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Social Enquiry Reports and Sentencing

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Abstract

This article describes an analysis of the provision of social enquiry reports, the various sentencing outcomes in magistrates' courts and differences in the level of resources in 34 probation areas. It demonstrates that the level of report provision is strongly associated with the use of probation service administered disposals (i.e. probation and community service orders) but has little effect on the use of custodial disposals. The second part reviews the reasons for the apparent absence of influence in reports on the use of custodial sentences and the ways in which probation officers might enhance their impact on sentences via the preparation of reports, especially in relation to the use of tariff sentences.

The starting point for this examination of the role of social enquiry reports in sentencing was a recent paper by Henn (1979) prepared for a conference of chief probation officers in England and Wales. Henn referred to an issue which has been raised more than once: whether there is any discernible relationship between the level of social enquiry report provision to the criminal courts, and the level of use of various sentences by those courts. Henn concerned herself primarily with the rise in custodial sentencing, and the decline in the number of reports written per probation officer. A recent Home Office Research Study also explored this among other issues (Thorpe 1979) and although hampered by inadequate information in the period studied, concluded that there was no evidence of any effect on custodial sentencing, but that in a number of the probation areas studied, a higher level of report provision was associated with a higher use of probation.

The availability of information about probation service workload has much improved since that of 1973 which Thorpe was using, and this present paper reports further exploration of the same issue, using probation and criminal statistics for 1979, and concentrating primarily, though not exclusively, on magistrates' courts¹ in 34 county areas where police and probation areas coincide.

PART I

Provision of Social Enquiry Reports to Magistrates' Courts and Sentencing Outcome

There is considerable variation in the extent to which magistrates' courts are provided with social enquiry reports. Using as an estimate of provision, the number of magistrates' court reports prepared in each probation area, expressed as a percentage of the offenders sentenced in those courts for indictable offences, a range of provision from 16.3% to 63.3% may be found. Among the types of court for which reports are prepared by probation officers, adult magistrates' courts offer more scope than others for the exercise of discretion about the scale of report provision. The implications of such discretion is the main focus of the first part of this paper.

When this variable provision of reports is compared with sentencing outcomes in the 34 areas (*Table 1*), it is clear that both probation orders and community service orders co-vary with the level of provision of social enquiry reports, but that active and suspended custodial sentences do not. Specifically, there is a very high positive product-moment correlation between percentage social enquiry report provision and the percentage use of probation service administered disposals (i.e. probation and community service orders), ($r = +0.89$).² There is only a very slight positive correlation between social enquiry report provision and percentage use of active custody ($r = +0.14$). Using 1973 statistics, Thorpe (1979) observed this effect in relation to probation orders, but not to community service orders as they were first introduced experimentally in that same year. Thorpe suggested that courts are unlikely to make probation orders without recommendations; and the Powers of Criminal Courts Act 1973 rules out the making of a community service order without provision of a social enquiry report. A Home Office Research Study of community service orders (Pease *et al.* 1977) raised doubts about the extent to which these orders were diverting offenders from custodial sentences. An unpublished study by probation officers in a court duty team in Birmingham Magistrates' Court found corroborative evidence; a deliberate policy of increasing the level of social enquiry report provision achieved the desired effect in terms of increasing the court's use of probation orders, but without any decrease in custodial sentences (Lamb 1981). *Table 1* provides further support for the observation.

The Problem of Reducing the Use of Custodial Sentences

A thorough examination of material available in criminal statistics and probation statistics failed to find any factor or combination of factors which appeared to vary with the use by magistrates' courts of custodial sentences, in spite of a range of use of active custody from 5.6% to 20.1% of all sentences. The inescapable conclusion appears to be that the level of use of custodial sentences is strongly rooted in local sentencing practices, and not readily influenced by the provision of reports. Detailed monitoring at local court level of report provision, recommendations and outcomes may be an essential preliminary stage,

in the identification of any factors which might influence local sentencing practice.

TABLE 1
Provision of Social Enquiry Reports to Adult Magistrates' Courts and Sentencing Outcomes in 1979*

Percentage use by adult magistrates' courts of:	Percentage provision† of S.E.R.s in adult magistrates' courts (est.)			
	9 Areas	9 Areas	8 Areas	8 Areas
	Up to 32.9%	33.0%-37.9%	38.0%-45.9%	46.0% +
Active custody	10.0	11.0	10.1	11.6
Suspended custody	5.9	6.3	5.5	7.3
Active + suspended custody	15.9	17.3	15.6	18.9
Probation order	5.8	7.9	8.5	9.5
Community service order	3.0	4.5	5.0	5.7
Probation + community service order	8.8	11.4	13.3	15.2

(Sources: *Criminal Statistics 1979* (Home Office 1980a) and *Probation Statistics 1979* (Home Office 1980b).

Notes:

* % use of a particular sentence, expressed as a proportion of persons dealt with for indictable/triable either way offences in the adult magistrates' courts for that area.

† "Provision" of S.E.R.s expresses the number of S.E.R.s prepared in a probation area in 1979 for adult magistrates' courts, expressed as a proportion of those dealt with for indictable/triable-either-way offences.

All figures relate to adult offenders only. All custodial sentence figures include committals (under Sections 28 and 29, Magistrates' Courts Act 1952), from magistrates' courts to the Crown Court for sentence.

The Level of Use by Courts of Probation and Community Service Orders

It seems fair to conclude from the evidence presented above that although localised patterns of use of probation and community service orders also exist, those patterns are more susceptible to influence via the provision of reports than is custodial sentencing. The slope of the

regression line linking probation and community service orders to the provision of social enquiry reports suggests that a 10% increase in social enquiry reports to magistrates' courts yields a 2.1% increase in probation service administered disposals (i.e. probation and community service orders). *Table 2* uses as its base the different levels of aggregated use of probation orders and community service orders, in the same 34 probation areas. The range of use of these sentences varies from 6.9% to 17.2%. The absence of variation in the use of custody, whatever the use of these probation outcomes, remains clear. The link between the latter

TABLE 2
*Variations in the Use of Probation and Community Service Orders
by Adult Magistrates' Courts in 1979*

Percentage use by adult magistrates' courts of:	Percentage use by adult magistrates' courts of probation and community service orders		
	9 Areas	16 Areas	9 Areas
	Up to 10.9%	11.0%-13.9%	14% +
Active custody	9.9	11.3	10.1
Suspended custody	6.0	7.1	6.1
Active + suspended custody	15.9	18.4	16.2
Probation order	5.8	7.8	9.5
Community service order	2.9	4.0	4.8
Probation + community service order	8.7	11.8	14.3
Percentage provision of S.E.R.s in adult magistrates' courts	25.6	40.0	47.0
Average number of S.E.R.s prepared per probation officer for adult magistrates' courts	20.0	28.4	31.1
Average number of probation orders on probation officers' caseloads	9.4	10.8	11.3

(Sources: *Criminal Statistics 1979* (Home Office 1980a) and *Probation Statistics 1979* (Home Office 1980b)).

disposals and the level of report provision is confirmed; and the final section of the table appears to contain implications about the workload of probation officers in the various groups of areas. Ostensibly, the workload per officer of probation orders and social enquiry reports prepared for magistrates' courts, is higher in the group of areas where courts' use of probation and community service orders is greatest, and where courts are receiving more social enquiry reports in relation to their throughput of adult offenders.

Workload Variation

An illustration of the possible effect of report provision upon the caseload of probation officers occurs in *Table 3*, which uses caseload and report load figures from the 1979 probation statistics (Home Office 1980b), for all 55 probation areas in England and Wales. Taking the social enquiry reports written by probation officers for the magistrates' and Crown courts in each area as the base, it emerges that those areas with a higher average of reports per probation officer record a higher average caseload of probation orders. The ratio of reports to orders, however, increases as the number of reports increases (or as the number of orders increases). A probation officer working in one of the areas in group A (in *Table 3*) would be supervising one probation order for every 3.7 reports written, whereas in group C the ratio would be one probation order for every 4.5 reports written. However, although it would appear that group C officers have a lot more work than group A officers, preparing more reports and supervising more offenders, their "return" of probation orders is lower, and presumably might continue to diminish. The absence of any comparable "diminishing return" when the relationship between report provision and magistrates' courts use of probation service disposals is examined by use of a scattergram, suggests that *Table 3* reflects an aspect of workload control by probation officers rather than sentencing variations.

This appears to be an interesting parallel to Thorpe's (1979) observation that a higher level of report writing per officer was associated with a lower rate of specific recommendations.

Workload and Resourcing

It would be naïve to assume that the factors examined so far account completely for the variable provision of reports to courts, and their variable use of probation and community service orders. One dimension that needs to be added is that of the level of staff-resourcing in different probation services. The measure of resourcing used was the number of indictable offenders in magistrates' courts, divided by the number of maingrade probation officers, in each of the 34 areas. As might be expected, *Table 4* shows that the level of provision of reports to magistrates' courts varies with the level of resourcing of the probation areas. The relevant correlation is $r = +0.56$. Well-resourced probation areas tend to achieve a higher level of provision which, as *Table 1* and the earlier cited correlations show, is in turn associated with increased use by magistrates of probation orders, and of community service orders, but not with any reduction in use of custody.

TABLE 3			
<i>Workload Variation: Social Enquiry Reports Written and Probation Orders Supervised per Probation Officer in 55 Probation Areas in 1979</i>			
	Number of reports written per probation officer for adult magistrates' and Crown courts		
	GROUP A	GROUP B	GROUP C
	18 Areas	24 Areas	13 Areas
	Up to 38.7	38.8-48.7	48.7+
Average number of S.E.R.s for adult magistrates' and Crown courts	34.7	42.9	52.8
Average number of probation orders per officer caseload	9.4	10.7	11.8
Ratio of S.E.R.s to probation orders per officer caseload	3.7 to 1	4.0 to 1	4.5 to 1

(Source: *Probation Statistics 1979* (Home Office 1980b)).

Does the level of resourcing in fact wholly account for the varying rate of provision of reports? Within the various groupings of probation areas according to their resource levels (number of indictable offenders per probation officer), different rates of report provision can in fact be seen (in spite of the general tendency in *Table 4* for report provision to vary with resourcing). *Table 5*, using these groupings, indicates that the highest provision of reports to courts is indeed achieved by those areas (group Y) which are well-resourced and which give a high priority to report writing (measured by the number of magistrates' court reports prepared per officer).³

Table 5 also appears to demonstrate that even a less well-resourced group of areas (group Z) can promote a high use by magistrates' courts of probation and community service, where they achieve a similar level of provision of reports to those courts. In such instances, the individual probation officers within the less well-resourced areas will be preparing a higher number of magistrates' court reports per capita and carrying a slightly higher caseload of probation orders (10.9), compared with their

colleagues in better-resourced areas (10.2 and 10.7). The caseload of probation orders carried by officers in the remaining group of ill-resourced areas (group X) is substantially lower at 8.7 cases.

TABLE 4
Provision of Social Enquiry Reports to Adult Magistrates' Courts
and the Resourcing† of Probation Areas in 1979*

Resource Index:†	Percentage provision of S.E.R.s in adult magistrates' courts (est.)			Total areas
	Up to 33.9%	34.0%-42.9%	43% +	
Up to 70.9	2	4	7	13
71.0 - 92.9	4	7	4	15
93.0+	5	1	0	6
Total areas	11	12	11	34

(Sources: *Criminal Statistics 1979* (Home Office 1980a) and *Probation Statistics 1979* (Home Office 1980b)).

Notes:

* See note †, Table 1.

† Resource Index = Number of indictable offenders dealt with in adult magistrates' courts, divided by number of maingrade probation officers in the same area.

Another way of addressing the same point is provided by calculating the correlation between the level of social inquiry report provision and the level of probation service administered disposals (i.e. probation and community service orders), *partialling out* the level of resourcing as measured by the ratio of offenders to probation officers. This procedure yields a correlation coefficient of $r = +0.84$. Thus the relationship between social enquiry report provision and use of probation and community service holds up even when the resourcing level is controlled statistically. It does not seem to be the case that an area's level of resourcing alone determines its level of report writing and probation service administered disposals made.

Tarling's (1979) interpretation of the issues surrounding probation resources and the magistrates' courts was that: "... Resources could affect the use of probation. For example, probation officers may exert some influence on the numbers receiving probation by the number they recommend for it. If the probation service feels fully committed and unable to deal with many more probationers, it could reduce the numbers recommended for probation. . . . On the other hand the willingness to use probation may have determined the level of resource available. . . ." (p. 21). While that may be so, Table 5 and the

TABLE 5			
<i>Number of Indictable Offenders in Adult Magistrates' Courts per Probation Officer (Resource Index*)</i>			
		Low (up to 74.9) (well-resourced)	High (75 and over) (less well-resourced)
		GROUP W (n = 11)	GROUP X (n = 5)
Low Report Load† (up to 28.9)	(a) % provision of reports to adult magistrates' courts	35.6%	24.5%
	(b) magistrates' % use of probation/C.S.O. comb.	11.8%	8.8%
	(c) average caseload probation orders per officer	10.2	8.7
	average reports per officer	22.6	23.3
	average indictable offenders per officer	61.6	96.6
		GROUP Y (n = 7)	GROUP Z (n = 11)
High Report Load† (29 and over)	(a) % provision of reports to adult magistrates' courts	52.9%	38.9%
	(b) magistrates' % use of probation/C.S.O. comb.	13.9%	12.9%
	(c) average caseload probation orders per officer	10.7	10.9
	average reports per officer	33.7	34.4
	average indictable offenders per officer	64.3	88.8

(Sources: *Criminal Statistics 1979* (Home Office 1980a) and *Probation Statistics 1979* (Home Office 1980b)).

Notes:

* See note †, Table 4.

† Report Load = Average number of reports prepared per probation officer for the adult magistrates' courts.

statistical analysis cited take issue with the reliance upon recommendations as the key response to work pressure and suggests that in some areas provision of reports can vary in spite of adverse resourcing to produce more probation and community service orders. This effect can apparently be adduced without knowledge of any recommendations in reports provided. The experimental study by Hine *et al.* (1978), discriminated between the effects on sentencing of report provision and of recommendations; sentencers were partially influenced by the provision of background information alone towards the imposition of the sentence recommended, regardless of the nature of that sentence; the actual recommendation was an additional influence.

PART II

The Scope for Influence

The problem posed by the figures cited in the various tables of this paper is not a new one, but it is worth reviewing some of the reasons that have been suggested to account for the apparent absence of probation service influence over the use of custodial sentences. Three key factors may be involved:

- (i) The existence of separate and individual sentencing traditions in different local magistrates' courts;
- (ii) the question of how far probation officers "influence" sentencers by their recommendations, and the possibility that they may be largely anticipating what sentencers would in any event have been prepared to accept;
- (iii) the ability of probation officers to estimate accurately the primary sentencing decision, between a tariff or an individual disposal, may be more crucial than their ability to anticipate the precise sentence likely to be considered realistic.

Local Sentencing Traditions

The study by Tarling (1979) is the most recent to illustrate the importance of local sentencing traditions very clearly:

. . . Perhaps the most significant finding of this study is the degree of importance attached by court officials to establishing and maintaining a consistent policy within their own individual courts and their relative disregard for the policies of their neighbours. If one is considering modifications to court practices it is probably this feature which is the most important one. Indeed, one could, if one wished, see the insularity and durability of court traditions as major obstacles to attaining greater consistency between courts. Any attempts to change existing procedures cannot afford to underestimate the strengths and weaknesses of these traditions. (p. 45)

Other earlier studies, notably Hood (1962), and Young (1979), have compared the characteristics of offenders sentenced similarly in different courts, and found considerable disparities between different courts; disparities which, both studies concluded, led to similar offenders being sentenced quite differently in different courts.

The importance of this first factor, for the probation service, is that any attempt to influence the behaviour of sentencers must be local, and be based upon a sound knowledge of the sentencing behaviour of local courts. In this context, national trends have little significance, and even the earlier tables based on whole probation areas are limited in their value by the extent to which practice within areas may vary.

The Influence of Recommendations

The question of how far probation officers, by their recommendations in social enquiry reports, influence rather than predict the nature of sentencing decisions, is also a complex one. Various studies (see Thorpe 1979, p. 11, for an account of these) have indicated that around 80% of recommendations by probation officers

are "followed". Some writers, notably Davies (1974), and Carter and Wilkins (1967), have suggested that at least one element in this apparent "influence" is a capacity by probation officers to anticipate the sentence most likely to be imposed and to recommend accordingly. Davies in particular suggests a circular influence ("closed loop of influence") between sentencers and report writers, each gradually modifying their own behaviour in the light of feedback received via the decision or recommendation of the other. This explanation fits particularly neatly with the localised nature of sentencing traditions described by Hood (1962), Young (1979) and Tarling (1979).

Three studies may indicate that the definition of a recommendation is crucial, and in particular what the absence of recommendation may mean. Perry (1974) showed the extent of variation in take-up of recommendations, with advice against a supervision disposal being followed most often, in 96% of cases; and a similar result was also identified by Thorpe and Pease (1976). Perry also reported that the most common outcome when the probation officer's report contained no recommendation was a custodial sentence (55%). Hine *et al.* (1978) separated the various types of information about defendants that sentencers would use — social information in reports, information from the police about antecedents and the circumstances of the offence, and the recommendation from the probation officer. Their results indicate at least some degree of influence of recommendations on sentences and suggest that this cannot invariably be explained by probation officers anticipating sentencers' preferences. The study contains some interesting implications for probation officers' recommendations for custodial sentences. It emerged that probation officers' recommendations for custody seemed to be a very powerful (at least) ratification of sentencers' preferences, since all were "followed" in the experiment — a similar finding to that reported in Perry (1974). Hine *et al.* (1978) also showed that out of the 240 sentencing decisions involved in their study, identical numbers of offenders (24) were apparently diverted into custody by the provision of social information and a recommendation, as were diverted from custody under similar conditions.

These various findings appear to suggest that the probation service is blinkered in its preoccupation with the take-up of its recommendations in favour of disposals involving the probation service (probation orders and community service orders in particular). This is only half the picture. Evaluation of the "desired effects" of increasing provision of social enquiry reports should be extended to include the "undesired effects"; that is, the effects following from those instances where recommendations for probation disposals are not followed, or where such recommendations are not made. There is a tempting parallel between the findings of Hine *et al.* (1978) which suggest that probation reports are capable of exerting a strong influence towards probation orders, but also an equal influence towards and against custody; and the conclusions which might be drawn from *Table 1*, that increased provision of reports is accompanied by more use of probation service disposals, but no significant variation in the use of custody. This poses the question, from what other sentence are the increased numbers made subject to probation and community service orders being

TABLE 6
Distribution of Disposals in Adult Criminal Courts in England and Wales: 1970-1979 (Indictable and Triable-Either-Way Offences Only)

	Abs/con. dis' fines, recogns., sen. att. cent.	Probation orders	Community service	Suspended sentences	Committals for sentence S. 28 & S. 29	Det. cen. & borstal training	Imprisonment (Y.P. & adult)	Other* sentences	Total
	%	%	%	%	%	%	%	%	No.
Magistrates' Courts	1970	69.3	8.6	—	8.9	5.1	1.8	5.6	223807
	1971	69.3	9.3	—	8.2	5.0	1.9	5.6	214460
	1972	71.1	9.0	—	7.9	4.5	1.7	4.9	219641
	1973	75.1	8.8	0.2	5.5	4.2	1.2	4.0	214820
	1974	75.9	8.2	0.3	5.7	4.2	1.3	3.9	236517
	1975	75.6	7.6	0.7	6.0	4.1	1.3	4.2	259861
	1976	74.8	7.0	2.0	6.1	3.8	1.2	4.5	269850
	1977	74.7	6.7	2.5	6.2	3.4	1.2	4.8	277580
	1978	73.0	6.6	3.1	6.3	3.4	1.4	5.1	271995
	1979	70.4	7.2	3.6	6.9	3.7	1.4	5.8	280048
Higher Courts	1970	18.3	11.3	—	15.5	—	13.5	40.1	36034
	1971	21.2	11.6	—	15.1	—	12.9	37.9	38596
	1972	22.0	11.9	—	15.8	—	12.2	37.0	41795
	1973	25.6	9.2	0.2	18.0	—	10.9	34.0	43488
	1974	25.9	9.4	0.5	19.3	—	11.2	32.5	45532
	1975	21.5	8.9	1.2	18.4	—	15.1	33.7	62048
	1976	20.6	7.7	3.5	18.4	—	14.1	34.6	65018
	1977	20.4	7.1	4.7	18.3	—	13.6	35.2	65219
	1978	21.9	6.2	4.9	18.8	—	10.2	36.3	55582
	1979	20.3	5.4	5.0	19.4	—	9.4	38.6	49686

(Sources: *Criminal Statistics 1970-79* (Home Office 1971-80)).

Note:

* Other sentences include hospital orders, restriction orders (M.H. Act 1959), guardianship orders, deported, one day's imprisonment, care orders.

diverted, and the logical conclusion can only be that diversion is mainly from fines, discharges, and other non-custodial sentences. The sentencing trends of the 1970s which can be identified in *Table 6* appear to support this conclusion. There may be more optimistic alternatives to this explanation, one of which would be that there is a constant trend towards greater punitiveness in sentencing, and that probation disposals are in fact being used to diminish that tendency. Even then, the possible corollary that at the less serious end of the spectrum, probation disposals are used for offenders who previously would have received a fine or a discharge is a worrying one. The extent to which such an effect can be laid at the door of the probation service is, however, less clear.

Less speculatively, the probation service should pay closer attention to the recommendations most often associated with custodial sentencing: recommendations for custody, and the "absence" of a recommendation, which in many cases may in effect be a recommendation for custody. The findings of Hine *et al.* (1978) suggest that at worst as many as half those subject to custodial recommendations would not have received a custodial sentence if a report had not been prepared. Perry (1974) shows that just over half those for whom no recommendation was offered were also custodially sentenced, and for this group the same prescription seems desirable. It may be worth exploring whether the probation service can increase its level of positive recommendations for probation service and other non-custodial disposals, not simply in the quantitative sense, but in the proportionate sense, so that a higher percentage of all reports prepared contain a positive recommendation for a probation service or other non-custodial disposal; rather than simply to prepare a larger number of reports without altering the proportion with recommendations for custody, against probation or community service, or lacking any recommendation.

Primary Choice: Tariff or Individualisation

The third factor which may play a part, particularly in the differential take-up of recommendations, is the relationship between the primary sentencing decision, and the content of the social enquiry report. Thomas (1979) indicates that the sentencer is presented with a choice:

he may impose, usually in the name of general deterrence, a sentence intended to reflect the offender's culpability, or he may seek to influence his future behaviour, by subjecting him to an appropriate measure of supervision, treatment or preventive confinement . . . having made this primary decision between what is conventionally, if inelegantly, known as a tariff sentence and a sentence based on the needs of the offender as an individual, the sentencer must apply the appropriate body of principle to determine the precise form of sentence or measure he will adopt. The principles applicable to tariff sentences differ from those which govern the selection of individualised measures. . . . It follows that a sentence which would be considered inappropriate as an application of tariff principles may be considered entirely correct if it is seen as an individualised measure based on the court's assessment of the needs of the offender as an individual, and the converse is equally true. (pp. 8-9)

The probation officer may be writing a report before this primary decision has been made, in chronological terms, and he may therefore be required to anticipate it; or he may know the decision has been made, without necessarily being aware of its nature. Hardiker's (1979) study of explanations given by probation officers for their recommendations demonstrates that they distinguish tariff and individualised sentencing in their report writing process, and various studies indicate that the probation officer is capable on the basis of quite limited information about the nature of the current offence, and the offender's prior criminal record, of making a prediction about the most likely sentence (Carter 1967). Carter and Wilkins (1967) showed considerable agreement between probation officers and judges in the United States:

as to the significance of certain factors and characteristics for decisions relating to probation or imprisonment recommendations and dispositions. (p. 509)

A similar finding is reported in England by Thorpe (1979).

The writing of a social enquiry report, however, also involves the probation officer in establishing personal contact with the offender, possibly his family, and his wider circumstances. Other influences are therefore, brought to bear on his original perception of the most likely outcome; his personal assessment of the offender is one of these, and it may involve a strongly experienced reaction (either positive or negative). Alternatively, a personal relationship may pre-date the requirement to write a social enquiry report, e.g. where the offender is already subject to supervision or after-care; the same potential exists for personal contact to interact with the original sentencing prediction, in a variety of ways. Personal contact may reinforce the prediction about likely sentence, or it may lead to a modified or even contradictory view of a more appropriate sentence. It seems likely that individualised considerations will become more dominant in the officer's mind. Perry (1974) found that probation officers estimated a probation/supervision outcome in 5.5% of cases, but recommended probation/supervision in 31.3%; they estimated that 27.9% of subjects would be custodially sentenced, but a custodial sentence was recommended for only 10.7%. Initially the officer might estimate that he was reporting on an offender whose present and past behaviour was likely to attract a tariff sentence. Upon investigation of the offender's personal circumstances, however, the probation officer might decide that it was important to seek an individualised outcome, because the offender's behaviour or circumstances warranted intervention of a helping or supervisory nature. Alternatively, a preliminary estimate of an individualised sentence might be followed by a certainty, upon closer acquaintance, that the offender is not likely to respond to a probation order or other forms of "help".

How the probation officer handles the congruence, or lack of congruence, between his estimate of the likely sentencing decision, and the recommendation he comes to consider appropriate, may be very important for the potential influence of the report upon the actual sentence imposed. If his estimate is fairly accurate, and the recommendation made is congruent, in that they are both individualised or both tariff,

then it seems more likely that the recommendation will be followed, than if they are not congruent. In either case, the nature of the argument used to support the recommendation may be crucial to the success of the recommendation. To identify the nature of the argument needed, requires the probation officer to return to his original estimate of probable sentence, and to review it in two stages: firstly, what primary sentencing decision it anticipated, and secondly, what level of either individualised or tariff sentence seemed likely. He must then compare this with his proposed recommendation, and consider what order of argument is needed to influence sentencers to move from what he expects them to impose to what he is recommending: a first order change (requiring a change of primary decision from tariff to individualised or vice versa) would probably require a different type of supporting argument than that needed for a second order change (where the probation officer wishes to recommend a sentence which assumes the same primary decision, but seeks an outcome of a more or less severe nature). Thus, where the probation officer expects a prison sentence but wishes to recommend a probation order, he needs to identify whether the prison sentence in this case results from a primary tariff decision (and for the sake of the argument it will be assumed that it does, although prison sentences for individualised reasons are quite possible). Since the probation order recommendation assumes a primary decision towards individualisation, the main thrust of his argument will need to be towards changing the primary decision. Only subsequently should the means of achieving positive influence on the offender be adduced.

In good social enquiry report practice it is probably evident that this kind of process has taken place, although the rationale for the strength and type of argument used is probably not always consciously identified. Probation officers and sentencers often refer to the importance of "credibility" in social enquiry report practice; it often seems, however, that the "credibility" to which they refer is of a rather simple kind, and consists of a little more than congruence between recommendations and sentencing decisions. To achieve a level of credibility appropriate to those claiming to offer professional advice to sentencers requires the presentation of recommendations in a way which takes account of how far they are congruent with the estimated sentence, but should not require constant agreement between report writer and sentencer. What credibility does require, where such agreement does not exist, is an appropriate investment of effort in acknowledging and accounting for the lack of congruence and for the alternatives proposed. This assumes a need for conscious and knowledgeable analysis of sentencing issues far wider than the individualised concerns of the probation service.

This distance between the estimated sentence and the outcome sought by the probation officer will vary; the probation officer seeking to influence the sentencer towards a substantially different outcome can obviously take considerable credit if his efforts are rewarded. Perhaps the most difficult change to achieve is that from a tariff-based prison sentence to an individualised probation order, and a probation officer should not feel discredited if it is not readily or regularly achieved.

It may be partly a recognition of the difficulty in achieving this particular type of change that has led to suggestions that the probation order be modified to incorporate elements more characteristic of tariff sentences than individualised sentences — surveillance, other forms of limitation on liberty as conditions of a probation order, a more rigorous approach to breaches of requirements, separation of the requirements for contact from the helping content. Such modifications are invariably proposed as a means of enhancing the credibility of probation orders as custodial alternatives, but seem to lose sight of two important factors. First, as Tarling (1979) demonstrates, the improbability that the probation order can really establish itself as a credible tariff sentence in the eyes of sentencers: "Courts' use of probation was not related to their use of any other disposal. This may be due to magistrates' view of probation as a form of 'treatment', whereas other disposals can reflect other sentencing aims. It could mean that the decision to place an offender on probation is taken to meet his individual needs, and is not considered merely as a more or less severe alternative to discharge, fine, custodial and suspended sentence" (p. 11). Second, there is the danger that in seeking to establish the value of the probation order as a tariff sentence, its value as an individualised sentence may be diminished. There is evidence from Fairhead (1981) that this value is not being fully exploited; from her study of persistent petty offenders serving prison sentences: ". . . the research . . . indicated that concern for the welfare of the offender also contributed to decisions in respect of members of this group . . . such that some decisions were a response to lack of alternative provision appropriate to individuals' needs and circumstances . . . it leads to a disadvantaged group being subjected to some degree of punishment and limitations on their freedom, in order that their needs be met. . . . In order for alternative decisions to be made, therefore, welfare provision that is as far as possible separate from the controlling and punitive function of the criminal justice system is required" (pp. 69-70).

Fairhead pursues her argument with a plea for specific facilities to enhance the work of the probation service, such as day centres and drying out facilities. In the process she refers to the desirability, in some instances, of incorporating a condition of attendance at a day centre into a probation order, as a means of meeting "the court's requirements that offenders be supervised . . ." (pp. 70-1). This comment serves, perhaps in a way that was not intentional, to exemplify how the function of control as an adjunct to a welfare/helping provision (i.e. individualised) comes to be confused with the function of control as a limitation upon liberty (i.e. tariff). It is correct to assume that in order that some offenders can take advantage of the help available from the probation service they may need to be bound in a contractual agreement concerning the need for supervision, its purpose, and the means by which it will be achieved. This is not, however, only or always necessary in the case of offenders who would otherwise be sentenced to imprisonment. This form of control should be related to the offender's capacity to make use of help. Fairhead's proposal to introduce additional requirements to satisfy sentencers about the level of control offered is thus inconsistent with her own

criticisms of the "confusion of function" involved in sending some offenders to prison to provide them with shelter, food and help.

Furthermore, to introduce control-as-punishment into the probation order to enhance its "credibility" as a substitute for a high-tariff sentence such as imprisonment may not only fail to achieve that effect (as the history of the community service order already suggests); it may in the process of encouraging use of the probation order as a tariff sentence, actually diminish the traditional credibility of probation as a means of helping, whether for persistent petty offenders who could be kept out of prison, or for others whose primary need is for skilled help and support (even if sometimes mediated by an appropriate degree of control-as-an-adjunct-to-help). The extent to which it would run counter to the social work base in probation officers' training and hence professional skills must not be ignored, either. These forms of control should be carefully distinguished and kept separate; it should be recognised that each has its place on either side of Thomas's sentencing dichotomy.

Conclusions

This examination of social enquiry report provision to criminal courts and of various studies of the influence of reports upon sentencing, suggests the following main conclusions:

(i) There is no evidence that increasing the provision of social enquiry reports affects the courts' use of custodial sentences. There is, however, clear evidence of a link between a higher provision of reports and a higher level of use of probation and community service orders.

(ii) In order to test the influence of the probation service over sentencing, detailed monitoring at local court level of recommendations made and of outcomes is essential. Specific resource provision is necessary to enable this analysis to be undertaken in a rigorous way. This may have important implications for the types of offenders on whom the probation service would consider it most appropriate to prepare social enquiry reports.

(iii) Provision of reports seems at present to be connected to a large extent with "gatekeeping" for the probation service caseload; and considerations about recommendations, therefore, largely revolve around whether or not to recommend probation orders or community service orders. A more strategic approach towards the range of possible disposals could prove more useful. For example, more impact on custodial sentencing could perhaps be achieved by limiting those recommendations which are most often associated with custodial sentences (recommendations for custody, and the absence of recommendations).

(iv) It is important to identify a conceptual framework which assists probation officers to influence sentencing more widely, since broader considerations than the ability of the probation service to offer help or opportunities to the offender, will be involved. The framework which is suggested as offering a very useful prescription is Thomas's (1979) distinction between the sentencer's primary decision to impose a tariff sentence or seek an individualised disposal. The probation officer must consciously analyse the congruence between his own opinion as to the

most suitable outcome and the estimated primary sentencing decision; and lack of congruence — if it exists — may need to be accounted for in a credible way. This may involve not only relevant arguments, but the capacity to present these convincingly by attendance at court.

(v) The application of Thomas's framework to social enquiry reports also requires the probation officer to discard the idea of a single "tariff" of sentences, and to think in terms of a double range of sentences — a tariff range and an individualised range. Influence upon decisions within the range seems more likely to be achieved, than changes in the primary sentencing decision (especially that from tariff to individualised). Specific types of arguments may therefore be required for the order of change sought.

NOTES

- ¹ Magistrates' courts show more variation in both availability of social enquiry reports and the use of different sentences, than does the Crown Court. It is also likely that where probation areas record S.E.R.s as written for magistrates' courts, most of these will be for courts within the areas' boundaries; a higher proportion of Crown Court reports would probably relate to cases heard outside a probation area boundary.
- ² Readers not familiar with the statistical techniques used and reported here and elsewhere in this article, can, if they wish, refer to standard texts on statistical analysis, such as Guilford (1965), where they will find detailed explanations of the terms used.
- ³ The possibility must exist that priority to report writing is in turn a product of the probation officer's total workload, but that issue, while worthy of further investigation, is not within the scope of this paper.

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