

Adversarial vs Inquisitorial



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Key Differences

	Adversarial	Inquisitorial
Investigation	<i>Police</i>	<i>Investigating magistrate</i>
Plea	<i>Guilty plea</i>	<i>No guilty plea</i>
Personnel	<i>Jury</i>	<i>Judge</i>
Evidence	<i>Parties determine Oral</i>	<i>Judge determines Written</i>
Expert Witness	<i>Called by parties</i>	<i>Called by court</i>

Against Adversarial

- It's a game!
- With the wrong incentives built in:

Discredit the expert

Silence the defendant

Bully the witness

Bore the jury

Abuse the process

For Adversarial

- Response to each of points
 - Tests witnesses
 - Tests expert evidence
 - Role of jury
- What's so good about inquisitorial?

For Inquisitorial

- Joined up justice
- Justice and judges involved throughout
- Thorough pre-trial process
- **THE DOSSIER**

Dossier

- If it's not in there
- It's not worth knowing
 - Interview summaries
 - Forms
 - Criminal record
 - Investigative actions
 - Etc etc etc

Inquisitorial trials

- Brief and unconfrontational
- No courtroom drama
- No traumatised witnesses
- No horrified victims
- No 'lawyer's paradise'

Against Inquisitorial

- Too much trust in the state
- Lacks lay involvement
- Miscarriages of Justice hidden
 - "...the continental inquisitorial system had also led to miscarriages of justice." (Chris Mullin)

For inquisitorial

- Seasoned judges
- Verdicts explained and justified
- Full appeals process

Conversion

- Are inquisitorial systems becoming more adversarial (and what prompts it)?
 - More active defence lawyers
 - New ways of contesting expert evidence
 - More emphasis on oral evidence

ICTY

- No jury but more 'fact-finding' judges
- All evidence presented in court, but documentary evidence as well
- Elaborate verdicts in writing
- Appeals against acquittals and convictions
- System of review