

Bars Behind Bars: Rap Lyrics, Character Evidence, and State v. Skinner

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I. INTRODUCTION

In the wake of the murders of George Floyd, Breonna Taylor, and Ahmaud Arbery, the Black Lives Matter movement inspired a global reckoning over racial injustice and mobilized one of the largest civil rights actions in

American history.¹ These protests shed light on our nation's deep-rooted legacy of white supremacy and elucidated the pervasiveness of racism throughout our legal and political institutions. Although past reforms have mitigated overt racism in employment, education, and housing, a piecemeal approach to civil rights legislation has proven to be insufficient to fully combat institutional discrimination.² In fact, the most insidious aspects of anti-Black ideology have systematized over time into a complex network of colorblind³ criminal laws and prosecutorial practices that continue to disproportionately criminalize Black Americans. This makes it increasingly difficult to identify or dismantle problematic aspects of the criminal justice system, and because of this, the existing political and legal structure continues to fall short in rectifying generations of Black disenfranchisement. Despite these obstacles, the rise of the Black Lives Matter movement signifies a transformative political moment; one in which individual citizens, academics, and policymakers are empowered to engage in a critical inquiry of our racialized norms and institutions. In that vein, this Note is aimed at addressing one of the many colorblind practices in our criminal justice system that ultimately serves to disproportionately harm Black defendants: the use of rap lyrics as character evidence in criminal proceedings.

Over the last two decades, this evidentiary practice has become a commonly used prosecutorial tactic.⁴ By invoking the character evidence rules, prosecutors are able to utilize a defendant's lyrics to show proof of motive or intent behind alleged violent crimes. As hip-hop music has gained prominence in American popular culture, its controversial evolution as a genre has contributed to a negative cultural perception of the artform as violent and criminal, which prosecutors are able to exploit in order to prejudice a jury against a defendant. Given rap and hip-hop music's unique role as Black

¹ Larry Buchanan et al., *Black Lives May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), [<https://perma.cc/7XFB-9TJQ>].

² See Stephen Plass, *Exploring the Limits of Executive Civil Rights Policymaking*, 61 OKLA. L. REV. 182 (2008), [<https://perma.cc/26FD-8RLP>]; Matt Bruenig, *Glaring Limits of the Civil Rights Act: We Need to Redistribute Wealth*, SALON (Apr. 14, 2014, 9:15 PM), [<https://perma.cc/299J-4EDP>] ("Clearly, more progress needs to be made on the anti-discrimination front, but anti-discrimination, even if it were entirely successful, would still never be enough to rectify the economic harms inflicted by centuries of slavery and racial apartheid.").

³ One of the five tenets of Critical Race Theory (CRT) is the "critique of liberalism," which questions the notions of colorblindness as a "mechanism that allows people to ignore racist policies that perpetuate social inequity." Payne Hiraldo, *The Role of Critical Race Theory in Higher Education*, 31 VT. CONNECTION 53 (2010), [<https://perma.cc/466Y-8T18>]. Due to the history of systemic racism in this country, the "idea that the law is indeed colorblind and neutral is insufficient (and many would argue disingenuous) to redress its deleterious effects." Jessica T. Decuir & Adrienne D. Dixon, "So When It Comes Out, They Aren't That Surprised That It Is There": *Using Critical Race Theory as a Tool of Analysis of Race and Racism in Education*, 33 EDUC. RESEARCHER 29 (July 2004), [<https://perma.cc/4DA4-SFQU>].

⁴ Erik Nielson, 'Rap on Trial': *Why Lyrics Should Be Off-Limits*, ROLLING STONE (May 3, 2017, 8:05 PM), [<https://perma.cc/4E7C-575D>].

art—continuing the oral and rhythmic tradition of Jazz and Blues music⁵—the use of this evidentiary practice disproportionately affects defendants of color. Thus, we are faced with a crucial question: does the use of rap lyrics as criminal evidence unfairly prejudice a jury against defendants of color? And if so, how should courts consider this evidence to avoid undue bias?

This Note will focus on the state of Iowa and argue that this practice creates a prejudicial effect on juries. To combat this effect, this Note will recommend that Iowa courts adopt the “direct connection” test provided in the New Jersey Supreme Court opinion, *State v. Skinner*, to determine whether rap lyrics are admissible as character evidence. First, this Note will discuss the history of rap and hip-hop music and analyze the critical events that have shaped their perception in American popular culture. Second, it will provide background on the character evidence rules—Rule 403 and 404(b) of the Federal Rules of Evidence⁶—in general. Third, this Note will address the use of rap lyrics as character evidence and highlight the various judicial approaches employed across the country. Fourth, this Note will contextualize the discussion by focusing on the use of this practice in Iowa courts. Fifth, this Note will argue that Iowa’s current approach fails to combat the practice’s underlying racial bias. Sixth, and finally, this Note will recommend that the Iowa legislature amend the Iowa Rules of Evidence to incorporate the “direct connection” test in its character evidence rules.

II. BACKGROUND

To understand the unique impact that rap lyrics have on juries, this Note will identify the implicit biases associated with rap music and the ways in which the character evidence rules are used to exploit those biases. First, this Part will track the significant events that have shaped the negative stigma associated with rap and hip-hop music. Second, this Part will examine the historical purpose of the character evidence rules and the evidentiary theories behind its development. Third, this Part will discuss the intersection of rap lyrics and character evidence, while synthesizing the judicial approaches that have arisen around the country. Fourth, this Part will highlight Iowa’s approach to rap lyrics as character evidence and provide context around the severe racial disparities within Iowa’s criminal justice system. Ultimately, this Part will demonstrate the resultant need to modernize Iowa’s character evidence rules.

⁵ Alice Price-Styles, *MC Origins: Rap and Spoken Word Poetry*, in *THE CAMBRIDGE COMPANION TO HIP-HOP* 11, 1311 (Justin A. Williams ed., 2015), [<https://perma.cc/PX52-3MW7>].

⁶ Since this Note argues to amend the Iowa character evidence rules, this Part will first discuss their analogues in the Federal Rules of Evidence in order to examine the history and purpose of the character evidence rules generally.

A. History and Development of Rap Music in Popular Culture

As a staple of the 1970s Bronx underground party scene, hip-hop was pioneered through technical innovation as a forum for entertainment and neighborhood competition.⁷ The genre quickly gained traction and caught the attention of the music industry, which began hip-hop's trajectory toward mainstream popularity.⁸ During the "gangsta rap"⁹ era, hip-hop flourished as an art form as some rappers utilized the platform to discuss socio-political issues that affected their communities.¹⁰ However, rap music also became increasingly competitive as local gang politics blended with the commercialization of the genre.¹¹ Due to the heavy controversy of this era, critics waged legal battles to prevent the sales of hip-hop records.¹² While this was ultimately unsuccessful, the backlash against rap music was enough to create a cultural image of hip-hop as criminal and violent.¹³ Despite the negative stigma, rap music's popular appeal drove its commercial success, and consumers continued to buy hip-hop records at unprecedented levels.¹⁴ Now, hip-hop is the most consumed genre in the country,¹⁵ but it is still associated with the images of criminality and violence that were cultivated throughout its rise in popular culture.

This Section will examine each stage in the evolution of hip-hop and its role in shaping the public's perception of rap music. First, it will discuss the origins of the hip-hop culture. Second, this Section will describe hip-hop's rise to commercial success and the advent of gangsta rap. Third, this Section

⁷ David Dye, *The Birth of Rap: A Look Back*, NPR MUSIC (Feb. 22, 2007, 1:06 PM), [https://perma.cc/5976-J94P].

⁸ *Id.*

⁹ "Gangsta rap" is a term of art used to describe the style of hip-hop music that "became the genre's dominant style in the 1990s," which often contained sobering narratives of inner-city life and gang culture. Greg Tate, *Gangsta Rap*, BRITANNICA, [https://perma.cc/XM6Y-5UME] (last updated Nov. 26, 2013) ("The romanticization of the outlaw at the centre of much of gangsta rap appealed to rebellious suburbanites as well as to those who had firsthand experience of the [] harsh realities of the ghetto."). The rest of the Note will refer to "gangsta rap" without quotation marks.

¹⁰ *See infra* Section II.A.2.

¹¹ Leola Johnson, *Silencing Gangsta Rap: Class and Race Agendas in the Campaign Against Hardcore Rap Lyrics*, 3 TEMP. POL. & C.R. L. REV. 25, 26 (1994).

¹² *See infra* Section II.A.3.

¹³ *See infra* Section II.A.2.

¹⁴ Zach Schonfeld, *Does the Parental Advisory Label Still Matter?*, NEWSWEEK (Nov. 10, 2015, 3:20 PM), [https://perma.cc/4TLU-H7RV].

¹⁵ *Hip-Hop Deemed Most Popular Genre of 2020*, HYPEBEAST (July 15, 2020), [https://perma.cc/TE55-5L76]; *2018 Year-End Report*, BUZZANGLE MUSIC (2018), [https://perma.cc/WTN9-2CU9] ("The Hip-Hop/Rap genre had the largest genre-share of total album consumption, 21.7% up from 17.5% in 2017. . . . For the third year in a row, Hip-Hop/Rap was the top genre in terms of total song consumption, 24.7% up from 20.9% in 2017. . . .").

will highlight the censorship campaign against gangsta rap and its role in shaping the cultural perceptions of rap music generally. Fourth, this Section will discuss the mainstream proliferation of modern hip-hop music. Finally, this Section will identify the existing racial and cultural perceptions of rap and hip-hop music.¹⁶

1. Origins of Rap and Hip-Hop Music

As the disco era came to a decline in the 1970s, hip-hop culture was born in the underground block parties of Bronx, New York.¹⁷ DJs like Kool Herc, Grandmaster Flash, and Afrika Bambaataa innovated the hip-hop sound by using vinyl turntables to loop the “break” (usually the instrumental section of a song) of popular funk, soul, and disco records.¹⁸ This created an extended break that would seamlessly repeat, allowing party-goers to dance and showcase their moves—hence the name “breakdancing”—while the DJ continued to transition between records.¹⁹ Different DJs employed unique approaches to this technique, including “scratching,” which DJ Grand Wizard Theodore accidentally discovered by pushing the vinyl record back and forth against the needle.²⁰ Since the aim of these parties was to engage the crowd, DJs began to include “emcees” (derived from the pronunciation of “MC,” or the master of ceremonies) to rhythmically vocalize over the extended break and engage with the party-goers.²¹

While the primary duty of emcees was to support the DJ, they quickly rose to the forefront of hip-hop music. Instead of just speaking over the break and commentating on the DJ’s skills, they eventually began to “rap” their lyrics in rhymes and poetically discuss their own personal experiences.²² The emcees formed groups—like “The Fantastic Five” and “The Cold Crush Brothers”—alongside their DJs and battled against each other to stake their claim over the growing hip-hop movement.²³ As these battles became increasingly competitive, emcees experimented with their vocal style and lyrical

¹⁶ While this Note refers to “rap” and “hip-hop” interchangeably, they are distinct concepts. The art of rapping, or emceeing, is a subset of the larger hip-hop culture, which includes DJing, breakdancing (“b-boying”), and graffiti painting. Greg Tate, *Hip-Hop: Music and Cultural Movement*, BRITANNICA, [https://perma.cc/KTX9-SQCN] (last updated Feb. 19, 2021).

¹⁷ Dye, *supra* note 7.

¹⁸ While Grandmaster Flash and Afrika Bambaataa are attributed to the early development of hip-hop, Kool Herc was the first to pioneer the turntable technique. Becky Blanchard, *The Social Significance of Rap & Hip-Hop Culture*, ETHICS OF DEV. IN A GLOB. ENV’T (July 26, 1999), [https://perma.cc/L2FZ-PSN8].

¹⁹ *Id.*

²⁰ Dye, *supra* note 7.

²¹ Blanchard, *supra* note 18.

²² *Id.*

²³ *Cold Crush Brothers*, HIP HOP GOLDEN AGE, [https://perma.cc/7C8K-5TTS] (last visited May 10, 2021).

content, turning to more exaggerated and braggadocious statements in order to best the opposing group.²⁴ This experimentation never stopped; as hip-hop culture spread across New York, emcees like Rakim, Q-Tip (of A Tribe Called Quest), and Busta Rhymes further innovated the art of rapping by incorporating multi-syllabic rhymes and the syncopated tone of jazz music into their performance.²⁵ Rakim, in particular, modeled his influential rapping style on the unique improvisation of renowned saxophonist John Coltrane.²⁶

The evolving nature of rap is intimately tied to the longstanding oral tradition of Black poetry and art.²⁷ Before hip-hop music found commercial appeal, young Black artists defined the genre's aesthetic by reflecting on their lived experiences and developing the cadence of the "signature hip-hop flow."²⁸ In contrast to earlier forms of Black poetry, hip-hop's development as party music required rappers to formulate their lyrics primarily for entertainment value rather than deliberate poetic intention.²⁹

The music industry quickly noticed the popular appeal of hip-hop music. After songs like "Rapper's Delight" by the Sugarhill Gang and "The Breaks" by Kurtis Blow rose to the top of the charts, record labels swooped in to capitalize on hip-hop's commercial viability.³⁰ Independent record labels, like Def Jam Records, also began to grow as hip-hop gained traction.³¹ Artists like Run-DMC helped spread the notoriety of the genre due to their cross-appeal to non-Black demographics.³² Ultimately, hip-hop music transcended beyond the tight-knit circles of the Bronx underground party scene and became part of the mainstream culture. A notable example of this is seen through the popularity of the song, "My Adidas," by Run-DMC, which popularized the early hip-hop aesthetic and earned them one of the first non-athletic Adidas sponsorships.³³

²⁴ Nielson, *supra* note 4.

²⁵ Price-Styles, *supra* note 5, at 13.

²⁶ Patrick Jarenwattananon, *The Microphone Fiend on John Coltrane*, NPR (Nov. 23, 2009, 6:32 PM), [https://perma.cc/U8T4-4UPL] ("Like, some of my influence was John Coltrane[—]I played the sax, as well. So listening to him play and the different rhythms that he had: I was trying to write my rhymes as if I was a saxophone player.").

²⁷ Price-Styles, *supra* note 5, at 13.

²⁸ *Id.* ("[s]tyles of rap and lyrical content can vary greatly, but the unifying quality that, for better or for worse, links up the diverse array of rap is the signature hip-hop flow and aesthetic.").

²⁹ *Id.*

³⁰ Dye, *supra* note 7.

³¹ NPR Staff, *Rick Rubin, Russell Simmons: Def Jam's First 25 Years*, NPR MUSIC (Oct. 9, 2011, 7:27 AM), [https://perma.cc/7J8E-ZFHQ].

³² Kiah Fields, *Today in Hip Hop History: Run-D.M.C. Gets Inducted into Rock and Roll Hall of Fame 7 Years Ago*, THE SOURCE (Apr. 4, 2016), [https://perma.cc/2HAU-ZV42].

³³ *Id.*

2. Gangsta Rap and Hip-Hop's Commercial Success

In the late 1980s to 1990s, rap music saw its transformation into gangsta rap. This term—now used as an identifier for this era of hip-hop—was seemingly pejorative and downplayed the meaningful socio-political discourse that was going on during this period.³⁴ Although laced with profanity, misogyny, and violence, songs like “F*** the Police” by N.W.A. and “Fight the Power” by Public Enemy protested police brutality and systemic oppression.³⁵ “C.R.E.A.M.” by the Wu-Tang Clan served as a cautionary tale about the “hopelessness of a capitalist system that’s built to trap so many into lives of crime and poverty.”³⁶ Nas, the expert wordsmith of the gangsta rap era, offered a sobering narrative of inner-city life in “N.Y. State of Mind”³⁷ and later pushed young listeners to break past the barriers of this reality in songs like “I Can.”³⁸

Despite these positive messages, gangsta rap was mired with controversial events that contributed to a negative perception of hip-hop as a whole. As it experienced a commercial boom, gang culture seeped into the business of hip-hop and gravitated towards the genre’s inherently competitive nature.³⁹ Although hip-hop movements were budding across the country, the hip-hop community found itself defined by the “East Coast-West Coast” feud.⁴⁰ Tension fueled by “diss track[s]” ultimately exploded into gang violence and culminated in the murders of Tupac Shakur on September 13, 1996 and The Notorious B.I.G. on March 9, 1997.⁴¹ The death of these rappers—

³⁴ Samuel V. Golter, *Women Rappers and the Neoliberal Politics of Indifference: Reevaluating the Racial and Sexual Politics of Los Angeles Gangsta Rap in the Early 1990s* (Sept. 2017) (M.A. thesis, University of Oregon) (on file with the University of Oregon Graduate School), [<https://perma.cc/CMV6-RRQW>] (“In this sense, ‘gangsta rap’ has taken on a pejorative definition . . . Rather than simply encouraging listeners to reject state authority and enact violence against the police, gangsta rap was said to represent a culture of criminality that would warp the mindsets of its young listeners.”).

³⁵ Justin Charity et al., *A History of Rap Songs Protesting Police Brutality*, COMPLEX (Aug. 18, 2014), [<https://perma.cc/DJJ8-BJLL>]; Ben Beaumont-Thomas, *How We Made Public Enemy’s Fight the Power*, THE GUARDIAN (Mar. 7, 2016, 1:37 PM), [<https://perma.cc/53FJ-HC9Z>].

³⁶ Mychal Denzel Smith, *Wu-Tang Clan’s “C.R.E.A.M.” Is Not the Capitalist Anthem You Think It Is*, PITCHFORK (Sept. 10, 2019), [<https://perma.cc/LXL3-V3XG>].

³⁷ Madeleine Byrne, *Nas, “N.Y. State of Mind,” (Illmatic, Columbia Records, 1994) Prod. DJ Premier, Interviews Plus Live Performance*, (Mar. 5, 2019), [<https://perma.cc/J8F9-EUDT>].

³⁸ “*I Can*,” *Nas*, HIP-HOP & POLITICS: RESEARCH FROM @CLARKU SEMINAR COURSE IN MUSIC HISTORY AND CRITICISM, [<https://perma.cc/LGW3-E7SC>] (last visited May 10, 2021).

³⁹ See Johnson, *supra* note 11, at 26.

⁴⁰ Dre’Kevius O. Huff, *Rap on Trial: The Case for Nonliteral Interpretation of Rap Lyrics*, 5 SAVANNAH L. REV. 335, 337 (2018).

⁴¹ *Id.*

who are often lauded as the greatest rappers in the history of hip-hop⁴²—further contributed to the images of criminality and violence associated with gangsta rap.⁴³

3. Censorship of Rap Music

As gangsta rap gained prominence in popular culture, critics of the genre made considerable efforts to censor and limit its proliferation. Following the release of their hit album, “Nasty As They Wanna Be,” in February 1990, the group 2 Live Crew faced the first bout of legal action against rap music when the group was prosecuted on obscenity charges.⁴⁴ On appeal, the obscenity ruling was overturned, but the anti-rap activists continued to target 2 Live Crew with litigation, including prosecution for one of the group’s live performances.⁴⁵

Censorship of live musical performances was generally rare, but it remained as a tactic used to suppress gangsta rap. The most notable example of this was when Milt Ahlerich, Assistant Director of the FBI’s Office of Public Affairs, sent a letter to N.W.A.’s record label denouncing their album, “Straight Outta Compton” (which included the song “F**** the Police”), for promoting “violence against and disrespect for the law enforcement officer.”⁴⁶ This led to a “network of police messages” tracking N.W.A.’s live tour and urged law enforcement to stop the band’s live concerts.⁴⁷

Another example involved the song “Cop Killer” by the group Body Count, led by front man Ice-T.⁴⁸ After its release on March 10, 1992, the song garnered national media attention due to its controversial content and raised protest from many prominent figures in American national politics.⁴⁹ Former Vice President Dan Quayle called upon Time-Warner (the parent company

⁴² Sweenie Saint-Vil, *Biggie Refused to Respond to Tupac’s “Hit Em Up” Diss Track for This Reason*, *Revolt* (Dec. 3, 2020, 3:18 PM), [https://perma.cc/6BKT-X39R]; Deron Dalton, *Tupac vs. Biggie: Who’s the Greatest Rapper of All Time?*, *THE TYLT* (Mar. 24, 2020), [https://perma.cc/DR9W-NQGR].

⁴³ *See id.*

⁴⁴ Barry Glassner, *Rap Music and the Culture of Fear*, 21 *ENT. & SPORTS LAW* 1, 18 (2003).

⁴⁵ Schonfeld, *supra* note 14.

⁴⁶ Rolf Potts, *The Great Rap Censorship Scare of 1990*, *MEDIUM: CUEPOINT* (May 25, 2016), [https://perma.cc/XB8G-HN9M].

⁴⁷ Mathieu Deflem, *Popular Culture and Social Control: The Moral Panic on Music Labeling*, 45 *AM. J. CRIM. JUST.* 2, 15 (2019), [https://perma.cc/PY5E-KHFD].

⁴⁸ BODY COUNT, *Cop Killer*, on BODY COUNT (Warner Records 1992).

⁴⁹ Chuck Philips, *‘Cop Killer’ Controversy Spurs Ice-T Album Sales: Pop Music: ‘We Don’t Care if They Sell a Million More Copies Because of Our Protest,’ Says the President of Combined Law Enforcement Assn. of Texas*, *L.A. TIMES* (June 18, 1992, 12:00 AM), [https://perma.cc/P2WG-UZEH].

of Body Count's record label) to halt its sponsorship of the album,⁵⁰ while then-President George H.W. Bush angrily denounced the record as "sick" for glorifying the killing of law enforcement officers.⁵¹

Oliver North—infamously known for his role in the Iran-Contra scandal⁵²—vowed to seek criminal charges against Time-Warner for its distribution of the song alongside Jack Thompson, the anti-rap activist who led the legal crusade against 2 Live Crew.⁵³ In addition, sixty members of Congress sent a letter to Time-Warner urging the company to halt distribution of the record, while groups like the International Brotherhood of Police Officers aimed to file suit against Ice-T and Body Count for advocating for violence against law enforcement.⁵⁴ Ultimately, the intense national pressure to denounce and censor the song left Ice-T to pull the record from distribution on July 29, 1992.⁵⁵

The censorship campaign against rap music became formalized when the Parents Music Resource Center (PMRC), an organization led by former Second Lady Tipper Gore, raised national concern about the genre's "explicit content."⁵⁶ The group advocated for the institution of a parental advisory label—the ubiquitous black-and-white sticker—to be placed on albums deemed inappropriate for minors.⁵⁷ Although the congressional hearings mainly discussed the censorship of rock music (including testimony from artists like Frank Zappa and the Red Hot Chili Peppers), rap music became the primary focus of the label's enforcement.⁵⁸ The first album to don the parental advisory label was 2 Live Crew's fourth studio album, with the tongue-in-cheek title, "Banned in the USA."⁵⁹

⁵⁰ *The 1992 Campaign; Vice President Calls Corporation Wrong For Selling Rap Song*, N.Y. TIMES (June 20, 1992), [<https://perma.cc/F2TR-8FWK>].

⁵¹ *Bush Calls Cop-Killing Lyrics 'Sick'*, UNITED PRESS INT'L (June 29, 1992), [<https://perma.cc/SBU3-PMX4>]; Chris Morris et al., *Bush, New LAPD Chief, NRA Assail Body Count; Cops to Sell TW Stock*, BILLBOARD, July 11, 1992, at 1, 71, [<https://perma.cc/C6D5-CLHK>] ("[s]aying, 'I stand with those who fight criminals,' the President added, 'I also stand against those who use films, or records, or television, or video games to glorify killing law-enforcement officers. It is sick.'").

⁵² Kurtis Lee, *Oliver North was Once a Key Figure in the Iran-Contra Scandal. Now he has a New Role: NRA President*, L.A. TIMES (May 8, 2018, 6:20 P.M.), [<https://perma.cc/E4HE-TMTH>].

⁵³ Chris Morris et al., *supra* note 51.

⁵⁴ Michael Christopher, *25 Years Ago: Ice-T Decides to Pull 'Cop Killer' From Body Count's Controversial Debut*, DIFFUSER (Aug. 4, 2017), [<https://perma.cc/2UUD-3GHU>].

⁵⁵ Chuck Philips, *Ice-T Pulls 'Cop Killer' Off the Market*, L.A. TIMES (July 29, 1992), [<https://perma.cc/7YU3-2ZYU>].

⁵⁶ Schonfeld, *supra* note 14.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

Despite the concerted efforts of national political figures who advocated for the censorship of rap music, the parental advisory label seemed to have a reverse effect. As 2 Live Crew member Fresh Kid Ice recounted, the warning label “helped sell the records a little bit more because it was considered taboo.”⁶⁰ Albums like “The Chronic” by Dr. Dre and “Doggystyle” by Snoop Dogg went on to top the charts⁶¹, despite inclusion of the parental advisory label.⁶² Still, legal efforts against labeled albums continued to skyrocket as over 200 albums were faced with obscenity litigation in 1992.⁶³ Despite the barriers it posed against the sale of rap music to minors, the censorship campaign failed to deter the commercial explosion of hip-hop music as a leading popular genre.⁶⁴

Today, the Parental Advisory label—as a remnant of the intense efforts to censor rap music in the 1990s—has become a non-affecting staple of contemporary hip-hop music.⁶⁵ In fact, the warning label has become so ubiquitous that artists now include it in the design of the album artwork itself.⁶⁶ With the advent of music streaming services, the Parental Advisory label has almost completely lost its deterrent value. Minors listening to music with explicit content no longer have to purchase music from a physical record store and thus do not face the barrier intended by PMRC to prevent minors from hearing the content.⁶⁷ Instead, listeners can privately stream the music on their smartphones despite the presence of the warning label.⁶⁸

4. Rap as Mainstream—The Most Popular Genre in the Country

With artists like Jay-Z, Lil Wayne, Kanye West, and Eminem gaining international fame throughout the 2000s, rap music became even more widespread.⁶⁹ As of 2021, hip-hop music garnered a 33.9% share of total music

⁶⁰ *Id.*

⁶¹ *Parental Advisory Sticker*, NOISE ADDICTS, [https://perma.cc/8QQ5-WVGA] (last visited May 10, 2021); *Hip-Hop Gem: Doggystyle Broke the Sales Record for a Debuting Artist*, STOP THE BREAKS (Dec. 8, 2014), [https://perma.cc/RTP9-CD3K] (“[r]eleased at the end of 1993, following the enormous commercial success of Dr. Dre’s *The Chronic* the previous year, Snoop’s debut moved over 800,000 units in its first week of sales. This number made *Doggystyle* the fastest selling hip-hop album of all time until [2000].”).

⁶² Schonfeld, *supra* note 14.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Schonfeld, *supra* note 14.

⁶⁸ *See id.*

⁶⁹ *See* Rafly G., *Top 10 Highest-Selling Hip-Hop Artists of All Time*, THE THINGS (Feb. 11, 2021), [https://perma.cc/H4JQ-GLNH].

album consumption in America—the highest of all genres.⁷⁰ Rap music—once vehemently opposed by censorship advocates and government officials—became the most popular genre in the country.⁷¹

With the advent of music streaming services, hip-hop music flourished with its newfound accessibility to listeners. The genre began to experience a new creative renaissance, tapering off into niche sub-genres that demonstrated the widespread diversity of hip-hop culture. Artists like Kendrick Lamar and J. Cole continued the “emcee” tradition of hip-hop music through socially conscious lyrics, laden with unconventional flows and multi-syllabic rhyme schemes.⁷² Drake, as a notable example, demonstrated the star-power of hip-hop and supplanted records once held by artists like the Beatles and Michael Jackson.⁷³ Other artists like Future, Young Thug, and Migos helmed the rise of “mumble rap,” which is easily recognized by its Auto-Tune-processed vocals,⁷⁴ booming 808 drums,⁷⁵ and hi-hat triplet⁷⁶ rolls.⁷⁷ Moreover, female rap artists, who were often tokenized in the eras of Lil’ Kim and Remy Ma, are now beginning to see parity in the hip-hop industry as artists like Nicki Minaj, Cardi B, and Megan Thee Stallion have dominated the charts.⁷⁸ Through the Internet and social media, hip-hop artists like Lil Nas X and

⁷⁰ Tim Ingham, *Nearly a Third of All Streams in the US Last Year Were of Hip-Hop and R&B Artists (As Rock Beat Pop to Second Most Popular Streaming Genre)*, MUSIC BUSINESS WORLDWIDE (Jan. 7, 2021), [https://perma.cc/3G9T-HPHM].

⁷¹ Yoh Phillips, *Hip-Hop Is America’s Biggest Genre. What Happens When We Enter 2020?*, DJ BOOTH (Sept. 23, 2019), [https://perma.cc/8TP7-U4VL].

⁷² See Mike “DJ” Pizzo, *How Kendrick Lamar & J. Cole Rebooted Conscious Rap*, MEDIUM (Apr. 26, 2015), [https://perma.cc/VA6S-XYNN].

⁷³ Ben Beaumont-Thomas, *Drake’s Progress: The Making of a Modern Superstar*, THE GUARDIAN (Apr. 6, 2018, 1:00 AM), [https://perma.cc/WRS8-KRTW]; Lisa Respers France, *Drake Beats Beatles Historic Record*, CNN ENTERTAINMENT (July 10, 2018, 8:50 PM), [https://perma.cc/JW9L-A2BN] (“Drake’s ‘Scorpion’ album set a record by posting seven simultaneous singles on Billboards Top 10. That toppled The Beatles record of five singles set in 1964 . . . Drake also surpassed the late Michael Jackson as the artist with the most Hot 100 Top 10s in his career among solo males. Drake currently has a career total of 31 to Jackson’s 30 . . .”).

⁷⁴ Auto-Tune is a pitch-correction software developed by Antares Audio Technologies. Simon Reynolds, *How Auto-Tune Revolutionized the Sound of Popular Music*, PITCHFORK (Sept. 17, 2018), [https://perma.cc/L4WR-LSJF]. At high levels, the pitch-correction creates a robotic, yet fluid vocal sound that has become popular in the trap music genre. *Id.*

⁷⁵ “808 drums” refer to the drum machine Roland TR-808, which was developed by Ikutaro Kakehashi in 1980. This machine creates a punchy, low-frequency bass that is typically used in trap music. Zainab Hasnain, *How the Roland TR-808 Revolutionized Music*, THE VERGE (Apr. 3, 2017, 4:59 PM), [https://perma.cc/YU7M-5W6J].

⁷⁶ Trap music producers often use triplet drum patterns with the hi-hat sound to establish the underlying groove that is common among trap songs. See *Trap Hats—How to Program Them Properly*, BEAT PRODUCTION, [https://perma.cc/3WEY-LYC7] (last visited May 10, 2021).

⁷⁷ *The Evolution: What Is Mumble Rap?*, MN2S (May 15, 2020), [https://perma.cc/LJ37-ZQU8].

⁷⁸ Briana Younger, *Is Rap Finally Ready to Embrace Its Women?*, THE NEW YORKER (Dec. 7, 2018), [https://perma.cc/Y72L-EY9H].

Doja Cat have also established the prominence of “meme rap,”⁷⁹ by using the Internet joke format to promote their music into notoriety.⁸⁰ Most notably, Lil Nas X’s record, “Old Town Road” aided by a remix with country artist Billy Ray Cyrus, skyrocketed into record-breaking fame as it became the longest consecutive #1 single on the Billboard charts.⁸¹

5. Existing Racial and Cultural Perceptions of Rap Music

Despite rap and hip-hop music’s widespread popularity, the general cultural perception of rap music remains negative. A 2008 Pew Research Center poll found that more than 70% of Americans held a negative assessment of rap music and believed the music had a “bad” impact on society.⁸² In a 2013 poll conducted by Public Policy Polling, 68% of Americans gave rap music an “unfavorable” rating, while every other genre—classical, country, jazz, pop, R&B, and rock music—received largely “favorable” ratings.⁸³ Moreover, a 2014 YouGov poll found that 76% of Americans believe that rap musicians are negative “role models for young black men.”⁸⁴

While rap music has evolved immensely since the gangsta rap era, the associated images of violence, gang culture, misogyny, and criminal behavior remain poignant today.⁸⁵ Rap music’s role as a Black artform, combined with deeply held racial stereotypes linking Black people to criminality,⁸⁶ create a hard-to-shake perception that rap music (and the artists behind it) inherently condone or engage in criminal behavior.⁸⁷ As prosecutors utilize violent rap lyrics to glean criminal intent or motive against defendants, they play off these

⁷⁹ See generally Mohammed Kloub, *Rapper’s Delight: The Rise of Meme Rap*, THE DAILY (Jan. 23, 2017), [https://perma.cc/S7QP-N746] (discussing the impact of streaming and Internet culture on hip-hop music consumption).

⁸⁰ Rawiya Kameir, *The Strange Evolution of Viral Music Stardom*, PITCHFORK (Oct. 9, 2019), [https://perma.cc/WA98-7XSM].

⁸¹ Trevor Anderson & Gary Trust, *Winner’s Circle: Lil Nas X’s ‘Old Town Road’ Breaks Record With 17th Week Atop Billboard Hot 100*, BILLBOARD (July 29, 2019), [https://perma.cc/5F2W-43BT].

⁸² *Rate Rap Low*, PEW RES. CTR. (Feb. 5, 2008), [https://perma.cc/7HXY-6YTW] (“More than seven-in-ten among the U.S. public, including large majorities of both blacks and whites, offer a negative assessment of rap music, with 71% of blacks and 74% of whites agreeing that rap’s societal impact is bad.”).

⁸³ David Drake, *Poll: America Hates Rap Music*, COMPLEX (May 10, 2013), [https://perma.cc/ZHN5-EB79].

⁸⁴ Peter Moore, *Country Beats Rap in Public Opinion*, YOUGOV (Dec. 9, 2014, 4:51 AM), [https://perma.cc/NPN9-TMDT].

⁸⁵ See Jason E. Powell, *R.A.P.: Rule Against Perps (Who Write Rhymes)*, 41 RUTGERS L.J. 479, 485–86 (2009).

⁸⁶ See generally Mary Beth Oliver, *African American Men as “Criminal and Dangerous”: Implications of Media Portrayals of Crime on the “Criminalization” of African American Men*, 7 J. AFR. AM. STUD. 3 (2003) (showing the impact of media narratives associating Blackness with criminality).

⁸⁷ See Powell, *supra* note 85, at 487.

existing stereotypes to curry disfavor among juries and lead them to strictly interpret rap lyrics—without regard for metaphorical or poetic intention.⁸⁸

B. Character Evidence: Rule 404 of the Federal Rules of Evidence (FRE)

Rap lyrics enter the courtroom through the character evidence rules.⁸⁹ The character evidence rules come from FRE 404, which prohibits the use of evidence of a defendant's character to prove that they had the propensity to commit the charged crime.⁹⁰ The rule further provides exceptions to this rule, including FRE 404(b)(2), which allows character evidence to be used in a criminal case to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.”⁹¹ Prosecutors aiming to use a defendant's rap lyrics against him or her typically utilize the exception granted under 404(b)(2) to argue that the lyrics demonstrate prior knowledge or intent to commit the charged crime.⁹² Judges are supposed to weigh the probative value of this evidence against its undue prejudice to the jury before deciding whether to admit.⁹³ In practice, rap lyrics are often admitted and prosecutors are able to exploit the jury's implicit biases toward rap music and garner disfavor for the defendant.⁹⁴ To initially understand how the rules are applied when dealing with rap music and the potential prejudicial effect they create, this Section will discuss the character evidence rules generally. First, this Section will track the history behind the character evidence rules and the purpose behind the rules. Then, it will discuss how the character evidence rules apply to song lyrics in general.

1. History and Purpose of the Character Evidence Rules

The drafters of the Federal Rules of Evidence (FRE) contemplated the inclusion of the character evidence rules—Rule 404—in order to prevent juries from wrongfully convicting a defendant based on his or her propensity to commit a certain crime.⁹⁵ This conformed with the longstanding common-law approach to character evidence, although the Supreme Court has described the common-law rule as “grotesque” due to its complex structure and

⁸⁸ Nielson, *supra* note 4.

⁸⁹ Ashley G. Chrysler, Note, *Lyrical Lies: Examining the Use of Violent Rap Lyrics as Character Evidence Under FRE 404(b) and 403* 11 (2015) (published online by Michigan State University College of Law), [<https://perma.cc/VT88-7KXP>].

⁹⁰ *Id.* at 10.

⁹¹ FED. R. EVID. 404(b)(2) (2021).

⁹² See Chrysler, *supra* note 89, at 15–16.

⁹³ *Id.*

⁹⁴ *Id.* at 29.

⁹⁵ KENNETH W. GRAHAM, JR., FEDERAL PRACTICE AND PROCEDURE § 5231(a)–(b) (2d ed. 2017).

variant application.⁹⁶ Despite this, Congress codified the common-law approach within Rule 404 to maintain this delicate balance.⁹⁷

In considering the purpose behind the character evidence rules, the Supreme Court acknowledged the potential for juries to give undue weight to evidence describing a defendant's "evil character," thus depriving a defendant of his constitutional right to a fair trial.⁹⁸ Although this demonstrated the fundamental focus of the character evidence rules—excluding evidence that showed the "propensity" to commit a crime—Congress and the drafters of the FRE recognized the need for a narrow exception for non-propensity character evidence, which they codified in Rule 404(b)(2).⁹⁹ Ultimately, this exception became the most litigated rule of evidence in the FRE.¹⁰⁰ The current text of Rule 404(b) states that:

Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character . . . This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.¹⁰¹

Commentators on the FRE proposed two distinct approaches to judicial interpretation of Rule 404(b): the inclusionary approach (advanced by jurisprudence scholar Julius Stone) and the exclusionary approach (advanced by evidence law expert John Henry Wigmore).¹⁰² The majority of courts adopted the latter—Wigmore's exclusionary approach assumes exclusion of evidence of prior "crimes, wrongs, or other acts" unless it is offered only to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."¹⁰³ In contrast, Stone's inclusionary approach is a broader interpretation that generally allows evidence of a defendant's prior crimes, wrongs, or other acts unless it is offered *solely* for the purpose of showing the defendant's propensity to commit the crime in question.¹⁰⁴ The key difference is that the inclusionary approach broadly permits

⁹⁶ *Michelson v. United States*, 335 U.S. 469, 486 (1948).

⁹⁷ *Id.*

⁹⁸ *Id.* at 475–76.

⁹⁹ FED. R. EVID. 404(b)(2) (2021).

¹⁰⁰ Kenneth J. Melilli, *The Character Evidence Rule Revisited*, 1998 BYU L. REV. 1547, 1556–57 (1998).

¹⁰¹ FED. R. EVID. 404(b) (2021).

¹⁰² Chrysler, *supra* note 89, at 6.

¹⁰³ GRAHAM, *supra* note 95.

¹⁰⁴ See generally Julius Stone, *The Rule of Exclusion of Similar Fact Evidence: America*, 51 HARV. L. REV. 988 (1938).

propensity evidence under Rule 404(b)(2), while the exclusionary approach only allows evidence of prior bad acts if it is used for a non-propensity purpose.

The analysis under Rule 404(b) is also subject to the balancing test provided by Rule 403, assuming it satisfies Rule 401's relevancy requirement.¹⁰⁵ This rule applies to all determinations of admissible evidence and weighs a piece of evidence's probative value against its prejudicial effect.¹⁰⁶ The current version of Rule 403 states that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."¹⁰⁷

When Rule 403 was drafted in 1969, it divided the text of the rule to concretely define the discretionary power of the court in conducting this balancing test.¹⁰⁸ The proposed dual form of the Rule required exclusion of evidence that posed a threat of "unfair prejudice . . . confusing the issues . . . [and] misleading the jury," while the admissibility of evidence implicating "undue delay, wasting time, or needless presentation of cumulative evidence" was up to the discretion of the court.¹⁰⁹ Ultimately, Congress rejected the proposed dual language and extended the discretionary power of the court to all forms of Rule 403 analysis.¹¹⁰ In any case, this broad grant of discretionary power made Rule 403's purpose clear: a court ought to exclude relevant evidence if it showed the potential to "poison the jury against a defendant."¹¹¹

2. Applying the Character Evidence Rules to Rap Music

Despite its popularity, rap music is a young genre.¹¹² Since Congress and the drafters of the FRE likely did not contemplate the use of rap lyrics as character evidence—nor the negative stigma associated with the genre—courts are charged with interpreting Rule 404(b) on their own and applying the balancing test of Rule 403 regardless. Since judges have to weigh the rap lyrics' probative value against any undue prejudice on the jury, this Section will examine whether rap music poses a unique threat to an impartial jury trial. First, it will discuss the prejudicial effect of rap music on juries. Second, this Section will highlight the various judicial approaches in state and federal

¹⁰⁵ Chrysler, *supra* note 89, at 8.

¹⁰⁶ *Id.*

¹⁰⁷ FED. R. EVID. 403 (2021)..

¹⁰⁸ GRAHAM, *supra* note 95.

¹⁰⁹ Chrysler, *supra* note 89, at 8.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 10 (quoting *State v. Skinner*, 95 A.3d 236, 249 (N.J. 2014)).

¹¹² *Supra* Section II.A.

courts across the country. Third, this Section will introduce the *State v. Skinner* standard, which this Note will argue that the Iowa legislature ought to incorporate in their character evidence rules.

a. Prejudicial effect of rap music on juries

FRE Rule 403 states that a “court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice”¹¹³ While this Note has discussed the negative cultural perceptions of rap music in general, the fundamental issue in determining unfair prejudice lies in how rap lyrics are interpreted once they are admitted into the courtroom.

Dr. Stuart Fischhoff at California State University, Los Angeles, conducted one of the seminal studies on the issue in 1999.¹¹⁴ The study focused on gangsta rap and analyzed jury subjects’ psychological perceptions of a murder trial defendant when presented with the defendant’s rap lyrics as evidence.¹¹⁵ Dr. Fischhoff found that the criminal defendant was viewed as more likely to have committed the murder when the jury knew he authored the rap lyrics than if they did not know he authored the rap lyrics.¹¹⁶ Moreover, the study showed that mere authorship of the rap lyrics was “more damning in terms of adjudged personality characteristics than was the actual fact of being charged with murder.”¹¹⁷ These findings demonstrate a substantial jury bias against rapper-defendants and suggest that extant negative stigmas surrounding rap music are exacerbated when rap lyrics are admitted into trial.¹¹⁸

Beyond judgments of personality, rap lyrics as character evidence are also taken at face-value when presented before a jury. Despite rap music’s history and development as a poetic form of creative expression, jurors often do not see past a literal interpretation of the lyrics.¹¹⁹ This is mainly due to prosecutors’ presentation of rap music as “rhymed autobiography” by “ignoring its extensive use of metaphor, exaggeration and [the] complex narrative perspective . . . of an invented character” when offering lyrics as character evidence.¹²⁰ Sociologist and criminology professor Charis Kubrin, who has consulted on forty cases as an expert witness on rap music, recognizes that the

¹¹³ FED. R. EVID. 403 (2021).

¹¹⁴ Stuart P. Fischhoff, *Gangsta’ Rap and a Murder in Bakersfield*, 29(4) J. APPLIED SOC. PSYCH. 795 (1999).

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 803

¹¹⁷ *Id.* at 795.

¹¹⁸ See Andrea Dennis, *Poetic (In)Justice? Rap Music Lyrics as Art, Life, and Criminal Evidence*, 31 COLUM. J.L. & ARTS 1, 29–30 (2007).

¹¹⁹ Nielson, *supra* note 4.

¹²⁰ *Id.*

literal interpretation of rap lyrics itself poses a “horribly prejudicial” effect on juries.¹²¹ In a study she conducted at the University of California, Irvine, Kubrin found that subjects who believed they were reading rap lyrics interpreted them “very literally” as opposed to subjects who believed they were reading country lyrics—even though the lyrics were the same.¹²²

A 2017 study conducted by Adam Dunbar (and supervised by Charis Kubrin) built upon prior research to examine the impact of rap lyrics on jury perceptions.¹²³ In a series of experiments, this study found that “participants deemed identical lyrics more literal, offensive, and in greater need of regulation” when the lyrics were identified as rap music as opposed to country.¹²⁴ Further, the study revealed that the songwriter of the lyrics was viewed “more negatively across a number of dimensions when the lyrics were categorized as rap” rather than other genres.¹²⁵ Most damning, however, was the finding that subjects suspecting a defendant to be guilty were more likely to treat rap lyrics as an “admission of guilt” in the trial context.¹²⁶ Thus, the admission of rap lyrics as character evidences poses a significant risk of prejudice among jurors by leading them to prematurely decide a defendant’s guilt.

b. Judicial approaches

Courts across the country are beginning to hear more cases involving rap lyrics as character evidence and have employed differing methods in considering their admissibility.¹²⁷ Some federal circuits and state courts have adopted the inclusionary approach to Rule 404(b) and have admitted rap lyrics as character evidence.¹²⁸ Since this approach broadly admits character evidence if it can be used to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident,”¹²⁹ many courts believe that rap lyrics fall under this judicial view. On the federal level, the Sixth and Seventh Circuits have admitted rap lyrics as character

¹²¹ David Reese, *Experts Decri Increasing Use of Rap Lyrics in Criminal Trials*, COURTHOUSE NEWS (Sept. 7, 2017), [<https://perma.cc/257W-2WU4>].

¹²² *Id.*

¹²³ Adam Dunbar, *Rap Lyrics as Evidence: An Examination of Rap Music, Perceptions of Threat, and Juror Decision Making* (2017) (Ph.D. dissertation, University of California, Irvine) (on file with UC Irvine Electronic Theses and Dissertations), .

¹²⁴ *Id.* at ix.

¹²⁵ *Id.* at x.

¹²⁶ *Id.* at x.

¹²⁷ Chrysler, *supra* note 89, at 15.

¹²⁸ *Id.* at 17.

¹²⁹ FED. R. EVID. 404(b) (2021).

evidence.¹³⁰ On the state level, California,¹³¹ Indiana,¹³² and Delaware¹³³ have also followed this approach. In these cases, courts only require that the lyrics and the alleged crime are “sufficiently similar” to admit the character evidence, which requires a lower burden of proof to invoke Rule 404(b).¹³⁴

Courts that follow Wigmore’s exclusionary approach view the rule in an opposite way. As discussed earlier, Wigmore’s approach involves a narrow interpretation that assumes exclusion of evidence of prior “crimes, wrongs, or other acts” unless it is offered only to prove “motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.”¹³⁵ Courts end up collapsing their evidentiary analysis on Rule 403 and have found the danger of unfair prejudice substantial enough to exclude rap lyrics as character evidence.¹³⁶ In other words, if the connection between the specific crime and the lyrics is too attenuated, then it offers little probative value.¹³⁷ State courts in New Jersey,¹³⁸ Illinois,¹³⁹ and South Carolina¹⁴⁰ utilize this approach by requiring a strong nexus between the rap lyrics and the alleged crime to avoid exclusion under Rule 403. One early case on the issue of rap lyrics as character evidence is *State v. Cheeseboro*, in which the South Carolina Supreme Court found that rap lyrics with “general references glorifying violence” failed to show a direct and substantial connection between the lyrics and the accused crime.¹⁴¹

In Michigan, the Court of Appeals adopted a completely different approach by arguing that rap lyrics were not even within the scope of Rule 404(b).¹⁴² As the rule involves “crimes, wrongs, or other acts,” the court found that rap lyrics should be considered written statements and thus not

¹³⁰ See *United States v. Foster*, 939 F.2d 445, 455 (7th Cir. 1991); *United States v. Stuckey*, 253 F. App’x 468, 482–83 (6th Cir. 2007/1991).

¹³¹ *People v. Olguin*, 313731 Cal. Rptr. 2d 596, 603 (Cal. Ct. App. 1994).

¹³² *Bryant v. State*, 802 N.E.2d 486, 499 (Ind. Ct. App. 2004).

¹³³ *Joynes v. State*, 797 A.2d 673, 677 (Del. 2002).

¹³⁴ *Chrysler*, *supra* note 89, at 18.

¹³⁵ GRAHAM, *supra* note 95.

¹³⁶ *Chrysler*, *supra* note 89, at 20.

¹³⁷ See *id.*

¹³⁸ See *id.* at 19–20 (discussing *State v. Skinner*, 95 A.3d 236 (N.J. 2014)).

¹³⁹ *People v. Goldsberry*, 630 N.E.2d 1113, 1118 (Ill. App. Ct. 1994).

¹⁴⁰ *State v. Cheeseboro*, 552 S.E.2d 300, 313 (S.C. 2001).

¹⁴¹ *Id.*

¹⁴² *People v. Williams*, No. 263892, 2006 WL 3682750, at *1 (Mich. Ct. App. Dec. 14, 2006) (per curiam).

“acts” at all.¹⁴³ Instead, the court admitted the lyrics under Rule 801(d)(2)(A) as an opposing party’s statement made in an individual capacity.¹⁴⁴

In New Jersey, the State Supreme Court addressed the issues involving rap lyrics as character evidence in the high-profile ruling of *State v. Skinner*.¹⁴⁵ In this case, Vonte Skinner was charged for his role in a 2005 shooting and was convicted at trial.¹⁴⁶ During the trial, the court allowed the prosecutor to admit Skinner’s rap lyrics, which contained many violent references, as evidence of motive and intent.¹⁴⁷ This ultimately pushed the jury towards a guilty verdict, leading the court to sentence him to 30 years in prison.¹⁴⁸

On appeal, the New Jersey Supreme Court found the trial court erred by admitting the rap lyrics into the trial.¹⁴⁹ While the lyrics depicted graphic scenes of violence, they were all written prior to the shooting and contained no specific details connected to the crime in question.¹⁵⁰ Thus, under its analogue to Rule 404(b), the court could not show that the evidence could be used to prove a non-propensity purpose.¹⁵¹ Moreover, the court acknowledged the artistic value of the lyrics and rejected the notion that they should be interpreted literally.¹⁵² The court famously stated that:

One would not presume that Bob Marley, who wrote the well-known song “I Shot the Sheriff,” actually shot a sheriff, or that Edgar Allan Poe buried a man beneath his floorboards, as depicted in his short story “The Tell-Tale Heart,” simply because of their respective artistic endeavors on those subjects. Defendant’s lyrics should receive no different treatment.¹⁵³

State v. Skinner followed the exclusionary interpretation of Rule 404(b) and articulated a heightened standard for character evidence: requiring a “direct connection” between the lyrics and the crime in question.¹⁵⁴ This requirement would also satisfy Rule 403 by proving the evidence’s strong

¹⁴³ Chrysler, *supra* note 89, at 16.

¹⁴⁴ Williams, 2006 WL 3682750, at *1; *See also* FED. R. EVID. 801(d)(2)(A) (2021).

¹⁴⁵ *Skinner*, 95 A.3d at 249.

¹⁴⁶ *Id.* at 238.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 236.

¹⁴⁹ *Id.* at 238

¹⁵⁰ *Id.*

¹⁵¹ *See* Chrysler, *supra* note 89, at 14–15.

¹⁵² Nielson, *supra* note 4.

¹⁵³ *Skinner*, 95 A.3d at 251.

¹⁵⁴ Chrysler, *supra* note 89, at 14 (citing *Skinner*, 95 A.3d at 253).

probative value over any unfair prejudice.¹⁵⁵ Moreover, the court recognized the cultural stigma against rap music in general and cautioned prosecutors against presenting rap lyrics if less prejudicial evidence could be used to prove the same fact.¹⁵⁶ The “direct connection” requirement effectively limits the admissibility of rap lyrics as character evidence, but allows for situations where the lyrics are clear proof of intent or motive for a specific crime.

C. Criminal Justice Issues in Iowa and Their Impact on Rap Lyrics as Character Evidence

To demonstrate how *State v. Skinner* can be applied to other states, this Note will focus on the state of Iowa. First, this Section will address racial disparity in the Iowa criminal justice system. Second, this Section will discuss Iowa’s application of the character evidence rules to rap lyrics.

1. Racial Disparity in the Iowa Criminal Justice System

Iowa has serious racial disparity within its criminal justice system.¹⁵⁷ As the nation tops the world in incarceration rates of Black defendants, Iowa itself incarcerates Black citizens in state prisons at a rate that is more than ten times the imprisonment of white populations.¹⁵⁸ Although Black Iowans make up roughly 3.71% of the state population¹⁵⁹, they represent 24.5% of the state’s prison population.¹⁶⁰ Many of those incarcerated persons are prosecuted for drug offenses.¹⁶¹ An ACLU study found that a Black person in Iowa is eight times more likely to be arrested for marijuana possession than a white person, despite both populations using marijuana at the same rates.¹⁶² Ultimately, Iowa ranked second-worst in racial disparities for drug arrests.¹⁶³

However, the racial disparity in Iowa’s criminal justice system does not just affect arrest and incarceration rates—it leads to long-term consequences

¹⁵⁵ *Id.* at 14–15.

¹⁵⁶ *Id.*

¹⁵⁷ See *infra* text accompanying notes 154–60.

¹⁵⁸ ASHLEY NELLIS, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, THE SENTENCING PROJECT (June 24, 2016), [https://perma.cc/4PC7-NW6R].

¹⁵⁹ *Iowa Population by Race, Iowa Population 2021*, WORLD POPULATION REVIEW (2021), [https://perma.cc/K2RY-KR3J].

¹⁶⁰ SARAH FINERAN, IOWA DEP’T OF HUMAN RIGHTS, THE CORRECTIONAL POLICY PROJECT: IOWA PRISON POPULATION FORECAST FY 2018-FY 2028 19 (Dec. 1, 2018), [https://perma.cc/M4VP-MR55].

¹⁶¹ *Id.*

¹⁶² Veronica Fowler, *The Truth About Iowa’s Criminal Justice Racial Disparities*, ACLU OF IOWA (Apr. 15, 2016, 2:30 PM), [https://perma.cc/X9WD-93UN].

¹⁶³ Kathy A. Bolten, *Iowa ranks 2nd-worst in racial racial disparities for Drug drug arrests*, DES MOINES REG. (Oct. 20, 2016, 3:30 PM), [https://perma.cc/VY3W-JYTL].

that systemically restrict the liberty of Black Iowans.¹⁶⁴ Once a person is convicted of a crime, their ability to seek employment, secure public benefits, and attain education is stunted.¹⁶⁵ In fact, the National Institute of Justice reports that 60% of people convicted of a crime are unemployed.¹⁶⁶ Until August 5, 2020, Iowa was the only state in the country that imposed a lifetime ban on felon voting, leaving 52,000 Black Iowans—or 7.8% of the Black population in Iowa—disenfranchised.¹⁶⁷

The cases this Note discusses often involve Black defendants or defendants of color who are brought into the criminal justice system at an immensely disproportionate rate. The issues involving the use of rap lyrics and their impact on jury impartiality are exacerbated in the state of Iowa when considering the racial disparities in both prosecution and jury representation. The Iowa judiciary has recognized this problem; in *State v. Lilly*, the Supreme Court of Iowa remanded a case to address disparities in the racial makeup of the jury.¹⁶⁸ Although the county of the defendant’s trial—North Lee County—is 3.2% Black, every potential Black juror was struck, leaving an all-white jury.¹⁶⁹ The court agreed that this jury makeup violated their earlier holding “that criminal defendants have a constitutional right to a jury drawn from a fair cross-section of the community.”¹⁷⁰ Further, this case came following a 2017 decision by the Supreme Court of Iowa in *State v. Plain* which rejected that the “absolute disparity” test to decide whether a jury pool was drawn from a fair cross-section of the community, but failed to instruct the courts in what method to apply when considering whether a jury’s racial makeup affects their impartiality.¹⁷¹ Despite the Iowa judiciary itself

¹⁶⁴ See *infra* text accompanying notes 161-162.

¹⁶⁵ Sarah B. Berson, *Beyond the Sentence—Understanding Collateral Consequences*, 272 National Institute of Justice 25 (Sept. 2013), [https://perma.cc/WR6P-CJVM].

¹⁶⁶ *Why Hire Someone with a Criminal Record?*, UNITED WAY OF CENT. IOWA (Feb. 15, 2018), [https://perma.cc/39MR-T6ZS].

¹⁶⁷ See Veronica Stracqualursi, *Iowa Governor Signs Executive Order Restoring Some Ex-Felons’ Voting*, CNN POLITICS (Aug. 5, 2020, 2:49 PM), [https://perma.cc/CQ9H-W3AP].

¹⁶⁸ See *State v. Lilly*, 930 N.W.2d 293 (Iowa 2019).

¹⁶⁹ Bernie Pazanowski, *Black Iowa Defendant May Challenge Jury Pool’s Racial Makeup*, BLOOMBERG LAW (May 29, 2019, 9:06 AM), [https://perma.cc/G6PW-Q6AY].

¹⁷⁰ *Id.*

¹⁷¹ *State v. Plain*, 898 N.W.2d 801 (Iowa 2017). The absolute disparity test takes:

the percentage of the distinct group in the population and subtracting from it the percentage of that group represented in the jury panel. . . . The absolute disparity formula does not account for the relative size of the minority group in the general population. It instead excludes any minority population that makes up a percentage of the population that is lower than the permissible amount for absolute disparity.

Id. at 823.

acknowledging the potential for unrepresentative juries to violate Black defendants' right to a fair trial, the current approach remains limited.

2. Iowa and the Use of Rap Lyrics as Character Evidence

Courts around the country adopt either an inclusionary or exclusionary approach to the character evidence rules.¹⁷² Iowa interprets Iowa Rule of Evidence 5.404(b), the state's analogue to FRE 404(b), as an exclusionary rule.¹⁷³ However, the development of the character evidence rules in Iowa jurisprudence has been uneven. In 1994, *State v. McDaniel* strayed from the exclusionary rule and followed the lead of courts adopting Stone's inclusionary interpretation of Rule 404(b).¹⁷⁴ The court held that the evidence of a prior sale of marijuana was relevant to the non-propensity issue of intent in the prosecution for possession of marijuana with intent to deliver.¹⁷⁵ In *State v. Sullivan*, the court later recognized that this interpretation effectively allowed the admission of evidence to show a defendant's propensity to possess and sell drugs and overruled *McDaniel*.¹⁷⁶

In *State v. Sullivan*, the court made it clear that Iowa adopted the exclusionary approach.¹⁷⁷ It laid out a three-prong test to determine whether a piece of evidence fell under Iowa Rule 5.404(b): "(1) the evidence must be relevant and material to a *legitimate* issue in the case other than a general propensity to commit wrongful acts, and (2) there must be clear proof the individual against whom the evidence is offered committed the bad act or crime."¹⁷⁸ If the first two prongs are satisfied, the court must then decide if the danger of unfair prejudice substantially outweighs the evidence's probative value.¹⁷⁹

In the context of rap lyrics and criminal evidence, there is little jurisprudence in Iowa on the issue, although the practice is often used at the trial level. One notable case is *State v. Deases*, which was one of the first cases in America that involved rap lyrics as evidence.¹⁸⁰ The Iowa Court of Appeals mentioned that the prosecution used rap lyrics as character evidence during

¹⁷² See *supra* Section II.B.2.b.

¹⁷³ See *State v. Sullivan*, 679 N.W.2d 19, 28 (Iowa 2004).

¹⁷⁴ *Id.*; See *State v. McDaniel*, 512 N.W.2d 305 (Iowa 1994).

¹⁷⁵ *McDaniel*, 512 N.W.2d at 309.

¹⁷⁶ *Sullivan*, 679 N.W.2d at 28.

¹⁷⁷ *Id.* at 24–25

¹⁷⁸ *Id.* at 25.

¹⁷⁹ *Id.* at 29.

¹⁸⁰ ERIK NIELSON, RAP ON TRIAL: RACE, LYRICS, AND GUILT IN AMERICA 62 (2019).

the trial stage, but did not spend any time considering their admissibility, since it had nothing to do with the issue on appeal.¹⁸¹

There are only two major cases that discuss the admissibility of rap lyrics as character evidence in Iowa that are both unpublished opinions, indicating that the courts did not feel they held sufficient precedential value.¹⁸² At the federal level, the Eighth Circuit held in *United States v. Miller* that a district court did not abuse its discretion in admitting evidence of the defendant's rap lyrics into trial.¹⁸³ The case followed the steps of *Sullivan* to determine the lyrics' admissibility through a non-propensity purpose and ultimately landed on its own discretion in conducting the Rule 403 balancing test.¹⁸⁴ The court deferred to the district court's discretion despite the defendant's claim that the inclusion of the lyrics as evidence portrayed him as "another dangerous, violent black man."¹⁸⁵

At the state level, the Iowa Court of Appeals ruled in the opposite way.¹⁸⁶ In *State v. Leslie*, the court held that the lower court did not abuse its discretion by excluding rap videos (which bear the same evidentiary concerns as lyrics, but with the added issue of visually biasing a jury) as evidence.¹⁸⁷ The prosecutor aimed to use the rap videos to prove the non-propensity purpose of knowledge for gun charges, but the court relied on its discretion in balancing the interests of Rule 403 to exclude the evidence.¹⁸⁸ This case demonstrated a significant shift in Iowa's judicial treatment of rap music as it states that "[t]he rap videos are a form of artistic expression."¹⁸⁹ Moreover, the court, when conducting its 403 balancing analysis, cited *Poetic (In)Justice? Rap Music Lyrics as Art, Life, & Criminal Evidence* by Andrea Dennis—a leading academic article that this Note also cites—and highlighted the perceived association of rap music with criminality as the basis for "undue prejudice."¹⁹⁰

III. ANALYSIS

Iowa has severe disparities in its criminal justice system and the judiciary is looking for ways to combat these racial biases on an institutional level. Some prosecutors in Iowa are able to exploit this disparity when using rap

¹⁸¹ *Id.*

¹⁸² See Cara Griffith, *Why Do We Still Have Unpublished Opinions?*, FORBES (Nov. 5, 2015, 12:12 PM), [<https://perma.cc/Q5KA-Y6T9>].

¹⁸³ *United States v. Miller*, 638 F. App'x 543, 544 (8th Cir. 2016).

¹⁸⁴ *Id.* at 545.

¹⁸⁵ *Id.*

¹⁸⁶ *State v. Leslie*, No. 12-1335, 2014 WL 70259, at *6 (Iowa Ct. App. Jan. 9, 2014).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*; see also Dennis, *supra* note 118.

lyrics as character evidence and Iowa courts are only equipped to prevent this tactic by resorting to their individual discretion under Iowa Rule 5.403 (state analogue to FRE 403). First, this Part will argue that, in light of Iowa's criminal justice issues, the state's current judicial approach is limited. Second, this Part will recommend that the Iowa legislature amend Iowa Rule 5.404(b) to reflect the *State v. Skinner* test. Third, this Part will examine how the amended rule would impact current Iowa jurisprudence in dealing with rap lyrics as character evidence.

A. Iowa's Current Approach is Limited

As highlighted earlier, Iowa has major racial disparity in its criminal justice system.¹⁹¹ The "War on Drugs" and the over-policing of low-income Iowa communities have led to large swaths of Black and Brown populations entering the criminal justice system.¹⁹² Iowa stands out among states in its incarceration of these groups and systematically disenfranchises them through felon voting laws, reduced employment/educational opportunities, and restricted access to public benefits.¹⁹³ Most significantly, the disenfranchisement of 65,000 Black Iowans—prior to the reversal of this policy—blocked their access to political capital to rectify racially disparate policies and rendered them unable to combat the longstanding stereotypes that link Black individuals to criminality.¹⁹⁴ The imbalance in representation is further perpetuated in juries, where victims of over-policing and mass incarceration are not afforded the right to be judged by a jury of their peers.¹⁹⁵ Moreover, the 91% white population in Iowa is statistically susceptible to holding subconscious images of Black criminality that can later be manipulated by prosecutors to further imprison Black defendants.¹⁹⁶ This institutional destabilization of racial minority communities in Iowa has even been acknowledged by the state judiciary.¹⁹⁷

Prosecutorial tactics that play off these disparities, whether intentional or not, should be thwarted in nuanced ways that guide courts toward fair and just rulings. The use of rap lyrics as character evidence is a poignant example of this type of tactic, which amplifies the longstanding negative stigma of rap music and exacerbates existing racial stereotypes to prejudice a jury against Black defendants and other defendants of color.

¹⁹¹ See *supra* Section I.C.1.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See *supra* Section I.C.1.

¹⁹⁷ *Id.*

Although perceptions are shifting within the Iowa judiciary, the lack of binding precedent or persuasive authority signifies a gap in Iowa's current approach towards rap lyrics used as character evidence. In both *Miller* and *Leslie*, the courts made their final decision on whether to admit the rap lyrics using the balancing test prescribed in FRE Rule 403 and Iowa Rule 5.403, respectively.¹⁹⁸ This reliance on courts' individual discretion to determine admissibility will inevitably lead to disjointed judicial interpretations that may harm Black defendants and other defendants of color who are caught in the middle of the confusion.

Moreover, this limits the chance for a defendant to appeal an evidentiary ruling that admits rap lyrics as character evidence. Since reviewing courts use an "abuse of discretion" standard for review of discretionary rulings, courts will often defer to a judge's discretion so long as there is no plain error. In cases involving rap lyrics as character evidence, Iowa judges use Iowa Rule 5.403 to balance the probative value of the lyrics against any undue bias it may cause in the jury. This is fundamentally discretionary and reviewing courts will likely deny a defendant's appeal unless there is some clearly harmful abuse in the judge's discretion. Furthermore, the discretionary decisions involving rap lyrics as character evidence are often fact-sensitive and courts will be hesitant to overturn a lower court's ruling even if they fail to acknowledge the implicit biases carried by rap music and their impact on the jury.

B. Iowa's Legislature Should Amend Rule 404(b) to Reflect State v. Skinner

As previously stated, Iowa courts have clarified their interpretation of Iowa Rule 5.404(b)—the state analogue to FRE Rule 404(b)—to be an exclusionary rule, but the bulk of cases involving rap lyrics as character evidence hinge on the application of the judge's discretionary balancing test. With disparity among juries, politicized court elections, and rampant institutional discrimination in Iowa, relying on courts alone to use their discretion may produce disparate outcomes across the state. The need for a unified approach is pressing as Iowa faces a criminal justice crisis. While the use of rap lyrics as character evidence is not the sole manifestation of this crisis, the current standard leaves the door open for prosecutors, courts, and juries to perpetuate status-quo racial disparity. Thus, rather than argue that courts should merely adopt the view expressed in *State v. Skinner*, this Note advocates that the Iowa legislature ought to redraft Iowa Rule 5.404(b)(2) to codify the standard in the rule itself. The proposed language would state:

Permitted uses. *If there is a direct connection between the evidence offered and the specifics of the offense, this [evidence of a crime, wrong, or other act] may be admissible for other purposes,*

¹⁹⁸ See *Miller*, 638 F. App'x at 545; *Leslie*, 2014 WL 70259, at *4.

such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake.

This amended statute reflects the precise language given by *State v. Skinner* requiring a “direct connection” between the evidence and the specifics of the crime.¹⁹⁹ Further, the added language was purposely placed at the beginning of the second sentence to avoid any statutory confusion (if the language were to be placed at the end of the sentence, it would only modify “absence of mistake”). In any case, the intent of the legislature would be clear in enacting such language so as to avoid future statutory interpretation problems.

Further, this language remains in line with Iowa’s exclusionary approach to Iowa Rule 5.404(b).²⁰⁰ In fact, it strengthens the exclusionary nature of the rule by elevating the burden of proof necessary to invoke the admission of non-propensity prior bad acts. This language requires specificity from prosecutors who aim to present character evidence of prior bad acts, including rap lyrics, so that courts avoid the inclusion of character evidence with an attenuated link to the crime in question. The proposed language also limits the ability of prosecutors to maneuver around the character evidence rules to admit evidence that may implicate proof of “motive, opportunity, intent, preparation, plan, knowledge, or absence of mistake,”²⁰¹ but ultimately serves the primary purpose of showing a defendant’s propensity to commit a certain crime. This not only remains consistent with the original purpose of the character evidence rules, but also limits the possibility of courts adopting the inclusionary interpretation, as Iowa courts did in *State v. McDaniel*.²⁰²

Moreover, the rule is still subject to the balancing test of Iowa Rule 5.403. Courts are still granted their discretionary power to determine whether a piece of evidence’s danger of “unfair prejudice” substantially outweighs its probative value. However, the inclusion of the proposed language in Iowa Rule 5.404(b) guides courts to require a strong nexus between the crime in question and the offered evidence before the evidence even reaches the scrutiny of Rule 5.403. This will promote consistency among Iowa courts in their treatment of character evidence, while still allowing courts to conduct case-by-case FRE Rule 403 balancing. Ultimately, the proposed language will largely allow the same type of evidentiary analysis of non-propensity prior bad acts that is currently permitted, but it will also create a heightened burden of proof that will weed out prosecutorial tactics that “poison the jury against a defendant.”²⁰³ This will effectively prevent the use of rap lyrics as character

¹⁹⁹ *Skinner*, 95 A.3d at 253.

²⁰⁰ See *Sullivan*, 679 N.W.2d at 28.

²⁰¹ FED. R. EVID. 404(b).

²⁰² *McDaniel*, 512 N.W.2d at 309.

²⁰³ Chrysler, *supra* note 89, at 10 (quoting *Skinner*, 95 A.3d at 249).

evidence, unless the lyrics are directly connected to and created in contemplation of the offense at trial.

C. Impact of Amended Iowa Rule 5.404(b) on Iowa Jurisprudence

By including the “direct connection” language in Iowa Rule 5.404(b), the Iowa legislature would be effectively imposing a bright line for lyrics used as character evidence. This establishes an evidentiary prohibition on lyrics that are created outside of the scope of the specifically charged offense and consequently prevents prosecutors from bringing extraneous rap lyrics to prejudice a jury against a defendant. Moreover, it allows a judge to use Iowa Rule 5.404(b) itself to exclude evidence that may exploit the racial stereotypes of rap music, instead of relying on individual judges’ discretion to weigh the potential prejudicial effect against the lyrics’ probative value.

For the two cases within Iowa’s jurisprudence—*United States v. Miller* and *State v. Leslie*—the reasoning and precedential weight would likely change under the amended statute. This is significant because it allows defendants more leeway to appeal rulings on rap lyrics since the amended Iowa Rule 5.404(b) would provide a concrete evidentiary standard to exclude rap lyrics as character evidence when they are not directly connected to the charged offense. Instead, both cases relied on the judge’s discretion in their balancing analysis, which reviewing courts are very hesitant to overturn.

In *United States v. Miller*, the Eighth Circuit considered whether the defendant’s lyrics were admissible as character evidence. The lyrics stated: “Momma told me, she told me, these . . . aint yo homies, watch how . . . change [sic] they change up that’s why *I keep one in the chamber* cause imma take one wit me!”²⁰⁴ The lower court found that the lyrics were relevant since they made the fact of possession of handgun more probable than it would be without the evidence. This led the court to conduct an FRE Rule 403 balancing analysis to weigh the probative value of the evidence against its potential prejudicial effect on the jury. Because of this, the Eighth Circuit was hesitant to overturn the judge’s evidentiary ruling and made clear that it would “give great deference to a district court’s application of the Rule 403 balancing test.”²⁰⁵ The defendant, Miller, argued that the admission of the lyrics was “unfairly prejudicial” because of its portrayal of the defendant as “another dangerous, violent black man.”²⁰⁶ The court seemed to acknowledge the implicit racial bias that is promulgated through the use of the rap lyrics, but chose to avoid the question by deferring to the lower court’s discretion.

Under the amended rule, the cited lyrics would never be admitted under the character evidence rules, since they pose no direct connection to the

²⁰⁴ *Miller*, 638 F. App’x. at 544.

²⁰⁵ *Id.* at 545 (quoting *United States v. Lupino*, 301 F.3d 642, 646 (8th Cir. 2002)).

²⁰⁶ *Id.*

specific crime the defendant is charged with. In this case, the judge would not have to use its discretion under Rule 403. The admission of the rap lyrics would focus on the evidentiary analysis of whether the lyrics were made in contemplation of the crime or possess a strong nexus to the crime in question, rather than the discretionary question of probative value vs. prejudicial effect.

In *State v. Leslie*, the outcome of the case would be the same, but it would not rely on the judge's discretion. This change in reasoning is significant, because it would establish a precedent that rap lyrics cannot be used as character evidence simply because the defendant wrote them. The ruling would require that the rap lyrics in question are in direct connection with the alleged crime to be admitted and thus, an appeal would be based on whether a judge properly applied the amended statute, rather than deferring to the judge's discretion.

In this case, the prosecutor aimed to bring rap videos and lyrics written by the defendant to demonstrate that he has a propensity for violence.²⁰⁷ The reviewing court had to determine whether the lower court judge abused his discretion in conducting the Iowa Rule 5.403 balancing analysis towards this evidence.²⁰⁸ The reviewing court weighed the prejudicial effect that rap music has on juries and determined the artistic nature of the rap lyrics and video dampened their probative value.²⁰⁹ The court acknowledged the implicit bias brought forth with rap music, and used this reasoning to determine that the lower court abused its discretion.²¹⁰

Under the amended statute, the evidence would not have even reached a balancing test. Since the rap lyrics and video had no direct connection with the crime, which the prosecution conceded in arguing that the evidence only showed a knowledge of guns generally, the evidence would be categorically excluded. Thus, the outcome of the case would be the same, but the reviewing court would not have to rely so heavily on the lower court's discretion, and instead could invoke a categorical exclusion of the rap lyrics under the amended statute.

IV. CONCLUSION

This Note addressed the development of rap and hip-hop music in American popular culture and outlined the significant events that have contributed to its negative cultural perception, such as the censorship campaign of the PMRC and the East Coast-West Coast feud. As rap music entered the legal arena through the character evidence rules under Rule 404(b) and the

²⁰⁷ *Leslie*, 2014 WL 70259, at *6.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

balancing test of Rule 403, the genre's negative stigma leads juries to hold heavy implicit biases that could be exploited by prosecutors when presenting rap lyrics as evidence. In turn, this prosecutorial tactic disproportionately harms defendants of color.

In Iowa, the disproportionate impact is further entrenched as the state harbors severe racial inequities in its criminal justice system. For this reason, the Iowa legislature needs to take steps to address the structural imbalance in its judicial system by preventing the use of prosecutorial practices that exploit racial biases to garner convictions. This Note recommended that the Iowa legislature should adopt the *State v. Skinner* standard and require that rap lyrics presented as character evidence have a "direct connection" with the charged offense.

By incorporating this language into Iowa Rule 5.404(b), the judiciary would have a clear standard to reject rap lyrics as criminal evidence when their only purpose is to prejudice a jury against a defendant. This does not prevent all rap lyrics from being admitted into criminal proceedings, but it creates a higher evidentiary threshold that prosecutors must meet before they can use rap lyrics as evidence. Thus, this amended rule minimizes the ability of prosecutors to exploit racial biases and the negative stigma against rap, while still allowing relevant rap lyrics as character evidence only if they carry a strong nexus to the facts of the alleged crime.

As the struggle for racial justice continues, legal scholars and social justice advocates must persistently aim to translate calls for reform into concrete solutions to implement throughout our political and legal systems. This requires transformative changes to occur on every level, whether they involve massive shifts in federal policy priorities or granular alterations in a state evidence statute. The effect of these changes on individual lives, no matter their magnitude, are steps toward a more fair and equitable society. Together, they will allow us to realize the fundamental vision of the racial justice movement, that every person deserves equal protection of the laws and the freedom to live a life of respect and dignity. In the song, "good kid," Kendrick Lamar pleads for this reality and describes the experience of living in a world without respect:

All I see is strobe lights, blinding me in my hindsight
Finding me by myself, promise me you can help
In all honesty I got time to be copacetic until
You had finally made a decision to hold me against my will
It was like a head on collision that folded me standing still
I can never pick out the difference and grade a cop on the
bill

Every time you clock in the morning, I feel you just want to
kill

All my innocence while ignoring my purpose to persevere
as a better person

I know you heard this and probably in fear

But what am I supposed to do[?] [W]ith the blinking of red
and blue

Flash from the top of your roof and your dog has to say
woof

And you ask, "Lift up your shirt" cause you wonder if a tat-
too

Of affiliation can make it a pleasure to put me through

Gang files, but that don't matter because the matter is racial
profile

I heard them chatter: "He's probably young but I know that
he's down[]

Step on his neck as hard as your bullet proof vest

He don't mind, he know we'll never respect, the good kid,
M.A.A.D.²¹¹ city[.]²¹²

²¹¹ "Good Kid, M.A.A.D. City" is the name of Kendrick Lamar's second studio album in which the song "good kid" appears. KENDRICK LAMAR, *GOOD KID, M.A.A.D. CITY* (Top Dawg Entertainment, Interscope Records 2012). "M.A.A.D" is an acronym with two meanings: "My Angry Adolescence Divided" and "My Angels on Angel Dust." Steven Horowitz, *Kendrick Lamar Explains Meaning of "Good Kid, M.A.A.D. City" Title, Reveals T.I. Collaboration*, HipHop DX (Oct. 19, 2012, 3:10 PM), [<https://perma.cc/4U6C-U63C>].

²¹² Kendrick Lamar, *good kid, on GOOD KID, M.A.A.D. CITY* (Top Dawg Entertainment, Interscope Records 2012).