

Legal procedure can be broadly categorized into two systems: the adversarial system and the inquisitorial system. The United States, like many common law countries, follows an adversarial system. Adversarial systems are characterized by competition between the accused (defense) and the accuser (prosecution). Each side is represented by lawyers, who present their case to a jury. The jury acts as the fact-finder and determines the truth of any charges brought against the defendant. Judges maintain a neutral role. They participate in the process only to decide questions of law and ensure adherence to procedure.

France follows an inquisitorial system of legal procedure used by most civil law jurisdictions. While adversarial systems are dominated and led by attorneys, attorneys play a relatively minor role in inquisitorial systems. Judges, by contrast, play a much more active role in an inquisitorial system. A judge has the power to supervise the collection of pretrial evidence, personally question witnesses, and even compel the defendant to testify. Attorneys may likewise question witnesses and suggest routes of inquiry to the presiding judge. Jury trials are rare (and sometimes nonexistent) in inquisitorial systems.

There are several important distinctions between the United States and France in pretrial procedures. In the United States, judges are generally not involved in police investigation except to issue warrants. The French system of judicial involvement is somewhat more complex. A *juge d'instruction* ("investigating judge") may be employed to supervise the pretrial investigation.¹ However, this type of investigation is only required for the most serious offenses. In the United States, this would encompass serious felonies, while lesser felonies and misdemeanors would not qualify for such an investigation.² The *juge d'instruction* then determines whether there is sufficient evidence for

1 Dammer, H. R., & Albanese, J. S. (2011). *Comparative Criminal Justice Systems* (4th ed.) at 126. Belmont, CA: Wadsworth Cengage Learning.

2 Langbein, J. H., & Weinreb, L. L. (1978). *Comparative Criminal Procedure*. *Yale Law Journal*, 87(8) at 1551.

the case to proceed to trial.

A comparison can be made between the French felony pretrial investigation and grand jury proceedings in the United States.³ Both proceedings take place in secret, prior to the public trial. Furthermore, both exist for similar purposes—to determine whether or not the charges brought should be further investigated at trial. However, American grand jury proceedings are led by the prosecutor, while the *juge d'instruction* is responsible for pretrial investigation in France. The pretrial investigation is also much more extensive than the comparatively short grand jury proceeding.⁴

Adversarial systems like the United States' have complex rules regarding evidence and witnesses. This contrasts heavily with France's inquisitorial investigation. For example, generally speaking, courts do not look into the legality of pretrial police actions.⁵ Although police are given greater latitude in investigation, this is not to say that the police can do anything. Certain acts may be illegal under French law. However, even if evidence is obtained illegally, it will still be included at the trial.⁶ This is a major deviation from the American system. Police are encouraged to “play by the rules” because a failure to do so could result in inadmissible evidence and the defendant going free.

³ Dammer, H. R., & Albanese, J. S. at 127.

⁴ Id.

⁵ Langbein, J. H., & Weinreb, L. L. at 1554.

⁶ Id.