

Characteristics & Rationale of the Adversary System

Features of adversary system:

1. Neutral & passive decision maker
2. Party presentation of evidence and arguments.
3. Trial designed to emphasize clash between parties
4. Parties have equal opportunities to present and argue their cases.
5. Rules of professional conduct designed to prevent abuses.

Neutral & Passive Decision Maker

Passive = Not involved in *investigation*
because:

- Investigator needs preliminary theories of the case to decide what to investigate
- “Ego investment” in these theories can lead to premature conclusions.

Passivity preserves neutrality (delaying judgment until all evidence presented).

Juries work well in adversarial system because passive and neutral compared to J:

1. Passive:

- a. Jury waits thru trial for sole job, deciding.
- b. J actively manages case, making legal rulings—evidentiary, discovery, etc.

2. Neutral:

- a. J may be biased by experience.
- b. Jury is comprised of multiple people so may check each others' biases.
- c. Voir dire available for juries not J.

Parties Investigate & Present Evidence

1. Search for truth: Parties have incentive to do best job possible investigating & presenting evidence in support of their case.
2. Preserve appearance of judge's fairness.
3. Since each party heard & considered, human dignity reinforced & parties more likely to accept judgment.

Trial Designed to Emphasize Clash Between Parties

Trial is designed as a clash between two parties, keeping the decision maker in suspense & avoiding premature judgment.

- Pl & def constantly take turns—e.g., direct examination then cross examination.
- Continuous & concentrated trial.
- Preference for “immediate” oral evidence over written evidence allows fact-finder to consider nonverbal clues to credibility.

Parties Have Equal Opportunities to Present and Argue Their Cases

1. “Discovery” gives each party equal opportunity to examine opponent’s proof.
2. Prosecution sits at same type table and wears same clothes as defense attorney and defendant.

3. Rules of evidence protect decision maker's neutrality by excluding evidence likely to be unreliable or pose serious threat of exciting unfair prejudice against a party.

Rules of Professional Conduct Designed to Prevent Abuses

Restrain misuse of L's power to gather & present evidence by prohibiting:

- Tactics designed to harass or intimidate opponent.
- Tactics intended to mislead or prejudice decision maker.
- Promote zealous advocacy to ensure parties gather & present most persuasive evidence.