

INSIGHTS

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"Ask yourself one question. 'Is it right?' Then do what you believe is best for your town, your state and your country." — James M. Cox, founder, Cox Enterprises

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Don't use rap lyrics as evidence of crime

Prosecutors across U.S. using metaphorical words against authors.

By Devin Rafus

Rap is a lyrical expression of social, cultural and political issues in current society. Unsurprisingly, rap music is the most popular genre of music and features predominantly Black artists highlighting the controversial issues facing their communities. The lyrics are frequently written in the first-person, often filled with profanity, drugs and depictions of gang-related violence.



Devin Rafus

Across the country, prosecutors are now using metaphorical rap lyrics to prosecute its authors.

The Fulton County District Attorney indicted alleged gang members, including Grammy Award winner Young Thug, and quoted their rap lyrics in the indictment. Prosecutors are using those lyrics to connect the artists to the crimes. Prosecutors are also interpreting lyrics as autobiographical confessions, instead of what the lyrics are – fictional language. As a result, the lyrical expression of rappers is now a prosecutorial tool being manipulated to take away their freedom.

The First Amendment protects free speech and expressive conduct, including artistic expression. Rap is a form of artistic expression to share social and political commentary. UGA professor Andrea Dennis, the leading expert on this issue, said, "Rap music lyrics are not simply rhyming poems or declarative sentences, as many individuals believe. Rather, rap lyrics contribute to a complex form of creative verbal expression deserving of careful analysis."



Rappers Gunna (left) and Young Thug were among more than two dozen people indicted on racketeering charges by the Fulton County District Attorney, which quotes multiple music videos as evidence. AJC FILE

Rap lyrics articulate the social story of low-income Black neighborhoods, exposing the underground realm of crime and violence to the public. The U.S. Supreme Court said, "Speech on public issues occupies the highest rung of the hierarchy of First Amendment values and is entitled to special protection."

Prosecutors are attempting to introduce rap lyrics to prove motive or intent. Creating art by writing lyrics is not a crime, a wrong, or a bad act. This is a thinly veiled attempt by the state to attack a defendant's character and show propensity – "the defendant rapped about it so he must have done what he is being charged with now."

Importantly, it cannot be understated how much race plays a role in how the public views the lyrics and the authors, creating stereotypes that construct racist perceptions of the expressive music. There are multiple studies on how rap lyrics can create stereotypes of Black men as violent, which becomes extremely prejudicial in a criminal jury trial.

In 1999, psychologist Stu-

art Fischhoff conducted a study in which he gave participants biographical information about a young Black male. Some participants were given sexually explicit rap lyrics allegedly written by the young black male. The study showed that the participants who heard the lyrics were more likely to believe that the young Black male committed the crime.

The prejudicial effect of rap lyrics has negative racial connotations. Psychologist Carrie Fried conducted a study where she used the violent lyrics of the folk group Kingston Trio's song "Bad Man's Blunder." The participants were not told who the artist was or what genre the lyrics belonged to. Half of the participants were told that the lyrics were from a country song, and the other half were told they were from a rap song. The group that was told it was from a rap song believed the artist was dangerous.

There is a clear distinction between the perceptions of rap compared to other genres. The Supreme Court of New Jersey said in a 2014 opinion:

"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."

In State v. Skinner, the New Jersey high court reversed Vonte Skinner's conviction of attempted murder because the prosecutors should not have used the rap lyrics as evidence in the trial. The same goes for Queen's "Bohemian Rhapsody" ("just killed a man, put a gun against his head, pulled my trigger, now he's dead") or Johnny Cash's "Folsom Prison Blues" ("I shot a man in Reno just to watch him die").

The double standard is undeniable.

Georgia's attorney general created the Georgia Anti-Gang Network in 2018 and recently was given authority to prosecute criminal gang activity statewide. Interestingly, the Georgia attorney general – along with other state attorneys general – recently sent a letter to Washington, D.C.,

using the First Amendment as an offense shield tactic to shut down the Disinformation Governance Board enacted by President Joe Biden, much of which applies to voter fraud and the Jan. 6 Capitol insurrection. The letter said the Disinformation Governance Board would infringe upon the First Amendment rights enjoyed by citizens and would silence Americans who wish to express their views. The letter, supported by the Georgia attorney general, says it is unconstitutional and un-American.

The First Amendment that the Georgia attorney general used to shield the rights of predominantly white voters is simultaneously being used as a sword to prosecute young Black men.

To (w)rap things up, the prosecution of rap artists is affecting one class of people – young Black men. In cases across the country, prosecutors are using "motive and intent" as a disguise for introducing these lyrics to portray the defendant as a criminal. This bad character evidence is even worse given how juries prejudicially view defendants with explicative rap lyrics.

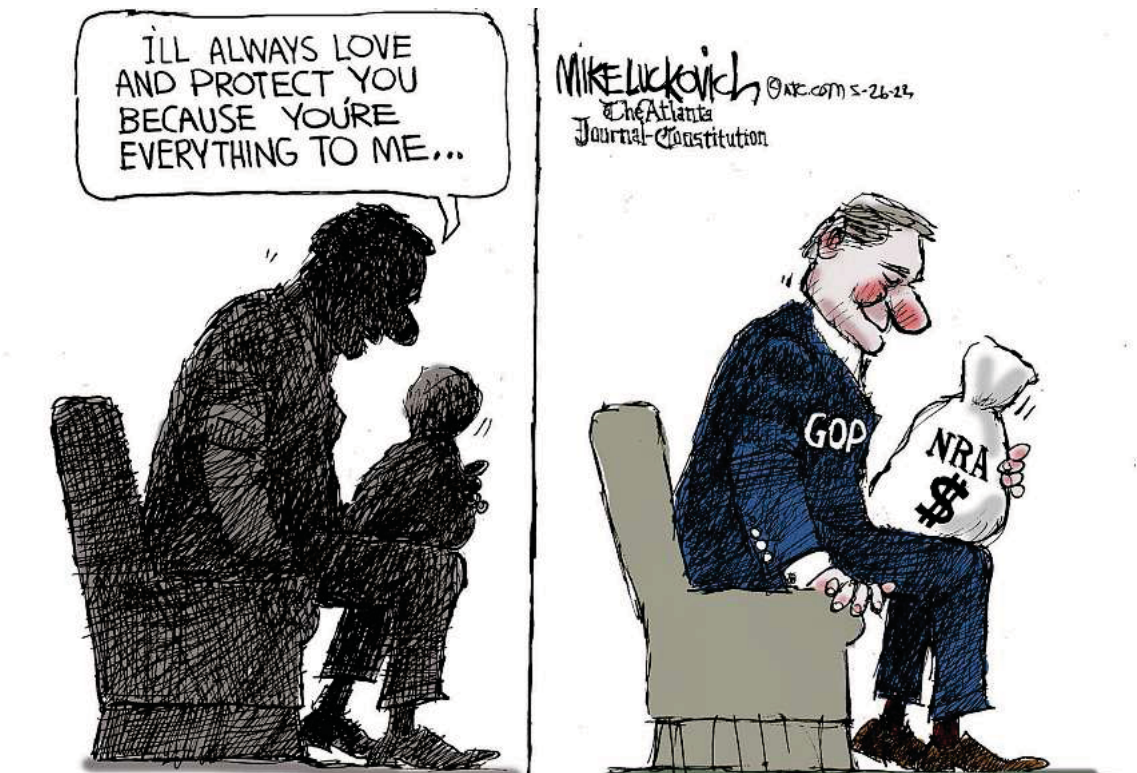
Earlier this year, the New York Senate introduced a bill (S7527) that would limit the admissibility of rap lyrics. Georgia and other states should follow suit and pass a bill excluding the use of constitutional artistic expression in a criminal trial. Otherwise, prosecutors will continue to use rap lyrics as non-Mirandized confessions.

If the stated goal of every prosecutor is to conduct a fair trial and to seek the truth, then prejudicial rap lyrics should not be allowed in the courtroom during a criminal jury trial. As the gatekeepers to the justice system, winning should not be prosecutors' priority.

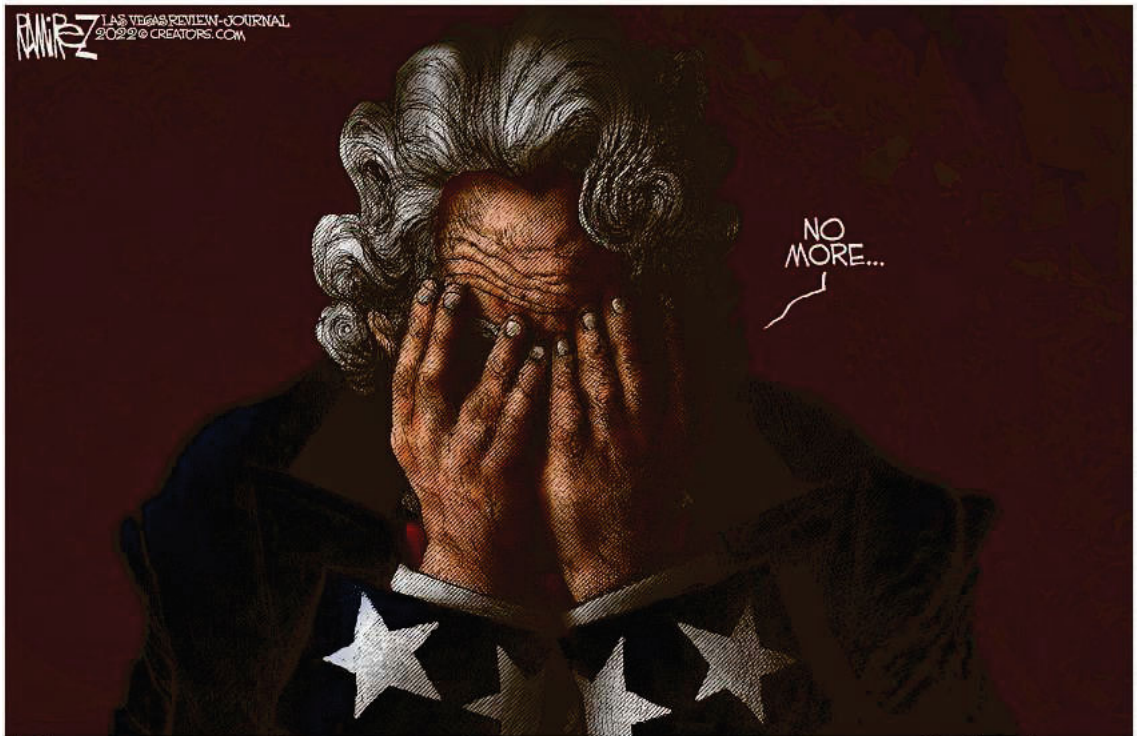
"If you don't know, now you know." – The Notorious B.I.G.

Devin Rafus is a senior associate at Atlanta's Arora Law Firm.

Mike Luckovich



From the right



READERS WRITE

Buffalo tragedy demands lawmakers' attention

It's been more than a week since 10 innocent people were killed in Buffalo, N.Y., but I've seen little in the AJC letters to the editor about this tragedy.

The fact that an individual who threatened his high school could, less than a year later, buy several weapons that are illegal in New York and kill 10 people highlights several painful – and unpopular – realities. America needs better enforcement of existing gun laws, stronger gun laws and better mental health resources.

Until our elected officials have the courage and integrity to enact legislation to protect our country and everyone who lives here, no one is safe.

MARGARET PERRY DANIEL, ATLANTA

U.S. history doesn't treat secessionists favorably

Patricia Murphy, in her very timely piece on the Trumpian fever over election fraud, calls out several current and potential Georgia legislators who are running on the lie that the 2020 election was stolen (but only in states where Democrats won). Other essayists have called these people "conservatives" or "ultra-conservatives," a questionable label considering these are people who support overturning democratic norms, including the peaceful transition of power. One must ask, were Robert E. Lee (a West Point graduate) and the Civil War secessionists just patriotic ultra-conservatives?

JONATHAN D. GLASS, ATLANTA

Hoping Trump loyalists will stick to their principles

Since Donald Trump shows little support for those who refused to accept his unsupported claim that the election was stolen, it's obvious to me that he will throw anyone under the bus who is not loyal to him, including Georgia politicians and voters. There's a report that a sizable number of Republicans will refuse to vote for Gov. Kemp if Perdue is not the GOP nominee. Perdue is a Trump loyalist, and I hope that his supporters stick to their principles.

LARRY TAMBLYN, NEWNAN

Letters to the editor must be no longer than 165 words and must include a daytime phone number for verification. Letters will be edited for length and clarity and may be published in both print and digital formats. Emailed submissions are strongly preferred, with letters pasted into the body of an email. Volume of submissions prevents us from acknowledging receipt of letters. Please email yours to: letters@ajc.com.

About the Opinion page: The AJC recognizes the diversity and differences of opinion among our readership, and we strive to accommodate this reality by regularly offering insights that point toward solutions for problems facing us today. Part of this work is regularly offering both conservative and liberal opinion voices as well. And we recognize the variety of opinions even within the same side of the political aisle, and hope you do too. For example, some of our liberal writers have been critical of the Clintons or former President Barack Obama – much as some of our conservative columnists have taken to task former President Donald Trump. We will continue looking at how best to bring you a variety of viewpoints on President Joe Biden's administration because we recognize the importance of balance on our Opinion pages – both between and within conservative and liberal ranks.