

LAWYER VIEWPOINT  
by John Ritter

### LESSON OF THE SIMPSON TRIALS

Regardless of what one thinks of the O.J. Simpson trials and their excess of publicity, they are one of the most widely shared legal events in our history -- more Americans know who Marcia Clark is than Sandra Day O'Connor. And now more are aware than ever before of the fundamental differences between civil and criminal trials.

A different result in the two trials showed the entire nation what lawyers and police officers have known for years: criminal trials are a game fixed in advance in favor of the criminals. For once a national audience saw the difference between what a civil and criminal jury sees: the Defendant forced to stand up and answer his accusers and explain his conduct in civil court, but sitting silent in criminal; Defendant questioned about contradictions in his story in civil, but answering nothing in criminal. Then the criminal jury, which has seen far less evidence than a civil jury, is told it must find the Defendant guilty beyond a reasonable doubt and unanimously. Compare the civil jury which is instructed that only three fourths of its members must find that the Defendant committed the act, and they need only be sure by a preponderance of the evidence. Little doubt remains about the reason for the different Simpson verdicts -- more evidence seen by jurors, a common sense standard for weighing the evidence, and a more realistic non-unanimous decision allowed in civil.

Nobody thinks truth is served by allowing Defendants to remain silent, prohibiting prosecutors from commenting on failure to reply to the accusations, and forcing judges to instruct jurors to ignore their common sense and draw no negative conclusions about a Defendant's failure to stand up and deny the charges. The problem is that we have adopted a higher law than truth -- the Constitution. As long as we continue putting constitutional rules above the rules for seeking truth the guilty will continue to go free. The *Griffin*, *Mapp*, and *Miranda* cases make nice theory

but poor precedents for protection against crime.

The different Simpson trial results may now lead non-lawyers to say what lawyers have feared to say -- the criminal law system needs some common sense reforms. Not more police, more prosecutors, and more high-tech anti-crime weapons but the reassessment of constitutional protections. After all, the Bill of Rights came about in response to concerns of the Founding Fathers over English abuses of personal rights involving anti-government writing and assemblies, searches and seizures of criminal tax-evaders, and use of confessions against anti-English colonists. The Founding Fathers never applied these rules to crimes of violence, robbery, or prosecutions by their own democratically elected government. It is likely they never intended to overgeneralize and apply these protections to all crimes, and it is time for us to stop broadening their intent and to start limiting these protections or we stand in danger of losing the war on crime. No other democratic country places such a handicap against government prosecution of criminals and none has our high level of crime.

If the differences between civil and criminal trial rules for finding truth do not change, we could witness something similar to what happened to the Anglo-American legal system in the 18th century when a dual system of equity and law courts grew up side by side. Just as litigants then preferred equity over law because it contained more common sense, in the 21st century they will prefer civil over criminal law for the same reason.

Forget the circus atmosphere, excessive TV coverage, and egotistical attorneys upstaging each other, the Simpson trials were a real life legal lesson for the American people, teaching us to re-think some of our underlying assumptions about criminal law and constitutional rights.