

RELEASE AND SUPERVISION: RELATIONSHIPS AND SUPPORT
FROM CLASSIC AND HOLISTIC ATTORNEYS

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“A lawyer might well choose to practice ‘traditional’ criminal law, but infuse the practice with Therapeutic Jurisprudence concerns throughout the process” (Wexler, 2005: 745).

Attorneys’ contributions both to the desistance process and to criminal justice’s legitimacy in the sentence implementation phase have seldom been studied, particularly in non-English-speaking jurisdictions. The present study is an attempt to bridge this gap through a qualitative methodology (interviews, observation, and immersion) that focuses on attorneys and probationers. Through this study, I have found that attorneys, albeit not very knowledgeable in the desistance route and literature, do contribute to this complex process. Attorneys do this by often acting in lieu of overloaded and un-invested probation services, by actively and collaboratively contributing to their clients’ release plans, by focusing on their clients’ strengths and positives actions and attitudes, and by developing a positive working relationship with their clients. I have also found that attorneys strongly contribute to the criminal justice system’s legitimacy as they are among the main participants in a fair trial procedure. Furthermore, attorneys compel other actors to behave neutrally and respectfully, respect and care for their clients, espouse their causes, and translate and interpret their clients’ voices in court.

This research has additionally tested a holistic versus a classic dichotomy amongst lawyers, which was uncovered in a previous study about French reentry courts. However, rather than a clear-cut dichotomy, I have discovered a continuum on which attorneys situate themselves, either in general or depend-

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ing on their client or the case. I have also found that an important minority wanted to be holistic with at least some of their clients (e.g. vulnerable, long sentences) but were not in a capacity to behave in such a way due to financial and time factors.

I. INTRODUCTION

Desistance literature presents offenders' rehabilitation as being a long, complex, and difficult process (see Farrall et al., 2014) where social (employment, housing, family, etc.) and human (emotions, motivation, education, etc.) factors play a considerable part. Probation personnel account for a mere fraction (Farrall, 2002), essentially limited to planting a seed for future use (Farrall et al., 2014). However, in many criminal justice systems ("CJS"), probation services do not have a monopoly on offender supervision and rehabilitation support. Courts may participate in this endeavour, in particular through "good courts," such as problem-solving courts (Bermann and Feinblatt, 2005). Attorneys are present in such courts in order to present release applications to defend their clients in breach cases. They may also support many other requests (the modification of obligations, furlough applications, the conversion of a community measure for another, etc.). Unfortunately, previous research on desistance has not focused on this diversity of practitioners.

To the contrary, over the last seven years, my research has focused on all French probation practitioners' knowledge and practice of desistance. In so doing, I have found that between 2009 and 2010, French probation officers had very little knowledge of desistance and what it entailed (H-Evans, 2011 and 2012), and their practice was very hands-off and unresponsive due in large part to their institutional 'prisonbation' environment (H-Evans, 2016). I have also studied French reentry and supervision courts (*juges de l'application des peines*, "JAP"). These courts are a system that can be consid-

ered the ancestor of United States problem-solving courts (H-Evans, 2015). Using a mix of quantitative and qualitative methodologies, I found that French JAP were desistance knowledgeable and acted accordingly both during their interaction with offenders and in their rulings (H-Evans, 2014a). However, the frequency of their interactions with offenders was limited. Another study found that the third sector (which was the study's focus) accomplished, in practice, much of the reentry and social work offered to sentenced offenders, and sentenced offenders had a much higher opinion of the third sector than of probation officers (H-Evans, 2014b). The question remained, however, whether attorneys also contributed to desistance (for a positive answer: Wexler, 2005) and how they did so.

Another literature domain is important when analyzing the roles of judicial actors. Scholars studying the legitimacy of justice (Tyler, 2006, 2012; de Mesmeacker, 2014) have found that a series of factors account for why justiciable persons, including offenders, obey the law and comply with the CJS:

- “voice,” that is, allowing the offenders to express their points of view, which suggests that attorneys can play an active role in supporting them in doing so;
- “neutrality,” which refers both to objective (i.e. apparent impartiality) and to subjective impartiality (i.e. CJS's actors' inner and true impartiality) and which includes courts' independence (van Compernelle et al., 2006). Attorneys can contribute to neutrality by acting as counter-power forces;
- fact-finding, as these practitioners can both provide proof and dispute evidence;

- care and interest in the offender's case and future, which attorneys may promote directly through their own attitudes; and
- respect for the person and for the person's "status" in which attorneys may play a part through their own attitude and by ensuring that the CJS behaves in a civil and considerate manner.

Unfortunately, no empirical study has thus far supported that findings on the legitimacy of justice are transferable to the release and supervision phase of the penal continuum (for a theory of such continuum, see H-Evans, 2015a), although there are good reasons to believe they indeed are (Digard, 2015; Hough, 2015).

Therapeutic jurisprudence, which is a legal body of literature rather than a body of empirical literature, is both a lens and a compass that aims at making good justice. Therapeutic jurisprudence deals with the emotional and mental well-being of *justiciables*—that is, in French, people in contact with the judicial system for whatever reason (Wexler and Winick, 1996). Attorneys can contribute to the well-being and therapeutic approach by encouraging the CJS to go beyond punishment and the documents contained in a file towards focusing on the human being and her or his circumstances.

When focusing on courts, I have also tested for the legitimacy and therapeutic jurisprudence components and found that they were generally present in the French court-led reentry and supervision context, but they were impaired by severe judicial lack of funding and overload (H-Evans, 2014a). Thus, the context in which French attorneys operate is rather favorable overall since fair trial principles apply (H-Evans, 2014a) and since re-entry and supervision judges are in charge of release, important supervision decisions (e.g. adding obligations), and sanctions (H-Evans and Padfield, 2015).

Most French criminal lawyers thus regularly defend their clients in French reentry courts, for release applications, for breach cases, and at important post-trial conversion procedures (H-Evans and Padfield, 2015). Custodial sentences of up to two years are systematically processed to the JAP if no bench warrant has been issued, and they are routinely transformed into community sentences or measures (“CSM”).

The aforementioned “JAP research,” showed a dichotomy between classic lawyers and holistic lawyers, which I later discovered had been suggested elsewhere (International Alliance of Holistic Lawyers: <http://www.iahl.org/>, which unfortunately dissolved in 2011). Similarly, Daicoff (2006) found that some attorneys were more oriented in an adversarial direction, whereas others were more naturally collaborative.

To the contrary, in France, very little literature has focused on attorneys, except for that of sociologist Milburn (2002) who found that one of the two main keys to criminal attorneys’ professionalism was their relational competence. Unfortunately, he did not investigate what the meaning of this relationship could be or whether attorneys were particularly good at this exercise.

Internationally, a lot of research has addressed attorneys in the PSC context. The researchers have found that lawyering in the developing PSC framework required a change in how attorneys’ work was perceived, and what it meant to win (Clarke and Neuhard, 2004). In short, they found that attorneys should become more collaborative and perhaps even adopt a social work-like (Potter, 2005) and emotional (Winick, 1999) stance—an assertion which has been contested (e.g. amongst many: Kempinen, 2011; Casey, 2004; Meekins, 2007). In France, this particular difficulty was bound to be much less pronounced as the system is not adversarial, and attorneys are used to switching from one case to another—even, at times, within the context of a given case—from an adversarial stance to a much more collaborative one, depending on their client’s best interest. It is

indeed likely that continental Europe's legal system is best fitted for alternative and "softer" legal practices (Freiberg, 2011).

More specifically, in the context of probation and reentry, David Wexler (2005) has confirmed that a therapeutic jurisprudence approach obliges lawyers to embrace different roles and to focus on the bigger picture of their clients' rehabilitation, which implies that they should focus on the relational dimension of lawyering (Wexler, 2008 and 2011).

Focusing on attorneys, in this study, I thus endeavored to "identify the potential rehabilitative role of the attorney... through conditional or unconditional release" (Wexler, 2005: 745) in a context where due process is understood in a legitimacy of justice and therapeutic jurisprudence sense, with the idea of "maximizing desistance" (Birgden, 2015). I thus had the following goals in this study:

First, to test the hypothesis that attorneys contribute to the desistance process and how they do so;

Second, to test the hypothesis that attorneys contribute to the legitimacy of the justice process and help the CJS operate in a more therapeutic way;

Last, to further test the holistic versus classic dichotomy, which was previously discovered via practitioners' interviews in the aforementioned JAP research, by adding immersion and observation.

II. METHODOLOGY

This study is essentially qualitative and comprises interviews, observation, and immersion. A team of fourth- and fifth-year law students from Nantes University (Marie Durant) and Reims University (Mélissa Bauser, Julie Marot, Sophie Dehaye, Chloé Pigeot, and Noémie Rodrigues) joined me to conduct the fieldwork during the 2013 to 2014 university term.

These participating students were each interning with attorneys for a several month term.

The study focused on twenty-seven attorneys working in four jurisdictions: Reims, Châlons, Troyes, and Nantes. The first three are in the northeast of France, and the fourth is on the west coast of France. Sixteen of these attorneys were males and eleven were females. Their experiences ranged from four and a half months to thirty-one years. Interestingly, three held a PhD, a parallel access avenue for attorneys in France.

Eight JAPs were also interviewed in the same areas, but their interviews will not be used for the present article. Additionally, sixteen probationers were interviewed, all of whom were males. However, we only had access to such probationers in Nantes (“N6”) and Reims (“N10”). These probationers had obtained a “semi-freedom” release or a conversion measure pronounced by a JAP, whereby they are imprisoned at night and over the weekend, and they spend their days in the community for work or treatment.

With the exception of interviews involving probationers who were serving semi-freedom measures or in detention or interviewees who refused to be recorded, semi-structured interviews were recorded and transcribed verbatim. When the interviewees refused to be recorded (nine of the twenty-seven), ample notes were taken.

Observations focused on meetings between probationers/prisoners and their attorneys in the four sites. Observations of hearings with the attorneys were added in East-of-France jurisdictions (Charleville Mezières, prison of Villenauxe), since many attorneys in the four sites operated in several jurisdictions. Thirty hearings were thus observed, dealing with ninety-one offenders and forty-three attorneys, including these who had been interviewed plus others who happened to be present in court when we were observing.

Immersion consisted of the students spending several weeks with each attorney and taking ample notes based on a

common protocol, which were reviewed collectively with the students and I through emails and debriefing meetings.

For data coding, the students and I mostly converged, and we defined criteria for the three main study compasses. With regard to desistance, we used the following criteria: attorneys' understanding of how offenders desist; attorneys' level of concrete action in supporting their clients' desistance based on their interviews, their observations, and the probationers' perceptions; and the attorneys' nature and the quality of their relationships with their clients.

For the legitimacy of justice and therapeutic jurisprudence, the following elements were coded: the attorneys' contribution to the offenders' voices; the attorneys' contribution to the CJS neutrality; the attorneys' own respect and care for their clients; and the attorneys' overall goals for their clients' cases.

Lastly, lawyers were deemed holistic if they:

- tended, as much as possible, and depending on the case, to support their clients during the sentencing phase (when relevant, from the initial police investigation) and beyond their release, during the post-release supervision stage, and for offenders serving a community sentence, during their probation;
- endeavored to know their clients very well, including their personalities, their histories, their family circumstances, and, in many cases, their family members;
- actively contributed to the release plan collaboratively with their clients and families (not merely formalizing it) and in doing so, contacted the JAP, the probation service, and various agencies; or,

- in court, presented their clients as human beings in their overall context.

III. RESULTS AND FINDINGS

Before we present our results, it is important to stress that this study has important limitations. First, it is qualitative and not quantitative. Secondly, it focuses on a single country. Nevertheless, with this in mind, it does shed a very interesting light on French attorneys' work in the post-sentencing phase of the penal continuum, and given the similarities between French JAP and PSC, it is important to understand what attorneys can bring to this international movement. In particular, we found: (A) that attorneys are, albeit modestly, desistance agents; (B) that attorneys are essential to the CJS's legitimacy; and (C) that many attorneys are "holistic."

A. *Attorneys support the desistance process*

As with the aforementioned French probation practitioners' research, attorneys' knowledge of desistance factors and processes was tested with general and open questions. We found that though their understanding of the desistance process were not as detailed as JAPs' (compare H-Evans, 2014a), they were far from ignorant, and they embraced a variety of roles and attitudes connected to desistance literature and to related fields, such as Core Correctional Practices ("CCP") (Trotter, 2015).

We found most attorneys' knowledge of desistance to be fairly good. Knowledge of desistance factors and processes (which were investigated through open questions) was strong in four attorneys, good in ten, and medium in five. Only four had weak knowledge and four others had none at all. Only one of the twenty-seven attorneys, who was totally ignorant in terms of desistance, had a punitive discourse and yet was very humane in his relationships with his clients.

Surprisingly, thirteen of the twenty-seven had received a one-semester class in criminology, and one additional attorney had actually studied criminology for a full term in Paris. Yet, only eight had ever heard of desistance. Of these eight, one had heard of it thanks to a long-life training session, two heard of it at the university of Reims, one read about it in a special 2010 edition of a French criminal law journal (*Actualité Juridique pénale*), two had read about it on the internet, and one heard of it through a discussion with a student unrelated to our research. In other words, most of what attorneys knew about the desistance process was actually derived more from their experience and regular contact with offenders than through academic education. Interestingly, holistic attorneys were not necessarily more knowledgeable than other lawyers.

When asked to define what a good sentence implementation decision was, most lawyers did not answer in terms of winning a case, but referred to the bigger picture of offenders' reinsertion (the French vernacular for desistance) and reconciliation with society—what Fergus McNeill calls 'thinking beyond interventions' (2012). "It's a decision that makes reinsertion possible--a decision that puts a positive end to a story that started out rather painfully at the initial trial. For me it's reconciliation between the sentenced person and society" (Attorney 8).

Conversely, whether attorneys actively supported the desistance process depended on where they were situated on the holistic continuum, to which we shall refer to as *infra*. The continuum is defined through factors, such as helping the offenders create a release or application plan (for conversion) that best suited their contexts and personalities; through making (in some cases repeated) calls to social services, local agencies, probation services, or the JAP, contacting offenders' families; or interacting with them in various ways.

In the first publication pertaining to the Sheffield longitudinal study, Farrall (2002) found that the probation staff's active

support was useful to the desistance process. However, in their more recent sweep, the Sheffield team found that stable desistance was achieved with a delayed effect (Farrall et al., 2014). One would expect probation staff to be the main providers of through the gate-and-release support, with reinsertion and desistance as an ultimate goal. However, in a jurisdiction such as France, probation services are overloaded, and today's probation officers are mainly lawyers (de Larminat, 2012). They tend to perceive their jobs as legal clerks who have to prepare a case, write reports, and send documents. As a result, many of them are actually unsupportive (Dindo, 2010). This context has also been caused by a merger between probation and prison services in 1999, which has led to their embracing a prison culture and to their being, unfortunately, embedded in the overly centralized, monopolistic, and corporatist (a French trait (Cavadino and Dignan, 2006)) institutional organization of prison services (H-Evans, 2013 and 2016).

A key question for this research, thus, was whether attorneys would find themselves, willingly or not, doing part of the probation services' work, given the general absence of probation services' support. It was posited that a "communicating vases" principle would operate, whereby if the local probation service was more supportive, attorneys would not need to do their jobs; conversely, where it was unsupportive, they would have to be more active. For indeed, such a "communicating vases" principle between probation staff and other practitioners has been found within the third sector (H-Evans, 2014 b) and within experts' written conclusions and assessments (H-Evans, 2015 c). Through their research focusing on French "reinforced probation," Worrall et al. (2014) found that this complementary municipality-funded program was created precisely to compensate for probation services' shortfalls. In the present study, attorneys and offenders alike confirmed our hypothesis. Offenders expected more from their attorneys when their probation officer ("PO") did not support them. For example, one

probationer said that he had been better supported by his attorney than PO: “Clearly the attorney, because the probation service--it’s not the same. They have so many files!” (Probationer 3). Similarly, an attorney from our study said:

With inmates who are a little lost, where we’re dealing with the issue of short sentences--where access to the PO is complicated (so in reality he has not seen the PO), if he’s our client, we’re rapidly contacted by his family, and it’s not that we substitute for the PO, but we kind of do that sort of job. Because when the guy’s told ‘in order for you to be released, you need a job or an occupation of some sort and housing,’ generally he looks at us and says, “Ok but what do I do now? I’m alone. I’m in jail. There’s just too many of us, and I don’t know who to write to.” So all this work, this project elaboration, we actually do and give a hand with (Attorney 14).

Attorneys, thus, often give a hand when it is needed (particularly with offenders who lack family support). They also try to boost offenders’ morale, and thus operate as “hope agents”--an essential component of desistance (Farrall et al., 2014). One attorney said, “Boost and support him, yes, else he could give up. It’s difficult to hang onto a release plan sometimes” (Attorney 15).

The attorneys’ hope and positive attitude also has much to do with how they try to present their clients’ cases. They tend to present their positive traits, their actions, and their strengths. Here again, attorneys draw on the more positive view of offenders, as advocated by desistance literature (Burnett and Maruna, 2006) or related fields, such as the Good Life Model (Ward and Maruna, 2007) or Core Correctional Practices (Trotter, 2015). In preparing their cases, discussions with their clients, and in presenting cases during hearings, attorneys present

their clients' personal skills, positive actions, activities, what they have attempted to learn while in prison (vocational training, general education, etc.), and what they used to do that they can now draw upon--in other words, their clients' more positive self (H-Evans, 2011).

Given the enormous and unquestioned influence of psychoanalysis in France (Roudinesco, 1990), attorneys tend to present a narrative story of their clients' past stories in effort to make the judge understand where they come from and how they ended up offending. One attorney shared a significant story illustrating this point:

For instance, I have this young man--his step-mother, with whom he was living, reported him to the police because he sold cannabis at her place. There was an investigation, and after his police detention, several former warrants were executed. He found himself overnight having to serve a total of two to three years. The thing is, though, that he smoked up to fifteen joints a day. He lived secluded in his bedroom in the dark because in 2009 he'd lost his father, and in 2011 his mother hanged herself. He was sentenced because cannabis is illegal, but in reality, he smoked to try and forget that he was an orphan. It's complicated. I'm not sure he'll stop tomorrow or even that he will get treatment, but it's just to say that there's always been something in their life (Attorney 9).

Because of their understanding of their client's global context and personality, many attorneys do obtain confidence and information that others (in particular POs) do not: "Well, the understanding of the *justiciable* person's personality--because we attorneys discuss with the persons we defend, we thus get

into questions that touch upon their personal lives and sometimes things that are very personal” (Attorney 11).

According to both desistance (King, 2013) and CCP (Trotter, 2015) literature, offenders’ agency is an essential component to the desistance path and to offender compliance (McCulloch, 2013). It requires that practitioners work with a collaborative stance. Whereas POs, who are used to a more controlling approach, have to learn this particular dimension of their job, attorneys always have to work collaboratively since they represent their client and cannot decide for them. However, the attorneys also need to make their clients’ opinions and wishes acceptable to the court. Thus, they collaboratively need to make their clients accept a polished version of the truth, and in some cases, to accept making some real changes. One attorney expressed this need, “I personally try and explain to people that, well, they’ve done something wrong and they’ll have to go to court, and that’s the way it is--that we’ll work together. Either they are stubborn or they accept working with me” (Attorney 9).

The relationships they build with their clients, even in a short space of time, along with their privileged situation (the fact that they are not CJS agents) place attorneys in a position where they can tell their clients things their clients might not want to hear, such as to stop lying, starting with themselves, and to accept some hard facts. Here are two attorneys’ stories of how they handle such situations: “I tell them [expletive]! It’s not possible! You’ve been arrested for a DUI for the fifteenth time! So I am terribly sorry, but you’ll now see the difference between justice and magic, which means I will not obtain your immediate release. It’s simply impossible!” (Attorney 12).

This chap says, ”Yeah I have a release plan; it’s the sister of a guy I met in prison who might be ready to certify he’ll hire me.” I tell him, “I will not support this project in front of a JAP or a prosecutor as they hear this nonsense fifteen

times a week. It's not serious. I cannot go and say in court that there's your co-inmate's sister who will give you a fake promise of employment certificate. Your application will be denied" (Attorney 22).

We also saw in many hearings the attorney asking a prisoner or a probationer to calm down, to stop it, to behave, and even, quite frequently, to shut up ("*taisez vous!*"). Amusingly it often looked like judges and prosecutors expected the attorney to make their client-children behave as if the attorney was the parent and needed to control the client. Likewise, attorneys often looked embarrassed for their clients' uncontrolled public outbursts or self-incriminating slips of the tongue.

Therefore, importantly, if attorneys manage to efficiently support their clients, it is because they build a rather strong relationship with them. Professional relationships in offender supervision have become a very important theme in desistance, compliance (Digard, 2015; Raynor et al., 2014), and Risk/Needs/Responsivity (Dowden and Andrews, 2004) literatures. The last of these literature categories draws upon psychology and medicine (Horvath and Greenberg, 1994), including cognitive-behavioural therapy (Beck, 2011). In France, sociologist Milburn (2002) has explained that one of the main keys to criminal attorneys' professionalism is their relational competence.

In the present research, we found that for the vast majority of offenders (fourteen out of sixteen; one declaring it was not relevant in his case and another one that he did not know), good working relationships with their attorneys were expected and needed. "It's their job to be close to their client. As far as I'm concerned, an attorney must know his client perfectly" (Probationer 12).

We had indeed asked what they expected from their attorneys as an open question. Only six probationers declared that they expected their attorney to support them in obtaining what

they wanted, i.e. release or to avoid incarceration or a harsh sentence. None of the others mentioned their case outcomes. Importantly, none seemed to expect their attorney to win their cases. To the contrary, most of them referred to relationships as “being there for them,” care, and respect.

Most attorneys and probationers declared that the relationship was, of course, of a purely professional nature, even if they ended up knowing each other quite well. The relationships did not go beyond the necessities of the case or series of cases. Offenders declared that once they were finished with their criminal careers, they would probably not want to remain in contact with their attorneys, as the attorneys would remind them of their delinquent past. In other words, the relationship was limited to the criminal career and the end of the desistance journey. One probationer expressed his feelings, “It’s better not to have any contact anymore. I hope to stop offending. My sentences are a thing of the past. When I’m released, I’ll start over and won’t owe anybody anything” (Probationer 7). Similarly attorneys knew that once they no longer heard of a client, it probably was good news: “I’d be tempted to say that if we don’t get any news it means we’ve done our job well. It’s actually great not to get any news” (Attorney 22). Several clients were quite shy about the idea that they could have a real relationship with someone like an attorney: “There’s no reason to. I’m not going to bother him!” (Probationer 2).

However, during supervision itself, attorneys are often probationers’ most consistent responsible adult figures. They see them more often than judges, prosecutors, or POs. Unlike attorneys, these other practitioners are not always available for them and can be transferred to another jurisdiction. The longer the sentence is, the higher the chances are that such changes will occur.

Attorneys are, nonetheless, aware that the relationship must remain strictly professional, for they are afraid of a form of contamination and of their privacy being invaded. Several of

them told us they would refuse to have a drink with offenders after a successful trial--that they were not their "mates." This idea is also linked to their ethical duties (Ader and Damien, 2013). Overall, the relationship with their client is to be understood as being a trusting and close one, but not one that includes friendship. As one attorney put it, "I'm not referring to an amicable relationship, but to a relationship built on trust" (Attorney 11).

This professional relationship is usually explained by the necessity of being more efficient: it is by knowing the clients and their circumstances better that the attorneys do their jobs well. In order to do so, they must not lose credit with the court. They also want to protect their own credibility as a professional. As one attorney expressed, "I refuse to talk rubbish. When I disagree with a client, I tell him: 'I will plead what I want to plead.' I talk about it beforehand with the client. I won't lose credibility for a client!" (Attorney 20). For this reason, several attorneys presented their role as being an intermediary between the CJS and their clients, making both meet mid-way:

The attorneys, well, they're sort of the interface. They will make them [the probationers] understand that for things to work, you need a balance between the personal circumstances that have to be taken into consideration, but, on the other hand, there also is a need for thoroughness and stringency, and when you tell people that, they understand and they accept it (Attorney 23).

That being said, attorneys also enjoy the relationship they have with their clients and most attorneys genuinely care for their clients, and clearly their clients expect for the attorneys to care. For example, one attorney said, "They're always happy when we go see them in jail! It shows them that we care for them" (Attorney 17).

French attorneys are first and foremost interested in human relationships and in defending “the widow and the orphan,” as the usual saying goes—one we heard them refer to when describing why they had become attorneys. “If you’re only in for the money, you’ll necessarily be disappointed. If you’re interested in winning: same thing. If, conversely, you have humanity, you receive a thank you and you have the feeling that you’ve done your job, that’s your real success” (Attorney 25).

Clearly, our research has found that French attorneys are mostly interested in the human dimensions of their job and not in money and honors. Like the United States attorneys described in Krieger and Sheldon’s (2015) study, they are more interested in efficacy, autonomy, and humanity. It therefore is unsurprising that the interviewed attorneys have been, but for one, unanimous in finding their job satisfying; seventeen actually found it “very satisfying.”

For their part, probationers described themselves as being equally satisfied with their attorneys and the relationship they had with them. Probationers also described that their attorneys were competent, caring, and interested in their case and person. This, in their eyes, undoubtedly contributed to the legitimacy of the CJS.

B. Attorneys legitimize the release and supervision process

The second main finding of this qualitative study is that attorneys do indeed contribute to CJS legitimacy and that they do this in many different ways.

First, attorneys embody fair trials and due process. Previous research on JAP (H-Evans, 2014a) and an ongoing research on a fast-track release procedure without due process, which is compared to fair trial procedures, have strikingly showed that where attorneys are present, judges, prosecutors, and prison or probation staff behave in a radically different way. First, the time taken for each hearing (or in the absence of a hearing, commission time) is tripled. Second, CJS practitioners focus

much more on the release plan and on the persons' circumstances and personality and much less on their prison behaviour or criminal past. Third, CJS personnel and authorities behave much more respectfully towards the people and their cases. In other words, when the attorneys are present, "the system" behaves decently; when they are not, the care and respect components of a legitimate justice system are not present, or not to the same degree. We observed this phenomenon even when attorneys were frankly incompetent; their mere presence made a significant difference.

Second, attorneys are also important in terms of CJS neutrality. When attorneys are absent, offenders face judges, who are inevitably perceived as being an essential part of the CJS, even if they are caring and respectful. By being present, attorneys re-establish a form of balance.

Importantly, attorneys thirdly contribute to the CJS's legitimacy by caring and respecting offenders. Quasi-unanimously, offenders want their attorneys to be nice and caring. Only two of our interviewees said they did not know how to answer our question, but none thought this was not important. They were also very sensitive to significant displays of interest and kindness, as one expressed when asked if his attorney had been kind to him, "Oh yes indeed. He would not come and pick me up when I'm released otherwise" (Probationer 11).

A true sign of this care and interest was given, in their opinion, by the regular visits that the attorneys made to the prison to see them. Fifteen of our interviewees declared that their attorney visited them often; only one of them told us he would like him to visit more often, while acknowledging he actually had enough visits. Nine of the sixteen referred to phone calls or letters they received from their attorneys, and only one of them said he did not receive enough. The others were dismissive and said that it was not necessary to constantly be in contact. One of the probationers said that he had actually

changed his attorney because his first one did not visit him regularly.

Probationers were also unanimous in expecting respect, and they deemed this particular dimension extremely important. Interestingly, when asked whether they had received the respect they needed from their attorney, most of them agreed they had: “That’s for sure otherwise there’d be no trust!” (Probationer 5). “Respect is the basis, right?” (Probationer 6).

Another essential component of legitimacy of justice is the justiciable people’s voices. In practice, however, offenders often cannot express their voice satisfactorily. They do not master the judicial language, even when French practitioners try to use rather ordinary French, or they are intimidated, afraid, or in no condition (mental health, substance abuse, etc.) to articulate their thoughts and needs (La Vigne and Van Rybroek, 2014). One of attorneys’ main roles is thus to embody and to faithfully present their clients’ perspectives, needs, contexts and personalities. In order to test this particular legitimacy component, attorneys were asked whether they agreed with the idea that they were their clients’ translators in court. The vast majority of them were completely taken by the idea. In response, one attorney reminded us of the etymology of the French word for lawyer: “*Ad vocatum* means being somebody’s voice” (Attorney 25). (The French word for attorney is *avocat*, which is derived from the Latin *Ad vocatum*.)

However, some of them corrected our translator metaphor and contented they were more precisely translator-interpreters. What they meant was that they needed to make their clients’ truth audible to the court, and merely conveying their clients’ opinions would not serve their interests well. “I think that if I am this person’s translator, I am actually a very bad attorney, because I would not defend this person well by telling something as absurd as this to the judge, something that the judge cannot hear” (Attorney 7). They also meant that they needed to decode what the clients said in legal terms. “Yes, yes. That’s

actually our guideline--meaning that there is more room for maneuvering compared to purely translating” (Attorney 26).

For their part, fifteen of the sixteen interviewed probationers confirmed that they expected their attorney to translate their discourse and needs to the court. However, they also said they wanted the attorneys to translate *to* them what was going on during the hearing. As one probationer said, “...because when they talk, I don’t understand anything [contempt]. I need a dictionary. Know what I mean!?” (Probationer 1).

Fourteen of the sixteen told us that their attorneys had indeed executed this particular mission well. Only one of them believed he did not need his attorney to act as a translator, as he could understand most of what was being said. Five of the probationers actually deemed this particular aspect of their attorney’s role as being the most important of all. Such was particularly the case of those who confessed their distress and anxiety levels were very high. “I want him to help me quite a lot in terms of talking, because since I’m stressed out, I find it hard to talk” (Probationer 4).

In order to best interpret their clients’ wishes and circumstances and to present an acceptable view of them, attorneys often need to coach them before trial. Both attorneys and probationers spontaneously referred to this coaching role. One probationer put it in rather amusing, yet to-the-point, terms, “We mustn’t bother the attorney. If he had planned something, we could destroy it all by saying something” (Probationer 11).

Attorneys were unanimous in explaining to their clients what was going to happen and who the authorities were, and they prepared their clients for the questions they might be asked. In particular, the attorneys warned the probationers that they would be asked about their offense, which many did not expect and definitely resented, since they had now reached the release application phase. The attorneys also tried to temper some of their clients’ over-optimistic perceptions of their cases’ outcome. As one explained, “Our role is both that of coun-

sel and of moderator. We have to temper our clients' enthusiasm, because they think just because they reach the eligibility date, bam!--we launch the application tomorrow! But that's not how it works" (Attorney 22).

In the same vein, attorneys warn their clients about patent lies and stances that would guarantee the exact opposite result to what they want. As mentioned previously, this is where most of them try to be assertive and to look for their client's best interest, even when their client has a different opinion. "We have this principle, see: 'Our client is our main enemy.' Of course he lies to us! We're his first test!" (Attorney 10).

Most of them also systematically coach their clients pertaining to how to conduct oneself in court. Several of them explained that they told their clients to dress correctly, to get rid of their piercings, not to slouch, to put their hands nonchalantly in their pockets, not to look arrogant, not to chew gum, and to turn their mobile phones off.

However, they also try to prevent their clients from appearing to be reading from a script. "It's too risky. I mean, a façade discourse--That disintegrates real fast!" (Attorney 14). They also want to ensure their clients' voices are heard, and not their own. "We do not prompt their answers. We help them formulate them, to elaborate on their answers; but they're still their answers" (Attorney 12).

We observed that many attorneys executed this mission rather well and literally carried their clients' fate on their shoulders. In many court hearings, when a client suddenly said something incriminating or made his or her case extremely worse--e.g. by blaming, in incendiary terms, his or her ex-spouse who had been the victim of his/her violence--we saw the attorneys literally shrink in their seats, holding their faces in their hands and appearing quite devastated. They looked down as if they were personally ashamed.

But sometimes it does not work, see! Sometimes they simply cannot stop from saying what they

consider to be the right thing to say as in: “Uh, let’s see--I’ll say that” and you’re under your robe and you collapse and you tell yourself, “What the hell has he come up with this time?!” (Attorney 25).

When their clients fail, they feel they have failed, too. As one expressed, “We are under pressure. If the client goes back to jail, it feels like I’m going with him” (Attorney 22). This statement reflects how deeply attorneys care for their clients.

C. *The Holistic Lawyer Hypothesis*

Not all criminal lawyers take on sentence implementation cases. The legal field of sentence implementation is extremely complex and most universities do not teach it (H-Evans, 2014a). Consequently, attorneys who want to represent their clients in such cases need to devote time and energy to learning this discipline. As we shall see *infra*, attorneys do not earn a living from sentence implementation representation and some lawyers tend to think that it is not worth the effort. However, most of them do have at least occasional cases, as the clients they have supported during the investigation, trial, and sentencing phases expect them to keep representing them. Some attorneys have actually developed a specialty in sentence implementation as they greatly enjoy it. Our interviewees either took such cases as part of their criminal law activity, or chose to devote a great proportion of their time to such cases. All of them believed sentence implementation was part of their job. “I developed this post-sentencing part of the job because for me, it’s a little like after-sales services” (Attorney 18).

Beyond this basic “after sales” duty, we wanted to test whether some of them were holistic. However, we first wanted to uncover what they all considered to be the non-holistic bare minimum. Aside from their relational competence, according to Milburn (2002) drawing on Freidson (1970), the other main

key to criminal attorneys' professionalism is their professional expertise. Precisely, as was mentioned before, French sentence implementation law has become exceptionally complex from a technical viewpoint over the last decade or so. Unfortunately, the JAP that were interviewed in the aforementioned "JAP research," along with the eight whom we interviewed for this particular study, complained that attorneys were a disappointment in this respect. After having observed them, we can validate these judges' negative analysis. Nonetheless, during hearings and in preparing cases, attorneys mostly draw upon psychological, circumstantial, and other factual elements rather than on the law itself. Their expertise is their knowledge of their client, which is more relevant than their legal expertise.

Another issue is whether attorneys need to be adversarial in some cases but collaborative in others (Daicoff, 2006: 127-128). What we observed was that French attorneys were particularly good at detecting when one stance was needed rather than another. For instance, they tended to be more collaborative in release application cases (*inter alia* elaborating the best release plan or looking for the most adapted release measure) and adversarial in some of the breach cases where the proof was debatable or when they needed to fight against unacceptable obligations. We thus witnessed numerous very collaborative discussions leading to the JAP, the probationer, and his attorney determining what the best conditions for release should be. Contrarily, we also witnessed a very heated debate between a JAP and an attorney pertaining to a case where the police had needlessly searched a probationer's workplace leading to his case being dismissed. Similarly, we witnessed debate in another case when there was reasonable doubt that the client had been violent on an approved premises site. We asked our interviewees whether they needed to be adversarial, using the French label "severance defense," but most attorneys strongly rejected this supposition. Most attorneys stated that they more often had to be collaborative. However, they insist-

ed that this be distinguished from conniving, "...[because you would] entrench the idea, which is a risk, that all these robes are buddies, and it is true that we know everybody" (Attorney 25).

So the adequate defense is situated somewhere in between an adversarial stance and a conniving one. It is a truly collaborative stance, whereby attorneys contribute to the big picture of the CJS, which is clear for all the attorneys: reinsertion, desistance, treatment, damages payments, etc. They think that their role is to help their clients accept responsibility, accept sanction, and to work towards a desisting future with all the CJS actors. In other words, whether holistic or classic, attorneys all look for the end result for their clients, which they deem being his or her desistance from crime and living a normal life.

We can explain why the person, ahem, did not respect his obligations. Mostly in the hearing pertaining to potential revocation, or sanction, for obligations' violations, these hearing are linked to the difficulties... of the person's daily life, and how he [or she] finds it hard to get organised, or to anticipate [events] (Attorney 26).

In a minority of instances, however, a presumption-of-innocence issue was clearly at stake (see H-Evans, 2014a). Attorneys knew how to revert back to their clients' stance against the prosecutor. They also fought using attorneys' weapons--proofs. Particularly, that is the case when the probation service affirms that a breach has taken place and the circumstances are not straightforward. As one attorney explained, "Many offenders do not have a good relationship with the probation services. Sometimes we have to produce lots of documents to justify things that counter-balance the probation service's report" (Attorney 18).

Indeed “documented-proof, documented proof, documented proof!” was a gimmick that several attorneys repeated. A great part of their job is thus to file applications, present ready-to-be-decided-upon files, and provide evidence, given the probation services’ general abstention.

Beyond these basics, which most attorneys accomplish well, our main research question was whether and how many attorneys were holistic. In our previous research on JAP, and based on interviews only, we had found that only four out of thirty-two interviewed attorneys appeared to be holistic (H-Evans, 2014a). This time we found that holistic versus classic lawyers was not a clear-cut dichotomy but a continuum on which lawyers situated themselves in general. Attorneys could also oscillate depending on the type of case, or the type of offender.

Our results reflect a great variety of situations and personalities. Only three attorneys out of twenty-seven were fully holistic. However, five were quasi-holistic, which meant they tried to be holistic with most of their clients but may not have been in a position to be fully holistic in all circumstances. Six additional attorneys were situated further down on the continuum scale as “medium holistic.” Another still declared he would be holistic if only he could afford it. Excluding this one, fourteen of the twenty-seven attorneys were relatively to fully holistic lawyers, i.e. more than half of our small sample.

Under the holistic blurry cut-off point, the vast majority, i.e. nine out of twenty-seven, were classic but very humane with their clients, with whom, as seen *supra*, they endeavored to create professional relationships. Importantly, only one was classic and cold, and only one other was purely classic. Contingencies, material and financial, prevented some of them from giving all the support they thought they should give all of their clients. “Frankly if it was better paid, I would do it” (Attorney 16).

Others opposed appointed attorneys and attorneys of choice. In France, legal aid allows offenders to choose their attorney while still being supported financially by the state. Those who ask for an appointed attorney—by the bar—can also benefit from legal aid, which is exclusively based on revenues. In most cases though, offenders obtain support from an appointed and legal-aid-funded attorney. However, underpaid legal aid attorneys barely cover their costs and cannot offer the same service they would on a client-paid basis. One of them explained her stance, “We lack time. We’re paid 125 euros per case, so bear in mind that in order to be cost-effective, an attorney’s office must at least bill 150 euros per hour, so...” (Attorney 17). Importantly these 125 euros include visiting their clients in prison, meeting with them to discuss the case and prepare the release plan, drafting the release application, obtaining the documented proof, and their plea in court. In other words, 125 euros is for dozens of working hours.

Of the sixteen probationers, ten had appointed attorneys while six had an attorney of choice. We found that experience played a part in what attorneys actually accomplished. Our sample comprised a wide range of experiences—from beginners (one of them was in her first year) to more than thirty years, with a vast range of situations in between. Unsurprisingly, the vast majority of those who could choose their clients were those with the most experience. Younger criminal law attorneys could not enjoy such luxury as they had to build a clientele. Those who had several years of bar behind them tended to have a relatively even clientele (appointed, word of mouth, follow-up, or old clients). Yet this was not the sole factor. Several young attorneys had opted for a holistic practice from the very beginning, and their worry was that this earned them a lot of clients, which then made them unable to give them all the attention and time they needed.

Levels of desistance understanding had no correlation with the attorneys having a holistic attitude. We found some in-

stances of rather ignorant attorneys who were fully or quasi-holistic and others who were classic attorneys with a full knowledge of desistance. We also found the exact opposite.

Offenders were evenly distributed between those who said they expected attorneys to support them (six) and those who claimed they did not need or want their help (nine), while one offender said he did not know. Amongst those who answered “no,” most of them declared they wanted or expected to do things on their own and clearly expressed a need for personal agency. Two of them, a rather small number, said it should be the role of the probation service. Those who wanted their attorneys to help were clearly those who were in greater need and had no support system. Yet several of them declared that they would like their attorney to help but that they had other things to do. In other words, they would need their attorneys to support them but did not expect them to.

It was apparent to our team that offenders expected quite a lot from their attorneys because the overloaded and ‘prisonbation’ type of probation that exists in France led to an overall abstention from active release, desistance or other form of concrete support. As was said *supra*, in practice, attorneys used more concrete support where the probation service was particularly negligent.

Very often, I sent to the probation officer, prior to the hearing, all the documented proof that I have. How many times do I need to call the family to ask: “Did you send the subsistence evidence?” and they ask “The what? Nobody asked us to!” Normally it is not my job; it’s that of the probation service (Attorney 18).

In other words, in many cases, attorneys have to act holistically because the probation service does not do its job properly. Indeed, we asked offenders whether they had been better supported by their attorney or by the probation service. Seven

answered that their attorney had helped them the most, some of them explaining that he or she was much more available and positive. Five answered that it was the probation service; one answered it was both; two regretted that none had been available for him. One probationer in particular noted his attorney's dominant role in helping: "Definitely the attorney. It's more his role, it's more personal, and he talks to us more often" (Probationer 1).

Not only do French probation services generally not support desistance, but they are also often perceived as being very punitive and purely controlling (which is similarly a comparison between probation officers and third sector workers (H-Evans, 2014b)). One probationer expressed the following, "[The probation service] really pushes and shoves me and stresses me out; [my attorney] supports and helps me" (Probationer 2).

Due to their intimate knowledge of their clients and of what their personal and global contexts are, attorneys know their clients better, or from a different angle than any other CJC actor. This global and personal knowledge allows many of them to present a global holistic picture of their clients in their scriptures and in court--one which gives sense of their clients' life-courses, and actions; one which places the person in his/her family life context, difficulties, and traumas; one which, in short, reveals a suffering and vulnerable humanity.

Their holistic work starts as early as possible. It goes way beyond preparing a release plan and presenting it in court. It starts in some cases several--and at times many--years before, by guiding the offender towards not only a good plan, but also to an acceptable behavior while still in jail, even if it involves postponing the release application. One attorney shared a poignant story in this regard:

Naturally he had absolutely nothing, so I asked him to desist, and my job was to explain to him how to behave in jail in order to try and obtain

something as early as possible. It's been a year now, and we still haven't filed an application, but he has increased his payment to the victim. He used to have an incident report every month, and now he has none (Attorney 18).

Our small sample of attorneys finally revealed interesting information, which was not part of our research question: three of the twenty-seven attorneys were militant attorneys in the sense that they had a strong human rights discourse. They participated in various actions supporting offenders' rights and were obviously politicized. Interestingly, only one was situated on the holistic continuum, and only at a medium level. The two others were classic and humane, but they did not actively support offenders. Further research may be needed to uncover the particular type of defense lawyer who seems to belong to a historically strong French heritage (Sur and Sur, 2013; Tonneau, 2014). Another interesting point was that these three attorneys were all located in Nantes, a city that may harbor a strong militant tradition, according to my observations during my five years at the University of Nantes, but which would have to be further investigated.

IV. CONCLUSION

This qualitative study focusing on French criminal law attorneys operating in the post-sentencing, release, and supervision continuum showed that attorneys' desistance knowledge is rather limited, but they do support the desistance process actively, often acting in lieu of probation services. By favouring offenders' responsibility and agency, by focusing on strengths, and by developing a professional relationship with them, they also support offender's self-efficacy.

Through this study, I have found that attorneys additionally contribute to the legitimacy of the CJS by providing a voice to *justiciables*, acting as a form of translator-interpreter, and compelling CJS personnel to behave in a more neutral and respectful way. They also directly contribute to this legitimacy by behaving themselves in a respectful and caring way. This research has also confirmed the research in the legitimacy of justice claiming that offenders expect their attorney to be kind, caring, and supportive. In other words, they mostly focus on relationships and attitudes rather than on outcomes.

We also invalidated the classic-holistic attorney dichotomy in its simplistic cut-off form. However, we did uncover a continuum ranging from purely classic to fully holistic, on which attorneys were situated at various points and on which they could navigate, depending on the case at stake. Their position on the continuum also depended on their clients' needs and circumstances. Attorneys would naturally be more supportive and active with vulnerable and isolated clients, based, to a great extent, on the quality of the work provided by the probation service. In many cases, the holistic stance of attorneys derived from the fact that they had to do part of the social work that probation officers were not in a capacity or not willing to do.

During the observation activities, we saw that attorneys are the only practitioners who present a global, narrative, and humane picture of offenders, one that can put their actions into a relatively rational yet emotional and humane context. Whereas court hearings, probation officers' reports, and other interactions tend to focus on objective facts (employment, housing, etc.), plans and projects (release plan, community plan, etc.), or potential risks (escape, compliance, reoffending, etc.), attorneys provide the court with other information and perspectives, such as family relationships, emotions, feelings, fears and desires. Many times, we saw tears in the eyes of these lawyers' clients as a result of what their attorneys had said, obviously hitting a raw nerve.

Such intimate knowledge of the offender's personality and circumstances can however only happen in a due process judicial context (H-Evans, 2015a), and is at risk of being crushed by an over-powerful executive 'prisonbation' context.

We found that French attorneys are vital to the post-sentencing, release, supervision, and sanction continuum. They make it more humane and more legitimate. Whether they make it more efficient would warrant another type of study. Indeed, this study was limited in its scale, of a purely qualitative nature, and it only focused on one jurisdiction with a rather specific legal system. Nevertheless, this system is close enough to the problem-solving experience (H-Evans, 2015b) to make a small contribution to the debate pertaining to the role of attorneys in such courts.

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