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THUG LIFE: HIP-HOP'S CURIOUS RELATIONSHIP WITH CRIMINAL JUSTICE

andré douglas pond cummings*

I. INTRODUCTION

Hip-hop music and culture profoundly influence attitudes toward, and perceptions about, criminal justice in the United States. At base, hip-hop lyrics and their cultural accoutrements turn U.S. punishment philosophy on its head, effectively defeating the foundational purposes of crime and punishment. Prison and punishment philosophy in the United States is based on clear principles of retribution and incapacitation, where prison time for crime should serve to deter individuals from engaging in criminal behavior. In addition, the stigma that attaches to imprisonment should dissuade criminals from recidivism. Hip-hop culture

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denounces crime and punishment in the United States by defying the underlying penal philosophy adopted and championed by legislators for decades. Since the inception of hip-hop as a musical genre, hip-hop artists have rhymed in a narrative format that starkly informs listeners and fans that the entire fundamental regime of prison for crime in the United States is suspect, illegitimate, and profane.

Because U.S. criminal law and punishment are profane and illegitimate to many, as hip-hop artists historically and fiercely argue,¹ two of the primary foundational underpinnings of the criminal justice system are *lost* on the “hip-hop generation”²: deterrence and stigma. “When . . . incarceration is not sufficiently stigmatized, it loses its value as deterrence.”³

Professor Paul Butler powerfully notes in his groundbreaking 2009 book, *Let's Get Free: A Hip-Hop Theory of Justice*, that despite the apparent divide between socially conscious rap and gangsta rap, the hip-hop artists and culture agree profoundly on one thing: that overwhelming inequities permeate the criminal justice system in the United States.⁴ And hip-hop harshly critiques crime and punishment inequality in our country.⁵ Because, as hip-hop aggressively describes, crime and punishment in the United States is fundamentally unfair, inequitable, and biased against people of color and the poor,⁶ punishment for committing certain crimes here is viewed by the hip-hop nation as illegitimate, and imprisonment for committing

1. See *infra* Part IV.

2. See BAKARI KITWANA, *THE HIP HOP GENERATION: YOUNG BLACKS AND THE CRISIS IN AFRICAN AMERICAN CULTURE* 4 (2002) (defining the hip-hop generation as “those young African Americans born between 1965 and 1984 who came of age in the [1980s] and [1990s] and who share a specific set of values and attitudes”). Kitwana further states: “At the core are our thoughts about family, relationships, child rearing, career, racial identity, race relations, and politics. Collectively, these views make up a complex worldview that has not been concretely defined.” *Id.*; see also Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983, 986–87 (2004) (“The hip-hop nation is gaining political power, and seems more inclined to use it than has historically been the case with youth or artists.”).

3. Butler, *supra* note 2, at 997; see also PAUL BUTLER, *LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE* (2009).

4. See Butler, *supra* note 2, at 985.

5. See *id.*

6. See *infra* Parts III, IV.

suspect crimes is unaffected.⁷ Hip-hop culture has engendered in the global hip-hop generation a tradition of exposing racial inequality and social injustice, particularly within the United States.⁸

This article will begin by exploring the global ascent of hip-hop music through an examination of how it has influenced an entire generation towards a deep distrust of the criminal justice system in the United States, to the point where imprisonment is respected, if not lauded, and deterrence has lost any realistic value for those who engage in “criminal” behavior.⁹ After examining hip-hop “lessons” through rhyme and baseline, the article will focus on the political agenda of early rap artists that included clear messages of defiance and deep disrespect for a criminal justice regime that systematically targeted young African American and urban youth.¹⁰ Then, this piece explores what it means for a hip-hop generation to come of age while retaining chasm-like differences from the traditional majority perspective on crime and punishment in the United States, and how this development will impact punishment and justice in this country going forward.¹¹

II. A GLOBAL FOOTPRINT

Hip-hop music and culture have “conquered” the world.¹² Since hip-hop’s humble beginnings in the streets and parks of the South Bronx in New York City, it has, in just thirty years, become a United States phenomenon and a global cultural and entertainment movement.¹³ Hip-hop artists regularly top

7. See *infra* Part IV.

8. See *infra* Part IV.A.

9. See *infra* Parts II–III.

10. See *infra* Part IV.

11. See *infra* Part IV.C.

12. See *And You Don’t Stop: 30 Years of Hip-Hop, Episode 1, Back in the Day* (VH-1 television broadcast June 2005) (“These young kids came from poverty and desolation and conquered the world.” (quoting Bill Adler, Def Jam Records, 1984–1990)); see also Andre L. Smith, *Other People’s Property: Hip-Hop’s Inherent Clashes with Property Laws and Its Ascendance as Global Counter Culture*, 7 VA. SPORTS & ENT. L.J. 59, 68 (2007) (“Globally, hip-hop art and culture have been adopted by poor youths around the world, who rely on hip-hop to express their visions of the future and frustrations with the present.” (citing TRICIA ROSE, *BLACK NOISE: RAP MUSIC AND BLACK CULTURE IN CONTEMPORARY AMERICA* 19 (1994))).

13. See Press Release, Nielsen Soundscan, 2008 U.S. Music Purchases

American and international record sales charts.¹⁴ Motion pictures with hip-hop themes chart regularly on box office reports, both in the United States and internationally.¹⁵ Hip-hop artists have become record moguls,¹⁶ international movie stars,¹⁷ clothing designers,¹⁸ stars of reality television

Exceed 1.5 Billion; Growth in Overall Music Purchases Exceeds 10% (Dec. 31, 2008), http://www.businesswire.com/portal/site/home/permalink/?ndmViewId=news_view&newsId=20081231005304&newsLang=en (describing top ten album sales in 2008 where *Tha Carter III*, by Lil' Wayne ranks first; *Paper Trail*, by T.I. ranks eighth; and *I Am . . . Sasha Fierce*, by Beyonce ranks tenth); see also Smith, *supra* note 12, at 66–67 (citing JEFF CHANG, CAN'T STOP WON'T STOP: A HISTORY OF THE HIP-HOP GENERATION 418 (2005)) (“[M]usic industry executives began signing talent from other continents, such as Africa and Europe.”); *id.* at 60 (“[Y]oung Palestinian and Brazilian youths have embraced hip-hop as their way of expressing dissatisfaction with their social order . . .”).

14. See Press Release, Nielsen Soundscan, *supra* note 13.

15. See Lynette Holloway, *The Angry Appeal of Eminem Is Cutting Across Racial Lines*, N.Y. TIMES, Oct. 28, 2002, at C1, available at <http://query.nytimes.com/gst/fullpage.html?res=9B02E5D6163FF93BA15753C1A9649C8B63&sec=&spon=&pagewanted=1> (“Hip-hop artists are a proven box-office draw. ‘Barbershop,’ an urban comedy starring Ice Cube, grossed an estimated \$69.5 million by Saturday since its release on [September] 13. ‘Brown Sugar,’ a hip-hop love story starring Taye Diggs, grossed \$22.4 million since its release on [October] 11. Last year, ‘Exit Wounds,’ starring DMX, grossed \$52 million.”); see also NOTORIOUS (Fox Searchlight 2009); HUSTLE & FLOW (Paramount Classics MTV Films 2005); 8 MILE (Universal Studios and Dreamworks 2002); BELLY (Artisan Entertainment 1998); MENACE II SOCIETY (New Line Cinema 1993); BOYZ-N-THE-HOOD (Columbia Pictures 1992); JUICE (Paramount Pictures 1992); KRUSH GROOVE (Warner Bros 1985).

16. See Jane Ivory, *Forbes Names Jay-Z Richest Rap Mogul*, EFLUXMEDIA, Aug. 17, 2007, http://www.efluxmedia.com/news_Forbes_Names_Jay_Z_Richest_Rap_Mogul_07806.html (discussing Jay-Z as the current president and CEO of Def Jam and Roc-A-Fella Records and examining other artists such as Diddy, Eminem, and Timbaland as business entrepreneurs).

17. See Wendy Kale, *Common: “If I Had to Choose, Making Movies Would Win,”* COLO. DAILY, Feb. 19, 2009, http://www.coloradodaily.com/ci_12956569?IADID=Search-www.coloradodaily.com-www.coloradodaily.com (describing how hip-hop artist Common made his transition into motion pictures in the 2007 film *Smokin’ Aces* and also appeared in the action film *Wanted*); see also The Internet Movie Database, Mos Def, <http://www.imdb.com/name/nm0080049/> (last visited Feb. 25, 2009) (indicating that Mos Def has appeared in such major motion pictures as *16 Blocks*, *Brown Sugar*, and *The Italian Job*); The Internet Movie Database, Queen Latifah, <http://www.imdb.com/name/nm0001451/> (last visited Feb. 25, 2009) (listing the number of major motion pictures in which Queen Latifah has starred, including *Chicago*, *The Secret Life of Bees*, and *Set It Off*); The New York Times, Times Topics: Ludacris, <http://topics.nytimes.com/top/reference/timestopics/people/l/ludacris/index.html?scp=1&sq=ludacris%20turned%20actor&st=cse> (last visited Feb. 22, 2009) (“His acting career has grown with roles in ‘Crash,’ ‘RocknRolla’ and ‘Max Payne,’ in which he uses his real name, Chris Bridges.”).

18. See Jeffrey McKinney, *Rags to Riches: Hip-Hop Moguls Use Groundbreaking Designs and Star Power to Challenge Major Clothing*

programming,¹⁹ and world renowned collaborators.²⁰ Hip-hop studies programs have sprung up throughout the undergraduate educational academy²¹ and a burgeoning body of literature has documented this global ascent.²² In a

Labels and Become a Force in the \$164 Billion Fashion Industry—The Hip-Hop Economy: Part 4 of a Series, BLACK ENTERPRISE, Sept. 2002, http://findarticles.com/p/articles/mi_m1365/is_2_33/ai_91040610/ (stating that Sean Combs, better known as P. Diddy, has his own successful clothing line, “Sean John,” while hip-hop artist Jay-Z also has a clothing line, “Rocawear”).

19. See Natalie Finn, *Snoop Dogg Gets Real*, E! ONLINE, July 13, 2007, http://www.eonline.com/uberblog/b55631_Snoop_Dogg_Gets_Real.html (stating that Snoop Dogg signed on to star in a reality series on E!); see also Run’s House, http://www.mtv.com/ontv/dyn/runs_house/series.jhtml (last visited Feb. 22, 2009) (stating that Reverend Run, from the hip-hop group Run DMC, stars in his own reality show on MTV titled, “Run’s House”); BET.com, Tiny & Toya, <http://www.bet.com/ontv/betshows/tinyandtoya/> (last visited July 17, 2009) (featuring in a reality television program Tameka “Tiny” Cottle and Antonia “Toya” Carter, the girlfriend/wife of T.I. and the ex-wife of Lil Wayne—Wayne Carter—respectively). The Hip Hop Law blog reveals:

We get a glimpse inside hip hop star T.I.’s mansion as his girlfriend, who is now rumored to be his wife, capitalizes on his incarceration. Tameka “Tiny” Cottle, a former member of the 90s hip hop soul female singing group Xscape, is talented in her own right, but for the most part was forgotten. With renewed media interest in all of the “T.I. goes to jail” hoopla, Tiny is back in the spotlight. Antonia “Toya” Carter, the ex-wife of Wayne Carter a.k.a. superstar rapper Lil’ Wayne, uncovers the unknown side of the musician’s family.

Posting of Kamille Wolff to Hip Hop Law.com, <http://hiphoplaw.blogspot.com/2009/07/tnt-tiny-n-toya-are-dynamite.html> (July 14, 2009).

20. See RollingStone, Timbaland Biography, <http://www.rollingstone.com/artists/timbaland/biography> (last visited Feb. 22, 2009) (demonstrating that Timbaland is well known for his many successful collaborations, including his work on hip-hop artist Genuine’s album, *The Bachelor*, and Nelly Furtado’s album, *Loose*); see also Posting of Daniel Kreps, Justin Timberlake, T.I. Team Up for “If I” to Rolling Stone, <http://www.rollingstone.com/rockdaily/index.php/2008/12/17/justin-timberlake-ti-team-up-for-if-i> (Dec. 17, 2008, 15:05 EST).

21. See The HipHop Archive, HipHop Courses, <http://www.hiphoparchive.org/university/courses> (last visited Mar. 1, 2009) (listing hundreds of hip-hop-based courses offered in upper-level academia through 2009).

22. See BUTLER, *supra* note 3; see also D.J. Kool Herc, *Introduction to CHANG*, *supra* note 13, at xi; NELSON GEORGE, *HIP HOP AMERICA* (Penguin Books 1999) (1998); BAKARI KITWANA, *WHY WHITE KIDS LOVE HIP-HOP: WANKSTAS, WIGGERS, WANNABES, AND THE NEW REALITY OF RACE IN AMERICA* (2006); IMANI PERRY, *PROPHETS OF THE HOOD: POLITICS AND POETICS IN HIP HOP* (2004); S. CRAIG WATKINS, *HIP-HOP MATTERS: POLITICS, POP CULTURE, AND THE STRUGGLE FOR THE SOUL OF A MOVEMENT* (2005); Horace E. Anderson, Jr., “Criminal Minded?": *Mixtape DJs, the Piracy Paradox, and Lessons for the Recording Industry*, 76 TENN. L. REV. 111 (2008); Olufunmilayo B. Arewa, *From J.C. Bach to Hip Hop: Musical Borrowing, Copyright and Cultural Context*, 84 N.C. L. REV. 547 (2006); Ronald D. Brown, *The Politics of “Mo’ Money, Mo’ Money” and the Strange Dialectic of Hip Hop*, 5 VAND. J. ENT. L. & PRAC. 59

relatively short period of time, hip hop has become a dominant cultural force and, in many ways, has become the voice of a generation.²³

This global movement, however, sprang from very humble roots. Rap music and hip-hop culture was dismissed at its inception as a fad and was widely panned by critics and many in the general public as an unimportant “flash in the pan” musical movement.²⁴ The public seemed content to ignore hip-hop and its accoutrements (i.e., break dancing, graffiti, deejaying, etc.) when the movement was confined to the inner city of major U.S. metropolises.²⁵ Thus, when the

(2003); Akilah N. Folami, *From Habermas to “Get Rich or Die Tryin’”*: Hip Hop, the Telecommunications Act of 1996, and the Black Public Sphere, 12 MICH. J. RACE & L. 235 (2007); Brian Goldman, *Putting Lamborghini Doors on the Escalade: A Legal Analysis of the Unauthorized Use of Brand Names in Rap/Hip-Hop*, 8 TEX. REV. ENT. & SPORTS L. 1 (2007); Josh Norek, *“You Can’t Sing Without the Bling”: The Toll of Excessive Sample License Fees on Creativity in Hip-Hop Music and the Need for a Compulsory Sound Recording Sample License System*, 11 UCLA ENT. L. REV. 83 (2004); Sean-Patrick Wilson, *Rap Sheets: The Constitutional and Societal Complications Arising from the Use of Rap Lyrics as Evidence at Criminal Trials*, 12 UCLA ENT. L. REV. 345 (2005).

23. See Folami, *supra* note 22, at 253 (“Despite its commercial successes and commodification, gangsta rap must continue to be contextualized within its hip hop origins, as it still gives voice to what would otherwise be an invisible and marginalized group of Black and Latino male youth.”); see also M.K. ASANTE JR., *IT’S BIGGER THAN HIP HOP: THE RISE OF THE POST-HIP-HOP GENERATION* (2008); CHANG, *supra* note 13, at xii (“Hip-hop is the voice of this generation. Even if you didn’t grow up in the Bronx in the ‘70s, hip-hop is there for you. It has become a powerful force. Hip-hop binds all of these people, all of these nationalities, all over the world together.”).

24. See Rachel E. Sullivan, *Rap and Race: It’s Got a Nice Beat, but What About the Message?*, 33 J. BLACK STUD. 605, 606 (2003) (“By the late 1980s, rap was no longer viewed as a fad but as a distinctive musical form.”); Live Leak.com, *History of Rap/Hip Hop Music*, http://www.liveleak.com/view?i=909_1221000257 (last visited Feb. 27, 2009).

25. See Glenn Collins, *Rap Music, Brash and Swaggering, Enters Mainstream*, N.Y. TIMES, Aug. 29, 1988, at C15, available at <http://query.nytimes.com/gst/fullpage.html?res=940DE1DF163EF93AA1575BC0A96E948260&sec=&spon=&pagewanted=2>. In 1988, the New York Times reported:

Hip-hop, as the culture of rap is called, originated among young blacks in the Bronx in the 1970s. Instead of fading like many previous fads, rap’s energy has become increasingly irresistible to an international audience of teenagers and pre-teenagers. As in other subcultural trends that have matured into mass phenomena, rap language and style are entering older, more racially diverse, middle-class and suburban communities.

.....
Hip-hop words from what was once an underclass subculture are now common parlance among America’s youth. . . .

1970s and 1980s saw the Sugar Hill Gang release *Rapper's Delight*, Afrika Bambaataa release *Planet Rock*, Kurtis Blow release *Basketball* and *If I Ruled the World*, and Whodini release *Five Minutes of Funk*, legislators and law enforcement paid little heed to this nascent movement.

However, when in the 1980s, hip-hop began creeping into the cassette players and minds of white American suburban youth—particularly with aggressive, violent, and counter culture lyrics—the general public, its legislators, and law enforcement began to take urgent notice.²⁶ When Public Enemy released *It Takes a Nation of Millions to Hold Us Back* and *Fear of a Black Planet*, featuring *Don't Believe the Hype*, *Black Steel in the Hour of Chaos*, *Fight the Power*, and *911 is a Joke*; when N.W.A. released *Straight Outta Compton*, featuring *Fuck Tha Police* and *Gangsta Gangsta*; when Boogie Down Productions and KRS-One released *Criminal Minded* and *By All Means Necessary*; and when Ice-T released singles *6 in the Mornin'* and *Cop Killer*, hip-hop suddenly became a lightning rod for attention and criticism.²⁷ New and

....

"The mainstream always hoped it would be a fad that would die," Mr. Bambaataa said. But instead, he maintained, the distinctive hip-hop vocabulary, clothes and culture has been important in empowering and giving status to an impoverished and isolated generation of urban young people that society found threatening.

Id.

26. See *id.* ("Like early rock-and-roll, rap's tough sound and aggressive aesthetic can be abrasive and anti-authoritarian, raising concern among some parents and critics about hip-hop's sexual explicitness, macho swaggering and association with violence. . . . The cultural police are always threatened by new movements, and greet them unfailingly with hysteria . . .").

27. See *id.*; see also Encyclopedia Britannica's Guide to Black History, Hip-Hop, <http://www.britannica.com/blackhistory/article-9117537> (last visited Feb. 26, 2009) (discussing hip-hop as a "cultural movement" and examining the evolution of "gangsta rap" and its beginnings). Britannica's Guide to Black History states:

The most significant response to New York hip-hop, though, came from Los Angeles, beginning in 1989 with N.W.A.'s dynamic album *Straight Outta Compton*. N.W.A. (N****z With Attitude) and former members of that group—Ice Cube, Eazy E, and producer Dr. Dre—led the way as West Coast rap grew in prominence in the early 1990s. Their graphic, frequently violent tales of real life in the inner city, as well as those of Los Angeles rappers such as Ice-T (remembered for his 1992 single *Cop Killer*) and Snoop Doggy Dogg and of East Coast counterparts such as Schoolly D, gave rise to the genre known as gangsta rap.

Id.; PUBLIC ENEMY, *IT TAKES A NATION OF MILLIONS TO HOLD US BACK* (Def Jam Records 1988); PUBLIC ENEMY, *FEAR OF A BLACK PLANET* (Def Jam Records

aggressive critiques labeled hip-hop as dangerous, irresponsible, and certain to lead listeners to violence while potentially upsetting the fragile balance of law and order in minority communities. This newfound status as controversial lightning rod came to be, not just because of the explicit political and violent counter culture messages, but because these messages were being *heard* and received widely by inner city youth and also by white suburban youth across the country.²⁸ In addition, as Professor Andre Smith argues, hip-hop openly defied traditional property laws across the board, including intellectual property and municipal property codes.²⁹ Early hip-hop's civil disobedience took the form of house parties and park performances held without required permits or payment for electricity, unlicensed radio stations known as "pirate stations" playing hip-hop across the country, music sampling, and illegal production and distribution of records and tapes.³⁰

Despite intense criticism and attempts to discredit and eradicate hip-hop music, including aggressive attacks launched by the FBI,³¹ CIA, local law enforcement across the

1990); N.W.A., *STRAIGHT OUTTA COMPTON* (Ruthless Records 1988); BOOGIE DOWN PRODUCTIONS, *CRIMINAL MINDED* (B-Boy Records 1987); BOOGIE DOWN PRODUCTIONS, *BY ALL MEANS NECESSARY* (Jive Records 1988); ICE T., *6 in the Mornin'*, on *DOG 'N THE WAX (YA DON'T QUIT-PART II)* (Techno Hop Records 1986); ICE T., *Cop Killer*, on *BODY COUNT* (Sire/Warner Bros. Records 1992).

28. See *infra* notes 31–34; see also Butler, *supra* note 2, at 992 ("Market studies indicate that about seventy-five percent of people who buy hip-hop music are non-black."); Bakari Kitwana, *The Cotton Club: Black-Conscious Hip-Hop Deals with an Overwhelmingly White Live Audience*, *VILLAGE VOICE*, June 21, 2005, <http://www.villagevoice.com/2005-06-21/music/the-cotton-club> ("Whites run hip-hop, they say, from the business executives at major labels to the suburban teen consumers. But the often-intoned statistic claiming that [seventy] percent of American hip-hop sells to white people may cover up more than it reveals.").

29. See Smith, *supra* note 12, at 69.

30. *Id.*

31. See NME.com, *NWA Biography*, <http://www.nme.com/artists/nwa> (last visited Mar. 17, 2009) ("In 1989, the FBI investigated Straight Outta Compton's infamous 'Fuck Tha Police' . . . It set a precedent for numerous actions against N.W.A., including the first time anyone in the music industry had received a threatening letter from the FBI."); see also N.W.A. *Outta Compton in 1989: 50 Moments that Changed the History of Rock & Roll*, *ROLLING STONE*, June 24, 2004, http://www.rollingstone.com/artists/nwa/articles/story/6085509/nwa_outta_compton_in_1989 ("N.W.A.—N****z With Attitude—put Los Angeles on the hip-hop map by combining funk rhythms with staccato rhymes that condemned racist cops and offered a nihilistic chronicle of drug dealing, casual street violence and crack ho's. . . . The FBI sent a letter to N.W.A.'s record company,

United States,³² Tipper Gore,³³ and C. Delores Tucker,³⁴ hip-hop has not just survived, but has influenced and dominated a generation—the hip-hop generation.³⁵ One commentator notes: “Hip-Hop has assumed a central role in molding the destinies of a whole generation of young people.”³⁶ Simply stated, hip-hop music and its counter culture exploded upon U.S. and global consciousness.

From the 1980s through today, hip-hop culture has grown in its power and influence. Debate has raged during these three decades as to whether hip-hop’s influence has been a positive force or a destructive mechanism, but few still believe or argue that hip-hop will fade to a mere cultural footnote.

The genuine power and robust influence of hip-hop and its generation was on clear display during the 2008 presidential election. President Barack Obama was fueled to

Priority, six months after the album’s release, accusing the label of selling a record that encouraged violence against law enforcement.”).

32. See James LeMoyné, *Limelight Nothing New for Sheriff in Rap Case*, N.Y. TIMES, June 26, 1990, at A12, available at <http://query.nytimes.com/gst/fullpage.html?res=9C0CE5D81638F935A15755C0A966958260&n=Top%2FReference%2FTimes%20Topics%2FSubjects%2FP%2FPornography%20and%20Obscurity> (discussing Broward County Sheriff Nick Navarro’s “successful effort to have 2 Live Crew’s sexually explicit record album ‘As Nasty as They Wanna Be’ declared the first legally obscene record in America”); see also The Internet Movie Database, Ice-T—Biography, <http://www.imdb.com/name/nm0001384/bio> (last visited Mar. 2, 2009) (“[Ice-T’s] most infamous song, the heavy metal ‘Cop Killer,’ was one of the major battle[s] in the cultural wars of the 1990s, in which cultural conservatives enlisted the Moses of the right wing, Charlton Heston, to get Ice-T dropped from his then-label, Sire/Warner Bros.”).

33. See EMMETT G. PRICE III, HIP HOP CULTURE 74–75 (2006) (discussing the Tipper Gore-led formation of Parents’ Music Resource Center and its goal of banning explicit material on recordings in rap, rock, and heavy metal music and the RIAA’s introduction of a uniform labeling system for records with explicit content reading “Parental Advisory—Explicit Lyrics”).

34. See RUSSELL A. POTTER, SPECTACULAR VERNACULARS: HIP-HOP AND THE POLITICS OF POSTMODERNISM 95 (1995) (“In 1994, the reaction against this particular genre reached a crisis point in the form of congressional hearings instigated by Dr. C. Delores Tucker. Dr. Tucker . . . took offense to ‘gangsta rap’ lyrics, and organized a series of protests in the Washington, D.C. area. . . . Unlike Tipper Gore and her dormant Parents’ Music Resource Center, Tucker wanted more than warning labels; she demanded an outright ban on ‘gangsta’ rap records.”).

35. See KITWANA, *supra* note 2, at 4 (defining the hip-hop generation); see also Butler, *supra* note 2, at 986 (discussing the “hip-hop nation”).

36. See Christian D. Rutherford, Note, “Gangsta” Culture in a Policed State: The Crisis in Legal Ethics Formation Amongst Hip-Hop Youth, 18 NAT’L BLACK L.J. 305 (2004–2005).

victory in the historic 2008 election by many various supporting constituencies; one of the most important, which drove Obama to the most powerful position in the world, was the hip-hop generation.³⁷ Socially conscious rapper Talib Kweli backed and campaigned for President Obama, and referred to him as not just the first black President, but the first hip-hop President.³⁸ NPR reported: “Rappers like Lil’ Wayne, Young Jeezy, Jay-Z and Nas rallied their fans behind President-elect Barack Obama’s campaign. And like their hip-hop forefathers, the kings and queens of rap preached about social justice, the economy and the power of democracy.”³⁹ Dr. Cornel West, when reflecting upon the

37. See Shaheem Reid, *Barack Obama and Hip-Hop: Does the Support of Jay-Z, Nas, T.I. Hurt His Chances?*, MTV.COM, Aug. 20, 2008, http://www.mtv.com/news/articles/1593139/20080819/jay_z.jhtml; see also Aliya Ewing, *Obama Addresses Hip Hop; Meets with Jay-Z and Kanye West*, HIP HOP DX, Jan. 10, 2008, <http://www.hiphopdx.com/index/news/id.6204/title.barack-obama-addresses-hip-hop-meets-with-jay-z-and-kanye-west> (“With the primaries in full swing, the voice of young Black America and the Hip Hop vote will continue to be a focal point in the media. So far, rappers including Common, Rhymefest and Talib Kweli have voiced their support for Obama.”); William Kristol, *Generation Obama? Perhaps Not*, N.Y. TIMES, Mar. 17, 2008, at A19, available at <http://www.nytimes.com/2008/03/17/opinion/17kristol.html> (referring to “Generation Obama,” as a “grass-roots movement led by young activists with a simple goal: electing Barack Obama the next president of the United States of America”); Azi Paybarah, *Obama’s Hip-Hop Admirers*, N.Y. OBSERVER, Mar. 4, 2008, <http://www.observer.com/2008/obama-s-hip-hop-admirers> (“If Barack Obama is the Democratic nominee, it’s a pretty safe assumption that he’s going to have overwhelming support from the hip-hop community.”).

38. See Talib Kweli, Keynote Address at West Virginia University College of Law Symposium, *The Evolution of Street Knowledge: Hip Hop’s Influence on Law and Culture* (Feb. 12, 2009), <http://lawmediasite.wvu.edu/mediasite/Viewer/?peid=59733166612c4b28aa405284c2b22e99>. During live remarks made at West Virginia University College of Law’s symposium, keynote speaker Kweli refers to President Obama as the “hip hop President.” *Id.*; see also Imani Cheers & Crystal Holmes, *The Audacity of Hip-Hop*, NEWSWEEK, Sept. 25, 2008, <http://www.newsweek.com/id/160832>.

39. See NPR *Weekend Edition: Obama Hip-Hop: From Mixtapes to Mainstream* (NPR radio broadcast Nov. 9, 2008), <http://www.npr.org/templates/story/story.php?storyId=96748462>. NPR reported that President Obama recognized the support from the hip-hop generation:

“The challenge that Barack Obama had was really to be able to wink to the hip-hop community and say, ‘I really can’t acknowledge you in the mainstream, but understand that I’m hearing what your critique is, I’m hearing what your concerns are, and you now have a wide-open space in the so-called underground . . . to talk about why my candidacy is important,’” [Professor Mark Anthony] Neal says. “And I think many of the rappers, particularly the very visible mainstream rappers, understood that strategy, because it’s a strategy that they employ all

historic campaign waged by Barack Obama for the presidency of the United States, recently mused:

I would go as far as to suggest that there is a good chance that there wouldn't even be an "Age of Obama" without hip-hop, given the fundamental role that young people played in galvanizing the whole campaign. I was there in Iowa when there was just a few of us. Disproportionately young, disproportionately white and when we stole away they were all listening to hip-hop. And I am not talking about just Eminem. . . . Hip-hop doing what? Opening young people to the humanity of other young black people whose conditions have been overlooked.⁴⁰

At bottom, as hip-hop has become the voice of a generation, and recognizing the sizeable global footprint that hip-hop has created, two things seem clear: first, as the hip-hop nation emerges, some of its members will become leaders, including legislators, educators, lawyers, scholars, and philosophers; and second, these leaders and educators will bring the images, lessons, and stark critiques that accompany all authentic members of this generation into their leadership roles. Because hip-hop is deeply impacting an emerging generation of leaders and scholars, society should pay very close attention to the messages and lessons that hip-hop has taught and continues to teach its generation.

Particular awareness should be paid to the one lesson upon which all of hip-hop, both "gangsta" and "socially conscious," seems to agree: that the United States system of crime and punishment is inequitable, unfairly administered, and purposely aimed to disempower people of color and the voiceless.

the time, also. There's a version of, for instance, Snoop Dogg that sells records, but that's a very different version of Snoop Dogg that's sitting with Larry King talking about the election."

Id.

40. Dr. Cornel West, Professor, Princeton Univ., Keynote Address at the West Virginia University College of Law Symposium, *The Evolution of Street Knowledge: Hip Hop's Influence on Law and Culture* (Feb. 13, 2009) (transcript on file with author) (describing hip-hop "at its best" as a movement that inspires and affects listeners based on its authenticity and willingness to deal with the reality of pain, inequality, and disappointment in life, when most Americans avoid dealing with difficult issues of racism, sexism inequality, poverty, and powerlessness).

III. "THE EDUCATIONAL LEVEL I'M GIVING THE PEOPLE"⁴¹

While many different iterations exist in the world of hip-hop music and culture, a common division often cited is that between socially conscious hip-hop and the hip-hop that focuses on violence, misogyny, and gaining riches ("bling" or "gangsta rap"), which permeates much of what is currently released for public consumption.⁴² While this differentiation may be too simplistic, many commentators agree that some type of divide exists in hip-hop between that which is positive and uplifts the black and inner city community (socially conscious rap) and that which is negative and serves to degrade women, perpetuate violence, maintain stereotypes, and injure the black and inner city community (bling or gangsta rap).⁴³ One reason that this characterization is too simple is that many "gangsta" rappers release records that could be characterized as positive and uplifting, while many "socially conscious" rappers release music that could be characterized as misogynistic or violent.⁴⁴ As Professor Pamela Bridgewater has noted, hip-hop refuses to apologize

41. See *And You Don't Stop*, *supra* note 12 (featuring an interview with Ice-T).

42. See Symposium, *The Evolution of Street Knowledge: Hip Hop's Influence on Law and Culture* (Feb. 12–13, 2009). The webstreams from day one and two can be found at Law Mediasite Catalog, <http://lawmediasite.wvu.edu/mediasite/catalog>, with many symposium panelists making references to the distinction between socially conscious hip-hop and gangsta rap, including Professors Pamela Bridgewater, Kamille Wolff, andré douglas pond cummings, Horace Anderson, and Akilah Folami.

43. See Butler, *supra* note 2, at 991 (citing the Washington Post describing "two faces of hip-hop," distinguishing between the "conscious" side of hip-hop and the "bling-bling" or "gangsta" rap); see also Rutherford, *supra* note 36, at 322. Rutherford states that a distinction exists between socially conscious hip-hop artists and more negative hip-hop, and opines without citing support:

There are plenty of artists recording Hip-Hop music today who do not espouse violence: Common, Talib Kweli and the Roots, to name a few. But the level of attention, exposure, and airplay that these artists receive pales in comparison to their platinum-selling counterparts, all of whom choose to infuse their albums in varying degrees, with anti-social content.

Id.

44. See, e.g., SLICK RICK, *Children's Story*, on *THE GREAT ADVENTURES OF SLICK RICK* (Def Jam/Columbia 1988); see also TUPAC SHAKUR, *Changes*, on *GREATEST HITS* (Death Row Records 1998). But see SLICK RICK, *Treat Her Like a Prostitute*, on *THE GREAT ADVENTURES OF SLICK RICK* (Def Jam/Columbia 1988); TUPAC SHAKUR, *I Get Around*, on *STRICTLY 4 MY N.I.G.G.A.Z.* (Interscope 1993).

for the many and often complex inconsistencies it portrays.⁴⁵

Still, very early on, both socially conscious hip-hop artists and gangsta rappers began to understand the power and influence they could wield in “molding the destinies” of hip-hop’s fans and adherents. In the 1980s, “socially conscious” rap stars KRS-One and Public Enemy began articulating clear messages to the public/fans, with albums like *Edutainment*⁴⁶ and songs like *Fight the Power*.⁴⁷ Hip-hop stars became keenly aware of their burgeoning influence and many took it upon themselves to educate the hip-hop generation.

Hip-hop legend Tupac Shakur recognized this influence when he boldly stated: “I guarantee that I will spark the brain that will change the world.”⁴⁸ Gangsta rap pioneer Ice-T described this flourishing influence in particularly savvy terms when responding to critics of his stark realist hip-hop lyrics by boldly proclaiming that the hip-hop stars of the 1980s and 1990s would truly influence a nation:

They are not really after me for that, [law enforcement and critics are] after me because of the educational level I’m giving the people. And I’m telling them, I am giving them the guts to say, “Fuck em.” See, this is what scares them. They are scared of one brother yelling out “the system can ‘kiss my ass.’” This could cause a problem.

They are also afraid of the fact that kids that go to law schools, Harvard and all these, are listening to my album, think its dope and these kids are the next ones that are going to be sitting on the Supreme Court. Next, what you are going to have in five years is that the Supreme Court is going to be wearing Too Short, Ice-T, Yo-Yo, Ice Cube t-shirts. The country will be fucked, as far as they’re

45. See Pamela Bridgewater, Professor of Law, American University Washington College of Law, *Stepping to the Mic: Hip Hop’s Expanding Voice in Social and Political Discourse*, Address at the West Virginia University College of Law Symposium, *The Evolution of Street Knowledge: Hip Hop’s Influence on Law and Culture* (Feb. 13, 2009), <http://lawmediasite.wvu.edu/mediasite/Viewer/?peid=0f77bcf641b64295acde0a810e573f97>.

46. KRS-ONE, *EDUTAINMENT* (Jive/RCA Records 1990).

47. PUBLIC ENEMY, *Fight the Power*, on *DO THE RIGHT THING—SOUNDTRACK* (Tamla 1989); see also PUBLIC ENEMY, *Fight the Power*, on *FEAR OF A BLACK PLANET* (Def Jam/Columbia Records 1990); YouTube.com, Public Enemy *Fight the Power*, http://www.youtube.com/watch?v=M_t13-0Joyc (last visited Oct. 13, 2009).

48. See *And You Don’t Stop*, *supra* note 12 (featuring an interview with Tupac Shakur).

concerned. I think it will be a great place.⁴⁹

Like Ice-T, Professor Smith not only recognizes the influence that hip-hop artists have in educating America's hip-hop generation, he also opines that these artists have influenced the perspectives of listeners across the world:

For many of the world's poor and non-propertied, the emergence of hip-hop culture has represented a powerful movement against the propertied and the social order maintaining their wealth. Surely, Public Enemy's song "Fight the Power" promoted hip-hop globally as an art form capable and worthy of adoption by those struggling for economic or social justice. . . .

. . . .

. . . [I]t is not surprising that, for example, young Palestinian and Brazilian youths have embraced hip-hop as their way of expressing dissatisfaction with their social order, as do rebellious suburban teenagers in the U.S.⁵⁰

As hip-hop has roared to an ever increasing apex in connection with its power, influence, and global impact, and as hip-hop artists recognize this influence and impact, it would behoove the traditional majority to sit up and recognize what this global genre is saying about crime, punishment, inequality, and imprisonment in the United States and across the world.

IV. WHAT HIP-HOP TEACHES ABOUT CRIME, PUNISHMENT, AND IMPRISONMENT

Recently, hip-hop superstar Lil' Wayne delivered a rap message that should motivate the traditional majority to "sit up and recognize." Lil' Wayne released the song "Don't Get It" in 2008 which included the following critique of the U.S. system of punishment:

I'm just a soul whose intentions are good
 Oh lord please don't let me be misunderstood.
 I was watching T.V. the other day right
 Got this white guy up there talking about black guys
 Talking about how young black guys are targeted
 Targeted by who? America
 You see one in every 100 Americans are locked up

49. *See id.* (featuring an interview with Ice-T).

50. *See Smith, supra* note 12, at 60.

One in every 9 black Americans are locked up
And see what the white guy was trying to stress was that
The money we spend on sending a mothafucka to jail
A young mothafucka to jail
Would be less to send his or her young ass to college
See, and another thing the white guy was stressing was
that
Our jails are populated with drug dealers, you know
crack/cocaine stuff like that
Meaning due to the laws we have on crack/cocaine and
regular cocaine
Police are only, I don't want to say only right, but shit
Only logic by riding around in the hood all day
And not in the suburbs
Because crack cocaine is mostly found in the hood
And you know the other thing is mostly found in . . . you
know where I'm going
But why bring a mothafucka to jail if it's not gon' stand up
in court
Cause, this drug ain't that drug, you know level 3, level 4
drug, shit like that
I guess it's all a misunderstanding
I sit back and think, you know us young mothafuckas you
know that 1 in 9
We probably only selling the crack cocaine because we in
the hood
And it's not like in the suburbs, we don't have what you
have
Why? I really don't wanna know the answer
I guess we just misunderstood, hunh
You know we don't have room in the jails now for the real
mothafuckas, the real criminals
Sex offenders, rapists, serial killers
Don't get scared, don't get scared⁵¹

Thus, in 2008, millions of Lil' Wayne fans either learned or were reminded of both the excruciatingly unfair crack versus cocaine sentencing laws in the United States and of the inequitable prison sentencing numbers that continue to destroy the inner city. For example, when Lil' Wayne rhymes about "1 in 100 Americans being locked up" but "1 in 9 black Americans being locked up," he reminds hip-hop aficionados and teaches amateur hip-hop listeners about the

51. LIL' WAYNE, *Don't Get It*, on THA CARTER III (Cash Money Records/Universal Records/Young Money Entertainment 2008).

incomprehensible incarceration bias against African Americans in the United States.⁵² When Lil' Wayne raps that it is "only logic" for police to infiltrate "the hood" daily based on the cocaine versus crack sentencing disparity, he reminds the hip-hop enlightened and teaches budding hip-hop fans that the United States Congress has, for twenty years, perpetuated a racist and biased sentencing disparity between drug users and dealers that traffic cocaine (typically white suburban users—punished lightly) versus crack cocaine (typically minority inner city users—punished severely).⁵³

Lil' Wayne in *Don't Get It* simply propagates the hip-hop tradition of using lyric and wide audience appeal to educate the hip-hop generation. Harsh critique of the inequities in the criminal justice system and police brutality was on early display in N.W.A's 1989 *Fuck Tha Police*:

Fuck the police
 Comin straight from the underground
 Young n***a got it bad cuz I'm brown
 And not the other color so police think
 They have the authority to kill a minority

Fuck that shit, cuz I ain't tha one
 For a punk mothafucka with a badge and a gun
 To be beatin on, and thrown in jail
 We can go toe to toe in the middle of a cell

Fuckin' with me cuz I'm a teenager
 With a little bit of gold and a pager
 Searchin my car, lookin for the product
 Thinkin every n***a is sellin narcotics

You'd rather see me in the pen
 Than me and Lorenzo rollin' in the Benzo

....

And on the other hand, without a gun they can't get none
 But don't let it be a black and white one
 Cuz they'll slam ya down to the street top
 Black police showin' out for the white cop

52. See *infra* note 63 and accompanying text.

53. See *infra* notes 64, 66 and accompanying text.

Ice Cube will swarm
 On any mothafucka in a blue uniform
 Just cuz I'm from the CPT, punk police are afraid of me,
 huh
 A young n***a on the warpath
 And when I'm finished, it's gonna be a bloodbath
 Of cops dyin' in L.A.
 Yo, Dre, I got something to say⁵⁴

As in 2008 with Lil' Wayne and *Don't Get It*, when N.W.A. released the furiously defiant *Fuck Tha Police* in 1989, a generation of young people were instructed that law enforcement routinely targets minority youth *expecting* most to be involved in drug trafficking and that the criminal justice system often *prefers* that young African American youth be installed in jails and prisons, whether guilty of crime or not.⁵⁵ At that time, the 1980s, this exposed notion of targeting, profiling, and preferred imprisonment of inner city youth for "soft crime,"⁵⁶ and the clarion call for defiance in response to this unjust system, was audacious and stunning in its raw, starkly realized exposé. Law enforcement, together with the traditional majority, reacted swiftly in an attempt to stifle and silence this critique.⁵⁷ The FBI famously penned a

54. N.W.A., *Fuck Tha Police*, on STRAIGHT OUTTA COMPTON (Ruthless Records/Priority Records 1988).

55. See generally andré douglas pond cummings, *Just Another Gang: "When the Cops are Crooks Who Can You Trust?,"* 41 HOW. L.J. 383 (1998) (describing the "siege mentality" that permeates most large, urban police departments and discussing the "War on Drugs" as a war on small scale, inner city drug dealers rather than a war against the source countries and cartels).

56. The term "soft crime" is typically understood to include "non-violent drug offenses." See Bruce Shapiro, *Hard Time For Soft Crimes*, SALON.COM, July 31, 2000, <http://archive.salon.com/news/feature/2000/07/31/drugs/index.html> ("'Poor Prescription: The Costs of Imprisoning Drug Offenders in the United States,' published by the Justice Policy Institute, reveals in stark terms the consequences of the bipartisan, two-decade love affair with mandatory sentences and harsh drug policies. The nation's prison population now stands at [two] million, but according to the report, this has less to do with making streets safer than with locking up nonviolent drug users.').

57. See *supra* notes 31–34; see also Robert Levine, *Film; The Thawing of Ice Cube*, N.Y. TIMES, Feb. 1, 2004, § 2, at 13, available at <http://query.nytimes.com/gst/fullpage.html?res=9A00E3D81538F932A35751C0A9629C8B63&scp=2&sq=fbi%20letter%20to%20NWA%20record%20label&st=cs> e ("N.W.A., which in the late 80's defined West Coast hip-hop with layered beats and brutal lyrics, probably offended more people before breakfast than most artists do all day; the F.B.I. sent the group's record label a letter expressing

missive to N.W.A.'s record label protesting the content of the group's music, while Public Enemy faced constant media criticism, including charges of anti-Semitism and reckless black militancy.⁵⁸

A. *Hip-Hop Lessons*

Beginning in the 1980s with Public Enemy, KRS-One, N.W.A., and Ice-T among many others, hip-hop artists began describing, in stark rhymes and narratives, a United States criminal justice system that was inequitable and unfair, a system that targets and profiles African-Americans and inner city youth, and the descriptions by those artists became, in Chuck D's words, "the Black CNN."⁵⁹ As discussed in Part III, these rap artists *knew* that they were the Black CNN and were influencing and molding a generation. Hip-hop's musical tradition is to be, in many instances, black America's first response to current inequities and discriminations. As Professor Mark Anthony Neal stated: "Whether it's Katrina three years ago, the L.A. riots in 1992, Jesse Jackson's run [in] 1984, you know, hip-hop was seen as black America's first response."⁶⁰

its disapproval of the song '[Expletive] Tha Police.');

Jon Pareles, *Critic's Notebook*; *Public Enemy, Loud and Angry, Is Far From Its Own Best Friend*, N.Y. TIMES, Dec. 26, 1989, at C15, available at <http://query.nytimes.com/gst/fullpage.html?res=950DEEDD163EF935A15751C1A96F948260>. The New York Times, detailing the swirling controversy that always surrounded Public Enemy in the 1990s, reported:

The rap group Public Enemy has a knack for shooting itself in the foot. Its response to a controversy last summer over anti-Semitic statements by its "minister of information" has now appeared in lyrics from its new single, "Welcome to the Terrordome," that also seem to cross the line into anti-Semitism.

Public Enemy has been in rap's musical and political vanguard since 1987, when the group revolutionized the sound of rap with its dense, jarring, propulsive sonic collages. The booming voice of Carlton (Chuck D.) Ridenhour quickly became synonymous with a commitment to militant black self-determination.

Id.

58. See Pareles, *supra* note 57.

59. See Laura Barton, "Rap is Elitist," GUARDIAN (UK), May 7, 2003, <http://www.guardian.co.uk/music/2003/may/07/artsfeatures.popandrock> ("Chuck D rapped about the problems blighting the black community, and memorably described hip-hop as 'the black CNN.'").

60. NPR *Weekend Edition: Obama Hip-Hop: From Mixtapes to Mainstream* (NPR broadcast Nov. 9, 2008), <http://www.npr.org/templates/story/story.php?storyId=96748462>.

In *Much Respect*, Professor Butler writes:

At the same time that an art form created by African American and Latino men dominates popular culture, African American and Latino men dominate American prisons. Unsurprisingly then, justice—especially criminal justice—has been a preoccupation of the hip-hop nation. The culture contains a strong descriptive and normative analysis of punishment by the people who know it best.⁶¹

Thus, a movement that was beginning to dominate a generation, combined with artists who understood the potential dominance and who lived on the front lines of the crime and punishment system in the United States, came together in a perfect storm of platform, audience, and defiance. The hip-hop generation was going to learn, in no uncertain terms, about the inequities, injustices, and discriminations in the U.S. criminal justice system.

Hip-hop exposes the current punishment regime as profoundly unfair. It demonstrates this view by, if not glorifying law breakers, at least not viewing all criminals with disgust which the law seeks to attach to them. Hip-hop points out the incoherence of the law's construct of crime, and it attacks the legitimacy of the system. Its message has the potential to transform justice in the United States.⁶²

In the 1980s and 1990s, hip-hop stars described, to their eager audiences, including millions of suburban white youths, the inequities in criminal law and punishment, including (a) the specific targeting of inner city communities, revealed by the now well-known massive prison population disparity (nearly sixty percent of men imprisoned for drug offenses are African American, while only twelve percent of the total U.S. population is black);⁶³ (b) the egregiously unfair imprisonment of inner city crack dealers versus suburban

61. Butler, *supra* note 2, at 986.

62. *Id.* at 985.

63. See Timothy Egan, *War on Crack Retreats, Still Taking Prisoners*, N.Y. TIMES, Feb. 28, 1999, § 1, at 1, available at <http://query.nytimes.com/gst/fullpage.html?res=950CE0DC123CF93BA15751C0A96F958260&sec=&spn=&pagewanted=5> ("In state prisons, blacks make up nearly [sixty] percent of the people serving time on drug offenses, according to Justice Department figures, though they are only [twelve] percent of the general population and [fifteen] percent of regular drug users."); see also *supra* Part III (detailing hip-hop lyrics that discuss the inequities and biases in criminal law and punishment).

cocaine dealers, revealed by the well known crack/cocaine sentencing disparity (prison time for a crack seller or taker is 100 times greater than prison time for a cocaine seller or taker);⁶⁴ (c) the American epidemic of police brutality inspired by the “siege mentality” that infests most large police forces, revealed by the well known brutalizations of Rodney King, Abner Louima, Sean Bell, and others;⁶⁵ and (d) the flooding of inner city communities with law enforcement officers, through the “War on Drugs,” the “War on Gangs,” and the “War on Crime,” while suburban crime and white collar crime continued seemingly unhindered and unabated.⁶⁶

64. See Butler, *supra* note 2, at 988; see also David A. Sklansky, *Cocaine, Race, and Equal Protection*, 47 STAN. L. REV. 1283, 1290–98, 1296 (1995) (“[Congress] instituted a mandatory sentence for possession of crack cocaine, but not powder cocaine. The punishment for sellers was especially harsh. To receive the same sentence as a crack distributor, a powder distributor must possess one hundred times the quantity of cocaine.”); Egan, *supra* note 63 (“As the war on drugs set up special penalties on crack, however, law enforcement focused on the highly visible, often violent crack trade in city neighborhoods, rather than the larger traffic in cocaine going on behind closed doors across the country. The result: Nearly [ninety] percent of the people locked up for crack under Federal drug laws are black”); *supra* notes 51, 54 and accompanying text; *infra* notes 67–81 (detailing hip-hop lyrics that discuss the inequities and biases in criminal law and punishment).

65. See *Rodney King Testifies About Night of Beating*, N.Y. TIMES, Jan. 22, 1993, at A16, available at <http://query.nytimes.com/gst/fullpage.html?res=9FOCE1DD1039F931A15752C0A965958260> (describing Rodney King’s harrowing testimony of the infamous police brutality incident); see also Cummings, *supra* note 55 (describing the “siege mentality” that infests most metropolitan police forces across the United States); Sewell Chan, *The Abner Louima Case, 10 Years Later*, N.Y. TIMES, Aug. 9, 2007, <http://cityroom.blogs.nytimes.com/2007/08/09/the-abner-louima-case-10-years-later/?scp=1&sq=%20Abner%20Louima&st=cse> (“Ten years ago today, a [thirty]-year-old Haitian immigrant named Abner Louima was arrested and sodomized with a broomstick inside a restroom in the 70th Precinct station house in Brooklyn. The case became a national symbol of police brutality and fed perceptions that New York City police officers were harassing or abusing young black men as part a citywide crackdown on crime.”); Robert D. McFadden, *Police Kill Man After a Queens Bachelor Party*, N.Y. TIMES, Nov. 26, 2006, § 1, at 1, available at <http://www.nytimes.com/2006/11/26/nyregion/26cops.html?scp=8&sq=sean%20bell&st=cse> (discussing the death of Sean Bell who was killed when police officers fired fifty rounds of bullets into Bell’s car following his bachelor’s party the evening before his wedding).

66. See Ben Wallace-Wells, *How America Lost the War on Drugs*, ROLLING STONE, Dec. 13, 2007, at 90, available at http://www.rollingstone.com/politics/story/17438347/how_america_lost_the_war_on_drugs/1 (detailing the failed efforts of the Reagan era “War on Drugs”); see also William J. Stuntz, *Unequal Justice*, 121 HARV. L. REV. 1969, 1970 (2008) (“Inequality is a core feature of American criminal justice The effects of both the fall of criminal punishment and its subsequent rise were disproportionately felt in urban black

In educating the hip-hop generation, Grandmaster Flash and the Furious Five recorded and released *The Message*;⁶⁷ Public Enemy famously recorded *Fight the Power*,⁶⁸ *Don't Believe the Hype*,⁶⁹ *Black Steel in the Hour of Chaos*,⁷⁰ and

neighborhoods.”); john a. powell & Eileen B. Hershenov, *Hostage to the Drug War: The National Purse, the Constitution and the Black Community*, 24 U.C. DAVIS L. REV. 557, 558–59 (1991) (“[I]t is clear that the war on drugs has not extinguished the drug trade. Rather, the real victims of this war are the minority poor and the Bill of Rights. While the war against drugs potentially compromises the rights of all Americans, it has a particularly devastating impact upon the recently gained rights of minorities. In fact, the war on drugs could more aptly be called a war on the minority populations.”).

67. See GRANDMASTER FLASH, *The Message*, on THE MESSAGE (Sugar Hill Records 1982).

You grow in the ghetto, living second rate / And your eyes will sing a song of deep hate / The places you play and where you stay / Looks like one great big alley way / You'll admire all the number book takers / Thugs, pimps, and pushers and the big money makers / Driving big cars, spending twenties and tens / And you wanna grow up to be just like them / Smugglers, scramblers, burglars, gamblers / Pickpockets, peddlers and even pan-handlers / You say I'm cool, I'm no fool / But then you wind up dropping out of high school / Now you're unemployed, all null 'n' void / Walking around like you're Pretty Boy Floyd / Turned stickup kid, look what you done did / Got sent up for a eight year bid . . .

Id.

68. See PUBLIC ENEMY, *Fight the Power*, on DO THE RIGHT THING SOUNDTRACK (Motown Records 1988).

To revolutionize make a change nothin's strange / People, people we are the same / No we're not the same / Cause we don't know the game / What we need is awareness, we can't get careless / You say what is this? / My beloved let's get down to business / Mental self defensive fitness . . . Fight the Power . . .

Id.

69. See PUBLIC ENEMY, *Don't Believe the Hype*, on IT TAKES A NATION OF MILLIONS TO HOLD US BACK (Def Jam Records/Columbia Records 1988).

Turn up the radio / They claim that I'm a criminal / By now I wonder how / Some people never know / The enemy could be their friend, guardian / I'm not a hooligan / I rock the party and / Clear all the madness, I'm not a racist / Preach to teach to all / 'Cause some they never had this . . .

Id.

70. See PUBLIC ENEMY, *Black Steel in the Hour of Chaos*, on IT TAKES A NATION OF MILLIONS TO HOLD US BACK (Def Jam Records/Columbia Records 1988).

I got a letter from the government / The other day / I opened and read it / It said they were suckers / They wanted me for their army or whatever / Picture me given' a damn—I said never / Here is a land that never gave a damn / About a brother like me and myself / Because they never did / I wasn't wit' it, but just that very minute . . . / It occurred to me / The suckers had authority . . .

Id.

911 is a Joke;⁷¹ N.W.A. notoriously released *Fuck Tha Police*,⁷² and *100 Miles and Runnin'*;⁷³ Tupac Shakur released *Brenda's Got a Baby*,⁷⁴ *Keep Ya Head Up*,⁷⁵ and *To Live & Die in L.A.*;⁷⁶ Ice Cube released the explosive *AmeriKKKas Most Wanted*,⁷⁷ featuring *Endangered Species (Tales from the Darkside)*⁷⁸ and later *Dead Homiez*;⁷⁹ KRS-One released an

71. See PUBLIC ENEMY, *911 is a Joke*, on FEAR OF A BLACK PLANET (Def Jam Records/Columbia Records 1990) ("911 is a joke we don't want 'em / I call a cab 'cause a cab will come quicker / The doctors huddle up and call a flea flicker / The reason that I say that 'cause they / Flick you off like fleas / They be laughin' at ya while you're crawlin' on your knees.").

72. See N.W.A., *Fuck Tha Police*, on STRAIGHT OUTTA COMPTON (Ruthless Records 1988) ("Fuck the police comin straight from the underground / Young n***a got it bad cuz I'm brown / And not the other color so police think / They have the authority to kill a minority").

73. See N.W.A., *100 Miles and Runnin'*, on 100 MILES AND RUNNIN' (Ruthless Records 1990).

Runnin' like a n***a I hate to lose. / Show me on the news but I hate to be abused; / I know it was a set-up. / So now I'm gonna get up. / Even if the FBI wants me to shut up. / But I've got 10,000 n****s strong. / They got everybody singin' my "Fuck Tha Police" song / And while they treat my group like dirt, / Their whole fuck'n family is wearin' our T-shirts.

Id.

74. See TUPAC SHAKUR, *Brenda's Got a Baby*, on 2PACALYPSE NOW (Interscope Records 1991) ("[C]ause I bet Brenda doesn't even know / just cause your in the ghetto doesn't mean you can't grow / but oh, that's a thought, my own revelation / do whatever it takes ta resist the temptation.").

75. See TUPAC SHAKUR, *Keep Ya Head Up*, on STRICTLY FOR MY N****Z (Interscope Records 1993).

And since we all came from a woman / Got our name from a woman and our game from a woman / I wonder why we take from our women / Why we rape our women, do we hate our women? / I think it's time to kill for our women / Time to heal our women, be real to our women.

Id.

76. See TUPAC SHAKUR, *To Live & Die in L.A.*, on THE DON KILLUMINATI: THE 7 DAY THEORY (Death Row Records 1996).

It's the, City of Angels and constant danger / South Central LA, can't get no stranger / Full of drama like a soap opera, on the curb / Watchin the ghetto bird helicopters, I observe / So many n****z gettin three strikes, tossed in jail / I swear the pen the right across from hell, I can't cry / Cause it's on now, I'm just a n***a on his own now.

Id.

77. ICE CUBE, *AMERIKKKAS MOST WANTED* (Priority 1990).

78. See ICE CUBE, *Endangered Species (Tales from the Darkside)*, on *AMERIKKKAS MOST WANTED* (Priority Records 1990).

Every cop killer goes ignored / They just send another n***a to the morgue / A point scored—they could give a fuck about us / They rather catch us with guns and white powder / If I was old, they'd probably be a friend of me / Since I'm young, they consider me the enemy / They kill ten of me to get the job correct / To serve, protect, and break a n****s neck.

entire album he styled *Edutainment*,⁸⁰ featuring *Love's Gonna Getcha*.⁸¹ Each release was an effort on the part of the hip-hop artist to educate and enlighten the hip-hop generation, particularly as to the inequities and discriminations inherent in a criminal justice system that systematically targets minority and urban youth.

Today in 2009, carrying the Black CNN torch lit by early hip-hop street reporters are Mos Def, Common, Talib Kweli, and Immortal Technique who, among others, continue to capture the disaffection that black Americans and urban youth have with a criminal justice system that remains a profiling, targeting, "law enforcement versus the enemy" construct.⁸²

Id.

79. See ICE CUBE, *Dead Homiez*, on KILL AT WILL (Priority Records 1990). Another homie got murdered on a shakedown . . . / And his mother is at the funeral, havin' a nervous breakdown / Two shots hit him in the face when they blasted . . . / A framed picture and a closed casket / A single file line about 50 cars long / All drivin' slow with they lights on / He got a lot of flowers and a big wreath / What good is that when you're six feet deep? / I look at that shit and gotta think to myself / And thank God for my health / 'Cause nobody really ever know / When it's gonna be they family on the front row / So I take everything slow, go with the flow / And shut my motherfuckin' mouth if I don't know . . . / 'Cause that's what Pops told me / But I wish he could have said it . . . to my dead homiez.

Id.

80. BOOGIE DOWN PRODUCTIONS, EDUTAINMENT (Jive/RCA Records 1990).

81. See BOOGIE DOWN PRODUCTIONS, *Love's Gonna Get'cha (Material Love)*, on EDUTAINMENT (Jive/RCA Records 1990).

But there's no dollars for nothing else / I got beans, rice, and bread on my shelf / Every day I see my mother struggling / Now it's time, I've got to do somethin' / I look for work I get dissed like a jerk / I do odd jobs and come home like a slob / So here comes Rob [drug dealer], his gold is shimmery / He gives me two hundred for a quick delivery / I do it once, I do it twice / Now there's steak with the beans and rice / My mother's nervous but she knows the deal / My sister's gear now has sex appeal / My brother's my partner and we're getting paper / Three months later we run our own caper / My family's happy everything is new / Now tell me what the fuck am I supposed to do? / That's why / [Chorus:] Love's gonna get you / Love's gonna get you . . . / You fall in love with your chain / You fall in love with your car / Love's gonna sneak right up and snuff you from behind / So I want you to check the story out as we go down the line.

Id.

82. See *supra* note 65; see also COMMON, FINDING FOREVER (G.O.O.D. Music/Geffen 2007); IMMORTAL TECHNIQUE, REVOLUTIONARY VOL. 1 (Viper Records 2005); MOS DEF, BLACK ON BOTH SIDES (Rawkus Records 1999); TALIB KWELI, THE BEAUTIFUL STRUGGLE (Rawkus Records 2004).

In hearing and feeling these lessons dropped by hip-hop educators, an entire hip-hop nation learned and continues to learn a much different system of criminal justice than that what was taught to them in grade school, high school, college, and graduate school, including law school. More than any other lesson learned, perhaps the most striking is that the entire foundational principle of prison for crime in the United States is suspect, illegitimate, and profane.

B. United States Philosophy of Punishment and Imprisonment

While varying philosophical underpinnings for punishment and imprisonment are debated worldwide, the prevailing view of imprisonment in the United States is referred to as the “conservative approach” to imprisonment.⁸³ This “conservatism: deterrence and incapacitation” prizes the philosophy that casting criminals into prison will deter individuals from acting in ways that lead to prison.⁸⁴ “Prison life should be uncomfortable—even painful—and rational people will be deterred from committing crime to avoid being sent there again.”⁸⁵ While some attempts have been made throughout U.S. history to use imprisonment for purposes of rehabilitation, the prevailing view in this country is that prison will deter criminals and the stigma of having been imprisoned will inspire those inclined to crime to avoid criminal behavior and deter them from returning.⁸⁶ Deterrence and stigma then serve, in many ways, as the foundational principles for imprisonment in the United States.

Perhaps one of the greatest weaknesses in the current regime of U.S. crime and punishment, and most criticized, is that incarceration and retributivism is fundamentally based on a system that has always been developed from the top

83. See JOYCELYN M. POLLOCK, PRISONS: TODAY AND TOMORROW 9–10 (2d ed. 1997); see also Rutherford, *supra* note 36, at 305 (“Legal scholars have long proffered the idea that the criminal law is effective, and justified, in part, because of its deterrent effects. The common notion is that punishment rendered by the criminal legal system, as well as the moral condemnation and stigma associated with a criminal record, will serve to counter-act the compulsion individuals have to commit anti-social behavior.”).

84. See POLLOCK, *supra* note 83, at 9–10.

85. See *id.*

86. See *id.*

down.⁸⁷ More plainly stated, the U.S. system of criminal justice has been developed and refined, from inception, by the privileged and the powerful,⁸⁸ those individuals who have little to no experience or firsthand knowledge of poverty, despair, voicelessness, and victimization.⁸⁹ Hip-hop argues, even philosophizes, about a system of punishment that can and should be developed from the bottom-up.⁹⁰

Thousands of hip-hop songs consider crime and punishment. These voices are worth listening to—they evaluate criminal justice from the bottom up. . . . We might punish better if the ghetto philosophers and the classic philosophers met. They address many of the same issues in punishment, including causation, harm, responsibility, excuse, and justification.⁹¹

Speaking in broad brush strokes, those that favor imprisonment as a means of deterrent punishment and retribution are those that have inhabited the rare air of the privileged. Those that favor rehabilitation as a means of punishment and imprisonment are typically those who know firsthand, that life is messy, seedy, and rarely as perfect as it is for the privileged.⁹²

87. See Butler, *supra* note 2, at 1000.

88. See Reginald Leamon Robinson, *Race, Myth and Narrative in the Social Construction of the Black Self*, 40 HOW. L.J. 1, 7 (1996) (“Today, few law professors are willing to acknowledge that a white male perspective has shaped legal academe in a manner which stills invades, wounds, and destroys their colleagues of color.”); see also andré douglas pond cummings, Grutter v. Bollinger, *Clarence Thomas, Affirmative Action and the Treachery of Originalism: “The Sun Don’t Shine Here in This Part of Town,”* 21 HARV. BLACKLETTER L.J. 1 (2005).

89. See generally cummings, *supra* note 88; Michele H. Kalstein et al., *Calculating Injustice: The Fixation of Punishment as Crime Control*, 27 HARV. C.R.-C.L. L. REV. 575, 588 & n.52 (1992) (“‘We the people’ is misleading because it claims to speak for everyone when it is actually the voice of ‘a political faction trying to constitute itself as a unit of many disparate voices; its power lasts only as long as the contradictory voices remain silenced.’” (quoting Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 583 (1990))); Robinson, *supra* note 88. The authors state that utilitarian thinking “enables those in power to create ‘apparently neutral and universal rules which in effect burden or exclude anyone who does not share the characteristics of privileged, white, Christian, able-bodied, heterosexual, adult men for whom those rules were actually written.’” *Id.* (quoting Martha Minow & Elizabeth V. Spelman, *Symposium on the Renaissance of Pragmatism in American Legal Thought*, 63 S. CAL. L. REV. 1597, 1601 (1990)).

90. See Butler, *supra* note 2, at 1000–01.

91. *Id.* at 1000 (footnote omitted).

92. See generally Dr. Cornel West, Professor, Princeton Univ., Keynote

Because of the top-down approach of crime and punishment in the United States, our prisons are literally teeming with minority convicts who are incarcerated for soft drug crimes,⁹³ will be imprisoned for decades because of skewed sentencing guidelines,⁹⁴ and will share the same cells inhabited by murderers, rapists, pedophiles, and hardened career criminals.⁹⁵

This top-down approach of determining which activity will count as criminal and which will not (i.e., marijuana sale and use—a crime; alcohol and tobacco sale and use—not a crime), of determining which crimes will be severely punished and which will not (i.e., peddling soft drugs and crack—harshly punished; bankrupting corporations and destroying capital markets—not harshly punished, but in fact, bailed out with taxpayers money), and favoring harsh imprisonment with little directed rehabilitative effort, has been recognized in hip-hop music and culture as illegitimate and profane.

Address at the West Virginia University College of Law Symposium, *The Evolution of Street Knowledge: Hip Hop's Influence on Law and Culture* (Feb. 13, 2009) (transcript on file with author) (discussing frankly the inequities in the criminal justice system and the need for rehabilitative principles in punishment regimes, particularly for soft drug crime offenders).

93. See Larry E. Walker, *Law and More Disorder! The Disparate Impact of Federal Mandatory Sentencing for Drug Related Offenses on the Black Community*, 10 J. SUFFOLK ACAD. L. 97, 119 (1995) (“The majority of the arrests made are of young black males who are addicted to and in possession of small quantities of drugs or who are low-level distributors. The facts seem to indicate that the war on drugs can easily be perceived as a war on the black community.”); see also *id.* at 98 (“[W]hile blacks makeup approximately [twelve] percent of the United States population, over [eighty] percent of all of those arrested for drug related offenses are black.” (citing Powell & Hershenov, *supra* note 66, at 568)).

94. See Walker, *supra* note 93; see also Michael A. Simons, *Departing Ways: Uniformity, Disparity and Cooperation in Federal Drug Sentences*, 47 VILL. L. REV. 921, 930 (2002) (discussing the drug sentencing guidelines and mandatory minimum sentences of five years for distributing five grams of crack compared to distributing 500 grams of cocaine); Sklansky, *supra* note 64 (discussing the differences in sentencing for crack cocaine and powder cocaine as a constitutional violation of the Equal Protection Clause).

95. See Chuck Colson & Pat Nolan, *Prescription for Safer Communities*, 18 NOTRE DAME J. L. ETHICS & PUB. POL'Y 387, 389 (2004) (“Offenders are often sentenced for years to overcrowded prisons where they are exposed to the horrors of violence including homosexual rape, isolation from family and friends, and despair. Instead of working on the outside to repay their victims and support their families, many non-dangerous offenders are idle in prison Prisons are, indeed, graduate schools of crime.”).

C. The Curious Relationship Between Hip-Hop and Imprisonment

As described above, to many in the hip-hop generation, U.S. criminal law is profane and illegitimate, as forcefully argued by artists from hip-hop's birth in the Bronx through today.⁹⁶ As such, the goals of deterrence, stigma, and incarceration are primarily *lost* on the hip-hop nation. Many in the hip-hop generation recognize that imprisonment, arrest, and charges of criminal activity are little more than politically motivated, incoherent, inefficient, and unworthy directives. Because imprisonment for various crimes is political, incoherent, inefficient, and unworthy, much of the U.S. crime and punishment regime is given no respect by hip-hop culture. Therefore, for many members of the hip-hop nation, prison has come to be viewed as a "rite of passage" and a legitimating activity in the hip-hop hustle.

Over and over, hip-hop artists "shout out" their brothers and sisters in prison, recognizing them as human and worthy of respect and attention. Most know that, in the eyes of those that matter to them, the "brother behind bars" is probably illegitimately incarcerated. Jay Z recognizes this in "A Ballad For A Fallen Soldier":

Shout to my n****s that's locked up in jail
 P.O.W's that still in the war for real
 . . .
 But if he's locked in the penitentiary, send him some
 energy
 They all winners to me⁹⁷

Ludacris recognizes this in "Do Your Time":

If you doin' 25 to life, stay up homie
 I got your money on ice, so stay up homie
 If you locked in the box keep makin' it through
 Do your time, do your time, don't let your time do you⁹⁸

96. See *supra* Parts III, IV.A.

97. JAY-Z, *A Ballad for the Fallen Soldier*, on *THE BLUEPRINT 2: THE GIFT & THE CURSE* (Def Jam/Island Def Jam 2002); see also MetroLyrics.com, Jay-Z—A Ballad for the Fallen Soldier, <http://www.metrolyrics.com/a-ballad-for-the-fallen-soldier-lyrics-jayz.html> (last visited Sept. 5, 2009).

98. LUDACRIS FEAT. BEANIE SIGEL, *Do Your Time*, on *RELEASE THERAPY* (Def Jam South/Disturbing Tha Peace 2006); see also MetroLyrics.com,

T.I. recognizes this in “*You Ain’t Missin’ Nothin’*”:

The time’ll do itself, all you gotta do is show up
 Keep layin’ down wakin’ up
 And thankin’ the Lord
 And ‘fore you know it they gonna open the doors

 I know the times seem long
 Just try and keep strong
 Put on your headphones and rewind this song
 Remember you ain’t missin’ nothin’ homes
 I promise you ain’t missin’ nothin’ homes⁹⁹

Many in the hip-hop generation believe, by and large, that the United States has abdicated its responsibility to the poor and those in the ‘hood, as evidenced by poverty, lack of opportunity, and joblessness. So much so, that the stigma of being imprisoned for theft, drug crimes, or some violence is simply absent.¹⁰⁰ “Breaking the law is seen as a form of rebelling against the oppressive status quo . . . Rappers who brag about doing time are like old soldiers who boast of war wounds.”¹⁰¹ A commentator further writes: “If imprisonment is no longer viewed primarily as a substantial loss of one’s freedom and liberty to be avoided, but rather a rite of passage resulting in increased social respect, can we really expect individuals to fear or respect the law?”¹⁰² As imprisonment in the United States is viewed by many as a rite of passage and the prisoner is viewed with respect and admiration, and as the value of deterrence is diluted and stigma is lost on the hip-hop generation, should not then a new American theory of crime, punishment, and imprisonment be considered and implemented?

Crime and punishment in the United States is predicated on deterrence, incapacitation, and stigmatization, and the

Ludacris—Do Your Time Lyrics, <http://www.metrolyrics.com/do-your-time-lyrics-ludacris.html> (last visited Mar. 4, 2009).

99. T.I., *You Ain’t Missin’ Nothin’*, on PAPER TRAIL (Grand Hustle/Atlantic 2008); see also MetroLyrics.com, T.I.—You Ain’t Missin’ Nothin’ Lyrics, <http://www.metrolyrics.com/you-aint-missin-nothin-lyrics-ti.html> (last visited Mar. 4, 2009).

100. See Butler, *supra* note 2, at 998.

101. *Id.*

102. Rutherford, *supra* note 36, at 305.

hip-hop generation recognizes none as truly legitimate. The system of crime and punishment in the United States has lost its way. The criminal justice system is disrespected and dismissed by a wide swath of American citizens. This should be a chilling and sobering thought to legislators, prosecutors, judges, and lawmakers.¹⁰³

This is not to say that hip-hop ignores law-breaking or does not believe in some type of retributive consequence for engaging in immoral crimes. It recognizes the need for imprisonment for legitimate crime and seeks community retribution for crimes like murder, rape, child abuse, and so forth.¹⁰⁴ But as for the illegitimate or inequitable punishment for crimes, including drug crimes and sentencing, the three-strikes laws, and the loitering and petty theft crimes, these are all viewed as skewed against people of color and imprisonment for these crimes are ignored, dismissed as illegitimate, and disavowed. Hip-hop culture recognizes that in many instances, crime is justified by lack of opportunity.¹⁰⁵ As Professor Butler cogently recognizes: "Hip-hop culture emphasizes the role of environment in determining conduct, whereas classic retributivist theory focuses on individual choice. In essence, hip-hop culture discounts responsibility when criminal conduct has been shaped by a substandard environment."¹⁰⁶

The question I am most interested in seeing answered is this: will the emerging leaders of the hip-hop generation—including lawyers, scholars, legislators, economists, preachers, laborers, and teachers radically change the broken system of crime, imprisonment, and punishment in the United States?

One scholar has started on this path already by suggesting six ways that hip-hop can assist in producing legitimate standards of crime and punishment in the United States, a regime that respects the individual, protects the community, and imprisons only those from whom society needs protection. For the hip-hop generation legislator or policy maker, Professor Butler, from a hip-hop perspective, offers a starting place for a more humane, more bottom-up

103. See generally BUTLER, *supra* note 3.

104. See Butler, *supra* note 2, at 1002.

105. See *id.*

106. *Id.* at 1004–05.

approach to crime and punishment in the United States:

First, the purpose of punishment should be retribution. Second, punishment should be limited (but not determined) by utilitarian concerns, especially the effect of punishment on people other than the lawbreaker. Third, punishment should be designed to “catch” the harm caused by rich people more than poor people. Fourth, people probably should not be punished for using or selling intoxicants. Fifth, punishment should be imposed only by people within a community, not outsiders. Sixth, prison should be used sparingly as an instrument of punishment.¹⁰⁷

Will those emerging leaders from within the hip-hop nation respond to this call?

V. CONCLUSION

Hip-hop teaches that the U.S. system of crime and punishment is inequitable, and does so primarily by exposing, in stark lyric and behavior, that the poor are punished more harshly than the rich, and that drug offenders are punished more harshly than white collar criminals. An amazing chasm exists between the hip-hop generation and the traditional majority perspectives. Hip-hop asks who the true criminals are: young inner city youth selling drugs with no prospects for work, petty thieves stealing to eat, or the 2008 corporate executives at AIG, Lehman Brothers, Countrywide, and Bear Stearns, who recklessly torpedoed the U.S. economy and, rather than facing jail, received government bailout money exceeding \$800 billion dollars.¹⁰⁸ Hip-hop adjudges this system of prioritizing crime in this way as obscene.

Respected scholars are arguing today that hip-hop offers a legitimate alternative theory of justice,¹⁰⁹ that hip-hop's bold trespass into traditional copyright and property law is a form of civil disobedience,¹¹⁰ that hip-hop has influenced a generation of law students and young lawyers to proactively

107. *See id.* at 1001.

108. *See* andré douglas pond cummings, What's Race Got to Do with Post-Racialism?: Post-Racialism and the Financial Market Meltdown (Jan. 9, 2009) (AALS Annual Meeting Hot Topics Panel Presentation) (unpublished manuscript, on file with author).

109. *See* BUTLER, *supra* note 3.

110. *See* Smith, *supra* note 12, at 69.

seek radical means of justice,¹¹¹ that hip-hop comfortably debates and exposes the “dark side” of American society and inequality,¹¹² that gangsta rappers stake an important place in the black public sphere while still providing seeds of political expression amidst the violence and misogyny,¹¹³ that criminal prosecution of mix-tape DJs is an improper use of police power in an ever changing copyright dynamic,¹¹⁴ that hip-hop did not create the violence and misogyny rampant within it but merely contextualized it for the black community,¹¹⁵ and that hip-hop profoundly influences political discourse.¹¹⁶ It then seems time for U.S. legislators and policy makers to reexamine the fundamental underpinnings of crime and punishment in the United States. It simply does not work for the hip-hop generation.

Hip-hop erases the stigma of imprisonment. Hip-hop refuses to acknowledge the deterrent power of the U.S. prison system as it recognizes the many illegitimate and profane uses of the law to subjugate people of color and punish the poor and powerless, while ignoring the criminal behavior of the wealthy and privileged. While hip-hop does not say much about actual life in prison, it certainly respects the imprisoned and welcomes the convicted back into society openly.

If in fact, American society is no longer fine with its prisons overflowing with petty criminals and grossly disproportionate imprisonment of minorities, and if American citizens are no longer fine with spending billions of dollars on

111. See Carla Pratt, Professor of Law, Texas Wesleyan School of Law, *From the Corner to the Corner Office: Hip Hop's Impact on Corporate Culture and Law*, Address at the West Virginia University College of Law Symposium, *The Evolution of Street Knowledge: Hip Hop's Influence on Law and Culture* (Feb. 13, 2009), <http://lawmediasite.wvu.edu/mediasite/catalog>.

112. Dr. Cornel West, Professor, Princeton Univ., *Keynote Address at the West Virginia University College of Law Symposium, The Evolution of Street Knowledge: Hip Hop's Influence on Law and Culture* (Feb. 13, 2009) (transcript on file with author).

113. See Folami, *supra* note 22.

114. See Anderson, *supra* note 22.

115. PERRY, *supra* note 22.

116. See Anthony Farley, James C. Matthews Distinguished Professor of Jurisprudence, Albany Law School, *Stepping to the Mic: Hip Hop's Expanding Voice in Social and Political Discourse*, Address at the West Virginia University College of Law Symposium, *The Evolution of Street Knowledge: Hip Hop's Influence on Law and Culture* (Feb. 13, 2009), <http://lawmediasite.wvu.edu/mediasite/Viewer/?peid=0f77bcf641b64295acde0a810e573f97>.

building prisons, while cutting billions of dollars from education,¹¹⁷ then perhaps a new nascent movement is afoot—one that will radically alter the course of crime and punishment in the United States.

117. See Tavis Smiley's *State of the Black Union* (C-SPAN television broadcast Feb. 28, 2009) (showing elected representatives discussing the budget crises faced by many states, where legislators cut spending on education and raise spending on prison construction).