Pre-trial Social Inquiry Reports on Defendants pleading Not Guilty: are they acceptable?

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After a brief review of the problems associated with pre-trial social inquiry reports on defendants pleading not guilty, this paper focuses on one of these problems: the impact on the report of the uncertainty about the nature and the number of the offence(s) of which the defendant may eventually be convicted. Research findings are reported which indicate that the offence is an element of information which nearly all officers find essential to know, and which a good number of them perceive as carrying considerable influence over their decisions. A change in the nature of the offence sometimes creates a need for additional information and, more importantly, may lead to a change in the recommendation. Consequently, it is concluded that probation officers should not prepare pre-trial reports when there is a chance that the final conviction may differ from the original charges, i.e. in cases where the defendant pleads not guilty.

Advantages
The aim of social inquiry reports is to assist the courts in their sentencing duties. Therefore, they are not intended to be used before the guilt of the accused has been established. However, pre-trial reports have become general practice, particularly in crown courts. Statistics published by the Home Office do not distinguish between pre-trial and post-conviction reports, but it has been suggested that the vast majority of social inquiry reports presented to crown courts are written before the court hearing. This practice was encouraged by the Streatfeild Committee, and officially sanctioned by the Home Office in 1963. However, probation officers seem divided on the approach to take. What are the advantages and disadvantages of pre-trial reports?

Pre-trial reports present advantages for criminal courts. Post-conviction reports mean adjournments which involve a loss of time for them. They have heavy workloads, and expeditious measures are welcomed. In addition, judges feel better able to decide on a sentence immediately after the trial, when the facts concerning the offence are still fresh in their minds. This is of particular importance in districts where courts sit infrequently and where remands may be longer than elsewhere. Pre-trial reports also involve one advantage for the accused: he may be sentenced at once when found guilty. He is not subjected to the anxiety of waiting longer for his sentence; and, in cases where the court chooses a non-custodial sentence after reading the report, he does not run the risk of being remanded in custody for nothing. Finally, in cases where the sentence aims at reaffirming publicly the moral values of society, the public impact for an immediate sentence after conviction is probably greater than a deferred sentence.
Criticisms

Pre-trial inquiries have been criticized on several grounds; one of these grounds concerns possible abuses. A pre-trial inquiry may not be conducted without the defendant's consent; nevertheless, consent may be withdrawn at any stage of the inquiry. However, undue pressure may sometimes be exerted on the accused to consent to the inquiry. Furthermore, if the accused refuses his consent and, if after the finding of guilt, a post-conviction inquiry is requested by the court, is there not a danger that the investigating officer might interpret unfavourably the original refusal? A "stamp of non-co-operation" might be attached to the defendant, which might make him appear a less promising candidate for probation.

Many criticisms directed to pre-trial inquiries concern more directly one specific category: those on defendants pleading not guilty. Thus, it is said that time and effort is wasted on preparing reports which the courts will not use. In her research, Plotnikoff (1973) found that 38% of the reports prepared before the trial were useless because the accused were acquitted. This waste of probation officers' time and energies should be viewed with great concern, particularly at a time when economic difficulties involve cut-backs for the probation service.

Another concern lies in the possibility of creating in the mind of the offender the impression that "it's all fixed", even though the case has not yet been heard in court. The accused may wonder why reports should be prepared if they are not to be used.

Other dangers arise out of possible abuses. Plotnikoff (1973) has indicated that some accused (and even some officers) were unaware that pre-trial reports could be seen by the judge before a finding of guilt. Research has demonstrated that decision-makers are more likely to find an offender guilty if they know about his criminal past than if they do not. It is true that, in jury cases, the jury is responsible for the verdict, not the judge. But it remains that a judge who has been prejudiced by this type of information prior to the verdict might convey his perception to the jury in a subtle manner through his summing up. One wonders how many defendants who are unaware of this practice would refuse their consent to the inquiry should they know this.

But the greatest problem with these inquiries is that they must be done while the defendant is still presumed innocent. Therefore, the offence, its circumstances and its underlying causes cannot be discussed with the defendant to the extent that would be useful to the officer. The treatment ideology which is widespread in the probation service makes it very delicate to prepare social inquiry reports when the commission of the offence has not been established. In the words of King, the social inquiry amounts to a tentative social diagnosis [and the officer] uses his casework skills in arriving at it... He is also making a tentative prognosis and treatment plan.

In that context, the offence becomes interesting not so much on its own, but as a "symptom" of some deeper maladjustment (e.g. emotional difficulties, personality problems, social maladjustment, etc.). But how can the diagnosis be made if the existence and nature of the symptom has not yet been confirmed? To paraphrase Bean, we have the curious position of the "social doctor" diagnosing a "social illness" and prescribing treatment without even knowing if the symptom exists. The only alternative is to presume that the defendant is guilty and build the
whole inquiry on this assumption. If the accused is acquitted later, then the diagnosis crumbles for want of symptom. If he is found guilty of lesser offences, or on only part of the charges, the diagnosis becomes invalid and has to be reviewed in the light of those symptoms which are supported by the evidence. Similarly, if a probation officer leans towards a punitive orientation, his recommendation to the court is likely to be influenced by the offence even more that his more exclusively treatment-oriented colleague.

In fact, the nature of the offence may have an impact on the whole decision-making process in the social inquiry. As soon as the offence is known, recommendations incompatible with the offence are excluded and the officer’s attention focuses on the remaining alternatives. This information search is a selective process which is guided by the need to narrow down the number of remaining options to one choice to recommend to the court. Thus, the information search itself is to some extent built on the knowledge of the offence: elements of information are judged relevant or irrelevant depending on the sentencing options left open or excluded by the nature of the offence. Then, once a recommendation is reached, the officer has to write a report for the court. The selection of the information included in this report is bound to be influenced by the officer’s perception of the case and his recommendation to the court, both of which are likely to be influenced by the nature of the offence. Thus, if at the outcome of the trial the accused is convicted of offences which are different (in number and/or seriousness) from those with which he was charged, one of the foundations of the social inquiry report, the nature of the offence, is altered. This raises the question of whether pre-trial reports should be allowed in cases of defendants pleading not guilty.

This paper presents some data which were collected in the course of a research project focusing on other questions, but which can be of some relevance to this question. More specifically, it can throw further light on the importance of the offence—and of a change of offence—in relation to the recommendations of probation officers. The method used in this research will be briefly described first, the results will then be presented, and finally some conclusions will be drawn in relation to pre-trial reports on defendants pleading not guilty.

The Method

A group of 174 probation officers from the Greater London area were presented with some information about an offender. This information was laid out in a manner inspired by Wilkins’ “decision-game” The information consisted of 62 items, each of which was recorded on a separate index card. One of these cards presented a description of the offence and the circumstances in which it had been committed. The cards were numbered from 1 to 62 and were placed in a box in such a way that only the numbers were visible. The information itself could only be seen when the cards were removed from the box. A list was provided, showing the title and the number of each card. This enabled the officers to see which cards they had to select to find particular items of information.

The officers were first requested to read the list of items to see what information was available to them. The available information corresponded to that which probation officers usually need and meet in the course of social inquiries: previous offences and sentences, current
offence and related proceeding, the offender, his family, his social environment, his school and work records, and the opinions of various people on how the court should deal with him. After reading the list, the officers had to select a first item from it, record the number on the questionnaire, take the card out of the box and read it. They repeated the exercise until they felt they had the essential information to make a satisfactory decision on how the offender should be dealt with by the court. Then they recorded their decisions on a questionnaire and stated which cards had most influenced their decision.

In the decision-game, the current offence consisted of three interrelated charges: taking a car without lawful authority, driving it uninsured, and going equipped to steal. In order better to see the impact of a change of offence after the initial decision was reached, the officers were presented with a new offence and asked to state what they thought their decision would have been had they made it with this new offence in mind rather than the above-mentioned charges. This new offence was a burglary for half the officers and a robbery for the other half. These two offences were absolutely identical, except that an element of physical violence was added in the case of the robbery. After reading the new charge, the officers proceeded to record their new decision. They were allowed to select additional information cards if they felt it necessary. Thus, this method made it possible to study which information was required by the officers to reach their decision, and to compare the relevance ascribed to the offence with that ascribed to other elements of information. Furthermore, it made it possible to analyze the decisions themselves, and to look at the impact of a change in the offence on both the decision and the need for additional information.

The Results

Nearly all officers found the information concerning the current offence essential to know for their initial decision: the appropriate card was selected by 99% of the officers (172 out of 174). This card was by far the most frequently selected card: on average, the various cards were selected by 30% of the officers, and only two out of the other 61 cards were selected by at least 80% of the officers. When asked to state which cards had most influenced their initial decision, 28% of the officers (49 out of 174) mentioned the card describing the current offence. Seven other cards were reported more frequently. This finding must be interpreted cautiously. Since the current charges were only relatively serious, the vast majority (86%) of the officers felt able to opt for treatment-oriented measures—mainly probation. The elements of information reported by the officers as having most influenced their decisions reflected this orientation. Information of a clinical nature could be perceived to have had a greater influence than the offence on the decisions. However, it remained that the relatively low seriousness of the charges was most probably a necessary condition to the treatment orientation of the majority of the decisions: as will be seen below, the decisions would probably have been of a different nature had the offence been much more serious. Thus, the nature of the offence certainly carried considerable weight in the decisions in that it made it possible for the treatment-orientation of many officers to play a role in the decision. But the real influence of the offence may have been less clearly perceived by the officers than the influence of the information of a more clinical nature.
The influence of the offence became much more obvious when the
offence was changed to a more serious one, and the officers were asked
to state what their decisions would have been had they made it with
this new offence in mind. The effect was felt both on the need for
additional information and on the decisions themselves.

After being presented with the new offence, the officers were told they
were allowed to select additional information if it was impossible for
them to make their new decisions on the basis of the information they
already had. Thirteen per cent of the officers (22 out of 174) felt they
had to select additional information. The change of offence seems to
have created the need for some officers to go into greater depth into
some aspects of the case which they had viewed as less relevant in the
light of the first offence. The nature of the offence seems to influence
the relevance which is ascribed to other elements of information.

The change of offence also had considerable repercussions on the
decisions of officers. The initial decisions of the officers were highly
supportive of community-based measures: only 11% of the officers
chose custodial measures (9% being suspended sentences), against 89%
of community-based measures. In the group of officers presented with
a burglary as the new offence, the proportion of custodial sentences
rose to 37% (14% suspended sentences and 23% actual custody). More
than one third of the officers changed their decision to one involving a
greater deprivation of liberty for the offender. This trend was even
more striking in the group of officers presented with a robbery as the
new offence. The officers opting for custodial measures became a majority
(52%), with over two officers out of five (42%) choosing actual custody
(as opposed to 10% supporting a suspended sentence). In 55% of the
cases, the new decision involved greater restrictions on the offender’s
freedom than the initial decision.

Summary

These findings lead to the following conclusions. The offence is an
element of information which nearly all officers find essential to know,
and which a fair number of them perceive as carrying considerable
influence over their decisions. When an increase in the seriousness of
the offence is forced on the officers, some of them feel they cannot
make a new decision without obtaining additional information, which
suggests that the offence is an element of information which is used by
some officers to establish the relevance of other information. Finally,
and most importantly, an increase in the seriousness of the offence
may often lead the officers to change their views on how the case
should be dealt with.

As was mentioned earlier, this paper presents a secondary analysis
of some data collected for another purpose. The design of the research
did not make it possible to measure the impact of a reduction (as
opposed to an increase) in the charges. Obviously, it cannot be assumed
that, had the officers been presented first with the more serious offences
and then with the less serious ones, the changes in the decisions would
have been identical, but in the reverse order. The impact of the offence
on the officers’ decision-making process is likely to differ according to
the stage of the procedure at which the nature of the offence is known.
However, the hypothesis that a reduction in the seriousness/number
of the offences would also have an impact on the decision-making pro-
cess is a safe one to put forward.
Conclusion

These findings show the need for probation officers to know what offence has been committed by the defendant before they prepare their reports. They also show that a change in the offence after the report has been transmitted to the court may have undesirable consequences. The offender may be sentenced on the basis of a report which conceivably contained a recommendation and information which could be justified only on the basis of the original charge and not on the offence for which he was finally convicted.

The policy implications of these findings are quite obvious. First, probation officers should not proceed to prepare social inquiry reports without being provided with sufficient information on the nature of the charges. Previous research has indicated that this requirement was very often not met. Second, no social inquiry reports should be made if there is any chance that the final conviction will differ from the charges. In other words, pre-trial social inquiries on defendants pleading not guilty should be abolished. One might suggest as an alternative that such reports still be prepared, but that reporting officers be required to review their reports before the court sees them in those cases where the final verdict would be different from the original charges. Although this would be an improvement over the present situation, serious problems would remain. There would be a real danger that, being already completely written, reports might not be reviewed as extensively as they should. Furthermore, previous research has indicated that the impact of an element of information may differ depending on whether it is presented at the beginning of the decision-making process or after an initial decision has been reached. If the right information on the offence is to be given its proper weight, it must be known by the officer before he reaches a decision. Finally, this alternative solution would not solve other problems described at the beginning of this paper, such as the costs of inquiries rendered useless by subsequent acquittals, etc.

Therefore, it is suggested that pre-trial social inquiry reports on defendants pleading not guilty should be abolished.

NOTES

1. Plotnikoff (1973), p.176. The arrangements for pre-trial inquiries have been designed primarily for crown courts. Magistrates' courts seem to make less use of them.

2. UK, Home Office and Lord Chancellor's Office (1961), chapter 11. Home Officer Circular No. 138/1963. Other committees were more reluctant to take a clear position on this issue. Thus, the Ingleby Committee expressed a preference for post-conviction reports, while appreciating that pre-trial reports could sometimes be preferable (UK, Home Office, 1960, para. 220). The Morison Committee was unable to reach an agreement on this question (UK, Home Office and Scottish Home Department, 1962, para. 35).

3. For example, Plotnikoff (1973, p.178) reported that, in her sample of probation officers, the majority favoured an extended use of the post-conviction inquiry.

4. An occasional tendency to put pressure on the defendant to consent to the inquiry has been indicated by Ford (1972, p.11) and Herbert and Mathieson (1975, p.33).

5. The expression is borrowed from Mathieson and Walker (1971, p.31).

6. In her sample, seven of the twenty probation officers were not aware of this practice, which she qualified as “alarming” (p.179).


As mentioned earlier, the questionnaire was not designed primarily for the purpose of this paper. Had it been so, the research would have been designed so as to make it possible to measure the impact of a reduction in the number/seriousness of the charges. Trials result less frequently in an increase than in a reduction in the number and seriousness of the charges. But even with this limitation, the data remain quite relevant to the question under study here.


14. These were the cards giving the identification data (name, address, age, etc.) and an outline of previous adult court records.

15. The five cards reported the most frequently among those having most influenced the decisions were in order of frequency: relationships between parents, siblings and offender; employment record; specialists’ (psychologist, psychiatrist and social worker) opinions on how the offender should be dealt with; previous charges and sentences in adult criminal courts; emotional health (and treatment, if any).

16. See note 12, above.


18. Burnham (1969), chapter 6. This aspect of the problem is important and this author would have liked to touch on it in greater depth. Unfortunately, the available data did not lend themselves to the analysis of the subject.

REFERENCES


