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Jeffrey Campolongo, of Law Office of Jeffrey Campolongo.

COMMENTARY

Does Listening to HipHop at Work Create a Hostile Work Environment?

Can listening to hip-hop at work create a hostile work environment in the workplace? As someone who has practiced in both the entertainment law and employment law worlds, I can safely say this is not the first time an argument condemning Black or urban music has been made.

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Employment Law

By Jeffrey Campolongo | February 16, 2023 at 01:23 PM 

At the Grammy Awards this past month, the music world celebrated the 50th anniversary of the birth of hip-hop music. Started in the 1970s in urbanized areas of New York City, rap music became a musical and cultural phenomenon that became the voice for many marginalized Black Americans with roots to Africa, Latin America and the Caribbean. The music traces its

roots to heavy rhythmic percussion, mixed with precise spoken word delivered over hard drum beats. Hip-hop culture is inextricably intertwined with economic, social, cultural and political issues of the day, particularly in disadvantaged or underserved urban communities.

The earliest forms of hip-hop were heavily influenced by political upheaval and the civil rights movement. Speaking to everyday issues, such as poverty, gangs, crime, family, social status, and anything else in life, hip-hop became a counterculture to mainstream America. The music represented a safe space for rappers, DJs, graffiti artists, breakdancers and bootleggers. Hip-hop has been called the central cultural vehicle for open social reflection on poverty, fear of adulthood, the desire for absent fathers, frustrations about Black male sexism, female sexual desires, daily rituals of life as an unemployed teen hustler, safe sex, raw anger, violence and childhood memories. In short, (hip-hop) is Black America's most dynamic contemporary popular cultural, intellectual and spiritual vessel. See Rose, Tricia, "Black Noise: Rap Music and Black Culture in Contemporary America," New Hampshire: University of New England Press, 1994. There has long been a discussion of violence and misogyny in rap music. In its rarest and rawest form, rap lyrics are delivered in a braggadocious way, and at times can incorporate lurid, misogynistic themes. It's not uncommon to hear rap lyrics describing women as "bitches" and "hoes." Women as objects of sexual

gratification and the imaging of violence against women can be a reoccurring theme for some rappers. The explanations for this objectification are as diverse as the culture itself. Ranging from toxic masculinity to mainstream attitudes toward women, no one theory can explain the existence of crime and misogyny in hip-hop culture. For a more scholarly analysis on violence in hip-hop, one should read "Code of the Streets," by renowned sociologist and ethnographer, Elijah Anderson. Anderson writes that violence is so much a part of these disadvantaged communities that a set of informal rules, which polices personal and group behaviors, has been established and many of the lyrics in rap music reflect a code of the street. See Anderson, Elijah. 1994, "Code of the Streets," *Atlantic Monthly* 273(5): 81-94.

Which brings us to the question a Nevada appellate court confronted on a recent appeal from the U.S. District Court of Nevada. Can listening to hip-hop at work create a hostile work environment in the workplace? As someone who has practiced in both the entertainment law and employment law worlds, I can safely say this is not the first time an argument condemning Black or urban music has been made. Rap music has long been the scapegoat for a plethora of society's woes, more than any other genre of music. But why is that? What is it about Black culture that is so threatening to the mainstream? What would compel a former president to label Rihanna's Super Bowl half time performance an "EPIC FAIL" with

"her foul and insulting language"? To ignore the cultural hypocrisy is tantamount to turning a blind eye.

The advertisement is a vertical rectangular graphic with a dark red background. On the left side, there are two portrait photographs. The top one is of an older man with white hair, identified as Hon. Joe Van Jura (Ret.). The bottom one is of a man with glasses and a beard, identified as Tom Reilly, Esq. To the right of the portraits, the text reads: "Providing Alternative Dispute Resolution services for over 30 years". Below this text is a yellow rectangular button with the text "CLICK HERE TO CONTACT US" in dark red. At the bottom right, the logo "ADROPTIONS" is displayed in a stylized, bold font, with the tagline "Settling Cases Since 1993" underneath it.

In the Nevada case, rap music became front and center of a workplace harassment lawsuit. On Feb. 10, the U.S. Court of Appeals for the Ninth Circuit heard oral argument from counsel for eight employees, seven women and one man, who sued their employer for a hostile work environment. The case is *Sharp v. S&S Activewear*, 3:20-cv-00654-MMD-CLB (D. Nev. Dec. 27, 2021). The main issue before the appellate court was whether the district court erred in concluding that sexually abusive, violent, and misogynistic music could not be considered part of a sex-based hostile work environment under Title VII. The employees alleged that their employer permitted sexually graphic and offensive music to be played in its warehouse, which was offensive to both women and men who worked in the employer's 700,000-square-foot warehouse in Reno, Nevada.


In their amended complaint, the plaintiffs alleged that their employer "allowed sexually abusive and misogynistic 'music' to be ... played from various locations throughout this large facility." Both employees and managers streamed the music from speakers and, "on occasion, various employees placed speakers on a forklift, or other powered vehicles," and drove around the facility broadcasting the music. The music was audible throughout the warehouse, and it contained the "repetitive use of gender offensive terms such as 'bitch' and 'c t.'"

The music featured artists such as Too \$hort, Eminem, Lil Wayne, and other rappers, according to the suit. To illustrate the type of music at issue, the complaint states that S&S often "loudly" played a song that "touts the act of forcibly placing a pregnant woman in the trunk of a vehicle and then driving the vehicle into a river or other body of water, for the purpose of drowning her" (referring to the purpose of drowning her" (referring to Eminem's hit "Stan"). The complaint also alleges that "'Too [\$]hort' ... routinely writes sexually graphic and very offensive, and misogynistic lyrics," including a song that "references and glorifies prostitution."

According to the complaint, "a number of men," including the male plaintiff, Anthony Baker, also "were offended by the manner in which the music portrayed men, and their relationships with women." S&S sometimes justified playing the music on the ground that it "motivated

employees" in the Reno warehouse. Despite the numerous complaints, S&S failed to halt the music for almost two years, until it learned that some of the plaintiffs had obtained counsel and intended to take legal action.

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The plaintiffs filed suit under Title VII premised on the playing of the music and other acts of harassment, asserting, essentially that the music created a sex based hostile work environment. The employer filed a motion to dismiss the plaintiffs' complaint, arguing that the conduct

was not discriminatory on the basis of sex. At its core, the company's argument was that both men and women were offended by the work environment created by the music played in the warehouse and that all employees in its Reno warehouse were exposed to the offensive music. This is commonly referred to as the equal opportunity offender defense, the basis of which has no merit in hostile work environment claims.

The district court granted S&S's motion to dismiss in pertinent part, agreeing with S&S that the claim failed as a matter of law "because both men and women were offended by the ... music." In reaching this conclusion, the court emphasized that the plaintiffs did not allege "that any employee or group of employees were targeted, or that one individual or group was subjected to treatment that another group was not." On appeal to the Ninth Circuit, the issue before the court was whether the district court erred in deciding, as a matter of law, that the offensive music was not discriminatory on the basis of sex.

The case is an example of the best and worst of employment law. On the one hand, companies are encouraged to have workplace policies that have zero tolerance for offensive speech and conduct, including the display of music or images that depict women in terribly offensive ways. We should all aspire to eliminate our own implicit biases. That is neither being woke nor politically correct. It is called doing the right thing. On the other hand, defending on the basis that everyone being offended means

no one is offended, is just plain absurd. That slippery slope has no basis in discrimination law.

What is really going on in this case? Well, we may not know unless the appellate court reverses and allows the matter to proceed. What we do know, though, is the plaintiffs appear to be pushing a "righteous" agenda, whatever that means. At oral argument, counsel for the plaintiffs was asked if dropping the male plaintiff would allow the rest of the case to proceed. The answer was "No, ... I think he has a righteous case. He's a decent guy, he's a Christian man and he has a view, ...he's not that guy. He's not a sexual predator. He finds the rap music very offensive. He has a righteous case." Lumping rap music with sexual predators, or elevating a client's claim because of his Christian values is not the type of playing-field leveling that Title VII intended. To be offended by misogynistic lyrics is one thing, and arguably colorable under federal law, but to impugn the very culture itself for a righteous, Christian agenda, seems to speak to a different set of issues. I, for one, will be watching this case with great interest.

Jeffrey Campolongo is the founder of the Law Office of Jeffrey Campolongo, which, for over a decade, has been devoted to counseling employees, working professionals and small businesses in employment discrimination and human resource matters.
