

**COMPARING U.S. AND FRENCH MODELS OF
CRIMINAL PRE-TRIAL INVESTIGATION**

PARTY-PROSECUTOR v. NEUTRAL *JUGE D'INSTRUCTION*

A THESIS

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Abstract

The criminal procedure of the United States is being exported to France. It started with “pick-and-choose” reforms, such as the cross-examination of trial witnesses and the guilty plea mechanism. In late 2005, a bill was presented to the French legislature to vote on the abolition of the “investigating magistrate” (*juge d’instruction*) and follow the adversarial *Anglo-Saxon* judicial structure, thus transferring his fact-finding role to the public prosecution service.

In France, the preparation of criminal matters for trial is directed, not by the prosecutor with the assistance of investigating agencies, as is the case in the United States, but by a judge, distinct from the prosecutor, who is positioned between the latter and the putative criminal defendant. His *raison d’être* is to uncover the truth through “seeking out both incriminating and exculpatory evidence (*instruction à charge et à décharge*);” he does not take part in the adjudication phase.

This thesis raises the overlooked issue of the impact of the party affiliation of the prosecutor on the orientation of the pre-trial investigation and, consequently, its results. This thesis claims that it is a material determination to make, given (i) the distinctive nature of the virtue of impartiality of the investigating magistrate, (ii) the fact that the impossibility to fulfill such obligation is offered as one of the main justifications for abolishing this institution, and (iii) the conventional wisdom opinion that prosecutors, because they are the charging authority, are biased towards a finding of guilt.

Based on a literature review and qualitative interviews with French investigating magistrates and French and U.S. prosecutors, the purpose of this research is to determine whether a prosecutor collects and weighs evidence differently as compared to a neutral investigating magistrate. The U.S legal system is used as a point of reference.

This “insider” approach has shown that prosecutors and investigating magistrates *share* the same commitment to exhaust the facts of a matter, including seeking out evidence refuting the criminal charge. Logically, they concluded that the neutrality of the investigating magistrate does not represent added value.

Although other viewpoints may contradict these findings, in particular, that of defense counsels, this study clarifies that the choice of a prosecutor-investigator does not result in the confrontation of two opposite versions of the facts, or “half-truths” as it has been argued.

This study shows nonetheless that material differences exist in the operation of the two models which relate to the respective significance granted to the voice of the putative criminal defendant and this of the public authority in the pre-trial phase.

Such insight over the U.S. experience will further help shaping the reform of the French criminal justice system in the respect of its value system.