"...AND JUSTICE FOR ALL"

ENSURING PUBLIC TRUST AND CONFIDENCE IN THE JUSTICE SYSTEM

THE AMERICAN BAR ASSOCIATION
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“...And Justice for All”: Ensuring Public Trust and Confidence in the Justice System
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About This Book
This special issue book was prepared by the American Bar Association in collaboration with the National Issues Forums Network and the Kettering Foundation for use by civic and educational groups interested in addressing the issue of how we can improve the justice system.

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The American Bar Association (ABA) is the largest voluntary professional membership organization in the world. With more than 400,000 members, the Chicago-based ABA provides law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public. The ABA Standing Committee on Judicial Independence works to promote public awareness of the values of an independent, accountable, and efficient judiciary and to assist bar associations in responding to unwarranted criticism of judges. The Standing Committee has a particular focus on state, local, and administrative judiciaries. The ABA's Justice Initiatives program is led by the Coalition for Justice and is staffed by the office of Justice Initiatives. The Justice Initiatives program encourages lawyers and judges to reach out and involve the public in justice improvement activities. For more information, about either of these ABA entities, contact the American Bar Association, 750 North Lake Shore Drive, Chicago, IL 60611, 312/988-5000, www.abanet.org.

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The Kettering Foundation is a nonprofit, nonpartisan research organization based in Dayton, Ohio, with offices in Washington, D.C., and New York. Founded in 1927, it has provided books, materials, and moderator training for National Issues Forums since this nationwide network was formed in 1982. The foundation has a wide range of activities to promote civic participation and enrich public life. For more information, write the Kettering Foundation, 200 Commons Road, Dayton, Ohio 45459-2799, or call (800) 221-3657.

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An overwhelming majority of Americans agree that we have the best justice system in the world. But is the best in the world good enough when many segments of the population — minorities, women, immigrants, and the poor — feel they are unfairly treated by the system or left outside its doors with no way to get in? Other citizens, too, have grown cynical. Increasingly, they see politics and special interests infiltrating the system. How can we restore public confidence in American justice? This book is designed to promote public deliberation that can help us find common ground for action on this pressing issue.

**Approach 1  Remove the Bias: Eliminate Unequal Treatment Based on Race or Gender**

Proponents of this approach believe that race and gender affect the nature of encounters between citizens and the justice system countless times each day — both in the courtroom and on the street. And too much of what happens in those encounters, especially for minority citizens, serves to perpetuate and increase mistrust on each side. It is a view familiar to many victims of domestic violence as well. This approach calls for a number of remedial steps from changing jury selection practices to enforcing laws against racial profiling.

**Approach 2  Remove the Barriers: Make the Justice System Equally Accessible to Everyone**

The emphasis on remedying racial and gender bias, advocates for Approach Two say, diverts attention from the underlying problem. That is, that the justice system is not equally accessible to all those seeking justice. The high cost of legal advice, the inability to speak English, the lack of knowledge about how the system works, and overcrowded court dockets are all barriers to equal access. In this view, we need to level the playing field by providing many more services to the poor and the disenfranchised.

**Approach 3  Remove the Politics: Don’t Let Bureaucracy and Special Interest Gamesmanship Undermine the Rule of Law**

Even if it were possible to achieve equal treatment by, and equal access to, the justice system, some people say we would still have a system disabled by the intrusion of politics. This approach calls for rooting out problems caused by the election of judges increasingly tainted by partisan politics and campaign fund-raising debts, and the erosion of principles of justice in which winning or losing the game have become more important than finding the truth.
“. . . And justice for all,” the last four words of the Pledge of Allegiance. They express not only what we believe but also what we want.

Are we getting what we want? Or are we getting something else?

Some of the stories most frequently repeated when we turn our attention to the justice system are also the least typical. But they have somehow come to represent aspects of the justice system that we, as a public, find pressing.

A nation that usually pays little attention to the daily workings of the justice system, we were riveted for months by the daily proceedings of the O.J. Simpson trial. When the verdict was announced, we were deeply divided over the outcome. We were even more divided over what it meant and we’re still talking about it.

If it had been a typical case it would not have become the center of attention that it did. But, for all its out-of-the-ordinariness, certain aspects of the trial struck some people as being representative of things that we suspect may be all too ordinary: racism, the influence of status, celebrity, or money, and legal professionals more interested in furthering their careers than in seeking out the truth. We agreed that much of what we saw during the Simpson trial troubled us but we couldn’t agree about what it all meant or what was really at the heart of the problem.

More than a few people are likely to agree with David Cole, author of *No Equal Justice*, when he wrote, “In an odd way, then, the Simpson case brought to the foreground issues that lurk beneath the entire system of criminal justice.” Often though, when legal cases make national news, we don’t get a clear picture of all the facts. We are told the compelling information without getting into all the details. What happens, then, is the public makes a judgment about the legal
process without being fully informed. Take, for example, the now oft-repeated story of Sheila Liebeck. She bought a cup of hot coffee at a McDonald’s and spilled it on her legs. The third-degree burns she suffered required skin grafts and seven days in the hospital. Liebeck sued after McDonald’s refused her request to settle a claim for $20,000. And eventually, a jury awarded her $160,000 for her injuries and $2.7 million in punitive damages, which was later reduced to $480,000. What many people don’t realize is that the punitive damages total awarded by the jury represents only two days worth of McDonald’s coffee sales, and that McDonald’s had continued selling coffee at a temperature much higher than its competitors despite having received more than 700 coffee-burn claims over the preceding 10 years. Nor did many people realize the extent to which Ms. Liebeck was injured by the coffee burn. Yet many use parts of this case to illustrate their concern and puzzlement about whether the justice system is working the way we as a society want it to. But when taken as a whole, this case represents that the system does work effectively and fairly. Yet the public perception of the judicial system is influenced by the way this story is told.

We look to our justice system to reinforce who we would like to think we are as a society. We want it to be fair, effective, and open. We want it to treat people in a calm, even-handed, expedient manner, and with dignity and respect. We want it to be as near perfect as a human institution can be — free of bias, favoritism, or corruption. We trust that courts, lawyers, and judges will do the right thing in accordance with common sense and with our sense of what is fair and just.

Too often, what we see doesn’t measure up to what we want.

**What Worries Us?**

The last 20 years have left us with a growing list of legal decisions, both civil and criminal, that have raised doubts about the health of the justice system and have sometimes even sparked civil unrest.

In 1991, in Brooklyn, 100 people chanting “No justice, no peace,” marched in protest after the acquittal of El Sayyid Nosair who witnesses saw holding and hiding a gun immediately after the fatal shooting of Rabbi Meir Kahane at the Marriott Hotel in Manhattan where Kahane had spoken. As he fled, Nosair shot another man and then held a gun to a cabdriver’s head demanding to be driven away from the scene. Nosair’s .357 Magnum was identified by ballistics tests as the same gun used to shoot Rabbi Kahane.

On May 1, 1992, Los Angeles was declared a federal disaster area after looting and rioting erupted in response to the announcement that a jury had found three police officers not guilty in the videotaped beating of Rodney King, an African-American who had been stopped for speeding.

Many names representing other troubling cases have been etched in our memories, among them Eric and Lyle Menendez, brothers who shot and killed their parents; their first trial resulted in deadlocked juries. In some cases, death penalty convictions have been reversed when new technology has been applied to old evidence. Many people are concerned over harsh drug-sentencing laws that have resulted in swelling prison populations of young minority men.

Increasingly, the media have turned a sharper eye to the workings of the court system. Real-life court cases are depicted on show after show, network after network. From “Court TV” to “Judge Judy” and “Divorce Court,” there is an alarming proliferation of reality-based legal television. Not only does this dramatize actual legal proceedings, lending them an air of fiction, but it has escalated the demand for coverage of sensational cases. On one hand, public broadcasting of legal proceedings has allowed more people to become familiar with the court system. On the other hand, a few cases, such as the O.J. Simpson trial and the Elian Gonzalez immigration case, have been highlighted by the media, and have been held out as examples of the legal system as a whole. The media jumped on these cases, which appeal to the public emotionally, and the ensuing frenzy of coverage blew the proceedings out of proportion. These situations raise the question of whether the media’s
attention to the case affected the way in which the proceedings were handled.

Aside from these high-profile, highly publicized situations, Americans express concerns about the everyday functioning of the justice system, too. They see politics and the influence of special interests seeping into the system in a variety of ways. And they are questioning whether with enough money you can practically buy the legal result you want.

It’s not all bad news, but people are concerned over what they see.

**How Worried Are We?**

In May 1999, 500 leaders from courts, the bar, the media, and citizen groups met in Washington, D.C. for the National Conference on Public Trust and Confidence in the Justice System. Sponsored by the Conference of Chief Justices, the League of Women Voters, the American Bar Association (ABA), and the Conference of State Court Administrators, it featured Chief Justice of the United States, William H. Rehnquist, as the keynote speaker. The American Bar Association’s Standing Committee on Judicial Independence summarized the gathering as the “first-ever conference addressing the serious issue of public trust in the justice system.”

Some of the results of a national survey conducted in 1998 were summarized at the conference: 70 percent of African-Americans think that as a group they are treated some-what worse or far worse than other groups; 81 percent of Americans agree that politics influences court decisions; 56 percent feel that most juries are not representative of the community; 68 percent do not agree that it is affordable to bring a case to court; only 10 percent felt that courts in their communities handled cases in an excellent manner; and, 44 percent felt that judges were out of touch with what was going on in their communities. In addition, the survey reported that 51 percent agreed or strongly agreed with the statement, “The justice system needs a complete overhaul.”

But the survey also reported that 78 percent agreed that “the jury system is the most fair way to determine guilt or innocence of a person accused of a crime” and 69 percent agreed that “juries are the most important part of our judicial system.” Fully 80 percent agreed with the statement, “In spite of its problems, the American justice system is still the best in the world.”

**Competing Rights, Balancing Interests**

Some of the problems that people see in the justice system today are linked to competing rights. Tensions and issues arise as we continually try to balance those rights.

The Sixth Amendment guarantees a speedy and public trial by an impartial jury. But safeguarding the Fourteenth Amendment’s guarantee of due process means ensuring that a person’s life, liberty,
There is a public perception of problems in the justice system. Even when it may be unfounded in reality, mistrust on the part of the public is detrimental to the system's ability to function effectively. When people feel they can't count on the law to do what it is supposed to do they begin to disregard it.

The foundation of the justice system's authority is our tradition of respect for, and trust in, the rule of law. It is because most reasonable people want to live in a society of reasonable laws — enforced in a reasonable and even-handed manner — that the justice system has the authority to be effective at all. Trust is the glue that holds it together. The strength and weight of court rulings come from the public's trust and confidence in the judiciary as the final arbiter of the law.

A Framework for Discussion

To promote public deliberation about public trust and the justice system, this issue book outlines three approaches to change.

We often hear it said, “They ought to do something about the justice system in this country!” Well, it turns out they are doing something about it. And guess what? They’re asking you to help.

Courts and bar associations working to improve the justice system are increasingly reaching out to seek the active input of non-lawyers and community groups. In 1994, when Chief Justice William Rehnquist told an American Bar Association conference that “Just as war is too important to leave to the generals, reform of the justice system is too important to be left to lawyers and judges,” there were 13 justice reform projects across the country in which nonlawyers were involved. The ABA’s Justice Initiatives program reported in 2000 that the number of
such efforts had increased to 272.

Each approach in this issue book represents a different diagnosis of the problem and, therefore, calls for different remedies. “Working through” each of the approaches by “trying on” the pros and cons of each one and sharing perspectives with each other will help to better inform us as individuals and as a public. For it is we who will have to make choices and give direction to our public officials.

Since most choices, whether in private life or public life, involve costs and consequences, part of the work of deliberating involves taking a hard look at the trade-offs and responsibilities that are inherent in each approach. Perhaps none is foolproof; each has its downsides. We will need to be clear about the risks we can tolerate as we move toward changes that we propose.

• **Approach One: Remove the Bias:** Eliminate Unequal Treatment Based on Race or Gender

  Proponents of this approach believe that, overall, too many instances of justice gone awry can nowadays be traced to bias related to race or gender. Unfair treatment of individuals or groups due to prejudice, stereotyping, or favoritism may be conscious or subconscious on the part of those involved. Either way, say those who take this approach, this flaw in many of the systems of our society, including the justice system, must be recognized and dealt with before public trust can be fully restored.

  Flagrant situations may be the most noted nationally, but subtle, day-to-day, biased treatment is just as harmful and erosive to the effectiveness of the justice system.

• **Approach Two: Remove the Barriers:** Make the Justice System Equally Accessible to Everyone

  Proponents of this approach are most concerned about the roadblocks that keep some people from getting the same access to the justice system that others have. Among other things, they point to the expense of getting excellent or even adequate legal representation. And most of us can think of high-profile cases that seem to imply that if you have enough money, you can practically buy the legal result you want.

  Other barriers include not being able to speak English, a lack of knowledge about what one’s rights are and how the system works, and limited access and long waiting periods due to an overburdened system. Proponents of this approach believe that steps could be taken to level the playing field that would go a long way toward making the system effective and fair for everyone.

• **Approach Three: Remove the Politics:** Don’t Let Bureaucracy and Special Interest Gamesmanship Undermine the Rule of Law

  Proponents of a third approach believe that the justice system’s problems — perceived and real — stem from the intrusion of politics at its worst into the legal establishment. Special interest pressures and personal ambition, they believe, are transforming the justice system from a means of ensuring justice for the many into a bureaucratic tool, a special interest that functions for the few.

  They believe that things such as election of judges, an obsession with winning and losing over truth-finding, and politically motivated laws are areas where politics is tainting the system. The result, they say, is increasing mistrust and cynicism on the part of the public.
Remove the Bias:
Eliminate Unequal Treatment Based on Race or Gender

“A swallow had built her nest under the eaves of a Court of Justice. Before her young ones could fly, a serpent gliding out of his hole ate them all up. When the poor bird returned to her nest and found it empty she began a pitiable wailing. A neighbor suggested by way of comfort, that she was not the first bird who had lost her young. ‘True,’ she replied, ‘but it is not only my little ones that I mourn, but that I should have been wronged in the very place where the injured fly for justice.’”

— Aesop’s Fables

Attorney, law professor, and rape victim Susan Estrich could be referring to many aspects of the justice system when she writes in her book, Getting Away With Murder, “We know how to argue, how to fight, how to disagree. But the greatest need of an increasingly diverse country is not for those whose skill is to divide people but for those who see the common ground while the rest of us are blinded by our differences.”

She talks about the kind of defense attorney we need in our system: “But if, God forbid, your kid got picked up for drugs, you would want this man to represent him. The kid would learn something, without his life being ruined. Ideally, he would help your kid straighten up, not just get off.” She could equally be talking about the ideal police officer, judge, or jury member.

Unfortunately, say proponents of Approach One, how your kid gets treated, even at a routine traffic stop, is all too likely to have a lot to do with that kid’s race, gender, or ethnicity.

We would all like our kids, and everyone for that matter, to be treated fairly and equally. A fundamental tenet of the rule of law is that the law applies to everyone equally. A large number of people in America today think it doesn’t.

Three-quarters of Americans say the justice system treats some groups of people unfairly. Almost half of all white people say they believe the system is getting worse instead of better in dealing with its biased treatment of members of different races and ethnic groups.

Estrich knows from personal experience that although equal treatment is the ideal, it often isn’t the reality. In her book, Real Rape, she begins her story: “In May 1974 a man held an icepick to my throat and said, ‘Push over, shut up, or I’ll kill you . . . .’” As a woman she recounts the impact that the rape had on her; as a law professor she goes on to describe the disturbing details of what
happened after the assault. The first question the police asked her was if her attacker had been black. The second question was whether she had known him, and then she was asked if he had stolen her money. She relates that with each answer to their questions — her attacker had been a black stranger and had taken her money and her car — they became more interested in her complaint and took her more seriously. Her vivid impression that both gender and race had a great deal to do with how she and her attacker would be viewed and treated in the justice system was immediate and lasting.

Much has changed since Susan Estrich was attacked in 1974. But proponents of this approach believe that race and gender still affect the nature of encounters between citizens and the justice system countless times each day. And too much of what happens in these encounters, especially for minority citizens, serves to perpetuate and increase mistrust on both sides.

A lot of Americans agree. A national survey commissioned in 1998 by the American Bar Association explored the understanding and attitudes of 1,000 randomly selected people. Only 30 percent said that they were extremely or very confident in the U.S. justice system in general, and 27 percent said that they had slight or no confidence.

When asked how they think various groups of people are treated, 55 percent agreed that courts try to treat males and females alike, 45 percent agreed that law enforcement officials and police try to treat males and females alike, and only 39 percent agreed that either courts or law enforcement officials and police try to treat whites and minorities alike. Among nonwhites, 28 percent agreed that courts treat all groups equally and only 26 percent agreed that law enforcement officials and police treat groups equally.

While many people are concerned about unequal treatment of some groups, they are strongly supportive of the jury system and agree that juries are the most important part of our justice system. But some people are concerned that juries may not always reflect the diversity of the community. They also worry that the racial makeup of a jury can be manipulated by lawyers who may remove jurors for no other reason than their race, even though it is illegal to explicitly do so.
The use of peremptory challenges can often give the appearance that a lawyer is dismissing a juror because of his or her race, although this is often not the case.

While the process of questioning and excusing prospective jurors is meant to produce an impartial and rational jury, proponents of Approach One worry that some lawyers are employing racial stereotypes to try to create a biased jury. Although these concerns are frequently heard, 78 percent overall (80 percent of nonwhites and 77 percent of whites) say they still believe that the jury system is the fairest way to determine the guilt or innocence of a person accused of a crime.

Racially biased jury verdicts have troubling implications for a society. There are numerous stories of all-white juries like the one in 1955 that refused to convict two white men who killed Emmet Till, a black teenager, and there is the suggestion that O.J. Simpson’s acquittal by a predominantly black jury in his criminal trial was a kind of payback to the system. As Elaine Pascoe wrote in America’s Courts on Trial, “Race-based verdicts are disturbing, no matter which way they cut. . . . If jurors do, in fact, put racial solidarity ahead of justice, then the gulf between the races is wide indeed.”

Some other manifestations of bias that proponents of this approach point to include bail as a condition of pretrial release in poor communities and high incarceration rates for minority youths in local juvenile justice systems that lack the resources to deal with poverty, fractured families, and poor community support systems.

Incarceration and mandatory sentences for drug offenses have contributed to a national prison population that is, by now, more than 50 percent black men, even though blacks comprise only 12 percent of the nation’s population. A report in 1995 by the Sentencing Project in Washington, D.C., revealed that 30 percent of all black men between the ages of 20 and 30 in America were either in prison, on probation, or on parole and that this figure could rise to as high as 50 percent in coming years.

Proponents of this approach say that is a strong indication that something is wrong. And drug enforcement isn’t the only area where there are obvious problems.

In domestic violence cases and rape cases there are many examples of gender bias such as officials ignoring restraining orders and poorly treated or ill-advised rape victims. There is also evidence that white middle- and upper-class women receive different treatment than do poor and minority women. A review of the literature by Sally Simpson produced these findings: Police give preferential treatment to white women, not black women; married women receive more lenient sentences than single women; and women with families are treated more leniently than women with no families. Black women are more likely to be single and not part of a traditional family compared to white women. Consequently, they do not receive the same treatment as do the more traditional white women.

Proponents say it’s not unusual that we don’t all agree on how much bias there is in the system because seeing bias depends upon who is looking. Women and minorities give very different answers from nonminority

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males. Asked how often they had seen a judge giving unfair or insensitive treatment to a minority attorney, litigant, or witness, from 45 to 65 percent of minority attorneys answered "sometimes" or "usually" while only 11 percent of nonminority attorneys responded the same way.

Some proponents of this approach believe that overt, blatant racial, ethnic, and gender bias are not the main problem because they are easier to spot and deal with. The widespread and more damaging problem is insensitivity (often unconscious) to racial, ethnic, and gender concerns, and both conscious and unconscious stereotyping of entire groups of people. Such was the stereotyping that Susan Estrich noted when police assumed that her attacker must have been black. Many forms of bias are so ingrained in our culture that they are not recognized for what they are, except by those who are directly affected.

A 1982 report from the National Minority Advisory Council on Criminal Justice is still accurate today according to proponents of this approach. It said, "Minorities are not only more likely to be suspected of crime than whites, but also more likely to be arrested and less likely to receive bail. Further, after being arrested, minorities are more likely to be indicted than whites, and are less likely to have cases dismissed. If tried, minorities are more likely to be imprisoned and more likely to serve full terms without parole."

When large portions of a society have vastly differing experiences with the law, they are for all intents and purposes living in different justice systems.

**What Should Be Done?**

Among the actions that proponents promote to remove bias from the system is changing the jury selection process. They suggest making sure that the makeup of the jury pool, from which juries will be drawn, reflects the makeup of the community, even though that would mean taking more note of a person’s race or ethnicity instead of less. They suggest eliminating or closely watching lawyers’ peremptory challenges that may be intended to manipulate the racial makeup of the jury itself for a specific trial.

The importance of serving on a jury should be emphasized to community members to encourage their active participation. Some sources other than voter registration lists and drivers’ license lists should be used to draw names for jury service, since those listings leave out some portions of community populations.

Police should not be allowed to stop, search, or question citizens based solely on their race (racial profiling), but should use individualized criteria, not stereotypes, and have a specific reason for stopping someone.

Proponents of this approach believe there should be increased minority and female representation at all levels and in all positions in the justice system and in law schools, even if this means requiring that quotas of racial, ethnic, and gender makeup be met.

Diversity and sensitivity training and education could help eliminate stereotyping of minorities. Judges, lawyers, and police should spend more time listening to the concerns of minorities and women in non-justice system settings before there are...
problems that cause tensions to rise in a community.

In an increasingly diverse country, public trust in the justice system will suffer until racial, ethnic, and gender bias is remedied.

**What the Critics Say**

Critics of this approach respond that removing all bias, conscious and unconscious, from the justice system sounds good but may be impossible to achieve in reality.

Even if it were possible to achieve, it wouldn’t address the problems that lead an undeniably large percentage of minorities both to commit crimes and to be victimized by crime. Poverty, unemployment, broken families, dysfunctional communities with transient populations, crumbling schools, and poor health lead entire groups of people to become enmeshed in the justice system. It creates a vicious cycle of misunderstanding, mistrust, fear, and cynicism on the part of citizens and justice system workers, police officers, lawyers, and judges. Critics say, you can do all the sensitivity training you want, but as long as kids are growing up in vastly different worlds, the problems of bias and stereotyping and unequal justice will continue.

Community-building and providing services and support to help break the cycle of poverty, hopelessness, and violence are essential to achieving the goal of equal justice for all.

Critics contend that incarceration rates among minorities closely reflect the rate of crime commission. They also say that there are good reasons why crack and powdered cocaine are associated with widely different penalties, pointing out that users and dealers of crack tend to have more serious and violent histories of committing crime than users of powdered cocaine.

Removing the figures for drug offenses still leaves a disproportionate number of minorities in the justice system. To write off the disparity as racism pure and simple is to write off the fact that high rates of minority crime and incarceration also represent high rates of minority victimization. The problem is much more complex than is being portrayed in this approach according to its critics.

Critics agree that bias is not only prevalent, but is also hurtful and is something to be vigilant about. Bias is not going to go away anytime soon, if ever, according to the critics of Approach One. But more importantly, even if it did, we would still have problems achieving equal justice and equal treatment.

They point out that bias creeps into our lives sometimes without our notice. As the Reverend Jesse Jackson said, “There is nothing more painful to me at this stage in my life than to walk down the street and hear footsteps and start thinking about robbery — then look around and see someone white and feel relieved.”
We may not ever be able to eliminate racism and bias in all its forms. But proponents of Approach Two believe that, even if that is true, and especially if that is true, it shouldn’t stop us from seeing to it that all citizens have equal access to the justice system and, therefore, an equal opportunity to exercise their rights as American citizens.

Proponents of this approach say that bias is, and always has been, a part of our society. Indeed, at least the inclination to treat different people differently may be a part of human nature — like it or not.

But inclination needn’t become action. Biased feelings should not be allowed to prevent people from getting equal access to and equal treatment from the justice system. But we must be willing to be honest and to do the hard work that needs to be done to make the system accessible to everyone.

Proponents of this approach claim that it’s just too easy to cry racism and sexism and call for things like quotas in the hiring of lawyers, judges, and police officers. These are claims that are easy to make but divert our attention from the underlying problems. Assuming that guaranteeing diversity alone will solve the problem is just more racial and gender stereotyping in itself.

Arzell Nelson, executive director of the Cincinnati Human Relations Commission, believes that a different perspective is needed to cut through the talk about racism and sexism. In an article entitled, “Lawyers and Racism: Facing the Challenge,” Nelson wrote, “No one can define equality. Equity, on the other hand, is an issue of numbers and the distribution of resources.” To proponents of this approach, that means removing the barriers that keep many people from enjoying a level playing field when it comes to encounters with the justice system.

One of the barriers is the expense of getting adequate legal advice and assistance. Although people who are accused of a crime but can’t afford to hire a lawyer have a right to be supplied with “effective” legal representation, just what constitutes “effective” is not spelled out. At the other extreme, people who can afford it can hire whole teams of well-experienced and highly effective lawyers, investigators, and expert witnesses.

Other barriers include an inability to speak or understand English, long waiting periods, slow progress through the system, and sometimes crumbling and impossibly crowded facilities. Another significant barrier that proponents of this approach point to is a lack of knowledge about how the system works or even how to begin to access the system. Not knowing what one’s rights are is a serious barrier to getting equal treatment. People who don’t know what their rights are can’t insist on getting them.

Lack of knowledge in other areas can also be a serious barrier to equal treatment,
according to Arzell Nelson. He talks about the need for young black males not only to know about their rights but “also how to expand their repertoire of behavior to be successful in this society. For example,” he says, “a police officer stops a young black male who says ‘why are you stopping me? I didn’t do anything.’ It escalates from there.” Nelson believes training and knowledge beyond just rights could prevent the encounter from turning into a disaster.

Proponents of this approach have a different view of the reasons and remedies for the startling disparity in drug arrests and incarcerations between white and black illegal drug users, especially regarding the use and sale of cocaine. They point to barriers that prevent many young black men from getting access to the justice system in the same way that young white men can. Black men are far more often imprisoned for drug offenses than white men, even though studies show that there are five times more white drug users than black ones. And white drug users are more likely to have money and contacts with others to get legal help when they are arrested, and more likely to live in communities that provide drug programs or other support systems.

When Christopher Lee Armstrong, a young black man, was arrested and indicted for conspiracy to distribute crack, he was assigned public defenders to represent him. His lawyers knew that over a four-year period, among the 77 crack cases that the public defender’s office had dealt with, not one defendant had been white. They also knew that white defendants had been tried for crack charges in the state court system where penalties are not as harsh as in the federal system. They began to suspect that perhaps black defendants were being directed through the federal system, while white defendants were being directed to the state system. They needed more information to determine whether their suspicions were true. Requests to get access to the files that would show whether white and black cocaine sellers were being selectively prosecuted were denied by the courts. A lack of information such as Armstrong’s lawyers were seeking is a huge barrier to understanding and dealing with the enormous disparity between crack sellers, 65 percent of whom are white, and those sellers who are convicted, over 90 percent of whom are black. Without enough information about why the situation exists, it will be difficult to change it.

Proponents acknowledge some efforts have been made to deal with some types of barriers but they say that more progress needs to be made in removing language and especially financial barriers. A public hearing on Racial and Ethnic Bias in the California court system in 1992 elicited the following testimony:

“For monolingual recent immigrants, who cannot afford an attorney and who lack an understanding of their basic rights, there is no access to the court system. Even if they can afford an attorney, there are insufficient numbers of bilingual ones. This is true not only in Hmong, Cambodian, Laotian, Tongan, Somoan, and Thai communities, but also for the larger Asian groups of Chinese, Japanese, Filipinos, Koreans, and Vietnamese.”

In speaking of the multiple barriers facing some women who are attempting to
Leave a domestic violence situation one person said, “Immigrant women, often with low self-esteem, speak little or no English and have no independent source of funds to hire an attorney. Also they have no friends or relatives to help them make that call during that period of highest danger to themselves and their children.”

Cultural barriers can be a source of escalating tension on all sides if the causes are not understood. “For many immigrants, their only experience with any legal system was in their country of origin, where distrust and fear were the prevailing sentiments. Their political, judicial, and law enforcement systems were corrupt and cruel. Thus they often view our legal system with skepticism, mistrust, and fear.”

Other barriers, especially in poor and minority communities include long waits, and then sometimes incredibly brief attention to their problems or cases. Receiving an average of four or five minutes of attention, as happens in some cases is aptly described as “assembly line justice.” In such an environment, people are often treated as though their problems are not very important. It’s difficult to have trust in a system that treats you as if you don’t matter very much.

What Should Be Done?

Proponents say that an important part of removing barriers would be to increase legal aid services to provide adequate legal representation for those who can’t afford a lawyer. High enough standards for legal representation should be specified so that the help is truly effective, even if this means spending more tax money to do it.

Other actions that proponents of this approach suggest include increasing the number of bilingual and bicultural court staff, including attorneys and judges, and providing more interpreters. Cultural training for all justice system professionals would help to prevent misunderstandings and promote trust on all sides.

Another action would be to provide more assistance for people who want to represent themselves. This could take the form of brochures and classes, and simplification of forms and court procedures to make the justice system more “user-friendly.” Ventura County, California, has instituted a “Self Help Center” on wheels — a Winnebago that travels to rural towns to distribute forms and advice.

Alternative resolution systems such as mediation and arbitration that could be based in local communities would be both more approachable and more cost effective for many people. It would relieve the courts of many of the more easily solvable problems and better equip the courts to deal with more serious cases. Alternative dispute resolution is one of a number of mechanisms that allow people to deal with and resolve their problems before they get to court. And it has been suggested that community-based, “quality-of-life” policing — where police act pro-actively to deal with small problems before they become big problems — could make access to the legal system less frequently needed.

Each court could establish an Office of Ombudsman to be an advocate for and assist people in understanding court processes, to secure interpreters and help with other needs.

One of the most important elements of this approach and the one that is crucial to promoting public trust is educating citizens about their rights and responsibilities and about how the justice system works. This is especially important for the poor, disenfran-
chised, and newly arrived members of our society. Education could proceed in a number of ways including outreach into schools by courts and bar associations, court tours, and speaking engagements for judges, lawyers, and law enforcement officials in the community. Since it has been suggested that much mistrust of the justice system on the part of the public is based more on perception than on reality, a better understanding of how the system works would promote trust.

**What the Critics Say**

Critics of this approach point out that information about how the justice system works and what everyone’s rights are isn’t secret. Anyone who wants information can get it if they try. A large public information campaign would cost plenty and use up resources that could be better used in other ways. Besides, the communities that would be most in need of an educational program would also be the ones that could least afford it.

Civic education is a responsibility of the public schools. It makes no sense to spend more tax money to teach people what they could find out for free if they wanted to. People have access to plenty of information but lack interest until they find themselves personally involved with the system.

The way to deal with the disparity in how white and nonwhite drug offenders are treated would be to make the penalties equivalent for both powdered cocaine and crack as Minnesota did.

Taking the “Home Depot” approach to helping people to represent themselves, as Ventura County has done, sounds good in theory but the reality is another story. The courts end up clogged with people who don’t know proper procedure or even how to fill out the forms correctly. It is exploiting and misleading people who need professional assistance.

Community-based policing with the police more visible in the community, and pro-actively dealing with small problems and crime does improve quality of life and increase safety. But there are some serious trade-offs. In quality-of-life patrolling, police have considerable discretion in where, when, and with whom they intervene. That means more stops, frisks, and searches. More discretion brings with it the possibility of biased treatment, as history has taught us. When this type of quality-of-life policing was instituted in New York City, crime fell but complaints about police abuse and interference rose. It may be a difficult if not impossible balance to maintain. And less crime doesn’t necessarily produce greater public trust.

Even if it were possible to eliminate all the barriers between the public and the justice system, it doesn’t mean that the system itself would work any better. It wouldn’t change who has the power and for what purpose that power is used. The next approach takes a look at the role that politics plays in the justice system and what effect it has on public trust.

Community-based policing is one way to improve public confidence in the justice system. Critics fear the consequences of giving police officers more discretion.
Approach Three

Proponents of this third approach say that even if it were possible to remove racial and gender bias in a human-run and complex system like the law, and even if we could make the system equally accessible to everyone, we would still have a justice system that is on its way to being disabled by the intrusion of politics.

The word “politics” means different things to different people. To proponents of this approach it means politics at its worst in the forms of mindless, unaccountable bureaucracy and special interest gamesmanship where an obsession with winning has replaced truth seeking. They agree that the justice system grew out of a political process of choosing, deciding, and compromising about what the law should be for us as a society. But, they say, the application of the law is supposed to be nonpolitical so that everyone is treated the same way under the same set of laws. That, to proponents of this approach, is the democratic ideal of the rule of law. And that ideal, say proponents, is fast receding.

At the heart of the problem, according to this view, is the erosion of the traditional ethic that finding truth and meting out justice is what the justice system should be all about. Replacing that ethic is ambition, career-building, and using law as a tool for settling scores and pursuing political interests.

Concern over this trend has been expressed even at some of the highest levels. In March 1998, U.S. Representatives John Murtha and Joseph McDade introduced the “Citizens Protection Act.” The 105th Congress passed the measure and the President signed it into law. In explaining why he introduced the act, McDade said: “There are Justice Department employees who engage in questionable conduct without penalty and without oversight . . . A win-at-all costs attitude blinds them into suppressing exculpatory evidence, falsifying evidence, misleading grand juries, and other misconduct which most of the time goes unpunished.”

Proponents remind us that our justice system was inherited from the English legal system, which was based on the principles that law flows from the people and that law should serve justice, not the careers of politicians and the rich and the powerful. It was a
way of ensuring that the law could not be used by government as an instrument of oppression. The administration of laws was intended to be about determining truth and not to be influenced by pressures of personal ambition or special interests.

In 1998, a series of ten investigative reports published in the Pittsburgh Post-Gazette painted a picture of law enforcement too often characterized by “the pursuit of justice, sometimes at any price.” The reports included such examples as an Assistant U.S. Attorney who “told several people that he was unmoved by innocence or guilt; he just wanted a high-profile indictment to further his career,” and a prosecutor who said that prosecutors are “political animals pressured to justify budgets with convictions.”

The fact that 90 to 95 percent of cases today are resolved without a trial — often through plea-bargaining — is one symptom that something is wrong, according to proponents of this approach. The deals reached through plea-bargaining, wherein someone accused of a crime agrees to admit to a lesser crime in order to avoid being tried for the crime they stand accused of, are extremely common. Plea-bargaining is more expedient for the courts, the lawyers, and the prosecutors looking for high conviction rates, and for the justice system bureaucracy. Determining the truth is not necessarily the primary aim of the process.

The worry about plea-bargaining is not only that guilty persons will not receive the punishment that they truly deserve, but also that some innocent people may be so intimidated and frightened by the system that they plead guilty just to escape the stress and uncertainty. As one man in North Carolina told a judge, “I ain’t shot no man. . . . I just pleaded guilty because they said if I didn’t they would gas me for it.”

Another area of concern over the negative influences of politics is the election of judges. In 39 out of 50 states judges must stand for election in one form or another, whether it is the initial path to the bench through partisan or nonpartisan elections, or a retention election. Election of judges is almost exclusive to the United States and began in the 1800s when judges were likely to be well-known members of the community and financing of an election campaign was a minor matter.

There is a long history in this country of differences of opinion over the best method of choosing judges. Some argue that judges should be selected by a commission so that they are free from political influences and can apply the law as they see it. Others argue that judges must be accountable to the people they serve and, thus, should stand for election.

Worrisome to proponents of this approach is the increasingly political and expensive way in which some judges are being elected today. The election process leaves at least the perception, if not the reality, that judges, central in importance to the whole system, owe their jobs to special interest groups or individuals who may, in turn, expect special treatment in court. Elections often require candidates for judgeships to raise huge, and escalating, amounts of money from groups and individuals including lawyers.

A 1999 national survey funded by the Hearst Corporation reported that 78 percent of Americans believe that elected judges are influenced by having to raise campaign funds. And 81 percent agree that politics influences court decisions.

When the mother of a man killed in a gay nightclub sued the club for failing to provide enough security, one Ohio court judge ruled that the nightclub could not be held liable. Another judge dissented and said that the slain man’s family had a right to a trial. This could be just an example of a difference of opinion. But some also suggest that it may reflect intense spending by business and political groups interested in limiting liability lawsuits against businesses. They suggest that in spending large amounts to support the election of particular judges, special interest groups are investing in hoped-for legal outcomes in the future that are similar in nature.

Another example of the corrosive influence of politics on the justice system is a preoccupation with the minutiae of the rules of the game and an obsession with winning and losing instead of seeing that justice is served.
In his book, *The Death of Common Sense*, Philip K. Howard related the story of an effort by nuns of the Missionaries of Charity to convert abandoned buildings in the South Bronx into homeless shelters. Although the head of their order, Mother Teresa, and the mayor of New York had agreed on the plan and the city offered to sell the buildings for one dollar each, the nuns spent a year and a half in one hearing room after another trying to get the plan approved. The nuns finally gave up because they found the expense of installing the required elevators to be too much, and in their opinion, unnecessary. Their letter of regret to the city reflected that their almost two-year experience had “served to educate us about the law and its many complexities.” Howard points out that “No person decided to spite Mother Teresa. It was the law. And what it required offends common sense.”

We can appreciate that applying the law involves endless decisions about where, when, and how to draw the line. We need to be able to trust others to draw the lines in the right ways, for the right reasons. When that is not what appears to be happening, the result is rising cynicism and mistrust.

Proponents of this approach look at the statistics that over 90 percent of crack users who are convicted are black and at the estimate that 65 percent of crack users are white but represent less than 5 percent of those convicted. Where others see racial bias, proponents of this approach see political choices being made about how, when, and where drug users are being pursued and tried. They look at the great disparity between the harsher penalties imposed for crack offenses than for powdered cocaine offenses. What appears to others as a racial problem, proponents of Approach Three see as the negative effects from the intrusion of politics into law as lawmakers and politicians try to look “tough on crime” to win votes and further careers without considering the costs to society or to the rule of law.

These voices cite the fact that according to the Bureau of Justice Statistics, as of 1999, the United States has the highest per capita imprisonment rate in the world at 690 inmates per 100,000 population, surpassing Russia's rate of 675 per 100,000. Between 1990 and 1999 alone, the United States prison population increased by 77 percent. Some believe these changes suggest that our justice system has been seduced into drawing lines for political purposes more often than for serving justice.

Some believe that the O.J. Simpson trial is an example of how an obsession with rules and winning has taken precedence over seeking the truth. High-profile trials are reported in the horse race-style of journalism that is used to follow electoral politics with its focus on personalities and on who's up and who's down. The excitement of the game with its winners and losers has even become a source of entertainment with TV shows like “Court TV” and “Judge Judy.” The impression the public is left with is that gamesmanship counts more than the search for the truth — another characteristic often attributed to “politics at its worst.”

In his book, *Trials Without Truth*, William Prizzi begins with a tongue-in-cheek comparison of football and soccer to make a serious point about America’s obsession with rules and winning in both sports and law.

Prizzi writes, “Our American trial system reflects many of the cultural values encoded in the rules of traditional football: the worship of proceduralism, the attempt to rationalize every aspect of decision making, the distrust of spontaneous action, the heavy preference for tight control over the participants and, above all, the daunting complexity of rules that such a system requires. Today, trials in the U.S. are prepared for, officiated, and even reported on much like actual football games.” The trouble is, he points out, one is supposed to be about entertainment and showcasing the skills of the players, and the other is supposed to be about determining truth.

The public has noticed too. In a 1996 Court-TV/Dateline opinion poll, when asked the question “Do you think the outcome of a court case depends more on the skills of the lawyers involved than on who is right or wrong?” 78 percent answered “Yes.”
What Should Be Done?

Reversing this trend will not be easy but proponents believe it is possible. To do so will require refocusing on the purpose and original intent of the various parts of the system and taking steps to remove the damaging effects of politics and bureaucracy.

Some of the steps that proponents suggest include placing a high priority on finding truth in trials and not promoting justice as a contest to be won or lost, or as a form of entertainment. We should also severely limit or prohibit the televising of court trials, even though this may reduce the public’s exposure to the justice system. Another step is not letting rules and procedures become ends in themselves, even if this means giving up loopholes and some of the safeguards to our rights as victims or as defendants.

Proponents also suggest limiting plea-bargaining even though this would necessitate more courts and judges for more trials.

Justice system professionals including lawyers, judges, and police officers should regularly communicate with the public in understandable terms about proposed legislation and campaign promises that would impact the rule of law and the public. When a proposed law would be unenforceable or adversely and unfairly affect one part of the population, it should be the duty of justice system professionals to let the public know.

To maintain the appearance and reality of fair and impartial judges, proponents suggest requiring campaign spending limits, limits on contributions, public disclosure of campaign funding sources, public funding, educating voters about the qualifications of candidates, or better yet, nonpolitical means of selecting judges such as merit selection by commissions. A judge should not take part in a trial involving any individual or group that contributed to a judge’s campaign.

States should consider modifying the judicial code of conduct to provide for disqualification of judges if they have received from parties in a case, a contribution that reaches a threshold amount.

“Since,” according to the 1998 Report and Recommendations of the Task Force on Lawyers’ Political Contributions, “recent polls demonstrate that campaign contributions to judges are seriously eroding public confidence in the courts,” there is a tension between wanting the accountability that election promotes and the judicial independence that appointment provides. Citizens, including lawyers, must give up expectations of special treatment on the basis of personal connections or favors owed.

Proponents fear that if citizens do not start taking concerns about how the law is administered seriously, and speak out about their concerns, we all stand to lose the protection against unrestrained power that the law was intended to provide. We will only face more of what Roberts and Stratton, authors of The Tyranny of Good Intentions, describe when they say: “Americans of all stripes increasingly feel that getting in trouble with the law is a random phenomenon,

### 10 Leading Nations in Incarceration Rates

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<tr>
<th>Country</th>
<th>No. of Prisoners per 100,000 Population</th>
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<tbody>
<tr>
<td>United States</td>
<td>690</td>
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<td>Russia</td>
<td>675</td>
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<tr>
<td>Cayman Islands</td>
<td>665</td>
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<td>Belarus</td>
<td>575</td>
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<td>Kazakhstan</td>
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<td>Bahamas</td>
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<td>US Virgin Islands</td>
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<td>Belize</td>
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<tr>
<td>Bermuda</td>
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<tr>
<td>Kyrgystan</td>
<td>440</td>
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bearing little apparent relationship to guilt or justice.”

What the Critics Say

Critics of this approach charge that “remove the politics” is just another way of saying, “remove the people,” and is likely to be counterproductive in itself. Figuring out how to be protected by the law and still maintain the freedoms that are precious to us can be a difficult and messy process. But, critics say, in a democracy, when things get messy, the answer should be more openness and accountability, not less, even if it means putting up with more of the kind of politics that we like least.

Television court proceedings, even when what is viewed falls far short of the ideal, is only a problem for legal professionals, not for the public. Prohibiting televising of trials and appeals would only heighten cynicism and mistrust by making the process seem more distant and mysterious. Besides, say critics, if people find trials interesting enough to watch, warts and all, it is an opportunity to educate the public about the justice system and how it works — or should work. You can’t fix what you can’t see, they say.

Limiting plea-bargaining is just plain unrealistic, say critics of this approach. To do so would result in so many court trials that it would completely incapacitate an already overburdened system.

And appointing judges instead of electing them would eliminate their accountability to the public. One of the colonial abuses that was attacked in the Declaration of Independence was the appointment of judges by the king who, therefore, had enormous power over them. To trade off accountability for judicial independence is too great a price to pay.

The multitude of rules and technicalities in the justice system is an indication of how much Americans value what is at stake in legal proceedings; liberty, property, and one’s good name. Streamlining the rules would mean less protection from abuse at the hands of the system or the government, not more.

Critics of this approach say that dealing with the politics involved in rules, election of judges, and the making and enforcing of the laws of the land is a small price to pay for the freedoms we enjoy in this country. They point to the poll taken in 1998 in which fully 80 percent of the population agreed with the statement: “In spite of its problems, the American justice system is still the best in the world.”

Critics say this approach is a way of shifting the blame to those vague, nameless groups, “the bureaucracy” and “the politicians.” It is a way of ignoring the hard questions and avoiding the hard work that the public must do to answer the question of how an increasingly diverse society can live by a common law. To shift responsibility and involvement away from the public would only serve to divide us further as a people and to push aside the problems that need to be faced.

Politics, as messy as it sometimes is, is an integral part of the law — in its creation and its enforcement. Removing the “politics” would remove the public’s vital connection with the justice system. As Susan Estrich put it, “To believe in the rule of law in a democracy, as I do, is to believe in a way of doing politics built on faith in one another’s good intentions, however misinformed, naïve, or even stupid we may sometimes be. Politics is the way we work out how to live together.”
Comparing Approaches

Fairness and equal application of the law to all people is an essential tenet of the justice system. While 80 percent of Americans agree that in spite of its problems, the American justice system is still the best in the world, 51 percent believe that it needs a complete overhaul. Our system of justice and the public’s trust in it are far too important to our way of life to be taken for granted. Our vision of the society we want to be — fair, open, and attentive to the rights of all people — depends on an effective system of justice. Without public trust, the system cannot be effective. What are the reasons for the erosion of public confidence in our legal system? What can be done? To help citizens consider these tough questions, this deliberation guide considers the issue from three different perspectives and suggests approaches by which the problems might be resolved. An outline for talking through this troublesome issue appears on these pages.

“All discussion, all debate, all dissidence tends to question, and in consequence, to upset existing convictions; that is precisely its purpose and its justification.”

— Learned Hand
Approach 2

Remove the Barriers
Costly attorney’s fees, lack of knowledge about the system, and overburdened courts result in unequal access to the justice system, for the poor and the uneducated. Restore public trust by removing these barriers.

What Can Be Done?
• Increase funding for legal aid.
• Improve education about the justice system at all age levels.
• Make interpreters available to all courts.
• Promote alternative dispute resolution to relieve overburdened courts.
• Use community-based policing to deal with problems before they escalate.

In This View
• Education will inoculate people against mistreatment in the justice system.
• People are more likely to use mediators or arbitrators to help them.
• People who do not speak English must have access to the system.
• Better communication between the public and professionals in the system will promote trust.

In Contrary Views
• More access by do-it-yourselfers may increase litigation and clog courts.
• The addition of all the justice system personnel advocated by this approach will be very costly.
• Information about the justice system and about citizens’ rights is already available.
• Use of some community-policing methods may increase incidents of police abuse.

A Likely Trade-off
Encouraging those who want to represent themselves may well result in more confusion in courtrooms as litigants struggle to navigate through complex legal waters.

Approach 3

Remove the Politics
Removing the influence of politics in the form of campaign fund raising for election of judges, obsession with rules, and the emphasis on winning and losing, rather than on finding truth, will better serve those seeking justice.

What Can Be Done?
• Make selection of judges nonpartisan.
• Institute public financing of campaigns.
• Place a high priority on truth seeking.
• Ban or limit televising of court trials.
• Limit plea-bargaining.

In This View
• Judges must be free of the influence of money, politics, or special interest groups.
• The cost of electing judges has escalated dramatically.
• Any hint of justice for sale damages the system and public trust in it.
• Politically motivated laws and rules undermine the delivery of justice.

In Contrary Views
• The system should be kept as open and as accountable to the public as possible. The public should be able to vote ineffective judges out of office.
• Televised trials serve to educate the public.
• Politics are an integral part of the system and not necessarily a bad thing.

A Likely Trade-off
Changing the system to select judges by commission will result in a system, in which judges will be less directly accountable to the electorate.
“. . .And Justice for All”:
Ensuring Public Trust and Confidence in the Justice System

One of the reasons people participate in National Issues Forums is that they want others to know how they feel about the issues. So that we can present reports on your thoughts and feelings about the issue we’d like you to fill out this questionnaire before you attend a forum. At the end of the forum, your moderator will ask you to fill out the Post-Forum Questionnaire.

1. Which statement best describes what you think should be done about our justice system? Circle one.
   a. I have a general sense of what should be done.
   b. I have a definite opinion about what should be done.
   c. I am not at all sure about what should be done.

2. Do you agree or disagree with the statements below?
   a. Whites are treated more fairly by the U.S. justice system than are minorities.
   b. Judges should be appointed rather than run for election.
   c. Many people are denied equal access to the law because they are poor, lack education, or have limited ability to speak or understand English.
   d. Domestic violence against women is often taken less seriously than other crimes of violence.
   e. Courtroom justice is more about winning and losing than about finding the truth.
   f. Overcrowded court dockets and overworked justice officials often short-change individuals seeking justice.

3. Are there any other things that trouble you about the U.S. justice system? Please explain.

4. Do you favor or oppose each of these actions?
   a. Institute a nonpolitical means of selecting judges.
   b. Increase legal aid services for those who cannot afford an attorney.
   c. Prohibit or severely limit the televising of real court trials.
   d. Redesign the jury selection process to ensure that the make-up of the jury pool reflects the make-up of the community.
   e. Strengthen laws against racial profiling.
   f. Expand alternative dispute resolution systems, such as arbitration and mediation, to relieve burdens on courts.
5. Are you male or female?  □ Male  □ Female

6. How much schooling have you completed?
   □ Less than 6th grade  □ 6th-8th grade  □ Some high school  □ High school graduate  □ Some college
   □ College graduate  □ Graduate school

7. Are you:
   □ African-American  □ Asian-American  □ Hispanic  □ Native American
   □ White  □ Other (specify) __________

8. How old are you?
   □ 17 or younger  □ 18-29  □ 30-49  □ 50-64  □ 65 or older

9. Have you attended an NIF forum before?  □ Yes  □ No

10. If “yes” to #9, how many forums have you attended?
    □ 1-3  □ 4-6  □ 7 or more  □ Not sure

11. In which part of the country do you live:
    □ Northeast  □ South  □ Midwest  □ West  □ Southwest  □ Other

12. What is your ZIP code?________

Please give this form to the forum leader.
“. . . And Justice for All”:
Ensuring Public Trust and Confidence in the Justice System

Now that you’ve had a chance to participate in a forum on this issue, we’d like to know what you are thinking. Your opinions, along with those of others who participated in forums, will be reflected in a summary report that will be distributed to members of the legal profession, officeholders, the media, and others in your community. Since we’re interested in whether you have changed your mind about certain aspects of the issue, a few of the questions will be the same as those you answered earlier.

1. Do you favor or oppose the statements listed below?

   a. We should limit plea-bargaining, **EVEN IF** this means expanding the number of courtrooms and judges in the system.

   b. We should make more use of “quality-of-life” policing, a system in which community-based police officers take care of small problems on the spot, **EVEN IF** this gives them considerable discretionary power about who they stop or search.

   c. We should increase minority and female presence in the justice system, **EVEN IF** that requires the establishment of quotas for racial, ethnic, and gender representation.


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<tr>
<th>Strongly favor</th>
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<th>Somewhat oppose</th>
<th>Strongly oppose</th>
<th>Not sure</th>
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2. Do you favor or oppose each of these actions?

   a. Institute a nonpolitical means of selecting judges.

   b. Increase legal aid services for those who cannot afford an attorney.

   c. Prohibit or severely limit the televising of real court trials.

   d. Redesign the jury selection process to ensure that the make-up of the jury pool reflects the make-up of the community.

   e. Strengthen laws against racial profiling.

   f. Expand alternative dispute resolution systems, such as arbitration and mediation, to relieve burdens on courts.


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<th>Strongly favor</th>
<th>Somewhat favor</th>
<th>Somewhat oppose</th>
<th>Strongly oppose</th>
<th>Not sure</th>
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3. Do you agree or disagree with the statements below?

   a. Whites are treated more fairly by the U.S. justice system than are African-Americans and other minorities.

   b. Judges should be appointed rather than run for election on a party ticket.

   c. Many people are denied equal access to the law because they are poor, lack education, or have limited ability to speak or understand English.

   d. Domestic violence against women is often taken less seriously than other crimes of violence.

   e. Courtroom justice is more about winning and losing than about finding the truth.

   f. Overcrowded court dockets and overworked justice officials often short-change individuals seeking justice.


<table>
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<tr>
<th>Strongly agree</th>
<th>Somewhat agree</th>
<th>Somewhat disagree</th>
<th>Strongly disagree</th>
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4. Which statement best describes what you think should be done about our justice system? Circle one.
   a. I am not at all sure about what should be done.
   b. I have a general sense of what should be done.
   c. I have a definite opinion about what should be done.

5. What principles or deeply held beliefs should guide our approach to restoring public trust in the justice system? Please explain.

6. Are you thinking differently about our justice system now that you have participated in the forum? If yes, please explain.  
   □ Yes  □ No

7. Do you see ways for people to work on this issue that you didn't see before? Please explain.  
   □ Yes  □ No

8. What, if anything might you do differently as a result of this forum?

9. What else troubles you about the workings of the justice system? Please explain.

10. What is your ZIP code? ________

Please give this form to the forum leader.