



## *Criminal Law vs. Civil Law*

by John D. Whitaker

Well, the legal system took a hit last week in Colorado when the criminal case against Kobe Bryant was dismissed. Now I don't have a clue about whether he was guilty or innocent, but my fear is that the public perception of this event was that the system did not function correctly. Unless of course you are a Lakers fan. Mr. Bryant was charged with sexual assault. The Eagle County District Attorney dismissed the charges after the alleged victim said she'd had enough. The truth is that she was beat up pretty badly by the process, and the fact that her life was being examined under an electron microscope would be pretty intimidating to anyone. Mr. Bryant is not totally out of the woods however, because a civil suit for damages has now been filed. I thought it might be helpful to talk a little bit about the differences between a civil and criminal case, using the Bryant case as an example.

Criminal cases are the result of an alleged violation of a criminal law. The criminal justice system is designed to punish the alleged wrongdoer, not compensate the victim. In Wyoming, a criminal case begins when the District Attorney files charges with the court. Crime victims are not parties to the criminal case, they are just factual witnesses to an alleged violation of the law. Victims in criminal cases do have input in how the case is resolved, but the District Attorney has the final say. In the Bryant case, the victim wanted the case dismissed. The District Attorney could have forced the victim to go forward; but as a practical matter, it is very difficult to move forward in a criminal case without the cooperation of the complaining witness. The major difference between a criminal case and a civil case is the burden of proof. When you make allegations against someone in our system, you must be able to prove them. In a criminal case, the State has the burden of proof. This means that if the State does not prove its case or "carry the burden," then the defendant wins. It's like in baseball: a tie goes to the runner. The burden in a criminal case is proof "beyond a reasonable doubt." This is a huge burden, and if you can't prove your case beyond the point where the



jury has any reason to doubt the defendant's guilt, the defendant wins. The defendant has the right to testify in a criminal case, but because of the Fifth Amendment he cannot be forced to testify. The District Attorney cannot use the defendant's silence against him.

Civil cases are cases between two citizens and generally involve compensation for some type of specific damage. Civil cases are brought in the name of the person who files the suit, and they are called the "plaintiff." A plaintiff can represent himself but most hire lawyers. The case begins when the plaintiff files a document with the court which is called a "complaint."

The complaint is a written document that details the wrongful conduct of the defendant, and asks the court to order the payment of damages. The defendant then files an "answer." The answer is a document that specifies why the defendant should not be ordered to pay the plaintiff any money. After the complaint is served and the answer is filed with the court, a trial is held to determine who wins. After the trial the court enters a judgment for the winner. The burden of proof in a civil case requires only that the plaintiff prove that the defendant should pay by a "preponderance of the evidence." This means that the plaintiff need only prove that, more likely than not, the defendant is responsible for the damages. In terms of percentages, 51 percent proof is sufficient in a civil case where the percentage of proof required in a criminal case is just a little less than 100 percent. The defendant still has a Fifth Amendment right not to incriminate himself and can refuse to answer questions in a civil case that might implicate him in a crime, but his silence can be used by the plaintiff in a civil case.

You may recall that OJ Simpson won his criminal case, but then lost the civil case for damages. He was ordered to pay a large sum to the family of the victims he was acquitted of killing. I think the differences in the burden of proof may explain how a criminal defendant can win a criminal case but still lose a civil case with exactly the same evidence. The civil case against Kobe Bryant should be a humdinger. Stay tuned.