

Adversary System of Justice

The United States of America has long adopted an adversary system of justice in which two or more advocates represent their parties' positions before an impartial arbiter, usually a jury or judge, who attempt to determine the truth. Justice is said to be done when the most effective adversary is able to convince the arbiter that one perspective of the case is correct. Some scholars trace the origins of the system to medieval battle by combat. U.S. Supreme Court opinions that describe our adversary criminal system enunciate principles that apply equally to criminal and civil trials. Our adversary system is very complex - very human. The participation of lawyers is necessary because untrained citizens are not expected to understand nor be able to implement the intricacies of the law of the judicial system. This utter dependence upon lawyers to achieve justice requires that lawyers be ethical.

“[I]n our adversary system of justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try [cases]. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That [a plaintiff] hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in courts are necessities, not luxuries. The right of [a defendant] to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged has to face his accusers without a lawyer to assist him.”¹

“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If [accused], he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be [blameless], he faces the danger of [losing] because he does not know how to establish his innocence.”²

“We have elected to employ an adversary system of . . . justice in which the parties contest all issues before a court of law. The need to develop all relevant facts in the adversary system is both fundamental and comprehensive.”³

¹ *Gideon v. Wainwright* (1963) 372 U.S. 335, 344-45 (ellipses omitted).

² *Powell v. Alabama* (1932) 287 U. S. 45, 68-69 (ellipses omitted).

³ *United States v. Nixon* (1974) 418 U.S. 683, 709.