Adversarial vs Inquisitorial

The criminal justice system used in English courts is known as an adversarial system. This relies on the contest between two opposing counsels (the adversaries), one for the prosecution and one for the defence, with an impartial person, the judge, or impartial group, the jury, looking on and trying to determine the truth of the case. A difficult task when many of the facts are distorted or omitted by the opposing adversaries in order to suit their respective objectives.

Caught in the middle between the two adversaries are the witnesses. They are usually ordinary people who were in a certain place at a certain time and, therefore, may have information that will help the case of one or other of the adversaries. The witness is usually nervous and overawed by being the centre of attention, standing in the raised witness box in this very strange place.

The nervous and ill at ease witness is then set upon by our two battling and very skilled adversaries. The witness is coaxed and bullied into telling the story that each of the bullies wants the court to hear. The witness is often purposely confused by the haranguing questions of the inquisitors and will often have their words distorted and thrown back at them for confirmation. Witnesses are rarely as clever as the counsels, and very often, under extraordinary pressure from the bullies, they find themselves saying, or more likely agreeing, things that are not correct. The counsels play with language and use mind games in order to distort facts and to purposely confuse the witness.

Justice is seen to be done when the most effective adversary is able to convince the judge or jury that his particular perspective on events is the correct one. The success of such a system depends upon the respective counsels being equaly pitted and being fully knowledgable of the facts of the case. However, the objective of the counsel is solely to influence the judge and/or jury in order to win the case for his client, whether his client is guilty or not. None of this circus has anything to do with honesty or truth or fairness or justice.

As opposed to that, the inquisitorial system has a judge (or a group of judges who work together) whose task it is to investigate a case.

One of the most significant differences between the adversarial system and the inquisitorial system occurs when a criminal defendant admits to the crime. In an adversarial system, there is no more controversy and the case proceeds to sentencing. By contrast, in an inquisitiorial system, the fact that the defendant has confessed to some guilt is merely one more fact that is entered into evidence, and a confession by the

defendant does not remove the requirement that the prosecution present a full case. Despite an admission to a crime, in an inquisatorial system a defendant is given the opportunity to present mitigation.

In the adversarial system we also have a dilution of the knowledge of the case, from the police and the solicitor, diluted to the barrister, then diluted further in the minds of the judge or jury. Then, with this diluted and sometimes distorted version of the facts, huge decisions are made about guilt and punishment.

We must ask ourselves whether this is the best way to get to the truth, if indeed it is the truth that we want to get at. The adversarial system has nothing to do with finding the truth and administering justice, it is purely a battle of egos between respective counsels. It is not uncommon for a counsel to win a case when he knows that he has won by clever presentation; or distorting the truth; or by harassing and confusing a witness. The clever counsel has no interest whatsoever in truth, fairness or justice, only winning for his client.

A Few Comments Relating To The Adversarial Approach

During my research into matters relating to the 'injustice' system, I have come across various comments that shocked me. They shocked me because of the people that made the comments:

- The Hon Russell Fox QC states in 'Justice in the 21st Century' that, "Justice means fairness, fairness means truth, and truth means reality. Those who expect any of the above from the adversary system should lie down until the thought goes away."
- Geoffrey Robertson QC stated, "We can't avoid the fact that the adversary system does make justice a game."
- Law professor Charles Wolfram stated, "Lawyers are institutionally schizophrenic ... a lawyer's objective within the system is to achieve a result favourable to the lawyer's client, possibly despite justice, the law and the facts."
- Lawyer Charles Curtis states, "One of the functions of a lawyer is to lie for his client. … He is required to make statements as well as arguments, which he does not believe in."
- Ethics professor Arthur Applbaum states, "Lawyers might accurately be described as serial liars because they repeatedly try to induce others to believe in the truth of propositions, or in the validity of arguments, that they believe to be false."
- Judge Burton Katz states, "A system that exalts a criminal's rights over the victim's, procedure over substance, and adversarial supremacy over the quest for

truth and justice is on the verge of moral bankruptcy. It will not survive, because the people will not support it."

Ethics invented by lawyers are self-contradictory. Lawyers purport to have a duty not to deceive the court, but also claim to have a sacred duty to get the best result for the client. If the client is in the wrong, the best result is to win the case; if he is guilty, the best result is to get him off. Both results necessarily deceive the court and pervert justice.

Dilution of the Truth - My Case

From July 1999, when D/C Steve Ball and his boys, rang my front door bell at six o' clock in the morning I had spent five years helping the police in their understanding of the facts. In that time D/C Ball had got to know me very well. He also knew the facts of the case very well and he understood my unwilling role in the crime. D/C Ball forecast that I would get a suspended sentence.

For almost two years before the criminal trial of Mike Buchanan started, I had provided numerous documents and held many meetings and discussions with my solicitor, Rachel Hubbard. Rachel also got to know the complex case reasonably well in that time and, like D/C Ball; Rachel was also confidant that I would get a suspended sentence.

For a much shorter time and for just a few meetings, I met with my barrister, Dean Armstrong. Whilst Dean was skilled at presenting cases in court, he obviously didn't know me or my case as well as D/C Ball or Rachel. Dean had not spent the same amount of time as D/C Ball and Rachel on the case and therefore had less of an understanding of how and why I had become unwillingly involved in the crime; or the devious methods used by Buchanan to entrap me; or my determination not to betray the trust placed in me by my customers.

Because I had pleaded guilty to certain counts, I was not on trial; I was purely a witness for the prosecution of Buchanan. The trial-by-jury took up five weeks of court time during which I spent three days in the witness box being bullied.

Buchanan's lies had taken up five years of police time and five weeks of court time. My honesty entitled my barrister to just 20 minutes of court time prior to sentencing in order to present a brief snapshot of my mitigating circumstances.

Then the all-powerful Judge King, with a minimal grasp of the facts concerning my involvement in the crime but with an intimate knowledge of the potential consequences if I were to receive a custodial sentence, issued his destructive finale.

If the justice system really was focussed on finding the truth, why is the knowledge of the case diluted more and more as it gets to the all powerful life destroyer? And why am I not allowed one minute of time in the court in order to explain why I felt I had little option in the circumstances but to break the law.

Would it not have been reasonable for the main players to sit around a table and discuss a fair and reasonable sentence? What would be wrong with the judge, the police and the two legal teams sitting around a table to discuss the facts of the case and together decide on a fair punishment?

The net result of the farcical process in court was that all of the main players were aghast at the sentence I received. I was traumatised and stunned to the core. D/C Ball of the fraud squad sent me his regards by way of an apology. Rachel and Dean were very angry at what they called "the idiot judge" and even the counsel for the Crown Prosecution Service voiced his great surprise at my sentence as I found out later from Mark Durbin.

Are our courts really interested in honesty and truth? Are we sure that the process used by the sparring, confrontational bullies who star in the show, is the best way to reach the truth. I don't think so. Our justice system should reconsider the processes used to reach the truth, if indeed it is the truth that they search for.

There is a real problem in the system for those that plead guilty (that is a black and white guilty). The court must give reasonable time for the guilty pleader to explain to the court just why he committed the crime. I was not given one solitary second in either civil or criminal court to have a say.

It's all a game and those players who operate within the justice system appear to make up the rules as they go along, or bend the rules to suit their objectives. Our adversarial justice system has evolved into a most vicious game where unfortunate members of the public are drawn for humiliation and destruction.

Is that too much to ask for a justice system to deliver fair justice and have sufficient regard for morality? I don't think so.

Our courts are courts of law. What if there were courts of morality. One thing is sure, if we had a court or morality then many of the judges, barristers, solicitors and police who currently practice in the criminal courts would not fare very well when being judged.

I now have to mention the role of the courts in family law. The events of this case destroyed my family and I found myself being dragged through the courts in a process that left me feeling 'mugged' time and time again by the deceit and lies of the legal professionals involved.

It may be too much to expect any change in the systems used by our justice system but the move towards divorce by mediation must be accelerated. Mediation is rather more akin to an inquisitorial system.

The use of an adversarial system to settle a divorce simply drives a huge wedge between the husband and the wife that is extremely detrimental to the children.