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Shadow Writing and Participant Observation: A Study of Criminal Justice Social  
Work Around Sentencing

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The study of decision-making by public officials in administrative settings has been a mainstay of law and society scholarship for decades. The methodological challenges posed by this research agenda are well understood: how can socio-legal researchers get inside the heads of legal decision-makers in order to understand the uses of official discretion? This article describes an ethnographic technique the authors developed to help them penetrate the decision-making practices of criminal justice social workers in writing pre-sentence reports for the courts. This technique, called 'shadow writing', involved a particular form of participant observation whereby the researcher mimicked the process of report writing in parallel with the social workers. By comparing these 'shadow reports' with the real reports in a training-like setting, the social workers revealed in detail the subtleties of their communicative strategies embedded in particular reports and their sensibilities about report writing more generally.

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This article marks the first in a commissioned, occasional series on empirical innovations and justice research methods. They will draw to the attention of the socio-legal community issues associated with empirical work particularly those that involve innovation in research methods or can otherwise stimulate the development of empirical work.

In a fascinating study of administrative behaviour, Robert Kagan captures the key challenge faced by socio-legal researchers who seek to penetrate the social world of public officials and get at the real substance of their decision-making processes:<sup>1</sup>

The process of legal decision in an administrative agency is not easily susceptible to pure observation. It takes place at desks, in offices, in occasional conferences and telephone conversations, and in hurried conversations in corridors. The participants spend a great deal of time studying documents. To a very great extent, the process takes place inside people's heads.

How does the researcher get inside the heads of such legal decision-makers? Kagan's solution was to conduct overt participant observation by working as a lawyer in his chosen agency, making the very decisions he wanted to understand as a researcher. There is a meaningful sense, of course, in which simply being present in a fieldsite as an observer is also a form of participation.<sup>2</sup> One does not actually have to be a fully-integrated worker like Kagan to be a participant in the field. By asking questions, or responding to the curiosity of the research subjects about why the researcher is there, s/he inevitably becomes part of the activities of those research subjects. Even by his/her silent presence, the researcher will usually affect the dynamics inside a research site, particularly in the early stages of fieldwork, and so cannot avoid 'participating' in this sense.<sup>3</sup> So observation and participation are better conceived, not as separate activities, but as inevitably overlapping roles within the field. This is not to say that we cannot make meaningful distinctions between differing forms of participation in the field. Such distinctions are, perhaps, especially easy in the context of researching legal decision-making in a public agency. The bureaucratic organization and division of labour within such agencies, with their hierarchies and lines of responsibility, lends itself particularly well to this.<sup>4</sup> At one end of the observer-participant spectrum, the researcher, like Kagan, might issue decisions for the agency and use that experience to reflect on that discretionary process.<sup>5</sup> At the other end of the

1 R. Kagan, *Regulatory Justice: Implementing a Wage-Price Freeze* (1978) 185.

2 T. May, *Social Research: Issues, Methods and Process* (1998) 139.

3 See R. Burgess *In the Field: An Introduction to Field Research* (1990) pp. 79±80.

4 Our analysis here needs to be distinguished from the classic typology of roles in relation to field observations (R. Gold, 'Roles in Sociological Field Observations' (1958) 36 *Social Forces* 217±23). At the extremes of Gold's scheme are the roles of 'complete participant' and 'complete observer'. Both of these involve covert research. Between these extremes are 'participant-as-observer' and 'observer-as-participant'. Given that the role of observer-as-participant 'is used in studies involving one-visit interviews' (p. 221), May is probably right to suggest that we should not, strictly speaking, regard this as participant observation (May, *op. cit.*, n. 2, p. 140.) Most self-proclaiming participant observational researchers would be described by Gold as having adopted the role of the participant-as-observer. Our analysis makes distinctions within this category.

5 See, for example, S. Halliday, 'Judicial Review and Administrative Justice', unpublished PhD thesis, Strathclyde University (1999).

spectrum, the researcher might simply observe decision-making and other behaviour, and often supplement the observational data with interview data and documentary analysis.<sup>6</sup> In between, the researcher may adopt the role of 'helper'<sup>7</sup> by agreeing to engage in various other tasks which contribute to the operations of the agency but which fall short of producing the decision outcomes which the researcher may ultimately be interested in.<sup>8</sup>

The kind of participant observation conducted by Kagan, we would suggest, permits the researcher to get especially close to one's research subjects and, more importantly, to the social action being investigated. In the context of studying public agencies, it offers the researcher a privileged, perhaps unique, position from which to unpack the complexities of the decision-making process and to reveal the subtleties of discretion at work.<sup>9</sup> But what can the researcher do to get 'inside the heads' of legal decision-makers when this kind of participant observation is not possible? This was the dilemma the authors faced when conducting a study of pre-sentence report-writing.<sup>10</sup> These are reports written to assist judges in the sentencing process. In Scotland they are written by social workers employed by local government authorities. Previous research, using a range of research techniques (content analysis, surveys, statistical analysis, and interviews) had offered only limited data about the communication process between report

authors and judges embodied in report writing. Important insights had certainly been made about the ideological underpinnings of reports,<sup>11</sup> judges' satisfaction with reports,<sup>12</sup> the quality of report-writing,<sup>13</sup> and the

6 See, for example, I. Loveland, *Housing Homeless Persons* (1995).

7 R. Stebbins, 'Fitting in: the researcher as learner and participant' (1987) 21 *Quality and Quantity* 103-8. See, also, J. Flood, 'Socio-Legal Ethnography' in *Theory and Method in Socio-Legal Research*, eds. R. Banakar and M. Travers (2005).

8 See, for example, J. Flood, *Barristers' Clerks: The Law's Middlemen* (1983); C. Hall et al., *Telecommunications Regulation: Culture, Chaos and Interdependence inside the Regulatory Process* (2000).

9 See S. Halliday *Judicial Review and Compliance with Administrative Law* (2004).

10 *Social Enquiry Reports and Sentencing in Sheriff Courts*, ESRC Award R000239939.

11 J. Curran and G. Chambers, *Social Enquiry Reports in Scotland* (1982); P. Hardiker, *Ideologies in Social Inquiry Reports: Final Report to the Social Science Research Council* (1975); G. Horsley, *The Language of Social Enquiry Reports* (1984); B. Hudson and G. Bramhall, 'Assessing the "Other": Constructions of "Asianness" in Risk Assessments by Probation Officers' (2005) 45 *Brit. J. of Crim.* 721-40.

12 S. Brown, *Magistrates at Work* (1991); E. Burney, *Magistrate, Court and Community* (1979); Curran and Chambers, *id*; L. Brown and L. Levy, *Social Work and Criminal Justice: Vol. 4 - Sentencer Decision Making* (1998).

13 F. Perry, *Information for the Court: A New Look at Social Inquiry Reports* (1974); S. Rawson, *Sentencing Theory, Social Enquiry and Probation Practice* (1982); J. Thorpe, *Social Inquiry Reports: A Survey* (1979); B. Whyte et al., *Social Work in the Criminal Justice System in Scotland: Competencies required by the National Objectives and Standards for Social Work Services in the Criminal Justice System* (1995).

relationship between quality and effectiveness.<sup>14</sup> However, one of our ambitions was to complement this previous research by focusing more directly on the specific aims and objectives of social workers in writing reports - to unpack and reveal the deliberative processes underpinning report writing. Although we felt that this could best be achieved by a researcher conducting participant observation as a report writer for social work agencies, this was not possible. Social workers have a statutory duty to write reports (called 'Social Enquiry Reports' in Scotland) for the criminal courts in relation to certain cases. It would have been contrary to social work departments' professional ethics to allow a researcher to write these reports. It was clear to us in developing the project that research access would not be granted on this basis and our preliminary discussions with the social work profession confirmed this.

Alternative methods for studying public officials, of course, have been widely used. As already noted above, less intense forms of participant observation, often combined with interviews and documentary analysis, have been used to study public officials, producing much insightful work within the socio-legal field.<sup>15</sup> More innovative techniques have also recently emerged. Maynard-Moody and Musheno<sup>16</sup> collected everyday work stories from respondents in their study of routine decision-making by police officers, social workers, and teachers. These public officials were invited to jot down notes on a few stories about work situations where their beliefs about fairness or unfairness helped them to make decisions. These notes formed the basis of story telling at a later meeting between the researchers

14 J. Thorpe and K. Pease, 'The Relationship Between Recommendations Made to the Court and Sentences Passed' (1976) 16 *Brit. J. of Crim.* 393-4; J. Hine et al., 'Recommendations, social information and sentencing' (1978) 7(2) *Howard J.* 91- 100; B. Williams, and A. Creamer, *Social Enquiry Within a Changing Sentencing Context* (1989); H. Parker et al., *Unmasking the Magistrates* (1991); L. Gelsthorpe and P. Raynor, 'Quality and Effectiveness in Probation Officers' Reports to Sentencers' (1995) 35 *Brit. J. of Crim.* 188±200; M. Cavadino, 'Pre-Sentence Reports: the Effects of Legislation and

National Standards' (1997) 37 Brit. J. of Crim. 529-48; K. Downing and R. Lynch, 'Pre-Sentence Reports: Does Quality Matter?' (1997) 31 Social Policy and Administration 173-90; A. Creamer, 'Reporting to the Scottish Courts: The Quality of Social Enquiry Reports and Custody' (2000) 28 International J. of the Sociology of Law 1-13.

15 See, for example, G. Richardson et al., Policing Pollution: a Study of Regulation and Enforcement (1982); J. Mashaw, Bureaucratic Justice: Managing Social Security Disability Claims (1983); D. Nelken, The Limits of the Legal Process: A Study of Landlords and Crime (1983); K. Hawkins, Environment and Enforcement (1984); R. Emerson and B. Paley, 'Organizational Horizons and Complaint-Filing' in The Uses of Discretion, ed. K. Hawkins (1992); M. Adler and B. Longhurst, Discourse, Power and Justice: Towards a New Sociology of Imprisonment (1994); C. Grace, Social Workers, Children and the Law (1994); B. Hutter, Compliance: Regulation and Environment (1997); D. Cowan and S. Halliday, The Appeal of Internal Review (2003).

16 S. Maynard-Moody and M. Musheno, Cops, Teachers, Counselors: Stories from the Front Lines of Public Service (2003).

and respondents. This technique of 'narrative analysis' was particularly helpful in revealing how the public officials saw themselves, and how they understood their motivations and justifications for their decision-making behaviour. It was a key element in Maynard-Moody and Musheno's thesis about the moral dimension of street-level discretion, the 'citizen-agent narrative' as they termed it.

However, despite the value of the above techniques, we wanted to get closer to the privileged standpoint of the 'decision-maker-participant' in order to understand more specifically the mentalities of report writing. Accordingly, we adopted an alternative strategy which we hoped would offer better insights without breaching professional ethics. Our approach was effectively to mimic the kind of participant observation where the researcher becomes a decision-maker (in our project a report-writer) for the public agency. This involved the researcher shadowing social workers in their routine tasks, effectively as a non-participant observer, but then writing a pre-sentence report on observed cases as if she were a social worker writing for the court. In the participant-observer spectrum we sketched above, this practice falls somewhere between being a decision-maker-participant and adopting the role of 'helper'.

This technique of 'shadow writing', as we called it, proved very fruitful in producing a rich data set about the writing of court reports, though not in the way we had envisaged. Our original intention had been that the experience of shadow writing would permit our fieldworker<sup>17</sup> to experience the internal deliberations which underpin report writing and thereby reveal the subtleties of communication embodied in the reports. To an extent this proved possible, though it became clear that the process was, in effect, opening up to us the mind set of a trainee social worker rather than a fully-trained and experienced social worker. The excerpt below from the fieldwork diary shows our fieldworker reflexively document her uncertainties and anxieties in trying to write a report in relation to an offender, 'Joe' (case WW13), who had been convicted of malicious damage and breach of the peace. Joe had offended before and so previous social work files existed, including previous Social Enquiry Reports. Our fieldworker examines these as background information for her shadow report:

I move onto the most up to date Social Enquiry Report (5/2002) . . . I notice that I barely read the 'home circumstances/ family' section and skim read the 'personal' section. Joe has 5 previous offences and fines of £2000 and there is an issue over intimidating a witness. The writer provides us with a description of 'what happened' and this corresponds with what Joe himself told us during interview. The writer notes that Joe fails to accept any level of responsibility and that he has no regret or remorse . . . I think back to how Joe discussed the offence and remember that he wasn't in any way apologetic for his actions . . . However, he did appear to accept that he could have handled the situation better and blamed his state of mind at the time of his behaviour (relationship

17 The fieldworker on this project, Nicky Burns, is also a co-author of this paper.

break up, not getting to see the kids). This to me seems significant. There is a subtle change in Joe's approach to the offence if his discussion last week was honest. On the other hand, are you

stopped from seeing your children for nothing? If Joe was faced with a similar situation, I'm not convinced he wouldn't react in the same way again. But then again, his ability to face up to his parental responsibilities suggest that when he decides something he can stick to it (I'll need to check pattern of offending again). I note that Joe has offered to pay off a substantial sum of his fine (a quarter) and I wonder if he did this or whether this is something he says to social workers. I am confused . . . (WW: Fieldwork Diary, week 9).

What ultimately proved more effective in giving us the data we sought were the discussions our fieldworker had with the social workers she had observed about her shadow reports. These discussions were generally structured by a comparison of the shadow reports with the real reports written by the social workers. By comparing their real reports with the shadow reports, social workers explained in detail their own strategies of communication with the courts which were embedded in the structure of a report, or in particular phrases or specific textual content. In doing so, they revealed their own sensibilities about report-writing.

Writing shadow reports, in addition to creating such opportunities to discuss the structure and meaning of real reports, also equipped our fieldworker to make those discussions particularly productive. It gave her enough of an inside view to render the dialogue with social workers more insightful than if she were simply interviewing them about their reports. The benefits of shadow writing, then, were ultimately less to do with participant- as-decision-maker-like insights as such, and lay more in its role as a routine technique for skilfully prompting research subjects to reflect in detail on how and why they had written reports in a particular way.

The fruits of shadow writing as an ethnographic technique ultimately are seen in the analysis of report writing which follows in this article. Some extracts from the fieldwork diaries, however, can illustrate how the exchanges between fieldworker and social worker around shadow reports became routine opportunities for training by the social worker, or for probing by our fieldworker. The case already referred to above concerning the offender 'Joe' (WW13) was our fieldworker's first attempt at shadow writing. She had concluded her shadow report by suggesting that a deferred sentence might be an appropriate sentencing disposal. This was focused on by the social worker 'Pam' who had written the real report, as the following diary extract reveals:

I am going for a deferment and Pam is going for Community Service. She is intrigued about why I am going for deferment. I give my reasons: that Community Service is a direct alternative to custody and I don't think Joe warrants a Community Service disposal. 'Aye, but they don't use it that way . . . it's just another option' she tells me. I query this. Pam explains that young men in particular are given Community Service by sheriffs: 'it gives them something to do' . . . Still, I remain unconvinced and stick to deferment. Pam seems a little annoyed about this. I tell her that I haven't a clue what I am doing and am just learning, that's the point of the exercise. She nods. We swap reports and we go through the report looking for differences . . . Pam tells me I should have added the fact of Joe's employment in my suggestion that there was no focus for probation - sheriffs like people to be in employment apparently . . . She likes the last sentence [the writer would respectfully suggest that a period of deferment would allow the offender the opportunity to pay his compensation order in full and provide him with further opportunity to continue his efforts to address his offending behaviour] but tells me I am a 'sook'<sup>18</sup> for writing it. She continues to try and persuade me that he will get Community Service . . . Pam tells me as I leave that the report is 'no' bad' for a first attempt. I think she is just being polite. (WW: Fieldwork Diary, Week 9)

The diary entry on another case (SP15) shows our fieldworker using the exchanges with the social worker 'Jodie' around shadow writing to probe the content of the real report on 'Carrie'. Carrie had pleaded guilty to an assault of a police officer and a subsequent breach of the peace having been taken to hospital by the police. Carrie had been drunk at the time. In her interview with the social worker, however, Carrie had claimed that it was the police who had, for no good reason, harassed and assaulted her, though she did not want this formally recorded in the report:

Jodie thinks my report is too detailed . . . I ask her to give me an example. She points to my discussion of Carrie's relationship on page 1, noting that she would only discuss relationships if the person had a child . . . We move onto the section on 'education and employment'. Why did Jodie include information about Carrie's job interview? Jodie tells me that she is making the sheriff aware

that Carrie is actively looking for employment. This is important, she continues, because it suggests that there is less likelihood of re-offending. She explains that Carrie is showing a commitment to having 'structured activity' in her life . . .

I move onto Jodie's account of the offence, noting that she has mentioned that Carrie was injured entering the police car. Jodie explains that the sheriff would be wondering how Carrie ended up in the hospital in the first place. She points to my account: no explanation is given there as to why Carrie had to go to hospital. I ask whether Jodie feels it is important to give a coherent account to the sheriff. She nods. She continues that she thinks it is important to tell the sheriff 'what, where and when' an event happened, to give Carrie's version of events. Jodie reminds me that Carrie was vague about what happened and did not wish Jodie to mention it in the report. However, Jodie feels that by mentioning this, she is not only telling the sheriff 'what happened', but is also giving her lawyer an opportunity to question what in fact took place that night. Jodie therefore is leaving it open for the lawyer to 'dig this out'. Jodie pulls a faces. She isn't colluding with Carrie or trying to write a plea for her, but she feels she is 'supporting' her by doing this. If there was evidence that Carrie was mishandled, it is for her lawyer to raise this as an issue . . .

The above extracts also demonstrate a related and important aspect of shadow writing's effectiveness as an ethnographic technique. It helped our fieldworker to position herself as someone in need of constant training and

18 'Sook' means someone who deliberately curries favour.

so provided an acceptable vehicle for routine and detailed questioning and enquiry over a long period of fieldwork. As Stebbins has suggested,<sup>19</sup> the participant observer is a 'special kind of stranger' who faces the challenge of having to 'fit in' in order to counter initial suspicions on the part of his/her research subjects about why s/he is there. Stebbins sets out two major processes by which the researcher can fit in: learning and participation. Shadow writing captured both particularly well and was a structured way by which our fieldworker could demonstrate her interest in the routine work of the social workers. In this way, in addition to producing pertinent and focused data, shadow writing also facilitated a productive social dynamic between our fieldworker and her informants. This is extremely important in participant-observational work. As Gold has noted:<sup>20</sup>

a field relationship in process of being structured creates role-and-self problems for informants that are remarkably similar to those [the researcher] has experienced . . . Certainly a fieldworker has mastered his role only to the extent that he can help informants to master theirs.

The adoption by our fieldworker of the role of a kind of trainee, then, helped the social workers negotiate their own roles within the research site. They proved, from the beginning, very comfortable with the process of shadow writing. It was common for trainee social workers to have work placements in the offices where fieldwork took place as part of their professional training. So the social workers we observed were used to imparting their professional knowledge about how to do the job of criminal justice social work. Accordingly, they seemed to be put at ease by the technique of shadow writing. Indeed, as we discuss further below, shadow writing proved itself to be a useful technique for exploring the more general routine of criminal justice social work. The discussions about individual Social Enquiry Reports when compared with the shadow reports were revealing more generally about the social reality of criminal justice social work.

However, these benefits of shadow writing were not automatic or inevitable. Stebbins warns that 'demonstrated competence' is also an important condition for rapport and trust. It can be burdensome for informants to teach a researcher about their worlds or work if the researcher comes across as naive, ignorant or incompetent.<sup>21</sup> This created a particular challenge in terms of writing shadow reports. On the one hand, in order to elicit insights from social workers about how and why they had constructed their own reports, the shadow reports needed to contain differences of approach which created a space for social work training. On the other hand, they could not be of such low quality that they would make the training a burdensome task. A balance,

19 Stebbins, op. cit., n. 7, pp. 103±8.

20 Gold, op. cit., n. 4, at p. 222,

21 Stebbins, op. cit., n. 7, at p. 108.

then, had to be struck between over-competence and incompetence. Indeed, the challenge of striking this balance shifted as the project developed. In the first fieldsite, our fieldworker was a genuine newcomer to the field of social work and criminal justice. The challenge, then, was to demonstrate sufficient competence in report-writing to avoid shadow writing becoming a burden for her informants. Her initial months of observation were very important to her preparation (see further below). The expertise of one of the team supervisors (McNeill), both as a former social worker and experienced academic researcher in the field of social enquiry and criminal justice, was also significant. However, when our fieldworker entered the second site, she took with her the knowledge and experience gained from the first site. She could not genuinely claim the status of complete novice. Indeed, the social workers in the second site were aware that she had already spent time researching another local authority's social work team (though they did not know where). Instead, she had to stress her inexperience and need for training in relation to that particular social work team, rather than in relation to report writing in general. The challenge, then, in the second site was to avoid over-competence. It is important to recognize that the demands of mastering one's role as a researcher in the field, and of helping one's informants to master theirs, can alter as the project develops. Relationships and dynamics within the field can change over time. Fieldwork strategies need to evolve to match such changes.

The practice of shadow writing did not begin immediately when entering the field. Fieldwork took place in two sites (discussed further below) and lasted for approximately 5-6 months in each. At the beginning of fieldwork an initial two-month period of observation took place. In addition to building relations of trust with the social workers, these initial months were also important for our fieldworker's preparation for shadow writing. She shadowed individual social workers in the team during this initial period, sitting with them while they worked on cases, observing them in interviews with offenders, sitting in on meetings with other professionals, listening to them as they talked about cases with their fellow social workers, reading their case files and reports, and so forth. In doing so she developed her knowledge of the routine practices of report writing and immersed herself in the local organizational culture. Thereafter, she began writing shadow Social Enquiry Reports herself in light of the observed interviews with offenders and her reading of the case papers.

The discussions between our fieldworker and the social workers around the shadow reports formed the basis of the subsequent analysis of report writing, much of which is reported in this article. Importantly, however, this data also enriched the analysis of how judges and lawyers responded to Social Enquiry Reports. They enabled direct comparisons to be made between the intentions of report writers in individual cases and the interpretations of those reports by judges and defence solicitors. As discussed in more detail elsewhere, this constituted a significant advance in exposing the limits of the communication processes between report-writers and judges.<sup>22</sup>

In the remainder of this article we locate shadow writing within the broader combination of techniques used in our project and present the findings about the routine business of report-writing distilled from its data. First, however, we must set the context and say a little more about the research project itself and about social enquiry within criminal justice in Scotland.

## OVERVIEW OF THE RESEARCH PROJECT

As noted above, in Scotland Social Enquiry Reports are written by generic-ally trained social workers who continue to work within social work departments. The Scottish courts can consider such reports in any case and must call for reports in certain circumstances, including where

custody is being considered in relation to an offender under 21 years of age or who has not been in custody before. The national standards for criminal justice social work in Scotland<sup>23</sup> frame the writing of Social Enquiry Reports in the following terms:

the central task is to provide advice and information about the feasibility of a community disposal or the need for supervision on release from custody by assessing the risk of re-offending, and in more serious cases, the risk of possible harm to others. This requires an investigation of offending behaviour and of the offender's circumstances, attitudes and motivation to change.

The national standards delineate the range of this enquiry which should address issues of offending behaviour, finance, family relationships, education, training, employment, accommodation, lifestyle, physical and mental health, risk of self-harm, and substance misuse.<sup>24</sup>

Scotland has witnessed a significant escalation in the number of reports prepared for the courts. Between the years 2000 and 2005, a total of 184,000 reports were completed. This represents an increase of 70 per cent on the numbers during 1991-1996.<sup>25</sup> The concomitant level of financial investment reflects policy makers' recognition of the pivotal role that the reports play in pursuit of governmental objectives for social work services to the criminal justice system. The reports are both the key entry point to criminal justice social work services and the prime opportunity to promote the use of these

22 The data about how judges and solicitors interpreted specific Social Enquiry Reports is contained in C. Tata et al., 'Informing the Sentencing Decision Process: the Pursuit of "Quality" in Pre-Sentence Reports' (see [www.law.strath.ac.uk/csr](http://www.law.strath.ac.uk/csr) for further details).

23 Social Work Services Group (SWSG), National Objectives and Standards for Social Work Services in the Criminal Justice System (2000) para. 1.6.

24 *id.*, paras. 2.8±2.21.

25 Scottish Executive, 2006.

services. It is easy to see why they attract this level of fiscal investment and policy attention.

Our research focused on Social Enquiry Reports written in relation to offenders who had been convicted under summary procedure - what are known in Scotland as 'summary cases'. These are non-jury-triable cases. Ninety-seven per cent of Social Enquiry Reports are produced for summary cases. Although some summary cases are tried in the District Court, usually presided over by lay magistrates, our project restricted its focus to reports being written for the Sheriff Courts which are presided over by judges (called 'sheriffs').

Although this article focuses on the activities of social workers in writing reports for the courts, our research project had wider ambitions, looking also at how reports were interpreted and used by judges in criminal sentencing.<sup>26</sup> The project used entirely qualitative methods to try to understand the production and use of Social Enquiry Reports. It comprised four complementary parts:

#### 1. An ethnographic study of criminal justice social workers in two sites

'Southpark' and 'Westwood' are both situated within areas which, relative to the rest of Scotland, are socially and economically deprived. Both areas are marked by high unemployment, high numbers of households in receipt of key income benefits, and high levels of recorded crime. The routine work of Westwood's team was managed by two senior social workers, each of whom supervised a number of social workers, and overseen by a manager. In Southpark, the criminal justice social work team was headed up by a service manager, though day-to-day report writing was carried out by two senior social workers and their more junior staff. In both sites, the social work teams primarily wrote reports for their local court.



As we noted above, fieldwork lasted for 5 to 6 months in each site. In total our fieldworker closely observed 53 cases over both sites. In 29 of these cases she additionally employed the technique of shadow writing. The fieldworker wrote a daily diary which was sent to the research team on a weekly basis. Two members of the research team with a particular interest in criminal justice social work (McNeill) and street-level bureaucracy (Halliday) took the lead in discussing the fieldwork diary with the field-worker. This was usually achieved via email on a weekly basis, and conference telephone calls on a fortnightly basis. The team as a whole met quarterly to review the progress and direction of the project.

After the fieldworker left the field and preliminary analysis of the data had taken place, she re-entered the field to conduct follow-up interviews with all the social work staff. These follow-up interviews provided an opportunity to test some themes which were emerging from the write-up.

26 Tata, *op. cit.*, n. 22.

## 2. An observational and interview-based study with Sheriff Court judges

In sites corresponding to Southpark and Westwood, we examined the interpretation and use of reports in sentencing. This included a follow-through of specific reports whose preparation had already been observed (five cases in total). Seventeen post-observational interviews were conducted with a total of 13 sheriffs. Additionally, interviews were conducted with defence solicitors before and after those sentencing hearings.

## 3. Seven focus group discussions involving 13 Sheriff Court judges throughout Scotland

These discussions concerned general issues and specific matters relating to four reports, the writing of which had already been observed during the social work phase of the project. The judges were sent the case papers in advance and asked to review them in the same way in which they normally would for sentencing diets.

## 4. Five 'moot' (or simulated) sentencing diets

This involved five sheriffs, relating to four cases, the report-writing for which had already been observed. Pre- and post-interviews with Sheriff Court judges and defence solicitors were also conducted. In total, there were 10 cases for which we had both social work data and sheriff data. Twenty-six sheriffs took part in the project overall.

## **SHADOW WRITING AND STREET-LEVEL SOCIAL WORK**

Although its principal function was ultimately one of creating a space for social workers to unpack their communicative strategies in relation to individual cases, shadow writing, as noted above, was additionally useful in teaching us about street-level criminal justice social work more generally. The focus on specific reports in individual cases offered us a window onto the wider pressures and influences on social work practices. Here, shadow writing operated alongside simple observation and documentary analysis as a complementary ethnographic technique which helped to reveal the social reality of everyday criminal justice social work. In this section, we summarize some of these general findings before moving on to examine our findings about social workers' communicative strategies.

### 1. Role tension in criminal justice social work

Criminal justice social workers face a particular tension in carrying out their professional role. This arises from the fact that the changing social and policy contexts for their work have resulted in a marked shift towards a more risk-based approach emphasizing public protection, while the legal<sup>27</sup> (and perhaps moral) basis of the services they provide, and their professional education programmes, enshrines a welfare approach.<sup>28</sup> This role conflict is also expressed in long-

standing debates concerning how, in social work terms, to define 'the client' of the report writer: is it the court, or the offender, or both?<sup>29</sup> Recent policy has formally settled this question in favour of the court but social workers on the ground still experience much more of a role tension than this allows. Often in our study, social workers were particularly attentive to the welfare needs of their clients. In interviews, for example, they took on the role of supporting and valuing the process of change within offenders, recognizing that efforts to address drug or alcohol use were often very difficult. In other words, in serving the court as client, they were at the same time practicing social work with and for offenders. The welfare inclinations of social workers can also influence the content of report-writing as we will see further below.

## 2. A sentencing mentality

Our data suggests that the routine business of writing reports for the courts invites the social worker to make a sentencing decision. By using the term 'invite' we intend to convey the point that, although report writing does not require social workers to come to a view on an appropriate sentence, it is highly conducive to it, and the social reality is that a sentencing mentality was commonplace within routine practice in our study. We are not suggesting here that social workers somehow forgot their role within the criminal justice system. They were fully aware that their task was to 'assist' the sentencing judge, and they had no pretensions about being able to displace the judge's role. Indeed, they showed a concern to carry out their supportive work with integrity. But in most cases, social workers - at least those with some experience - had a sense of what was an appropriate (or at the very least an inappropriate) sentence for the offence in question. Indeed, social workers' frustrations at the lack of access to corroborative information about the offence at hand (see further below) was in part a frustration at not being able to fully develop and exercise their professional expertise in 'sentencing'.

27 Social Work (Scotland) Act 1968.

28 G. Robinson, and F. McNeill, 'Purposes Matter: The Ends of Probation' in *What Matters in Probation*, ed. G. Mair (2004).

29 G. Moore and C. Wood, *Social Work and Criminal Law in Scotland* (1981).

## 3. Offending, risk, and responsibility

The broad sentencing mentality was operationalized through social workers making a professional judgement about two principal issues: (i) why a person offends; and (ii) the offender's prospects of modifying his/her future behaviour. This professional judgement was exercised by asking, in effect, 'what kind of offender is this?' Social workers looked at offenders' attitudes to their criminal behaviour and their willingness to cooperate in probation programmes which would address offending behaviour and try to support change. A key concern which drove social workers' thinking about risk and responsibility<sup>30</sup> was the extent to which offenders were predicted to be cooperative in probationary programmes. This was an indicator of the viability of non-custodial sentences. The social workers made judgements about how compliant the offender would be and attempted to communicate their judgement to the court.

However, significantly, social workers felt that they laboured under a heavy workload and were required to complete reports within a fairly tight timetable. Under these conditions, the interaction between social worker and offender during the interview took on considerable significance. Compliance in the interview was often interpreted as reflecting compliance more generally. Acts of resistance in the interview were often interpreted as acts of uncooperativeness which represented risk factors in terms of the success of future social work intervention. In other words, social workers had to rely on short-hand methods of making a professional judgement about the longer-term cooperativeness of offenders with social work intervention. Where offenders were judged to be uncooperative, the social worker was less likely to encourage the court to grant a non-custodial sentence. In addition to confirming the continuing pertinence of Lipsky's<sup>31</sup> concept of 'street-level bureaucracy' for the study of social work,<sup>32</sup> it also reveals the paradox which Lacey has noted in relation to the criminal justice system more generally:

Whilst criminal justice power is ultimately coercive, its exercise depends at almost every level on many forms of cooperation and consensus. Without these, the resort to coercion is liable to become both more repressive and less effective . . .<sup>33</sup>

30 This theme is discussed in much greater detail in F. McNeill et al., 'Hysteresis, Risk and Reconfiguration' (paper presented at the Law and Society Association annual conference, Humboldt University, Berlin, July 2007 [oral paper]).

31 M. Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (1980).

32 For recent studies of social work which apply Lipsky's concept of 'street-level bureaucracy', see T. Evans and J. Harris, 'Street-Level Bureaucracy, Social Work and the (Exaggerated) Death of Discretion' (2004) 34 *Brit. J. of Social Work* 871-95; K. Ellis, 'Direct Payments and Social Work Practice: The Significance of "Street-Level Bureaucracy" in Determining Eligibility' (2007) 37 *Brit. J. of Social Work* 405-22.

33 N. Lacey, 'Introduction: Making Sense of Criminal Justice' in *Criminal Justice*, ed. N. Lacey (1994) at 5.

#### 4. The role of trust

Trust between social workers and offenders is another feature of the report writing process revealed by our ethnography. The issue of trust, of course, has emerged as a major focus in the social sciences,<sup>34</sup> often at the macro level, and often in a fairly abstract fashion, particularly when framed as a component of the risk society thesis.<sup>35</sup> At a micro level, however, trust may also play an important role in citizen-state relations. Cowan and Halliday,<sup>36</sup> for example, have noted the necessity of trust (at some level) in the act of seeking welfare assistance and demonstrate the importance of trust in bureaucracy to applicants' decisions about whether to challenge adverse decisions. Equally, however, we can examine the significance of trust to citizen-state relations where the government agency is the trustor and the citizen the trustee. This approach is of significance to our understanding of the writing of Social Enquiry Reports. Trust became necessary in many cases in our study because the offender's account was the major (and sometimes the only) source of information about the offence available to the social worker. Unlike the position in England and Wales, social workers in Scotland do not have access to witness statements and police reports, and the social workers we observed often expressed their frustration about this.

It is important to note that in trusting the offenders to be open and honest, the stakes for social workers were reasonably high. Social workers were very conscious of the routine scrutiny of their work by judges in reading and using their reports. They were anxious not to appear naive or inadequate to other professionals within the criminal justice system, judges in particular. Further, as a matter of professionalism, they were anxious to write reports on the basis of an accurate account of events. Trust in the honesty of offenders was, therefore, a common feature of relations between the social workers and offenders. But this trust could be breached and what is of particular interest for our purposes is how social workers responded to the breach of trust in terms of the writing of reports. Our data suggests that the breach of trust could affect how an offender was characterized by the social worker and alter the aim of the social worker in constructing a report. A feeling of having been duped by an offender, in some cases at least, seemed to lead to a

34 See, for example, V. Braithwaite, and M. Levi (eds.), *Trust and Governance* (1998); P. Sztompka, *Trust: A Sociological Theory* (1999); T. Tyler, and Y. Huo, *Trust in the Law: Encouraging Public Co-operation with the Police and the Courts* (2002); D. Putnam, *Bowling Alone: the Collapse and Revival of American Community* (2000); F. Fukuyama, *Trust: the Social Virtues and Creation of Prosperity* (1995).

35 See, for example, N. Luhmann, 'Familiarity, Confidence, Trust: Problems and Alternatives' in *Trust: Making and Breaking Co-operative Relations*, ed. D. Gambetta (1988); A. Giddens, *The Consequences of Modernity* (1990); U. Beck, *World Risk Society* (1999).

36 Cowan and Halliday, *op. cit.*, n. 15.

more condemnatory narrative on the part of the social worker in the text of Social Enquiry Reports.

#### 5. Simplifying and typifying

In answering the question of what kind of offender they had before them, social workers also applied 'senses of the typical' to help them manage and process the mass of information which came before them. The routine investigative process produced a considerable amount of information which had to be processed into the form of a report within a tight timescale set by the court. In most cases the information portrayed a fairly complex picture of the sort of person the offender was, his/her reasons for having committed the offence, the likelihood of further offences being committed in the future, and the potential benefits of various community-based sentences. A key question for social workers in writing a report concerned the selection of information to include. The report was usually a reduced and streamlined account of all the information gleaned in interview and from other sources. Social workers simplified the jumble of information which made up the raw material of the case, and imposed on it a greater level of coherence. They created, in effect, a simpler and more manageable story about what type of offender they had before them.

We may make a point of connection here with our earlier discussion about the sentencing mentality of the social workers we studied. Developing a simpler story about what kind of offender social workers had before them was practiced in part, we suggest, because of their instinct towards a sentencing approach. Our argument is that the social workers' tendency towards making a 'sentencing decision' as part of the report-writing process required a simpler narrative than that afforded by the full jumble of information at their disposal. This can be understood as a way of making the social workers' sentencing decision a rational process. Decision-making rationality and narrative incoherence are pitched in something of a zero-sum game. Only a certain amount of incoherence in the narrative can be tolerated. In other words, in addressing (either explicitly or implicitly) the questions 'what kind of offender is this?' and 'what is the risk of him/her re-offending?', social workers could not make a rational decision if the evidence was entirely conflicting or too complex for sense to be made of it. Social workers demonstrated a clear concern to construct a reasonably coherent narrative within the report which communicated a clear and logical conclusion to judges.

But our argument here should not be taken too far. Social workers in both sites generally tried to present an accurate picture of the offender. This could involve the inclusion of details in a report which sat in tension with the main thrust of the characterization within the report. Further, the extent to which typification and simplification took place varied between social workers. Our point here is merely that typification and simplification were permanent features of the report writing process. They cannot, of course, be measured but are significant and observable features of report writing.

#### 6. The emotional and moral dimensions of report writing

The above sections about the social reality of report writing all hint at the role of emotions and morality in the report-writing process. It is important to give proper recognition to the emotional aspects of administrative behaviour.<sup>37</sup> Although much of the discourse around social work practice focuses on notions of professional expertise and dispassionate judgement, criminal justice social work is an unavoidably emotional task. Social workers in our study often found cases emotionally engaging. In interacting with offenders, social workers were often faced with harrowing stories - either because of the difficult circumstances of the offender, or the serious nature of the offence, or sometimes both. Emotions usually manifested themselves in the form of sympathy for the general plight of the offender. When this happened the social worker was influenced by the desire to maximize the welfare of the offender. This translated into an attempt to represent the offender to the court in the best possible light as someone capable of reform, and to secure the best sentencing option for them. However, emotions could also manifest

themselves in the form of sympathy for the plight of the victim. This at times translated into a desire for punishment of the offender, producing a condemnatory narrative in the social worker's report. Between these two extremes, of course, lay more complicated emotional relationships and responses.

The emotional response to cases, then, sometimes seemed to influence the extent to which social workers ascribed responsibility for the offence to the moral character of the offender. In this sense, there was something of a dynamic between the emotional and moral dimensions of report writing, though we would not suggest it was not absolute or complete. However, despite the national standards of social work stating that 'phrases which imply moral judgements or which label or stereotype offenders must be avoided',<sup>38</sup> social workers, perhaps unavoidably, made moral assessments about the individual as an offender. In engaging with cases as professional social workers, they also engaged with them as moral and emotional human beings. As one social worker noted:

I think my moral being is obviously at play and I have to be very conscious of it when I'm interviewing people. Usually I'm trying to put it aside to a certain extent but sometimes I feel it's possible to lose something by doing that too

37 B. Lange, 'The Emotional Dimension in Legal Regulation' (2002) 29 J. of Law and Society 197-225. In relation to judicial work, see S. Roach Anleu and K. Mack, 'Magistrates' Everyday Work and Emotional Labour' (2005) 32 J. of Law and Society 590-614.

38 Scottish Executive, National Standards for Social Enquiry and Related Reports and Court Based Social Work Services (2000) at para. 5.1.

much because you can reduce it to technical, pragmatic issues. When you're looking, when you're trying to find out people's attitude to, say, the victim of the offence it's very hard not to have that somewhere in your head. (Westwood: Social Worker 4)

These findings generally support the common theme in socio-legal studies that public officials act as moral agents in their routine work.<sup>39</sup> They reproduce cultural morality as they implement public law.

## SHADOW WRITING AND NARRATIVE

In this section we present our findings about the communicative strategies adopted by social workers in writing reports. It was here that the technique of shadow writing proved itself especially productive as an ethnographic technique. The data underpinning the analysis below was gained through the discussions between our fieldworker and individual social workers, structured around the comparison of shadow reports with real reports, and recorded in the fieldwork diary.

### 1. Persuasion through narrative

Although social workers in Scotland are mandated only to 'assist' the judge in sentencing and cannot recommend a particular sentence in their reports, our data shows that they did try to influence the court towards particular disposals. This was part of the sentencing mentality and links to our discussion above about the moral dimension of report writing. It is important to recognize, however, that social workers' tools of persuasion were limited. Generally, social workers attempted persuasion by telling a story, as it were, about what kind of person the offender was and why he/she had been offending. Persuasion, then, was attempted through the use of narrative. Often this amounted to a narrative of redemption where the social worker tried to present the offender to the court in the best light. Here, the narrative of the report attempted to demonstrate the possibility of the offender becoming a non-offending citizen through social work support. But this was not always the case. Sometimes the social worker attempted to paint a negative image of the offender as someone who was beyond hope or deserving of punishment. Indeed, sometimes the absence of redeemability in the narrative was enough to evince or imply

condemnation. And, of course, between these two opposing ends of the continuum lay more ambivalent or complex stories. Two (contrasting) examples may illustrate our point.

In case WW19, the offender had pleaded guilty to misuse of drugs, carrying an offensive weapon, and theft. He had a long history of analogous

39 See, for example, K. Hawkins, *Law as Last Resort* (2002); Maynard-Moody and Musheno, *op. cit.*, n. 16.

offences and was now in breach of bail, of an existing probation order, and of a release licence. The social worker believed that the offender's drug use explained his offending behaviour. She believed that, despite a history of similar offending, he should be given further probation with a support programme to help him address his drug addiction. At various stages of the Social Enquiry Report, she attempted to build up this picture of the offender, and give various signals to the judge about the appropriateness of this as a sentence. In a section describing the offender's family background, the social worker marked the beginning of his problem with drugs:

[the offender] indicated that his behaviour deteriorated following his stepfather's death and he started abusing illicit drugs at this time.

She also tried to convey the fact that his problems with drugs were not shared by his family and that he had had a supportive environment:

Departmental records indicate that previous family difficulties have mainly focused around [the offender's] drug dependency problems.

Later in the report, she attempted to inform the judge of the offender's need for structured support from probation services:

It would appear that [the offender] would have difficulty in maintaining a heroin-free lifestyle if released from custody without structured support, which would result in relapse and involvement in further offending behaviour . . . [He] is motivated to address his drug addiction and has sound reasons for wanting to do so. However, there remain some concerns that he would not be able to achieve this on his own and would require professional help to do so.

She also tried to convey to the judge that the offender was motivated to address his drug habit and that he wanted help. She did this by noting:

[the offender] was open and honest about his drug use and at our last probation meeting expressed a willingness to engage with the addiction services. However, he was incarcerated before he had the opportunity to meet and discuss his situation with a trained counsellor.

The social worker also addressed the current offences and explained them in relation to drug use:

With regards to the offence of possession of illicit drugs [the offender] advised that he was in possession of these drugs for personal use and that he had intentions of taking them later that day. He stated that he is aware that having illicit drugs on his person is illegal. [He] advised that he had an offensive weapon with him when apprehended and reported that his weapon was used to access locked areas and that he had no intentions of using it to harm persons.

In this report the social worker attempted to tell a story of the offender as a young man who turned to drugs because of personal tragedy, rather than an unstable family environment, who committed crime to feed his habit, who was a threat to property rather than persons, and who was now ready to address his addiction having missed the opportunity to do so previously.

In addition to this 'persuasive' narrative, however, she also included separate information which was, perhaps, dissonant with the narrative of redeemability that she had composed. This was done out of a concern to be open and informative for the judge. So, for example, she discussed

how the offender related to school because she believed it was important to show how he related to authority more generally:

It would appear that [the offender] has had problems with his behaviour dating back to primary school. He reports attending mainstream education but claims to have been excluded from five primary schools due to disruptive behaviour. This continued into his secondary education and as a result of several exclusions he attended a Day Care Unit.

She also felt that it was important to 'alert' the judge to the fact that the offender had been charged with a similar offence which had not yet been resolved. She also discussed the offender's history of offending and breaching probation orders. She was keen to demonstrate to the judge that she was 'not daft' but was, rather, 'living in the real world':

[The offender] has a lengthy offending history to include his early teenage years. He has failed to sustain previous probation orders, has breached his current order for further offending and continues to offend on a regular basis. It is the author's opinion that [the offender] remains at high risk of re-offending if he does not address his addiction difficulties and breaks his cycle of offending behaviour. Given these issues the writer is aware that the court will be considering sentencing [the offender] to a period of custody.

The report for case WW19 and our fieldworker's discussions with the social worker through shadow writing, then, reveal several ambitions. First, the social worker tried to persuade the judge to give a sentence of further probation - a welfarist narrative of redemption; second, she wanted to be open and informative about other relevant information; and, third, in doing all this she wanted to avoid giving the impression to the court of being naive. Indeed, it is interesting to note that she was sceptical about her chances of persuading the judge to grant probation and guessed (correctly as it happens) that the offender would receive custody.

Case WW17 contains an opposing narrative - one of condemnation. The offender was to be sentenced on two counts of breach of the peace relating to domestic violence. The social worker was angered by the offender's attitude to the offence displayed in the interview. As he remarked to our fieldworker, he felt that the offender had shown 'a blatant disregard for the law and for his wife'. He wanted to communicate this attitude to the judge. In his Social Enquiry Report he noted:

Scottish Criminal Records Office information shows that the [offender] has appeared before the court on at least four previous occasions, once for breaching the Environmental Protection Act 1990, twice for Breach of the Peace and the other for a Road Traffic offence. Whilst discussing his previous offences it appeared from his body language, manner, tone and responses to questions posed that his attitude to his pattern of offending was extremely poor. As to the matter before the court [the offender] states that although he pled guilty as charged he was insistent that the whole episode had been blown out of proportion and that his wife's part in the proceedings were malicious due to the bitter acrimony between them. [He] showed no insight, remorse, regret or victim empathy over his actions and barely before the interview had begun articulated to the writer that he only pled guilty in order that the proceedings would be over with quickly and it was his expectation that he would be fined. [He] also indicated that once he has been disposed of it is his intention to divorce his wife and engage in a new relationship. Throughout the interview, [he] went to extreme lengths to deny that he physically assaulted his victim.

The social worker did not discuss a fine as a sentencing option as he did not feel that there was a sufficiently punitive element to it. Instead, he wanted to persuade the judge to give the offender a community service order. This, he stated, had a punishment aspect to it which he felt was suitable to the offence. As this was his preferred option, he discussed it last, noting the 'power of suggestion'. However, the social worker also discussed other matters in the report which were unconnected to his attempt to persuade the judge towards giving a community service order. For example, he gave a fair amount of detail about the collapse of a previous business. The social worker explained that, in recounting his history of employment, he wanted to make it clear to the judge that the offender had done all he could to save his business.

The narrative in case WW17's report is perhaps unusually explicit. The social worker told a story of the offender as a wife-beater who had little respect for his spouse or the legal process. The narrative was aimed at persuading the judge to give a sufficiently punitive sentence (unsuccessfully, as it happens, as the offender, as he had predicted, received a fine). But, just as in case WW19, the social worker also aimed to be informative for the judge's benefit.<sup>40</sup>

Our point about social workers' attempts to influence judges' decisions is that the persuasive nature of the narrative did not overwhelm the report. Social workers had a number of ambitions in constructing the report, some of which were in conflict with each other. Their attempts to persuade were often tempered to an extent by their concern to be open and informative and to maintain their credibility.

## 2. Laying the foundations of narratives

We can see from the above that the attempt to influence was generally curtailed by social workers' inability to straightforwardly advocate for a particular sentencing option. Instead, they had to speak between the lines, or adopt techniques of suggestion. A major concern in this regard was to avoid being seen to mitigate for offenders in their reports. Accordingly, social

<sup>40</sup> The data about how judges interpreted this report is contained in Tata, *op. cit.*, n. 22.

workers included factual details about offenders and their backgrounds in an attempt to portray a personal history or context which might account for offending behaviour or urge greater leniency in sentencing. This was an integral part of the process of developing a reasonably coherent narrative. For example, in case SP14, in order to emphasize background stress in the offender's life and to demonstrate that the offender had responsibilities which would be affected by certain disposals, the social worker mentioned the fact that the offender helped to look after his elderly mother who was unwell. Similarly, in case WW18, in the hope that the judge would take it into account when sentencing, the social worker discussed the offender having witnessed violence between his parents as a child in order to demonstrate the 'chaotic' nature of his background. Or in case SP20, in order to convey to the court that the offender had a role model and was receiving positive reinforcement, the social worker mentioned that the offender's older brother was employed as a chef. Or in case WW16, in order to communicate that the offender was trying to keep out of trouble by doing other things with his day, the social worker noted that the unemployed offender played football for a local club during the days.

## 3. Encoding moral judgements

Another major issue for social workers in developing narratives was that, unlike case WW17, they generally avoided making explicit moral judgements about the offender, preferring to appear to be impartially reporting on the facts of offenders' background, their risk of re-offending and the viability of non-custodial sentencing options. As already noted, this is explicitly required by relevant national standards. It was also encouraged through professional training and socialization. Nevertheless, they did often try to communicate their moral judgements about, for example, an offender's honesty. So, for example, some would use a phrase such as 'the offender claims to be drug-free' (case SP12). By explicitly attributing authorship of the claim to the offender, the social worker was trying to convey the message that she believed this to be untrue. Or, social workers might try to convey their assessment that an offender was generally dishonest by including items of information in a report which contradicted each other. For example, in case SP13 the offender had told the social worker that she had been seeing psychiatric services on and off for 30 years. The psychiatrist, however, had informed the social worker that the offender had been seen by psychiatric services since only 1996. The social worker formed the view that the offender was dishonest. In order to imply that the offender's general account of events might lack credibility, the social worker included the two factual statements side by side without further comment:



[The offender] stated that she has attended various psychiatrists over a thirty year period but continues to struggle to come to terms with her past. Dr X, psychiatrist, commented that according to hospital records, Mrs Y first contacted psychiatric services in 1996 and has had intermittent contact ever since. [Report, case SP13]

Similarly, in case WW20 where the offender was convicted of being in possession of an offensive weapon, the social worker wrote:

Following an argument between [the offender and his partner, the partner] apparently threw some items out of the window and these included a kitchen knife. [The offender] claimed no recall of having picked the knife up. [Report, case WW20]

Earlier in the report, in describing the offender's history of mental health problems, the social worker had written:

[the offender] reports feelings of depression and apathy, irritability, tendency to withdraw and short-term memory loss . . . [The offender's GP] confirmed the above with the exception of the memory loss which she was unable to comment upon. [She] indicated that [the offender] had suffered from significant depression since his illness and that his recovery is impeded by the fact that he has neither engaged with psychiatric services offered nor consistently taken his prescribed medication.

She explained to our fieldworker that in including these two statements she was inviting the judge to 'join the dots' and draw a conclusion about dishonesty - the offender claimed memory loss, but this wasn't confirmed by the GP.<sup>41</sup>

#### 4. The power of suggestion: leaving the preferred disposal to last

Stories require endings. Social Enquiry Reports were no different. We noted above that social workers tried to construct their reports in such a way that they led up to what one described as 'a logical conclusion'. The final section of Social Enquiry Reports often discussed the sentencing options open to the court. Social workers usually discussed their own preferred disposal last. This was a culmination of the report's narrative. As we saw above in our discussion of case WW17, some social workers spoke of this technique as the 'power of suggestion'. Others spoke in terms of leaving a 'last impression' (SP19). Others believed that judges would either skim read the earlier sections of reports, or not read them at all. For them, the final section of the report, and the final statement, was all important. Interestingly, the data that we secured from sentencers suggested that social workers are basically right in these assumptions about how sentencing judges read reports.<sup>42</sup>

<sup>41</sup> id.

<sup>42</sup> This is discussed further in id.

## CONCLUSION

Our study of criminal justice social work shows that social workers tried to influence the sentencing process through the use of narrative in their reports. By developing a reasonably coherent narrative about the offender they attempted to lead the judge as reader to the narrative's logical conclusion. The use of shadow writing revealed that social workers routinely attempted to induce judges to read between the lines of their reports by way of various hints, implications, and other subtleties. The wider findings from our project demonstrate that although judges often understood the basic thrust of a social worker's narrative, in many cases the more subtle communicative techniques were completely missed. Indeed, they could backfire and have unintended effects. The follow-through to sentencing of these observed reports explored this and is discussed elsewhere.<sup>43</sup> But the question begged for the purposes of the current analysis is why

the social workers wrote in a code which arguably only they could understand. It is suggested that they were constrained by the regulatory forces which oversaw the production of Social Enquiry Reports. On the one hand they had national standards which insisted that social workers should make explicit when they were reporting 'facts', rather than 'opinions', and should avoid stereotyping or making moral judgements. Social workers also cared about their credibility within the criminal justice system. They had an eye on what the judge might think of them and their report and were careful not to be seen to be directing or recommending a disposal as appropriate for a particular offender in a particular type of case. Social workers in a sense had to negate what they did during interviews and in writing their reports. They exercised sentencing judgement as a professional skill, bringing to bear all of their knowledge and experience. Yet the regulatory fields in which they operated meant they had to camouflage much of this judgement and embed it within subtle techniques of seemingly neutral communication.<sup>44</sup> Such practices exemplify the compromise social workers felt in regarding themselves as sentencing professionals yet lacking the status within the criminal justice system to openly perform this role.

The prevalence of formal documents in legal processes and the decision making which embodies their production make them an obvious focus for socio-legal research. However, the analysis of documents in isolation from other research techniques, although promising some insight, has important limitations for sociological studies of law.<sup>45</sup> Documentary analysis is often complemented by interviews and observations in order to shed light on some of the complexities which lie hidden beneath what might seem like fairly dry

43 id.

44 A regulatory analysis of criminal justice social work will be explored more fully in a forthcoming publication by S. Halliday et al.

45 R. Banakar, 'Studying Cases Empirically' in Banakar and Travers, op. cit., n. 7.

and routine documents. The technique of shadow writing took us even further in revealing these. By positioning herself as a kind of professional trainee, and in presenting her shadow-reports for assessment, our fieldworker was given important insights into the specifics of the deliberative work and communicative strategizing which produced individual Social Enquiry Reports. We do not claim that a meaningful analysis would have been impossible on the basis of only observation and interview. We employed these techniques also and gained much from them. But our analysis was significantly deepened by shadow writing. It moved us considerably beyond the generalities of discretionary work which is often the limitation of interview-based studies. It opened up to us the subtleties of communication embedded in individual reports and got us deep inside the heads of social workers as decision-makers.