

# INSPECTOR MAIGRET'S GUIDE TO VENUE

Alert readers may have enjoyed Inspector Maigret, who stars in the novels of Georges Simenon, not to mention the TV and film versions of these detective stories. Readers and viewers from common law countries may be intrigued by the judge who (sometimes) pads about after Maigret, sometimes addled, sometimes overly (un)helpful, often in the way, and always wrong. It's Inspector Maigret who, like Sherlock Holmes, is allowed the flashes of brilliance that make detective stories fun for the reader and so very un-fun for the judges.

But who are these judges? In the French legal system, the *juge d'instruction* has a wide range of powers at her disposal to collect necessary evidence. Recently, these judges work in teams, especially when white-collar crime or terrorism is involved. Perhaps the fuddled image of the *juge d'instruction* that Simenon gave the public had something to do with these reforms.

Common law lawyers and judges are bred to loathe the inquisitorial system of justice, which is what we call it. The idea of a judge loping about the countryside, with or without the assistance of a brilliant member of the *Police Judiciaire* such as Maigret, is a travesty of justice, even if that kind of justice may also be quite continental.

Take a venue. In this venue the judge is not confined to the bench. The judge may ask questions as she wishes. The judge may hear what she wishes and interrupt as she wishes. The judge may look at any documents she wishes to see. The judge may talk with the parties together or individually, usually in private. The judge may decide on her own say-so, make up her own mind, as to what she will disclose to any side. She may agree to be bound or not bound by any confidence made.

What have I just described? I've described, of course, the conduct of a judge in a settlement venue and also (in part) the conduct of a *juge d'instruction*. Of course, I've simplified matters.

Americans use a venue style in settlement proceedings which, if Inspector Maigret presented the ethics of discourse to them, Americans would probably dislike at first glance. Take this venue style out of France

and put it into Alaska, put one of our own state court judges in charge, and you have something much more homely.

Now here's the problem. If American lawyers and judges want unrepresented parties to participate enthusiastically and with appropriate motivation in settlement conferences – and to be satisfied consumers of these services – and if there are going to be situations in which settlement conferences fail, then how do we introduce this venue to these consumers?

Let's start first with the inevitable challenges to the judicial conduct. To be more precise: the judge may fail the ethical bar in (1) negotiating the parties' switch from trial judge (in adversarial venue) to settlement venue, or (2) in her participation in the settlement venue, or (3) in her conduct back in the adversarial venue.

What might be needed here is waiver or perhaps, a bit of consent, or even acknowledgement or appreciation from the consumers. After all, it is weird to the person-in-the-street who walks into a courtroom and doesn't fully realize that everything others say about her will be taken down and may be used against her in a court of law *and she'll never know what they said*. But that is one of the several differences in the ethics of discourse, with its significant twin being the judge's soliciting and giving opinions on the value of the case.

Of course, the Alaska Court System expects its judges to do both jobs, delivering justice in an adversarial context and managing settlement conferences. So when Canon 3 calls on a judge (in the typical case) to perform "the duties of judicial office impartially and diligently" that aspiration should be read to require the judge to bring the parties along with her in making the switch from one type of venue to another and then back again.

Lawyers and judges in Alaska's larger cities may dismiss these issues, because other judges are available to engage parties in the *ex parte* conversations that adversarial venue condemns and which are essential in settlement venue. True, the plaintiffs' half of the civil litigants paid the price of a ticket to the doubleheader, but the other half isn't there willingly at all. The burdens on access to judicial services are real enough and there is an expectation gulf when a party (counselled or not) moves into settlement

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venue. It's the consumer's point of view that this little essay draws attention to. By the way, a good website for Maigret fans is [www.trussel.com/f\\_maig.htm](http://www.trussel.com/f_maig.htm).

### *Apparatus*

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