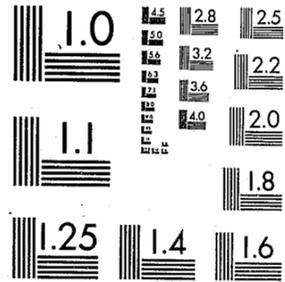


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# International Summaries

A Series of Selected Translations in Law Enforcement and Criminal Justice

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## The Application of Partial Suspension of Sentence in French County Courts

Among alternatives to incarceration considered by French courts is the partial suspension of sentence, which bears some resemblance to shock probation. This article examines partial suspension of sentence and briefly assesses its reception by the professional community.

By G. Levasseur and M.P. Champenois-Marnier

### The Partially Suspended Sentence--A Definition

The partially suspended sentence (*sursis partiel*) was recently introduced into French law and has few equivalents in the legal codes of other countries.

"Simple suspension" has been known in French law since 1884: the judge pronounces a sentence which will not be executed unless the offender is convicted of a second offense within 5 years. In addition, the possibility of "suspension with probation" has existed since 1959: a sentence is suspended while the offender undergoes a probation period of 3 to 5 years. Under the new law (July 17, 1970), judges have the option, in cases of simple suspension and suspension with probation, of partially suspending a sentence, which means that the offender will have to serve part of his prison term. The advantage of the new provision for the criminal is that the offense will appear only on special records that are accessible only to judicial authorities.

### Goals of the Study

The 1974 study explored the significance and future of partially suspended sentences (also referred to as mixed sentences) in the concrete application of the judicial process; i.e., to what extent do the courts make use of the new sentencing opportunity? Next, the profile of a typical candidate for the partially suspended

sentence was determined. Finally, the motivations of judges in pronouncing a mixed sentence were surveyed; the hypothesis most frequently advanced by experts is that judges want to account for the period of pretrial detention by making the length of the prison term (the part of the sentence which is not suspended) coincide with the period served during pretrial detention.

### Size of the Sample Population

Since at the time of the study the possibility of partial suspension had been in effect for 3 years, it could be expected that judicial application had reached a normal pattern and that future trends would be visible. The scarcity of available records imposed two restrictions on the study. First, the study dealt only with the decisions of French county courts. Second, the records selected (767 cases in Paris, Lyon, Lille, Pau, Bayonne, and Tarbes) are not representative of the French judicial system as a whole; the trend of the results is of greater significance than the individual statistics.

### Methods

The collection of data. The collection of data involved a study of court records in each city evaluating the objective facts which constitute court decisions, and interviews with judges and other court experts who had made the decisions to determine subjective factors influencing their decisions. The former consisted of a thorough statistical analysis of records<sup>1</sup> dealing with partially suspended sentences. The latter surveyed ap-

<sup>1</sup>An effort to be representative was made when selecting a predetermined number of records in each city.

<sup>1</sup>L'application du sursis partiel par les tribunaux correctionnels français" (NCJ 59769) originally appeared in *International Annals of Criminology*, v. 17, nos. 1 and 2, 1978, pp. 117-146. (Société Internationale de Criminologie, 4, rue Mondovi, 75001 Paris, France) Translated from the French by Sybille Jobin.

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proximately 10 judges and other court experts in each district to compare their personal theoretical positions with the sentences they had pronounced.

The interviews were unavoidably delayed until 1976-77, when the results of the statistical analysis had already been tabulated, but a benefit of this accidental delay was more pointed questions in the questionnaires and interviews.

Evaluation of the data. The most significant part of the extensive statistical analysis was an attempt to relate three dependent variables--the suspended part of the sentence (SP), the overall sentence (OS), and the prison part of the sentence (OS-SP)--to 18 independent variables that might influence them. Six of the independent variables refer to the offender's personality (age, nationality, marital status, number of children, socio-professional background, and income). Eight factors relate to the circumstances that surround the offense (extenuating circumstances, four groups of aggravating circumstances, the offender's previous criminal record, imposition of suspension with probation, duration of the court proceedings). Four factors are linked to the conditions under which the court decision took place (existence and duration of pretrial detention, presence of a lawyer at the trial, strictness of the sentencing court).<sup>2</sup>

### Results of the Statistical Analysis

Of the analyses conducted to relate the SP, the OS, and the OS-SP to the above-mentioned independent variables, only 10 are significant enough to be mentioned here.

The OS-SP. The results reported in this section cover only records for which pretrial detention exceeded 15 days. The figures indicate a significant relationship between the part of the sentence to be served in prison and the length of pretrial detention, and (to a lesser degree) to damage caused by the offense. The longer the pretrial detention and the greater the damage, the longer the prison term becomes. However, an inverse relationship exists between the duration of the jail term and the offender's socioprofessional background: if the offender comes from a disadvantaged section of the population, the prison term tends to be shorter.

The OS. The results apply to all the records studied and indicate a strong relationship between the overall penalty imposed and the following variables: amount of damage, presence of a defense attorney at the trial, suspension of the sentence with probation, length of the pretrial detention, and length of the suspended part

<sup>2</sup>Other variables contained in the overall statistical analysis but not included in this part of the study include sex, place of birth, place of residence, type of offense, and others. Significant results concerning these factors are included under "Comparison of the Results of the Statistical Analysis and the Interviews."

of the sentence.<sup>3</sup> Briefly, the results show that the greater the damage, the longer the pretrial detention, and the longer the suspended part of the sentence, the greater the chances of receiving a long overall sentence. The presence of a defense attorney at the trial--probably an indication of a more serious offense--is also related to a longer overall sentence.

At the same time, the following relation of the length of the overall punishment to an offender's socio-professional background and to the existence of extenuating circumstances holds true: the less privileged an offender's social background and the more extenuating circumstances, the shorter the overall sentence tends to be.

Length of the suspended part of the sentence. The statistical analysis of the entire sample showed the following results:

- The greater the number of extenuating circumstances, the shorter the suspended part of the sentence tends to become.
- The lower the educational level of the offender, the shorter the suspended part of the sentence becomes.
- The duration of the suspension appears to shorten if the offender is a foreigner.
- The longer the overall amount of penalty<sup>4</sup>, the longer the suspended part of the sentence.
- The longer the pretrial detention period, the longer the suspended part of the sentence (which seems to indicate that the desire to "cover" the pretrial detention period is only of limited significance).
- The more aggravating the circumstances (for example in a case of conspiracy), the longer the suspended part of the sentence. This surprising result is explainable: the seriousness of the offense calls for a long overall sentence, part of which is the proportionately longer suspended period.
- The presence of a defense attorney at the trial also seems linked to a longer suspended period.

### Results of the Court Expert Survey

The responses of judges, prosecutors, examining magistrates, sentencing judges, and attorneys to the most

<sup>3</sup>In this analysis, the length of the suspended part of the sentence (actually one of the three dependent variables) was used as an independent variable.

<sup>4</sup>In this analysis, the overall sentence (actually one of the three dependent variables) was used as an independent variable.

important questions in the questionnaire are summarized in this section. The judges' and prosecutors' response to mixed sentencing was unanimously favorable, at times even enthusiastic. Despite a few reservations, examining magistrates responded just as positively. For all professional groups surveyed, the advantages of this form of sentencing clearly outweighed any possible disadvantages, and the frequent use made of mixed penalties was emphasized.

The judges' reasons for imposing mixed sentences were the subject of several questions. Results indicated that the offender's personality is the foremost factor of consideration, while the nature of the offense—contrary to expectations—proved of minor importance. In making their decisions, the judges emphasized the existence of dependents, the offender's age, lack of previous criminal record, a favorable prediction, and employment which a prison term would jeopardize. The other expert groups interviewed tended to corroborate these criteria, although the emphasis placed on each item varied from group to group.

The circumstances of the judicial proceedings play an important part in the judges' motivations. An important purpose of the survey was to find out whether the desire to account for the period of pretrial detention was of special significance in the judges' sentencing considerations. The questionnaire contained two questions on the subject; one mentioned pretrial detention in connection with other factors, while the other approached the subject directly. In reply to the first question, 10 judges referred to the detention period as a foremost factor in their considerations while 6 judges emphasized its irrelevance.

However, when the question was asked a second time and in a more direct manner, the judges unanimously acknowledged the importance of justifying the pretrial detention period and explained their positions in great detail. The other groups questioned agreed on the significance of the pretrial detention as a sentencing factor.

In addition, the judges' decision may be influenced by a number of extenuating and aggravating circumstances relating to the victim's personality, the extent of the damage, the circumstances under which the crime was committed, and the offender's motivation. With regard to motivation, the judges ruled out (and most other interviewees agreed) the influence of alcohol and drugs as a factor of consideration. The fact that the offense had only been attempted or that the victim was a representative of an official agency did not have any effect on the sentence. Only a slight majority believed that the conspiratorial nature of an offense had any influence on the selection of the partially suspended sentence. Some court officials—in particular examining magistrates, sentencing judges, and attorneys—stated that they considered a victim's provocative attitude an extenuating circumstance.

Restitution for the damage and (to a lesser degree) the fact that the offender lost control of himself enter into the judges' consideration as extenuating factors. A

great majority of interviewees underlined the use of a weapon or of violence as aggravating circumstances. Almost as great a majority claimed to be influenced by the defenseless and pitiful state of the victim and by the ease of access in committing the offense.

When asked to name the most influential circumstances in their decisionmaking, the judges listed, in order of importance, the use of violence, the use of a weapon, and the defenselessness of the victim. The other groups of interviewees agreed (with few exceptions) on the same three factors. Among other motivations was the desire to have the offender experience prison life first hand in order to give greater emphasis to the suspended part of the sentence.

The real or supposed effects of partial suspension were the object of several questions. When asked if the partial suspension was more effective in terms of crime prevention when combined with simple suspension or suspension with probation, the great majority of judges found simple suspension in combination with the partially suspended sentence the most effective solution. Prosecutors found both combinations equally effective—an opinion shared by examining magistrates and sentencing judges. Remarkably, attorneys were extremely divided on that point.

Another question explored whether the mixed sentence may administer a beneficial shock to the offender. The judges almost unanimously believed that such a beneficial effect existed, as did many of the examining magistrates, prosecutors, and (with two exceptions) attorneys.

Does a partial suspension make the probation period easier? None of the sentencing judges seemed to see a particular advantage in that respect; they did not believe that the mixed sentence should be made a normal condition of probation.

According to those interviewed, other beneficial effects of the suspended sentence include a deterrent effect, which is higher than with the total suspension of a sentence, and a better chance of social reintegration. On the other hand, the interviewees considered contamination through prison contacts (despite the short term) a negative effect of the partial suspension.

Principal points of agreement. The points of agreement between the two research proceedings primarily concern the selection of delinquents who benefit from the partial suspension. For instance, the records indicated that the great majority of selected offenders was between 18 and 35 years of age; similarly, the judges themselves mentioned the youthfulness of an offender as a primary factor in their selection of punishment. At the same time, an offender's criminal past is influential. It is no accident that three-quarters of the beneficiaries of the partially suspended sentence have no previous court record since the judges consider a "clean" past as a decisive factor for imposing a suspended sentence. The importance of the length of pretrial detention is clearly confirmed. The desire to account for pretrial detention, which showed in all aspects of the statistical analysis, was explicitly mentioned in the interviews. The analysis

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of court records indicated, and the judges confirmed, that the circumstances surrounding an offense are significant sentencing factors. According to the interviewees, extenuating circumstances include restitution for damage and provocative behavior on the part of the victim, while the use of violence (in particular, use of a weapon), the defenseless state of the victim, and the ease with which the offender can act count as aggravating factors.

Principal points of disagreement. The main area of disagreement concerns particular circumstances surrounding the crime. For instance, the importance of the damage done—which, according to the statistical analysis, influenced the overall sentence, the suspended part of the sentence, and the length of the prison term which must be served—does not have the same prominent part in the interviews.

Another divergence is found in particular characteristics of the delinquent. While the analysis of records seemed to indicate that nationality was an influential factor (a comparatively high number of foreigners received a partially suspended sentence), most judges insisted that an offender's nationality should not enter as a factor of consideration. Similarly, an offender's having family dependents, which appeared as an insignificant factor on the statistical level, was almost unanimously emphasized by the judicial experts as an influential factor.

A final striking aspect is the importance judges attribute to an offender's prediction for recidivism. While the statistical analysis indicated that numerous first-time and repeat offenders known for their negative conduct, weak morals, and alcoholism received partially suspended sentences. This is only a seeming contradiction because an offender's outlook after release is an extremely complex phenomenon which cannot be easily deduced from the facts contained in a court record.

### Points of Uncertainty

Neither the study of court records nor the interviews revealed whether the offender's sex has a significant influence on this type of sentence. The impact of the sociocultural background and of the nature of the offense on the sentences also remains doubtful.

Judges argue that they try to avoid penalties which risk costing an offender his job (some judges even rate this consideration as fifth in importance). The study of court records was not sufficient to corroborate this fact: although the records requested information on whether the offender was employed at the time of imprisonment, for various reasons this information was hard to obtain.

### Conclusion

Since the research is not completed, it is not possible to reach definite conclusions; however, several clearly visible trends deserve comment.

The introduction of partial suspension has been very well received by the court experts. We may be surprised at this enthusiasm since the suspended sentence increases the number of short prison terms, which are presently criticized as more destructive than useful. According to a frequently stated opinion, this criticism does not apply to the mixed sentence since the time spent in jail under the partially suspended sentence refers to a prison term which has already been served—the pretrial detention. Our research only partially confirmed this opinion. An approximate correspondence (within 15 days) between the duration of the pretrial detention and that of the jail term imposed under the suspended sentence exists only in 40 percent of the cases and, furthermore, appears to be diminishing. On the other hand, the partially suspended sentence is imposed on many offenders who have not served a pretrial detention period. In some cases, the courts consider a limited prison term beneficial in administering "a short, sharp shock." This also explains why the imposition of partially suspended sentences is offender, rather than offense, oriented.

At times, the mixed sentence is imposed to make the offender sufficiently aware of what awaits him if the suspension is revoked. This is especially true if the prison term to be completed is rather long. Clearly, the present success of the partial suspension is partly due to the fact that the total suspension has lost a good deal of its deterrent effect.

Frequently, strict sentences accompanied by a considerable partial suspension are imposed. It appears that judges desire to preserve a certain proportion between the overall sentence and the suspended part so that the latter is usually longer than the prison term served.

In summary, our research has contributed useful information to the study of sentencing, revealing numerous elements and circumstances which influence the sentence. However, the present inquiry needs to be supplemented by a parallel study of the assize courts, a study already in the planning stage. At this point, we may suspect that the assize courts are guided by different considerations since they are dealing with more serious offenses. To complete the research, a complementary study should explore the sentencing practices of the appeals courts in order to discover whether they are more liberal or more strict than the county courts.