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The LEGAL SYSTEM

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“Congress shall make
no law...abridging the
freedom of speech, or of
the press.”

First Amendment to the U.S. Constitution

The basic foundation of our democracy is the First Amendment guarantee of freedom of expression. The Opposing Viewpoints Series is dedicated to the concept of this basic freedom and the idea that it is more important to practice it than to enshrine it.

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Why Consider Opposing Viewpoints?

"The only way in which a human being can make some approach to knowing the whole of a subject is by hearing what can be said about it by persons of every variety of opinion and studying all modes in which it can be looked at by every character of mind. No wise man ever acquired his wisdom in any mode but this."

John Stuart Mill

In our media-intensive culture it is not difficult to find differing opinions. Thousands of newspapers and magazines and dozens of radio and television talk shows resound with differing points of view. The difficulty lies in deciding which opinion to agree with and which "experts" seem the most credible. The more inundated we become with differing opinions and claims, the more essential it is to hone critical reading and thinking skills to evaluate these ideas. Opposing Viewpoints books address this problem directly by presenting stimulating debates that can be used to enhance and teach these skills. The varied opinions contained in each book examine many different aspects of a single issue. While examining these conveniently edited opposing views, readers can develop critical thinking skills such as the ability to compare and contrast authors' credibility, facts, argumentation styles, use of persuasive techniques, and other stylistic tools. In short, the Opposing Viewpoints Series is an ideal way to attain the higher-level thinking and reading skills so essential in a culture of diverse and contradictory opinions.

In addition to providing a tool for critical thinking, Opposing Viewpoints books challenge readers to question their own strongly held opinions and assumptions. Most people form their opinions on the basis of upbringing, peer pressure, and personal, cultural, or professional bias. By reading carefully balanced opposing views, readers must directly confront new ideas as well as the opinions of those with whom they disagree. This is not to simplistically argue that

everyone who reads opposing views will—or should—change his or her opinion. Instead, the series enhances readers' understanding of their own views by encouraging confrontation with opposing ideas. Careful examination of others' views can lead to the readers' understanding of the logical inconsistencies in their own opinions, perspective on why they hold an opinion, and the consideration of the possibility that their opinion requires further evaluation.

Evaluating Other Opinions

To ensure that this type of examination occurs, *Opposing Viewpoints* books present all types of opinions. Prominent spokespeople on different sides of each issue as well as well-known professionals from many disciplines challenge the reader. An additional goal of the series is to provide a forum for other, less known, or even unpopular viewpoints. The opinion of an ordinary person who has had to make the decision to cut off life support from a terminally ill relative, for example, may be just as valuable and provide just as much insight as a medical ethicist's professional opinion. The editors have two additional purposes in including these less known views. One, the editors encourage readers to respect others' opinions—even when not enhanced by professional credibility. It is only by reading or listening to and objectively evaluating others' ideas that one can determine whether they are worthy of consideration. Two, the inclusion of such viewpoints encourages the important critical thinking skill of objectively evaluating an author's credentials and bias. This evaluation will illuminate an author's reasons for taking a particular stance on an issue and will aid in readers' evaluation of the author's ideas.

It is our hope that these books will give readers a deeper understanding of the issues debated and an appreciation of the complexity of even seemingly simple issues when good and honest people disagree. This awareness is particularly important in a democratic society such as ours in which people enter into public debate to determine the common good. Those with whom one disagrees should not be regarded as enemies but rather as people whose views deserve careful examination and may shed light on one's own.

Thomas Jefferson once said that “difference of opinion leads to inquiry, and inquiry to truth.” Jefferson, a broadly educated man, argued that “if a nation expects to be ignorant and free . . . it expects what never was and never will be.” As individuals and as a nation, it is imperative that we consider the opinions of others and examine them with skill and discernment. The Opposing Viewpoints Series is intended to help readers achieve this goal.

David L. Bender and Bruno Leone,
Founders

Greenhaven Press anthologies primarily consist of previously published material taken from a variety of sources, including periodicals, books, scholarly journals, newspapers, government documents, and position papers from private and public organizations. These original sources are often edited for length and to ensure their accessibility for a young adult audience. The anthology editors also change the original titles of these works in order to clearly present the main thesis of each viewpoint and to explicitly indicate the opinion presented in the viewpoint. These alterations are made in consideration of both the reading and comprehension levels of a young adult audience. Every effort is made to ensure that Greenhaven Press accurately reflects the original intent of the authors included in this anthology.

Introduction

"Truth-seeking is an imperfect process. . . . If mistakes are to be made, they should be made in the direction of making sure that an innocent person is not convicted."

—Jay M. Feinman, Law 101: Everything You Need to Know About the American Legal System

One of the keystone responsibilities of the American legal system is to ensure that every defendant receives a fair trial. However, the perfection of DNA tests have recently proven that on numerous occasions people were arrested and convicted of crimes they did not commit. The results of these tests point out that the legal system is imperfect.

DNA, or deoxyribonucleic acid, is the genetic code that determines an individual's physical characteristics. It can be found in the nucleus of every cell. Because everyone has a unique DNA code (except identical multiple births), forensic testing on hair, semen, or blood left at a crime scene may determine whether a defendant committed the crimes for which he or she has been accused.

Law professor Barry Scheck has advocated using DNA in ambiguous cases in a nationwide effort he calls the Innocence Project, which provides free legal assistance for inmates who have proven that DNA testing may make a difference in the outcome of a retrial. The project has helped exonerate more than thirty-five prisoners. In an interview with the television program *Frontline*, Scheck stated, "This is total system failure. We're not talking about some procedural due process matter, some matter of unfairness in the way the trial was conducted. We're talking about people who are actually innocent. And that has to command our respect and attention and concern unlike any other kind of case."

DNA testing has, in effect, called into question more traditional evidence in determining guilt such as eyewitness testimony. Eyewitness testimony leads to an average of seventy-seven thousand arrests every year. Studies have found that faulty eyewitness testimony is a leading cause of

false convictions. A 1997 report by the Constitutional Rights Foundation states, "Researchers at Ohio State University examined hundreds of wrongful convictions and determined that roughly 52 percent of the errors resulted from eyewitness mistakes." According to Boston defense attorney James Doyle, thirty-six of the first forty prisoners who were released after DNA testing had been convicted because of eyewitness testimony.

Several ways that eyewitnesses have been asked to identify suspects may compound the inaccuracy of their testimony. Criminal lineups, for example, seem to result in the witness selecting the person who most closely resembles the person he or she saw, regardless of whether the actual perpetrator is in the lineup. Other factors include the amount of time that passed between the crime and the identification, as well as police and prosecutors influencing the eyewitness. Race also affects an eyewitness's ability to successfully identify a suspect. Studies have found that people are 15 percent more likely to accurately identify suspects of their own race.

The behavior of police can also affect a person's ability to receive a fair trial. Despite the presence of Miranda laws—which have largely eliminated physical and psychological torture of suspects—many critics of the police contend that defendants are compelled into confessing to crimes they did not commit. For example, Earl Washington was convicted of murder in 1984 and sentenced to death; he was later exonerated by DNA testing. Washington's lawyers argued during his murder trial that his IQ of 69 had made it easier for police to lead him into a false confession. In an article for *American Prospect*, Alexander Nguyen writes, "[The] tactics police departments have developed are so effective that police have even been able to extract false confessions from innocent suspects—a baffling phenomenon; but evidence that interrogations have continued to be psychologically compelling." These tactics can include lying to a suspect about an accomplice's confession or the existence of witnesses and evidence.

The problem of wrongful convictions is one of the many issues facing the American legal system. In *The Legal System: Opposing Viewpoints*, the authors examine these issues in the

following chapters: What Is the State of the American Civil Justice System? Does the Jury System Work? Is the Criminal Justice System Fair? What Should Be the Role of the Media in the Legal System? In those chapters, the authors consider how to achieve the idea: treating all citizens equally in the eyes of the law.

CHAPTER

1

What Is the State of the American Civil Justice System?

Chapter Preface

One criticism of the American civil justice system is that plaintiffs in civil suits sometimes receive unduly large settlements. Supporters of tort reform, which limits the types of disputes that can be taken to court and places caps on settlements, charge that these lawsuits damage the U.S. economy. However, other commentators maintain that these settlements are rare and involve circumstances that their critics ignore.

Lawsuits are much more common in the United States than in other industrialized nations. According to Californians Against Lawsuit Abuse (CALA), forty thousand product liability lawsuits are filed each year in America, compared to two hundred such suits in the United Kingdom. CALA also notes that the United States has thirty times as many lawsuits per person as Japan. In 1999, the median award for these lawsuits was \$1.8 million. CALA charges that the costs of these suits are eventually passed on to the consumer "in terms of higher prices for products and services." Secretary of Energy Spencer Abraham, in his report "The Case for Legal Reform" (written when he was a U.S. senator from Michigan), writes: "Litigation adds 2.5 percent to the average cost of a new product in America." According to Abraham, the threat of liability lawsuits can also cause companies to shy away from developing new products.

However, not everyone agrees that these lawsuits are a significant problem. According to a study by the National Center for State Courts, of the nation's seventy-five largest counties, only 364 of 762,000 cases resulted in punitive damages. Additionally, the number of liability suits has decreased 9 percent since 1986. An editorial in the *Minneapolis Star Tribune* asserts that various studies prove "civil jurors are deliberative, responsible and anything but spendthrifts."

Opponents of tort reform often cite one of the most famous product liability suits—the woman who sued McDonald's when she spilled its coffee on her lap—as proof that the media and tort reform supporters misrepresent these cases. The coffee caused third-degree burns and required the eighty-one-year-old woman to undergo skin grafts. Although a jury initially awarded the woman \$2.9 million, a