Review the Technology & Criminal Justice vignette called **Posting on Social Media: Distinguishing Threats from Free Expression** and then answer the following:

Is there a risk that the Supreme Court’s decision could limit the ability of rappers, songwriters, and poets to express themselves in stark terms? Is the risk of harm different, either greater or reduced, because any threat-like statements are announced to a broader audience than are traditional criminal threats sent to an individual?

Create a test that could be used to distinguish actual criminal threats from creative expression. Then, provide two examples of expressions that you believe show sufficient intent to justify a criminal conviction for making threats, and provide two examples that could be considered creative expression.

**Technology & Criminal Justice**

**Posting on Social Media: Distinguishing Threats from Free Expression**

Clearly, the proliferation of technology in the form of smartphones, digital tablets, and personal computers has created new opportunities for communication. Every day, hundreds of thousands of statements and photos are posted through such social-media outlets as Facebook and Twitter. Interactions can range from person-to-person chats via social messaging to uploads on YouTube that go viral nation- or even worldwide. The sheer quantity of information being communicated daily via social media has made these outlets useful to both criminals and law enforcement officers. For example, there have been burglaries traced to Facebook, Twitter, and other postings in which people announce to the world that they are away on vacation. On the other hand, such postings have also led to arrests and convictions when criminal offenders announce their locations or share with friends information about crimes that they have committed. More difficult problems arise when the social-media postings themselves are potentially the basis for a prosecution and conviction for a crime.

In December 2014, the U.S. Supreme Court heard oral arguments in the case of *Elonis v. United States*. Anthony Elonis posted statements on Facebook that appeared to be angry reactions to being left by his wife and losing his employment for on-the-job sexual harassment of coworkers. Regarding his coworkers, he said “I have sinister plans for all of my friends….” With respect to his wife, he said such things as “I’m not going to rest until your body is a mess, soaked in blood and dying from all the little cuts.” He also posted statements alluding to the possibility he might engage in a shooting at a school and kill law enforcement officers.

These statements resulted in federal charges, a conviction for transmitting interstate threats to injure another person, and a sentence of several years in federal prison. In challenging the conviction, Elonis claimed that he was not making threats. He said his statements were therapeutic in helping him to cope with his divorce and job loss. He said that the statements were much like rap music lyrics—stark expressions, but not actual threats.

The Supreme Court confronted the question of how criminal law should regard expressions posted on social media, especially because social-media sites are recognized outlets for creativity and personal expression. Prior to the advances in technology, a criminal threat would have been easier to identify as such, because it would have been said directly to someone or written in a letter. Yet some of the Supreme Court’s justices expressed reluctance to permit stark threats to be freely made because they are like song lyrics or labeled by the author as merely expressing emotions. In 2015, Elonis won. The Supreme Court demanded clearer proof of intent in such cases.

**Debate the Issue**

Is there a straightforward test that could be developed to distinguish criminal threats from creative expression? Is there a risk that the Supreme Court’s decision could limit the ability of rappers, songwriters, and poets to express themselves in stark terms? Is the risk of harm different, either greater or reduced, because any threat-like statements are announced to a broader audience than traditional criminal threats sent to an individual? Create two examples of expressions that you believe show sufficient intent to justify a criminal conviction for making threats.