 2016 WL 763687.

could perhaps argue that employing a stock image signals that it is just a lyric, and nothing more.

However, the Court's reticence to accept *Bell* may be understandable given its context within the *Tinker* universe of school administration.⁴ Professors Erik Nielson and Charis Kubrin (with the support of Michael Render, aka "Killer Mike") also submitted an amicus filing in last year's *Elonis v. United States* Supreme Court decision.⁵ In that case, the seven-judge majority determined that defendant, self-identified rapper Elonis, was protected by the First Amendment for his virulent Facebook lyrics, and that his use of explicit disclaimers negated the necessary *mens rea* to meet the "true threat" exception.⁶ For speech to have the specificity and conditionality of producing future violence, there must be a threshold level of subjective intent on the part of the author to commit to the action. The favorable *Elonis* holding should provide the rap scholars some measure of solace. But in the circumscribed context of the public school, administrators are tasked with balancing the exigencies of discipline and moral education with individual expression.⁷

The Court's denial of Bell's case does not condone these loathsome gym coaches, or suggest that Bell's rap lyric is not a rap. Instead, it acknowledges the fact-intensive calculus involved with determining whether a student's public broadcasting of his lyric meets the reduced standard of being merely harassing or intimidating to school personnel.⁸ This is too bad for Bell, who received an excessive seven-day suspension. This Article agrees with Professors Neilson and Kubrin that the administration had available more modest and constructive responses. But this incident also coheres with Andrea Dennis' broader lament that "[t]he Internet has

⁴ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

⁵ Brief for Marion B. Brechner First Amendment Project et al. as Amici Curiae Supporting Petitioner, *Elonis v. United States*, (No. 13-983), 2015 WL 2464051.

⁶ *Elonis v. United States*, 135 S.Ct. 2001 (2015).

⁷ *Bell*, 799 F.3d. at 389-90.

⁸ *Id.* at 384.

fostered a generation of individuals both willing and able to create art, bare souls, and spread messages in an exceedingly public manner.”⁹ In short, this is in part an Internet problem, and not simply a rap problem.

Still, there are important distinctions between rap and other kinds of artistic texts. The most obvious difference is that rap lyrics are not intended to be read; they are intended to be *heard*. Infused in the mythology of pantheon rappers Biggie Smalls and Jay Z is their claim to “write” their lyrics in their head. This lack of a paper trail is a common ambition among musicians, and led to the direct creation of websites in the vein of genius.com. It is known to those familiar with the genre that rappers experiment with forms of wordplay that would feel prosaic on paper, but novel or entertaining when rapped aloud (e.g. Kanye West’s complex reference to Princess Kate Middleton and the Olsen Twins in “N***** in Paris”). True threats jurisprudence provides a useful template for thinking through this juxtaposition of medium to message in rap music.

The Supreme Court in *Watts* determined that the three relevant factors of a true threat inquiry are context, content, and audience reaction.¹⁰ Professors Kubrin and Nielson seem most concerned with how an inner-city environs informs the context for traditional forms of gangster rap. Graphic violence and nihilistic meditations are markings of the genre, and this aesthetic framing should be *read in* by audiences to help unpack a particular gangster rapper’s commentary or improvisation on these themes.¹¹ The implicit, assumed nature of this aesthetic context has encouraged some authors to call for “experts” to uncover the meaning of written rap lyrics in court proceedings.¹² Kubrin was an expert for an

⁹ Andrea L. Dennis, *Poetic (In)justice? Rap Music Lyrics as Art, Life and Criminal Evidence*, 31 COLUM. J.L. & ARTS 1, 40–41 (2007).

¹⁰ *Watts v. United States*, 394 U.S. 705 (1969).

¹¹ Cf. Andrew Jensen Kerr, *Meta-Stories and Missing Facts*, 6 CAL. L. REV. CIR. 69 (2015).

¹² See e.g., Dennis, *supra* note 9, at 35–39.

Illinois case;¹³ University of Delaware Professor Yasser Arafat Payne offered expert testimony for the Eastern District of New York.¹⁴ But what requires more exploration is how the canvas of the *rapper* inherently frames lyrical content.

“Delivery” is a common heuristic used to evaluate the quality of a rapper. The dexterity, texture, and tempo of the rapper’s voice are used to modulate meaning and listener effect—for example, Drake in *Nothing Was the Same* compared with *If You’re Reading This It’s Too Late*.¹⁵ The identity and personal history of the rapper can also be used to provide a meta or ironic quality to rap music; rap is allusion-heavy. But the coded lexicon of the rapper is not the only tool to provide depth of meaning. The avatar of the rapper can be used as a foil or play on lyrical content. One example of this duality (tri-ality?) is Eminem’s use of his Marshall Mathers and Slim Shady avatars to remind the audience of the complexity of rap identity and the distance between Marshall-as-artist and Marshall-as-real life-dude. Other rap audiences are more familiar with Jay Z’s meditation on self and artist in the iconic *Black Album*. Still other rap fans might prefer the metaphysical resonance of Viktor Vaughn appearing on the MF Doom track “Fancy Clown” (Vaughn and Doom are just two of the many manifestations of masked rapper Daniel Dumille).

This Article examines how the visual icon of the rapper influences listener expectations. Previous generations of rappers projected symmetry between image and lyrical content. But today rappers like Young Thug experiment with the limits of both identity and language. The complexity of rap “compounds the difficulties with the already muddled true

¹³ *People v. Oduwole*, 985 N.E.2d 316 (Ill. App. Ct. 2013), *appeal denied*, 2013 Ill. LEXIS 796 (Ill. May 29, 2013).

¹⁴ *United States v. Wilson*, 493 F.Supp.2d 484 (E.D.N.Y. 2006).

¹⁵ *E.g.*, Jayson Greene, *Evolve with the Flow: How Drake and Kendrick Found their Voices*, PITCHFORK (Apr. 8, 2015), <http://pitchfork.com/features/overtones/9623-evolve-with-the-flow-how-drake-and-kendrick-found-their-voices/> [<https://perma.cc/6GRP-8HZP>].

threats doctrine,”¹⁶ and this Article therefore suggests a revised standard of legal protection for the rapper and her rap lyric based in public perceptions of art. In doing so, this Article re-contextualizes law and rap as a humanity rather than a forum for sociology or criminology. This Article presents two cases in detail: the illegalization of the *hologram* image of Chicago drill rapper Chief Keef,¹⁷ and the United Kingdom’s ban of Tyler the Creator for encouraging “terrorist acts.”¹⁸ The inherent textuality of “the Law” limits its ability to manage these sorts of perception problems.¹⁹ The “visual rhetoric” movement in legal scholarship is a welcome addition, but its embryonic status is also an index of the difficulty of applying conventional kinds of legal analysis to problems of visual meaning.²⁰ Instead, this Article argues that the Internet—rather than courts or “rap experts”—is best positioned to decide who lives life as art.

The rapper’s play on constructed identity goes to the problem of authenticity in lyric-based music. Image is a

¹⁶ Clay Calvert, Emma Morehart & Sarah Papadelias, *Rap Music and the True Threats Quagmire: When Does One Man’s Lyric Become Another’s Crime?*, 38 COLUM. J.L. & ARTS 1, 20 (2014). (“In summary, then, rap is a complex genre. Its very nature compounds the difficulties with the already muddled true threats doctrine.”)

¹⁷ Eugene Volokh, *Police shut down concert because of rapper Chief Keef’s hologram appearance – First Amendment violation?*, WASH. POST (July 26, 2016), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/07/26/police-shut-down-concert-because-of-rapper-chief-keefs-hologram-appearance-first-amendment-violation/> [https://perma.cc/X6ZE-KA3G].

¹⁸ Joe Zadeh, *The Banning of Tyler the Creator Reveals a UK Government Struggling to Define ‘Terrorism’*, NOISEY (Aug. 27, 2015), https://noisey.vice.com/en_us/article/the-banning-of-tyler-reveals-truths-about-the-uk-government-right-now [https://perma.cc/394L-2PJ4].

¹⁹ See Claudia E. Haupt, *Active Symbols*, 55 B.C. L. REV. 821, 861–62 (2014) (discussing Christmas crèches); see also Peter Brooks, *Law and Humanities: Two Attempts*, 93 B.U. L. REV. 1437, 1467–68 (2013) (“the Court . . . has stumbled in trying to find the interpretive tools [when analyzing cases like *Lynch v. Donnelly*]”).

²⁰ See, e.g., Lucille E. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237 (2010); see also Richard K. Sherwin, *A Manifesto for Visual Legal Realism*, 40 LOY. L.A. L. REV. 719 (2007).

common concern of public figures, and popular musicians are especially attuned to the effects of style and attitude on audiences. Consider the nomenclature of band names in diverse genres of rock: the atmospheric, insouciant handles of indie; the dark esoterica of metal; rustic images in folk. Ranges of star musicians from Garth Brooks to Prince to David Bowie have experimented with different images and “names” as vehicles for their musical evolution. Rappers are no different, as demonstrated in the innumerable iterations of conceptual rapper Kool Keith (Dr. Octagon, Dr. Doom, Black Elvis, Dr. Ultra, Poppa Large, Matthew, and Crazy Lou). Importantly, the assumption of a musical moniker creates distance between the individual and the artist. The career arc of David Bowie tracks a cosmic vision and liberatory take on the human condition, but few believe that Ziggy Stardust was actually a conduit for extraterrestrial life.

But the rap trope of “keeping it real” adds a wrinkle to the construction of identity.²¹ If Kendrick Lamar²² prefaces “The Art of Peer Pressure” by asking his listeners to sit down “and listen to this true mothaf*****’ story” then should his lyrics not be interpreted at face value? The work of scholars like Kubrin²³ helps to deconstruct the rhetoric of realness and authenticity in traditional gangster rap, and discern how credibility and commercial viability at one time shaped an expectation that the rapper’s lyrical content was in fact an unmediated account of their personal experiences and feelings.

²¹ See, e.g., Sean-Patrick Wilson, *Rap Sheets: The Constitutional and Societal Complications Arising from the Use of Rap Lyrics as Evidence in Criminal Trials*, 12 UCLA ENT. L. REV. 345, 355–56 (2005) (“The Trouble with ‘Keepin’ It Real”).

²² Compton-native Kendrick Lamar enjoys critical and popular acclaim for his musicality, technical mastery and veritable artistic genius. He won the 2015 Best Rap Album Grammy for *To Pimp a Butterfly*. See, e.g., *Kendrick Lamar, THE GRAMMYS*, <https://www.grammy.com/artist/kendrick-lamar> [<https://perma.cc/RZJ2-KHQQ>].

²³ See, e.g., Charis E. Kubrin, *Gangstas, Thugs, and Hustlas: Identity and the Code of the Street in Rap Music*, 52 SOC. PROBS. 360 (2005).

II. RAP AS ART / RAPPER AS ARTIST

But this Article questions the continued emphasis on gangster rap in law and rap scholarship, as well as the extent to which traditional forms of gangster rap still influence rap artists today, even those who detail violence. To the casual reader of Kendrick Lamar's genius.com page—it is difficult to imagine a situation where we might read Kendrick before listening to Kendrick, but indulge my hypothetical—it is understandable why his descriptions might be interpreted as literal transcription. But to the rap-literate target,²⁴ the *listener* would recognize the cinematic narrative of *Good Kid, M.A.A.D. City* to possess a synthesis of memory, creative nonfiction, and inserted aesthetic or sonic detail to provide it the depth of high literature and the musical resonance of an earworm-y rap album. The “listen to this true story” line might signal factual truth or “truthiness,” or it could just as likely be an ironic play by Kendrick on what he interprets to be a hackneyed, rote device of the gangster rap genre—he could simply be poking fun at the notion of strict realness in art. This Article posits that Kendrick's musical output weaves autobiographical elements with collective experience,²⁵ and to be influenced by the history of early gangster rap, but to not be dictated or constrained by it. A broader question: does it make sense for rap scholars to so firmly situate a consciously future-oriented musical genre within a historical compass?

*My mind move like a Tron Bike / Pop a Wheelie on the
Zeitgeist*

Kanye West, “I'm In It” (2013)

Anthony Elonis instead disclaims his Facebook raps by prefacing that the violent images described have no

²⁴ Calvert et al., *supra* note 16 (the authors use the categories of “rap-literate” and “rap-ignorant” target listener to argue for an “objective-recipient standard”). *But see* Dennis, *supra* note 9, at 4 (“Courts should interpret the meaning and import of defendant-authored rap music lyrics from the perspective of the defendant.”).

²⁵ *See, e.g.*, Dennis, *supra* 9, at 20 (referencing Michael Eric Dyson notion of collective experience in rap lyrics).

intentional likeness to his real-life acquaintances, and that his raps are purely therapeutic.²⁶ There is some hypographia here. And indeed, perhaps Chief Justice Roberts is suggesting his own aesthetic sensibility by placing skeptical “scare quotes” around Elonis’ self-defined status as a music artist: he began “posting self-styled ‘rap’ lyrics.”²⁷ Could Roberts be intuiting the need for a distinguishing test to separate the quotidian rap scribbler from the rapper-as-artist? The Sixth Circuit in *United States v. Jeffries* affirmed that individuals cannot immunize themselves by dressing up a true threat with the accents of political or artistic expression.²⁸ Historically, courts have retreated from making value judgments as to what counts as art. Indeed, part of the reason the court denied Bell’s hearing is that the case is positioned at the coordinate of two uncertain axes—the level of deference owed to school administrators along with the Court’s institutional capacity to separate the truth value of a written rap lyric.

But if we are to take earnest heed of the *Jeffries* position, then courts should develop a rubric by which to determine the sincerity or quality of artistic expression. Who decides who is a rapper? And what is a rap lyric? It is a bit surprising that the *amici* briefers were able to get *bona fide* rapper-activist Killer Mike to support Elonis’ defense²⁹—how much generosity should we have for this twerp who rips from *The Whitest Kids U’ Know* and interweaves vitriol towards his

²⁶ See, e.g., Richard Wolf, *Supreme Court to hear case on Facebook threats*, USA TODAY (June 16, 2014), <http://www.usatoday.com/story/news/nation/2014/06/16/supreme-court-facebook-threats-free-speech/10326233/> [https://perma.cc/QT4N-A6GB].

²⁷ *Elonis*, 135 S.Ct. at 2004 (emphasis added).

²⁸ 692 F.3d 473, 475, 482 (6th Cir. 2012); see also Calvert et al., *supra* note 16, at 24.

²⁹ Erik Nielson & Michael Render (aka Killer Mike), *Rap’s poetic (In)justice: Flashback*, USA TODAY (June 1, 2015), <http://www.usatoday.com/story/opinion/2014/11/28/poetic-injustice-rap-supreme-court-lyrics-violence-trial-column/19537391/> [https://perma.cc/2VVK-22WM].

ex-wife with coarse declarations like “if you really believe this s*** / I’ll have some bridge rubble to sell you tomorrow”?³⁰

The roster of allied rappers expanded for the more sympathetic Taylor Bell, but it is still interesting to parse the scholarly analysis. Professors Kubrin and Nielson situate the “pistol-whip” imagery within a lineage of certified rappers.³¹ Again, is using a hackneyed image a marking of rap-as-art? What about an image employed by a rapper like Gucci Mane?³² Sure, his moments of brilliance (*i.e.*, his guest verse on “Shine Blockas” with Big Boi) are surreally triumphant. And his acting work in the Harmony Korine masterpiece, *Spring Breakers*, will make him the subject of future film historians.³³ But this is also the same Gucci Mane who is fifty percent responsible for the cultural dross of *BAYTL*. The *amici* keyword search query compilation of “pistol” in published rap songs reminds one of Justice Scalia’s aphorism of legislative history: as a methodology of “counting your friends” rather than considering the integrity of the source.³⁴

III. LAW AND LITERATURE / LAW AND RAP

Previous scholarship on law and rap tends to this common law method of putting forward a jurisprudence of rap

³⁰ *Elonis*, 135 S.Ct. at 2006–07.

³¹ Brief for Erik Nielson et al. as Amici Curiae Supporting Petitioner, *supra* note 3, at 16.

³² *Id.* (referring to track “Texas Margarita”). The author grew up in Atlanta, and thus figured a soft spot for the Gucci oeuvre to be founded in semi-rational hometown pride.

³³ *Cf. The Best Movies of 2013 (The Playlist Staff Top 10s)*, INDIIEWIRE (Dec. 31, 2013) (placing second on critic Katie Walsh’s year-end list).

³⁴ *See, e.g.,* Elizabeth A. Leiss, *Censoring Legislative History: Justice Scalia on the Use of Legislative History on Statutory Interpretation*, 72 NEB. L. REV. 568, 574 (1993).

(Butler,³⁵ Murrell,³⁶ cummings³⁷) and then locating a rap or rapper that provides precedential support. This is a selective form of argument construction, and one that provides an incomplete portrait of the varied landscape of rap music. Lawyers are often guilty of a “presentist” use of historical data, but cultural historians are not. It feels a bit teleological to place the genre-breaking acid house/soul power/haute couture Kanye West into a trajectory of ancestral storytelling traditions.³⁸ A relevant analogue is Judge Posner’s jeremiad on the relevance of literary hermeneutics to legal method: his *Law and Literature*.³⁹

In this important text, Posner surveys his encyclopedic knowledge of the Western canon, and spins a theory of literature based on citation to literary precedent. Posner has been faulted for a conservative definition of what counts as canonical, but this is not as much his personal foible as a reflection of trends in education.⁴⁰ Posner is a voracious reader by any standard, and each of us suffers from gaps in our personal knowledge of primary authority. Nor does this Article fault law and rap scholars for coalescing around the same cohort of rappers; in particular, the political rap of the 80s, the gangster rap of the early 90s, and the conscious rap of the late 90s. It is natural for individuals to write about what they are most familiar with. And in the sprawling world of rap, encyclopedic knowledge is perhaps impossible. But

³⁵ E.g., Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983 (2004).

³⁶ Matthew Murrell, *This is Real Hip-Hop: Hip-Hop’s Rejection of Paul Butler’s Theory of Justice in Let’s Get Free*, 2011 GEO. L.J. 1179 (2010).

³⁷ andre’ douglas pond cummings, *Thug Life: Hip-Hop’s Curious Relationship with Criminal Justice*, 50 SANTA CLARA L. REV. 515 (2010).

³⁸ E.g., Cheryl L. Keyes, *The Roots and Stylistic Foundation of the Rap Music Tradition in RAP MUSIC AND STREET CONSCIOUSNESS* 17–38 (2002). But see Patricia Tang, *The Rapper as Modern Griot*, in HIP-HOP AFRICA: NEW AFRICAN MUSIC IN A GLOBALIZING WORLD 79, 81 (Eric Charry ed., 2012) (“In a 2006 interview with Playboy magazine, rapper Kanye West suggested that he would be a griot in a modern-day Bible.”).

³⁹ See RICHARD POSNER, *Law and Literature* (3rd ed. 2009).

⁴⁰ E.g., John Fischer, *Reading Literature/Reading Law: Is There a Literary Jurisprudence?*, 72 TEX. L. REV. 135, 152–55 (1993).

should this not remind the rap theorist that this same sprawl limits the possibility of forming a general theory of rap?

*I met a critic . . . she thought Hip Hop was only guns and
alcohol/
I said "Oh h*** naw!" But yet it's that too/
You can't discrima-hate cause you done read a book or two
Andre 3000, Humble Mumble (2000)*

Judge Posner has been criticized by the literati for his instrumental approach as a reader.⁴¹ Posner comes to literature with the same sensibility as a lawyer coming to a Westlaw results survey: what useful knowledge can I glean from this novel and how might I categorize it? One might ask if this is inconsistent with the very purpose of literature. We might ask a similar question of the rap scholar: is a record to be mixed and mastered for evidence of a grand political theory?⁴² While it is true that much of rap is political, this is not a conditional attribute. And it is certainly does not have to be *didactic*.

Contemporary hermeneutics has had limited influence on juridical practice. Peter Brooks notes that recent obituaries for Law and Literature have eulogized the movement.⁴³ Insight from literary and interpretive theory has spurred thoughtful academic work in this field, and has helped make a generation of law students more careful readers. But to the extent this project has possessed the programmatic goals of informing judicial method it has been less successful. The law is perhaps too reified, too *masculine* to fold to the belletristic world of letters and language.⁴⁴ The

⁴¹ E.g., James Boyd White, *What Can a Lawyer Learn From Literature?*, 102 HARV. L. REV. 2014, 2016–18 (1989).

⁴² Cf. Ronald D. Brown, *The Politics of "Mo' Money, Mo' Money" and the Strange Dialectic of Hip-Hop*, 5 VAND. J. ENT. L. & PRAC. 59 (2003).

⁴³ Peter Brooks, *Law, Literature: Where Are We?* at 61, in TEACHING LAW AND LITERATURE (2011).

⁴⁴ Julie Stone Peters, *Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion* at 80, in TEACHING LAW AND LITERATURE (2011).

law is coercive and utterly practical. It resists an open texture, or being a vehicle for some kind of rarefied intellectual game. The law is consequential. To expect codified statutes to bend to Barthes,⁴⁵ or judges to remove the personality of their peers from opinions is quixotic. It is an axiom of common law method that the weight of an opinion is tied to the credibility of the author. It is Aristotle's *ethos*. The writer of the judicial opinion always lurks.

But the use of rap lyrics in court gives unique practical value to academic trends in interpretation. Courts read raps not only in the context of a true threat to commit a future crime, but as a confession of a previous crime, or as an index of knowledge or *modus operandi*.⁴⁶ They are part of the fabric of evidence. Unlike the statute or regulation, their dual quality as aesthetic and truth documents makes them amenable to literary construction. I doubt the utility of Barthes' "death of the author" here. As argued earlier, the identity of the rapper provides a depth of meaning to the lyric, which the able rapper can play off for literary effect. Instead, this Article argues for the relevance of Stanley Fish. "How to recognize a poem"⁴⁷ provides a frame for "how to recognize a rap." Or more specifically, *how we recognize who is a rapper*.

The *Jeffries* court has asked for a test to help distinguish rap-as-art from rap-as-pretext. Instead of Dennis' claim that experts like Kubrin be invited to discern the genuine rap lyric, this Article asks for the reader-response theory writ large—what does the Internet think? Fish is identified with the birth story of reader-response. The paradigmatic hypothetical is his syllabus left on the chalkboard for the next classroom of medievalists. The students brought their own meaning to the surface of the text, constructing a poem out of the reading list. Repeated trials

⁴⁵ See generally Roland Barthes, *The Death of the Author* (Richard Howard, trans.) (1967).

⁴⁶ Dennis, *supra* note 9, at 33; see also *State v. Cheeseboro*, 552 S.E.2d 300 (S.C. 2002).

⁴⁷ STANLEY FISH, *How to Recognize a Poem When You See One*, in *IS THERE A TEXT IN THIS CLASS?* (1980).

proved to Fish that the constructed meaning of a document depends on its interpretative community—or, to borrow the language of *Calvert et al.*, the intended audience of a rap.⁴⁸ The reason that I challenge Kubrin’s expertise, or that of any individual expert, is the inherent disparate nature of rap music. As one man’s lyric is another man’s vulgarity (*Cohen v. California*), one (weirdo) rapper’s song is another (old school/conscious/gangster) rap fan’s drivel. A unitary hip-hop culture no longer exists, and perhaps neither does the pan-genre rap fan.

All I want to know is why they hating on me
Trinidad James feat. ILoveMakonnen, “H.O.M.E.” (2014)

Rap scholars frequently tell the birth story of rap music. This is interesting because there does not seem to be much debate as to its genesis. The usual history begins with 1970s South Bronx, and traces the early work of Herc and Africa Bambataa to the street sermons of Grandmaster Flash and Kurtis Blow to Public Enemy, N.W.A. etc. Some scholars go back further, citing the proto-emcee’ing of Jamaican toasting or even the crosstalk of the antebellum South.⁴⁹ This framing signals a lineage of polysemic wordplay, and of the use of vocal modulation to add musicality to the spoken word. But one might question whether a historian is required to confirm this overt rap quality. The more intriguing question is concerning the relevance of early rap history to the contemporary rapper. The lawyer cites to the canon to anchor their reasoning and provide legitimacy for their argument. It is less obvious why the rapper cites to the rap “canon,” or whether contemporary rappers even share the basic assumptions of previous generations of rappers. For the old school, or gangster, or conscious rapper, “word is bond.” But for some rappers, do the words even matter?

⁴⁸ Calvert et al., *supra* note 16, at 22–25.

⁴⁹ *E.g.*, Keyes, *supra* note 38.

*I'm a f***** walking paradox, no I'm not*⁵⁰
Tyler the Creator, "Yonkers" (2011)

Song lyrics are commonly assumed to be a vehicle for atmosphere, unformed emotion or the ineffable. Rap lyrics are no different. And while the wordplay of rap adds dimension to the texture of a song, this wordplay is not necessarily instrumental or meant to inform the listener of meaning. Wordplay can also be indulgent, or an exercise in abstraction. The contemporary rapper might use wordplay not only as testament to the power of language but to deconstruct words into the weightless, diaphanous and contingent things they are. Words are words are words are words.

IV. RETHINKING RAP: BEYOND WORDS

*Abstract, abstract, abstract. Abstract, abstract, abstract,
abstract, abstract, abstract, abstract ...*
Kool A.D., "Exotische Kunst" (2014)

What happens to rap music when language is no longer viewed as didactic, but as sonic bits and fragments meant to be *played* upon for listener effect? The recent turn from gangster and conscious rap has increased the aesthetic merit of rap while at the same time re-conceptualizing the rap lyric. Killer Mike is widely recognized as a front-rank rapper and is unique in his versatility—Killer Mike is simultaneously highbrow, street, playful, serious, avant-garde, old school, political, fun, funny, inclusive, afrocentric, industrial and employs a dexterous flow that can range from buttery to the double-time cadence of TechN9ne. Killer Mike is singular in how he transcends the multitude genres of contemporary rap. And perhaps another trait that distinguishes Killer Mike and *Run the Jewels* bandmate El-P is their emphasis on lyrical prowess. Run the Jewels is associated with internally dense

⁵⁰ Joyce, *Tyler the Creator on "Yonkers": "That Beat Was Made as a Joke."*, PIGEONS AND PLANES (Feb. 17, 2016), <http://pigeonsandplanes.com/2016/02/tyler-the-creator-on-yonkers-that-beat-was-made-as-a-joke/> [https://perma.cc/2XQD-R34Y].

lyrics and baroque wordplay.⁵¹ Lyrical rap is obviously an important form of rap, but perhaps it is no longer the only form. After all, as Kendrick Lamar says, if it were, “then Killer Mike [would] be platinum.”⁵²

For rappers like Chief Keef, words seem to also function as a vehicle for non-verbal concepts like our primordial *id*. Chief Keef is the most visible representative of Chicago’s drill rap scene.⁵³ Drill is Chicago-specific in many facets, and feels symptomatic of a city seemingly endemic with gun violence and police corruption. But drill also tracks a more general vector of “Crunk” to “Hyphy” to “Trap” over the last decade. This cluster of rap is marked by its pounding beats, and particularly crunk, trap and drill are associated with shouted, persistent lyrics. Bonecrusher, with the assistance of Killer Mike and T.I., repeated that he is “never scared” in his 2003 song; Waka Flocka’s breakout 2009 trap anthem “Hard In Da Paint” is near constant—and high-decibel—hook; Chief Keef ends most every sentence in his eponymous “I Don’t Like” by reminding the listener that there are many people and things he doesn’t like. But the rap-illiterate audience would be shallow to read the Chief Keef oeuvre as merely an unfiltered expression of youth aggression. Critics like Mayor Rahm Emmanuel are correct that many of his lyrics are explicit.

But Chief Keef is surely a savvy artist and understands how image juxtaposes with lyric and emotion. The repetition of his lyrics helps to transform them from

⁵¹ David Drake, *Run the Jewels: Last Rappers Standing*, PITCHFORK (Oct. 29, 2014), <http://pitchfork.com/features/article/9532-run-the-jewels-last-rappers-standing/> [<https://perma.cc/G7Y9-C7MG>] (“As writers, they’ve continued to push themselves, rapping with studiously dense internal rhymes, a baroque, wordy style that has the muscular punch of a comic book.”).

⁵² Kendrick Lamar, *Hood Politics* in TO PIMP A BUTTERFLY (2015) (referencing the platinum music sales threshold of one million albums).

⁵³ “Drill” is a booming, guttural, gritty form of music distinguished by its violent themes and, notably, from the conscious brand of Chicago rap identified with persons like Common.

description to *commentary*. Indeed, early YouTube footage of Chief Keef suggests the work of an auteur.⁵⁴ Chief Keef is a manifestation of West Chicago as well as a living, if raucous, diary of its violence. By illegalizing the icon of Chief Keef, is the state marginalizing, while possibly glamorizing, an important dissident voice? Political speech does not have to be overtly political. And in today's poetics of rap, speech does not even need to be speech. Alan Ginsburg's *howl* is now Young Thug's ululating yelp.

Indeed, who would have predicted New York rap would be saved in part⁵⁵ by two hyper-literate neo-beatniks, Victor Vasquez ("Kool A.D.") and Himanshu Suri ("Heems")? Their band, "Das Racist," was birthed in a deconstructive mission to "saw the legs out from under hip-hop as they celebrate it."⁵⁶ Their catalog is cerebral without being conscious, and poetic while improvising on the Dadaist banner of separating words from meaning. In an interview with the Village Voice, Suri quipped his "top five favorite poetic devices of all time are repetition, repetition, repetition, repetition, and repetition."⁵⁷ Vasquez concurred, though noting the relevance of

⁵⁴ E.g., DJKENN ALLORNOTHING, *Do It For My Town*, YOUTUBE (Apr. 27, 2011), <https://www.youtube.com/watch?v=YbVrxaJIMB8> [<https://perma.cc/BC4N-PDAX>].

⁵⁵ There might not be causality here, but there does seem to be anecdotal truth to Das Racist hypeman Dapwell's memory: "When we started in 2009, 2010, there wasn't a New York rap scene. All that [s***] wasn't around." Jordan Sargent, *Das Racist Bail on Munich Show, Announce Split on Twitter*, SPIN (Dec. 3, 2012), <http://www.spin.com/2012/12/das-racist-breakup-twitter-heems-kool-ad-dapwell/> [<https://perma.cc/627P-VJQP>].

⁵⁶ Josh Eells, *Pizza Hit: Meet Das Racist, the smartest stupid guys in the room*, NEW YORK MAGAZINE (Aug. 2, 2009), <http://nymag.com/arts/popmusic/features/58183/> [<https://perma.cc/SY4Z-ZULE>].

⁵⁷ Rob Harvilla, *A Chat with Das Racist, the Geniuses Behind "Combination Pizza Hut and Taco Bell"*, THE VILLAGE VOICE (June 17, 2009), <http://www.villagevoice.com/music/a-chat-with-das-racist-the-geniuses-behind-combination-pizza-hut-and-taco-bell-6392479> [<https://perma.cc/3EPB-DSG9>].

“plagiarism”⁵⁸ as well. This reference to repetition is characteristically *post-ironic*, and suggests a nod to their viral Internet 2009 song “Combination Pizza Hut and Taco Bell,” whose lyrics are centered on each rapper reiterating that they are at the Pizza Hut-Taco Bell on Jamaica Ave. The lyrics never explicitly deride the existence of a fast food Italian-Mexican restaurant as an appropriative, insipid Yum! Brands fusion. But one online magazine agrees that the repetition and awareness of the rappers make the song “an existential meditation on consumer identity.”⁵⁹ Post-modern hermeneutics can perhaps manage this. But can something as literal as the law? What are courts to do it when the context of the text is itself a joke? How might a rap expert like Kubrin provide jury instruction for *that*?

*We're not joking / just joking /
we are joking / just joking / we're not joking*
Das Racist, “Hahahaha jk?” (2010)

Repetition as meta-commentary is not new to rap. The facially misogynistic lyrics of the Beastie Boys “Girls” can easily be interpreted as parody. “I’m Black Y’all” in the Chris Rock film *CB4* suggests both the power of and limits to ethnocentricity in art. A more recent play on repetition and realness is Kendrick Lamar’s “Real” from *good kid/M.A.A.D. city*. The looping refrain of “I’m real/ I’m real/ I’m really really real” underscores Kendrick’s sense of integrity and knowledge of self while commenting on constructed notions of realness in rap music. A broader question is that given the counter-narrative to conspicuous consumption and authentic identity in rap, such as The Roots’ “What They Do” music video from *Illadelph Halflife*, why is it that law and rap scholars cite to

⁵⁸ See Kim D. Chanbonpin, *Legal Writing, the Remix: Plagiarism and Hip Hop Ethics*, 63 MERCER L. REV. 597 (2012).

⁵⁹ *Song of the Day: Das Racist*, DEATH + TAXES (Apr. 6, 2009), <https://web.archive.org/web/20100430080720/http://www.deathandtaxesmagazine.com/2009/04/song-of-day-das-racist.php> [https://perma.cc/3H8R-5VUH].

gangster rappers as an index that rap is actually *not* literal?⁶⁰ This seems like an unwise choice of precedent, especially when there are available sources (e.g. Kool Keith) who take on new identities for each consecutive album. But what this Article is more curious about is how we as a society are supposed to respond to the advent of the *rapper-as-troller*. “Trolling” is understood as the Internet phenomenon of a commenter/commentator instigating conflict or assuming contrarian positions for the sake of annoyance. But what do we do when the troller is not anonymous, but a public artist? What if the artist’s very identity functions as a playful sort of agitprop?

V. LEGAL PROTECTION FOR LIVING LIFE AS ART

The Stanley Fish question of how to decide who is a rapper intersects with the dramaturgical aspects of the rapper in society. When are these rappers performing, and for whom? Consider the histrionics of experimental industrial-rap outfit Death Grips.⁶¹ Their aesthetic output is non-linear, prolific, *ad hoc*, profound, profoundly subversive and profoundly frustrating. Are they even a band? Death Grips added a new dimension to performance art by deliberately *not* showing up for scheduled gigs in what has been interpreted as a ploy to annoy fans.⁶² But perhaps their point was to jeer at the notion of a live band in the twentieth century: in our new paradigm of Internet music does a band still need to be tactile, in living color, vital, *real*? What are the boundaries between life and art for the contemporary band? To what extent is the public

⁶⁰ See, e.g., Charis E. Kubrin & Eric Nielson, *Rap on Trial*, 4 RACE AND JUSTICE 185 (2014).

⁶¹ Their breakthrough album, *The Money Store*, is especially acclaimed, and is the first contemporary album to receive a perfect 10/10 from Anthony Fantano of the THE NEEDLE DROP (“the internet’s busiest music nerd”), see The Needledrop, *Death Grips-The Money Store Album Review*, YOUTUBE (Apr. 20, 2012), <https://www.youtube.com/watch?v=mK54P7VeM1g> [<https://perma.cc/Z8ED-T6DP>].

⁶² E.g., Mike Powell, *Death Grips: A Eulogy*, PITCHFORK (July 7, 2014), <http://pitchfork.com/thepitch/394-death-grips-a-eulogy/> [<https://perma.cc/CCB7-H4TS>].

responsible for constructing the identity of a “band” like Death Grips? Is the very identity of Death Grips an elaborate piece of performance art?

The law’s textuality also makes it less able to manage problems in performance art. “Traditional” performance art is distinguished by its transience, decay, spontaneity, conceptuality and non-verbal orientation. All of these things make it inherently difficult—perhaps impossible—to copyright. These tensions were made palpable last decade when Marina Abramovic curated a sort of “greatest hits” of performance pieces from the last half-century.⁶³ The illegalization of the icon of Chief Keef brings into focus these related issues of law, artistic protection and the life-as-art identity in society. For most certified rappers—Chief Keef, Tyler the Creator, and Action Bronson—criminal lyrical content is not the central problem, it is their freedom of personality.⁶⁴ In the Internet society, everyone markets their personal brand, including law professors. How are we to manage the problem of locating the boundaries of artistry in a brand-saturated society? And what are the potential transgressive implications of outlawing an identity?

The Chief Keef story is a post-modern city saga. Teenage Keith Cozart/Chief Keef drops out of school at age 15, sells heroin, gets in trouble, raps, raps about selling heroin (“pure white”), helps create raw Drill sound, releases mixtape, uploads YouTube videos, gets in trouble, etc., releases album, performs concerts, gets in trouble, etc.⁶⁵ Embattled Chicago Mayor Rahm Emanuel then expels Chief Keef from local

⁶³ See, e.g., David Bollier, *Performance Art as Property*, ON THE COMMONS (Nov. 11, 2015), <http://www.onthecommons.org/performance-art-property> [<https://perma.cc/E4CU-X7JA>]; see also *Performance Art and the Law*, ARTQUEST, <https://www.artquest.org.uk/artlaw-article/performance-art-and-the-law-2/> [<https://perma.cc/3CLT-JMWY>].

⁶⁴ But see Kubrin & Nielson, *supra* note 60, at 186 (describing criminal court use of lyrics by professional rappers Lil’ Boosie and B.G.).

⁶⁵ *Chief Keef: Top 10 Facts You Need to Know*, HEAVY (Apr. 17, 2015), <http://heavy.com/news/2013/08/chief-keef-christopher-lane-rapper/> [<https://perma.cc/5WKZ-DZ9B>].

venues, citing the potential “significant safety risk” as well as his unacceptable image for city youth. It is well-settled doctrine that a generalized safety worry does not justify preemptively shutting down a public event (*Terminiello v. City of Chicago*). Keef’s mere presence does not create a specific threat. It also feels hypocritical that Emanuel—the dance major alum of outré Sarah Lawrence College⁶⁶—is responsible for censoring an innovative artist. The post-modern turn comes when authorities in local Hammond, Indiana later shut down *the projection of Chief Keef’s hologram appearance*. Again, his *hologram*, his *projected image*, was blocked. In the United States, holographic performances are most associated with posthumous acts like Tupac Shakur.⁶⁷ Rap patron and Greek shipping heir Alki David has been instrumental in the digitization of the still living Keef. This past September the hologram version of Chief Keef was again shut down from public performance in Los Angeles.⁶⁸

I concur with Professor Volokh that denying a hologram projection is facially inconsistent with *Terminiello*, and distinguished from the “imminence” tests of criminal incitement.⁶⁹ Authorities may be concerned by Chief Keef’s reputation, but there are surely other rap musicians and

⁶⁶ John Kass, Rahm, dance and the importance of negative space, CHICAGO TRIBUNE (Apr. 6, 2017), <http://www.chicagotribune.com/news/columnists/kass/ct-rahm-emanuel-dancer-kass-0407-20170406-column.html> [<https://perma.cc/88CB-5J9P>].

⁶⁷ See generally Shannon Flynn Smith, *If It Looks Like Tupac, Walks Like Tupac, and Raps Like Tupac, It’s Probably Tupac: Virtual Cloning and Postmortem Right-of-Publicity Implications*, 2013 MICH. ST. L. REV. 1719 (2013).

⁶⁸ E.g., Rebecca Haithcoat, *Chief Keef’s L.A. Hologram Show Goes On, But Is Shut Down by Police Again*, BILLBOARD (Sept. 19, 2015), <http://www.billboard.com/articles/columns/the-juice/6700644/chief-keef-los-angeles-hologram-show-goes-on-but-is-shut-down-by-police> [<https://perma.cc/5LPT-VM4G>].

⁶⁹ See, Volokh, *supra* note 17 (imminence is interpreted strictly to require immediate action); see also Eric Zorn, *Sorry, the Constitution Protects Chief Keef Too*, CHICAGO TRIBUNE (July 28, 2015), <http://www.chicagotribune.com/news/opinion/zorn/ct-chief-keef-has-rights-perspec-zorn-0729-20150728-column.html> [<https://perma.cc/4KHS-RXHC>].

broad genres of music, such as punk, folk, and others, that have been connected with anti-authority values. To outlaw a musician might be counter-productive to the extent that it provides a transgressive edge. Naomi Mezey, in “Law as Culture,” explores the relationship of the Columbine response to the possible glamorization of things like guns or the Black trench coat.⁷⁰ Is Emanuel only making drill culture more attractive to certain youths by illegalizing it?

VI. FREE EARL / BUT WHY NOT WELCOME TYLER?

Connected to the illegalization of the Chief Keef image is the UK and Australia’s denial of entry to rapper Tyler the Creator. The story of Tyler the Creator is in many ways a story of Internet rap. Tyler and his friend group of precocious, skateboard-loving pranksters gained notoriety in the obscure corners of YouTube in 2010 with their pugnacious form of rap and rap video. His posse, Odd Future Wolf Gang Kill Them All (“OFWGKTA”), quickly transformed from a loose clique goofing off on the Internet into a viral sensation. Their lyrics were admittedly juvenile and marked by a macabre kind of violence.⁷¹ OFWGKTA attracted attention for both their palpable talent and *provocateur* aesthetic.⁷² The two standouts from the first iteration of OFWGKTA were production guru Tyler and rap prodigy Earl Sweatshirt.

⁷⁰ Naomi Mezey, *Law as Culture*, 13 YALE J.L. & HUMAN. 35, 59 (2001).

⁷¹ Chaz Kangas, *The History of Horrorcore Rap*, LA WEEKLY (Nov. 5, 2013), <http://www.laweekly.com/music/the-history-of-horrorcore-rap-4168562> [<https://perma.cc/D4DC-G4SS>] (“Horrorcore” is a long-time sub-genre of rap and enjoys a lineage from 1990s acts like Gravediggaz and Insane Clown Posse to contemporary groups like Flatbush Zombies).

⁷² Cf. Eric Thurm, *Earl Sweatshirt and Tyler, the Creator’s Odd Future as Mature Adults*, PITCHFORK (Apr. 9, 2015), <http://pitchfork.com/thepitch/731-earl-sweatshirt-and-tyler-the-creators-odd-future-as-mature-adults/> [<https://perma.cc/2G9J-VDFD>]. (“Many rappers/artists attempt to identify their personae with their selves as much as possible; Earl and Tyler exaggerate their character until it’s impossible to identify with the human being underneath.”).

Concerned with adolescent fame and declining grades, Earl's mother swiftly enrolled him in a Samoan boarding school until he reached the age of 18. The mystery of his absence (no details were publicly disclosed to his whereabouts) served as its own kind of PR, inciting an Internet-based "Free Earl" campaign.⁷³ Rap audiences were eager for Earl's return and the release of his first full-length album *Doris*, a pithy, confident work that suggested Earl's evolution from the gratuitous shock of his teenage lyrics to more mature, introspective themes. For rap audiences, and for state foreign ministries, Earl's early oeuvre is understood for what it is—art. Perhaps a very puerile form of art, but still non-literal, non-representational, and not evidence of Earl-as-real-life-dude.

Tyler has also matured since his early rap output.⁷⁴ Indeed, his most recent full-length, *Cherry Bomb*, has been criticized by fans for being *too* positive.⁷⁵ If anything, rap audiences might consider Tyler to be *too rehabilitated*, to have lost an edge or energy that gave his songs a signature raw quality. So it is surprising that only recently has the feminist group Collective Shout worked to successfully deny Tyler the Creator entry to tour Australia and the United Kingdom. (Tyler is banned from the United Kingdom for 3-5 years for

⁷³ See, e.g., Kelefa Sanneh, Where's Earl? Word from the missing prodigy of a hip-hop group on the rise, *THE NEW YORKER* (May 23, 2011), <http://www.newyorker.com/magazine/2011/05/23/wheres-earl> [<https://perma.cc/SXE5-BRAZ>].

⁷⁴ See, e.g., Alex Frank, *Why Tyler, the Creator's Gay Pride Shirt is More Than Just a Fashion Statement*, *GQ* (May 8, 2015), <http://www.gq.com/story/tyler-the-creator-gay-pride> [<https://perma.cc/Dy38-JN6X>]. ("It's a juvenile spin, the type he usually makes brattily, but it's genuine in a way he's not been before.")

⁷⁵ Ryan Middleton, *Tyler, the Creator Responds to Fan Criticism About "Cherry Bomb"*, *MUSIC TIMES* (June 20, 2015), <http://www.musictimes.com/articles/41274/20150620/tyler-the-creator-responds-fan-criticism-cherry-bomb.htm> [<https://perma.cc/6MQF-VWJ8>]. ("On an Odd Future Reddit thread a fan vented their frustration that the "Smuckers" rapper's recent album *Cherry Bomb* was not depressing enough . . . [a] short while later, Tyler responded on the social network Spring.me with a lengthy post about positivity and growing as a person . . . [w]hy cant i share my joy with the world?").

encouraging “terrorist acts”⁷⁶). And while a full roster of rappers came to the defense of young Taylor Bell, few have come to the aid of Tyler.⁷⁷ Sure, his past lyrics were at times undeniably awful to women.

But when these lyrics are situated within his scorched earth, ominous form of production, they are heard to be overtly fantastical and a sublimation of the dark recesses of his own psychology. The words are arguably a vehicle for expressing his angst of growing up without a father as much as any honest description of his feelings towards women or LGBTQ individuals.⁷⁸ This is distinguished from some of the content of conscious rappers who earlier in their career articulated comparably awful thoughts with a literality and deliberateness that seemed to portray their *actual* feelings.⁷⁹

⁷⁶ Nancy Groves, Tyler, the Creator cancels Australian tour after visa ban campaign, *THE GUARDIAN* (Aug. 10, 2015), <https://www.theguardian.com/music/2015/aug/10/us-rap-artist-tyler-the-creator-cancels-australian-tour-after-visa-ban-campaign> [<https://perma.cc/X3SC-Q2GH>].

⁷⁷ Harry Fletcher, *Foals Think Tyler, the Creator’s UK Ban Highlights ‘Stupid Government Bureaucracy’*, *DIGITAL SPY* (Aug. 30, 2015), <http://www.digitalspy.com/music/news/a666085/foals-think-tyler-the-creators-uk-ban-highlights-stupid-government-bureaucracy/> [<https://perma.cc/WZ7A-XKP8>]. (Oxford indie band, Foals, is one of the few music groups to comment: “The lyrics they’re banning him for are from six years ago and are no more offensive than the lyrics of a lot of other rappers who are freely allowed to come to the UK.”).

⁷⁸ Julianne Shepherd, *The New Underground: The Loud Family*, *SPIN MAG.*, Dec. 2011, (quoting Tyler, “I’m probably one of the least homophobic rappers in the world.”); *see also Tyler, the Creator Reveals Range of Anti-Homophobia Merchandise*, *NME* (May 8, 2015), <http://www.nme.com/news/tyler-the-creator--3/85233> [<https://perma.cc/FSB5-6UQ8>] (more recently quoting Tyler, “I’m legit one of the least homophobic guys to walk this earth but, most people just read the surface.”).

⁷⁹ *See, e.g.*, Phillip Mlynar, *High Five: Common’s Not-So-Socially Conscious Past*, *MTV* (Dec. 20, 2011), <http://www.mtv.com/news/2695145/hive-five-bad-common-lyrics/> [<https://perma.cc/8FAJ-H7HL>]; *see also* Kyle “Guante” Tran Myhre, *Homophobia in “Conscious” Rap*, *GUANTE* (Feb. 8, 2007), <http://www.guante.info/2007/02/article-conscious-rappers-and.html> [<https://perma.cc/V4XC-3NBU>].

Why are these other rappers able to be rehabilitated, but Tyler can't move on from his teenage identity?⁸⁰ Is it because Tyler skateboards? Or because of his Blackness?⁸¹ Or because Tyler seems to be laughing at *us* and a hip-hop culture of ebbing influence?

VII. THE RISE (AND FALL?) OF THE WEIRDO RAPPER:
SEPARATING PRODUCT AND PERSONA

I was born this way, halfsharkalligator / Is he weird ... ?
Dr. Octagon, "Halfsharkalligatorhalfman" (1996)

Rap scholars are quick to point out that rap music is only part of a larger umbrella movement of *hip-hop*. With rap are the kin disciplines of breakdancing, graffiti art, and record scratching.⁸² This ethnography of rap perhaps helps to explain to rap-illiterate audiences the early synergies between disciplines, and the street culture nucleus that informs much of rap content. But to the contemporary rapper it seems especially unclear why breakdancing and graffiti art relates to lyrical meaning.⁸³ Rap music's DNA is evolutionary and future-oriented. Its associated dances are correspondingly *fresh* (e.g., the dab, the tootsie roll, the jerk, the dougie, the superman, the whip/nae nae, the footwork, the quad-city

⁸⁰ See Joe Muggs, *Once you start banning rappers like Tyler, the Creator, where do you stop?*, THE GUARDIAN (Aug. 27, 2015), <http://www.theguardian.com/music/musicblog/2015/aug/27/rappers-tyler-the-creator-uk-visa> [<https://perma.cc/FH5V-C2EN>] ("The teenage lashing out demonstrated in his 2009 lyrics are often pulled out to demonstrate his offensiveness, but they were only ever part of a cascade of adolescent angst, the raging of a turbocharged 21st-century Holden Caulfield.")

⁸¹ See kris ex, *Op-Ed: Would Chris Brown be Allowed in Australia If He Were White?*, PITCHFORK (Oct. 1, 2015), <http://pitchfork.com/thepitch/923-op-ed-would-chris-brown-be-allowed-in-australia-if-he-were-white/> [<https://perma.cc/J5BW-WA43>] (asserting that Black artists like Chris Brown are more often banned from performing for their past wrongs than White artists).

⁸² See, e.g., Brief for Marion B. Brechner First Amendment Project et al. as Amici Curiae Supporting Petitioner, *supra* note 5, at *6.

⁸³ The author is an occasional rap concert goer and frequent Internet trawler, yet has few vivid memories of rappers breakdancing.

train, the getting jiggy with it, the hammer time, the chicken noodle soup, the c-walk, the Bankhead bounce, the Gangnam style,⁸⁴ the Bernie, the hotline bling).

But how many contemporary rappers even pride their dancing ability, breakdancing or otherwise? Pitchfork contributor Andrew Ryce suggests that Drake recently achieved The Singularity in his viral video for “Hotline Bling.”⁸⁵ But Drake did not enter the entertainment industry via breakdancing or graffiti art; he entered via acting. Many other front-rank contemporary rappers share an on-screen personality and broad genius, and seem to continue rapping in part because it is a medium particularly well suited to show off one’s charismatic personality. Drake makes use of his singing chops as much as his rap delivery, and has helped contribute to the re-evaluation of what rap *is*. Consider the current #rapgame dominance of sing-songy “rap weirdo”⁸⁶ Young Thug, who is “literally . . . famous for being unintelligible.”⁸⁷ Listen to Drake’s own 2014 collaboration with ILoveMakonnen, “Club Goin’ Up on a Tuesday.” This song is instantly catchy. But to the hip-hop purist is this track even a rap?

⁸⁴ See, e.g., PSY, BRITANNICA, <https://www.britannica.com/biography/PSY> [https://perma.cc/F2HW-CYKK]. Here, Psy indicates that he, in part, identifies as a rapper.

⁸⁵ *The Best 100 Tracks of 2015*, PITCHFORK (Dec. 13, 2015), <http://pitchfork.com/features/lists-and-guides/9765-the-100-best-tracks-of-2015/> [https://perma.cc/NGX9-AZQ9] (Ryce theorizes on the Drake singularity in his write-up for “Hotline Bling,” the number two track of 2015).

⁸⁶ Eric Diep, *Young Thug Releases New Mixtape “Thug 1017,”* XXL (Feb. 23, 2013), <http://www.xxlmag.com/news/2013/02/young-thug-releases-new-mixtape-1017-thug-download-now/> [https://perma.cc/Z5ZG-B6J2] (“1017 Bricksquad’s Young Thug has been offering his youthful exuberance to the roster and playing the role as rap weirdo.”).

⁸⁷ Devin Friedman, *Young Thug is an ATLien (and the Best Rapper Alive)*, GQ (Feb. 16, 2016), <http://www.gq.com/story/young-thug-best-rapper-alive-interview> [https://perma.cc/D5WN-NGD5]. (“He’s the most successful lyricist in the history of the world whose *thing* is that you can’t understand what the [f***] he’s talking about.”).

Have no apprentice, style uninherited
 Danny Brown, “Pac Blood” (2011)

The law and rap historiography not only confuses the association of things like graffiti art or breakdancing to contemporary rap, but perhaps also mischaracterizes the relevant rap canon. Reviewing the Nielson and Kubrin brief for *Elonis* (2014), all rap citations are prior to 2003. The artists’ brief in *Bell* includes track references of recent vintage, but little alternative rap. Cummings, Murrell and Butler each comment on the same population of old school, gangster or conscious rappers. Butler’s first piece is from 2004.⁸⁸ But Cummings, writing in 2010, focuses only on Public Enemy, N.W.A., Queen Latifah, KRS-One, Tupac Shakur, Talib Kweli, Common and Lauren Hill (but without mention to Stones Throw, 75 Ark or Def Jux record labels, MF Doom, N.E.R.D., etc.).⁸⁹ Murrell builds a whole theory out of Dead Prez’ then decade-old album *Let’s Get Free* (2000).⁹⁰ Are persons like Young Thug and ILoveMakonnen even doing the same thing as these supposed genre-equated artists?

I don’t need rap, told you rap needs me
 Heems, “Rapping 2 U” (2010)

Tyler the Creator instead cites Pharrell (“Skateboard P”; N.E.R.D. alum) and filmmaker Wes Anderson as his ultimate muses. For Tyler, rap is merely one aspect of his life-as-art persona, and a platform that he has found to be increasingly limiting (“I hate rapping . . . because it puts you in this box”; “I’m pretty bored with it”).⁹¹ “Internet rapper extraordinaire Danny Brown”⁹² cited Radiohead’s *Kid A* as

⁸⁸ Butler, *supra* note 35.

⁸⁹ Cummings, *supra* note 37.

⁹⁰ Murrell, *supra* note 36.

⁹¹ Larry King, *Interview with Larry King with Tyler, the Creator-Ora TV*, YOUTUBE (Jun. 4, 2014), <https://www.youtube.com/watch?v=LLAfFXi3Zxk> [https://perma.cc/7K6Q-QA5M].

⁹² Kia Makarechi, *Danny Brown on ‘Magna Carta Holy Grail,’ ‘Yeezus’ and His Own Album*, HUFFINGTON POST (July 15, 2013),

motivation for him to complete his bildungsroman.⁹³ But the maestro of Internet rap is decidedly “the based god” Lil’ B. Berkeley-bred Lil’ B shares with Odd Future a skateboard-paved entry into rap. His breakout single with The Pack is an ode to the archetypal skate shoe (“Vans,” 2007). Lil’ B now raps about most anything and everything, and his discography extends to the length of a novella.⁹⁴ Lil’ B rhymes in the stream-of-consciousness tradition of iconic wordsmith MF Doom.⁹⁵ Still, any characterization of Lil’ B’s oeuvre is inherently reductive and misleading. It is at the same time experimental, derivative, ambitious, indulgent, crude, uplifting, literal, confused, direct, orthogonal, dexterous, wooden, transcendent, and idiosyncratic. But core to all of Lil’ B’s music is its felt “based-ness,” a reflection of the preternaturally empowering and optimistic ethos of Lil’ B himself. Rarely do the words matter. They are seemingly indifferent to his project—to celebrate life, to affirm existence. It is the re-writing of *Waiting for Godot* with a happy ending.⁹⁶

Tracks like “Birth of Rap” and “I’m God” represent a peak form of based rap that captures the effortless genius of Lil’ B. His raps often enter the same puerile and disturbed world of early Odd Future (e.g., “Wonton Soup”). But somehow Lil’ B is able to suggest that we are in on the joke

http://www.huffingtonpost.com/2013/07/15/danny-brown-magna-carta-hail-yeezus_n_3588775.html [<https://perma.cc/UF9V-56YV>].

⁹³ Eric Diep, *Danny Brown Talks the Process Behind His Forthcoming Album “Old”*, XXL (Jan. 28, 2013), <http://www.xxlmag.com/news/2013/01/danny-brown-talks-the-process-behind-his-forthcoming-album-old/> [<https://perma.cc/GKQ6-H3PR>].

⁹⁴ *Lil’ B Discography*, FACTMAG (Oct. 7, 2013), <http://www.factmag.com/2013/10/07/download-45gb-worth-of-cult-rapper-lil-b-including-all-his-albums-and-mixtapes-documentaries-lectures-and-more/> [<https://perma.cc/2GXM-QWHH>].

⁹⁵ Cf. Matthew Perpetua, *Bradford Cox Talks Nervous Breakdown, New Atlas Sound Album*, ROLLING STONE (Nov. 7, 2011), <http://www.rollingstone.com/music/news/bradford-cox-talks-nervous-breakdown-new-atlas-sound-album-20111107> [<https://perma.cc/BWX6-UYVY>] (referring to the unconscious “automatic writing” process of the indie/ ambient Bradford Cox).

⁹⁶ See generally Bruce L. Hay, *The Damned Dolls*, 26 L. & LITERATURE 321 (2014).

with him, thus earning him plum invites on the academic lecture circuit (New York University, the Massachusetts Institute of Technology, etc.) rather than banning him from international festivals.

Chef-artist Action Bronson possesses the same on-screen personality as Drake, Lil' B, ILoveMakonnen and Tyler the Creator. And like Tyler the Creator, he has recently been denied concert privileges for degrading raps in his early oeuvre (he was removed from Toronto's North by Northeast lineup, as well as the George Washington University and Trinity College's annual spring concerts).⁹⁷ Bronson is well known for his hyperbolic, larger-than-life personality.⁹⁸ He raps in technicolor about the worlds of ultra-gourmet eating and sex workers with equal ease. And, indeed, the scatological cover of *SAAAB Stories* is an unfortunate example of his tendency to not recognize the boundaries of good taste. But Bronson doesn't seem to care what others think about his rapping.

It may be because Action Bronson *does not really care that much about rapping*. He is currently exploring expanded opportunities as a VICELAND TV travel foodie.⁹⁹ Tyler the Creator also seems content to leave his day job as a rapper and return to his sketch comedy work on the late night programming of Adult Swim (*Loiter Squad*). Critically acclaimed Long Beach rapper Vince Staples has publicly

⁹⁷ *Action Bronson Won't Play NXNE Show at Yonge-Dundas Square*, CBC NEWS (May 29, 2015), <http://www.cbc.ca/news/canada/toronto/action-bronson-won-t-play-nxne-show-at-yonge- Dundas-square-1.3093643> [<https://perma.cc/8FZ2-JP44>].

⁹⁸ See Dennis, *supra* note 9, at 22–23 (comparing rap storytelling to the narrative “yarn”); see also Matthew Strauss, *Action Bronson Removed from Another College Concert*, PITCHFORK (Apr. 21, 2016), <http://pitchfork.com/news/64973-action-bronson-removed-from-another-college-concert/> [<https://perma.cc/A43X-35EC>].

⁹⁹ Adam Chandler, *Where James Beard Meets Rap*, THE ATLANTIC (Mar. 10, 2016), <http://www.theatlantic.com/entertainment/archive/2016/03/action-bronson-vice/472995/> [<https://perma.cc/5RC4-H3G4>] (“The rise of Action Bronson, the rapper and former chef, is the apotheosis of hip-hop and food culture.”).

stated he might leave rap (he's 23 years old).¹⁰⁰ Chief Keef has toyed with the thought of retiring from rap (he's 21),¹⁰¹ as has gender-fluid rapper Mykki Blanco.¹⁰²

Kanye West long withdrew from our commercial culture, and only allows us a sneak peak of his creative universe when the whim strikes. We can perhaps separate his wife Kim Kardashian's electronic dance music (EDM) from her "real" identity as reality TV star, *see, e.g.* her 2012 "Jam (Turn it Up)". It is less easy to separate Kanye-as-artist from Kanye-as-person. Is Kanye's twitter feed a subversive kind of public mural? Are we figurative/literal puppets in what has evolved to become Kanye's life/world? Is his recent *The Life of Pablo* an album or a comment on the death of the album?¹⁰³ His very meta music video for "Famous" is the most recent evidence he has achieved his own Singularity (*cf. The Picture of Dorian Gray*). Vanity Fair shared this Kanye quip on his marriage with Kim: "Our life is walking performance art."¹⁰⁴ But should the law help to protect this personal icon so he—and other up-and-coming emcees—does not leave us for

¹⁰⁰ Jake Krez, *Vince Staples Asserts He's Prepared to Quit Rap*, DJ BOOTH (Dec. 2, 2015), <http://djbooth.net/news/entry/2015-12-02-vince-staples-prepared-to-quit-rap> [<https://perma.cc/4R6E-NGF6>].

¹⁰¹ Erika Benton-Martin, *Chief Keef Announces Retirement, Says Too Many Rappers Sound Like Him*, MUSIC TIMES (Mar. 8, 2016), <http://www.musictimes.com/articles/67104/20160308/chief-keef-announces-retirement-many-rappers-sound.htm> [<https://perma.cc/EEW5-BWXC>].

¹⁰² Yezmin Villarreal, *Why Mykki Blanco is Quitting Rap to Become an Investigative Journalist*, ADVOCATE (Mar. 24, 2015), <http://www.advocate.com/arts-entertainment/music/2015/03/24/why-mykki-blanco-quitting-rap-become-investigative-journalist> [<https://perma.cc/W8RC-H5J7>].

¹⁰³ *E.g.*, Jack Hamilton, *The Life of Pablo Is an Attack on the Very Idea of the Album*, SLATE (Feb. 19, 2016), http://www.slate.com/articles/arts/culturebox/2016/02/kanye_west_s_the_life_of_pablo_is_an_attack_on_the_very_idea_of_the_album.html [<https://perma.cc/4D8Y-VW4A>].

¹⁰⁴ Dirk Standen, *Exclusive: Kanye West on His "Famous" Video, Which Might Be His Most Thought-Provoking Work Yet*, VANITY FAIR (June 24, 2016), <http://www.vanityfair.com/culture/2016/06/kanye-famous-video-interview> [<https://perma.cc/UU7C-ENA7>].

fashion, food, or other industries where persona is separate from product?¹⁰⁵

VIII. CONCLUSION

Luckily, we already have a rubric by which to measure if a rapper has transcended from Elonis to Kanye: the interpretive community of rap listeners. Genius.com began in its beta form as rapexegesis.com, but its handle quickly evolved into the more familiar diction of rapgenius.com.¹⁰⁶ It reflects the interpretive method of reader-response by providing a platform for fans to aggregate meaning(s) of opaque or esoteric rap lyrics. Why pay Professor Kubrin to lecture in court when we can simply read the insights provided for free by rap fans? This is what some rap fans do for fun, and perhaps this provides sincerity to the effort.¹⁰⁷ The founders of now genius.com argue this is a novel kind of genre that transcends the mere transcription of lyrics.¹⁰⁸ This name change to genius.com reflects a broader mission—to *annotate the world*.

Interestingly, we might be in the midst of a dialectic of “law and literature” to “rap” to “revised hermeneutics of law and literature.” The United States Constitution is only one of many legal documents to now be annotated on law.genius.com.¹⁰⁹ Earlier, this Article expressed skepticism

¹⁰⁵ Kubrin & Nielson, *supra* note 64, at 203.

¹⁰⁶ Charles Curkin, *Genius is Out to Annotate Everything*, SURFACE (June 1, 2016), <https://www.surfacemag.com/articles/genius/> [<https://perma.cc/DGS8-6SG5>].

¹⁰⁷ *But see* Jonathon Sturgeon, *The Genius of Genius: Welcome to the Annotated Age?*, FLAVORWIRE (Jan. 21, 2015), <http://flavorwire.com/500272/the-genius-of-genius-welcome-to-the-annotated-age> [<https://perma.cc/7V2C-VZJ5>] (contextualizing genius.com within a recent lineage of projects to monetize hermeneutics and questioning the democratic appeal of the website).

¹⁰⁸ *See e.g.*, Sam Guthrie, *Lyrical Restraint: Lyrics Sites and Copyright Infringement*, 31 SUM. ENT. & SPORTS LAW. 1 (2014).

¹⁰⁹ *The U.S. Constitution (Article 1)*, GENIUS, <http://genius.com/Constitutional-convention-the-us-constitution-article-1-annotated> [<https://perma.cc/66SL-SPS3>].

of the *Bell amicus* brief counting up the mentions of “pistol-whipping,” but perhaps it should be more open-minded to an algorithmic approach to legal interpretation. The test is not how many individuals like Gucci Mane have rapped the hackneyed rhyme of putting a pistol in someone’s mouth; instead, it is the number of rap fans who connect these references to their insider knowledge of the rap canon. Star rappers have themselves joined genius.com to provide personal commentary on their tracks. Nas uploaded video commentary on his classic *Illmatic* debut.¹¹⁰ In a metaphysical turn, Professor Kubrin has begun to annotate her Ted Talk on expert work in gangster rap exegesis.¹¹¹

In contemporary rap it has become increasingly difficult to assign textual meaning to a rap lyric. And in our media society it has become perhaps impossible to separate when rappers are in artist mode or acting as their true selves.¹¹² A better question for courts and law and rap scholars is the one of *who counts as a rapper*. This might not help an aspiring emcee who cannot expect a genius.com profile. But it is also a reminder to the very local rapper that their lyrics are being heard or read if only by a direct social network of friends and acquaintances. Bell and Elonis should be cautious that online readers might interpret their postings as direct communication. For Tyler the Creator or Chief Keef, the same lyrics could inflect or reflect a collective experience for a general audience. In our evolution to a more public culture, it will be interesting to see if the Internet trumps the individual expert in defining hermeneutical meaning. Either way, the project of social knowledge should be fodder for both academic and jurist.

¹¹⁰ Nas, GENIUS, <http://genius.com/Nas> [<https://perma.cc/H3PS-GQWN>].

¹¹¹ Charis E. Kubrin, GENIUS, <http://genius.com/CharisEKubrin> [<https://perma.cc/7KQZ-VVfy>].

¹¹² See, e.g., Jimmy Kimmel Live, *Tyler, the Creator Raps the Dr. Seuss Book*, YOUTUBE (July 30, 2015), https://www.youtube.com/watch?v=JPkcmn_9RX8 [<https://perma.cc/6A8P-697T>].