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*NATIONAL INSTITUTE FOR CRIME PREVENTION  
AND REHABILITATION OF OFFENDERS*

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## **THE PRE-SENTENCE INVESTIGATION**

by  
**R. GRASER**

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*NATIONALE INSTITUUT INSAKE MISDAAD-  
VOORKOMING EN REHABILITASIE VAN OORTREDERS*

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## THE PRE-SENTENCE INVESTIGATION

In order to achieve a more complete picture of the nature, purpose and value of the pre-sentence investigation, it is necessary to provide a brief survey of the main objectives of criminal justice.

### OBJECTIVES OF CRIMINAL LAW IN DEALING WITH LAW-BREAKERS

#### Retribution

Dealings with the offender were traditionally vengeance-oriented, being based on the "an-eye-for-an-eye" and "a-tooth-for-a-tooth" principle as postulated in the code of Hammurabi about 3 700 years ago. In fact, the concepts of expiation and social revenge are so deeply ingrained in the systems of criminal law of the Western world that they still form the psychological basis of punishment today. This is reflected by such contemporary judicial measures as capital and corporal punishment, hard labour, solitary confinement, spare diet, and punitive detention.

Only recently letters appeared in a Cape Town newspaper advocating the re-introduction of "the cat" for violent offenders and making the punishment fit the crime.

#### Deterrence

While retribution is still fundamental to our system of criminal law, the concept of deterrence has become increasingly important in the justification of punishment. In deciding on a specific sentence, the judicial officer generally considers its possible deterrent value upon the offender as well as upon other potential wrongdoers. The person undergoing punishment becomes an example for all to see - personal details of the offence are widely publicised in the newspapers.

#### Protection of society

The fundamental objective of the court and the ultimate justification of all sentences is the protection of society from destructive and harmful behaviour by the law offender. Traditionally the judicial process hoped to achieve this by treating the criminal harshly in order to deter him from further acting out, or by removing him from the community and thereby neutralising his negative influence.

### Rehabilitation

With the development of the biological and social sciences came new theories of deviant behaviour and its motivation. The insight that crime is to a large extent learned behaviour and that, therefore, the deviant could be treated and his behavioural patterns could be amended, was followed by a shift of emphasis from mere retribution to reformation and rehabilitation. However, it appears that, in general, the prisons and welfare organizations still place much more emphasis on this objective than the courts do.

### EFFECT OF TRADITIONAL APPROACH TO CRIME AND CRIMINALS

History has shown that the traditional approach to crime and criminals has not reduced criminality to any marked degree. In spite of severe punishments the crime figures have steadily increased and the prison population has grown. While the threat of punitive sanctions probably deters a certain section of the population, especially the 'average' citizen with relatively healthy social values, and then deters mainly in respect of particular offences related to property, money and trust, there is little, if any, scientific evidence that severe sentences or the anticipation of these effectively deters actual or potential law-breakers, especially poorly socialised persons with an impaired sense of judgement, poor controls and a low frustration tolerance - as is often manifest in violent offences of an emotional content. Furthermore, experience indicates that, while some offenders do benefit from it, custody in itself presents no permanent protection for society. All but a few of the prisoners are eventually discharged. The majority are subsequently re-arrested for further crimes.

### SHIFT OF EMPHASIS FROM THE CRIME TO THE CRIMINAL

As a result of the above experience there has in recent years been a shift of emphasis from the crime to the criminal. A more rational approach, emphasising individualisation in sentencing, that is, adapting the sentence to the needs of the offender, is gradually replacing the traditional vengeance-oriented approach which was preoccupied with the crime itself in dealing with offenders.

The South African Court of Appeal's attitude to the objectives of criminal law is reflected most recently in the decision *S. v. Zinn*, 1969(2), South African Law Reports 537 on pages 540 - 542, where the Honourable Mr. Justice Rumpff says: "What has to be considered (when determining an appropriate punishment) is the triad consisting of the crime, the offender and

the interest of society. The Honourable Mr. Justice Miller, in *S. v. Geel*, 1972(1), South African Law Reports 455, on page 456, interprets the Court's duty in considering the triad as follows: "The result of overemphasis of any one of the relevant factors is often underestimation or even total disregard of one or more of the other factors. A mind tending to preoccupation with the desirability of deterring others from committing an offence is apt to give insufficient attention to other factors which, in the particular circumstances of the case may be more important for the purposes of assessing a just and proper sentence for the accused then standing in the dock. It is necessary always to be alert to that danger".

In most Western countries criminologists and jurists have come to the realisation that society can be more effectively protected by rehabilitating its offenders. Therefore increasing use is made of alternative methods to imprisonment in sentencing law-breakers. The alternative which is most frequently applied, apart from fines, is probation. In several European countries, Canada, the United States and Japan, probation is extensively used by the juvenile and criminal courts. In South Africa its formal application is at present still confined to juveniles.

#### THE NEED FOR PRE-SENTENCE INVESTIGATION

The logical first step in formulating the most appropriate judicial disposition, such as, for example, probation, is to gather and evaluate information on the accused as a person. After an accused has been found guilty the Court is faced with the most difficult and morally most demanding task - that of formulating a sentence that will benefit both the individual offender and society. However, while the criminal investigation and the judicial inquiry usually is a formal, detailed and thorough process, the decision of what is to be done with the accused after his guilt has been proven is often an informal and a speedy one. In this connection the Honourable Mr. Justice Hiemstra states as follows: "Aan die vraag van skuld of onskuld word die noulettendste aandag gewy: geen talent, tyd of kragte word gespaar in die proses nie en 'n ingewikkelde stel reëls van bewyslewing is daaromheen opgebou. Wanneer die beskuldigde eers skuldig bevind is, kom die strafoplegging meestal binne minute. Die pleitbesorger vir die beskuldigde wys op enkele omstandighede; die pleitbesorger vir die Staat sê niks. Sommige beskou dit selfs as verkeerd om hom iets te laat sê ... Dit word genoem 'n erkenning van onmag voor die probleem hoe om te straf, maar dit is eerder 'n saak van tradisie en gewoonte, oorgeërf van Engeland, wat die moeder van ons strafproses is. Jeremy Bentham het die

proses aldaar vergelyk met 'n vossejag. Met perde, honde en blasende beuels, word volgens vaste reëls op die vos jag gemaak en hy kry 'n billike kans om weg te kom. As hy eers gevang is, verdwyn alle belangstelling in sy verdere lotgevalle. In Suid-Afrika is toestande tans veel beter as dit, maar straftoemeting bly tot groot hoogte 'n lukrake wetenskap omdat die masjinerie nie bestaan vir diepgaande sosiologiese ondersoek vir elke misdadiger nie. Alleen in die geval van jeugdiges word van proefbeamptes gebruik gemaak" (3, p.407).

An American judge once stated that: "In no other function is the judge more alone: no other act of his carries greater potentialities for good or evil than the determination of how society will treat its transgressors" (4, p.3). As the training of judges and magistrates generally does not cover psychology, criminology, or applied sociology sufficiently, the judicial officer needs the assistance of experts from those fields in order to gain a deeper understanding of the relevant social and psychological forces underlying the offender's behaviour, to formulate an appropriate sentence, that is, a sentence which will hold the maximum benefit for the accused, the victim and society in general. The sentencing officer requires information on the offender as a person, on his strengths and weaknesses, on his characteristic behaviour patterns, on his family background, and on the socio-economic environment where he grew up. This information will enhance the predictability of a sentence. In the absence of such information the judge or magistrate must rely on his own evaluation of the accused, on his own intuition, and on the arguments in mitigation and aggravation by the defence counsel and prosecutor, respectively.

A sentence that is formulated without having adequate information on the character and personality of the offender, his emotional and psychological problems, his needs, his relationships with members of his family and with other people, as well as on the environment from which he comes, has very little predictive value and is an intuitive rather than a scientific process. Speaking at the symposium of the Social Services Association (now South African National Institute for Crime Prevention and Rehabilitation of Offenders), in 1966, the Honourable Mr. Justice Steyn stated inter alia: "The paucity of information makes the assessment of an appropriate penalty either a rule of thumb or a shot in the dark. I would, therefore, urge that priority be given to the creation of machinery whereby some information could be supplied prior to sentence, in respect of, particularly as a starting point, the first offender."

In a 1966 report of the Ontario (Canada) Magistrates' Association it is stated that, "In the interest of public safety and the protection of the offender,

no one today should question the place of individualisation of sentence in criminal law administration. The probation service and the pre-sentence report permit the magistrate to know the accused perhaps even better than his own mother." By answering such questions as "who is this man?"; "what kind of person is he?"; "what factors contributed to his acting out?"; "what is the best possible disposition which can be made of the case to ensure that the dual goals of protection of the community and rehabilitation of the offender are fulfilled?" (5, p.38), the pre-sentence investigation, which is a factual and diagnostic study of the accused, enables the judicial officer to formulate an objective, rational and an effective sentence. Judge James B. Parsons of the United States District Court expressed the opinion that: "The development of the pre-sentence report signalled a major break-through in the fight for individualised justice. The report has come to be the foundation stone on which modern probation practice rests. A key ingredient of the pre-sentence process is the assurance it affords the defendant, the court, and the community that this inquiry will be thorough and objective and that the report will accurately mirror the defendant and his life" (6, p.7).

A pre-sentence investigation should not be requested by the judicial officer only in respect of persons for whom a suspended sentence or probation is being considered, but also when it is likely that a prison sentence will be imposed. If an offender is sentenced to prison, a copy of the comprehensive pre-sentence report should be forwarded to the Department of Prisons as it could assist the prison administration in its classification of the person, as well as in formulating an effective training and treatment programme for him. Such a report could also be valuable to the prison board in considering an early release on parole. Should an offender be placed under probation supervision, the court report could aid the probation service or the voluntary welfare agency in their reconstruction and rehabilitation efforts. Furthermore, such reports could act as a useful source for criminological research.

In order to demonstrate the value of the pre-sentence investigation, a case from the experience of the American judge, Judge William J. Campbell, will be quoted: "... the defendant entered a plea of guilty to a serious interstate theft conspiracy charge. He had a prior record including incarceration, and judging from the nature of his offence and his prior record, probation seemed out of the question. However, in keeping with what I firmly believe to be sound policy in all cases, a pre-sentence investigation was requested. When completed, the report reflected a dismaying picture of early

parental neglect and abuse at the hands of an alcoholic mother, a criminally inclined father, and assorted irresponsible relatives. However, a significant development was noted. There was evidence of a fundamental change of attitude which had taken place during a rather lengthy period between the date of the offence, and his apprehension and trial. An attachment and later marriage to a fine girl and the beginning of a sound work record had occurred. As the probation officer remarked: 'It appeared that for the first time in his life this man had a home he could call his own and adequate incentives to motivate him toward a law-abiding life'. Probation was granted ...." (7, pp.31 - 32).

#### THE STRUCTURE OF THE PRE-SENTENCE REPORT

The format of pre-sentence reports varies considerably, but most reports have two main sections: the factual section in which identifying details and factual data on the accused are provided, and the analytical and evaluative section in which the relevance of facts and observations for the accused's deviant behaviour is determined. As the writer regards the pre-sentence reports presented to North American courts as being among the most comprehensive, a format which is generally used in the United States and Canada will be presented below. The outline described in "The Guides for Sentencing" of the National Council on Crime and Delinquency (pp. 35 - 47), will be followed.

#### Identifying details

The first section, usually appearing on the "face sheet", presents the identifying details of the accused: name, date of birth, race, sex, marital status, and case number.

#### Present offence

The facts which brought the accused to court are outlined and his attitudes towards the offence are discussed. While the offender himself is the main source of information, the probation officer does not attempt to justify or excuse his acting out, but merely provides as objective an account as possible. The nature and circumstances of the offence may give relevant clues to the offender's personality. It is important to know what role environmental and situational factors played; to what extent the offence involved impulsive or premeditated behaviour; to what degree the person acted under pressure or under the influence of others; whether the offender understands the implications of his behaviour; whether it is an isolated incident, or part of his general behaviour pattern; whether he manifests any guilt feelings about his acting out, etc.

Previous criminal record

An evaluation is made of previous offences and arrests as well as the offender's attitude towards these.

Family background

Information is obtained on early developmental influences, relationships between members of the family and the general tone of family living, the role of the accused within the family unit, family problems such as abuse of alcohol or parental conflict, and the socio-economic milieu in which he grew up. Present family circumstances and relationships are also discussed.

Home and neighbourhood

The offender's home and the environment in which it is situated are described.

Marital history

The accused's present marital adjustment is considered, which includes his attitude towards his wife and children as well as their attitude to him and to his acting out. Previous marriages are also discussed.

Education and training

The highest grade which the accused has reached is determined and his relationship with teachers and fellow scholars is discussed. His attitude towards education is also relevant.

Religion

A person's religious affiliation and his church attendance are noted. His moral values, his attitudes towards the church, the extent to which he is involved in religious activities, and the meaning this has for him is significant for future rehabilitation efforts.

Recreational and leisure-time activities

A significant reflection of a person's social functioning and an indication of the prognosis for future adjustment can be found in the nature and extent of his participation in sports activities, hobbies, reading, and creative social activities. It is important to consider the type of groups and individuals with whom the accused interacts.

Physical and mental health

As certain physiological defects or chronic physical ill-health could have an important bearing on a person's behaviour, these must be considered in

the pre-sentence investigation. Of great importance is a person's mental and emotional state. If any psychiatric or psychological reports are available, the information contained in these should be supplied to the court. In the absence of such information the social worker should make an assessment of the accused's emotional stability, particularly his psychological problems and operating level of intelligence as demonstrated by his general level of social functioning.

#### Employment

It is necessary to provide the court with an outline of the employment history for more or less the past ten years, indicating the accused's employment stability, reliability, his attitude towards his work and his relationship with fellow workers and supervisors.

#### Financial position

A statement of the accused's financial assets, his income, and his general standard of living assists in giving a more complete picture of the offender.

#### Evaluation

Once all the facts have been presented, the salient points are picked out and their significance for the offender's behaviour is assessed. The evaluation should give the court a composite and concise picture of the offender, enabling the judicial officer to predict the possible effects of a particular sentence on his future behaviour. Also included in the evaluation is an assessment of the accused's general personality traits; his social judgement, that is, how realistic his judgement and planning are; his capacity for feeling and love for others; his level of maturity; his intellectual resources; his self-image; his beliefs and convictions; the major defences he uses in his social relationships, for instance, whether he denies the existence of his problems, or blames them on others; his strengths and weaknesses; and his potential for social and emotional growth as well as his capacity for more orderly living.

#### Recommendations

Once a detailed picture of the offender and his behaviour has been presented, the probation officer or social worker may make a recommendation as to the most appropriate sentence.

#### SOME PREREQUISITES FOR EFFECTIVE PRE-SENTENCE INVESTIGATION REPORTS

In order for the pre-sentence investigation to be a meaningful and effective aid in the judicial process, there are certain prerequisites such as the following:-

- (a) The probation officer or the social worker must have sufficient diagnostic and analytical skills, as well as a thorough understanding of human behaviour.
- (b) The investigating officer must be aware of and utilise all relevant sources of information on the accused such as the home, relatives, and neighbours, the school, the church, employers, clubs and public and private welfare bodies.
- (c) In view of the fact that not only tangible facts are reported but also subjective elements such as the offender's beliefs, attitudes, feelings and emotional reactions, objectivity and impartiality must be maintained at all times. If the probation officer has any specific pre-occupation or prejudice in regard to, for example, drug abuse, alcoholism, prostitution, homosexuality or violence, and these influence his evaluation in the study, he could do the accused considerable harm.
- (d) The accuracy of information which is likely to have a bearing on the future of the offender, the welfare of his family, and the safety of the community must be carefully verified. Where sources of information appear to be unreliable, it may be necessary to cross-check the information.
- (e) Probation officers and social workers who conduct the investigation must be well trained and equipped to correlate and evaluate the information they receive.
- (f) The court report must be logically organised and readable, as well as complete but concise. Irrelevant details should not clutter the report.
- (g) The court, on its side, should have a clear understanding of the aims and objectives of the probation officer or the social worker. Some judicial officers still hold the misconception that social workers are sentimentalists who are excusing the offender's anti-social behaviour, who are trying to obtain leniency for him, or who are trying to get him 'off the hook'.

## CONFIDENTIALITY OF THE PRE-SENTENCE REPORT

Confidentiality has important implications for the value of the pre-sentence investigation. Where disclosure of such information is mandatory, that is, where the report is read in court and details can be published in newspapers, the probation officer or social worker who presents the report will often include only the most elementary facts and very general and uncontentious information - for fear of harming the offender or his family, or jeopardising his casework relationship with the offender. Such a report would be weak and ineffective.

The matter of confidentiality in the pre-sentence investigation has been subject to considerable controversy, particularly in the United States. Some persons feel that the accused has the right to know what is being said about him. It is felt, furthermore, that as there is a possibility of gossip and inaccuracies entering into the report, the accused should have the opportunity of contesting the accuracy of such information. On the other hand there are those persons who are of the opinion that a great deal of harm can result from mandatory disclosure of personal information, and that an accused's rebuttal in court of certain comments made by a member of the family, a neighbour or an employer would be of little value to the court in arriving at a proper disposition. Such contentious matters frequently do not lend themselves to proof by either side.

The opponents of disclosure feel, as privileged information is given to the probation officer in confidence, that mandatory disclosure would eventually limit the sources of information open to the court. Social agencies, psychiatrists, psychologists, social workers, ministers, and others who had known the client would refuse to provide any information which could, when made public, be detrimental to the offender or his family. Confidentiality lies at the very foundation of the client-therapist relationship; no client would expose his weaknesses and personal problems if he knew there was a likelihood that such information would be openly disclosed in court and published in newspapers. The social worker and psychiatrist are there to help the offender and if they knew that public disclosure of certain information may be disadvantageous, their court reports would be a "watered-down" and meaningless document - in terms of reflecting a comprehensive and realistic picture. Furthermore, a probation service or welfare agency that discloses confidential information may lose not only the clients but also the public's confidence and respect.

The accused can often identify the source of information quite easily. If members of his family or relatives provide negative information on him, the offender may feel that they have been disloyal and may, therefore, sever his ties with them or take revenge. When a welfare organization indicates that an offender is psychologically or emotionally disturbed, especially when succinct character sketches and details of his poor social functioning are provided, the offender will usually be bitter and resentful. Open disclosure of such information may reinforce a person's feelings of worthlessness and inadequacy.

In regard to confidentiality of pre-sentence reports, Judge James B. Parsons states: "I consider the probation officer an extension of the eyes and ears of the court in matters committed exclusively to the wisdom of the court, and I am convinced that the court, in the use of this special faculty, should not be hampered by mandatory rules. The exercise of judicial wisdom is a peculiarly personal performance of the judicial function and mandatory disclosure of the information contained in a pre-sentence report, as mandatory disclosure of the legal authorities upon which a court depends in arriving at a determination of a legal issue, would be an irresponsible encroachment upon the judicial act" (6, p.5).

The most sensible solution to the matter of confidentiality would be, in this writer's opinion, that the court should have the discretion to determine whether the pre-sentence report or any part thereof should be disclosed. Our courts have a universally high standard and the integrity of both the Supreme Court and the Magistrate's Court is unquestioned. We could, therefore, safely entrust to the Court the decision of whether it would be detrimental to the accused or his family if information in the pre-sentence report were openly disclosed. In certain cases it might be advisable to reveal the contents of the report only to the defence counsel.

#### THE SITUATION REGARDING THE PRE-SENTENCE INVESTIGATION IN SOUTH AFRICA

Otherwise than in the case of juvenile offenders, the pre-sentence investigation is not used by South African courts in an organised and systematic way in respect of adult offenders. Whether or not such an investigation is carried out depends largely on the inclination of the particular judicial officer. In some centres judges and magistrates do occasionally make use of pre-sentence reports as an aid in sentencing. While there is no specific mention of pre-sentence investigation in the Criminal Procedure and Evidence Act, 1955 (Act No.56 of 1955), section 186(2) makes provision for obtaining

information on the accused before sentence is passed. It reads as follows: "Before passing sentence, the Court may receive such evidence as it thinks fit in order to inform itself of the proper sentence to be passed". Another section which, indirectly has relevance for the court report is Section 352, which provides for the postponement or suspension of sentences. An adult probation system could probably be implemented under this section.

The growing realisation of the importance of a pre-sentence investigation was reflected by the talk given by a magistrate at the time of NICRO's Congress on Rehabilitation and Crime Prevention, held in August 1971. He stated, inter alia: "Matters about which the courts are generally more or less completely in the dark are e.g. -

- (a) the home circumstances of the accused;
- (b) his character and psychological make-up;
- (c) his personal history;
- (d) his associates; and above all
- (e) his amenability to rehabilitation and reform".

He expressed the opinion that, "... the Court should be as fully informed as possible of the general character and home circumstances of the accused". During his talk he related a case from his own experience where he requested a pre-sentence report on an offender who had several previous convictions (and had served prison sentences), for crimen injuria - indicating a pattern of behaviour which reflected definite psychological disturbance. On the basis of the pre-sentence report the accused was given a suspended sentence on condition that he submit himself to supervision and obtain regular psychiatric treatment.

In conclusion I wish to quote from a Supreme Court (Cape Province Division) judgement in which the Honourable Mr. Justice Steyn stresses the importance of the pre-sentence investigation and probation:-

"Hierdie saak het oorspronklik voor die Hof gekom op die 30ste September van hierdie jaar. Op daardie stadium het die Hof 'n uitspraak gelewer en die saak uitgestel en gelas dat 'n proefbeampte se verslag verkry sal word wat die Hof tot hulp kan wees by die vasstelling van 'n geskikte straf ... Dit is egter nodig dat ek vermeld dat die Hof destyds aangedui het dat die Streekhof, toe hy sy straftoemetingfunksie uitgeoefen het, dit uitgeoefen het sonder inagneming van die persoonlike omstandighede van die appellant. Dit was omdat hierdie Hof graag leiding wou verkry van 'n verantwoordelike ondersoekbeampte, dat die Hof 'n proefbeampteverslag aangevra het.

Daardie proefbeampte se verslag is nou voor ons en hy het self getuig en het sy verslag ingehandig. Dit blyk dat die appellant uit 'n goeie huis kom. Sy vader werk reeds die afgelope vyf-en-twintig jaar by 'n firma - Lewis Construction - en sy weeklikse inkomste bedra R44,25 (vier-en-veertig rand vyf-en-twintig sent). Die proefbeampte vermeld dat die vader 'n belangstelling in sy kinders het en dat wat die materiële nooddrufte van die gesin aanbetref, hy goed vir hulle voorsien. Die proefbeampte sê ook dat daar 'n aanduiding is dat hy die kinders reg probeer opvoed het en 'n goeie voorbeeld aan hulle probeer stel het ...

Ek beoog nie om verdere besonderhede uiteen te sit nie, behalwe om te meld dat dit duidelik is, uit die inhoud van die proefbeampte se relaas, dat die huislike agtergrond van die appellant in hierdie saak, gesond is.

Wat hom persoonlik aanbetref is hy tans 18 (agtien) (hy was 17 (sewentien) toe hy die oortreding begaan het), hy werk reeds geruime tyd en hy assosieer vrylik en gemaklik met mense. Hy is in die werk en werk gereeld. Hy verdien R12,80 (twaalf rand en tagtig sent) per week. Hy is nie aggressief van aard nie en die waarskynlikheid is, soos mnr. Van Papendorp meld in sy verslag, dat hy, vanweë sy geaardheid, maklik deur ander beïnvloed word ...

Ek het reeds beklemtoon in die uitspraak gelewer op die 30ste September, dat ons Howe, wanneer hulle met jeugdiges handel, met die grootste versigtigheid te werk moet gaan, en dat, sover menslik moontlik, vonnisse nie opgelê moet word op jeugdiges wat opgelê word sonder 'n behoorlike ondersoek na die agtergrond van die beskuldigde, na die omstandighede waarin die oortreding gepleeg is, en na die uitwerking van 'n straf wat die opname in 'n inrigting, hetsy 'n gevangenis of 'n verbeteringskool, tot gevolg sou hê nie ...

Ek het met opset vollediglik verwys na die rol wat 'n proefbeampte se verslag as 'n hulpmiddel vir die Hof kan speel by straftoemeting. Ek het dit met opset gedoen omdat hierdie Hof die mening toegedaan is dat hy al hoe meer, as dit kom by die uitoefening van sy plig om die gemeenskap te beskerm en die individu te straf, sy vonnis in die lig en nie in die duisternis moet opelê nie. 'n Behoorlik saamgestelde voorvonnisverslag is heelwaarskynlik die belangrikste enkele faktor wat die Hof kan help om op sodanige wyse sy straftoemetingsplig te vervul.

Ek onderskryf veral die feit dat, wat my aanbetref, die Hof vir leiding soek en dat as hy betekenisvolle aanbevelings gebaseer op gegronde feite van proefbeamptes beskikbaar kan hê die Hof sy pligte op 'n baie beter en doeltreffender wyse sal kan uitoefen ...

Teen daardie agtergrond is die Hof die mening toegedaan dat die appellant meer waarskynlik nuttiglik beïnvloed sal word deur opheffing en hervorming in die gemeenskap as deur behandeling in 'n gevangenis of ander inrigting. Ek wil dit baie duidelik stel - dit is nie dat ons die appellant, soos wat dikwels gesê word, " 'n kans gee" nie. Dit is nie 'n kwessie van sentiment nie; dit is 'n kwessie van 'n verligte straftoematingsuitoefening - 'n straftoematingsuitoefening wat ons meen in die belang van die gemeenskap en van die individu is". (Vgl. 8).

#### CONCLUSION

The pre-sentence investigation is without doubt the major modern criminological contribution to the process of criminal law. By helping to understand the character and personality of the accused, by offering insight into his problems and needs, by focusing light on the social milieu in which he lives, and by discovering the possible causative factors that underlie his anti-social behaviour, the pre-sentence investigation can be a valuable guide to the judicial officer in formulating the most rational, the most constructive and the most effective sentence. Furthermore, the pre-sentence report can be very helpful to the probation service, to correctional and penal institutions, and to welfare organizations in their treatment and rehabilitation efforts.

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