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Criminal Law

*So much more than
guilt vs. innocence*

by Rachel Margolis Chapman,
Guest Editor



I am often asked why I chose to practice criminal defense. Well, that isn't entirely true – more specifically, I am asked “how can you possibly represent someone who is probably guilty?” While I find this question irritating for flying in the face of the presumption of innocence, I also enjoy answering it, because criminal defense – and the criminal justice system as a whole – is so much more than guilt vs. innocence.

Above all else, the criminal justice system must be just, and much of criminal defense work involves protecting our clients from being treated unjustly. Is it just that a noncitizen accused of misdemeanor simple possession of a controlled substance faces deportation if convicted? Is it just that law enforcement can misstate the law in a DUI investigation to coerce an arrestee to provide a blood sample without a warrant, in violation of the Fourth Amendment? Is it just for racial bias to play any role at any stage in a criminal trial? When the system is

not just, it is not only the accused who are negatively impacted – trust in law enforcement, public safety, and community solidarity suffer as well.

Since the killing of George Floyd, California has taken steps to try to eradicate racially-discriminatory practices in the criminal justice system, which go beyond intentional discrimination. The California Racial Justice Act (“RJA”), which took effect on January 1, 2021, seeks to remedy this long-standing wrong in criminal cases, and covers discrimination and bias based on race, ethnicity, and national origin. In passing the RJA, the legislature declared “Implicit bias, although often unintentional and unconscious, may inject racism and unfairness into proceedings similar to intentional bias. The intent of the Legislature is not to punish this type of bias, but rather to remedy the harm to the defendant’s case and to the integrity of the judicial system. It is the intent of the Legislature to

ensure that race plays no role at all in seeking or obtaining convictions or in sentencing. It is the intent of the Legislature to reject the conclusion that racial disparities within our criminal justice are inevitable, and to actively work to eradicate them.” (Assem. Bill No. 2542, Stats. 2020, ch. 317, § 2.)

The RJA, which is codified in Penal Code section 745, has since been expanded by the Racial Justice for All Act (Assembly Bill 256), which extended the RJA to convictions obtained prior to January 1, 2021; AB 256 makes the application of the RJA retroactive in stages, and by January 1, 2026, this remedy will be possible for everyone who had a felony conviction or a juvenile adjudication with commitment, regardless of when it occurred. In October of 2022, Governor Gavin Newsom signed Assembly Bill 2799 into law, which limits the use of rap lyrics in criminal court cases; AB

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2799 requires “a court, in a criminal proceeding where a party seeks to admit as evidence a form of creative expression, to consider specified factors when balancing the probative value of that evidence against the substantial danger of undue prejudice.”

A first of its kind, in October of 2022, the Honorable Clare Maier overturned the murder convictions of two Black men in this county under the RJA, finding that the prosecution had most likely injected racial bias into the trial by quoting the men’s rap lyrics and repeating their use of a racial slur. The court held that, “the use of defendant’s rap

lyrics and videos at their criminal trial, though not done to purposefully invoke racial bias, more likely than not triggered the jury’s implicit racial bias against African American men.”

While these new laws are still in their infancy, and their scope up to much debate, the legislative intent is certainly a step in the right direction towards achieving a more just system.

I am honored to be Guest Editor of this Criminal Law issue, and want to thank those who contributed. It is my hope that this issue sheds light on aspects of the criminal justice system that transcend the limited question of guilt vs. innocence, and provides insight into the work of those who practice in it.

Rachel Margolis Chapman practices criminal defense and is an Associate Attorney at Gagen McCoy. She joined the Gagen McCoy team immediately upon graduating from the University of Southern California Gould School of Law, and is a proud Double Trojan. Rachel is an active member of the Conflict Program and the CCCBA. She currently serves on the CCCBA Editorial Board, and is a Board member of the Women’s Section and Treasurer of the Criminal Law Section.