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## The Limits of Advocacy

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A central tenet of the adversarial system provides that courts must decide cases as framed by the parties, and thus should not raise overlooked legal issues sua sponte. This "party presentation rule" is claimed to be one of the essential distinctions between the adversarial and inquisitorial legal systems. Yet forcing judges to decide cases solely on the parties' terms can conflict with the federal courts' role in the constitutional structure to pronounce on the meaning of contested questions of federal law, and is in tension with the common law tradition of stare decisis. Furthermore, the party presentation rule is premised on an anachronistic model of detached and passive judging out of place in an era in which federal litigation frequently concerns public policy choices affecting the nation. Accordingly, this Article suggests that courts adopt a presumption in favor of raising legal issues sua sponte when failing to do so would result in misleading or inaccurate statements of law. Such a presumption would ensure that courts retain the power to find the objective meaning of contested questions of federal law, rather than being forced to choose between the parties' subjective descriptions of it. Moreover, judicial power to raise issues sua sponte is compatible with the adversarial tradition as long as courts are careful to avoid slipping into the role of advocate, and make sure to preserve an opportunity for a dialectical exchange between the parties on questions raised by the judge. Indeed, granting judges this authority can enhance, rather than undermine, the adversarial system's goals of achieving accurate results, preserving the impartiality of the decisionmaker, and respecting litigant autonomy.