

# LONG PRISON TERMS : WHAT JUDICIAL CAREER AFTER RELEASE ?

In 1992, we published a paper in *Penal Issues*<sup>1</sup> showing the results of research on prisoners originally sentenced to at least three years of imprisonment, and who were released in 1982. The purpose was to measure the frequency of reincarceration within 4 years of their release, and to compare this group with an earlier cohort (prisoners released in 1973). The present paper reports on a second aspect of this research project<sup>2</sup>. In contradistinction to the diachronic approach used previously, attention here was exclusively focused on the prisoners released in 1982, and on every sentence subsequently entered on their criminal record, irrespective of whether a prison sentence was involved or not, over the same 4-year observation period. Rather than studying reincarceration, then, we went on to investigate the judicial career of released prisoners who had received long prison sentences.

## 1. Were they involved in any subsequent case ?

First of all, who are they ? The vast majority (68%) had no *previous sentences*. This means that they were not given any unsuspended prison sentence prior to the date of the offence for which they were in custody until their release in 1982. This proportion is overestimated, owing to the existence of amnesties. The original offence - which motivated the confinement that came to an end in 1982 - was most often a major one (57%)<sup>3</sup>. The most frequent offences were : moderately serious theft (27%), major theft (19%), murder (10%), rape (8%), drug trafficking (8%), intentional assault and battery of moderate seriousness (6%), indecent exposure (3%) and premeditated assault and battery of major seriousness (3%). 46% of the cohort of prisoners had originally been sentenced to 3 to less than 5 years, 40% to 5 to less than 10 years and 14% to 10 years or more. Only 1/3 had been released on parole.

**What became of them ?** 49.7% of dossiers show at least one other offence committed within the 4-year period subsequent to release and sanctioned by a conviction recorded on the criminal record before 15 June 1988 (new case rate). Conversely, over 50% of the dossiers did not contain any new case, serious or not (ranging from "5th class" minor offences to moderately serious or major offences). We will avoid using the expressions "rate of recidivism", which seems to refer to

<sup>1</sup> KENSEY (A.), TOURNIER (P.), "Reincarceration", *Penal Issues* N° 3, 1992.

<sup>2</sup> KENSEY (A.), TOURNIER (P.), "*Libération sans retour, devenir judiciaire d'une cohorte de sortants de prison condamnés à une peine à temps de trois ans ou plus*", SCERI, Travaux et documents n° 47, CESDIP, Etudes et données pénales n° 69, 1994.

<sup>3</sup> French law divides offences into three categories, on the basis of increasing seriousness :

- *contraventions* (termed "minor offences" in the text), which are judged by *tribunaux de police*; there are five classes of those, of increasing seriousness from first to fifth.

- *délits* (termed moderately serious offences), which are judged by *tribunaux correctionnels* ;

- *crimes* (termed major offences), which are judged by *cours d'assises*, in which a jury sits.

the notion of legal recidivism, not applied here, or "repeat rate", which suggests that the new case is of the same nature as the original offence. In point of fact, a new case is counted here even if its seriousness is in no way comparable with the original offence - punished by a sentence of at least 3 years -. These new cases included such acts as the writing of uncovered cheques. The way in which the necessary sorting out may be done will be discussed below.

**First new case :** The average time lapse between release and the facts involved in the new case was one year and one month. These new cases include 90% of moderately serious offences, 7% of minor offences and 3% of major offences. New moderately serious offences were mostly simple thefts, motoring offences, cases involving cheques, etc. In a majority of these (56%), a prison sentence (with no or only partial suspension) was pronounced. In nearly two cases out of three, the unsuspended time was less than one year. Sentences to 3 years or more were relatively exceptional (19%). There was one sentence to life imprisonment.

An overview of the data given above illustrates the importance of accurately defining what rate we are actually addressing :

Table 1 :  
Sentenced to at least 3 years, released in 1982

All released	1157	100,0 %
At least one new case (within 4 years)	575	49,7 %
New case = moderately serious or major offence	533	46,1 %
New case = unsuspended prison sentence	323	27,9 %
New case = sentenced to at least 3 years	61	5,3 %

Thus, in 5% of cases there was a new case resulting in a sanction at least as serious as the original sentence. There seems to be some relevance in this criterion for assessing the seriousness of the new offence. It should be remembered that we are only discussing the first new case, here ; our analysis will be taken further subsequently.

## 2. A major discriminating variable : the original offence

Differential analysis was applied to this new case rate using 9 variables, all significant for the study of this particular rate and which are not statistically independent of each other. They are : gender, nationality, marital status, age when released, previous convictions, nature of the original offence, length of imprisonment originally pronounced, type of release and proportion of the sentence spent in custody. The most discriminating variable is actually the nature of the original offence. Given this fact, there was no question but that this variable should be used as the principle variable for

subsequent analysis, and applied to the study of the following seven sub-cohorts :

Table 2. The sub-cohorts studied

Original offence	N released	new case rate over 4 years
1. Simple theft	220	72 %
2. Aggravated theft (major offences)	312	59 %
3. Intentional assault and battery	101	51 %
4. Rape	96	38 %
5. Murder	121	32 %
6. Indecent exposure	35	31 %
7. Drug trafficking	95	14 %

At this level of analysis, the study was confined to the first offence committed within 4 years of release. All sub-cohorts were subjected to the same statistical treatment. First, the structure of the population studied was elucidated. This information is actually essential in order to determine what people we are talking about ; this is caricaturally shown in the case of the "drug trafficking" sub-cohort, in which 2/3 of the individuals were aliens who were deported.

When new cases did exist, we established a description of the first of them, including the time lapse between release and the facts involved in the new case and the nature of the facts involved in this case. Last, we did differential analysis of the rates of occurrence of new cases in conjunction with the different variables for which information is available. When numbers permitted, typologies were established. For moderately serious thefts, for instance, the picture is as follows :

Table 3. original offence = moderately serious theft

	previous convictions	type of release	N released	new case rate (%)
Group A	1 or more	release on parole	23	95,6
		end of sentence	68	83,8
Group B	"	end of sentence	54	70,4
Group C	"	release on parole	25	44,0

- Group A is characterized by the existence of a previous judicial history. Irrespective of whether these inmates were freed after serving their sentence or on parole, their new case rate was over 80%. Curiously, the rate is higher for paroled inmates (96%).

- Group B had never been convicted before ; nonetheless, the inmates were released after serving their sentence : the rate is still very high, at 70%.

- Group C differed from the previous group by the type of release. In case of release on parole, a much lower rate - 44% - is found. This all-important finding is corroborated for all of the other sub-cohorts.

### 3. Beyond the first case : do they backslide ?

In this third phase of analysis, we continued to reason on the basis of the seven sub-cohorts defined by the nature of the

original offence, but as opposed to the method used in parts 1 and 2, analysis was not confined to the first new offence committed, which, as pointed out above, may be quite minor in comparison to the original offence. In fact, we scanned criminal records completely here, applying two rules :

- count new cases only if they are somewhat serious ;
- note whether an offence of the same or "relatively similar" nature as the original offence was committed.

Let us take the case of the "rape" sub-cohort to illustrate this approach.

- First question : does the criminal record contain a new case within 4 years of release ? The answer was *yes* for 38% of individuals (see table 2). Within this purely numerical reckoning, the situations involved may be quite different in terms of seriousness (8% of minor offences, 27% of motoring offences...). It is immediately clear, on the other hand, that no new case was recorded for 62% of individuals.

- Second question : was there a somewhat serious new offence, taking the pronouncement of an unsuspended prison sentence for a serious offence as the criterion ? The answer was *yes* for 23% of dossiers.

- Third question : was there a new offence at least as serious as the original one, considering the existence of an unsuspended prison sentence or of confinement for a serious offence of a duration of no less than 3 years as the criterion ? The answer was *yes* in only 6 cases, representing 6.3% of freed prisoners.

- Next, we rated the most serious offence in each of these six dossiers by order of decreasing seriousness, as follows :

Homicide, premeditated murder, parricide	1
Rape	2
Indecent exposure	1
Other morals offences	0
Other personal offences	0
Other offences	2

Of the 96 released prisoners originally sentenced for rape, 4 had committed other serious personal offences.

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Listening to discussions about incarcerated persons' destiny - be they on televised debates, on the courthouse steps following what some people judge to be an overly lenient verdict, in the press or in politician's speeches on insecurity - one might get the impression that *they always do it again*. For thieves and murderers, there is an *eternal recurrence* of the same situations. The reality is not that hopeless, even if the existence of any single crime can never be reduced to a simple statistically negligible quantity.

Indeed, the findings of this third part may be summarized as shown in table 4. T1, T2, T3 and T4 are the new case rates, as obtained by use of increasingly restrictive criteria for the selection of cases :

- T1 : existence of a new case within 4 years of release ;
- T2 : existence of a new case for which an unsuspended prison sentence was pronounced ;
- T3 : existence of a case punished by an unsuspended prison term of at least 3 years ;
- T4 : existence of a personal offence punished by an unsuspended prison term of at least 3 years ;

Table 4. Multiple criteria table

Original offence	New case rate 4 years after release			
	T1	T2	T3	T4
1. Theft (moderately serious)	72 %	57 %	16 %	2 %
2. Qualified theft (major offence)	59 %	36 %	12 %	4 %
3. Intentional assault and battery	51 %	35 %	7 %	5 %
4. Rape	38 %	23 %	6 %	4 %
5. Murder	32 %	20 %	4 %	3 %
6. Indecent exposure	31 %	17 %	0 %	0 %
7. Drug trafficking	14 %	10 %	4 %	4 %

For the first three criteria, the fact that the ranking of offences is the same is a further indication of the highly discriminating nature of this variable. The 4th criterion, on the other hand, yields very low rates, which hardly vary with the nature of the original offence.

All in all, for the 980 dossiers covering the 7 sub-cohorts studied, there were 33 personal offences punished by an unsuspended prison term of at least 3 years (34 per 1,000), including 4 murders (4 per 1,000). These findings indicate, if need still be, that there can be no unequivocal way of measuring recidivism per se.

**Annie KENSEY (SCERI)**  
**Pierre TOURNIER (CESDIP)**