

Global Hip Hop Studies
Volume 1 Number 1

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**RAP ON TRIAL: RACE, LYRICS, AND GUILT IN AMERICA, ERIK NIELSON
AND ANDREA L. DENNIS (2019)**

New York: The New Press, 204 pp.,
ISBN 978-1-62097-340-0, h/bk, USD 24.99

Reviewed by Salman A. Rana, McGill University

1. Other forms of hip hop cultural productions can include those which correspond to the traditional elements of hip hop culture in addition to emceeing, such as b-boying, graffiti writing and turntablism, but also corresponding expressive productions centred around language, film/video, style of dress and the music or *sounds* of hip hop.

In 1990, hip hop duo EPMD claimed that ‘*Rap Is Outta Control*’. The song title was a critique of anti-rap hysteria expressed by segments of the population alarmed by hip hop’s growing popularity (EPMD 1990). EPMD’s rhymes on the track vacillated between braggadocious bestings of the emcee competition to fantastical threats involving guns and beatdowns. Of course, it was all metaphorical and keeping in step with hip hop. EPMD, part of rap’s golden age, could have never guessed how systematic, formal and institutionalized anti-rap hysteria would become – or maybe they could, as young black men in America, where criminal law has always been outta control.

In *Rap on Trial: Race, Lyrics, and Guilt in America*, Nielson and Dennis distinguish a troubling practice in criminal law proceedings. The practice, which they name *rap on trial* as the title suggests, singles out rap lyrics and other forms of hip hop cultural productions as evidence of a defendant’s criminal disposition, culpability and/or intent.¹ The text deftly articulates the ways in which rap, as highly detrimental and inflammatory evidence, is weaponized by state prosecutors and others in the criminal justice pipeline.

Neither Dennis nor Nielson make the claim that people who participate in rap and other hip hop cultural productions are irreproachable. What they argue is that rap, in the context of criminal law evidence and the prosecution of defendants, is being singled out in ways that other art forms are not, and the reason is racism.

Nielson and Dennis provide a loose genealogy of rap on trial cases, supported by social science data and cultural studies. I use the term *loose* descriptively, simply because the text is written in a more accessible prose, forgoing traditional academic conventions in its approach. This is a welcome departure from academic exclusivity in writing and research, where the impact and benefit of a text clearly has those most impacted by the subject matter in mind. The authors make a timely and novel contribution to the contemporary literature on race, criminal prosecution and the disproportionate police surveillance and incarceration of young black and brown men in the United States.

Both Nielson and Dennis are recognized scholar-practitioners. Dennis, a law professor and former federal public defender, has focused her intellectual work on questions exposing bias in criminal law procedure. Nielson,

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a cultural studies professor, has focused his intellectual work on questions in and around hip hop culture and African American literature. He has acted as an expert witness on hip hop for defence counsel in criminal trials and has spearheaded efforts calling for an end to the use of rap lyrics at all levels and stages of criminal proceedings. Both Dennis and Nielson are staunch critics of surveillance tactics centred around manufacturing criminal narratives through the misuse of hip hop cultural productions.

The authors identify three main conceptual themes used by prosecutors when rap enters the courtroom:

1. *The Diary*: The prosecution relies on this theme to argue that the defendant's rap lyrics describe the crime in question after the fact. In this scenario, the rap is a substitute for a formal confession (Nielson and Dennis 2019: 13). Prosecutors liken this practice to discovering incriminating correspondence between two businesspeople which can then be used against them to establish any number of evidentiary criteria in the successful prosecution of a white-collar crime. However, business correspondence is not a work of art.
2. *Motive and Intent*: The prosecution relies on this theme to argue that the defendant penned rap lyrics that exhibit an intimate and enthusiastic knowledge of crime. A catch all to describe a propensity for criminal activity (Nielson and Dennis 2019: 14).
3. *The Threat*: The prosecution relies on this theme to argue that the defendant penned rap lyrics which contained direct and true threats against specifically named or described individuals (Nielson and Dennis 2019: 15).

Corresponding to these themes are a number of multilayered flaws in the administration of criminal justice at both the state and federal levels vis-à-vis reliance on rap lyrics and other hip hop cultural productions as evidence. The state's approach to rap lyrics carries heavy consequences for defendants when deciding whether to plead guilty or risk a trial, and also in sentencing hearings, where they face the prospect of lengthy periods of incarceration. The flaws highlight a fundamental lack of justice and gap in judicial reasoning on admissible forms of evidence.

Jury members, prosecutors, judges and law enforcement officials are all tasked with interpreting rap lyrics, without understanding the cultural trajectory of the art form, or its linguistic and normative frameworks (Nielson and Dennis 2019: 52). Rap authenticity and truth telling responds to the conventions of the art form, not to literal accounts of the lyrics (Nielson and Dennis 2019: 56). However, the use of rap on trial techniques presents rap lyrics as an accurate indicator of a defendant's intimate understanding of criminal normativity, and almost always serves as an implicit attack on their character (Nielson and Dennis 2019: 65, 79).

When rap lyrics are submitted into court, they are analysed, interpreted and decontextualized by individuals with little to no substantive expertise in hip hop culture. The experts called in to testify on the evidence are often police officers from gang units with a limited knowledge of rap music. Overzealous prosecutors and police officers often rely on policy directives, gang databases and commercially available certificate programmes in 'gangology' that point to 'music' (*read: rap music*) as data modules for deducing criminality (Nielson and Dennis 2019: 132). This

2. See Nielson and Dennis (2019: 85–93), for a brief comparative discussion on outlaw country music and heavy metal. Outlaw country has received no judicial scrutiny, although the themes are strikingly identical to gangster rap. See discussion about the *Carrie Fried study* on outlaw country and rap music at 87.
3. See Nielson and Dennis (2019: 66). The increasingly frequent use of rap on trial as a prosecutorial practice complimented the rise of hip hop in popular culture, and especially gangster rap. The authors make the argument that by 2005, rap on trial as a prosecutorial method was a 'solid gold' practice and an 'easy sell' in criminal court hearings. The practice withstood repeated challenges and now could take advantage of heightened anxieties and newly established anti-terrorism laws following the terrorist attacks of 11 September 2001. See Nielson and Dennis (2019: 67).

kind of flawed reliance on rap lyrics can be used to justify the triggering of legal enhancements to heighten surveillance and scrutiny of black and brown youth, which includes monitoring their musical tastes and participation in cultural productions (Nielson and Dennis 2019: 150). In some cases involving threats, rap lyrics were used to trigger heightened legal sanctions under anti-terrorism laws (Nielson and Dennis 2019: 68).

The court's willingness to submit rap music as evidence and make truth claims about lyrics relies on their willingness to deny it any artistic value, thus sheltering the evidence from free speech protection and scrutiny under the First Amendment (Nielson and Dennis 2019: 114). The authors argue, and their research bears this out, that no other musical genre has faced similar judicial scrutiny.² There are reasons for this discrepancy. Rap music is used as a proxy to introduce deeply embedded stereotypes into the courtroom. Terms such as *thug* and *gangbanger* are euphemisms for black and brown men, and the music complements this imagery, impacting jury interpretations of the facts and potentially playing to jury members' disdain for rap music and implicit biases (Nielson and Dennis 2019: 81, 94, 122). By doing so, the state denies mostly amateur artists in conflict with the law the privilege of separating their art from their real lives (Nielson and Dennis 2019: 65).

The overwhelming number of the defendants are poor, amateur artists, with little mainstream traction. The courts have used this against defendants to deny their rap music artistic value, arguing that their lack of fame heightens the factual value of the written lyrics (Nielson and Dennis 2019: 16). Because of a defendant's lack of opportunity to perform their lyrics publicly to throngs of fans, the court surmises that the lyrics are less fantastical, and more likely a reflection of fact. This class dimension is also representative of the quality of legal representation a poor marginalized defendant has at their disposal, especially in complex cases.

The authors argue that the entire law enforcement edifice is ill-equipped to interpret rap, and wilfully so. In one instance, a prosecutor alleged that photos on a defendant's phone were well-known gang members, when in fact they were photos of the late rappers Biggie Smalls and Craig Mack (Nielson and Dennis 2019: 132). Both were former Bad Boy recording artists under Sean Combs and hugely popular. In another instance, the prosecution attributed violent lyrics to a defendant's notebook, claiming they were a reliable account of the defendant's penchant for criminal activity. The lyrics were in fact lyrics belonging to South Park Mexican, a popular underground Chicano Rapper (Nielson and Dennis 2019: 137).

These instances would be comical if the stakes were not so high. The authors identified over 500 cases where the rap on trial technique was put to use prejudicially against overwhelmingly non-white defendants facing serious criminal charges and lengthy sentences (Nielson and Dennis 2019: 69). In many of the cases, the rap lyrics were used in lieu of eye witness testimonies and physical evidence. By 2005 the practice took off, and simply being affiliated with a rapper or rap music was enough to make an argument for criminal culpability.³ To make matters worse, in cases where the defendants were white males, the consequences were almost never as dire (Nielson and Dennis 2019: 19).

The authors are calling for an end to the practice of rap on trial (Nielson and Dennis 2019: 154). Short of granting rap lyrics privileged status to reduce judicial exposure (Nielson and Dennis 2019: 157), they are calling

on defence lawyers to seek the help of experts on hip hop culture and for rigorous judicial scrutiny of individuals presenting as experts (Nielson and Dennis 2019: 155). They go further by asking any potential jurors to nullify evidence that may come before them in the form of rap lyrics by not relying on the evidence in their deliberations (Nielson and Dennis 2019: 159). Furthermore, they are calling on scholars, and hip hop scholars in particular, to volunteer their time and resources to refuting the practice, in court as experts and in their research and writing.⁴

Hip hop's origins tell the story of an overly surveilled, highly regulated subculture from its early beginnings. The nexus is thick between early law enforcement efforts to disrupt graffiti movements, b-boys and their use of public space by black and brown kids and a prosecutorial practice like rap on trial (Nielson and Dennis 2019: 32–33).

Academics and students in law, cultural studies, sociology, American studies and criminal justice will find value in this text. As a legal theorist and lawyer, I see the text contributing to readings not only in criminal law courses but also courses in law and popular culture, and critical race theory. Its prose is not overly academic, making it a welcome contribution to more publicly accessible intellectual works that speak to a wider audience.

While centred on the American criminal justice system, it is useful to remember that hip hop is a transglobal subculture, and sadly, so is anti-black racism, state excess and police oversight. Rap on trial is as much a tactic in courtrooms in Toronto and London as it is in Los Angeles.⁵ This book is a clarion call for all, globally, who seek meaning through hip hop culture, and especially those who think and write about it, to put their heads (and individual and institutional resources) together and stand with Dennis and Nielson by bringing more attention to this prosecutorial method and most racist and insidious practice.

REFERENCES

- EPMD (1990), 'Rap Is Outta Control', *Business as Usual*, New York: Def Jam Recordings.
- Hancox, Dan (2019), 'Skengdo and AM: The drill rappers sentenced for playing their song', *The Guardian*, 31 January, <https://www.theguardian.com/music/2019/jan/31/skengdo-and-am-the-drill-rappers-sentenced-for-playing-their-song>. Accessed 4 April 2020.
- Nielson, Erik and Dennis, Andrea L. (2019), *Rap on Trial: Race, Lyrics, and Guilt in America*, New York: The New Press.
- Tanovich, David M. (2016), 'R v. Campbell: Rethinking the admissibility of rap lyrics in criminal cases', *Criminal Reports (7th)*, 24, pp. 27–43.

CONTRIBUTOR DETAILS

Salman A. Rana, BA (York), LLB (Osgoode), LLM (McGill), MSt (Oxon), DCL (ABD, McGill), (YLook), was a founding member of the Toronto hip hop collective The Circle, along with Kardinal Offishall, Saukrates and Choclair, among others. His law practice focuses on creative cultural industries and his academic research focuses on socio-legal theory, jurisprudence and cultural studies.

 <https://orcid.org/0000-0001-6432-9460>

4. See Nielson and Dennis (2019: 156). For examples of court interventions filed by members of the hip hop community, see the amicus briefs in the following two matters that sought leave to the US Supreme Court: *Taylor Bell v. Itawamba County School Board*, No. 15-666, USSC (2015); *Jamal Knox v. Commonwealth of Pennsylvania*, No. 18-949, USSC (2019). Both Petitions for certiorari were denied, but marked important steps towards organizing efforts within the hip hop community to advocate for first amendment protections.
5. See Hancox (2019); *R. v. Skeet* [2017] OJ No 6261; Tanovich (2016).