Your Inside Track Newsletter

Description

Interview with Desiree Talley

By Judith Finell and Don Franzen

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Your Inside Trackâ??s co-editors, Judith Finell and Don Franzen, recently interviewed attorney Desiree Talley about the use of lyrics agaisnt rap artists in criminal cases.

This interview occurred on September 1, 2022. Since then, the California Assembly Bill discussed has been enacted into law by Governor Gavin Newsom. This interview has been edited minimally for clarity and length.

Judith Finell

Desiree, both Don Franzen and I are going to be asking you questions. Don is an attorney who works on the music and entertainment fields. Iâ??m a musicologist who deals with some of the issues that arise in music and litigation at times. So, we have two different perspectives, but the idea is to bring them together and to hear your insights. If you want to propose any questions that grow out of this as youâ??re thinking about it, please feel free to do so. And feel free to expand on anything that you feel needs to be as our conversation progresses. The first question really is, what are some examples of the use of rap lyrics against musicians in criminal cases?

Desiree Talley

So most recentlyâ??in the *State of Georgia versus Young Thug and Gunna*, those are their rap names, stage names, and 28 other defendantsâ??one lyric thatâ??s being mentioned over and over by Young Thug in a song called â??Skiâ?• is, â??I killed a man in front of his mama.â?• Thatâ??s been going on and highly publicized, but that doesnâ??t necessarily mean that he actually committed this act. The song is very popular and even hit the top of the Billboard charts. Vonte Skinner had a couple of different songs wherein his lyrics were used against him. In one particular song he said, â??Iâ??m the [person] to drive by and tear your block up / Leave you, your homey, and the neighbors shot up / Chest shots will have you spittinâ?? blood clots up, Two to your helmet and four slugs drillinâ?? your cheek to blow your face off and leave your brain caved in the street.â?• This particular lyric was very controversial in his songs in general because the songs were actually written months and sometimes in cases years prior to when prosecutors tried to use the lyrics against him. In an alleged murder and attempted murder case, rapper Tay-K in his song called â??The Raceâ?• said, â??We was plottinâ??, yâ??all was tryna get the pack in / Get the pack in, you get robbed for a fraction (Gimme that s**t).â?•

So in this case, the lyrics were used against Tay-K in an aggravated assault case where a man died. It was essentially thrown out later because the lyrics in the video were considered prejudicial. Bobby Shmurda and the hit â??Hot Boyâ?• had lots of dances and went viral. One of the core lyrics says, â??Mitch caught a body about a week ago.â?• Thereâ??s a dance that goes with that portion. I think it goes in one ear and out the other. Whenever I was singing the song, I didnâ??t really realize what it was. But with that song in particular, Shmurda and a couple other people faced 101 criminal charges. And then YNW Melly on a song, â??Murder On My Mind,â?• said, â??Yellow tape around his body, itâ??s a f*****g homicide. His face is on a T-shirt and his family traumatized. I didnâ??t even mean to shoot him, he just caught me by surprise. I reloaded my pistol, cocked it back, and shot him twice.â?• And for these lyrics, he is currently in jail facing criminal charges for allegedly killing two of his friends.

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Don Franzen

May I ask a question, as a follow up to this? Youâ??ve given such compelling examples of where rap lyrics have been used against criminal defendants. Is there also a history of using words or lyrics against artists outside of the rap genre? So, is this uniquely a rap thing, or are there other cases, to your knowledge, where words or lyrics have been used against defendants?

Desiree Talley

In my opinion, itâ??s uniquely a rap thing. Rap lyrics and hip hop are being criminalized. And hip hop artists are facing jail time because of their lyrics. And while this is nothing new, I think the power of social media is really driving a lot of attention to it. So the Dixie Chicks have a song called â??Goodbye Earl.â?• They are not in jail for the lyrics of this song. In the song they say, â??She held Wandaâ??s hand and they worked out a plan / And it didnâ??t take â??em long to decide / That Earl had to die / Goodbye, Earl / Those black eyed peas / They tasted all right to me Earl / You feelinâ?? weak? / Why donâ??t you lay down and sleep, Earl / Ainâ??t it dark wrapped up in that tarp, Earl.â?• Willie Nelson is not in jail for the song â??Red Headed

Stranger.â?• In his lyrics he says, â??He shot her so quick, they had no time to warn her. The stranger went free, of course / For you canâ??t hang a man for killinâ?? a woman / Whoâ??s tryinâ?? to steal your horse.â?• Johnny Cash never went to jail for saying he shot a man in Reno. Kaitlin Butts is not in jail for the song â??White River.â?• The lyrics are, â??Thirty-four revolver reflected the moonlight / Pointed right between his eyes / And in the paper Monday morning it read / â??That was the night the White River turned red.â??â?• Colter Wall is not in jail for the song â??Kate McCannon.â?• In the lyrics he says, â??So I made for the creek / Where she and I did meet / And found her with some other lover / And I put three rounds into Kate McCannon.â?•

Don Franzen

While obviously none of us condone violence, violence, or murder, things like this are and always have been the subject of artistic expression, right? I mean, thatâ??s probably in every culture, just because itâ??s unfortunately a fact, a reality in human existence. But your point is that at least in our criminal system, rap artists in particular have been singled out for the use of their lyrics in criminal cases. Is that right?

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Desiree Talley

Yes, absolutely. And while it is art, does it mean that art imitates life? Not necessarily. Itâ??s a creative expression and these artists are storytellers. But you cannot have laws and criminalize music in one genre, and not all. There are rock songs that are violent as we see there are country songs that are violent. And if weâ??re taking lyrics as evidence to point at violence, then we need to look at all genres of artistic expression. We need to look at Walt Disney. He was probably one of the greatest storytellers alive. And while itâ??s arguable if thereâ??s violence in any of his stories, there could be. And so again, that was considered art. And so we have to look at everything, even down to books and criminal books and murder mysteries or murder fictions, crime fiction. Is that actually fiction or did these people do what they are talking about? So if weâ??re going to criminalize hip hop artists and rap lyrics we need to criminalize everything, which again impacts our laws and freedom of speech and creative expression. And Iâ??m not sure that the powers that be will want to do that because itâ??ll be a lot of people in trouble.

Judith Finell

Iâ??d like to ask a follow up on that: Do you distinguish between lyrics that talk about an actual true violent act such as theoretically, those about a murder that the artist did in fact commit or witness, compared to it being a storylineâ??a fictional storylineâ??about a violent act? And, what about inciting a violent act in terms of inspiring listeners to go out and commit something, but not the artist actually having done so? And I wonder how you look at those separate ways in which violence in art can impact both the response and the legal community.

Desiree Talley

Violence is embedded in our history and the nature and cloth of America. And so I canâ??t say that a rap artist who was talking about shooting somebody actually did it. Most people who commit crimes do not want to be found out, and if there was a crime, there needs to be hard, cold factual evidence. The criminal justice system cannot use the lyrics as the basis of a case, or point to the lyrics as evidence. Unfortunately, Black people in America come from poverty-stricken neighborhoods riddled with crime, decrepit school systems, and that is systematic. Our artists sometimes are making music based on the environment that they are in and that they have seen, that they have heard about, and that they may or may not have experienced. That is not necessarily saying that it is a literal recounting of something that they have actually done. And so when we talk about it, the question is, are we inciting violence? Are the artists responsible? This is the music that is selling. There are lots of conscious rappers out there who are not as popular as these artists who are currently locked up in prison. So you canâ??t say that itâ??s inciting violence and making them or others act in a criminal way and hold them fully responsible, when record labels are still creating profit and generating profit off of these same lyrics. Record labels set the guidelines of what this music is. They are the ones funding this music and so they should be responsible as well. For example, in this Young Thug and Gunna case, Gunna just had the number one album, but heâ??s sitting in jail, while the record labels are still making money. But when you look at RICO laws, the first thing that the government can do is take away your assets. Theyâ??re taking away the assets of the Black rapper who is currently in jail, who is employing people, who is owning property. The record labels are not losing their assets, they are not losing their companies. So it is a problematic situation. And again, in inciting violence and riots, we look at what happened at the Capitol. A lot of those people still are not in jail. And if they are, theyâ??re not in jail to the extent that these rappers are. And that was a physical action that we saw on TV. We have video, there are news camera reports, whereas with these lyrics, itâ??s a story that prosecutors have no other evidence for these crimes or alleged crimes.

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Don Franzen

Iâ??d just appreciate you maybe focusing in particularly on this question, which is: When is it and what is the prejudice, when is it prejudicial? And what is the prejudice to defendants in a criminal case when their lyrics are being held against them? Whatâ??s the nature of the prejudice and how can it affect the outcome of cases?

Desiree Talley

I think itâ??s prejudicial at all times. The job of the prosecutor is to have facts of the case. They need some type of weapon, they need some videotape, some type of true indication that this person is connected to the crime. So using rap lyrics as the evidentiary standard to help prove

the case for which they have no other basis is problematic. For example, with the rapper Tay-Kâ??s case, he was sentenced to murder. And in that case the prosecutor used Tay-Kâ??s, lyrics and admitted a printout as evidence of the lyrics when the rapper talked about holding a weapon and standing next to a wanted poster. And so by showing the jury those lyrics and repeating those same lyrics over and over and over again, it swayed the jury to believe that he actually committed this crime. And so on appeal, Tay-K was released because the court ended up saying that had the jury not seen or heard these lyrics repeatedly, they may not have come to the conclusion that he in fact committed this crime. Again, when we talked about the Vonte Skinner lyrics earlier, those lyrics were written down in a notebook and the courts found that he wrote about these alleged crimes. However, the cases or crimes that they tried to connect those lyrics to were months and years after those lyrics were written, so there was absolutely no connection. And he was sentenced to prison as well, based on the lyrics that the prosecutors showed the jury. But again, on appeal, the charges were dismissed. And that has happened again with the late rapper Drakeo the Ruler, where his lyrics were used against him. Rapper Lil Boosieâ??s lyrics were used against him, and they all beat the charges because the prosecutors had no additional evidence other than their rap lyrics that they alleged connected these rappers to crimes. So at all times, itâ??s prejudicial and it should not be used.

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Judith Finell

Can you think of any situations in which lyrics could be fairly used in a criminal case to prove guilt?

Desiree Talley

I donâ??t think that it should be used at all within the criminal aspect. If we start opening this up, it really infringes on our First Amendment rights and our copyright protection. You are stifling creativity at that point and then what happens to the arts? You know, art is already being defunded in schools, particularly in Black communities. If you have no other outlet to express your imagination and maybe talk about things that you see or witness, or again, if youâ??re trying to get out of poverty-stricken neighborhoods, and you see that all the biggest artists in the world are talking about violenceâ??this is what is on the top of the radio charts, and streaming is a type of lyrical content that is getting rappers bills. Then it is a pretty difficult assessment to say it should be used at any time. Itâ??s abridging our freedom of speech and creativity.

Judith Finell

Do you think there are times that this would be different outside of the rap arena? For example, the young man who killed John Lennonâ??Iâ??m pretty sure that his diaries were used as part of the proof package, so to speak, to show that he had been planning this and had thoughts about

it. And I think thatâ??s been true in other kinds of acts of violence and assassinations and all. Iâ??m just wondering if you think outside the arena of music, if different standards should apply. Iâ??m not sure that a diary or letters would be considered art forms. Iâ??m just wondering about where someone writes about something thatâ??s partly used to convict them â?? is that acceptable in your opinion?

Desiree Talley

I think it canâ??t be cherry picked. You canâ??t have, letâ??s say, a journal of 15 pages and you have one or two sentences that say â??I plan on killing John Lennon.â?• People have crazy thoughts all the time or suicidal thoughts, that doesnâ??t necessarily mean that theyâ??re actually going to go out and do it. So one, itâ??s looking at everything as a whole. But again, if art or writings are going to be used, it needs to be looked at as a whole, not cherry picked, and applied to all genres of art or expression. So anywhere from music, film, books, it should be applied as a whole.

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Don Franzen

California has just enacted a bill that does restrict the use of what it calls â??creative expression.â?• So itâ??s not just words, but any kind of creative expression. The way the bill defines it is â??forms, sounds, words, movements, symbols, including, but not limited to music.â?• So itâ??s very broad. It covers just about every art form. And this bill prohibits the use of creative expression against a criminal defendant unless the judge makes certain findings about the probative value and the prejudice. Some things that the court is required to consider are whether the expression is near in time to the charged crime or bears sufficient similarity to it, and whether there would be undue prejudice from its admission. And specifically, the courts are directed to consider whether it would inject racial bias into the proceedings. So those are some of the factors that this legislation calls out. Do you think this bill goes far enough? How do you evaluate this new piece of legislation?

Desiree Talley

I think itâ??s a good start and not necessarily far enough. Iâ??m not too confident on leaving the discretion solely in the judgeâ??s hands of the probative value. I mean, weâ??ve known across different states that judges also have racial bias. And if we were to give them this sole authority, I would want to look at the judgeâ??s record. Not how have they handled cases not solely related to music lyrics or anything else, but how have they handled cases or criminal cases with people of color? And so I want to know if there are patterns, are they sentencing people fairly and equally based on the same type of charges? Because there is inherent and maybe conscious or unconscious bias and that applies to judges as well.

Judith Finell

Regarding the status of the legislation in New York on this topicâ??do you think itâ??s adequately addressing it?

Desiree Talley

So the rap lyrics on trial bill in New York did pass the Senate, I believe, in June of 2022. However, it is stalled. And so the courts, I believe, are looking over the rules again before they make any determination on how it proceeds. But the great thing about that bill is the people who are backing it. They include Jay-Z and Meek Mill in there with REFORM Alliance who are all behind this, as well as Killer Mike whoâ??s also a contest rapper and very outspoken about the discrepancies and injustices in the justice system directed towards people of color and particularly hip hop artists. I love that we have our biggest stars behind this one.

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Don Franzen

Also there is proposed federal legislation. What are your thoughts on the federal bill? What do you think its chances are of passing?

Desiree Talley

Well, I hope it passes, but you never know. I believe federal laws are sometimes very hard to get passed, but I think that itâ??s great. It is the Rap Act and so this Rap Act is presented to limit the use of criminal lyrics as evidentiary basis. I hope that it does pass, and that maybe more states will follow suit. The limitation is good, but I would like a complete ban on lyrics. Again, we have to protect the arts, we have to protect our freedom of speech and our copyright laws. I fear that if we donâ??t do this, then it will open up other areas of our creativity and arts to be attacked that we fought so hard for, or others fought so hard for, not necessarily me. I wasnâ??t in those fights, but to make sure that we are a world where freedom of speech is truly that and of course with limitations, letâ??s make sure those limitations are equally applied.

Don Franzen

These are very eloquent concluding remarks. Do you have anything else youâ??d like to talk about? Is there something we missed that we could add to the interview?

Desiree Talley

Let me start in two parts. Artists, number one, need to be mindful. While these rappers are very skilled storytellers, they have to understand that people are watching it and are on the attack. And whether the lyrics are true or not, rappers should just be a little bit more mindful and pay attention to whatâ??s happening to their peers. I know that sometimes there is a struggle when this is what is selling. This is what the labels are buying, and if you come to the environment where youâ??re fighting to get out, sometimes you feel that you have no choice. And so, it can be a Catch-22. You might not be living that life or may have been in that life before, and are working so hard to get out, but what do you do if you come from poverty? You are now successful, and you try to go home with your friends to hang out, but they are looking at you because they canâ??t escape the environment. And now, you might want to carry a weapon to protect yourself because it is unsafe to go home. Most rappers who die, die in a neighborhood where they grew up, and when theyâ??re trying to give back to that community.

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Look at Nipsey Hussle. He is one of the most prolific musicians out there who provided a cure in his music. And while he didnâ??t talk about violence to the extent that some of these other artists are who are in jail, and even if he did mention it, he talked about how we need to combat that. He still died in the streets by somebody who looked like him, when Nipsey was giving back to the community and to the world. On the other side of that is that some people try to bring those people with them, who grew up in their same neighborhood, and give them also an escape. Now youâ??re looked at by the government as being part of a criminal gang organization, when you should be rewarded for helping everybody that youâ??re around. If Iâ??m leaving my negative environment and Iâ??m able to take people with me, we are a family when it becomes successful together. So it kind of seems like itâ??s a lose-lose situation.

Judith Finell

Do you think that in the end, if these laws do not succeed, that artists will start self-censoring, and watch what they write? Do you think that can actually impede their creative process?

Desiree Talley

Censorship definitely will impede the creative process. And again, it goes against what the First Amendment and copyright laws are trying to do. We do not want to be censored. And so that was the purpose of it. And if you have to think twice about what you are saying, it can be stifling to your creativity. You canâ??t get writerâ??s block if you are telling the truth, or verbalizing experiences, dreams, or your imagination. But if you have to fine pick what youâ??re saying because you fear that youâ??re going to go to jail, or if you and your friends are all just so happy to be out of a negative environment, but you fear that you might be accused of running a criminal

enterprise when you are employing these people, that is very problematic. And the labels do not pay for music that is not streaming. They have to adjust. They are making music for what is happening or for whatâ??s selling.

Judith Finell

Do you have anything more you wish to add before we finish?

Desiree Talley

Itâ??s our duty as lawyers as professionals to make sure we are upholding our First Amendment laws and copyright laws and take the biasâ??subconscious and consciousâ??out of it and look at it as a whole. The bottom line is free speech protecting the arts. And again, that is across all genres of music, across all forms of art, whether itâ??s painting, sculpture, dance, even if itâ??s expressed in videos. It all needs to be protected. And if you attack one genre, attack them all.

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This interview has been edited minimally for clarity and length.



Desiree Talley is an entertainment attorney and creative storyteller from Vallejo, CA working in Los Angeles. Currently VP of Legal Affairs at REVOLT and host of the podcast POPLAW, Desiree has held legal roles at Viacom Media Networks, ASCAP, Pandora Music and Turner Entertainment Networks. She has been recognized for her cultural impact and legal work with creatives as a Top 40 Under 40 Attorney. Desiree has emerged as a powerful voice in the conversation where business, law and pop culture intersect. She is a graduate of Hampton University, St. Johnâ??s University School of Law and the Clive Davis Institute of Recorded Music at NYU (Music Industry Essentials certificate program).

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