



School of Law
UNIVERSITY OF GEORGIA

Digital Commons @ University of Georgia
School of Law

Scholarly Works

Faculty Scholarship

11-1-2020

The Music of Mass Incarceration

Andrea L. Dennis

Associate Dean for Faculty Development & John Byrd Martin Chair of Law *University of Georgia School of Law*, aldennis@uga.edu



Repository Citation

Andrea L. Dennis, The Music of Mass Incarceration, Nov.-Dec. 2020, at 14.

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ University of Georgia School of Law. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ University of Georgia School of Law. [Please share how you have benefited from this access](#)
For more information, please contact tstriepe@uga.edu.

By Andrea L. Dennis

THE MUSIC OF



MASS INCARCERATION

Intellectual property law reaches every aspect of the world, society, and creativity. Sometimes, creative expression is at the very crux of societal conflict and change. Through its history, rap music has demonstrated passionate creative expression, exploding with emotion and truths. Now the most popular musical genre in America, rap has always shared—and consistently critiqued—disproportionate effects of the criminal legal system on Black communities. The world is increasingly hearing these tunes with special acuity and paying more attention to the lyrics.

Virtually every music recording artist would consider the following numbers a major career achievement: 500 percent increase; 222 percent growth; 25 percent market share. But these are not recorded music sales or revenue numbers. Rather, they are statistics that make the U.S. number one in the world in incarceration.

Mass incarceration refers to the decades-long phenomenon in which the U.S. has locked up a sizeable amount of its population in federal and state prisons, as well as local jails. According to the Sentencing Project, the U.S. is the world's leader in incarceration with 2.2 million people in prisons and jails, a 500 percent increase over the last 40 years.¹ Despite having only about 5 percent of the world's population, the U.S. has nearly 25 percent of the world's prison population.² The National Research Council reported that increased time served in prison for all offenses accounted for half of the 222 percent growth in the state prison population between 1980 and 2010.³ Most of these offenses are nonviolent crimes. There are more people behind bars for drug offenses today than the number of people who were incarcerated for *any* crime in 1980.⁴

Mass incarceration disproportionately affects people of color in the U.S. Today, more Black people are under the control of prison and corrections departments than were ever enslaved in this country.⁵ People of color make up 37 percent of the U.S. population but 67 percent of the prison population.⁶ This disparity does not correlate with the rate at which crimes are committed. For example, despite the fact that whites engage in drug offenses at a higher rate than Blacks, Blacks are incarcerated for drug offenses at a rate 10 times greater than that of whites.⁷ More generally, Black Americans face a greater likelihood of being arrested than white Americans.⁸ Black Americans are more likely to be convicted once arrested, and more likely to face stiffer sentences once convicted.⁹

While mass incarceration was taking hold in the U.S., rap music was gaining traction. Once deemed a passing fad of the 1970s and 1980s, rap (or hip hop) music has become mainstream, driving American culture and consumption. And its importance is not limited to entertainment, capitalism, and economics. Indeed, rap has played a vital role in the documentation of mass incarceration. From its beginnings 50 years ago, hip hop has explored a range of themes that address the root causes and detrimental effects of mass incarceration, including urban decay, poverty, community violence, hyper-policing, police misconduct and brutality, government surveillance, tough-on-crime policies, and prosecutorial zeal.

Rap music was born during an era of economic vulnerability and tough-on-crime policies, which also contributed

to mass incarceration. Since its birth, rappers of all genres—party, conscious, political, and gangsta—and in every era have written songs critical of social, economic, and legal injustices. They have paid particular attention to the devastating effects of the criminal legal system on Black communities.

Government Economics and the War on Drugs

In the 1960s, urban areas nationwide began to feel the negative effects of complex social and economic transformations that restricted wage and class mobility and fostered income inequality. Jobs were shifting from the manufacturing to the service sector, meaning workers were needed in low-skill, low-wage jobs with little opportunity for advancement rather than semi-skilled jobs with unionized wages. The federal government cut funding for housing, training, and education programs that provided a safety net and promoted upward mobility. Black and Latinx residents in these communities bore the brunt of these negative trends.

The following decades saw the birth and growth of the war on drugs, which President Nixon commenced in 1971.¹⁰ President Reagan continued the battle cry in October 1982 during a weekly radio address.¹¹ This war involved the provision of federal government funding to states to combat crime, the deployment of military tactics and strategies for policing, and a dramatic increase in the length of custodial sentences.

Just as Reagan was sounding a battle cry, the pioneering rap group Grandmaster Flash and the Furious Five recorded “The Message,” which critiques the impoverished conditions of urban housing projects and was one of the first rap songs of what would become rap's ongoing commentary regarding socioeconomic conditions in the Black community. Not long thereafter, in 1984, Run-DMC, the highly influential rap group, released “It's Like That” and “Hard Times.” “It's Like That” addresses unemployment, the cost of living, homelessness, and the difficulties of life in poor, urban environments. Similarly, “Hard Times” illustrates financial difficulties and the need to work hard to overcome challenges.

In the late 1980s, a Black nationalist style emerged in rap music, continuing the tradition of earlier songs that trained a spotlight on policies that facilitated economic and social disenfranchisement in Black communities. Public Enemy was the most successful of this group of political or conscious artists. In 1988, the group released “Black Steel in the Hour of Chaos” on its album *It Takes a Nation of Millions to Hold Us Back*. The song tells the story of a Black inmate who escaped from prison and refused to join the U.S. Army because he believed society mistreated Black men. The group's follow-up album, *Fear of a Black Planet*, deals with themes of anti-miscegenation and white supremacy, institutional neglect and racism, and Black pride. In particular, the hit track “911 Is a Joke” describes how first responders, i.e., medical personnel, were slow to react to the emergency calls and needs of Black people.

Andrea L. Dennis is Associate Dean for Faculty Development and John Byrd Martin Chair of Law at the University of Georgia School of Law. She is coauthor of *Rap on Trial: Race, Lyrics, and Guilt in America* (2019). She can be reached at aldennis@uga.edu.

Police Violence

Also during the late 1980s, gangster or gangsta rap, which, like political or conscious rap, engaged in strident critiques of society, grew out of repressive criminal justice practices, particularly in Los Angeles, California. During this time, in his 15 years heading the Los Angeles Police Department (LAPD), Daryl Gates built on an aggressive policing model of former LAPD police chief William H. Parker. Gangster rap in this period fixated on government hyper-aggressive, militaristic, brutal policing tactics.

The notorious hustler-turned-rapper Ice-T released in 1986 what is considered by many to be the first gangster rap: “6 'N the Mornin'” (others will say it was “P.S.K. What Does It Mean?” released in 1984 by Philadelphia-based rapper Schoolly D). Written in the first person, “6 'N the Mornin'” depicts physical violence, the drug trade, police chases, gun possession, arrest and incarceration, prostitution, homicide, and sex. As a B-side song, Ice-T did not expect the song to become as popular as it did. Seeing its popularity spurred Ice-T to make Los Angeles gang life a central theme in future works, although he did not affiliate with a particular gang.

FOR 400 YEARS, BLACKS IN AMERICA HAVE USED MUSIC TO CALL OUT AND CONTEST THE INJUSTICES THEY HAVE FACED.

Two years later, the release of the iconic gangster rap, police protest song “Fuck tha Police” can be directly linked to the actions of the LAPD.

On August 1, 1988, the LAPD conducted the infamous Dalton Avenue drug raid in South-Central Los Angeles. The raid was part of “Operation Hammer,” a large-scale police effort Gates created in 1987 after eight people were killed during a drive-by shooting of a party in South-Central Los Angeles. Operation Hammer engaged in massive sweeps and mass arrests with the aim of clamping down on gang violence. On the night of August 1, more than 80 officers raided and searched for drugs in four apartments in two buildings. In the course of the raid, officers beat residents and caused

massive property damage. Ultimately, officers recovered less than one ounce of cocaine and six ounces of marijuana, and no arrests were made. Some families were left homeless as a result of the extensive damage. The city paid \$4 million in damages to settle lawsuits, a couple of officers were fired, and more than 20 were put on leave without pay.

That same month, legendary N.W.A released its song “Fuck tha Police” on the album *Straight Outta Compton*. The lyrics excoriate local law enforcement for racial profiling, unlawful conduct, and targeting young men of color for violent treatment. The song challenges the authority of law enforcement and depicts violent responses to law enforcement.

In 1992, Ice-T’s heavy metal group Body Count issued “Cop Killer.” The song protests police brutality and references by name then LAPD police chief Daryl Gates and Rodney King, whose beating by LAPD officers in 1991 was videorecorded. Like “Fuck tha Police,” the character in “Cop Killer” seeks violent revenge for victims of police brutality.

A long-standing, national problem, police brutality is the unwarranted or excessive, and often illegal, use of force against civilians by law enforcement officers.¹² Police brutality takes many forms, ranging from simple assault and battery to aggravated assault to murder. It also encompasses mistreatment such as harassment, false imprisonment, intimidation, and verbal abuse.¹³

It is well-documented that people of color in America disproportionately suffer police brutality.¹⁴ Reports show that Blacks and Hispanics are more likely to experience excessive police force in comparison to whites.¹⁵ Even after accounting for situational factors of a police-citizen encounter, such as resisting arrest, and officer characteristics, such as age and training, studies show stark racial disparities in police maltreatment: Black boys and men are disproportionately subject to excessive, and sometimes deadly, police force.¹⁶

About 10 years after N.W.A released “Fuck tha Police,” the quintessential conscious rapper KRS-One continued to rail against law enforcement misconduct, releasing “Sound of da Police” in 2000. Generally, the song builds out themes of institutionalized racism in policing and policing misconduct. Specifically, the song addresses drug dealing by police, law enforcement ability to use deadly force (like slave overseers), and unlawful traffic stops. Finally, the song reminds the listener that police misconduct is intergenerational; the ancestors of today’s Black people dealt with the same issues—and so do their descendants.

As the world has become more aware in recent months, there have been many well-publicized instances of law enforcement officers killing unarmed Black men, including Eric Garner in New York City in 2014; Michael Brown in Ferguson, Missouri, in 2014; Walter Scott in North Charleston, South Carolina, in 2015; Freddie Gray in Baltimore, Maryland, in 2015; Stephon Clark in Sacramento, California, in 2018; and George Floyd in Minneapolis, Minnesota, in 2020.¹⁷ Many other killings of Black men and boys have received far less national attention but are equally disturbing and impactful.

In 2020, society seems to have reached a tipping point. Following the police killings of George Floyd in Minnesota and Breonna Taylor in Louisville, Kentucky, and the killing of Ahmaud Arbery by white vigilantes in Glynn County, Georgia,

and the months of protests that have engulfed America, rap artists have used their voices to draw attention to these crimes and, more broadly, to racism. Notably, legendary rapper LL Cool J posted online a spoken word tribute to George Floyd and other victims. The rap opens with: “For 400 years, you had your knees on our necks,” referencing George Floyd’s actual killing and, metaphorically, white society’s racism. Addressing government economic policies, the song turns to the topic of coronavirus stimulus relief: “I can’t be bought with a \$1,200 check / Even though \$1,200 can make a meal stretch.” The song continues with a comparison of the government response to the sometimes-violent protests by Black activists and the police reaction to whites protesting pandemic mitigation measures while sporting weapons and spitting in the faces of officers. After calling out names of more Black victims, LL Cool J closes with: “Being black in America is like rolling a pair of dice / But the stakes are way higher, you’re gambling with my life / Black Lives Matter, forever.”

While hyper-incarceration and police violence may be the most obvious effects of mass incarceration and the ones that receive significant public attention, there are practices and trends within the criminal legal system—such as racial profiling, surveillance, and criminalization of rap—that warrant significant scrutiny, and rap artists have heeded the call.

Race-Based Traffic Stops

Racial profiling is “the law enforcement practice of using race, ethnicity, national origin, or religious appearance as one factor, among others, when police decide which people are suspicious enough to warrant police stops, questioning, frisks, searches, and other routine police investigative practices.”¹⁸ Racial profiling is a discriminatory practice that does little to fight crime or increase public safety. “[P]eople of color are overrepresented among those who are stopped, cited, searched, and arrested” by law enforcement.¹⁹ They often are stopped for minor traffic infractions in an effort to investigate other crimes for which the police have no evidence (a.k.a. “Driving While Black”), even though research evidence reveals that contraband, such as weapons and drugs, is not more likely to be found among African American drivers than when white drivers are stopped.²⁰

Jay-Z’s 2003 hit song “99 Problems” from *The Black Album* sounds the alarm regarding racial profiling and traffic stops. The second verse describes a scene in which he is driving a car containing drugs in the trunk. He is pulled over by an officer for allegedly “doing fifty-five in a fifty-four.” When the officer asks if he knows why he has been stopped, he remarks, “Cause I’m young and I’m Black and my hat’s real low.” The officer then asks him whether he is carrying a weapon because “I know a lot of you are.” When the officer asks for license and registration, he responds that his papers are “legit,” i.e., his license is valid and his car is properly registered. The officer then asks whether he can search the car, and Jay-Z’s character refuses, understanding that the officer is looking for criminal evidence. The officer gets the final word, responding that he is calling a drug-sniffing dog to the scene to search the car.

Two years later, Grammy-winning rapper Chamillionaire (Hakeem Seriki) released “Ridin’,” which itemizes the pretextual

bases on which law enforcement conduct traffic stops of Black men driving in their vehicles: loud music; a flashy, tricked out vehicle; claims of erratic driving or an open warrant. The song explicitly calls out this police practice by its name: racial profiling. The story finishes with officers pulling over a driver and becoming angry when they fail to detect any criminal activity.

Mass incarceration results not only from street-level police-citizen interactions but also from more arms-length investigative practices.

The Surveillance State

Government surveillance has long been an essential feature of criminal policing and prosecution and a practice that is not limited to serious criminals or suspects. Surveillance takes many forms, from spying to eavesdropping to tracking to online monitoring. Individuals and whole communities are surveilled.

This feeling of being watched by government officials has played out time and again in the work of many rap artists. Public Enemy suspected it was being watched, a sentiment starkly revealed in the group’s logo, a picture of a man in crosshairs.

RAP MUSIC, IN PARTICULAR, HAS BEEN A POTENT MEANS TO EDUCATE LISTENERS ABOUT MASS INCARCERATION.

Ice Cube’s 1993 song “Ghetto Bird” focuses on the LAPD’s pervasive use of police helicopters to surveil Black areas of Los Angeles. The helicopter isn’t simply conducting flyovers of the city looking for particular offenders. It circles the area at night, shining a bright spotlight on the community, penetrating residents’ windows, and generally monitoring goings-on. When called into action, the helicopter is used in chases, following a suspect in the sky and alerting officers on the ground of the path a suspect is traveling.

More than any other, 2Pac wrote songs depicting his surveillance by government officials, not hesitating to call them out by name. For example, in “I Don’t Give a Fuck” on his 1991 debut studio album *2Pacalypse Now*, he sends a “fuck you” to the San Francisco Police Department, the Marin County Sheriff’s Department, the FBI, the CIA, the first

President Bush, and America. Even years later, on his fourth and final album, *All Eyez on Me*, released in 1996, the song by the same title mentions that the feds were watching him.

Surveillance has not been limited to individual artists. The larger hip hop community is under watch nationwide. Nearly 30 years ago, the New York City Police Department (NYPD) established a hip hop task force, i.e., a special unit of police officers targeting rap artists in the city. Not long thereafter, other major cities, including Atlanta, Chicago, Las Vegas, Los Angeles, and Miami, followed the NYPD model and set up their own task forces. The primary responsibility of these units is to keep track of rap artists' disputes, criminal histories and activities, and general whereabouts. They continue to operate today.

Long before their public unveiling by journalists, artists have been aware of these hip hop task forces and their goals. For example, in a 2007 song titled "Hip Hop Police" by Chamillionaire (featuring rapper Slick Rick), the chorus expressly calls out government surveillance: "With so much drama in the industry / Hip hop police are listening / Be careful or you'll be history." In the rap, Chamillionaire narrates a story in which he is harassed by the hip hop police and ultimately arrested for murder. The officers try to convince him to snitch on other artists, including Busta Rhymes, Snoop Dogg, and an unidentified rapper who is allegedly a gang member, in exchange for a lighter sentence. Police point out that they have mounds of evidence against him, including songs he has recorded on CDs.

The Criminalization of Rap Music

There is a particularly troubling aspect of the connection between hip hop and mass incarceration: a situation where rap music documenting mass incarceration moves to rap music facilitating mass incarceration. As far back as the early 1990s, police and prosecutors nationwide have been using rap lyrics as criminal evidence to investigate, convict, and sentence young Black and Latino men.

This author's research has uncovered hundreds of cases—mostly drug, gang, or violent crime—in which rap lyrics have been used as criminal evidence. Undoubtedly, this is just the tip of the iceberg. Despite its scope, the practice has gained public attention only in recent years. Journalists have covered the stories of high-profile defendants, such as Louisiana rapper McKinley (Mac) Phipps and, more recently, Tekashi 6ix9ine. Major legal decisions touching on the topic, such as the U.S. Supreme Court's 2015 opinion in *Elonis v. United States*,²¹ have attracted attention. Within the music community, Atlanta-based rapper Killer Mike has raised awareness of the issue, joined by other well-known artists such as 21 Savage, Chance the Rapper, Meek Mill, and Luther Campbell.

Currently, this tactic is playing out before the public in the case of rising rap star Darrell Caldwell, better known to fans as Drakeo the Ruler. Drakeo, a gifted and popular rap artist, has been described as one of the most original new rappers to emerge out of his hometown, Los Angeles. He has amassed hundreds of thousands of followers on social media, tens of millions of views on YouTube, and the attention of national media outlets.

In 2017, Los Angeles prosecutors charged Drakeo with ordering a 2016 shooting that, according to prosecutors, was a botched attempt to kill a musical rival, fellow Los Angeles-based rapper

RJ. However, at his trial in 2020, the jury acquitted him of most of the counts against him, including multiple counts of murder.

But prosecutors plan to retry him on the lone charge the jury hung on in the first trial: criminal gang conspiracy. Drakeo is a member of a well-known rap collective called the Stinc Team. Prosecutors claim the collective is actually a criminal street gang and allege that Drakeo benefited from the gang's violence. If convicted, Drakeo faces life in prison.²²

While Drakeo sits in the Men's Central Jail in Los Angeles awaiting retrial, his artistic voice has not been silenced. In March 2020, he released a new album—*Free Drakeo*—from jail. A collection of previously recorded works, the album is commercially entertaining and politically conscious. He followed that up in June 2020, releasing an album entirely recorded over the jail phone system: *Thank You for Using GTL*. As one reviewer wrote: "[A]s a statement about the carceral state, capitalism, the prison-industrial complex, the U.S. criminal justice system's targeting of rap and rappers, and the ongoing game of real vs. fiction taking place within hip hop itself, it's unimpeachable."²³ The song "Fictional" is particularly notable in that it tackles head-on the issue of rap as fiction versus nonfiction, which is playing out in Drakeo's case and courtrooms across America. He raps: "It might sound real but it's fictional / I love that my imagination gets to you." As *Washington Post* music critic Chris Richards commented:

[A]fter phoning-in the performance of a lifetime, Drakeo pivots into a soliloquy . . . offering up his own best defense: "You're not gonna hold Denzel Washington accountable for his role in 'Training Day,' so don't do the same thing with my music. That's all I'm saying." He's obviously saying so much more, but if you still can't hear it, at least hear this part.²⁴

In many ways, Drakeo's case and his artistry sum up the story of mass incarceration and the efforts by rap artists across time and geography to bring attention to the problem.

Conclusion

For 400 years, Blacks in America have used music to call out and contest the injustices they have faced. Slave songs. Negro spirituals. Jazz. Freedom songs. Black nationalist protest music. Hip hop. Black music has allowed Black people to speak to the hearts and minds of those who would not ordinarily listen to their complaints.²⁵

Rap music, in particular, has been a potent means to spread the stories of those who live today in marginalized, under-resourced, over-policed communities and educate listeners about mass incarceration. Its contribution to public discourse about the injustices of the criminal legal system cannot now be ignored. The songs are heard loud and clear. ■

Endnotes

1. *Criminal Justice Facts*, SENT'G PROJECT, <https://www.sentencingproject.org/criminal-justice-facts> (last visited Oct. 28, 2020).
2. *Mass Incarceration*, ACLU, <https://www.aclu.org/issues/smart-justice/mass-incarceration> (last visited Oct. 28, 2020).
3. *Criminal Justice Facts*, *supra* note 1.
4. *Id.*

5. *Race and Criminal Justice*, ACLU, <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice> (last visited Oct. 28, 2020).

6. *Criminal Justice Facts*, *supra* note 1.

7. *Race and Criminal Justice*, *supra* note 5.

8. *Criminal Justice Facts*, *supra* note 1.

9. *Id.*

10. MARK EDDY, CONG. RESEARCH SERV., IB10113, WAR ON DRUGS: LEGISLATION IN THE 108TH CONGRESS AND RELATED DEVELOPMENTS 1 (2003).

11. See Kenneth B. Nunn, *Race, Crime and the Pool of Surplus Criminality: Or Why the “War on Drugs” Was a “War on Blacks,”* 6 J. GENDER RACE & JUST. 381, 386–87 (2002).

12. Leonard Moore, *Police Brutality in the United States*, BRITANNICA, <https://www.britannica.com/topic/Police-Brutality-in-the-United-States-2064580> (last updated July 27, 2020).

13. *Id.*

14. *Racial Justice*, ACLU, <https://www.aclu.org/issues/racial-justice> (last visited Oct. 28, 2020).

15. *Id.*

16. Matthew Desmond et al., *Police Violence and Citizen Crime Reporting in the Black Community*, 81 AM. SOC. REV. 857 (2016).

17. See *id.* at 858.

18. David A. Harris, *Racial Profiling: Past, Present, and Future?*, CRIM. JUST. (Jan. 21, 2020), https://www.americanbar.org/groups/criminal_justice/publications/criminal-justice-magazine/2020/winter/racial-profiling-past-present-and-future.

19. See SENTENCING PROJECT, REDUCING RACIAL DISPARITY IN

THE CRIMINAL JUSTICE SYSTEM: A MANUAL FOR PRACTITIONERS AND POLICYMAKERS 12 (2008) [hereinafter REDUCING RACIAL DISPARITY], <https://www.sentencingproject.org/wp-content/uploads/2016/01/Reducing-Racial-Disparity-in-the-Criminal-Justice-System-A-Manual-for-Practitioners-and-Policymakers.pdf>; see also Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 957–58 (1999) (stating that between January 1995 and September 1996, of the 823 citizens detained for drug searches on one stretch of Interstate 95, over 70 percent were African American).

20. REDUCING RACIAL DISPARITY, *supra* note 19.

21. 135 S. Ct. 2001 (2015).

22. Alex Robert Ross & Jeff Weiss, *Drakeo the Ruler Faces Possibility of Life in Prison as DA Refiles Charges*, FADER (Sept. 3, 2019), <https://www.thefader.com/2019/09/03/drakeo-the-ruler-charges-refiled>.

23. Daniel Bromfield, *Music Review: Drakeo the Ruler: Thank You for Using GTL*, SPECTRUM CULTURE (June 16, 2020), <https://spectrumculture.com/2020/06/16/drakeo-the-ruler-thank-you-for-using-gtl-review>.

24. Chris Richards, *The Most Urgent Rap Album of 2020? Drakeo the Ruler Just Phoned It in from Jail*, WASH. POST (June 10, 2020), https://www.washingtonpost.com/lifestyle/style/the-most-urgent-rap-album-of-2020-drakeo-the-ruler-just-phoned-it-in-from-jail/2020/06/09/730a5c38-a5b1-11ea-b473-04905b1af82b_story.html.

25. Lawrence W. Levine, *African American Music as Resistance: Antebellum Period*, in AFRICAN AMERICAN MUSIC: AN INTRODUCTION 587, 588 (Mellonee V. Burnim & Portia K. Maultsby eds., 2006).

LANDSLIDE®

WEBINAR SERIES Presents

When: December 17, 2020
1:00 PM – 2:30 PM (EST)

Panelists:

Jerry A. Riedinger, Perkins Coie LLP
And other distinguished speakers

To register:

Call 1-800-285-2221
or visit

www.americanbar.org/iplaw

Why the “Essence” of an Invention Is as Important as the Claims

Judicial decisions regularly look beyond the claims of a patent and explore the “essence” of the underlying invention, even though this is not a stand-alone legal concept. Understanding the role of a patent’s “essence” is therefore indispensable for effective patent practice, whether as a litigator, prosecutor, or adviser. The panel will discuss recent decisions where the court looked beyond the claims and focused on the essence of the invention in rendering a decision, and provide practical guidance to litigators analyzing patents and prosecutors drafting patents to best understand and manage the intersection between the essence of the invention and the claims.



Turn to page 42 to read “The ‘Essence’ of an Invention Is as Important as the Claims” by Jerry A. Riedinger.