

55179



X INDIVIDUALIZED SENTENCING AND THE USE OF  
SOCIAL INQUIRY (PRESENTENCE) REPORTS IN ENGLAND

Prepared by Kersi B. Shroff

1978



Library of Congress

**LAW LIBRARY**

American-British Law Division

European Law Division

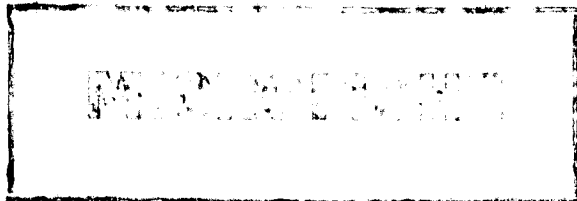
Far Eastern Law Division

Hispanic Law Division

Near Eastern and African Law Division



55179



## LAW LIBRARY PUBLICATIONS

A major function of the Law Library of Congress is the preparation of reports on various topics in foreign, comparative and international law in response to requests from the Members and Committees of Congress, the executive and judicial branches of the federal government and others. While many of these legal studies are so specific in content as to be useful only to the requester, a number are potentially of great interest to a broader audience. With the approval of the original requester, these reports are printed and made available for general distribution.

In addition to these printed reports, the Law Library prepares a variety of other publications which include: a series of guides to the law and legal literature of nations, extensive bibliographies, indexes and scholarly articles. Notice of all of these publications is found in the Library of Congress Information Bulletin. Specific inquiries may be addressed to the Law Librarian, Library of Congress.

The principle resources for all Law Library publications are its collection and research staff. The Law Library's holdings of over 1,600,000 volumes constitute the world's largest and most comprehensive legal collection. Its staff of over 45 legal specialists, researchers and librarians is competent in more than 50 languages and can provide reference and research service concerning all the world's legal systems, contemporary and historical.

INDIVIDUALIZED SENTENCING AND THE USE OF  
SOCIAL INQUIRY (PRESENTENCE) REPORTS IN ENGLAND

NCJ 1111

FEB 27 1978

Prepared by Kersi B. Shroff

ACQUISITION S

Washington, D. C.  
Library of Congress  
Law Library  
1978

Library of Congress Catalog Card No. 78-600143

INDIVIDUALIZED SENTENCING AND THE USE OF  
SOCIAL INQUIRY (PRESENTENCE) REPORTS IN ENGLAND

My object all sublime  
I shall achieve in time --  
To let the punishment fit the crime,  
The punishment fit the crime.

W.S. Gilbert in "The Mikado".

Sentencing policy in England has been traditionally formulated upon the theories of retribution and utilitarianism with the aims of seeking amends for the harm done by an offender and preventing him from committing further offenses. These aims were considered to be adequately served by a system of sentencing, known as "the tariff," i.e. fixing a sentence proportionate to the offender's culpability.

Modern developments in sentencing have, however, been moving away from the concept that all crimes have a definite measure of punishment. The emphasis has shifted from the guilt of the offender, and sentences are increasingly based on the needs of the offender as a person. This is called "the individualization of sentences" and requires the court to examine the background of the offender more closely in order to assist it in passing sentence.

Underlying this trend is the belief that whatever sentence is imposed, an offender will eventually return to society. Sentences should accordingly be passed with the deterrence or reform of the offender as the principal objective. Coupled with this development is the "more modern view . . . that the object of the criminal law is

the protection of the community."<sup>1/</sup> This view is not inconsonant with the individualization of sentences since such treatment does not always mean that offenders get off more lightly. Some offenders in fact receive heavier sentences.<sup>2/</sup> Nor does individualized sentencing suggest that the nature of the offense is irrelevant, but:

rather that it is one of the many considerations that are to be used in arriving at a sound disposition. Offence like many other forms of behaviour is to be taken as an indication or symptom of the [offender's] personal and social disorder. The principles of individualized justice suggest that disposition is to be guided by a full understanding of [the offender's] personal and social character and by his individual needs. This view is well captured by the slogan that nowadays the treatment fits the individual whereas in olden days the punishment fitted the crime.<sup>3/</sup>

Thus, the use of the individualized approach has not resulted in the elimination of the older tariff system. It continues to be applied along with the newer measures.<sup>4/</sup>

---

<sup>1/</sup> R. Jackson, The Machinery of Justice in England 385 (7th ed. 1977).

<sup>2/</sup> Id.

<sup>3/</sup> D. Matza, Delinquency and Drift 114 (1964), as quoted in P. Bean, Rehabilitation and Deviance 91 (1976).

<sup>4/</sup> D. Thomas, Principles of Sentencing 3 (1970).

In the older, simpler system of sentencing where an offender's culpability was the only criterion, the court's need for information was confined to the facts of the offense and the offender's record. Additionally, the defense was relied upon to bring to the court's notice any mitigating circumstances. The individualization of sentencing and the wide range of sentences among which a court may now choose<sup>5/</sup> has resulted in a great expansion in the information required by a court to assist it in determining a proper sentence. The purpose of this paper is to examine reports on the social background of offenders that are prepared for the court by the Probation Service in England.

These reports, now known as Social Inquiry Reports (S.I.R.), evolved out of the earlier practice of obtaining reports on the character, antecedents, age, health and mental condition of an offender.<sup>6/</sup> At first the background information in the reports was used primarily where the court was considering putting the offender on probation, but later the information was also found helpful where the court was considering a form of sentence other than probation.

---

<sup>5/</sup> See Thomas, "Developments in Sentencing 1964-1973," [1974] Criminal Law Review 685, 690.

<sup>6/</sup> Probation and Offenders Act, 1907, 6 Edw. 7, c. 17, § 1.



In 1933 an act concerning the treatment of young offenders required probation officers to provide full information on the background of such offenders.<sup>7/</sup> Later, the Criminal Justice Act, 1948,<sup>8/</sup> provided that:

. . . it shall be the duty of probation officers . . . to inquire, in accordance with any directions of the court, into the circumstances or home surroundings of any person with a view to assisting the court in determining the most suitable method of dealing with his case . . . .

The 1948 Act did not, however, lay down clear guidelines as to the arrangements for obtaining such reports and many difficulties were initially encountered. The scale on which inquiries were made on offenders varied from court to court. Some courts authorized pre-trial inquiries while some expressly forbade them. The content of the report was uncertain and a controversy was created as to whether a probation officer should express an opinion or make a particular recommendation.

In 1958 a committee was appointed to review the arrangements for providing the courts with information on the background of

---

<sup>7/</sup> Children and Young Persons Act, 1933, 23 Geo. 5, c. 12, § 35(2).

<sup>8/</sup> The Criminal Justice Act, 1948, 11 & 12 Geo. 6, c. 58, Sched. 5, para. 3(5).

offenders. The committee examined the areas of difficulties and made specific recommendations which were accepted by the Government.<sup>9/</sup>

The lack of uniformity in conducting pre-trial inquiries was tied to the basic presumption in English law that the defendant is considered to be innocent until guilt is established by due process of law. Objections were raised against the making of inquiries which became relevant only if an offender were found guilty or pleaded guilty. In the view of the committee, however, the necessity of avoiding a post-conviction adjournment was the overriding consideration. It was therefore felt desirable that the sentence should follow immediately upon conviction. In cases of serious offenses, there is thought to be considerable public interest in knowing as soon as possible the extent of the penalty. The impact of a sentence is also considered to be greatly reduced if it is made known at a later date than the finding of guilt. Accordingly, the committee recommended that the information should normally be ready on conviction. In acknowledgement of the validity of the objections against pre-trial inquiries, it was also recommended

---

<sup>9/</sup> Great Britain. Interdepartmental Committee on the Business of the Criminal Courts (Streatfeild Committee). Report (Cmnd. 1289) (1961).

that the accused should have the opportunity of objecting before the inquiries are initiated.

As to the content of the reports the committee recommended that:

. . . in most cases it should include, among other things, essential details of the offender's home surroundings, and family background; his attitude to his family and their response to him; his school and work record and spare-time activities; his attitude to his employment; his attitude to the present offence; his attitude and response to previous forms of treatment following any previous convictions; detailed histories about relevant physical and mental conditions; an assessment of personality and character. 10/

The committee also felt that the probation officers may be able to provide further information on other aspects of sentencing and it recommended that the report should also include the opinion of probation officers concerning the likely effect on the offender's criminal career of probation or some other specified form of sentence. 11/

Although the Government accepted the recommendations of the Streatfeild Committee, and legislation authorizing the Home Secretary to make rules prescribing the preparation and consider-

---

10/ Id. para. 336.

11/ Id. para. 335(c).

ation of reports has been enacted,<sup>12/</sup> no rules have yet been made. The Secretary has preferred to rely on persuasion by administrative action in the form of recommendations to the courts by circulars.<sup>13/</sup> Within the recommended categories of cases, the courts are required, though not obliged, to obtain reports. As a consequence, a sentence is not invalidated by the failure of a court to consider a report. However, on appeal, the appellate court may obtain a report to determine whether a different sentence should be passed.<sup>14/</sup> Once a report is obtained by a court, § 46(1) of the 1973 Act mandates that a copy be given to the offender or his counsel, and a defendant is entitled to cross-examine the probation officer on the report.<sup>15/</sup>

---

<sup>12/</sup> The current provision is the Powers of Criminal Courts Act, 1973, c. 62, § 45. (Hereinafter referred to as "the 1973 Act").

<sup>13/</sup> This has been criticized as being ineffective in ensuring that reports are obtained in all cases, but it is also thought that the system appears to work quite well as it is. See Ashworth, "Justifying the First Prison Sentence," [1977] Criminal Law Review 661, 663 and Jackson, supra note 1, at 398. A statutory obligation to consider a report is imposed in the case of community service orders (The Criminal Justice Act, 1972, c. 71, § 15(2)).

<sup>14/</sup> Morris v. Crown Office, [1970] 1 All E.R. at 1087, per Salmon L.J. In R. v. Tillman, [1965] Cr. App. Rep. 340 (1965), the court viewed with considerable concern the failure of the trial court to consider a S.I.R. on a 21 years old defendant who had no previous convictions and who had fallen in with a group involved in drug trafficking.

<sup>15/</sup> R. v. Kirkham, [1968] Criminal Law Review 210; 112 S.J. 151 (1968).

In 1962, the use of the term Social Inquiry Report was recommended as a substitute for "probation report" to denote that the scope of the report was no longer limited to cases where probation was in prospect.<sup>16/</sup>

Based on the Streatfeild Report, the Home Secretary has recommended that as a normal practice, where a case involves an offender 17 years or older, S.I.R. should be considered by the courts before passing the following sentences:

- (a) detention in a detention center;
- (b) imprisonment (including a suspended sentence) of 2 years or less where the offender has not received a previous sentence of imprisonment or borstal training; and
- (d) imprisonment of a woman.<sup>17/</sup>

It is mandatory for juvenile courts to hear S.I.R. except in trivial cases.<sup>18/</sup> A further use of S.I.R. arises under those sections of the 1973 Act which impose certain restrictions on sentences of imprisonment on persons 17 years or older who have not previously served prison sentences.<sup>19/</sup> In such cases, the court is

---

<sup>16/</sup> Great Britain, Departmental Committee on the Probation Service (Morison Committee). Report, para. 30 (Cmd. 1650) (1962).

<sup>17/</sup> Home Office Circulars, 28/1971, 29/1971 and 30/1971.

<sup>18/</sup> The Children and Young Persons Act, 1933, § 35(2). The Children and Young Persons Act, 1969, c. 54, places the duty of providing background information on the local authority. The probation service continues to be responsible for reports in criminal cases for offenders aged 14 and over.

<sup>19/</sup> Powers of Criminal Courts Act, 1973, c. 62, §§ 19(1), 20(2).

required to determine that no method, other than imprisonment, would be appropriate in dealing with the offender. In doing this, the court must take into account information relevant to the character and the physical and mental condition of the offender. The Home Secretary has recommended that whenever practicable, this information must be obtained by way of S.I.R. <sup>20/</sup>

In implementation of the Streatfeild Report's recommendations concerning the detailed content of S.I.R., the Home Secretary requires the reports to include inquiries into:

(a) the character, personality and social and domestic background of the accused;

(b) his record at any educational, training or residential establishments where he has recently been or while receiving after-care;

(c) his employment prospects, and, where appropriate, his attitudes and habits as known to his most recent employer. <sup>21/</sup>

In the Streatfeild Report it was hoped that through research studies it would eventually be possible to construct formulas by analyzing known characteristics of offenders who had undergone particular sentences. This, it was thought, would make it possible

---

20/ Home Office Circular, 233/1972, Explanatory Memo., para. 65.

21/ Home Office Circular, 59/1971, para. 11.

to discover to what extent the chances of an offender not being reconvicted were dependant on the type of sentence imposed, and then to determine whether one type of sentence was likely to have a different effect from another.<sup>22/</sup> Although, as envisaged, a number of research studies on the impact of S.I.R. on the effectiveness of sentences have been conducted, they do not appear to have produced any dependable results. The field is thus left clear for the claim, on the one hand, that studies towards evaluating sentences show encouraging consistency and that if the courts were to use the more "successful" remedies, such as fines, their effectiveness would be enhanced, and on the other that research cannot give an answer to all problems, the issue being one of which sentencing policy is to be applied.

A commentator examining the effect of the use of S.I.R. on sentencing decisions notes that although the studies do not provide a "wholly discouraging picture," they are not having the full expected effect.<sup>23/</sup> However, the relevance of the information included in the

---

<sup>22/</sup> Streatfeild Report, supra note 9, para. 278.

<sup>23/</sup> White, "The effect of Social Inquiry Reports on Sentencing Decisions," 12 British Journal of Criminology 230 (1972).

S.I.R. is borne out by studies which agree that the chances of rehabilitation of adult male offenders are poorer:

- (i) the more intermittent a man's employment record, and the more unskilled his jobs;
- (ii) the fewer ties he has with a wife or a relative;
- (iii) the more he has moved about the country;
- (iv) the more time he spends in leisure pursuits such as drinking and gambling;
- (v) the more members of his family and circle of friends have convictions;
- (vi) the higher the conviction rate in the area where he works or lives.<sup>24/</sup>

The results of research showing the rates of reconvictions of offenders under particular forms of sentences are given in a handbook issued for the courts by the Home Office.<sup>25/</sup> It puts forward the claim that "this should make it possible to compare the effectiveness, in preventing reconviction, of different types of treatment, and to assess whether a particular type has better results with one class of offender rather than another."<sup>26/</sup>

---

<sup>24/</sup> N. Walker, Sentencing in a Rational Society 100 (1971).

<sup>25/</sup> Home Office. The Sentence of the Court. (1969).

<sup>26/</sup> Id. at 64.



Some writers doubt whether research can be used so precisely as to achieve the desired end of effective sentencing. In one view, results of research can at best aid the sentencing process and the most encouraging prediction cannot reduce sentencing to a readily applicable formula.<sup>27/</sup> It is contended that even where sentences are given with a view of vindicating the law and deterring would-be wrongdoers, (i.e. under the tariff system) it has been difficult to determine the effectiveness of such sentences.<sup>28/</sup> Another authority on sentencing, while conceding that the information in S.I.R. "often makes it possible to predict with an accuracy a good deal better than chance" whether an offender will or will not be reconvicted, states that this is so regardless of the kind of sentence given.<sup>29/</sup> Professor Cross, while of the view that the information contained in the Home Office handbook is helpful towards gauging the effectiveness of different sentences, bemoans the

---

<sup>27/</sup> R. Jackson, supra note 1, at 399.

<sup>28/</sup> Id.

<sup>29/</sup> N. Walker, supra note 24, at 101-102.

fact that it presents the research in statistical form. This is not meant as a criticism, for he doubts

whether the most intensive study of these statistics would assist in the matter of sentencing, but the fact that all sentencers are statistically incompetent means that they will . . . only benefit from the results of the latest research if those results are explained in the simplest terms. 30/

Yet another author, in a scathing criticism of S.I.R., questions whether they serve any useful purpose and hazards the view that "[s]ocial background and offender's attitudes are of little value as predictors of further criminality."<sup>31/</sup>

While the debate continues on the merits or demerits of S.I.R., a significant development has taken place with regard to the opinion of probation officers on particular sentences. As previously stated, the Streatfeild Committee had felt that the probation officers were in a position to express a reliable opinion of the likely effect of various sentences, including probation. It regarded such opinions as an integral part of the probation officers' functions. The committee based its view on the contact that probation officers had with other offenders through post-conviction services. The report acknowledged that the opinion was only one of the possible

---

30/ R. Cross, The English Sentencing System 85 (1975).

31/ P. Bean, supra note 3, at 102.

factors before the court and that the court, after considering the nature of the offense and the public interest, remained solely responsible for the sentence ultimately passed.

What Streatfeild chose to term as 'opinion' eventually developed into recommendations, and a study published in 1972 suggested that probation officers were recommending a wide range of penal services and that these recommendations were accepted by the courts in a large number of cases.<sup>32/</sup> The study examined sample recommendations made by two probation offices, and the way they were disposed of in the courts. Its most important finding was that in the sampled areas the probation officers had adopted a general function of advising courts in the business of sentencing. The evidence from the samples seemed to indicate that:

probation officers have gone beyond . . . the Streatfeild recommendations; not only do they give opinions, but they make recommendations, some of which explicitly take into account the interests of society. Some recommendations suggest custodial treatment, which the Streatfield Committee never expected, and increasingly probation officers do not even mention an offender's suitability for probation.<sup>33/</sup>

In apparent acknowledgement of this role of probation officers, the Home Office Secretary informed the courts in 1974 that he took the view, which the Lord Chief Justice of England

---

<sup>32/</sup> P. Ford, Advising Sentencers (1972).

<sup>33/</sup> Id. at 31.

shared, that experienced probation officers should be encouraged to make specific recommendations to the courts about the type and length of sentence.<sup>34/</sup> This move has been described as establishing "the social inquiry report as an integral part of the sentencing process in court -- and the probation officer [has become] officially and closely identified with the sentencers."<sup>35/</sup>

A separate point arising in connection with recommendations by probation officers is whether they should be included in pre-trial reports. As noted earlier, social inquiries are preferably carried out prior to trial,<sup>36/</sup> but at that stage it is not known how an offender is going to plead. Obviously, since all S.I.R. are prepared on the assumption that the offender is guilty, no recommendations as to the type of sentence is generally made in reports prepared prior to trial. This has led some to question the very need for pre-trial reports.

---

34/ Home Office Circular, 194/1974.

35/ Mathieson "Social Inquiry Reports -- Time to Plot a New Course," 141 Justice of the Peace 224 (1977). This, however, does not indicate that the various proposals to take away sentencing from the courts and assign it to separate sentencing panels is any nearer acceptance. See generally: R. Jackson, supra note 1, at 389 et seq. and Thomas, supra note 5, at 691.

36/ Post-conviction reports are prepared in cases where the defendant may have refused consent to pre-trial inquiries, there may have been insufficient time in preparing a report and the case may not be within the recommended categories.

With regard to adopting a more systematized approach, it has been suggested that the reports should only be made in cases where there is a guilty plea.<sup>37/</sup>

### Conclusion

The fact that S.I.R. are so extensively used in England -- approximately 250,000 are prepared each year<sup>38/</sup> -- attests to their significant role in the sentencing procedure. The reports are proving valuable in disclosing circumstances which would not otherwise be available and are enabling the courts to make better informed decisions. However, the large numbers have put a strain on the probation service, resulting in doubts regarding their quality and reliability. With the requirement that probation officers should make specific recommendations on suitable sentences, there is an increasing need for better training in the preparation of the reports. The time may also be ripe for an official review of the developments since Streatfeild and an update of the procedure for preparing and presenting the reports in light of those developments. Such a reappraisal may additionally serve as an impetus for continuing research on the impact of S.I.R. on the effectiveness of sentences.

---

<sup>37/</sup> Mathieson, supra note 34, at 225.

<sup>38/</sup> Id.

Attention should also be focused on increasing the courts awareness of the value and limitations of S.I.R. The recent statement by a Working Party on Judicial Studies and Information that judges be instructed on how S.I.R. actually are prepared to equip them to evaluate and utilize the information to the best advantage,<sup>39/</sup> is a needed step in that direction.

---

39/ Home Office and Lord Chancellor's Office. Report of the Working Party on Judicial Studies and Information. 41 (1978).

## BIBLIOGRAPHY

### Books and Reports

- Barnard, David. The criminal court in action. London, Butterworths, 1974. 182 p. KD8276.B37
- Bean, Philip. Rehabilitation and deviance. London and Boston, Routledge & Kegan Paul, 1976. 168 p. HV9346.B4
- Blom-Cooper, Louis, ed. Progress in penal reform. Oxford, Clarendon, 1974. 288 p. HV9647.P76
- Booth, David M. and N.F.F. Pirie. The new powers of sentencing. London, Butterworths, 1973. 113 p. KD8406.B66
- Cross, Rupert. The English sentencing system. London, Butterworths, 1975. 213 p. KD8406.C76
- Davies, Martin and Andrea Knopf. Social enquiry reports and the probation service. London, H.M.S.O., 1973. 49 p. HV9346.D29
- Fallon, Peter. Crown Court practice: sentence. London, Butterworths, 1975. 243 p. KD8406.F34
- Ford, Peter. Advising sentencers. Oxford, Basil Blackwell, 1972. 39 p. HV9643.093 No. 5
- Great Britain. Home Office. Report of the departmental committee on the probation service. Cmnd. 1289 p. London, H.M.S.O., 1962. 143 p. Law Gt. Brit. 8 Cmnd 1289
- Report of the interdepartmental committee on the business of the criminal courts. Cmnd. 1650 p. London, H.M.S.O., 1961. 171 p. HV 9278.G858
- The sentence of the court. London, H.M.S.O., 1969. 76 p. Gt. Brit. 8 Home Dept.
- Great Britain. Home Office and Lord Chancellor's Office. Report of the Working Party on Judicial Studies and Information. London, H.M.S.O., 1978. 44 p. Law
- Jackson, R.M. The machinery of justice in England. 7th ed. Cambridge, Cambridge University Press, 1977. 627 p. KD7100.J3
- Jarvis, F.V. Probation officers' manual. London, Butterworths, 1974. 301 p. KD8462.Z9J37

- Thomas, D.A. Principles of sentencing. London, Heinemann, 1970.  
305 p. Law E Treat Them
- Walker, Nigel. Sentencing in a rational society. New York, Basic  
Books, 1971. 239 p. Law E Treat Walk

Articles

- Ashworth, A.J. "Justifying the first prison sentence." [1977] Criminal  
Law Review 661-673.
- Daunton-Fear, Mary W. "Social inquiry reports: comprehensive and  
reliable?" 15 British Journal of Criminology 128-139 (1975).
- Davies, Martin. "Social inquiry for the courts." 14 British Journal of  
Criminology 18-33 (1974).
- Farrington, David P. "The effectiveness of sentences." 142 Justice  
of the Peace 69-71 (1978).
- Mathieson, David. "The social inquiry report." 140 Justice of the  
Peace 246-248 (1976).
- "The social inquiry reports -- time to plot a  
new course." 141 Justice of the Peace 224-226 (1977).
- Perry, F.G. "Reports for the courts." 138 Justice of the Peace 589-590  
(1974).
- Prins, H.A. "Social enquiries and the adult courts." 8 British Journal  
of Delinquency 227-232 (1957).
- Thomas, D.A. "Developments in sentencing 1964-1973." [1974] Criminal  
Law Review 685-692.
- Thorpe, Jennifer and Kenneth Pease. "The relationship between  
recommendations made to the court and sentences passed." 16  
British Journal of Criminology 393-394 (1976).
- White, Stephen. "The effect of social inquiry reports on sentencing  
decisions." 12 British Journal of Criminology 230-249 (1972).



**END**