Aspects of French Criminal Procedure

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INTRODUCTION

This study will survey French criminal procedure with a view to presenting its most important aspects, and at the same time affording a picture for the benefit of students and practitioners of American law. To promote practical understanding and facile comparison, the French system will be analyzed by observing its application to each of three hypothetical situations involving offenses of different degrees.

Initially, however, it is necessary to become familiar with the various types of French penal violations. Offenses are divided into three categories, distinguishable by the maximum penalties attendant upon their commission. Jurisdiction over each class of violation is given to a particular type of court. Corresponding to misdemeanors in our law are those offenses called contraventions,1 which are dealt with by the Tribunaux de Simple Police. The next degree of offense is the délit,2 a class which roughly encompasses serious misdemeanors and lesser felonies in America. Violations falling within this category are tried in the Tribunaux Correctionnels. The most serious offenses, major felonies in our system, are called crimes.3 Transgressions of this third class are prosecuted in the Cour d'Assises, the only court in France which functions with a jury.

In certain instances, appeals may be taken from a Tribunal de Simple Police to a Tribunal Correctionel, which rehears the case. Appellate review of errors of fact and law committed in a

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1. A contravention entails a penalty of not more than twenty-four thousand francs or imprisonment up to ten days. Dalloz, Code d'Instruction Criminelle Annoté d'Apres la Doctrine et la Jurisprudence art. 137 (1955 ed.) (hereinafter called Code d'Instr. Crim.).

2. A délit is punishable by imprisonment for not less than eleven days nor more than five years, by loss of certain civil and family rights, or by a fine of over twenty-four thousand francs. Dalloz, Code Pénal Annoté d'Apres la Doctrine et la Jurisprudence arts. 9, 42 (1955 ed.).

3. A crime is punishable by death, imprisonment for more than five years, banishment and loss of civil, political, and family rights. Id. arts. 7, 20, 28, 32, 33, 36, 47, 56, 71.
Tribunal Correctionnel may be had in a Cour d'Appel. No right of appeal exists from a verdict rendered in the Cour d'Assises; however, errors of law may be corrected by Pourvoi en Cassation in the criminal division of the Cour de Cassation.

Since 1810, it has been a fundamental principle of French law that civil and criminal justice be meted out by the same hands. This is achieved by having the same judges act at different times in both civil and criminal matters.\(^4\) In some instances efficiency is promoted by partition of crowded courts into criminal and civil divisions, or chambres,\(^5\) a practice familiar to Louisiana judges and practitioners. Ordinarily a judge serves for one year in a civil or criminal section; however, congestion of the calendar in any section may be alleviated by calling judges from other divisions. Only the judges of the criminal section of the Cour de Cassation are not subject to rotation.\(^8\)

Before making an analysis of proceedings in hypothetical situations, it is necessary to examine briefly the respective functions of two important public officers, the juge d'instruction, and the public prosecutor, and to indicate the methods by which penal actions may be initiated.

**The Juge d'Instruction**

To understand the place of the juge d'instruction\(^7\) in the French system, it is necessary to point out that French law

\(^4\) Code d'Instr. Crim. art. 138. The judge of the Tribunal de Simple Police acts also as a judge (juge de paix) in civil matters within his competency. The Court of First Instance is a Tribunal Correctionnel when dealing with délit (Id. arts. 174, 179) and a civil court when dealing with civil matters. This court furnishes associate judges called conseilleurs to the Cour d'Assises and thus cooperates in the trial of crimes. (Id. art. 252). The Cour d'Appel not only has jurisdiction over appeals from the Tribunal Correctionnel, but is also a court of appeals for civil cases. (Id. arts. 201, 204.) The Cour d'Assises is presided over by a judge chosen by the Cour d'Appel.

\(^5\) This is also the case in the Cour d'Appel, where there are different sections for the trial of civil and criminal appeals. The section called the Chambre des Appeals Correctionnels tries all appeals from the Tribunaux Correctionnels.

\(^6\) Bouzat, Traité Théorique et Pratique de Droit Pénal § 999 (1951 ed.).

\(^7\) Code d'Instr. Crim. art. 55. He is appointed to the job for three years with possibility of renewal, (ibid.) being appointed by the President of the Republic on nomination of the Minister of Justice. (Ibid.) He is chosen from among the judges of the Tribunal Correctionnel, and since 1856 he may be selected from its substitute judges. (Id. art. 56.) If his work is unsatisfactory, he can be removed from the position of juge d'instruction, but he keeps his position as judge of the Tribunal Correctionnel. He must be at least twenty-five years old. (Law of July 18, 1930, art. 7, and decree of June 25, 1934.)

In general, there is one juge d'instruction for each arrondissement, but in very populous ones, such as Paris, Lyons, and Marseilles, there are a considerably greater number. Code d'Instr. Crim. art. 55. For example, in the court of the Seine, there are fifty such officials divided into two classes, "titular" juges and
makes a clear distinction between the functions of investigation and prosecution. Investigation procedure comprehends the gathering of evidence and preparation of a case for trial, and it is to the juge d'instruction that this function is delegated. On the basis of all data obtained, this officer determines whether a defendant should be held for trial.

As a general rule, the juge d'instruction is seized with an investigation either by requisition from the prosecutor's office or by request of a private party who has been injured. Except in a case of flagrant délit, where the offender is caught in the wrongful act or shortly thereafter, the juge d'instruction has no power to commence an investigation on his own motion. Investigation by the juge is mandatory only in cases involving crimes. In the case of délits the prosecutor may either turn the case over to a juge d'instruction or investigate and prepare it for trial himself. The juge never investigates contraventions.

To carry out his duties effectively, the juge d'instruction is given extensive authority. He may issue warrants of detention and arrest for the accused, admit him to bail, make searches and seizures at the home of the accused and third persons, order a visit to the scene of the crime, and require expert testimony. If proceedings must be held outside the jurisdiction of the juge, he can issue letters rogatory to a juge in the proper jurisdiction empowering him to hold the necessary hearings. The formal investigation is a secret proceeding before the juge and his clerk in which the juge examines and cross-questions witnesses and confronts them with the accused.

Since 1897, an accused has been entitled to counsel from the outset of an investigation and must be so advised. The juge is required to notify defense counsel twenty-four hours in advance. On the other hand, in those places where the duties of the juge d'instruction are not sufficiently heavy to keep him busy, the juge d'instruction continues to act as a regular judge in the trial of civil and correctional cases. He cannot, however, sit as a judge in any case he has investigated. Id. art. 257.
vance of questioning of the accused and to place at his disposal all documents in the case file, thus eliminating the element of surprise.\textsuperscript{17} When questioned by the juge, an accused has a right to remain silent; however, if he elects this course, it will inevitably prejudice his case before the juge.

All results of the investigation, including the depositions of witnesses and testimony of the accused, are reduced to writing and compose the dossier of the case. Upon this record the juge bases his decision as to whether the accused should be held for trial.\textsuperscript{18} The importance of the dossier in a subsequent trial will later be made evident.

Upon completion of the investigation, the juge refers the entire record to the prosecutor, who is allowed three days in which to plead.\textsuperscript{19} After pleadings by the prosecutor, which are not binding upon the juge, a final order is entered, closing the investigative phase. The juge d'instruction may enter an ordonnance de non-lieu, similar to a nolle prosequi in American law; an ordonnance de renvoi, or order of committal, to the Tribunal Correctionnel; or if he deems the offense to be a crime, he transmits the dossier to the Procureur Général of the Court of Appeal for further proceedings in the Chambre des Mises en Accusation,\textsuperscript{20} a body which very roughly corresponds to the American grand jury.

**THE PUBLIC PROSECUTOR**

In France the office of the prosecutor is centralized under control of the Ministry of Justice, which is the chief agency for integration of law enforcement procedure. Within the Ministry are divisions for civil affairs, criminal affairs, and personnel. All prosecutors are appointed by the Minister of Justice.

There is no prosecutor's office for the Tribunal de Simple Police, the function of prosecutor being customarily performed by the Commissioner of Police.\textsuperscript{21} However, each Tribunal Cor-

\textsuperscript{17} Id. § 1132.
\textsuperscript{18} Ploscoe, Development of Inquisitorial and Accusatorial Elements in French Procedure, 23 J. CRIM. L. 372, 374 (1932).
\textsuperscript{19} CODE D'INSTR. CRIM. art. 127.
\textsuperscript{20} The prosecutor or the partie civile can appeal within twenty-four hours against the orders of the juge d'instruction. The accused, however, can only appeal from orders refusing bail or on a point of the juge's jurisdiction. CODE D'INSTR. CRIM. art. 135. See also Wright, French Criminal Procedure, 44 L.Q. Rev. 324, 343 (1928).
\textsuperscript{21} TRAITÉ DE DROIT PÉNAL § 988; CODE D'INSTR. CRIM. art. 144 (providing that an assistant juge de paix or mayor or assistant mayor may also function as prosecutor in certain instances).
rectionnel has a *Procureur de la République*.\(^{22}\) The public prosecutor and his staff are under the supervision of the *Procureur Général*\(^{23}\) of the Court of Appeal.\(^{24}\) Prosecutions before the *Cour de Cassation* are performed by a group of officials operating independently of all other prosecutions.

If a trial before the *Cour d'Assises* be held in a city in which is located a *Cour d'Appel*, the *Procureur Général* and his staff perform the duties of prosecution. In other cities, however, the prosecuting attorneys are usually those of the *Tribunal Correctionnel*, except in unusually important cases, when the *Procureur Général* prosecutes.\(^{25}\)

In addition to the function of prosecution, the office of the public prosecutor has the power to investigate and prepare for trial all *délits* or to refer such cases to the *juge d'instruction*. No such option exists in the case of *crimes*, for as previously noted, an investigation by the *juge d'instruction* is mandatory in such instances.

**INITIATION OF PENAL PROCEEDINGS**

In France the commission of a penal offense gives rise to two separate actions: the public action,\(^{26}\) which has for its end both a deterrent and a punitive purpose; and the civil action,\(^{27}\) which has for its end the granting of separations to the person injured by the offense. Although these actions arise from the same set of facts, they are completely separate and distinct and may be tried simultaneously or separately.

The *action publique* is usually initiated by the filing of a *plainte*, or information by an aggrieved party.\(^{28}\) A *plainte* must be in writing, but not under oath, and may be posted at the court addressed either to the public prosecutor or the *juge d'instruc-

\(^{22}\) The prosecutor and his assistants, or *substituts*, make up what is called the *parquet*. *Traité de Droit Pénal* §§ 983, 987.

\(^{23}\) The *Procureur Général* is assisted by *avocats généraux* and *substituts*, all of whom compose the *Parquet Général*. These officials serve as prosecuting attorneys before the Court of Appeal, handling correctional appeals, and before the *Chambre d'Accusation*. *Id.* § 986.

\(^{24}\) *Id.* § 990.

\(^{25}\) *Id.* § 996.

\(^{26}\) *Code d'Instr. Crim.* art. 1: "The action for application of penalties belongs only to those functionaries to whom it is confided by the law.

"The action for reparation of damages caused by a *crime*, by a *délit*, or by a *contravention* can be exercised by all those who have suffered such damage."

\(^{27}\) *Ibid.*

\(^{28}\) *Traité de Droit Pénal* § 1107; *Code d'Instr. Crim.* art. 31.
It is also possible for the prosecutor's office to initiate proceedings without the filing of a plainte, if an offense has come to its knowledge by accusation, denunciation, or even by public rumor.

If a citizen decides to institute an action civile, he files a constitution de partie civile, a formal declaration that he exercises his civil right against the offender and demands reparation. This may be done regardless of whether the prosecutor institutes an action publique.

An action of a penal nature is extinguished by death of the accused, by passage of an Amnesty Act by Parliament prior to judgment on the merits, or by prescription. The civil action, however, does not terminate by the death of the accused or the granting of amnesty, but generally by the normal methods of extinction of civil obligations.

29. CODE D'INSTR. CRIM. art. 65. When addressed to the prosecutor, it is called a dénonciation, whereas it is known as a plainte when directed to the juge d'instruction. Id. arts. 63, 64. In practice, many dénonciations are verbal, and among the written ones, most are anonymous. TRAITÉ DE DROIT PÉNAL § 1107. If the information is left with the juge d'instruction, he must communicate it to the prosecutor, who exercises his discretion in deciding whether or not to prosecute in the name of the State. Id. §§ 861, 862.

30. If the offense is a contravention, the prosecutor must start the case by a citation directe; if it is a délit, it may be started either by a citation directe, or by a requisitoire a fin d'informer to the juge d'instruction against a designated person or one unknown. This is a request to the juge d'instruction by the prosecutor to open an investigation. In the event of a crime, the action always must be put in motion by a requisitoire to the juge d'instruction. TRAITÉ DE DROIT PÉNAL §§ 863, 864, 865. Note also that the requisitoire is also called a requisitoire de soi informer or a requisitoire introductif d'instance. The request must be written, dated, and signed by the prosecutor and must indicate the facts which are to be the basis of the investigation. TRAITÉ DE DROIT PÉNAL § 1123. Whenever a requisitoire a fin d'informer is made to him, the juge must commence an investigation. He is then said to be "seized" of the case. In a few cases, the injured party's consent must first be obtained before the prosecutor can set the penal action in motion.

31. The constitution de partie civile may take one of two forms. It may be a citation directe before the Tribunal de Simple Police — if the offense appears to be a contravention (CODE D'INSTR. CRIM. art. 145) or before the Tribunal Correctionnel — if the act appears to be a délit (id. art. 182). By this citation directe, the complainant summons the defendant through a bailiff to appear before the appropriate court to answer for the damage caused (TRAITÉ DE DROIT PÉNAL § 864). The defendant must answer before the Tribunal de Simple Police in twenty-four hours, and before the Tribunal Correctionnel in three days. The other form of constitution de partie civile is addressed to the juge d'instruction, instead of directly to the court, and it is a declaration whereby the complainant informs this official that an offense has been committed which caused him damage, for which he claims reparation (id. § 873). This procedure obligates the examining magistrate to open an investigation even against the will of the prosecutor (id. § 874). Both the above forms require an undertaking by the complainant to lodge security (CODE D'INSTR. CRIM. art. 66).

32. CODE D'INSTR. CRIM. art. 2; TRAITÉ DE DROIT PÉNAL c. VIII.

33. See note 32 supra.
against the public action will generally result in a simultaneous prescription of the civil action.\textsuperscript{34}

With this background in mind, it is now possible to view the application of French procedural machinery in a series of hypothetical situations.

\textbf{Prosecution of Contraventions}

In the first of the hypothetical situations a citizen has been apprehended for violation of a municipal ordinance constituting a \textit{contravention}. As previously noted, trial of such offenses is conducted in the \textit{Tribunal de Simple Police}. This court is composed, in each \textit{canton}, of a single judge, who has the duty of trying \textit{contraventions} in addition to his civil functions as \textit{juge de paix}. However, in communes of 80,000 or more inhabitants having at least three \textit{juge de paix} courts, the functions of the \textit{Tribunal de Simple Police} are concentrated in the hands of a single judge, who has no civil duties.\textsuperscript{35}

This court is generally competent to try petty offenses, such as breaches of police regulations, entailing maximum penalties of 24,000 francs and terms of imprisonment up to ten days.\textsuperscript{36} Venue is proper only in the place where the offense was committed.\textsuperscript{37}

If the offender in this instance wishes to avoid the inconvenience of court proceedings, he may resort to the special procedure known as \textit{oblation volontaire}, which permits the police officer to accept the fine and give a receipt.\textsuperscript{38} Use of this method puts an end to any public prosecution.

A second type of special procedure for dealing with \textit{contraventions} is the \textit{amende de composition}, introduced in 1945. Under this procedure, an official statement of the offense is sent to the nearest prosecutor’s office, which then submits the matter to the judge of the \textit{tribunal}. Within five days the fine is fixed accor-

\begin{itemize}
  \item 34. \textit{Traité de Droit Pénal} §§ 952-955.
  \item 35. \textit{Code d'Instr. Crim.} arts. 142, 143. Each of the \textit{juges de paix} serves by rotation a turn as judge of the \textit{Tribunal de Simple Police}, and while so acting he is relieved of the trial of civil cases.
  \item 36. See note 1 supra.
  \item 38. Law of December 28, 1956. This device is available in cases of breaches of decrees or municipal ordinances relating to traffic offenses. It has recently been extended to railway and other transport and the classes of officials authorized to receive payment has been enlarged. By-laws of October 30, 1935, November 2, 1945, and 1949.
\end{itemize}
The defendant is notified of the decision by registered letter, and if payment is not made by him within five days, regular proceedings must be instituted. This system of amende de composition applies to almost all contraventions.

If the above special procedures are not applicable or prove ineffective, the offender must be brought into court for a regular hearing. In this event, summons is served upon the defendant by directe citation, either by personal or domiciliary service. The defendant has twenty-four hours from service to make an appearance, personally or through counsel. Often, however, a summons is not used. Instead, an informal note or letter is sent to the defendant requesting him to appear. This does not give the court jurisdiction unless the defendant voluntarily appears.

Prior to the hearing, the judge can, upon requisition of either the prosecutor or the partie civile, estimate damages, draw up procès verbal, or issue any necessary conservatory orders. The hearing itself is public, unless the judge considers that publicity would be contrary to public order and good morals and so declares in his judgment. If the defendant makes a personal appearance, the hearing begins with an interrogation of the accused by the judge as to his identity and the circumstances surrounding the offense. The prosecutor and partie civile present the case against the accused, examining any witnesses necessary. The accused is then allowed to present his defense. The judge must pronounce his decision immediately after the hearing or at the following sitting of the court; however, since there is no sanction for failure to comply with this duty, it is often ignored. If the accused is acquitted or if the judgment is one of non lieu, damages cannot be awarded to the partie civile, but an interesting possibility is the power of the court to grant the defendant damages caused him by unwarranted prosecution by the partie civile.

39. The schedule varies the fines according to the offense and was fixed by the laws of September 22, 1948, and January 31, 1949 (TRAÎTÉ DE DROIT PÉNAL § 1205; REVUE DE SCIENCE CRIMINELLE 97, 361 (1949)).
40. It does not apply in cases of damage to things and property, in cases where the penalty is other than a pecuniary one, in cases of multiple or repeated contraventions, or if the offense is covered by the Forest or Labor Code.
41. CODE D'INSTR. CRIM. art. 146; Laws of July 26 and October 21, 1941.
42. CODE D'INSTR. CRIM. art. 148.
43. Id. art. 153. The judgment may be by default if the defendant fails to appear in person or by attorney, or it may be on the merits. Id. art. 149. It must give the reasons on which it is based and the law which was applied. Id. art. 163.
44. Id. art. 153.
45. Id. art. 70.
An appeal to the Tribunal Correctionnel is allowed when the sentence is imprisonment or a fine of over 1200 francs.46 Such appeals, suspensive in nature,47 are usually filed by declaration lodged at the office of the registrar.

**PROSECUTION OF DÉLITS**

Turning now to the second hypothetical situation, application of French procedural machinery may be observed in a case in which the defendant has been accused of stealing articles not sufficient in value to entail a penalty of more than five years in prison.

Such an offense constitutes a délit48 and must be tried by a Tribunal Correctionnel.49 By a gradual extension of jurisdiction this court has become the one general criminal court in France. Formerly limited to offenses punishable by imprisonment of not more than two years, the Code Pénal of 1810 extended its competence to offenses for which penalties are fines of more than 24,000 francs or imprisonment from eleven days to five years.50 A court of this classification has jurisdiction ratione personae if the charge is brought in the place where the offense was committed, the place of residence of the defendant, or the place of arrest.51

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46. Id. art. 172. Dalloz Recueil 1949. J. 421. Formerly the prosecutor was not given the right to appeal from judgments of the Tribunal de Simple Police, but by virtue of the laws of May 24, 1946, and September 25, 1948, the prosecutor can appeal whenever the penalty is more than 4,000 francs or over five days in jail. An appeal by the parties must usually be filed within ten days from the judgment (unless it was a default judgment, in which case it is ten days from service of the copy of the judgment), and within one month by the prosecutor.

47. Appeals are dealt with by the Tribunal Correctionnel informally, it having discretionary authority to allow the parties to produce further evidence and to rehear the case. Id. art. 175.

48. The more common délits are thefts, swindling (regardless of the value of the thing), abuse of confidence, embezzlement (excepting certain confidential relationships), assaults upon the person, manslaughter, and negligent homicide.

49. This court is the ordinary Tribunal of first instance of the district, sitting alternately as a civil and penal court, except in more important districts, where the number of judges allows a special Chambre of the court to specialize in délit cases alone. Traité de Droit Pénal § 1012.

The composition of the court is as follows: A presiding judge, two assistant judges, the prosecutor, called Procureur de la République, and a clerk. It is noteworthy that in 1945, due to a shortage of judges, there was an experiment with the system of a single judge which was abandoned in 1948, and since that time the court must be composed of three judges. See Code d'Instr. Crim. art. 180. Furthermore, in order for the court to be validly constituted, the prosecutor and the clerk must also be present during all trials.


The competence of the Tribunal Correctionnel has been greatly extended in recent years by the technique of correctionnalisation judiciaire, or, more simply, correctionalization of offenses. This device involves the omission from the accusation of one or more of the aggravating circumstances, which in fact surround commission of the wrongful act. By this means, many offenses which are actually crimes are brought up for trial in the Tribunal Correctionnel. For example, forgeries are within the category of crimes, but they are often correctionalized by being presented as frauds. This process is popular with prosecutors because a trial before the Tribunal Correctionnel is less expensive and more expeditious than trial before the Cour d'Assises and avoids the mandatory investigation by a juge d'instruction and proceedings before the Chambre des Mises en Accusation.

As was indicated, the investigation of délits may be conducted either by a juge d'instruction or the public prosecutor. However, in the majority of such cases, the prosecutor conducts his own investigation. In either instance, the defendant is served with summons by personal or domiciliary service. However, if the case is one of flagrant délit, procedure varies somewhat. In this situation, a right of arrest is given to any police officer or private citizen. Investigation may be conducted either by the prosecutor or by a juge d'instruction. The latter officer may begin his investigation of a flagrant délit on his own motion. After conclusion of the investigation, the offender may either be tried the same day or detained for subsequent hearing. The usual formalities as to witnesses are dispensed with, and they are summoned verbally by the office of the judicial police. This procedure is not compulsory, and the prosecutor may release

52. The accused, who may prefer a jury trial, has the right of refusing to allow the prosecutor to correctionalize his offense and send it to the Tribunal Correctionnel. If this is the case, his attorney must at the opening of the trial raise the objection to the jurisdiction, and insist that the Tribunal Correctionnel is not the proper form. For a thorough discussion of this entire subject, see Ploscoe, Development of Accusatorial and Inquisitorial Elements in French Procedure, 23 J. Crim. L. 372 (1932); Wright, French Criminal Procedure, 45 L.Q. Rev. 92, 105 (1929); Traité de Droit Pénal § 117.
53. Id. art. 182.
54. Id. art. 41 provides that the délit which is committed at the moment or which has just been committed is a flagrant délit. It will also be called a flagrant délit in a case where the accused is pursued by the public clamor and in the case where he is found with the effects, weapons, instruments, and documents which make it appear that he is the perpetrator or accomplice, provided that it happens close to the time of the commission of the délit.
55. Id. art. 106.
56. Id. art. 61.
57. In large courts, notably the Tribunal of the Seine, a deputy prosecutor is kept permanently at the Palais de Justice to question persons arrested under these
the accused and set the case for trial according to regular pro-
cedural methods.\textsuperscript{58}

The trial before the \textit{Tribunal Correctionnel} is as devoid of
rigid formality as in the case of a hearing before the \textit{Tribunal
de Simple Police}. The accused is entitled to counsel upon re-
quest, and is sometimes assigned counsel against his will.\textsuperscript{59} If
the offense does not involve a penalty of imprisonment, the ac-
cused need not appear personally.\textsuperscript{60}

The activity of the presiding judge is startlingly different
from that of a judge in the United States. In France, he directs
and controls the trial from beginning to end, using the attorneys
to help him establish the facts. At the outset of the trial, he
interrogates the accused concerning character, past life, and the
circumstances surrounding the offense. As a basis for this inter-
rogation, the presiding judge uses the \textit{dossier}. The defendant
may remain silent, just as in a preliminary investigation before
the \textit{juge d'instruction}, but here too, silence will prejudice the
court against him, and thus a defendant's refusal to answer
the judge's questions is rare. After this interrogation, witnesses
are heard and documentary evidence is adduced. The \textit{partie
civile} and the prosecutor present their charges, and then counsel
for accused offers his defense, the accused or his counsel always
being entitled to the last speech.\textsuperscript{61} If the court is of the opinion
that the case has not been sufficiently clarified, a further in-
vestigation by one of its members may be ordered.\textsuperscript{62}

As with \textit{contraventions}, the Code specifies that judgment
must be pronounced immediately or at the next sitting of the
court, but in this situation also the absence of sanctions results
in violation of this requirement. The court may convict or acquit
the accused or enter an \textit{ordonnance de non-lieu}. A major dif-
ference between the French and American systems may be ob-

\textsuperscript{58} If an accused is summoned in the traditional way, he has three days to
prepare his defense.

\textsuperscript{59} Persons under eighteen and certain recidivists must always be defended,
and the court always assigns counsel \textit{ex officio} to paupers.

\textsuperscript{60} \textsc{Code d'Instr. Crim.} art. 185.

\textsuperscript{61} \textit{Id.} art. 190; \textsc{Traité de Droit Pénal} § 1219.

\textsuperscript{62} \textsc{Traité de Droit Pénal} § 1219. If the \textit{Tribunal Correctionnel} is seized
of a \textit{contravention} by error, and neither the prosecutor nor the complainant nor
the defendant request a transfer to the \textit{Tribunal de Simple Police}, the \textit{Tribunal
Correctionnel} must rule on the case, and on damages, if any. \textsc{Code d'Instr. Crim.}
art. 192.
served in the fact that if the judgment is one of conviction, the court also passes on the issue of civil damages claimed by the partie civile. On the other hand, if the judgment is one of acquittal or non-lieu, the court may, upon proper proof, award damages to the defendant for unjustified and reckless prosecution by the partie civile. 63

Appeals from judgments of the Tribunal Correctionnel may be taken by the accused, the partie civile, the Procureur Général, or the Procureur de la République. 64 The Cour d’Appel must hear the appeal within one month, and is empowered to review errors of both law and fact. 65 Prior to the hearing on appeal, one of the judges prepares a report on the case which is read in open court at the inception of the hearing. Although most appeals are decided on the basis of the lower court’s record, 66 the Cour d’Appel has power to hear the defendant in person and receive oral testimony. 67

The Cour d’Appel has power to affirm the conviction, to increase or reduce the penalty, or to annul the sentence and free the defendant. 68 Errors of law committed by the Cour d’Appel may be corrected in the Cour de Cassation, which may affirm the appellate court’s decision or reverse and remand with directions to enter a decree in accord with its interpretation of the law. 69

PROSECUTION OF CRIMES

In the third hypothetical case, charges have been brought against the accused for murder, a crime under the French sys-

63. CODE D’INSTR. CRIM. art. 191.
64. Id. art. 202. The time allowed the parties to appeal is ten days, which runs, in the case of a judgment on the merits, from its pronouncement, and in the case of a default judgment, from its service on the accused. Id. arts. 149, 150, 151, 203. The prosecutor, however, has one or two months, according to whether a copy of the judgment was served on him. Id. art. 205.
65. Id. art. 200.
66. TRAITÉ DE DROIT PÉNAL § 1343.
68. TRAITÉ DE DROIT PÉNAL § 1341. When the person sentenced by the Tribunal Correctionnel is the only appellant, his sentence cannot be increased on appeal. If only the complainant appeals, the appellate court merely adjudicates the civil claims for damages. If the prosecutor has appealed, the higher court may quash, reduce or increase the original sentence. The Cour d’Appel never sends the case back for a new trial. It may, however, confirm the judgment of the lower court on one point only, and reverse it on another. It may decide the case is really concerned with a crime and send it to the juge d’instruction. If it was only a contravention and neither the prosecutor nor the complainant had requested its transfer to the Tribunal de Simple Police, the Cour d’Appel pronounces the fine and rules on the damages just as the Tribunal Correctionnel would have been able to do. Id. arts. 212-216.
69. Id. art. 216.
tem of classification of offenses. As previously noted, investigation by a *juge d'instruction* is mandatory in all offenses which amount to *crimes*. If the *juge d'instruction* decides the accused should be held for trial, he refers the *dossier* to the *Procureur Général* of the *Cour d'Appel* for proceedings in the *Chambre des Mises en Accusation*. No accused may be tried before the *Cour d'Assises* unless the *Chambre* reviews the *dossier* and concurs in the findings of the *juge d'instruction*.

Within ten days after receipt of the *dossier*, the *Procureur* submits the record to the *Chambre* with his recommendations. A report of the case is rendered before this body by one of its members. Although the hearing is conducted entirely on the basis of the record, the parties have a right to file briefs. The judges of the *Chambre* vote on the accusation in secret, the *Procureur* and clerk having been excused from the room. If further investigation is deemed necessary, this task may be entrusted to a member of the *Chambre*, another judge, or the *juge d'instruction*.

The *Chambre* may enter an *ordonnance de non-lieu*, or if it determines that the offense committed was a *délit*, it may issue an order of transmittal, or *arrêt de renvoi*, to the *Tribunal Correctionnel*. If, however, the *Chambre* concurs in the finding of the *juge d'instruction*, it enters an *arrêt de renvoi* to the *Cour d'Assises*. Usually, an order of arrest is contained therein, and the accused is apprehended and imprisoned, unless he has been granted provisional liberty.

Assuming that the *Chambre des Mises en Accusation* has entered an *arrêt de renvoi* to the *Cour d'Assises* and the accused has been arrested and imprisoned, attention may be directed to

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70. CODE D'INSTR. CRIM. art. 133. The *Chambre*, which is often referred to by the *Code d'Instruction Criminelle* as the *Chambre d'Accusation*, is a section of the *Cour d'Appel* of the district. It has permanent personnel, but obtains it from other sections of the court. Formerly its decisions were given by five judges, but since a law passed April 28, 1929, it is legally constituted by three judges, including a president. The *Cour de Cassation* has decided that this figure represents a maximum and a minimum. Dalloz Hédonimaire 1924.63.

71. CODE D'INST. CRIM. art. 217.

72. The *Code d'Instruction Criminelle*, Article 222, provides that the clerk read to the *Chambre* in the presence of the *Procureur Général* the testimony and documents in each case, but in practice today this is no longer done. TRAITÉ DE DROIT PÉNAL § 1180.

73. CODE D'INSTR. CRIM. arts. 217, 223.

74. Id. art. 224.

75. Id. art. 126.
a discussion of pre-trial procedure, composition of the court, and the jury. After the arrêt de renvoi has been rendered, the Procureur Général, or one of his assistants, frames and signs the acte d'accusation, which resembles an indictment. Both the arrêt and the accusation must be served on the accused and copies left with him. Within twenty-four hours the dossier and exhibits are sent to the clerk of the Assises. Twenty-four hours later, the accused must be visited by the president of the court or his deputy. There are three principal reasons for requiring such a visit. First, the president must discover if the accused has counsel, and if not, designate one for him. Second, the president must inform the accused of his right to appeal within five days to the Cour de Cassation from the decision committing him for trial. Finally, this visit enables the president to assure himself that the case is ready for trial, or if he finds the evidence insufficient, an additional investigation may be ordered, or the trial may be postponed.

At least twenty-four hours prior to trial, the opposing parties must furnish each other with lists of witnesses. The accused must be given a copy of the jury list, and his counsel is furnished a copy of the record establishing the offense, which contains the written testimony of all witnesses examined by the juge d'instruction.

Turning now to the composition of the court itself, it may be

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78. Id. art. 241. This acte d'accusation is composed of three parts: (1) the designation of the accused by name and description, (2) an impartial statement of the nature of the crime and all the circumstances, either aggravating or extenuating, which surrounded its commission, and (3) a résumé to the effect that "in consequence, X is accused of having committed such murder, robbery, or other crime, under such and such circumstances." The Cour de Cassation has often refused to annul the acte d'Accusation for lack of impartiality. Dalloz Periodique 1922.1.8. Errors in the acte d'Accusation can always be rectified in the course of the proceedings. Juris Classeur Periodique 1948.4.5.
79. Code d'Instr. Crim. art. 242. Errors or omissions in one may be rectified by the contents of the other.
80. Id. art. 291.
81. Id. art. 293.
82. Id. art. 294. This counsel may be a solicitor, or barrister, or even, on permission of the president of the court, a parent or friend. Id. art. 285. Note, however, that it is seldom the case that a parent or friend acts as counsel.
83. Id. art. 296.
84. Id. art. 303.
85. Id. art. 306. Once, however, the Cour d'Assises takes jurisdiction, the case cannot be interrupted for an additional investigation.
86. Id. art. 314. Any irregularity in this notice only gives the accused the right to oppose the testimony of witnesses not regularly notified to him, and not the right to go to the Cour de Cassation. Dalloz Recueil 1946.J.135.
observed that in theory, the *Cour d'Assises*\(^8\) meets only at certain times, holding a two-week session every three months. However, sessions may be held more often if "need demands it."\(^9\) Thus, in heavily populated departments extraordinary sessions are the rule, and in Paris the *Cour d'Assises* is divided into two sections, sitting alternately every two weeks.\(^9\)

The court, in the broadest sense, is composed of two elements: the court in the strict sense, which is the professional element, and the jury, representing the popular or lay element. The court, or professional element, is composed of a president, two assistant judges, a representative of the prosecutor's office, and a clerk.\(^9\) Originally, the function of the jury was similar to that in the English system, from which the institution was borrowed. The jury was trier of fact, while the court passed upon issues of law. But this absolute separation of fact and law

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8. This court has jurisdiction of crimes, which are punishable by imprisonment for over five years, banishment, loss of family and civil rights, and death. It has jurisdiction ratione personae if the prosecution is in the place where the offense was committed, the place of residence of the accused, or the place of his arrest. *Id.* arts. 23, 63, 69.

9. *Id.* art. 259.

90. The general rule is that the *Cour d'Assises* should hold its session in the county seat of the department, but it often sits elsewhere, as for example, in the chief judicial, as opposed to the chief administrative town, or in a place where there is a great deal of commercial activity or in a place designated by the *Cour d'Appel*. *Id.* art. 258.

91. *Id.* art. 252. The president may be a judge of the Court of Appeals if he so chooses. He is appointed by the Minister of Justice, or when the Minister does not exercise the right (and he rarely does), by the first president of the Court of Appeals. The president of the Assises is designated for an entire quarter during which time he presides over all sessions held, extraordinary, as well as ordinary ones. The two assistant judges (called assesseurs), can be chosen from among the judges of the Court of Appeals or from the trial court of first instance of the town where the Assises is held. If chosen from the Court of Appeals, they are selected by the same authorities who appointed the president of the Assises. If chosen from the court of first instance, they are designated by the first president of the Court of Appeals according to the advice of the Procurer Général. They hold office for the same length of time as does the president of the Assises, but in case of extraordinary sessions they be can selected from judges other than those of the ordinary session. One or two supplementary assesseurs may be designated by the president of the Assises in the type of case which shows a possibility of being protracted. These additional judges are present during the entire proceedings, even though the court is legally constituted by only three judges, and they may be called upon to act if any of the regular judges become incapacitated during the trial. Judges who have knowledge of the case, such as the juge d'instruction, or judges who have considered the matter as members of the Chambre des Mises en Accusation, must never be chosen as judges of the Assises. *Id.* art. 257. It has been held that this exclusion is a narrow one and does not extend to the judge who, either as president of the Assises or as his deputy, made an additional investigation after the order of the Chambre des Mises en Accusation had sent the case to the *Cour d'Assises*. It is, however, necessary to exclude a judge who decided a case as a member of the Tribunal Correctionnel, even though that court's incompetence was recognized and the case sent to the *Cour d'Assises*. *Daloz Periodique* 1940.1.15.
worked badly in France. The jury refused to disassociate itself from the consequences of its findings. Penalties were determined by law, and juries often acquitted those they knew to be guilty because they considered the penalty too severe.

In spite of attempts at reform, the difficulties engendered by the French jury system continued until 1941. At that time the system of *echévinage*, in use elsewhere on the Continent, was adopted in France. Under this system the court and jury convene to deliberate on both facts and law. There is equality of voting power among the jurors and judges. This does not, however, effect complete equality between court and jury, for the task of deciding disputed points of law arising during the proceedings, and ruling on damage claims are still court functions. The number of jurors, formerly twelve, has now been reduced to seven.

Jurymen are selected from annual department lists compiled by commissions composed of judges, administrators, and legislative officials. Jurors must be of French nationality, at least thirty years of age, and must possess a reading knowledge of French, enjoy political, civil, and family rights, and be mentally competent. Since 1944, women have had the right to serve as jurors. Session lists are drawn from the annual list, and the jurors whose names are thus drawn are notified a week before the opening of the session. Names of four additional jurors who may have to act as alternates are drawn from a special list.

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92. The first attempted reform was in 1824, when the court was given the right to find extenuating circumstances in certain cases, but the juries continued to acquit, either through mistrust of judges or because the particular case did not come within the law. In 1832, the power to find extenuating circumstances was given to the jury. However, even this measure did not alleviate the difficulty.

93. And in use in French overseas territories.

94. The law of November 25, 1941, had lowered the number of jurors from the original number of twelve to six, but the ordinance of April 20, 1945, extended it to seven, and this is the law now in force. TRAITÉ DE DROIT PÉNAL § 1015.

95. CODE D’INSTR. CRIM. arts. 385-389. Preparatory lists are made up in each canton which are consolidated and revised into *arrondissement* lists and finally again amalgamated into the annual department lists.

96. Id. art. 381. The Code d’Instruction Criminelle specifies certain disqualifications for jurors, such as conviction for certain penal offenses. Id. art. 382. A disqualification for interest is contained in the provision that a person cannot serve as a juror in a case where he had acted as a member of the judicial police, witness, interpreter, expert, or party. There may not be a relationship between jurors, or between jurors and the accused or between jurors and judges in the case. Id. art. 383. Certain persons are excused from jury duty, such as those seventy years of age or over, manual laborers or those who have served on a jury during the current or preceding year. Id. art. 384.

97. Id. arts. 390, 391. This is done by the president of the Court of Appeals or the court of first instance of the department, two weeks before the opening of the session. Names of four additional jurors who may have to act as alternates are drawn from a special list.
prior to the session during which they are to serve. If any are excused, additional names must be drawn.\textsuperscript{98} The trial jury is drawn by lot from the session list prior to opening of the hearing and in presence of the jurors, the accused, and the prosecutor.\textsuperscript{99} The defense and prosecution have a right to challenge, but unlike the American system, no challenges for cause are permitted.\textsuperscript{100} The prosecution is allowed three and the defense four challenges.\textsuperscript{101} The trial jury is formed when seven unchallenged names are drawn.

The first official order of business is the impanelling of the jury, which is accomplished by administering the oath to each juror individually in the presence of the court,\textsuperscript{102} the \textit{Procureur Général} and the accused. However, prior to this official procedure, the president makes an interrogation of the accused, which is generally directed toward establishing his identity.\textsuperscript{103} After the jury is impanelled, the \textit{arrêt de renvoi} and the \textit{acte d'accusation} are read by the clerk. The president then addresses the accused: “You are accused of the foregoing offense, and you will now hear the charges to be produced against you.”\textsuperscript{104} Next, the witnesses summoned by the prosecutor, the complainant, and the defense are called, and are directed to a special room which they leave only as called to testify.\textsuperscript{105}

According to the letter of French law, the actual proceedings begin with the hearing of witnesses,\textsuperscript{106} but this is not followed in practice. The president begins the trial proper with an interrogation of the accused as to the \textit{crime}, surrounding circumstances, and everything bearing on the character of the defendant. Although this procedure is not explicitly authorized,

\begin{itemize}
  \item \textsuperscript{98} Id. art. 392. There must never be less than seventeen names on a session list. \textit{Id.} art. 393.
  \item \textsuperscript{99} Id. arts. 394, 399.
  \item \textsuperscript{100} Id. art. 400.
  \item \textsuperscript{101} Id. art. 401. Supplementary jurors are designated if it appears that the trial will be protracted, and they replace the regular jurors in the event that they become unable to serve during the proceedings for any reason. \textit{Id.} art. 394.
  \item \textsuperscript{102} Id. art. 312. Today the jurors are supposed to be seated alongside the court, but due to a lack of facilities in the court rooms, they actually sit as they always have, separated from the public, the parties, and the witnesses, and facing the accused. \textit{Id.} art. 309, new and old art. 309.
  \item \textsuperscript{103} Id. art. 310.
  \item \textsuperscript{104} Id. art. 313. The \textit{Code d'Instruction Criminelle} provides that this be followed by a summary by the prosecutor stating the nature of the case (\textit{Id.} art. 314), but in practice, this has fallen into disuse since it is felt to be superfluous.
  \item \textsuperscript{105} Id. art. 317. If necessary, the president may take precautions to prevent the witnesses conferring among themselves before they give evidence. \textit{Ibid.}
  \item \textsuperscript{106} Id. art. 317.
\end{itemize}
it is felt by the best authority to be justified by the president's
discretionary power, or by his duty to clarify the case for
the jury. As in other trials, the accused rarely remains silent
because of the prejudice which would result from such a course.
The interrogation commences with a brief resumé from the
dossier, which the president elicits by a leading question. This
covers defendant's life, including schooling, business, and army
records, and previous criminal record. This is intended to pre-
sent to the court and the jury a picture of the nature and char-
acter of the accused.

The president then deals in detail with facts and issues in
the case, delving into possible motives of the accused and ex-
posing his own ideas in a running commentary on the evidence.
This is considered valuable to the jury, even though the presi-
dent frequently assumes the aspect of the prosecutor rather than
that of an impartial judge. The president often attempts to
break down the story told by the accused. By all this, he leaves
little doubt in the minds of the jurors as to his own opinions.
During the foregoing examination, the president relies on the
dossier, by means of which he can check the statements made
in testimony given at the trial and point out any conflicts or
contradictions. During this time, counsel for accused must re-
main silent, unless given permission to speak.

The role of the president thus far is perhaps something of a
shock to the American judge or practitioner. Thus, it may be
advisable to examine in some detail the function of that officer
in a trial. What is probably most confounding to the American
legal mind is the dominant and far from impartial role played
by the president. He is charged by law "personally with direct-
ing the jurors in the exercise of their functions, with clarifying
to them the case on which they will have to deliberate, and even
with recalling to them their duty." In the French trial, it is
the president and not the attorneys who questions the accused
and the witnesses; who confronts the witnesses and the accused;
and who, often on his own motion, introduces documentary evi-

107. Id. art. 268.
108. Id. art. 267.
109. For further and more detailed discussion on this topic, see Ploscoe, De-
velopment of Inquisitorial and Accusatorial Elements in French Procedure, 23 J.
Crim. L. 372, 388-99 (1932); Wright, French Criminal Procedure, 45 L.Q. Rev.
92, 96-97 (1929); Woods, French Court of Assises, 22 J. Crim. L. 325, 327
(1931).
dence. The activity of counsel, far from being all important as in the United States, is only auxiliary.\textsuperscript{110}

Among the powers of the president of the \textit{Cour d'Assises} two are particularly eminent. First is the police power to keep order during the proceedings and to direct the course of the trial.\textsuperscript{111} Second, and perhaps most novel to the American student, is the "discretionary" power of the president, the exercise of which is limited only by his honor and conscience, and which is essentially personal to him.\textsuperscript{112} The Code contains an illustrative list of instances in which this power may be exercised.\textsuperscript{113} The president has power to order new documents introduced into evidence if they appear to be useful in clarifying issues; permit reading of the testimony of absent witnesses given before the \textit{juge d'instruction}; and even to introduce papers which had not been communicated to the accused, such as a memorandum or even an anonymous letter. Obviously a rule excluding hearsay evidence has no place in such a system. Further instances in which the power may be exercised are many and varied. The only limitations on this power are that it may not extend in time beyond the trial, nor may it go counter to provisions of law or derogate from fundamental principles, such as the freedom of the defense. Thus, the president cannot show evidence to the jury without first tendering it to the accused or his counsel.\textsuperscript{114}

The role of the two other judges is limited. In certain instances, however, the court may exercise powers not available to the president alone, and it may also settle disputed points of law.\textsuperscript{115}

\textsuperscript{110} Code d'Instr. Crim. arts. 319, 327, 329, 330. For a full exposition on this subject, see Ploscoe, \textit{Jury Trial in France}, 29 Minn. L. Rev. 376 (1945).
\textsuperscript{111} Code d'Instr. Crim. art. 267.
\textsuperscript{112} Id. art. 268 provides: "\textquote{Le président est investi d'un pouvoir discrétionnaire en vertu duquel il pourra prendre sur lui tout ce qu'il croira utile pour découvrir la vérité; et la loi charge son honneur et sa conscience d'employer tous ses efforts pour en favoriser la manifestation.}" The president exercises this discretionary power without the participation of the other two judges, and he cannot delegate its exercise.
\textsuperscript{113} Id. art. 269.
\textsuperscript{114} Dalloz Péridiöque 1880.1.191.
\textsuperscript{115} Traité de Droit Pénal § 1244. Thus the court as a whole rules on points of law raised by questions asked by the president in the exercise of his discretionary power, and also on rulings made by him in the exercise thereof. The court as a whole rules on the transfer of a case to another session and on closed hearings in the interest of public morality. It also pronounces sentence against persons guilty of crimes or délits during the hearing.
Returning to the course of the trial, the next step after interrogation of the accused is the hearing of witnesses. Distinct differences may be noted between the American and French systems in the manner of taking testimony. After being called and sworn, each witness is allowed to tell what he knows of the case in his own way, without benefit of notes, except in complicated cases, and without interruption. After each witness testifies, the president asks him if he speaks of the accused. According to Article 319 of the Code, the attorneys are prohibited from asking questions except through the president. In practice, however, direct questioning is permitted. There is no cross examination of witnesses as known to Anglo-American law, and although testimony must have some relevance, it is not confined by the narrow exclusionary rules of the Anglo-American system. Persons related within a specified degree, the spouse of the accused, and those having a pecuniary interest are incompetent to testify and are not to be either called or received as witnesses. However, the hearing of such persons does not strike proceedings with nullity if the testimony has been heard without objection of the prosecution, the partie civile, or the accused. After testimony of all witnesses has been heard, experts may be called to testify.

When the taking of testimony and introduction of evidence has been completed, the parties make their arguments. First, the prosecutor and the partie civile speak, and then the defense argues. Each side has a subsequent right of rebuttal. It is a firm rule of French law that the accused or his attorney must invariably be allowed to have the last word.

116. Recueil Sirey 1950.1.145. The court must hear all witnesses summoned by the prosecution and the defense.
118. The president also has the right, by virtue of his discretionary power, to read the deposition of an absent or dead witness.
120. Ploscoe, Jury Trial in France, 29 Minn. L. Rev. 376, 379-80 (1945). The president notes any additions, changes or variations between the testimony of the witnesses at the trial and their previous statements, as shown in the dossier, when they were questioned by the judge d'instruction. Code d'Instr. Crim. art. 318. The witnesses are given a chance to explain such variations. False testimony before the Cour d'Assises is a crime, and a witness testifying falsely can immediately be arrested. Id. art. 330.
122. Ibid.
123. Id. art. 335. The closing of the trial is then announced by the president, and all further discussion is prohibited. Id. art. 335. The president may, however, order a reopening of the hearing even after the court and the jury have begun their deliberations, at the request of any of the parties, and his refusal to do so can be reviewed by the entire court. Dalloz Periodique 1896.2.54.
Although the Code originally provided that the president make a summary of the case at this point, the practice was abolished in 1881.124 The president can, however, even today, given vent to strong expressions of opinion during the course of the trial and not be reversed on appeal. For example, the president was not considered to have violated the prohibition against summarizing the proceedings when he remarked at the close of a interrogation that he “had never seen such an abominable case.”125

The law provides that immediately after the closing of the proceedings the president must frame and read the categorical questions126 which the court and the jury, convened together in one body, will have to answer.127 These questions are of three general types: first, those which relate to issues arising from the indictment itself; second, “special” questions128 concerning new issues raised during trial; third, those inquiries which relate to legal excuses.129 The second category is of particular importance, for among the “special” questions which may arise are “subsidiary” questions directed toward presenting the offense in a category less grave than that set forth in the indictment. An example of this type of question would be one as to the presence or absence of specific intent in an indictment for murder.

After posing questions for decision, the president excuses the accused, and the court and jury assemble in the council chamber to deliberate.130 The court and jury vote by successive written ballots, first on the principal act, then on each aggravating circumstance; next on each legal excuse, and finally, if the accused is found guilty, a vote is taken on the existence of extenuating circumstances.131 Votes are taken by secret, written

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124. CODE D'INSTR. CRIM. art. 336.
125. TRAITÉ DE DROIT PÉNAL § 1255, n. 2.
126. CODE D'INSTR. CRIM. art. 346.
127. Id. art. 336. The reading of the questions may be dispensed with when they are framed in the terms of the indictment (arrêt de renvoi) or if the accused or his counsel waive the requirement. The questions are usually submitted to the prosecution and the defense, any disagreement being settled by the court, without a right in the parties to appeal. Id. art. 342.
128. Id. art. 338.
129. Id. art. 340. The president has the right to put such questions on his own motion. Questions of non-culpability and justification do not fall within this classification since they are not “legal excuses,” but are included in the general issue of guilt.
130. Id. art. 343.
131. Id. art. 345. The president must frame a question on extenuating circumstances if the guilt of the accused is established by vote.
ballots deposited in an urn and counted by the president in the presence of judges and jurors. An absolute majority of votes is necessary for a finding of extenuating circumstances. On a finding of guilt and in all other cases equality of votes is in the accused's favor.

When the deliberation on the question of guilt is completed, if the accused is found not guilty, his acquittal is pronounced. However, if the finding is one of guilt, the deliberations continue and are focused upon three particular questions: (1) Do the facts found constitute an offense under the law? (2) Is the action barred by prescription? (3) What penalty applies, considering all elements, such as aggravating circumstances, legal excuses, and extenuating circumstances?

After all questions have been resolved, the court and jury return to the court room and the answers to the questions and the judgment are read by the president to the accused. If the judgment is one of absolution or acquittal, the prisoner is released.

The Court, without the jury, rules on civil claims for damages, restitution, and costs. An award may be made to the

132. Id. art. 348. In case of contradiction between two or more answers, the president can order a new vote, as he can also do if the first vote is irregular in any way, for example, if it is incomplete. Id. art. 350.

133. Id. art. 355.

134. Id. art. 352. If the act of which the accused is found guilty does not come under the penal law because it is not an offense, or because a legal excuse is established or because the action is prescribed, "absolution" is pronounced. For cases within the purview of the penal law, the code specifies how the vote to determine the penalty takes place. It is also by secret ballot, and by majority vote. If after successive ballots there is a failure to agree on a penalty by the majority, further ballots are taken in each round, the penalty being lowered by one degree. This goes on until an absolute majority agrees on a penalty. Id. art. 351. A stay of execution of the penalty can be ordered by majority vote. Id. art. 351. If the accused is a minor of eighteen or less, the court and jury pass on measures for his placement and guardianship. Id. art. 354. If the offense of which the court and jury found the accused guilty was a lesser offense than a crime, they must nevertheless proceed to pronounce the sentence. Article 351 provides: "In case of an affirmative response as to guilt the court and the jury will deliberate without interruption on the application of the penalty, even in cases where after trial, the deed should be found not to be within the jurisdiction of the Assises."

135. Id. art. 357. In case of conviction, the law on which it is based must be read by the president. Id. art. 357.

136. The prisoner's release is subject to the condition that he be not charged by documents or witnesses, during the proceedings, with another penal act. Id. art. 358. If such be the case, however, the party acquitted may be rearrested, provided it is for a separate and distinct act from the one for which he has just been tried. This is in consonance to the double jeopardy provisions of the Code d'Instruction Criminelle, which provide: "All persons acquitted legally can no longer be held or accused by reason of the same facts." Id. art. 359.

137. Id. arts. 362, 364.
partie civile even though the accused was found not guilty and was acquitted or absolved. As in other prosecutions, the court has power to award the defendant damages for reckless or malicious prosecution by the partie civile.\textsuperscript{138}

As previously noted, there is no right of appeal from a verdict of the Cour d'Assises. However, redress may be had by pourvoi en cassation to correct errors of law,\textsuperscript{139} or a pourvoi en revision on the ground of newly discovered evidence. Either type of pourvoi may be filed by any party to the action.\textsuperscript{140} About six weeks is required for transmittal of the record to the Cour de Cassation, and a decision is usually rendered within twelve to fifteen days thereafter.\textsuperscript{141} Of the fifteen members of the criminal section of the Cour de Cassation, nine are necessary to constitute a quorum.\textsuperscript{142}

The pourvoi en cassation must be timely filed.\textsuperscript{143} If filed by the prosecutor\textsuperscript{144} or the partie civile, the only purpose is to obtain an annulment of the judgment for the record.\textsuperscript{145} A pourvoi is suspensive in nature, but when a defendant has been found not guilty in the Cour d'Assises, he cannot subsequently be convicted by means of a pourvoi.\textsuperscript{146}

A pourvoi en revision is analogous to a motion for a new trial filed on the ground of newly discovered evidence, and may be

\begin{itemize}
  \item 138. Id. art. 363.
  \item 139. Id. art. 408.
  \item 140. \textit{TRAITÉ DE DROIT PÉNAL} § 1356.
  \item 141. Woods, \textit{French Court of Assises}, 22 J. CRIM. L. 325, 327 (1931).
  \item 142. The \textit{Cour de Cassation} is divided into three sections: The Chambre des Requetes and the Chambre Civile, for civil cases, and the Chambre Criminelle for penal cases. The prosecutor for this court is represented by the Procureur Général of the \textit{Cour de Cassation}, and two avocats-généraux. \textit{TRAITÉ DE DROIT PÉNAL} § 1026.
  \item 143. The pourvoi must be entered by the parties within three days from the delivery of the judgment, or from its service, if it was by default (id. art. 273), but the prosecutor (id. arts. 374, 409), and the partie civile (id. arts. 374, 412) have only twenty-four hours to file a pourvoi against a judgment of acquittal or absolution rendered by the Cour d'Assises.
  \item 144. Id. art. 409.
  \item 145. The prosecutor can file, at any time, a pourvoi in the interests of the law, when the parties have not, within the time specified, filed any pourvoi. Id. art. 442. This pourvoi can neither profit nor injure the accused, and damages awarded the partie civile are not affected thereby. It only results in clarifying the law, although a pourvoi filed by an order of the Minister of Justice, can benefit the accused but not worsen his situation. Id. art. 441.
  \item 146. \textit{CODE D'INSTR. CRIM.} art. 444. Usually the \textit{Cour de Cassation} can only quash a decision and send the case down for retrial, but in a few instances it can substitute its own decision without sending the case to another court, as, for example, when it reduces a judgment it found excessive. \textit{TRAITÉ DE DROIT PÉNAL} §§ 1368, 1370, 1371.
\end{itemize}
used only when there has been error prejudicial to the accused.\textsuperscript{147} An application for revision may be filed by the Minister of Justice, the convicted person, or his legal representative if he is deceased.\textsuperscript{148} The application must be based upon facts unknown at the time of trial and must be filed within one year of their discovery if filed by the convicted person or his representative.\textsuperscript{149} The Minister of Justice, however, may file at any time.\textsuperscript{150}

Upon receipt of a pourvoi a member of the court is appointed to study the record and present a report. On the day set for hearing, arguments are heard by both parties. If the application is for pourvoi en cassation, the court may confirm the decision or remand the case to another court of the same rank as that which made the conviction. This court hears and decides the case, and if it disagrees with the Cour de Cassation, the three Chambres of the Cour de Cassation sit as a body to hear the case. If the entire court reaches the conclusion that there has been error, the case is remanded for decision in consonance with this finding.\textsuperscript{151} If the application is for pourvoi en revision, the court may reverse the decision appealed from and remand the case for retrial, if such be possible.\textsuperscript{152} A convicted person may be found innocent, or may be convicted again, but no sentence may be imposed higher than that meted out at the original trial. In certain instances, the Cour de Cassation hears and revises the judgment itself. A decree of revision, finding the convicted person not guilty, annuls in principle all past effects of the conviction and may also make an award of pecuniary compensation. This compensation is paid by the State to the one unjustly convicted, or if he be deceased, to his heirs.

CONCLUSION

From the foregoing analysis one may observe outstanding differences and similarities between the French and American systems of procedure. One outstanding distinction lies in the function of the judge in French procedure. The judge in Anglo-American jurisdictions plays the role of an umpire, standing

\textsuperscript{147} TRAITÉ DE DROIT PÉNAL §§ 1376, 1378.
\textsuperscript{148} CODE D’INSTR. CRIM. art. 444.
\textsuperscript{149} TRAITÉ DE DROIT PÉNAL § 1381.
\textsuperscript{150} Law of June 7, 1949.
\textsuperscript{151} TRAITÉ DE DROIT PÉNAL §§ 1368, 1369, 1370.
\textsuperscript{152} CODE D’INSTR. CRIM. art. 445.
\textsuperscript{153} Id. art. 446.
aloof from the contest, directing the proceedings. The burden of bringing forth evidence is upon the parties, and the court plays no part in taking testimony or adducing evidence. In France, on the other hand, a criminal trial is more in the nature of a judicial inquiry, wherein the judge performs an active role in making the investigation and in developing the facts. This is noted in the function of the juge d'instruction as well as in the functions of a trial judge.

Although the juge d'instruction has no specific counterpart in American systems, it may be observed that he performs at least a portion of the functions normally delegated solely to either the district attorney or the grand jury in American procedure. The French official, however, has the duty in the course of his examination to uncover facts favorable to as well as detrimental to the accused. He is given unusually wide powers to this end, since he is not a partisan as in our law, where the prosecution must present the State's case.

The French trial judge has an affirmative duty to make certain that all facts are revealed, developed and clarified, and for this purpose he is endowed with far greater authority than American law confers upon its judges. Needless to remark, such procedure would find little favor with most American lawyers, particularly the partisan attitude of the judge and the methods employed in questioning the accused, not to mention the running commentary upon the evidence.

The position of an accused is also singular. He is utilized as a source of information and investigation, and although he has a right to remain silent, his pursuit of such a course only results in prejudice to his chances of a favorable verdict.

Despite adherence to the principle of an oral proceeding, the written record of the preliminary investigation plays a major part in the proceedings, since it is used by the court's president as the basis for his interrogation of the accused as well as a source from which contradictions in testimony may be discerned. The evidentiary and exclusionary rules as to hearsay and opinion evidence, so firmly imbedded in the matrix of the Anglo-American sense of justice, have no place in French procedure.

Striking similarities may also be noted. In both countries a presumption of innocence exists, and in both there is found a prohibition against double jeopardy. Although procedural func-
tions of the lay element differ strongly, both systems embrace the concept that the layman has a function to perform in the decision of criminal cases. It may be concluded that the French procedural system is geared to give judicial officials wider authority to ferret out the facts than the American system. Nevertheless, in spite of differences both distinct and subtle, the objectives of doing justice by ascertaining truth and of protecting society and the State remain paramount in both legal cultures.