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# The Future of Adversarial Systems: An Introduction to the Papers from the First Conference

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# The Future of Adversarial Systems: An Introduction to the Papers from the First Conference

## **Cover Page Footnote**

International Law; Commercial Law; Law

# The Future of Adversarial Systems: An Introduction to the Papers from the First Conference

*Michael Louis Corrado*†

The four papers that follow are from a conference that took place on the campus of the University of North Carolina at Chapel Hill on April 8, 2009. The conference was the first in a planned series of conferences,<sup>1</sup> the aim of which is to stimulate comparative conversations on the future of adversarial systems, in particular in connection with criminal procedure.

**I. What an adversarial system is.** Our system of criminal procedure is adversarial.<sup>2</sup> The parties to criminal litigation—the adversaries—are the accused on one hand and the state on the other. The criminal investigation and the criminal trial are run by these parties. The prosecutor gathers and presents evidence to prove the defendant’s guilt, and the defendant may respond by rebutting the state’s evidence and by gathering evidence of his own to prove his innocence.

The important elements of an adversary system, for our purposes here, are these:

1. Litigation is run by the parties, and not by the judge. The parties decide who the witnesses will be and what evidence will be

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<sup>1</sup> The series is supported by the UNC Center for European Studies (CES), with funds from Title VI and the European Commission, and by the UNC School of Law. The success of the application for funding was largely due to the work of Ruth Mitchell-Pitts of the CES.

<sup>2</sup> For more on the adversary and inquisitorial system, see RENÉ DAVID, *FRENCH LAW: ITS STRUCTURE, SOURCES, AND METHODOLOGY* 116-22 (Michael Kindred trans., La. State Univ. Press 1972); F.H. LAWSON, *A COMMON LAWYER LOOKS AT THE CIVIL LAW passim* (Univ. of Mich. 1953); JOHN HENRY MERRYMAN & ROGELIO PEREZ-PERDOMO, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 130-31 (3d ed. 2007).

presented. The two parties are, at least in theory, of equal status before the court.<sup>3</sup>

2. The defendant, through his counsel, is entitled to confront and cross-examine his accuser.<sup>4</sup>

3. The defendant is entitled to have a jury of laymen decide the facts of his case.<sup>5</sup>

4. The fact-finder (the jury, or in some cases the judge) may take into account only the evidence presented in court at trial, and may not consider evidence in the pre-trial record which is not presented at trial; this is understood in our tradition as part of the presumption of innocence.<sup>6</sup>

5. The victim has no role in the prosecution of the case.<sup>7</sup> Some of these features are incorporated into our constitution, and some are simply part of the common law tradition which we inherited from England.<sup>8</sup>

**II. The inquisitorial tradition.** The adversarial tradition is one of two dominant traditions in criminal procedure; the other is the inquisitorial. The French system of criminal procedure is an example of an inquisitorial system.<sup>9</sup> The elements of the traditional inquisitorial system are these:<sup>10</sup>

<sup>3</sup> FRANCIS PAKES, *COMPARATIVE CRIMINAL JUSTICE* 50-59 (2004).

<sup>4</sup> MERRYMAN & PEREZ-PERDOMO, *supra* note 2, at 130-31.

<sup>5</sup> The United States uses trial by jury more than any other common law nation. See HARRY R. DAMMER & ERIKA FAIRCHILD WITH JAY S. ALBANESE, *COMPARATIVE CRIMINAL JUSTICE SYSTEMS* 140 (Eve Howard ed., 3d ed. 2006).

<sup>6</sup> See Giulio Illuminati, *The Frustrated Turn To Adversarial Procedure in Italy (Italian Criminal Procedure Code of 1988)*, 4 WASH. U. GLOBAL STUD. L. REV. 567, 569-70 (2005).

<sup>7</sup> See Mirjan Damaška, *Problematic Features of International Criminal Justice*, in THE OXFORD COMPANION TO INTERNATIONAL CRIMINAL JUSTICE 175, 180-81 (Antonio Cassese ed., 2009).

<sup>8</sup> The right to confrontation, for example, and the right to jury trial are contained in the Constitution. See U.S. CONST. amends. V, VI. Other features of the adversarial tradition were handed down in the common-law tradition. See generally Amalia Kessler, *Our Inquisitorial Tradition: Equity Procedure, Due Process, and the Search for an Alternative to the Adversarial*, 90 CORNELL L. REV. 1181 (2005) (discussing the history of the American legal system and its development from European traditions).

<sup>9</sup> Jacqueline Hodgson, *Hierarchy, Bureaucracy, and Ideology in French Criminal Justice: Some Empirical Observations*, 29 J. L. SOC'Y 227, 228 (2002) [hereinafter *Empirical Observations*].

<sup>10</sup> See, e.g., Bron McKillop, *Anatomy of a French Murder Case*, 45 AM. J. COMP.

1. Trials are run by judges, often more than one.<sup>11</sup> Questioning of defendant and witnesses is done by the presiding judge, and the order of evidence at trial is also determined by the presiding judge.<sup>12</sup> Counsel for the parties play a very minor role in the actual conduct of the trial.<sup>13</sup>

2. In serious criminal cases, the pretrial investigation is also conducted by a judge, the *juge d'instruction*.<sup>14</sup> This judge, who is presumed to be neutral, compiles a dossier in which, among other things, all evidence, inculpatory and exculpatory, is noted.<sup>15</sup>

3. The dossier is handed forward to the trial judges, who therefore have before them a record of everything that transpired in the pretrial investigation.<sup>16</sup> There is no requirement that evidence that may be relied on to convict the defendant should be presented to the fact-finder for the first time at trial.<sup>17</sup> This lack of insulation between pretrial investigation and what goes on at trial is one of the most significant differences between the two systems. Judges sometimes convict entirely on the basis of evidence gathered before trial, and without any evidence being presented at the trial itself.<sup>18</sup> Although it may not be fair to say that there is no

L. 527 (1997) (providing a good overview of French procedure, which is mostly still accurate today, despite some changes in the system since 1997).

<sup>11</sup> See JACQUELINE HODGSON, *FRENCH CRIMINAL JUSTICE: A COMPARATIVE ACCOUNT OF THE INVESTIGATION AND PROSECUTION OF CRIME IN FRANCE* 69 (Hart Publ'g, 2005) [hereinafter *FRENCH CRIMINAL JUSTICE*].

<sup>12</sup> See CLIFF ROBERSON & DILIP K. DAS, *AN INTRODUCTION TO COMPARATIVE LEGAL MODELS OF CRIMINAL JUSTICE* 120, 110 (Ctr. for Disease Control Press 2008).

<sup>13</sup> See *FRENCH CRIMINAL JUSTICE*, *supra* note 11, at 101, 105.

<sup>14</sup> Jacqueline Hodgson, *Constructing the Pre-Trial Role of the Defense in French Criminal Procedure: An Adversarial Outsider in an Inquisitorial Process?*, 6 *INT'L J. EVIDENCE AND PROOF* 1, 3 (2002).

<sup>15</sup> *Id.* at 3-4; *FRENCH CRIMINAL JUSTICE*, *supra* note 11, at 191-95; see also René Lévy, *Police and the Judiciary in France since the Nineteenth Century: The Decline of the Examining Magistrate*, 33 *BRIT. J. CRIMINOLOGY* 167 (1993).

<sup>16</sup> *FRENCH CRIMINAL JUSTICE*, *supra* note 11, at 32.

<sup>17</sup> See Hodgson, *supra* note 14, at 3-4; *FRENCH CRIMINAL JUSTICE*, *supra* note 11, at 191-95.

<sup>18</sup> See, for example, Bron McKillop, *Readings and Hearings in French Criminal Justice: Five Cases in the Tribunal Correctional*, 46 *AM. J. COMP. L.* 757, 761 (1998), which explains how French judges may consider minimal testimony at trial and may convict primarily based on the evidence gathered before trial. There is also an excellent documentary film showing a series of trials of misdemeanors, 10E *CHAMBRE-INSTANTS*

presumption of innocence in such a system, the role of the dossier certainly raises a question about that presumption.<sup>19</sup>

4. The prosecutor has a special role at trial; the defense counsel is not the equal of the prosecutor. The special role is indicated by the elevated seat the prosecutor occupies; he sits on the same level as the judges,<sup>20</sup> whereas the defense counsel sits at a lower level. The prosecutor is considered a magistrate, and the training of prosecutors is in large part the same as the training of judges: both take place in the *École Nationale de la Magistrature*.<sup>21</sup> Prosecutors and judges are considered associates; in French terminology judges are called “sitting judges” (“*juges du siege*”) and prosecutors are called “standing judges” (“*juges du parquet*”)—to indicate that when arguing the case they stand on the floor *parquet*).<sup>22</sup>

5. There is a limited sort of jury for felonies. But the jury does not retire to decide the facts by itself. It retires with the judges to consider the application of the law to the facts, and it is accepted as fact that the professional judges control the proceedings in the jury room.<sup>23</sup> Although a number of continental countries experimented with a British-style jury after the revolution, the differences between the two systems were too great and the limited system that has developed is all that remains.<sup>24</sup>

6. The victim may initiate criminal litigation, and may join in the litigation as a civil party, with damages awarded if the defendant is found guilty.<sup>25</sup>

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D'AUDIENCE [10<sup>TH</sup> DISTRICT COURT] (Claude Morice 2004).

<sup>19</sup> FRENCH CRIMINAL JUSTICE, *supra* note 11, at 216.

<sup>20</sup> *See id.* at 238.

<sup>21</sup> *See id.* at 235. The *École Nationale de la Magistrature* (ENM) is a training school for the judiciary in France and is operated by the French Department of Justice. *See* ENM Website, <http://www.enm.justice.fr/> (last visited Mar. 7, 2010).

<sup>22</sup> *See id.* at 238.

<sup>23</sup> *See* John D. Jackson & Nikolay P. Kovalev, *Lay Adjudication and Human Rights in Europe*, 13 COLUM. J. EUR. L. 83, 98 (2007).

<sup>24</sup> *See id.* at 95.

<sup>25</sup> DAVID, *supra* note 2, at 116-17; William T. Pizzi & Mariangela Montagna, *The Battle to Establish an Adversarial Trial System in Italy*, 25 MICH. J. INT'L L. 429, 433 (2004); *see also* CODICE PENALE [C.P.] art. 185 (Italy). Article 74 of the Codice di procedura penale states that “the civil action to claim compensation or reparation provided for by Article 185 of the Codice penale can be brought as part of the criminal

Most of the criminal justice systems in the world are inquisitorial, based more or less on the French model.<sup>26</sup> Theoreticians find the English system superior in a number of ways. It is oral and immediate: The fact finder (judge or jury) bases its determination on oral testimony that the fact-finder observes directly, whereas the judges in the inquisitorial system base much of their decision on written notations of evidence gathered before trial.<sup>27</sup> There is an “equality of arms” in the British system: The two parties are equal before the court.<sup>28</sup> The defendant has a right to challenge the prosecutor’s case at any point in the proceedings and is free to conduct his own investigation before trial. And the defendant’s case, the presentation of which is entrusted to defense counsel, is more likely to be vigorously presented, not having to depend on the treatment it gets at the hands of the investigating judge, presumed to be neutral, who will already have decided on the defendant’s probable guilt.<sup>29</sup>

The perceived superiority of the adversary system has led to various initiatives in the traditional inquisitorial systems on the continent of Europe. The most thorough change, however, has taken place in Italy.

**III. The Italian revolution in criminal procedure.** In the late 1980s, the Italian parliament undertook to reform their inquisitorial criminal procedure system in the direction of a more adversarial system.<sup>30</sup> The result was a code of criminal procedure that provided for a prosecutor seen as one of the parties before the court, and not herself as a kind of magistrate; an equality of representation, in which counsel for the two parties (state and

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trial by the person injured by the crime or by his/her general successors against the defendant or the person having a civil responsibility.” CODICE DI PROCEDURA PENALE [C.P.P.] art. 74 (Italy).

<sup>26</sup> The inquisitorial model is generally part of the civil law tradition, the most pervasive legal tradition in the world. It is found throughout Western Europe (outside the British Isles and Scandinavia), in Latin America, and in parts of Africa and the Far East. MERRYMAN & ROGELIO PEREZ-PERDOMO, *supra* note 2, at 127.

<sup>27</sup> *See id.* at 128, 131.

<sup>28</sup> *See id.* at 128.

<sup>29</sup> *See id.* at 131-32; *see also* Damaška, *supra* note 7, at 180.

<sup>30</sup> Pizzi & Montagna, *supra* note 25 at 430.

accused) determined the course of the presentation of evidence and actually conducted the questioning of the defendant and witnesses; provision for cross-examination of every witness; elimination of the examining judge; and an end to the trial court's access to pre-trial proceedings.<sup>31</sup> All evidence to be considered by the trial court in its determination of guilt or innocence, with certain small exceptions, would have to be presented in open court at trial.<sup>32</sup>

In his paper below on the Italian reforms, Professor Illuminati makes the point that the resulting system is not adversarial but *accusatorial*.<sup>33</sup> According to Illuminati, the main differences are these: While the aim of the English adversarial criminal process is to compose conflicts, the new Italian criminal procedure, like continental criminal procedure generally, is aimed at implementing criminal policy. In the Italian system the fact-finder is a panel of professional judges or, for more serious crimes, a mixed panel of lay and professional judges sitting together; and prosecution is compulsory. Nevertheless the reformed system resembles the British and American systems in significant ways: most importantly, the right of confrontation and the insulation between the fact-finder and the pretrial investigation. Cross-examination of witnesses is now a part of the trial, and the dossier of the investigation is no longer forwarded to the trial court; to be considered by the fact-finder, evidence must be entered by the parties at trial.<sup>34</sup>

The Italian move is representative of a direction that continental procedure has been taking. One example is the move from judicial investigation to prosecutorial investigation. The investigating judge, whose conclusions arrive at the trial court in the guise of neutral and probably true findings, disappeared in the first half of the twentieth century in Germany,<sup>35</sup> for instance, to be replaced by a system in which the prosecutor, understood to be a

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<sup>31</sup> *See id.*

<sup>32</sup> *See id.* at 435.

<sup>33</sup> Giulio Illuminati, *The Accusatorial Process from the Italian Point of View*, 35 N.C. J. INT'L L. & COM. REG. 297 (2010).

<sup>34</sup> *See id.*

<sup>35</sup> *See* MERRYMAN & PEREZ-PERDOMO, *supra* note 2, at 114, 130.



party to the litigation, a party with an interest in conviction, conducts the pre-trial investigation. The same is true in the new Italian system, and even the French have, in recent years, contemplated the idea of substituting prosecutorial investigation for judicial investigation.<sup>36</sup>

**IV. Movement away from the adversary system.** In spite of the fact that a number of countries in the inquisitorial tradition have made moves in the direction of the adversarial system,<sup>37</sup> there have been doubts raised recently in traditionally adversarial countries about the adequacy of the adversarial system to deal with the problems of today's world.<sup>38</sup>

**A. Changes and proposed changes inspired by the terrorist threat.** The United Kingdom has abandoned the jury trial and certain other traditional rights in terrorism cases in Northern Ireland.<sup>39</sup> It is now contemplating extending the period of pre-trial detention for terrorism suspects throughout Britain and, most radically, instituting a French style investigating judge to manage pre-trial investigation so that preliminary conclusions as to the suspect's guilt may be reached early on in the process.<sup>40</sup> Typically, although this change has been proposed for terrorism, there is support for extending it to non-terrorism cases:

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<sup>36</sup> See *Empirical Observations*, *supra* note 9, at 229.

<sup>37</sup> See, for example, Ron Wright's description of the Mexican innovations in criminal procedure in his contribution to this conference. Ron Wright, *Mexican Drug Violence and Adversarial Experiments*, 35 N.C. J. INT'L L. & COM. REG. 363 (2010).

<sup>38</sup> Cf. JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF WESTERN EUROPE AND LATIN AMERICA* 127 (2007) ("In a sense it can be said that the evolution of criminal procedure in the last two centuries in the civil law world has been away from the extremes and abuses of the inquisitorial system, and that the evolution in the common law world during the same period has been away from the abuses and excesses of the accusatorial system. The two systems, in other words, are converging from different directions toward equivalent mixed systems of criminal procedure.").

<sup>39</sup> Laura K. Donohue, *Terrorism and Trial by Jury: The Vices and Virtues of British and American Criminal Law*, 59 STAN. L. REV. 1321, 1322 (2007); see also, Jan Wouters & Frederik Naert, *Of Arrest Warrants, Terrorist Offences and Extradition Deals: An Appraisal of the EU's Main Criminal Law Measures Against Terrorism After "11 September,"* 41 COMMON MKT. L. REV. 909, 929 n. 128 (2004).

<sup>40</sup> See generally Anti-Terrorism, Crime and Security Act, 2001, ch. 24 §§ 23, 30, sched. 2, 6 (Eng.) (outlining conviction process and detention limitations for suspected terrorists).

When the Home Secretary told the House of Commons home affairs select committee that he personally favoured a more French-style system of criminal justice in terrorist cases, saying he “did not think that our system has been swathed in distinction or particularly effective at delivering justice,” he was not alone. That view is widely shared, even among the judiciary and many legal practitioners, specifically in questioning the British way of criminal justice. His view, moreover, should not be seen as restricted to terrorist cases. . . .<sup>41</sup>

In France the pre-trial judge is not charged merely with checking the excesses of the prosecution, but rather will run the investigation herself, not subject to many of the limitations imposed by the adversarial system.<sup>42</sup> So far the British legislature has resisted this move, but it is included as one proposed change in a recent House of Commons report:

[Special judges on the ‘continental model’] would oversee the investigation to its conclusion and would reflect the rights of the suspect as well as the needs of the investigation. This would be similar to the examining magistrates’ model in some other countries, such as France and Spain. This would require a major shift in the way in which cases are investigated and in the adversarial system of prosecution used in this country. But given the scale of the challenge we face, we believe it is right to consider this option alongside the others.<sup>43</sup>

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<sup>41</sup> Louis Blom-Cooper, *Britain Can Learn From the French*, DAILY TELEGRAPH, Mar. 23, 2006, ¶¶ 1-2, available at <http://www.telegraph.co.uk/comment/personal-view/3623883/Britain-can-learn-from-the-French.html>. Blom-Cooper is apparently in favor of this change, for he adds:

It is not without importance that, in terrorist trials, there has been a number of miscarriages of justice in England and Wales by comparison with those tried in Northern Ireland, where, for 30 [sic] years now, trials of terrorist offenders have been in the so-called Diplock courts, where trial has been conducted by a high court judge sitting alone.

*Id.*

<sup>42</sup> *See id.* ¶ 5.

<sup>43</sup> HOUSE OF COMMONS COMM. REPORT, OPTIONS FOR PRE-CHARGE DETENTION IN TERRORIST CASES 11 (July 25, 2007), available at <http://security.homeoffice.gov.uk/news-publications/publication-search/counter-terrorism-bill-2007/pre-charge-detention2835.pdf>.

In the United States, the right to confrontation, a right situated at the heart of the adversary system, has diminished or disappeared in deportation cases, intelligence cases, and in military commissions:

Secret evidence . . . exists throughout tribunals in our legal system, whether in an immigration context, in combatant status review tribunals, or in military courts. . . . In Article III courts, we presume that the defendant . . . has access to incriminating and exculpatory facts, has the opportunity to thoroughly investigate the case, to cross-examine witnesses and, if he chooses, to testify on his own behalf and to present witnesses. We expect and require the lawyer to mount a zealous defense. These fundamental ethical mandates for counsel are called into question in a growing number of criminal prosecutions, notably those that result from the work of intelligence agencies or other government agencies that classify information. In such cases, because information that is material and relevant is not readily available to the defense, the defendant is placed at a significant disadvantage in case investigation, preparation, and presentation.<sup>44</sup>

To the extent that cases traditionally considered criminal cases are moved into the immigration, international terrorism, and military jurisdictions, the right of confrontation is diminishing or disappearing in criminal cases. Similarly, habeas corpus may no longer be considered a right in such cases.<sup>45</sup>

***B. Changes and proposed changes inspired by the concern for the innocent.*** We find discontent not only among those concerned about security, but also among those concerned for the rights of innocent defendants. According to some scholars, the adversary system is the best system in the world for guilty

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<sup>44</sup> Ellen Yarosefsky, *Secret Evidence Is Slowly Eroding the Adversary System*, 34 HOFSTRA L. REV. 1063, 1065-66 (2006).

<sup>45</sup> See Glenn Greenwald, *Obama and Habeas Corpus—Then and Now*, SALON, Apr. 11, 2009, <http://www.salon.com/opinion/greenwald/2009/04/11/bagram/print.html> (stating that the Obama administration has fought “harder for the power to abduct people and imprison them with no charges.”); see also *Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007), *rev’d*, 128 S. Ct. 2229 (2008) (holding that the denial of habeas corpus to Guantanamo detainees was unconstitutional and that these detainees have the right to be accorded a full hearing).

defendants, and the inquisitorial system is better for an innocent defendant.<sup>46</sup> The responsibilities of counsel are not equal: The prosecutor has an ethical obligation to do justice in our system, and has constitutional obligations to provide exculpatory evidence to the defense.<sup>47</sup> The defense has no similar obligation to the truth. Its job is to protect the defendant, guilty or innocent.<sup>48</sup> Along the same vein, there have been suggestions made that the Fifth Amendment protection against compelled self-incrimination protects the guilty more than the innocent, at least to the extent that it keeps the compulsion hidden in the back rooms of police stations rather than putting it out front in the courtroom, where it can be better controlled.<sup>49</sup> It is worth noting that the new North Carolina Innocence Inquiry Commission, whose very role is to investigate claims of wrongful conviction, will operate without adversarial guarantees.<sup>50</sup>

**V. The papers.** The speakers at the conference were a distinguished group of comparativists and proceduralists from the United States and abroad.<sup>51</sup> Four of their papers are reprinted here.

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<sup>46</sup> See MERRYMAN & PEREZ-PERDOMO, *supra* note 2, at 127-28.

<sup>47</sup> See *id.*

<sup>48</sup> See *id.*

<sup>49</sup> Court decisions both affirming and expanding Miranda rights seem to support this contention. See, e.g., *Griffin v. California*, 380 U.S. 609, 615 (1965) (requiring that judges not draw adverse inferences as to the facts of a crime in the guilt phase of the trial based on a defendant's invocation of his right to silence); *Dickerson v. United States*, 530 U.S. 428, 432 (2000) (strengthening the Miranda decision by holding that "Miranda and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts"). However, there are a growing number of academics who argue that the Fifth Amendment protects the innocent as well as the guilty. See, e.g., Daniel J. Seidmann & Alex Stein, *The Right to Silence Helps the Innocent: A Game-Theoretic Analysis of the Fifth Amendment Privilege*, 114 HARV. L. REV. 430 (2000) (applying a game theory analysis to show how the right to silence benefits innocent suspects); Alex Stein, *The Future of Self-Incrimination: Fifth Amendment, Confessions & Guilty Pleas: The Right to Silence Helps the Innocent: A Response to Critics*, 30 CARDOZO L. REV. 1115 (2008) (responding to critics of Seidmann and Stein's analysis of the privilege against self-incrimination).

<sup>50</sup> See generally The North Carolina Innocence Inquiry Commission Rules and Procedures, art. 5, <http://www.innocencecommission-nc.gov/rulesandprocedures.htm> (illustrating the procedure for formal inquiry of an innocence claim) (last visited Jan. 28, 2010).

<sup>51</sup> See Conference on the Future of the Adversary System: Speaker Biographies, [http://www.adversarialsystems.org/last\\_years\\_conference](http://www.adversarialsystems.org/last_years_conference) (last visited Mar. 24, 2010).

Professor Illuminati's paper, *The Accusatorial Process from the Italian Point of View*, gives a helpful sketch of the history of criminal procedure and the development of inquisitorial, accusatorial, adversarial systems. He then goes on to discuss the recent reform in Italy which has resulted in an accusatorial system, bringing Italy much closer to adversarial systems than other continental European countries.<sup>52</sup> In *The Future of Adversarial Justice in 21st Century Britain*, Professor Hodgson makes the point that the current English system of criminal procedure has both adversarial and inquisitorial roots.<sup>53</sup> She reviews ways in which procedure in England and Wales has departed from the adversary model, responding to an increased concern about wrongful acquittals and a desire for efficiency. These concerns have led to changes that have been criticized as inquisitorial, but that go far beyond any known inquisitorial system in their prosecutorial bias. Professor Wright, in *Mexican Drug Violence and Adversarial Experiments*, discusses Mexican legislation that directs the various Mexican states to adopt a more open and oral—that is, a more adversarial—criminal procedure, and what is being done to implement that directive.<sup>54</sup> Finally, in *Wrongful Convictions: Adversarial and Inquisitorial Themes*, Professor Roach discusses the effects of the recent discovery of wide-spread wrongful convictions on the future of the adversary system.<sup>55</sup> In

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Ron Wright of Wake Forest University Law School, a distinguished scholar and expert on criminal law and procedure; Giulio Illuminati, head of the department of criminal law at the University of Bologna and a moving force in Italy's effort to change from an inquisitorial system; Richard Myers, a former federal prosecutor who recently joined the University of North Carolina Law School, and whose interests lie in the intersection between criminal law and procedure; Jacqueline Hodgson of the University of Warwick in England, a highly regarded comparativist who has published empirical studies of both the French and the English systems of criminal procedure; Teresa Newman and James Coleman of Duke Law School, co-directors of the Duke Wrongful Convictions Clinic and members of the North Carolina Center on Actual Innocence; and Ken Roach of the University of Toronto Faculty of Law, with cross-appointments in criminology and political science, a distinguished proceduralist who has in recent years specialized in anti-terrorism law and policy.

<sup>52</sup> Illuminati, *supra* note 33.

<sup>53</sup> Jaqueline Hodgson, *The Future of Adversarial Justice in 21st Century Britain*, 35 N.C. J. INT'L L. & COM. REG. 319 (2010).

<sup>54</sup> Wright, *supra* note 37.

particular, he takes up two questions: Whether wrongful convictions can be remedied by improvements in the adversary system, and whether they can be better addressed through increased use of inquisitorial features.

At the conference in April, Professor Richard Myers delivered a paper which, like Professor Roach's paper, questioned whether adversarial features—in particular adversarial features of the American system—do not hurt innocent defendants. He also raised the issue of whether the greater tendency of certain adversarial features to acquit the guilty did not lead to a kind of compensation in the form of greater punitiveness. Professors Theresa Newman and James Coleman delivered a paper on wrongful convictions, discussing the work of the North Carolina Commission on Actual Innocence. Neither paper was available for this issue of the Journal.

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<sup>55</sup> Ken Roach, *The Causes and Remedies of Wrongful Convictions: Adversarial and Inquisitorial Themes*, 35 N.C. J. INT'L L. & COM. REG. 385 (2010).