

VIEWPOINT

The Constitution frees too many criminals

By John Ritter

Criminal law is too important to be left to the criminal lawyers. Its ineffectiveness impacts all of us. We all know too well that today's criminal justice system contains little justice, frees too many criminals, and is not a system.

Though a civil lawyer like 90 percent of the legal profession, I watch criminal law and am unhappy with what I see. As a law student, I learned quickly that criminal justice is a system of gamemanship — a giant game of technicalities and loopholes for freeing the guilty. Wanting to free the oppressed and those unfairly jailed for their political views, I joined a student civil rights research committee.

My first experience with a real criminal client came when a lawyer asked us to write a brief to get a murder suspect out of jail on a double jeopardy theory. I wrote the brief, the criminal was freed, and I learned that he was jailed six months later for shooting a policeman during a race

riot.

That was extreme but paralleled my experience as a young lawyer, that every criminal client was either guilty of the crime charged or some other one he hadn't been caught for. It didn't take long to lose my ambition for finding legal loopholes to free criminals.

Like most Americans, however, I still ask why there is so little protection for the public against criminals while so much protection for criminals once they are caught. The answer is that the Constitution and criminal law system furnish a set of legal technicalities for freeing the guilty; it is time to start recognizing these for what they are and modifying or eliminating them.

We all know the worst ones: constitutional rights like the Miranda rule and the exclusionary rule, and nonconstitutional loopholes like juvenile delinquency and insanity where admittedly guilty criminals are freed because they are insane or juvenile. Underlying them all is a fifth loophole I call "courtroom victimization." This is the result of parading a criminal before a judge, jury, and prosecutor surrounded by police, making him appear to be an underdog opposed by

the vast resources of government. A skillful defense lawyer can turn the tables and convince a juror that it is his poor client who is the victim rather than the unseen real victim. Because criminal law requires unanimous verdicts, this can free many guilty defendants.

The insanity defense contains little sanity or rationality. Witness Randall Carter, charged with rape in Washington, D.C. After being picked out of a police line-up by his battered victim, he pleaded not guilty by reason of insanity, telling a court psychiatrist he had committed over 300 rapes and was unable to control himself. Two years after the Not Guilty verdict and confinement in a mental hospital, he asked the court to free him on the basis that he had lied at trial, had only committed 12 rapes, and was not insane. A federal judge ordered him freed, stating that he was no longer insane and could not be retried because it would be double jeopardy. This is the same court and mental hospital where John Hinckley, the Reagan assassin, is located.

The problem is that the basic premise of the law is wrong — that only criminals who are sane should be imprisoned. Insane thieves and murderers harm us as much as sane ones. Society has the right to protect itself by segregating and imprisoning the insane criminal; our law should be changed to remove this loophole.

Juvenile delinquency is a similar technicality. The majority of crimes

in this country are committed by people under 17, juveniles under the law and exempt from adult penalties. The result is that instead of receiving a 10-year prison sentence, a 16-year-old armed robber is found guilty of "juvenile delinquency" and put on probation in the custody of his parents.

Again the basic legal premise is wrong — for it focuses on the accused, his mental state, and chance to reform, assuming that juveniles are less responsible for intent to commit crimes and more likely to reform. Fatally overlooked are two known facts: one is that failure to punish a criminal, young or old, encourages him to commit more crimes; two is that most crimes are committed by repeaters. 15 year old burglars are as dangerous as 30 year olds, and society should have the right to segregate and imprison them.

Our main problem in criminal law today is the whole philosophy of gamemanship pervading the system. I believe that it is time to change it by throwing out entrenched doctrines of the law of crimes like insanity and juvenile delinquency, as well as modifying the Bill of Rights. The American people demand and deserve it.

John Ritter is a Coral Gables, Florida attorney. Viewpoint is a weekly column containing opinion and commentary on law-related topics. The editors welcome contributions for possible use in Viewpoint.

