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BALLIN IN THE BOARDROOM: CHANGING THE SOCIAL CONTEXT OF SEXUAL HARASSMENT

TODD J. CLARK¹

“I would share the definition of ballin’ with you white folks, but now. . .the game is to be sold not told, so fuck you.”²

Tupac was one of the first artists to develop a connotative meaning for the word “ballin.” In his song entitled “Str8 Ballin,” Tupac chronicles various points in his life as a means of providing definitional context for the word “Ballin.” Through his lyrical soliloquy, Tupac is able to create a vivid image of what it means to “ball.” At the essence of Tupac’s definition of the word “ballin” is the concept of playing a game well. For example, shooting, scoring, assisting, rebounding, and dunking represent various ways to exhibit prowess on the basketball court. If a person is exceptionally good at anyone of these skills, it can be said that such person is “ballin,” since that person is able to manipulate the ball in a manner sufficiently greater than his or her competition. However, in Tupac’s song, he was applying this same concept to the game of life. For Tupac, “ballin” was exemplified through his entrepreneurial spirit of selling drugs, eluding the police, out thinking his competition, and manipulating women. Today, ballin has morphed into an urban colloquialism that is representative of the

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² Tupac, *Str8 Ballin’ Lyrics*, RAP GENIUS, <http://rap.genius.com/2pac-str8-ballin-lyrics> (Last visited Mar. 11, 2014).

mentality that is overwhelmingly codified in hip-hop culture. Since Tupac first coined the term “ballin,” it has become an entrenched lexicon in the urban vernacular. At its essence, ballin is about “gettin” money and women at any cost. In this article, I plan to discuss how hip-hop, and its perpetuation of the “ballin” culture can detrimentally alter the social context of the work place environment in a manner that makes it more difficult for black women to prevail in hostile work environment claims. More specifically, hip-hop music has the capacity to negatively impact the work place in two material ways. First, since the overwhelming message in hip-hop is that women are sexual objects, male decisions makers, that internalize the message in the music, may be subconsciously influenced to think of women solely as sexual objects. Second, women that are influenced by hip-hop’s misogynistic message may be more likely to internalize negative perspectives of themselves and, as such, may be less likely to report improper conduct. When both of these realities operate in the work place, the likelihood of redressing what might otherwise be considered harassment, in violation of Title VII, becomes more difficult to prove.

In any claim of hostile work environment harassment, the critical issue is often whether the employee’s work place environment is sufficiently, severely or pervasively filled with hostility such that a reasonable person would, in fact, conclude that the actions of the employer or its agent were outrageous. In defending against these types of claims, employers have argued that the social context of the workplace environment is a substantial consideration in determining whether a reasonable person would find the alleged conduct harassing.³ For example, if a male football player were to “pat” a teammate on the buttocks as a means of congratulating that player for a good play, regardless of whether the teammate is a male or female, most courts would agree that this is not harassment. However, if a male law professor were to “pat” a female law professor on the buttocks in recognition of her recent article receiving acceptance for publication, most courts would find that such conduct, at a minimum, begins to create a hostile work environment. Although the action was the same, the social

³ See generally Rebecca K. Lee, *Pink, White, and Blue: Class Assumptions in the Judicial Interpretations of Title VII Hostile Environment Sex Harassment*, 70 BROOK. L. REV. 677 (2005) (suggesting that a consideration of the social context makes it more difficult for women in blue collar environments to establish hostile work environment claims); see also Melissa R. Null, Note, *Disrespectful, Offensive, Boorish & Decidedly Immature Behavior is Not Sufficient to Meet the Requirement of Title VII: Duncan v. General Motors Corp.*, 69 MO. L. REV. 255, 271–3 (2004) (again, suggesting that a consideration of the social context makes it more difficult women in blue collar environments to establish hostile work environment claims).

context in which the action took place considerably affected the legal rights of the parties in each of these cases. The concern highlighted in this article is whether the social context can change. Clearly, there are certain types of behavior that society has come to accept on the football field and in the boardroom; however, can the social context of these environments reverse? More specifically, can an infusion of members from one group have an effect on the social context of a new environment? This possibility is of critical concern in considering the effect hip-hop music has on the black community and the misogynistic message it sometimes perpetuates. As more individuals who are influenced by hip-hop music enter Corporate America, it is imperative that the messages contained in the music endeavor to create an empowering and thought provoking spirit instead of one that focuses on the degradation of women. This article is not arguing that a change in the social context of a work place environment will prevent a woman from establishing a hostile work environment claim. Instead, it highlights that if such change does occur, the establishment of a hostile work environment claim may be more difficult.

While this article highlights one negative aspect of hip-hop music, the purpose of this article is not to condemn the genre. Hip-hop plays a central role in educating as well as inspiring the black community. "Hip-hop is inherently political, the language is political. . . . It uses language as a weapon — not a weapon to violate or not a weapon to offend, but a weapon that pushes the envelope that provokes people, makes people think."⁴ More accurately, this article advances that hip-hop music must assume a greater level of responsibility by codifying a more positive image of black women.

To facilitate this discussion, in Part I of my article I explain how hip-hop's misogynistic culture has detrimentally affected the self perception that black women have of themselves. In Part II, I provide a brief history regarding the hostile work environment claim and I discuss how the social context of the work place environment affects the ultimate determination of whether harassment has occurred in violation of Title VII. In Part III, I discuss the employment discrimination suit against the New York Knicks to provide an example of how "ballin in the boardroom," can negatively impact the social context of the workplace environment. Finally, in Part IV, I provide several solutions for dealing with the issues presented in this paper.

⁴ Scott Simon, *Hip-hop: Today's Civil Rights Movement?*, NPR MUSIC, (Mar. 1, 2003, 12:00AM), <http://www.npr.org/templates/story/story.php?storyId=1178621>.

I. HIP-HOP, MISOGYNY AND THE DEGRADATION OF WOMEN

Dear Ms. Deloris Tucker, you keep stressin' me
 Fuckin' with a mothafuckin' mind
 I figured you wanted to know, you know
 Why we call them hos bitches?
 And maybe this might help you understand
 It ain't personal, strictly business, baby, strictly business
 So if you wonder why we call you bitch
 You wonder why we call you bitch
 If you wonder why we call you bitch
 You wonder why we call you bitch.⁵

The aforementioned lyrics are from Tupac's song entitled "Wonda Why They Call You Bitch" from his multiplatinum album "All Eyez on Me."⁶ In this song, Tupac explains his definition of the word bitch. In his first verse, he introduces the listener to his protagonist, a woman who seeks to obtain monetary gain by sexually sacrificing her body to numerous men, instead of using her intellectual capacity to create opportunity. In the second verse, the story develops and Tupac raps about how his protagonist would rather frequent the night club rather than stay at home with her children. Finally, in the last verse, Tupac completes his verbal narrative about the word bitch. In this verse, the protagonist's story comes to an end as she dies from AIDS as a result of her numerous, unprotected, sexual encounters. Through this track, Tupac highlighted, for the world, that his use of the word bitch was limited to a woman that uses her sexuality to pursue financial gain. While some might perceive this song as Tupac's attempt to "uplift" women, the overwhelming portrayal of women in hip-hop is negative.⁷ Even in Tupac's attempt to tell a positive story about women, the language that he uses is highly disrespectful. Snoop Dog's chorus from Dr. Dre's song "Bitches Ain't Shit" from Dr. Dre's album entitled "The Chronic," better exemplifies the way women are more frequently depicted in hip-hop music.⁸

Bitches ain't shit but hoes and tricks
 Lick on deez nutz and suck the dick

⁵ Tupac, *Wonda Why They Call U Bitch*, RAP GENIUS, <http://rap.genius.com/2pac-wonda-why-they-call-u-bitch-lyrics> (Last visited Mar. 11, 2014).

⁶ *Id.*

⁷ 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, 261 (2007) (discussing the negative portrayal of women in hip-hop music).

⁸ Dr. Dre, *Bitches Ain't Shit Lyrics*, RAP GENIUS, <http://rapgenius.com/Dr-dre-bitches-aint-shit-lyrics> (Last visited Mar. 11, 2014).

Get's the fuck out after you're done
And I hops in my ride to make a quick run. . .⁹

In these lyrics, Snoop makes it very clear that a woman's primary purpose is for sexual gratification. Consistent with this idea, most scholars agree that black women are frequently portrayed in hip-hop music as "Jezebels."¹⁰ The term "Jezebel" finds its origins in the biblical story about Jezebel, the wife of King Ahab of Israel.¹¹ According to the Old Testament, Jezebel was a pagan woman who attempted to convert the people of Israel from following the teachings of God to following the teachings of her Pagan god, Baal.¹² According to scripture, she was able to accomplish her objective through devious means by manipulating her husband and by using his seal to deceive the people of Israel.¹³ Anyone who opposed her rule was persecuted.¹⁴ During her reign, she killed a significant number of God's followers.¹⁵ As a result of these actions, the term "Jezebel" has become a synonym "for a woman who engages in depraved sexual acts, and who herself enslaves and exploits men through sex."¹⁶ The connotative meaning of the word Jezebel further developed during slavery as white slave owners began to sexually and physically victimize black women.¹⁷ Since white slave owners perceived black women as seductive, manipulative, hypersexual animals who possessed an insatiable appetite for sex, white slave owners conceptualized that their mistreatment of black women was justified.¹⁸ Because of this mistreatment, an opprobrious stereotype developed that black women are incapable of sexual exploitation because of their "uncontrolled sexual nature."¹⁹

The portrayal of black women as Jezebel's is highly problematic because such portrayal influences the way that black men perceive black women as

⁹ *Id.*

¹⁰ ELAINE RICHARDSON, HIPHOP LITERACIES 59 (2006).

¹¹ *See 1 Kings; 2 Kings.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Joan R. Tarpley, *Blackwomen, Sexual Myth, and Jurisprudence*, 69 TEMP. L. REV. 1343, 1344 (1996).

¹⁷ Camile Stephine Moncrieffe, *Assessing Empowering and Degrading Forms of Black Entertainment to Understand Idealized Black Womanhood, Career Development, Family formation and the Stereotypes they Embody 21* (2010) (unpublished B.A. thesis, University of Delaware) (on file with the University of Delaware) available at <http://dspace.udel.edu:8080/dspace/bitstream/handle/19716/5492/Moncrieffe,%20Camille.pdf?sequence=1> (citation omitted).

¹⁸ *Id.* at 21. (citation omitted).

¹⁹ *Id.*

well as the way that black women perceive themselves. According to some scholars, stereotyping significantly affects the way that black women conceptualize their own womanhood and sexuality.²⁰ As a result of this problem, there are major social issues that confront black women. For example, black women are more likely to wait longer to report a sexual assault than white women.²¹ This failure to report is deeply rooted in black culture and is kept alive by hip-hop music.²² As noted by one domestic violence advocate, “[t]he black culture . . . is a storytelling culture, rooted in the South before the decline of American apartheid. It comes with its own set of rules,” that are affectionately known as “Blackisms.”²³ Some of these blackisms include: “What goes on in this house, stays in this house;” and “protect, don’t expose.”²⁴ These rules have become gospels of truth in the black community because of the historical belief that whites aren’t to be trusted. Because of this distrust, the black community will often shun those persons who report inappropriate behavior.²⁵ This message is highly prevalent in the hip-hop community and can be found in numerous hip-hop songs including: Lil Wayne’s “Snitch,”²⁶ Jay-Z’s “Stick 2 the Script,”²⁷ Chamillionaire’s “Everybody Hates a Snitch,”²⁸ and Chief Keef’s “I Don’t Like”²⁹ remix featuring Kayne West. In addition to being less likely to report incidents of sexual abuse, black women are more likely to experience issues with their sexual identity because a woman’s identity is largely determined by the predominant societal construct of the group to which she belongs.³⁰ Charles Cooley’s concept of the “looking glass self,”

²⁰ Melissa V. Harris-Perry, *Sister Citizen Shame, Stereotypes, and Black Women in America*, YALE U. PRESS 29, 35 (2011), http://yalepress.yale.edu/yupbooks/excerpts/Harris-Perry_Excerpt.pdf.

²¹ Victoria C. Olive, *Sexual Assault Against Women of Color*, 1 J. OF STUDENT RES., at 4 (2012), <http://www.jofsr.com/index.php/path/article/view/27/0>.

²² Gayle Pollard-Terry, *For African American Rape Victims, a Culture of Silence*, L.A. TIMES, Jul. 20, 2004, <http://articles.latimes.com/2004/jul/20/entertainment/et-pollard20>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Lil Wayne, *Snitch*, RAP GENIUS, <http://rap.genius.com/Lil-wayne-snitch-lyrics> (Last visited Mar. 11, 2014).

²⁷ Jay Z, *Stick 2 the Script*, RAP GENIUS, <http://rapgenius.com/Jay-z-stick-2-the-script-lyrics> (Last visited Mar. 11, 2014).

²⁸ Chamillionaire, *Everybody Hates a Snitch*, SWEETS LYRICS, <http://www.sweetslyrics.com/860992.Chamillionaire%20-%20Everybody%20Hates%20A%20Snitch.html> (Last visited Mar. 11, 2014).

²⁹ Chief Keef, *I Don’t Like*, RAP GENIUS, <http://rapgenius.com/Chief-keef-i-dont-like-lyrics> (Last visited Mar. 11, 2014).

³⁰ STEVEN SEIDMAN, *THE SOCIAL CONSTRUCTION OF SEXUALITY* 22 (Jeffrey C. Alexander ed. 2003) available at [http://www.old.li.suu.edu/library/circulation/Gurung/soc2370sgSocialConstrCh2Fall10.pdf#page=10&z](http://www.old.li.suu.edu/library/circulation/Gurung/soc2370sgSocialConstrCh2Fall10.pdf#page=10&zoom=auto,27,15555)

further explains this phenomenon. According to this theory, people develop their own self-image based on the perceptions of others.³¹ Thus, if other people have a negative image of a particular individual, that individual will have a negative image of themselves.³² In essence, the people who make up an individual's social context provide that individual with a reflection of his or her own reality.³³ For black women that are a part of the hip-hop culture, the overwhelming construct of black women is disrespectful. Consequently,

[m]any psychologists argue that Blacks overall, view themselves through imagery in media, which impacts their ability to develop positive self-concepts and reference groups' identifications. Thus, Blacks internalize these stereotypes and produce behaviors that reinforce them. Music videos are an important form of media to discuss and analyze because they present the many positive and negative meanings of stereotypes presented in electronic media; which can be internalized.³⁴

Because of this depiction of black women, their identity as well as their conceptions of sexual right and wrong can become distorted since the dominant construct is that they are merely sexual objects. As such, the misogynistic and barbaric views that hip-hop culture perpetuates when describing black women causes significant issues of self identity. For example, because black women are overly sexualized and begin to internalize such depiction, they may be less likely to recognize discriminatory conduct and even if they do, they will be less likely to report it.

II. HOSTILE WORK ENVIRONMENT CLAIMS AND THE CONSIDERATION OF THE SOCIAL CONTEXT

In *Meritor Savings Bank, FSB v. Vinson*, the United States Supreme Court expanded the theory of hostile work environment to apply in sexual harassment cases.³⁵ While the Court recognized that Title VII did not

³¹ CHARLES HORTON COOLEY, HUMAN NATURE AND THE SOCIAL ORDER 151–152 (1902).

³² *Id.*

³³ *Id.*

³⁴ Moncrieffe, *supra* note 17, at 5.

³⁵ *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986) (holding that a hostile work environment occurs when a victim is targeted because of her status as a member of a protected class and such targeting is unwelcome regardless of whether the victim participated voluntarily.). The first case to recognize a claim for hostile work environment was *Rogers v. EEOC*, 454 F.2d 234 (5th Cir. 1971). For a thorough history of the hostile work environment claim, please see Professor Clark's article entitled *Equal Opportunity to Harass, Unequal Burdens of Proof: Affirming the Equal Opportunity Harasser*

expressly provide for a claim of hostile work environment, it opined that the language “terms, conditions, or privileges of employment,” evinced a congressional intent to eliminate “the entire spectrum of disparate treatment of men and women.”³⁶ As a result, the court held that a claim of hostile work environment can only be established if a plaintiff-employee can prove each of the following:

- (A) That she was subjected to unwelcome sexual harassment;
- (B) That the harassment was based on sex;
- (C) That the sexual harassment had the effect of unreasonably interfering with the plaintiff’s work performance in creating an intimidating, hostile or offensive working environment that affected seriously the psychological well-being of the plaintiff (The third prong of a prima facie case requires both a subjective and objective inquiry, compelling the court to ask whether a reasonable person would find the workplace environment hostile.); and
- (D) That there is a basis for imputing liability to the employer.³⁷

In determining whether each of these elements is satisfied, the court must conduct its review by considering the totality of the circumstances.³⁸ In making this determination, strong consideration will be given to the social context in which the harassment occurs. The United States Supreme Court’s decision in *Oncale v. Sundowner Offshore Services*,³⁹ represents the Court’s most recent and comprehensive consideration of the social context of harassment. While *Oncale* specifically dealt with whether a male employee could establish a claim for hostile work environment against another male employee, the *Oncale* case reiterated the importance of analyzing the social context of harassment. In *Oncale*, the plaintiff-employee worked as a laborer in an oil field for his employer, Sundowner Offshore Services, Inc. (“Sundowner”).⁴⁰ The employee alleged that his co-workers sexually assaulted him, threatened him with rape, and forced him to participate in embarrassing sexual acts in front of his colleagues.⁴¹ The employee complained to his supervisors as well as the company’s

Defense, 1 TENN. J. OF RACE, GENDER, & SOC. JUST. 59, 62-70 (2012).

³⁶ *Meritor*, 477 U.S. at 64.

³⁷ *Id.* at 63-73.

³⁸ *Id.* at 69.

³⁹ *Oncale v. Sundowner Offshore Services*, 523 U.S. 75, 77 (1998).

⁴⁰ *Id.*

⁴¹ *Id.*

Safety Compliance Clerk; however, no action was taken.⁴² As a result, the employee quit because he felt that if he remained with his employer, he would be forcibly raped.⁴³ The employee brought an action for discrimination based on sex against Sundowner in the United States District Court for the Eastern District of Louisiana.⁴⁴ The court held that a male has no cause of action under Title VII for harassment by male co-workers.⁴⁵ On appeal, the Fifth Circuit affirmed and the United States Supreme Court granted certiorari for a determination on the validity of same-sex sexual harassment claims brought under Title VII.⁴⁶ The Supreme Court reversed the decision of the Fifth Circuit decisions and held that claims alleging “sex discrimination consisting of same-sex sexual harassment are actionable under Title VII.”⁴⁷ Specifically, the Court reasoned that Title VII’s reference to discrimination because of . . . sex” is intended to protect both men and women from unequal treatment in places of employment.⁴⁸ Although the Court extended protection to the plaintiff-employee in *Oncale*, the Court clearly indicated that not all workplace harassment will result in a claim of sexual harassment.⁴⁹ In determining whether workplace harassment violates Title VII, the court in *Oncale* averred that such inquiry

“requires careful consideration of the social context in which particular behavior occurs and is experienced by its target. A professional football player’s working environment is not severely or pervasively abusive, for example, if the coach smacks him on the buttocks as he heads onto the field—even if the same behavior would reasonably be experienced as abusive by the coach’s secretary (male or female) back at the office.”⁵⁰

⁴² *Oncale*, 523 U.S. at 77.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* (internal quotation marks omitted).

⁴⁷ *Oncale*, at 82. When the harasser is of the same sex as the plaintiff-employee, the Court held that there are several frameworks that a plaintiff-employee can use to establish that such harassment occurred because of sex, including: (1) showing that the harasser is homosexual; (2) showing that the harasser is motivated by a general hostility towards the presence of employees of the same sex in the workplace; or (3) showing how the harasser treated men versus women in a mixed-sex workplace. Interestingly, with respect to the second framework, a general hostility towards a particular group would not be a viable option if the same-sex harasser worked in an environment that was dominated by one group. *Id.* at 70, 80-81.

⁴⁸ *Id.* at 78 (quoting *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 682 (1983)).

⁴⁹ *Id.* at 81.

⁵⁰ *Id.*

Moreover, to thoroughly understand whether specific conduct is actionable, a court must consider

“a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed. Common sense, and an appropriate sensitivity to social context, will enable courts and juries to distinguish between simple teasing or roughhousing among members of the same sex, and conduct which a reasonable person in the plaintiff’s position would find severely hostile or abusive.”⁵¹

One of the most often cited cases for consideration of the social context and its ability to limit a plaintiff-employee’s right to recover pursuant to a hostile work environment claim is *Rabidue v. Osceola Refining Co.*⁵² In *Rabidue*, the plaintiff-employee, a female administrative assistant in an Oil Refinery, alleged that she was subject to a hostile work environment.⁵³ The plaintiff’s harassment claim was created largely as a result of her acrimonious working relationship with a male supervisor in another department.⁵⁴ While the harasser did not work in the same department with the plaintiff or have any direct supervisory control over the plaintiff, their workplace responsibilities often required that they coordinate with each other or with personnel from each of their respective departments.⁵⁵ It was undisputed that the harasser was extremely vulgar and crude.⁵⁶ The harasser made obscene comments about women in general and “routinely referred to women as ‘whores,’ ‘cunt,’ ‘pussy’ and ‘tits.’”⁵⁷ The harasser

⁵¹ *Id.* at 82.

⁵² 805 F.2d 611, 620 (6th Cir. 1986).

⁵³ *Id.* at 614. In addition to dealing with the hostile work environment issue, the Sixth Circuit also had to resolve two additional issues. First, the Sixth Circuit had to determine whether the plaintiff’s employer at the time of her suit, Texas-American Petrochemicals Inc., was liable as a successor for harassment that occurred before Texas-American’s acquisition of plaintiff’s previous employer. In regards to this issue, the Sixth Circuit affirmed the trial court’s decision holding that Texas-American was not liable as a successor because plaintiff had yet to file any charge with the EEOC prior to Texas-American’s acquisition and because there was insufficient evidence to establish that Texas-American was on notice of any outstanding or contingent charges before its acquisition. Second, the Sixth Circuit had to determine whether the plaintiff’s employment was terminated because she was a female. Again, the Sixth Circuit affirmed the decision of the trial court holding that plaintiff did not present sufficient evidence to establish that Texas-American’s legitimate nondiscriminatory reason was pre-textual. According to the Sixth circuit, there was substantial evidence in the record that plaintiff’s termination occurred because of the plaintiff’s “many job-related problems, including her irascible and opinionated personality and her inability to work harmoniously with co-workers and customers.” *Id.* at 615.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Rabidue* 805 F.2d at 624.

also directed specific comments at the plaintiff.⁵⁸ On one occasion he specifically made the following comment about the plaintiff: “‘All that bitch needs is a good lay’ and called her ‘fat ass.’”⁵⁹ Within the common work areas, the plaintiff was regularly subjected to inappropriate displays of “nude or partially clad women” that were posted by the male co-workers.⁶⁰ “One poster, which remained on the wall for eight years, showed a prone woman who had a golf ball on her breasts with a man standing over her, golf club in hand, yelling ‘Fore.’”⁶¹ The plaintiff, along with several other female employees, repeatedly filed written complaints because they were fearful that they would lose their jobs if they complained directly.⁶² However, the employer did nothing because the harasser was a key employee.⁶³ The trial court granted, and the Sixth Circuit affirmed, summary judgment in the employer’s favor.⁶⁴ According to the Sixth Circuit,

a proper assessment or evaluation of an employment environment that gives rise to a sexual harassment claim would invite consideration of such objective and subjective factors as the nature of the alleged harassment, the background and experience of the plaintiff, her coworkers, and supervisors, the totality of the physical environment of the plaintiff’s work area, the lexicon of obscenity that pervaded the environment of the workplace both before and after the plaintiff’s introduction into its environs, coupled with the reasonable expectation of the plaintiff upon voluntarily entering that environment. Thus, the presence of actionable sexual harassment would be different depending upon the personality of the plaintiff and the prevailing work environment and must be considered and evaluated upon an ad hoc basis.⁶⁵

According to both the trial court and the Sixth Circuit, the social context of the work place environment was a key consideration in determining whether the harassment suffered by the employee was cognizable under Title VII. The following language from Judge Newblatt’s district court opinion in this case best articulates the reasoning behind the holding in this case:

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 615.

⁶¹ *Id.* at 624 (Keith, dissenting).

⁶² *Rabidue*, 805 F.2d at 624.

⁶³ *Id.*

⁶⁴ *Id.* at 623.

⁶⁵ *Id.* at 620.

Indeed, it cannot seriously be disputed that in some work environments, humor and language are rough hewn and vulgar. Sexual jokes, sexual conversations and girlie magazines may abound. Title VII was not meant to-or can-change this. It must never be forgotten that Title VII is the federal court mainstay in the struggle for equal employment opportunity for the female workers of America. But it is quite different to claim that Title VII was designed to bring about a magical transformation in the social mores of American workers.⁶⁶

In addition to *Rabidue*, there are other cases that have been equally resistant to allow a hostile work environment claim after considering the social context of the harassment. For example, in *Gross v. Burggraf Const. Co.*,⁶⁷ a female plaintiff-employee, who was employed as a truck driver, brought suit against her employer, Burggraff Construction Company, alleging that she was subject to a hostile work environment.⁶⁸ Her claim was predicated on the actions and comments of her immediate supervisor, Anderson.⁶⁹ According to the plaintiff, the harassing supervisor directed the following statements at her throughout the course of her employment:

- Anderson referred to her as a “cunt”;
- After Anderson was unable to elicit a response from Gross over the CB radio, he made the following statement to another Burggraf employee: “Mark, sometimes, don’t you just want to smash a woman in the face?”;
- On one occasion, as she left her truck, Anderson yelled at her: “What the hell are you doing? Get your ass back in the truck and don’t you get out of it until I tell you.”;
- Anderson referred to Gross as “dumb” and used profanity in reference to her;
- Anderson approached Gross after work one day and offered to buy her a case of beer if she would tell another Burggraf employee to “go fuck himself”;
- Anderson warned Gross that if she ruined the transmission on her truck she would be fired; and
- Anderson threatened to retaliate against Gross because he had heard that she was contemplating filing an EEOC claim.⁷⁰

⁶⁶ *Id.* at 620-1.

⁶⁷ *Gross v. Burggraf Const. Co.*, 53 F.3d 1531 (10th Cir. 1995).

⁶⁸ *Id.* at 1535.

⁶⁹ *Id.*

⁷⁰ *Id.* at 1536.

In affirming the decision of the trial court to grant summary judgment in the employer's favor, the Tenth Circuit Court of Appeals held that the plaintiff's allegations were insufficient to establish a hostile work environment claim.⁷¹ In support of its decision, the Tenth Circuit relied on the reasoning of *Rabidue* and concluded that the social context of the harassment is a relevant consideration in analyzing whether a plaintiff has been subject to a hostile work environment.⁷² As such, because of the blue collar nature of her employer, the court determined that the plaintiff should expect a certain level of coarseness.⁷³ "In the real world of construction work, profanity and vulgarity are not perceived as hostile or abusive. Indelicate forms of expression are accepted or endured as normal human behavior."⁷⁴

While the holdings of both *Rabidue* and *Gross* used the social context of the work place environment to rule against the employee, not all courts agree.⁷⁵ *Williams v. General Motors Corp.* provides an excellent example of how some courts will not allow the social context of a work place environment that is historically discriminatory towards women, to heighten a female employee's burden in a hostile work environment claim.⁷⁶ In *Williams* a female plaintiff, who worked as a blue collar employee in the tool crib department, alleged that she was subjected to sexual harassment in the form of a hostile working environment.⁷⁷ In support of her claim, she alleged that one of her coworkers constantly used the "F-word" and called

⁷¹ *Id.* at 1547.

⁷² *Gross*, 53 F.3d at 1538.

⁷³ *See Id.*

⁷⁴ *Id.*

⁷⁵ *See Williams v. General Motors Corp.*, 187 F.3d 553, 560-61, (6th Cir. 1999) (illustrating the severe or pervasive test, and the subjective test, which assesses whether the employee herself felt threatened or harassed); *see Powell-Pickett v. AK Steel Corp.*, 904 F.Supp.2d 767, 778 (S.D. Ohio 2012) (stating a female employee brought an action against her employer, alleging that she was treated less favorably and subjected to harassment. The Court stated that in order for her to succeed on the harassment claim the employee's work must be altered and she must meet both objective and subjective components); *see Coy v. Delaware*, (S.D. Ohio 2014), 2014 WL 117085, at 10 (stating that former employee brought action against her employer and male supervisor, alleging sexual harassment in violation of Title VII. The Court stated that in order to establish a case of hostile work environment a subjective aspect must be met, along with other elements. In order to meet the subjective aspect the victim must subjectively regard the environment as abusive.); *see Bryant v. Martinez*, 46 Fed.Appx. 293, 296 (6th Cir. 2002) (explaining that a female former employee brought Title VII action against federal employer. The Court stated, "[t]o prevail, the employee must show conduct that is sufficiently severe or pervasive to alter the conditions of the victim's employment and to create an abusive working environment").

⁷⁶ *Williams*, 187 F.3d 563.

⁷⁷ *Id.* at 559. The tool crib was "a warehouse used to store materials and components used at [General Motor's] plant, from which materials were distributed by an attendant to assemblers who requested them." *Id.*

her a slut.⁷⁸ This same co-employee also remarked that he was “sick and tired of these fucking women.”⁷⁹ Thereafter, he threw several boxes on the plaintiff’s work desk, one of which grazed her hip.⁸⁰ The plaintiff also alleged that her general supervisor engaged in sexually discriminatory conduct.⁸¹ On one occasion, her supervisor looked at her breast while talking to another employee and remarked that she could rub up against him anytime.⁸² He also remarked that “You would kill me, Marilyn. I don’t know if I can handle it, but I’d die with a smile on my face.”⁸³ On another occasion, while she was writing the name “Hancock Furniture Company” on a piece of paper, her supervisor “came up behind her, put his arm around her neck and leaned his face against hers, and said, ‘You left the dick out of the hand.’”⁸⁴ The plaintiff-employee further alleged that there were several additional incidents that contributed to her hostile work environment claim that established a general hostility towards her womanhood, these include: someone gluing documents to her desk, denial of overtime, denial of regularly scheduled breaks, failure to provide her with a key to the office, relegation to the back of the workplace, and limiting her ability to access her work station.⁸⁵ In considering these facts, the district court granted the employer’s motion for summary judgment because the court reasoned that the employee’s work place environment was not sufficiently severe or pervasive.⁸⁶ The court of appeals reversed and expressly rejected *Gross* and *Rabidue*.⁸⁷ The court of appeals reasoned that it does not believe:

A woman who chooses to work in the male-dominated trades relinquishes her right to be free from sexual harassment; indeed, we find this reasoning to be illogical, because it means that the more hostile the environment, and the more prevalent the sexism, the more difficult it is for a Title VII plaintiff to prove that sex-based conduct is sufficiently severe or pervasive to constitute a hostile work environment. Surely women working in the trades do not deserve less

78 *Id.*

79 *Id.*

80 *Id.*

81 *Williams*, 187 F.3d at 559.

82 *Id.*

83 *Id.*

84 *Id.* at 563.

85 *Id.* at 559.

86 *Williams*, 187 F.3d at 558.

87 *Id.* at 563.

protection from the law than women working in a courthouse.⁸⁸

While the majority decision dismissed any requirement that a victimized employee establish a stronger case of discrimination, where the work place environment is historically hostile, Judge Ryan's dissenting opinion expressly rejected the majority's holding.⁸⁹ Instead, in his dissent, Judge Ryan reaffirmed his belief that *Gross* and *Rabidue* require a plaintiff to endure a certain level of coarseness when the social context is historically hostile.⁹⁰ According to Judge Ryan, the majority, in considering the "totality of the circumstances," improperly eliminated consideration of "the nature and character of the workplace environment."⁹¹ In Judge Ryan's view:

The shop floor is a rough and indelicate environment in which finishing school manners are not the behavioral norm. When a female of ordinary civility, sensibilities, and morality walks into a work milieu that may be tastelessly suffused with rudeness, personal insensitivity, crude behavior, and locker room language, she must do so with the understanding that Congress has not legislated against such behavior and such a workplace environment. That is not to say for a moment that an employer is immune from liability for hostile work environment sex discrimination occurring in the factory or shop simply because the environment is *regularly* laced with crude behavior that includes sexual abuse. It means only that the customary "culture," or lack of it, in a particular workplace is a part of the totality of circumstances to be taken into account *in determining* whether the nature and extent of the claimed harassment is so "severe and pervasive" that it has caused the workplace, such as it is, to become permeated with *discriminatory* intimidation, ridicule, and insult and has "*alter[ed] the conditions* of the victim's employment" in that place.⁹²

Essentially, Judge Ryan's dissent stands for the proposition that Title VII should not be interpreted to require a higher level of civility in workplace environments where the social context naturally encompasses a certain level of coarseness.

⁸⁸ *Id.* at 564.

⁸⁹ *Id.* at 570-1

⁹⁰ *Id.*

⁹¹ *Williams*, 187 F.3d at 570-1.

⁹² *Id.* at 571.

III. ALL IS FAIR IN LOVE AND BASKETBALL

Gross, *Rabidue* and Judge Ryan's dissent in *Williams*, highlight the harsh reality that in determining whether a victimized employee can establish a claim of hostile work environment, a court will consider the social context of the work place and if such context encompasses a certain level of coarseness, a plaintiff will have a more difficult time establishing discrimination. Moreover, these cases clearly stand for the proposition that, in some work place environments, women may be required to endure conduct that may be offensive in other context. Based on this reality, a critical question exists – can the social context of a work place environment change in a way that would require women to be more tolerable of inappropriate conduct. In both *Rabidue* and *Gross* cited above, the work place environments can best be described as “blue collar” environments. And as both courts articulated, a woman should expect a certain level of coarseness in blue collar environments. However, neither case limited application of the coarseness standard to cases involving blue collar workers. Moreover, *Oncale* clearly holds that the social context is a key consideration in evaluating the totality of the circumstances in all hostile work environment claim. Thus, a possibility is left open that the social context of a traditionally professional environment can change to reflect the context of a blue collar environment. Arguably, the social context of a boardroom or white collar environment, with the right composition, could mirror the more coarse type of workplace environment that courts observed in *Gross* and *Rabidue*.

The sexual discrimination case filed by Anucha Browne Sanders against former NBA star Isiah Thomas and the New York Knicks provides a useful example of how the social context can possibly change. Although this case was ultimately resolved in the plaintiff-employee's favor, it nonetheless, provides an excellent example of my conception of “ballin in the boardroom.”⁹³ In February 2006, Browne Sanders was fired from her job as the Knicks' senior Vice President for Marketing and Business Operations.⁹⁴ In response, Sanders contended that she was fired from the

⁹³ In December 2007, Sanders, a former senior executive with the New York Knicks, settled a sexual harassment suit against Madison Square Garden (“MSG”), its owner, James Dolan, and the New York Knicks' former head coach and President of Basketball Operations, Isiah Thomas. Prior to the settlement, Sanders had obtained jury verdict in her favor that awarded her 11.6 million dollars in punitive damages; however, before a determination regarding her compensatory damages, the case was settled for an undisclosed amount.

⁹⁴ Robin Shulman & Michael Lee, *Jury Rules Thomas Harassed Woman*, WASH. POST (Oct. 3, 2007), <http://www.washingtonpost.com/wp-dyn/content/story/2007/10/02/ST2007100201255.html>.

organization in retaliation for filing a sexual harassment complaint.⁹⁵ MSG argued that she was legitimately “fired for incompetence and interfering with the organization’s investigation of the complaint.”⁹⁶ According to Sander’s lawyers, her workplace environment was chaotic as evidenced by the fact that “Thomas could address Browne Sanders as ‘bitch’ and ‘ho’ and get away with it; star guard Stephon Marbury could bed an intern and still be coddled by Thomas; upper management could draw up rules against sexual harassment and fail to enforce them.”⁹⁷ Sanders recalled one incident that occurred during a community event at the Knicks practice facility where Thomas grabbed Sanders’ arm and pulled her into the bike room at the Garden, complaining that the players were tired.⁹⁸ At that point, Thomas replied that “We’re not going to do any more of these fucking community events. . . . I’m here to win fucking basketball games,” and you’re not going to fuck up what I’m trying to do.⁹⁹ Similarly, during another incident, Sanders recalled giving Thomas what she called a “cheat sheet” for marketing – a small laminated card that held key information about season-ticket holders, community programs, and sponsors.¹⁰⁰ In response Thomas replied, “Bitch, I don’t give a fuck about the [season subscribers].”¹⁰¹ “I don’t give a fuck about these white people.”¹⁰² Browne’s situation became even more frustrating when she reported Thomas’s harassment to MSG president, Steve Mills, and he failed to provide any reasonable resolution.¹⁰³ In fact, according to Browne, Mills’ only response was that she should not attempt to file a sexual harassment claim against Thomas because Thomas would spread a rumor that Browne had an affair with another MSG employee.¹⁰⁴

Thomas’s conduct is a clear example of “ballin in the boardroom,” as he used the inappropriate banter and verbal abuse that is typified on the basketball court, in an executive setting. While the court in the Thomas

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Tom Hays, *Verdict in Thomas Trial May Send Message to Sports World*, USA TODAY (Oct. 3, 2007, 5:28 PM), http://usatoday30.usatoday.com/sports/basketball/2007-10-03-2883058112_x.htm.

⁹⁸ Thomas Zambito, *Browne-Sanders Slams Isiah Thomas in Sex-Harass Lawsuit*, DAILY NEWS (Sept. 12, 2007 4:00 AM), <http://www.nydailynews.com/sports/basketball/knicks/browne-sanders-slams-isiah-thomas-sex-harass-lawsuit-article-1.247237>.

⁹⁹ *Id.*

¹⁰⁰ Bill Simmons, *Idiot’s Guide to the Isiah Trial*, ESPN (Sept. 27, 2007, 5:18 PM), <http://sports.espn.go.com/espn/page2/story?page=simmons/070927>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Richard Sandmir, *A Former Boss Says that Browne Sanders Resigned from the Garden*, N.Y. TIMES (Sept. 20, 2007), <http://www.nytimes.com/2007/09/20/sports/basketball/20msg.html>.

¹⁰⁴ *Id.*

case did not allow Thomas's inappropriate conduct to destroy Sanders ability to establish a claim for discrimination, such result may have had less to do with the social context and more to do with Sander's credibility, education, strength and personal sense of empowerment. As George Washington law professor, Tanya Hernandez, remarked, Thomas's actions may have occurred because he was intimidated by Sanders.¹⁰⁵ According to Hernandez, Sanders "with her proper speech and bearing, at some level embodied for Thomas a 'white corporate presence' that rankled or intimidated him."¹⁰⁶ Thomas couldn't get

along with Anucha [Sanders], because here's someone who's not only an equal but in some respects needs to dictate what he does. . . . Many of the women he's [Thomas] interacted with in his basketball career were there for a very different reason, [stated Browne Sanders]. . . . [P]rofessional sports . . . [are] known for the groupies who trail players from city to city. . . . [Whereas, to the best of Sanders knowledge,] she was the highest-ranking African-American woman Thomas had ever worked with.¹⁰⁷

Upon further examination of the conflict between Sanders and Thomas, it is evident that the crux of Thomas' harassment stemmed from his failure to adapt to the corporate culture of his workplace environment. Instead, Thomas took the social context of the basketball court into the boardroom. For Thomas, there was no real distinction between the way he interacted with women in his capacity as an NBA player and his capacity as an executive. But for the fact that Sanders was highly educated woman with a strong sense of personal empowerment her story would be representative of the narrative that many women experience in the workplace who are reluctant to report such conduct. Moreover, in jurisdictions that apply the coarseness standard in analyzing claims of harassment, although it is highly likely that Ms. Sanders would have still prevailed, her claim may have been slightly more difficult to establish because of the nature of the workplace environment had eroded once Thomas entered it.

CONCLUSION

Hip-hop culture substantially affects the way its proponents interact on the "streets" as well as in the "boardroom." Hip-hop culture is no longer

¹⁰⁵ Maureen Holohan, *Game On*, ELLE (Mar. 12, 2008), <http://www.elle.com/life-love/sex-relationships/game-on-6>.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

limited to the cultural context of the urban street corner; it has transcended its roots and can now be heard and observed on every street corner and office in America. As evidence of hip-hop's accumulation of influence, hip-hop has grown up from a music genre that was initially limited to the boroughs of New York, to playing a significant role in electing America's first black president.¹⁰⁸ With hip-hop's increased influence, comes an increased responsibility. No longer can hip-hop merely depict a narrative where black women are characterized as Jezebels. One of the fundamental tenants of hip-hop music is the idea of "Keeping it Real." At the essence of this idea, is that the music must accurately depict and tell the stories of its disciples. The harsh reality of this notion is that some of these stories are derogatory. While the notion of the Jezebel is a realistic figure in hip-hop culture, it is not an accurate depiction of the overwhelming percentage of women in hip-hop. Hip-hop fails to "keep it real" to the extent that it portrays the Jezebel as the central female narrative. As part of hip-hop's maturation process, it must do a better job of dispelling this myth. Hip-hop music must tell the stories of hip-hop's dynamic women. Hip-hop needs more songs like Nas's, "Black Girl Lost,"¹⁰⁹ Tupac's, "Keep Ya Head Up,"¹¹⁰ De La Soul's, "Millie Pulled a Pistol on Santa,"¹¹¹ and Lil Webbie's "Independent."¹¹² The fundamental message in each of the

¹⁰⁸ Andre Douglas Pond Cummings, *Thug Life: Hip-Hop's Curious Relationship with Criminal Justice*, 50 SANTA CLARA L. REV. 515, 517-25 (2010). ("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 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.")

¹⁰⁹ Nas, Black Girl Lost, AZLYRICS.COM <http://www.azlyrics.com/lyrics/nas/blackgirllost.html> (last visited OCT. 5, 2014). "Black girl lost" is a track on Nas's classic album, "It Was Written." In this song, Nas chronicles a series of cautionary tales about various female adolescents from the hood who have become misguided into devaluing their womanhood.

¹¹⁰ Tupac, Keep Ya Head Up, AZLYRICS.COM <http://www.azlyrics.com/lyrics/2pac/keepyaheadup.html> (last visited OCT. 5, 2014). "Keep Ya Head Up," is largely considered one of the most positive and uplifting hip-hop songs about black women. In this song, Tupac raps about the blatant mistreatment of black women and advocates that black men offer them a substantially higher level of respect.

¹¹¹ De La Soul, Millie Pulled A Pistol, RAP GENIUS, <http://rap.genius.com/De-la-soul-millie-pulled-a-pistol-on-santa-lyrics> (last visited OCT. 5, 2014). "Mille Pulled a Pistol on Santa" is a hip-hop classic, by De La Soul, that tells the story of a teenage girl that kills her father because he molested and physically abused her. Millie attempted to reach out to others for help, but no one came to her aid because no one believed that her father, a highly regarded social worker, would commit such acts. After her pleas for help fell on deaf ears, Millie took destiny in to her own hands. While her father was volunteering at the local Macys store by playing Santa Clause for the local children, she confronts him about the evils that he has perpetrated against her. As Millie points a gun at her father, he pleads for his life and admits to the transgressions that he committed against his daughter. However, his admissions hurt Millie even deeper and she shoots and kills him.

¹¹² Lil Webbie, Independent, AZLYRICS.COM <http://www.azlyrics.com/lyrics/webbie/independent.html> (last visited OCT. 5, 2014). In Lil Webbie's

aforementioned songs is one of female empowerment. These songs inspired the hip-hop community to think more positively about black women and more importantly, inspired black women to appreciate the value of their own self worth.

In addition, hip-hop must endeavor to promote more positive female lyricists. During hip-hop's infancy, the central female MC's were characterized by their intellectual capacity, afro centricity, personal empowerment and high levels of self-consciousness. Moreover, many of the early female rappers could accurately be classified as feminist rappers whose persona's demanded respect without using their sexuality to gain attention. Rappers like Queen Latifa, Yo Yo, Ms. Melodie, Salt' n Pepa, M.C. Lyte, Roxanne, and Sista Soulja embodied the types of female artists that were prevalent at the beginning of hip-hop.



song entitled "Independent" he raps about his ideal woman - one who is college educated, financially viable, has a strong spiritual foundation and who has a professional career.



These feminist rappers created music that focused on promoting the intrinsic value of womanhood, that demanded equal treatment as well as equal opportunity for women, and that demonstrated the need for women to support each other.¹¹³ Today, the females that are at the forefront of hip-hop are substantially different than their early counterparts. Instead of focusing on creating and reinforcing positive images of black women, present day females artist continue to perpetuate the idea of the Jezebel. “Unlike the earlier wave of female rappers, the most visible women in mainstream hip-hop take stereotypical notions of black women and make them profitable. Lil Kim, Foxy Brown, Trina, Khia and Jacki-O branded themselves as peddlers of the freak nasty.”¹¹⁴

Back in the day, a femcees’¹¹⁵ worth was “proved by her freestyle form instead of her physical one. Unfortunately, as time marched on, femcees rapping off the top of the dome dwindled to spitting about giving it.”¹¹⁶ Female rappers Lil Kim and Nicki Minaj are generally “credited as the catalysts for the revolutionary sexual persona of the new generation. They

¹¹³ See Robin Roberts, “Ladies First”: *Queen Latifah’s Afrocentric Feminist Music Video*, 28 AFR. AM. REV. 245 (1994), <http://www.public.asu.edu/~kleong/queenlatifahfeminism.pdf>.

¹¹⁴ Regina Bradley, *What Nicki Minaj Means to Black Women*, NEWSONE (Nov. 3, 2010), <http://newsone.com/842885/what-nicki-minaj-means-to-black-women/>.

¹¹⁵ A female rapper.

¹¹⁶ Bradley, *supra* note 115.

have established their fame largely because of their ‘barely there’ fashions.”¹¹⁷ The troubling part about the widespread fame of the new generation of female rappers is that they say “nothing lyrically, with respect to the social status of African-American women, but talk loud[ly], since they are among the most successful of the contemporary female rap artists.”¹¹⁸ Moreover, “the new generation personifies what has perhaps been the most destructive image of African-American womanhood, an image that African- American women have for centuries tried to ‘live down.’ The Jezebel image, as glorified by emerging female rappers, continues to be resurrected from history and projects a distorted image of African-American womanhood.¹¹⁹

If hip-hop culture promotes more music that portrays black women in a positive light and promotes more positive femcees, the detrimental effect that the image of the Jezebel has on influencing the way black women perceive themselves will substantially improve. As this perception improves, the victimization that occurs to black women in the workplace will lessen because they will be more inclined to report harassing conduct. If black women see other women in positions of power and hear more music that places a value on their personal self worth, they will be less likely to accept workplace harassment and mistreatment because they will be able to better recognize that such conduct is inconsistent with the idea of respect. Consistent with Cooley’s idea of the looking glass self, if black women hear music depicting positive narratives about black women and also observe empowered black women at the forefront of hip-hop culture, such reality will create a positive construct that promotes empowerment.

Finally, as hip-hop culture perpetuates a more positive image of black women, the possibility of the “ballin in the boardroom” mentality will dissipate. As highlighted by Professor Tanya Hernandez in her assessment of Isiah Thomas, part of the reason some men harass women is because of their limited experience in dealing with black women in positions of power and because of their limited experience in dealing with women who value themselves beyond their physical capacity.¹²⁰ As a result of this lack of experience, men who are influenced by the negative aspects of hip-hop music are more likely to treat black women in a manner that is consistent

¹¹⁷ Lori A. Tribbett-Williams, *Lil’ Kim and Foxy Brown- Caricature of Black Womanhood*, RACE, RACISM AND THE LAW, http://racism.org/index.php?option=com_content&view=article&id=1287:gender04&catid=72&Itemid=215 (last visited Mar. 12, 2014).

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See Holohan, *supra* note 106.

with the idea of the Jezebel. If hip-hop culture can successfully meet its heightened responsibility, the likelihood that “ballin in the boardroom” will occur is lessened.