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ADMINISTRATION OF CRIMINAL JUSTICE
IN FRANCE:
AN INTRODUCTORY ANALYSIS

George W. Pugh*

A system for administering criminal justice is a detailed tapestry woven of many varied threads. It is often difficult to understand the nature and significance of any particular fiber without at least a general appreciation of the function of other threads, and also a realization of the impact of the whole. This is certainly true of the French system.

An attempt at a comparative study of another procedural system is fraught with difficulty, for one becomes so accustomed to his own procedural patterns that he is tempted to make unwarranted translations in terms of his own institutional frame of reference. Comparative evaluation of a procedural device, on the other hand, is even more difficult, for it involves at least two aspects: whether the device functions satisfactorily in its own institutional setting, and whether utilization of the mechanism in the context of another given system would be feasible or desirable.

Since the inception of the Fifth Republic, there have been a number of changes in the French legal system, including the

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1. For discussion of changes made by the DeGaulle reforms, see: Anton, L'Instruction Criminelle, 9 AM. J. COMP. L. 441, 443 (1960); Herzog, Proof of Facts in French Civil Procedure: The Reforms of 1958 and 1960, 10 AM. J. COMP. L. 169 (1961); Patey, Recent Reforms in French Criminal Law and Procedure, 9 INT. & COMP. L.Q. 383 (1960); CODE DE PROCÉDURE CIVILE, Table
adoption of a new Code of Criminal Procedure. The following is not intended to be a comprehensive comparative treatment or evaluation, but rather an introductory analysis of the functioning of French procedure in actual practice. Before discussing the procedures themselves, a summary description of the French judicial system and the diverse roles of the various members of the legal profession will be given, for procedural rule and institutional context are interwoven and interact with each other.

I. JUDICIAL ORGANIZATION

In France, justice is administered through two separate systems — administrative and judicial. A discussion of the administrative system is beyond the purview of this summary.


In citing the CODE DE PROCÉDURE CIVILE, CODE DE PROCÉDURE PÉNALE, CUCHE ET VINCENT, and STEFANI ET LEVASSEUR, “et seq.” will be used where pertinent material follows the original citation, but is interspersed among related materials.

2. In 1958, the CODE DE PROCÉDURE PÉNALE was adopted, replacing the former CODE D’INSTRUCTION CRIMINELLE (enacted in its original form in 1808). The following discussion will be in the light of these reforms.

A very valuable English translation by Mr. J. Fergus Belanger of the Code of Penal Procedure, 1st Part was published by the United States Army in 1959.

3. To facilitate further study in particular areas, an effort has been made to provide useful references to sources in English (where available), followed by sources in French.


For a discussion of the administrative court, see DAVID & DE VRIES, 64 and bibliography, 144; Deák & Rheinstein, supra at 883; Kock, 377; DE LAUBADERE, TRAITÉ DE DROIT ADMINISTRATIF, no. 425 (1957); Rivero Droit Administratif nos. 131, 184 (Précis Dalloz 1962).
The highest court in the judicial system is the Cour de Cassation, and the Conseil d'Etat, the highest of the administrative. Questions of a jurisdictional nature between the two systems are decided by the Tribunal des Conflits.5

The noncriminal courts of first instance are fairly numerous and include a number of specialized courts (tribunaux d'exceptions),6 one of which is the very important commerce court for commercial matters.7 These specialized courts are generally staffed by lay judges, usually elected by those categories of persons affected by the specialized nature of the court's particular jurisdiction.

Minor civil cases not triable before these specialized courts are heard by the tribunal d'instance,8 and more important civil cases by the tribunal de grande instance.9 Petty criminal cases (contraventions) are tried by the tribunal de police;10 criminal infractions of an intermediate nature (called délits), by the tribunal correctionnel;11 and the gravest (called crimes), by the Cour d'Assises.12

The tribunal d'instance and the tribunal de police may be considered for practical purposes a single court, with civil and

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5. For a discussion of the Tribunal des Conflits, see Deák & Rheinstein, supra note 4, at 363; Kock, 381; De Laubadère, op. cit. supra note 4, at no. 477; Rivero, op. cit. supra note 4, at no. 136.
6. These include industrial councils (conseils des prud'hommes); commercial courts (tribunaux de commerce) exercising very important jurisdiction relative to commercial transactions; rent courts (tribunaux paritaires de baux ruraux); juvenile courts (tribunaux pour enfants et adolescents). See Deák & Rheinstein, supra note 4, at 349; Kock, 367; Cuche et Vincent, nos. 86 et seq., 103 et seq.
7. Cuche et Vincent, no. 103 et seq.
8. For further discussion of the organization and function of this court, see Kock, 370; Cuche et Vincent, no. 106 et seq.
9. For further discussion of the organization and function of this court, see Kock, 370; Cuche et Vincent, no. 90 et seq.
10. Roughly speaking, contraventions are petty offenses punishable by a maximum fine of 2000 NF (approximately $400), imprisonment not longer than two months, and confiscation of seized objects (French C.P.P. art. 464 et seq.) — triable before the tribunal de police (French C.P.P. art. 521 et seq.) presided over by a single judge, sitting without a jury. Patey, supra note 1, at 385; Stefani et Levasseur, nos. 425 et seq., 464.
11. Roughly speaking, délits are criminal infractions of an intermediate nature punishable by a fine in excess of 2000 NF, imprisonment from 2 months to 5 years, and other deprivations (see French Penal Code arts. 1, 9) — triable before the tribunal correctionnel, presided over by three judges sitting without a jury (French C.P.P. arts. 381 et seq., 398 et seq.). Stefani et Levasseur, nos. 427 et seq., 464.
12. Roughly speaking, crimes are the most serious offenses, punishable by death, imprisonment, and other deprivations — triable before the Cour d'Assises, composed of 3 judges and 9 jurors (French C.P.P. arts. 214, 231 et seq., 240 et seq.). Stefani et Levasseur, no. 430 et seq.
criminal sides. In this court a single, professional judge sits without a jury, while in all other proceedings in French law, multiple judges are employed. Staffed by at least three judges, the tribunal de grande instance and tribunal correctionnel may likewise be considered a single court.

The only court in France employing a jury, the Cour d'Assises, is composed of three professional judges and nine lay jurors, who sit together to deliberate. It is said that a strong presiding judge may exercise considerable influence over his fellow fact-finders, but that in Paris the lay jurors display greater independence than in the provinces. Thus, emotional appeals are perhaps more effective in Paris than elsewhere in France.

The Cour d'Assises has jurisdiction only over persons who have been indicted for a crime by a Chambre d'Accusation (the division of the Court of Appeal serving very roughly the same function as an American grand jury). In order to arrive at a guilty verdict, eight of the twelve fact-finders must concur. Thus for a defendant to be found guilty, there must be a concurrence of at least a majority of the lay jurors.

Except with respect to decisions of the Cour d'Assises and certain small cases, a full reconsideration of both fact and law

13. Stefani et Levasseur, no. 209 et seq.
14. See Kock, 371; Stefani et Levasseur, no. 234 et seq.
15. The Court of Assizes generally sits for a two-week term during each quarter of the year. Kock, 372; French C.P.P. art. 231 et seq.; Stefani et Levasseur, nos. 430 et seq., 790 et seq., 798 et seq. For general discussion of procedure before the Cour d'Assises, see Bouzat, op. cit. supra note 4, at 1220; Encyclopédie Juridique, op. cit. supra note 4, at Tome 1, p. 598 et mise à jour, p. 173; Jurisclasseur de Procédure Pénale, art. 231 et seq. (Editions techniques); Vidal, op. cit. supra note 4, at no. 853; Vitu, op. cit. supra note 4, at 347.

In citing Jurisclasseur de Procédure Pénale, "et seq." will be used where pertinent material follows the original citation, but is interspersed among related materials.

16. So much so, that it has been facetiously stated that if a Frenchman plans to kill his wife, he should do so in Paris.
17. French C.P.P. arts. 214, et seq., 288 et seq.; Stefani et Levasseur, no. 780 et seq.
18. However, once a Cour d'Assises has received a case, it must complete the trial and render a judgment, even if it decides that the case is not one that should have originally been sent to it. Kock, 373; French C.P.P. arts. 231, 214, 191 et seq.; Stefani et Levasseur, nos. 417 et seq., 721 et seq., 748 et seq.
19. Kock, 373; Patey, supra note 1, at 392.

For other questions, such as sentencing, etc., seven votes, a majority of the twelve, suffices. French C.P.P. art. 362; Kock, 373. See Patey, supra note 1, at 392; Stefani et Levasseur, no. 799 et seq.; French C.P.P. arts. 355 et seq., 359 et seq.
as a matter of right — called an appeal — before the Cour d’Appel is available to a litigant in French courts in both civil and criminal cases. Obviously, this appeal provides for much broader review than an American appeal. Generally, the whole record (or dossier) goes before the appellate court, but the court is not restricted to this record; it may receive additional evidence. From numerous conversations, it seems to the writer that both practitioner and judge feel that the court of appeal may freely substitute its judgment for that of the lower court. This is more understandable when it is considered that even at the original trial, much of the evidence comes to the court in written — not oral — form; demeanor evidence is of less significance than in Anglo-American courts. When the court of appeal disagrees with a decision reached by the lower court, it enters the final judgment itself, and there is no remand to the lower court for entry of judgment.

This “appeal” is to be distinguished from review of questions of law afforded by France’s highest court, the Cour de Cassation. This court generally has no authority to enter a judgment, but merely to upset (break or casser) the decision appealed. When a decision by a court of appeal is upset, the case is sent to another court of appeal of coordinate rank with that from which the appeal was taken. This latter court need not render a decision in conformity with the views expressed by the Cour de Cassation. In such a case, the Cour de Cassation will again consider the matter — this time sitting en banc. At this point, the Cour de Cassation may or may not adhere to its original determination. If it does, the case is referred to a third court of appeal, which must render a decision in accordance with the views expressed by the Cour de Cassation.

21. Ibid. For discussion and description of the internal organization and function of the Cour d’Appel, see Kock, 374; French C.P.C. art. 454; French C.P.P. arts. 549, 510, 511; Cuche et Vincent, nos. 98 et seq., 208 et seq.; Stefani et Lavasseur, no. 404.

22. Stefani et Lavasseur, no. 838 et seq. See also French C.P.C. art. 443 et seq.; French C.P.P. arts. 496 et seq., 512 et seq., 546 et seq.; Cuche et Vincent, no. 411 et seq.


24. Kock, 374; French C.P.P. art. 515; Cuche et Vincent, nos. 433 & 433 bis; Stefani et Lavasseur, no. 845 et seq.

25. French C.P.C. art. 213 et seq.; Cuche et Vincent, no. 126 et seq.; Stefani et Lavasseur, no. 437.

26. But for very exceptional cases where a Cour de Cassation may consider the facts and even enter judgment, see French C.P.P. art. 622 et seq.

27. More technically speaking, the court sits “toutes chambres réunies,” with at least 35 members. See Kock, 376.

28. For discussion and description of the internal organization and function
Of considerable interest to Anglo-American lawyers is the fact that in criminal cases, where appeal or review is available, it may be had at the instance of either the defendant or the state. 29

Observation and conversations indicate that in general, criminal justice is administered with reasonable speed. 30 Delay in civil litigation, which is of such lamentable significance in the United States, is, unfortunately, also present in France. Except as to the Cour de Cassation, however, where dockets are very crowded, it would appear that the delay in civil litigation is due not so much to the crowded condition of dockets as to the lengthy civil procedures and the procrastination of attorneys, which is perhaps a world-wide affliction of our profession. In criminal cases, perhaps the reasons for celerity are that the judiciary bears so much of the onus of expediting proceedings, and that fewer means 31 to slow down the wheels of justice are available to defendants.

II. LEGAL PROFESSIONS

In France, law schools are designed for much more than merely training lawyers. 32 They provide a broad, philosophical education in law and related subjects pursued by a fairly large number of university students. The French law student is younger than his American counterpart; other university work is not a prerequisite for enrollment. 33 After graduation from a four-year law curriculum, 34 and frequently after pursuing advanced work in law, a very small minority of students seek entry into either the private practice of law or the magistrature (judges and prosecutors).

of the Cour de Cassation, see Kock, 375; French C.P.C. art. 213 et seq.; French C.P.P. art. 567 et seq.; Cuche et Vincent, no. 464 et seq.; Stefani et Levasseur, no. 853 et seq.

29. French C.P.F. arts. 497, 546, 567, 622 et seq.; Stefani et Levasseur, nos. 840, 853, 867 et seq.

30. It must be noted, however, that pre-trial investigation in France is a painstaking process (see p. 13 infra). In serious cases, the defendant is often kept in jail awaiting trial under what is called preventive detention and there is understandably criticism of prolonged pre-trial detention. See Anton, supra note 1, at 453; Hamson et Vouin, Le Proces Criminal en Angleterre et en France, No. 2-2 Revue Internationale de Droit Penal 177, 182 (1952) and references there cited; Stefani et Levasseur, no. 277 et seq.

31. But see, for example, the instance of an attorney who came to an important case without his robe, and thus necessitated an adjournment. Le Monde, July 11, 1962, p. 16.

32. David & de Vries, 24, and authorities cited at 28.

33. The French student finishes the Lycée (or high school) at approximately age 18, but the last 2 years of his work at the Lycée correspond roughly to the first 2 years' study of an American university.

If one wishes to enter the magistrature, he must take a very rigorous, competitive examination. If successful, as a result of recent reforms, he follows an additional three-year course of intensive training at the National Center for Judicial Study (Centre nationale d'Etudes judiciaires), divided approximately evenly between formal study and varied practical training. Members of the magistrature are composed of two groups—the magistrature assise (the seated magistrate, or judge) and the magistrature debout (the standing magistrate, procureur, or public attorney, who corresponds roughly to the American district attorney and attorney general). Interchange of personnel between the two branches of the magistrature, though quite possible, occurs much more frequently from procureur to judge than vice versa. A cardinal principle in French law is the independence of the magistrature from political and private pressure. Although the procureur is subject to the written directives of the Ministry of Justice to institute proceedings, etc., he retains great independence. The procureur exercises two roles, one as attorney for the state in the sense of prosecutor of crime, and the other in behalf of society itself in the proper application of the law. Even in civil cases, for example, he is authorized, and

35. French C.P.C. art. 410 et seq.
37. CUCHE ET VINCENT, no. 134 et seq.
38. DAVID & DE VRIES, 18, and authorities cited at 28; CUCHE ET VINCENT, no. 132 et seq.
39. DAVID & DE VRIES, 20, and authorities cited at 28; French C.P.P. art. 31 et seq.; CUCHE ET VINCENT, no. 155 et seq.; STEFANI ET LEVASSEUR, no. 496 et seq. In the tribunal de police for trial of minor offenses, the state is represented by the commissaire de police, who, however, is not a member of the magistrature. (French C.P.P. art. 45; STEFANI ET LEVASSEUR, no. 498.) Before the tribunal correctionnel, for the trial of délits, the state is represented by the Procureur de la République. (French C.P.P. art. 39; STEFANI ET LEVASSEUR, no. 498.) Before the Cour d'Appel and Cour d'Assises, the state is represented by the Procureur Général (French C.P.P. art. 34; STEFANI ET LEVASSEUR, no. 498); before the Cour de Cassation, by the Procureur Général à la Cour de Cassation (STEFANI ET LEVASSEUR, no. 498).
40. DAVID & DE VRIES, 21.
41. FRENCH CONST. art. 64 (1958) ; Kock, 384; CUCHE ET VINCENT, no. 138 et seq.; STEFANI ET LEVASSEUR, no. 242 et seq.
42. French C.P.P. arts. 33, 36, 37, 44; CUCHE ET VINCENT, no. 157; STEFANI ET LEVASSEUR, no. 509.
43. CUCHE ET VINCENT, no. 157; STEFANI ET LEVASSEUR, nos. 244, 502.
44. Dainow, supra note 4, at 10-11; DAVID & DE VRIES, 21; French C.P.P. art. 31 et seq.; CUCHE ET VINCENT, no. 158 et seq.; STEFANI ET LEVASSEUR, nos. 102, 505 et seq.

For general discussion of the role of the ministère public, see Kock, 385; Déak & Rheinstein, supra note 4, at 857; Vouin, The Protection of the Accused in French Criminal Procedure, 5 INT. & COMP. L.Q. 1, 7 (1956); BOUZAT, op. cit. supra note 4, at nos. 860, 982; ENCYCLOPEDIE JURIDIQUE, op. cit. supra note 4, at Tome II, p. 425 et mise à jour, p. 328, Tome I, p. 51 et mise à jour, p. 19; JURISCLASSEUR, op. cit. supra note 15, at arts. 1-9, 31-48; STEFANI ET LEVASSEUR,
sometimes required, to express his views on questions of law at issue between private parties. The law specifically provides that in his oral comments, the procureur is free to express whatever personal views and observations he feels are appropriate to the proper administration of justice. It seems that this freedom of oral expression is highly prized by the procureur, and there is a well-known and descriptive phrase "la plume est serve mais la parole est libre." (The pen is subject to control, but the voice is free.)

There is considerable esprit de corps of the magistrature. Although professional advancement results from the recommendations of the high council of the judiciary (Conseil Supérieur de la Magistrature), composed in part of politically appointed personnel, it seems fair to state that the French ideal of an independent judiciary has generally been achieved.

French judges seldom achieve the individual recognition sometimes given members of the American judiciary. A court is normally composed of at least three judges, who render short per curiam opinions without dissents, and as a result of tradition, legal technique, and method of decision-writing, French courts generally play a much less important role in the development of the law than do American courts. However, court decisions now seem to be accorded much more authoritative significance than formerly, and in some instances jurisprudential rules seem to bear only remote relationship to the written law. This is perhaps because the French Civil Code is in essence a document approximately 150 years old. Further, French judges do not undertake to review the constitutionality of legislation nor does there appear to be any school of thought, as in the United States, that the courts have inherent procedural rule-making power.

45. French C.P.P. art. 33.
46. STEFANII ET LEVASSEUR, no. 244; French C.P.P. art. 33.
47. FRENCH CONST. arts. 64-65 (1958); Ordinance 58-1271 of Dec. 22, 1958; French C.P.C. art. 409; CUCHE ET VINCENT, no. 144.
48. DAVID & DE VRIES, 19; LePaulle, Données fondamentales de l'administration de la justice dans les pays anglo-saxon, 3 REVUE INTERNATIONALE DE DROIT COMPARÉ 1 (1956).
49. Compare FRENCH CIVIL CODE art. 1384 and the jurisprudential rules developed thereunder. See CARBONNIER, DROIT CIVIL, Tome I, no. 31 (collection Thémis 1957). But see FRENCH CIVIL CODE art. 5.
51. See LePaulle, supra note 48, at 4.
CRIMINAL JUSTICE IN FRANCE

If the graduate of the French law school wishes to enter upon
a legal career, but does not enter the magistrature, he has con-
siderable choice in the type of law work he may wish to do.52
Practice of law as known in the United States is fragmented
into a number of different careers in France. The character-
istic function of the avocat (corresponding roughly to that of
the English barrister) is oral presentation of his client's case before
the court.53 The inheritor of a proud tradition dating back to the
first half of the 14th century, the avocat enjoys high social
standing.54 Despite recent reforms the ambit of his professional
activities remains severely restricted, and the local bar associa-
tion (Ordre des Avocats) exercises pervasive control and super-
vision.55

In order to take the bar examination, a candidate must follow
additional professional study of a practical nature. This may be
accomplished after graduation, or, as frequently occurs, concur-
rently with a student's fourth year law school study. Even if
successful on his bar examination, he is not immediately admis-
ted to the full status of avocat. He must, for a period of from
three to five years, depending on circumstances, serve somewhat
of an apprenticeship. For the first year, except on special au-
thorization, he has no right to argue cases, but thereafter has all
the rights of an avocat, with certain obligations.56 During the
period of apprenticeship, he must follow a course of further
training under the supervision of the local bar association.57

53. Cuche et Vincent, no. 170 et seq.; French C.P.C. art. 467 et seq.
54 LePaulle, supra note 52.
55. LePaulle, supra note 52, at 953. For statutory provisions, see French C.P.C. art. 467 et seq.
56. On his letterhead and professional card, he must style himself an "avocat stagiaire" rather than "avocat." LePaulle, supra note 52, at 955.
57. This training includes attendance at court hearings; attending lectures and seminars covering, in addition to professional training, traditions of the bar and obligations owed to the court; sometimes participation in exercises of conférence du stage, which affords a type of moot court training; work with a senior lawyer, or in the office of an avoué, notaire, or procureur; and the handling of legal aid work assigned to him. LePaulle, supra note 52, at 955.
The avoué prepares pleadings, and acts as agent for parties in civil litigation, signing pleadings in their behalf, etc.58 There is a movement of considerable force in France today to merge the avocat and avoué into a single profession, which it is felt would achieve significant economy for litigants. Tradition and other factors militate against such union.59

In addition to the avocat and avoué, there is the very important and highly respected notaire.60 Of far greater significance than the notary public in American law, the notaire, in addition to being authorized to prepare the acte authentique (or authentic act), serves somewhat as an office lawyer and family counsellor.61

Many of the functions reserved in the United States to the legal profession, such as giving legal advice and drafting of legal documents for fees, may be performed in France by anyone, regardless of legal training.62 In fact, there are numerous self-styled agents d'affaires63 not subject to regulations, who perform many services that an American lawyer would consider to be an integral part of his practice. There are, of course, certain functions assigned exclusively to avocats, avoués, notaires, etc.

III. CRIMINAL PROCEDURE AND EVIDENCE

In France, it is often said that in French criminal proceedings, as contrasted with Anglo-American, "on juge l'homme, pas les faits" (one judges the man, not facts). The implications of this approach are of pervasive significance.

As noted previously, the French system does grade offenses, and contemplates that in general, each of the three different classes of criminal infractions be tried by separate tribunals.64


Somewhat similar to the avoué is the agrédé, who performs an analogous function with respect to proceedings in a tribunal de commerce. LePaulle, supra note 52, at 947-48; DAVID & DE VRIES, 23.

59. The position of avoué is purchased, and the expense to the government in reimbursing avoués would be high.

60. French C.P.C. art. 495 et seq.; DAVID & DE VRIES, 24, and authorities cited at 28.

61. French C.P.C. arts. 495, 555; CUCHE ET VINCENT, no. 191 et seq.

62. LePaulle, supra note 52, at 947; DAVID & DE VRIES, 23.

63. Also sometimes called "conseils juridiques," "jurisconsultes," "conseillers fiscaux," or "contentieux." LePaulle, supra note 52, at 947.

64. Roughly summarized: Contraventions are petty offenses punishable by a maximum fine of 2000 NF (approximately $400), imprisonment not longer than two months, and confiscation of seized objects (FRENCH PENAL CODE art. 464
The procedure to be followed varies somewhat accordingly. For purposes of clarity of exposition, and to provide a meaningful basic understanding of the French system, procedure with respect to the intermediate type of offense (délit) will provide the focal point for subsequent discussion. Where deemed of significance in light of the purposes of this survey, reference to procedures for the more serious crimes and less serious contraventions will be given, either in text or footnote.

Délys embrace infractions punishable by imprisonment of up to five years at hard labor — corresponding roughly to the more serious misdemeanors and less serious felonies of Anglo-American law. The institution of jury trial appears only in the Cour d'Assises, where crimes are tried, and is viewed with considerable skepticism by the French. Frequently, by common

et seq.) — triable before the tribunal de police (French C.P.P. art. 521 et seq.), presided over by a single judge, sitting without a jury. Délys are criminal infractions of an intermediate nature, punishable by a fine in excess of 2000 NF, imprisonment from 2 months to 5 years, and other deprivations (see French Penal Code arts. 1, 9) — triable before the tribunal correctionnel, presided over by three judges sitting without a jury (French C.P.P. arts. 381 et seq., 398 et seq.). Crimes are the most serious offenses, punishable by death, imprisonment, and other deprivations — triable before the Cour d'Assises, composed of 3 judges and 9 jurors (French C.P.P. art. 214, 231 et seq.; 240 et seq.).

Stefani et Levasseur, no. 494. 66. For procedure for the Cour d'Assises, see French C.P.P. art. 231 et seq.; tribunal correctionnel, French C.P.P. art. 381 et seq.; tribunal de police, French C.P.P. art. 521 et seq.; Stefani et Levasseur, nos. 757 et seq., 777 et seq., 797 et seq.


For references in English, see Bouzat, op. cit. supra note 4, at nos. 1192-1296; Encyclopédie Juridique, op. cit. supra note 4, at Tome II, p. 287 et mise à jour, p. 295; Jurisclasseur, op. cit supra note 15, at arts. 231 et seq., 321 et seq.; Stefani et Levasssieur, nos. 757 et seq., 777 et seq., 790 et seq.; Vidal, op. cit. supra note 4, at nos. 841-63 ter.; Vido, op. cit. supra note 4, at 343-71.


67. Stefani et Levasssieur, no. 432.
consent of the parties (via a process known as correctionnalization) many infractions which could properly be treated as crimes are treated as délits, and are tried before the three-judge tribunal correctionnel, sitting without a jury.\(^8\) Also, as a result of jury indulgence, certain crimes (abortions, bigamy) have been reduced legislatively from crimes to délits.\(^9\)

Civil party intervention in criminal proceedings is one fascinating aspect of French procedure which it is necessary to keep in mind. Although difficult perhaps for a person trained in American law to understand,\(^7\) French law provides that, in all criminal proceedings, a person who has been directly injured as a result of the criminal act may interpose a claim for civil relief.\(^7\) Thus in one proceeding, civil and criminal liability may be, and frequently are, determined.\(^7\) Although an injured party may always assert his claim for civil relief in a separate civil proceeding,\(^7\) intervention in a pending criminal proceeding may be quite advantageous.\(^7\) By this means, he can take full advantage of the investigatory facilities and prosecuting personnel of the state, the inquisitorial aspects of the proceedings, and the speed, economy, and more liberal rules of evidence characteristic of the criminal action. In addition, he reaps the psychological benefit resulting from his adversary's position as a criminally accused. Most automobile personal injury suits are handled in this manner.\(^7\)

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68. Freed, supra note 65, at 738; Ploscowe, supra note 66, at 385-86; Stefani et Levasseur, nos. 432, 477 et seq.
69. Stefani et Levasseur, nos. 432, 477 et seq.
70. In American law, criminal and civil proceedings are rigorously separated. For example, where civil and criminal proceedings both grow out of the same facts, the judgment in one case is generally inadmissible as evidence in the other. See McCormick, Law of Evidence § 295 (1954). But see Uniform Rule of Evidence 63 (20) and comment.
71. French C.P.P. arts. 2 et seq. For further discussion with respect to this procedure, see Stefani et Levasseur, no. 513 et seq.; French C.P.P. arts. 85 et seq., 418 et seq. For general discussion of the civil party and civil action, see: Vouin, The Protection of the Accused in French Criminal Procedure, 5 Int. & Comp. L.Q. 1, 7, 11 (1956); Bouzet, Traité Théorique et Pratique de Droit Pénal, no. 852 (1951, et mise à jour 1956); Encyclopédie Juridique, Répertoire de Droit Criminal et de Procédure Pénale, Tome I, p. 39 et mise à jour p. 7, Tome II, p. 469 et mise à jour p. 337 (Dalloz 1953 et mise à jour 1962); Jurisclasseur de Procédure Pénale, arts. 1-5, 10 (Editions techniques); Stefani et Levasseur, no. 131 et seq.; Vidal, Cours de Droit Criminal et de Science Pénitentiaire, no. 619 (1949); Viti, Procédure Pénale 144 (1957).
72. Stefani et Levasseur, nos. 180 et seq., 513 et seq., 657 et seq., 820 et seq.
73. French C.P.P. art. 4 et seq.; Stefani et Levasseur, nos. 170 et seq., 184 et seq.
74. Stefani et Levasseur, no. 180 et seq.
75. In France, there is compulsory automobile liability insurance, and thus
A criminal action in France may be commenced by a governmental official or a private individual directly injured by the criminal act. The procureur has discretion, subject to the order of his superiors, to institute criminal proceedings. This possibility of private initiation affords protection against arbitrary governmental inaction. If the governmental official does not institute the action, the injured party may do so by bringing a complaint against the perpetrator of the wrong, and at the same time constituting himself partie civile or civil party, claiming damages for injuries suffered by him personally. As noted above, this may be quite advantageous. There are, however, certain hazards to this course of action, not present when a party simply interposes his claim for civil relief in a criminal action already instituted by the procureur against an individual. By taking the initiative, a civil claimant may become liable, in the event of unsuccessful prosecution, for damages caused the defendant — no doubt a persuasive deterrent to unwarranted institution of criminal prosecution by private individuals.

When a complaint (or plainte) is made to the police, or they have other reason to believe that a criminal offense has been committed, a preliminary investigation (or enquête) by the police is usually held. The power of the police varies, depend-
ing upon circumstances. In a number of cases, a second stage of investigation is usually carried on by the very important juge d'instruction, who serves as investigating magistrate. The juge d'instruction may never on his own motion assume the power and authority to investigate. It can be acquired only on the request of the procureur, or as the result of a formal claim for damages filed by a civil party. Investigation by the juge d'instruction is obligatory for all the most serious offenses (crimes), and is usually required for débits where the perpetrator is unknown, a minor, or a multiple offender. It is generally optional for other débits and for contraventions.

The new Code of Criminal Procedure retains the essentially secret and inquisitorial nature of the proceedings before the juge d'instruction, but places the accused, the civil party, and the prosecutor upon a more equal footing in these proceedings.

The differences between French and Anglo-American law as


86. For an excellent description of the function of the juge d'instruction, see Anton, L'Instruction Criminelle, 9 AM. J. COMP. L. 441 (1960). See also French C.P.P. arts. 49 et seq., 79 et seq.; Stefani et Levasseur, no. 412 et seq.

87. French C.P.P. arts. 51, 80, 86; Stefani et Levasseur, no. 634 et seq.

88. Instruction préparatoire or information préalable (synonymous terms).

89. Since the writing of this article, Ordinance no. 62-1041 of September 1, 1962, has temporarily modified this rule in exceptional cases.

90. However, investigation by either the juge d'instruction or the juge des enfants (juvenile judge) of débits committed by minors is obligatory. Stefani et Levasseur, nos. 412 et seq., 631 et seq.; Vidal, op. cit. supra note 71, at no. 813; Vittu, op. cit. supra note 71, at 55, 269.

95. Stefani et Levasseur, no. 633. However, contradictory arguments are now possible before the accusatory chamber of the Court of Appeal, which exercises extensive supervisory powers with respect to actions of the juge d'instruction. Anton, supra note 86, at 444; Patey, Recent Reforms in French Criminal Law and Procedure, 9 INT. & COMP. L.Q. 383, 389-92 (1960).
to rules of evidence must be taken into consideration, even this early in the proceedings, for the statements made and evidence collected at these two phases (police and juge d'instruction) are generally included in the record (or dossier) of the case. In France, the subsequent trial or hearing (audience) is usually quite short. The presiding judge, who is himself a fact-finder, uses the dossier in examining the defendant and questioning the witnesses. Counsel also employ the dossier in their presentations, even those parts not previously developed through oral testimony.

The dossier contains the reports prepared by both the police and the juge d'instruction, detailing the nature of the crime, date and place of the hearing, and a summary of the statements of each of the witnesses. At each phase of the investigation, considerable evidence relative to the character and personality of persons involved in the incident is received and made part of the dossier. Each time a witness is heard, such things as his age, occupation, address, employer, date and place of birth, parents, and number of children are summarized succinctly, presumably so that his declarations may be evaluated accordingly and further information concerning the witness may be obtained without undue difficulty. Extensive annotated photographs and maps are usually made and included.

Rights of Suspect and Accused

In order to facilitate investigation of crime, there is a means under French law (la garde à vue) by which a suspect or ordinary witness may be kept in custody for twenty-four hours, which, in certain instances, may be extended for an additional twenty-four hours. In general, witnesses heard by the police

96. French C.P.P. art. 178 et seq.; Stefani et Levasseur, nos. 568, 739 et seq.
97. French C.P.P. arts. 118, 183; Stefani et Levasseur, no. 264. For further explanation as to the contents of the dossier, see Anton, supra note 86, at 452-55.
98. This is true even as to the Cour d’Assises. Although the jury is not supposed to have general access to the dossier in its deliberations (French C.P.P. art. 347), the presiding judge has studied it and the hearing has been conducted in light of it.
99. To avoid subsequent contradiction, the law provides that summaries of the witnesses’ statements are signed by them. French C.P.P. art. 106.
100. See French C.P.P. art. 77 et seq.; for felonies and misdemeanors discovered in the very act, see French C.P.P. art. 63 et seq.; see Patey, supra note 93, at 390-91; Stefani et Levasseur, nos. 546 et seq., 562.

As a result of Ordinance no. 60-121 of February 13, 1960, the 24- and 48-hour periods are increased to 48 and 96 respectively, where crimes and délits against the safety of the state are involved.

Since the writing of this article, Ordinance no. 62-1041 of September 1, 1962
are not sworn, whereas those heard by the *juge d'instruction* usually testify under oath.\textsuperscript{101} Any person against whom a charge has been specifically brought may refuse to testify as a witness before the *juge d'instruction*, who, after informing him of the contents of the complaint, shall notify him of this right.\textsuperscript{102} If the person charged exercises his right not to be heard as a witness, he may be heard only as a defendant (or *inculpé*),\textsuperscript{103} which status affords him a number of safeguards, discussed hereafter. Also, whenever there is strong and convincing evidence that a particular person has committed a crime, whether or not he has been named in a complaint, he shall not be heard as a witness, but shall be accorded the rights of an *inculpé*.\textsuperscript{104} A suspect not entitled to the rights of an *inculpé* is obligated to submit to interrogation\textsuperscript{105} and is not entitled to representation of counsel before the *juge d'instruction*. Apparently, at this stage, there is no French equivalent to the privilege against self-incrimination available to him.

Although a suspect may be heard many times before the *juge d'instruction* prior to officially becoming a defendant (or *inculpé*), generally once he is entitled to this status, he is to be informed\textsuperscript{106} by the *juge d'instruction* of the acts he allegedly committed, and notified that he is free to remain silent.\textsuperscript{107} The code article provides, however, that if the *inculpé* wishes to make a statement, it shall be received immediately. In an excellent and authoritative article on proceedings before the *juge d'in-

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\textsuperscript{101} French C.P.P. arts. 62 et seq., 75 et seq., 101 et seq.; Stefani et Levasseur, no. 544 et seq.

\textsuperscript{102} French C.P.P. art. 104. A notation that he has been so informed must be made in the official report.

\textsuperscript{103} French C.P.P. art. 104; Stefani et Levasseur, nos. 250, 651.

\textsuperscript{104} French C.P.P. art. 105; Stefani et Levasseur, no. 647.

\textsuperscript{105} Or be subjected to a fine of approximately $80-$200. French C.P.P. art. 109. See also French C.P.P. arts. 101 et seq., 110 et seg.

\textsuperscript{106} But for an exceptional case, see French C.P.P. art. 115.

\textsuperscript{107} The fact that such notice has been given must be recorded in the official records. This stage in the proceedings is called the first appearance. (French C.P.P. art. 114 et seg.; Stefani et Levasseur, no. 651.)

For discussion of rights of suspect and accused generally, see authorities cited in note 102 \textit{supra}. 
Professor Anton of the University of Glasgow states that it is highly probable that the inculpé will wish to make a statement at this time, for "in the vast majority of cases" French criminals "exhibit a quite spontaneous desire to confess all." In any event, confessions are certainly numerous.

The same code article that provides for informing the inculpé of his right to remain silent and his option to make a statement goes on to provide that the judge shall advise him that he is entitled to counsel. Professor Anton states that in practice, the inculpé is generally so informed only after he has made his statement. Although apparently there is no right to presence of counsel when an inculpé is formally charged by the juge d'instruction, and a statement by him is frequently voluntarily made at this point, thereafter, during actual interrogation or confrontation, the inculpé is entitled to presence of counsel, unless this right is expressly renounced. But before this and any subsequent interrogation or confrontation, the attorney for the inculpé shall have the right, twenty-four hours in advance, to study the dossier. However, neither counsel for the accused nor counsel for the state may speak at this hearing, except to ask questions, after receiving permission from the court.

A very fascinating element in the investigatory stage is the reenactment of the crime, wherein the inculpé is asked to reenact what happened. It is apparently felt that, during the process of reenactment, facts not previously disclosed will emerge; even an accomplished liar may encounter difficulty in portraying a false account. Photographs of the reenactment are often included in the dossier, very effective evidence indeed.

During the course of this investigation the juge d'instruction's actions and orders are subject to review, at the instance of the inculpé or the state (even, at times, of the civil party)
by the Chambre d'Accusation of the Cour d'Appel. Although not public, hearings before the Chambre d'Accusation are to a large extent adversary in nature.

**Search and Seizure**

When a crime, and, frequently, a délit has been discovered during the commission of the very act, provision is made for immediate search and seizure without the necessity of judicial authorization. Generally, in other cases, prior to investigation by the juge d'instruction, the police may not undertake compulsory search and seizure in private homes. Once a case is under investigation by the juge d'instruction, compulsory search and seizure by him or under his direction are permitted, subject to restrictions outlined in the law.

**Confessions**

The Code of Penal Procedure provides that a “confession, like all elements of proof, shall be left to the free appraisal of the judges.” It appears that as a result of the extensive in-

117. Stefani et Levasseur, no. 420 et seq. If the juge d'instruction has decided, somewhat as an Anglo-American grand jury would, that the inculpé should be tried for a crime and that the case is thus one which should be tried by the highest criminal court, the Cour d'Assises, then before the defendant may be so tried, the decision of the juge d'instruction must be reviewed by the Chambre d'Accusation (French C.P.P. art. 181), which is free to reinvestigate the case, or to act upon the dossier prepared by the juge d'instruction (French C.P.P. art. 191 et seq.). In any event, before a person can be tried by the Cour d'Assises, the case must be doubly examined, first by the juge d'instruction, and secondly by the Chambre d'Accusation (French C.P.P. arts. 181, 214 et seq.).

119. In those instances where the délit is punishable by imprisonment.

120. For very interesting provisions outlining procedures and formalities, see French C.P.P. art. 56 et seq.; Stefani et Levasseur, no. 556 et seq.

121. French C.P.P. art. 76; Stefani et Levasseur, no. 545. For the very exceptional case, see French C.P.P. art. 23.

122. French C.P.P. arts. 94 et seq., 151 et seq.; Stefani et Levasseur, no. 659 et seq.

For materials on search and seizure generally, including French handling of the problem of evidence obtained as a result of illegal search and seizure, see Bouzat, op. cit. supra note 71, at nos. 1145, 1161; Encyclopédie Juridique, op. cit. supra note 71, at Tome II, p. 505 et mise à jour, p. 347; Jurisclasseur, op. cit. supra note 71, at arts. 75 et seq., 92 et seq., 170 et seq.; Stefani et Levasseur, nos. 545 et seq., 556 et seq., 659 et seq.; Vidal, op. cit. supra note 71, at nos. 805, 819, 834; Vitu, op. cit. supra note 71, at 217, 314, 337.

123. French C.P.P. art. 428; Stefani et Levasseur, no. 343 et seq.

For materials on confessions, including French handling of the problem of illegally obtained confessions, see generally: French C.P.P. art. 170 et seq.; Bouzat, op. cit. supra note 71, at no. 1098 et seq.; Encyclopédie Juridique, op. cit. supra note 71, at Tome I, p. 203; Jurisclasseur, op. cit. supra note 71, at art. 428; Stefani et Levasseur, nos. 343 et seq., 354, 356, 547 and the authorities cited therein; Vidal, op. cit. supra note 71, at no. 743 et seq.; Vitu, op. cit. supra note 71, at 210 et seq.
vestigation and interrogation carried on by the police and the juge d'instruction, confessions are frequently obtained. Thus often the major function of the trial is investigation of the defendant's character and the circumstances of the case in order to determine what, if any, punishment should be accorded him.

Many of the confessions are received by the police, and understandably there are charges of ill-practice against them. In order to prevent police brutality in examining a suspect or other witnesses, French law provides that persons held in custody (garde à vue) have the right to a medical examination at the end of twenty-four hours detention, and the Procureur de la République may call for such an examination before that time. Also, French law makes it a crime for a policeman to use unjustifiable force against a citizen, and gives the Chambre d'Accusation of the court of appeal extensive authority to discipline police for misconduct.

Appointment of Experts

The juge d'instruction may on his own motion, or at the request of the defense, district attorney, or civil party, appoint experts to render an opinion on technical questions arising during the course of the investigation. The procedures in this regard are very interesting, particularly because of the difficulties experienced in the United States as to expert testimony and the various efforts towards reform.
The juge d'instruction must give reasons for refusing a request for the appointment of experts, a decision subject to immediate appeal. Generally, only those experts whose names appear on a national list compiled by the Cour de Cassation, or on a list prepared by the Cour d'Appel (on the advice of the Procureur Général) may be appointed. The experts may hold hearings and question witnesses, under certain circumstances have the defendant questioned by the juge d'instruction in their presence, and in the case of certain medical experts, examine the defendant themselves out of the presence of the juge d'instruction and counsel. If the persons so appointed disagree or have reservations, this is to be stated. The parties are to be notified of the experts' report and afforded an opportunity to comment or to request the appointment of additional experts. The experts may be heard at the trial of the case, and if other evidence or information that emerges in the course of the trial casts doubt on the validity of the findings of the experts, the court may decide either to continue with the hearing or to postpone further proceedings until a later date for the purpose of clarification.

Preventive Detention and Bail

French law declares that incarceration of an inculpé is an exceptional measure. It limits such detention to five days if the maximum penalty for the offense is less than two years' imprisonment and the defendant has no criminal record. Preventive detention, however, appears to be customary for seri-

132. French C.P.P. art. 156; Stefani et Levasseur, no. 702.
133. French C.P.P. arts. 156, 185, 186; Stefani et Levasseur, no. 706 et seq.
136. French C.P.P. arts. 166 et seq.; Stefani et Levasseur, no. 716.
137. French C.P.P. art. 168 et seq.
138. French C.P.P. art. 169; Stefani et Levasseur, no. 784 et seq. The court shall state its reasons underlying this determination.
139. French C.P.P. art. 137.
140. Id. art. 138.
141. Id. art. 714 et seq., regulated by id. art. 137 et seq. and discussed in Stefani et Levasseur, nos. 667 et seq., 680 et seq.

For discussion of preventive detention generally, see: Vouin, The Protection of the Accused in French Criminal Procedure, 5 INT. & Comp. L.Q. 1, 18 (1956); Bouzat, op. cit. supra note 130, at no. 1138; Encyclopédie Juridique, op. cit. supra note 130, at Tome I, p. 725 and mise à jour, p. 192; Jurisclasseur de Pro-
ous offenses. The law provides that preventive detention shall not exceed four months duration, except when extended for a similar period or periods by orders of the juge d'instruction, with written reasons. As a practical matter, such extensions appear to be frequent for the more serious crimes, and prolonged pre-trial detention in France has been severely criticized.

It is interesting that French law provides that, apart from exceptional cases, time served in preventive detention is to be subtracted from the sentence imposed at the trial. Although there are provisions for release, in the discretion of the court, on giving of security (caution), these provisions are rarely utilized. Instead, it appears that when felt that provisional liberty is deemed appropriate, it is accorded without the formality of caution.

Trial

The institutions of arraignment and pleas, as known in Anglo-American law, do not appear to be present as such in French law. There are, of course, ways of informing the defendant of the crime with which he is charged, as noted above. Generally, there is no guilty plea in French criminal proceedings. The writer has been informed that this is due to the French conception of the presumption of innocence: it is for the judge and jury to determine guilt, not the defendant. It is interesting to note that there is a possibility under French law of proceeding without the presence of the defendant. But in the following discussion, it will be assumed that the defendant is in court.

142. See Anton, supra note 133, at 453-54.
143. French C.P.P. art. 139, as amended by Ordinance 60-529, June 4, 1960.
144. See Anton, supra note 133, at 453-54; Hamson et Vouin, Le Procès Criminel en Angleterre et en France, No. 2-3 Revue Internationale de Droit Pénal 177, 182 (1952), and authorities therein cited.
145. French Penal Code art. 24; Stefani et Levasseur, no. 683.
146. French C.P.P. art. 145 et seq.
147. See Anton, supra note 133, at 454.
148. French C.P.P. art. 138 et seq.; Stefani et Levasseur, no. 685 et seq.
149. See Anton, supra note 131, at 448; French C.P.P. arts. 104, 114 et seq., 180, 217, 268, 550 et seq.; Stefani et Levasseur, nos. 250, 651, 759 et seq.
150. For petty offenses (contraventions), however, there is a means by which one may voluntarily pay a fine and avoid the inconvenience of a regular hearing (oblation volontaire or amende de composition). Freed, Aspects of French Criminal Procedure, 17 La. L. Rev. 730, 736-37 (1957); French C.P.P. arts. 6, 524 et seq.; Stefani et Levasseur, no. 771 et seq.
151. French C.P.P. arts. 410 et seq., 487 et seq., 544 et seq., 627 et seq.; Stefani et Levasseur, nos. 779, 829 et seq.
The French criminal trial (audience) is totally different from one in the United States. Of prime importance is the dossier, prepared in advance by the police at the enquête préliminaire (or first step of investigation), and, in many cases, also by the juge d'instruction. The dossier is at times lengthy. As noted previously, the presiding judge has had access to it in advance of the trial, and in more serious cases, it is necessary for him to have studied it assiduously. Counsel for the prosecution, the defense, and the civil party (if there be one) have all also had access to it.

The trial itself is short compared to American trials. Interrogation of the witnesses is handled almost exclusively by the presiding judge. Counsel for the parties may request that the president ask certain questions, and this usually occurs from time to time during the trial. Questions thus suggested, however, are not numerous, and there is nothing in French criminal procedure akin to Anglo-American examination and cross-examination of witnesses by counsel. The extensive and painstakingly prepared dossier is the French means of clarifying the facts in advance of trial and pinpointing whatever contradictions remain.

What is necessary, and yet very difficult, for an American to understand is that, in the vast majority of French criminal proceedings, the defendant has already fully confessed several times, and does not contest the validity of his confessions. Of course, there are exceptions, but it seems to this writer, from observations and conversations, that generally by the time the trial arrives, it is quite apparent from defendant's confessions, thoroughly corroborated in the dossier, that he did in fact commit the act in question. Since, at the same time guilt or inno-

152. See French C.P.P. arts. 381 et seq. (for trial of délits), 231 et seq. (crimes), 521 et seq. (contraventions).
For discussion of French criminal trials generally, see authorities cited in note 65, supra.
153. With respect to the more serious cases (crimes), the case must be investigated by the juge d'instruction and also further considered by the accusatory chamber of the Court of Appeal prior to trial by the Cour d'Assises.
154. French C.P.P. arts. 81, 89, 118, 183, 186.
155. Stefani et Levasseur, nos. 327 et seq., especially 336, 782 et seq.
156. French C.P.P. art. 454; Stefani et Levasseur, no. 336. In cases brought before the Cour d'Assises, subject to certain restrictions, the procureur has the right, after the witness has given his narrative account, to ask questions directly. French C.P.P. arts. 309, 312.
157. See Anton, supra note 153, at 442.
158. For discussion of confessions in French criminal proceedings, see supra p. 18.
cence is determined by the tribunal, sentence is also meted out, an extremely important consideration at the trial is determining what sentence should be given the defendant, if he should be found guilty. Naturally, this has great bearing as to the type of procedure employed, the evidence adduced, and the rules with respect thereto.

Because of the importance of the dossier and the role of the juge d'instruction in cases referred to him, it is noteworthy that this magistrate is charged with neutrality and obligated to develop for the dossier not merely facts favorable to the prosecution, but also those favorable to the defendant.\(^\text{159}\) It seems fair to state that in general this obligation is actually fulfilled. Since it is for the juge d'instruction, in cases referred to him, to decide whether an individual should be brought to trial, the standard employed by him in arriving at this decision is significant. Although the legislative texts are somewhat vague,\(^\text{160}\) it seems to this observer that the standard actually employed is much more defendant-oriented than that used for grand jury indictment.\(^\text{162}\) It appears that if the juge d'instruction is not reasonably convinced of guilt,\(^\text{165}\) subject to review by the accusatory chamber of the court of appeal at the request of the procureur,\(^\text{164}\) or the civil party,\(^\text{165}\) the defendant does not go to trial.\(^\text{166}\)

\(^\text{159}\) French C.P.P. art. 81; Stefani et Levasseur, no. 642 et seq.

\(^\text{160}\) Before a person may be tried for a crime, however, the case must be doubly examined, first by the juge d'instruction, and secondly by the Chambre d'Accusation.

\(^\text{161}\) Stefani et Levasseur, no. 351 et seq.

French C.P.P. arts. 176, 177 (1st par.), and 179 (1st par.) provide:

"176. The juge d'instruction shall seek to ascertain if there exist against the inculpé charges constituting a violation of the criminal law.

"177. If the juge d'instruction is of the opinion that the facts constitute neither a crime, a délit, nor a contravention, or that the perpetrator of the crime remains unknown, or that sufficient charges against the accused do not exist, he is to declare by an order, that there is no need to prosecute. . . ."

"179. If the juge [d'instruction] is of the opinion that the facts constitute a délit, he shall refer the case to the tribunal correctionnel. . . ."


\(^\text{163}\) See Stefani et Levasseur, no. 351. For example, the writer has seen the report of a juge d'instruction, stating that there existed a "slight doubt," which "must be resolved in favor of the suspect," and therefore a "non-lieu" or "no true bill" was brought. The writer is informed that such handling of the "doubt" question by the juge d'instruction is general practice.

\(^\text{164}\) French C.P.P. art. 185; Stefani et Levasseur, no. 742.

\(^\text{165}\) French C.P.P. art. 186; Stefani et Levasseur, no. 745.

\(^\text{166}\) The Chambre d'Accusation is to employ the same standard in arriving at
The presumption of innocence, although not expressly stated in the Code of Penal Procedure, is well recognized as a fundamental concept,\(^{167}\) and generally the burden of proof is clearly on the prosecution.\(^{168}\) However, in petty offenses and certain exceptional cases, a procès verbal, prepared by public officials outside of court, drawn in accordance with strict regulations, constitutes prima facie proof of guilt, rebuttable by evidence to the contrary.\(^{169}\)

At the trial, after the charge is read, the defendant is usually the first party examined by the presiding judge.\(^{170}\) As is the custom for witnesses, he stands. In serious cases, with painstaking care, the presiding judge, who has studied the dossier, interrogates the defendant, asking him to affirm or deny the truth of the statements contained therein, both his own and those of others. The judge attempts to bring out the pertinent circumstances, both favorable and unfavorable. Questions by counsel for the defendant and the civil party may be posed through the president of the court.\(^{171}\)

After the defendant has testified, other persons are heard. It should be noted that French procedure makes a distinction between witnesses and those who simply give information. Persons affected with an interest, such as the defendant,\(^{172}\) the civil party,\(^{173}\) and those closely related to them by blood or affinity,\(^{174}\) are not permitted to testify under oath — although they may give statements and be questioned as though they were wit-

\(^{167}\) See Declaration of the Rights of Man, art. 9; GORpHE, APPRÉCIATIONS DES PRÉUVEs EN JUSTICE 32 (1947); Hamson & Vouin, supra note 144, at 185; STEFANI ET LEVASSEUR, no. 287 et seq; VOUIN ET LÉAUTE, DROIT PÉNAL ET PROCÉDURE PÉNALE 220 (1960); Semaine Juridique, Cour de Cassation (chambre criminelle), 9 mars 1950, J.C.P. II, no. 5594.

\(^{168}\) For general discussion of burden of proof and presumption of innocence, see: BOUZAT, op. cit. supra note 130, at no. 1063; Encyclopédie Juridique, op. cit. supra note 130, at Tome II, p. 659 et mise à jour, p. 372; Jurisclasseur, op. cit. supra note 141, at art. 427 et seq.; STEFANI ET LEVASSEUR, no. 287 et seq.; Vidal, op. cit. supra note 130, at no. 715; VITU, op. cit. supra note 130, at 184.

169. France: Country Law Study, prepared by Judge Advocate Division, United States Army Communications Zone, Europe, 9-10 (1961); French C.P.P. arts. 537, 429 et seq.; STEFANI ET LEVASSEUR, no. 357 et seq.


171. French C.P.P. art. 442. For the rule regulating counsel's questioning of defendant in the Cour d'Assises see French C.P.P. 312. STEFANI ET LEVASSEUR, no. 779.

172. French C.P.P. arts. 442, 448.

173. Id. art. 442.

174. Id. art. 448.
nesses. As a result, these persons are not subject to prosecution for perjury.\textsuperscript{175} What they say is viewed with scepticism, in light of their interest. Persons under the age of sixteen,\textsuperscript{176} and certain individuals with past criminal records,\textsuperscript{177} are also prohibited from giving testimony under oath. When permitted to take an oath as a witness, one swears to “tell all the truth and nothing but the truth.”\textsuperscript{178}

Persons other than the defendant usually give their testimony in narrative form, and are permitted to say whatever they feel is pertinent, uninterrupted by the objections of counsel that so often characterize American criminal proceedings. The judge, however, is in control.\textsuperscript{179} Broad and intricately developed rules of exclusion, such as the Anglo-American hearsay rule, rule against opinion testimony, \textit{etc.}, do not exist in French criminal proceedings.\textsuperscript{180} The law does recognize a privilege as to professional secrets,\textsuperscript{181} and goes so far as to make it a crime generally for an individual to reveal professional confidences reposed in him.\textsuperscript{182}

If the testimony goes too far afield, the judge, of course, can limit it, but this seldom happens. Since the fact-finder also determines what sentence should be imposed, testimony relative to the character, family situation, background, economic status, \textit{etc.}, of the defendant, and even of the victim and other persons concerned in the criminal incident, may be pertinent, and are frequently discussed. Whether the defendant or the victim was previously convicted of crime, and the nature of such crime, may be presented in detail. The French statement, frequently heard,

\begin{itemize}
\item \textsuperscript{175} Stefani et Levasseur, nos. 327 et seq., 783. See Hamson & Vouin, \textit{supra} note 144, at 189.
\item \textsuperscript{176} French C.P.P. art. 447; \textit{Stefani et Levasseur}, no. 783.
\item \textsuperscript{177} See \textit{French Penal Code} arts. 28, 34, 42.
\item \textsuperscript{178} French C.P.P. arts. 437, 446. Witnesses before the \textit{Cour d'Assises} shall swear to speak “without hatred and without fear, and to tell all the truth and nothing but the truth.” French C.P.P. art. 331; \textit{Stefani et Levasseur}, no. 333.
\item For the oath taken by experts, see French C.P.P. arts. 160, 168.
\item \textsuperscript{179} French C.P.P. art. 401; \textit{Stefani et Levasseur}, nos. 336, 782 et seq.
\item \textsuperscript{180} See Bodington, \textit{French Law of Evidence} 122 (1904); David & de Vries, \textit{The French Legal System} 74 (1958); Hamson et Vouin, \textit{supra} note 144, at 187-88; \textit{Stefani et Levasseur}, nos. 315 et seq., 351 et seq.
\item \textsuperscript{181} Which extends generally to lawyers, doctors, druggists, midwives, \textit{etc.} \textit{French Penal Code} art. 378; French C.P.P. arts. 109, 432; \textit{Stefani et Levasseur}, nos. 253, 257, 323, 331, 558, 649, 663, 798.
\item \textsuperscript{182} However, although not required to reveal criminal abortions, they may do so without being subject to criminal sanction. \textit{French Penal Code} art. 378.
\item For further discussion of privileged communications in French law, see Bodington, \textit{French Law of Evidence} 39 (1904).
\end{itemize}
that "one judges the man, not facts," seems, indeed, to be the case.

From the broad range of testimony possible, a person accustomed to Anglo-American procedures might well imagine that a French criminal trial would be of inordinate length, but, as noted above, this is not at all the case. It must be remembered that the dossier has been painstakingly prepared, has been studied assiduously by the presiding judge, is readily available to the other judges, and is heavily relied upon by counsel in their presentations to the court.\textsuperscript{188}

After all testimony has been received, counsel for the state, the civil party (if there be one), and the inculpé deliver oral presentations, which are frequently eloquent and moving. The summation (or réquisitoire) by the procureur, a member of the magistrature, is probably more restrained and judicious than its American counterpart. Employing a polished literary style, defense counsel presents his client in the most favorable light possible. Frequently, as a result of confessions confirmed beyond serious question by the fruits of the exhaustive pre-trial research reflected in the dossier, defense counsel does not contest his client's guilt, but instead elaborates on the psychological, sociological, and economic factors which prompted the commission of the infraction. In serious cases, particularly those involving crimes (where juries are employed), the presentation (plaidoirie) of counsel is truly a masterful oration. In the publicized cases, lengthy quotations from the plaidoirie are frequently given by the news media (even television) and commented upon favorably or unfavorably.\textsuperscript{184}

The judges are specifically prohibited from basing their decision on evidence other than that available at the trial.\textsuperscript{185} They may consider all matters within the dossier properly acquired,\textsuperscript{188} for it is felt that as trained professional magistrates,
they can weigh the testimony and give it the value to which it is entitled. In arriving at their decision, the test to be employed is "inner conviction" (intime conviction). The nature of this test is spelled out for lay jurors (sitting for the trial of crimes), who are to be instructed by the president of the court before deliberation:

"The law does not ask judges for an accounting as to the means by which they are convinced. It does not prescribe for them any special rules on which they shall make the fullness and sufficiency of the proof depend; it requires them to interrogate themselves in silence and reflection, and to seek to determine in the sincerity of their conscience what impression the proofs brought against the accused, and his defense, have made on their reason. The law only asks of them this single question, which encompasses the full measure of their duty: 'Have you an inner conviction?'"

It has already been seen that the rules of evidence so characteristic of an Anglo-American criminal proceeding are generally quite unknown to its French counterpart. Possible explanations are that, except in the Cour d'Assises, French cases are tried before trained judges, sitting without juries, and that on the basis of the same evidence, French judges determine guilt or innocence and also mete out sentence. Especially noteworthy is the frequently found provision in modern American procedure for a post-trial, pre-sentence investigation and report to the judge on the character and background of the defendant, relative to the most appropriate penal sanction for him — and that this investigation is generally unencumbered by technical rules of evidence. The United States Supreme Court has stated:

188. French C.P.P. art. 427; Stefani et Levasseur, no. 348 et seq.
For general discussion of "intime conviction," see: Bouzat, Traite Theorique et Pratique de Droit Penal, no. 1067 (1951, et mise à jour 1956); Stefani et Levasseur, no. 348 et seq.; Vidal, Cours de Droit Criminel et de Science Pénitentiaire no. 721 (1949); Vitu, Procédure Pénale 188 (1957).
189. French C.P.P. art. 353.
190. This is also true for judges and jurors in the Cour d'Assises, where, sitting together, they perform the same functions.
For discussion of recent provisions affecting sentencing, see Patey, supra note 184, at 392-94.
Interestingly enough, since the decision as to the imposition of capital punish-
"[The sentencing judge's] task within fixed statutory or constitutional limits is to determine the type and extent of punishment after the issue of guilt has been determined. Highly relevant—if not essential—to his selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics. And modern concepts individualizing punishment have made it all the more necessary that a sentencing judge not be denied an opportunity to obtain pertinent information by a requirement of rigid adherence to restrictive rules of evidence properly applicable to the trial.

"Undoubtedly the New York statutes emphasize a prevalent modern philosophy of penology that the punishment should fit the offender and not merely the crime. The belief no longer prevails that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender." (Footnotes and citations omitted.)

Thus the two systems, by very different means, have evolved procedures permitting consideration of factors pertinent to fitting the punishment, not merely to the crime, but also to the person.