

7.5: American Trial Courts and the Principle of Orality

At trial, the state will present evidence showing facts demonstrating that the defendant committed the crime. The defendant may also present facts that show he or she did not commit the crime. The **principle of orality** requires that the **trier of fact** (generally the jury, but the judge when the defendant waives a jury trial) consider only the evidence that was developed, presented, and received into the record during the trial. As such, jurors should only make their decision based upon the testimony they heard at trial in addition to the documents and physical evidence introduced and admitted by the court. The principle of orality would be violated if, for example, during deliberations, the jury searched the Internet to find information on the defendant or witnesses. Similarly, if the police question the defendant and write a report, the jury cannot consider the contents of the report unless it has been offered in a way that complies with the rules of evidence and the court has received it during the trial. The principle of orality distinguishes the functions of a trial court, developing the evidence, and the function of the appellate courts, reviewing the record for legal error.

The principle of orality is one major difference between the **adversarial system** generally followed by the United States and the **inquisitorial system** generally followed in most other countries. Frequently in **civil law countries** (for example, most European nations), the police, prosecutors, or investigating magistrates question witnesses prior to trial and write summaries of their statements called a **dossier**. In determining guilt, the trier of fact is presented with just the summaries of the witness statements. The trial in civil law countries is less about the presentation of evidence establishing the defendant's guilt and more about the defendant's presentation of mitigation evidence which assists the court in giving an appropriate **sentence**, or sanction.

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