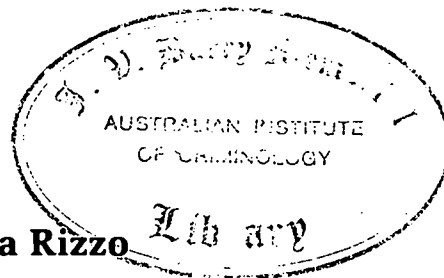


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**QUESTIONING
THE
MAGISTRATE'S DECISION:**

SENTENCING
AND
CONVICTION APPEALS
FROM
THE LOCAL COURT



Concetta Rizzo

New South Wales Bureau of Crime Statistics and Research
Attorney General's Department

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Preface

This is the second of two reports on studies conducted by the Bureau examining the appeal process. The first report examined appeals to the Court of Criminal Appeal against sentence severity. The present study examines characteristics and outcomes of appeals against convictions recorded and sentences imposed in Local Courts in New South Wales. An important difference between the two types of appeal is that the appeal to the District Court is regarded as a hearing "de novo". In other words, it is a complete rehearing of the case. Magistrates are, partly for this reason, not afforded the level of analysis and feedback on their decisions which forms a routine part of the system of appellate review at higher levels of the court system. The difficulties this is said to cause have been a recurring subject of legal debate.

The importance of the appeal process from Local to District Court is, difficult to overstate. To begin with, over 90% of the penalties imposed on individuals for criminal offences are imposed by Local Courts. Any influence exerted by the District Court on the sentencing decisions of magistrates is bound to be very broad. Moreover, though relative to the workload of Local Courts, appeals against Local Court sentencing or conviction decisions are infrequent (constituting less than 3% of decisions handed down) they constitute a very significant part of the workload of the District Court. For this reason it is interesting to enquire to what extent those decisions are upheld by the District Court. It is also interesting to enquire what factors affect the likely outcome of the appeal, whether on the issue of sentencing or conviction.

The study has turned up some surprising findings. Although only approximately 1 in 30 Local Court decisions on sentence or conviction is appealed against, the success rate of these appeals is of the order of 75%. This compares with a success rate of 25% among appeals on sentence heard in the Court of Criminal Appeal. No particular factor seems to be associated with the likelihood of a successful appeal, including, surprisingly enough, whether the defendant was legally represented or not. On the other hand, the nature of the conviction and penalty imposed by the Local Court does seem to play a role in determining the likelihood of an appeal itself. Appeals are much more common among those charged with a serious driving offence and those on whom a gaol sentence has been imposed.

The high success rate of appeals against Local Court decisions raises, once again, the question of whether some more formal system of appellate review of Local Court sentencing and conviction decisions should be introduced. That question is given greater prominence by the fact that the prosecution now has a limited right of appeal against Local Court decisions. Of crucial importance to this issue is the question of whether Local Court decisions are usually overturned only with the admission of fresh evidence on appeal. Clearly, magistrates cannot take guidance from appellate decisions on what amount to a different class of facts. The Bureau hopes to pursue this question in a follow-up of those cases where Local Court decisions are overturned by the District Court.

Dr. Don Weatherburn.
Director

Acknowledgements

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At the time of designing the study, a number of people were consulted and their contributions are also gratefully acknowledged:

His Honour, Judge Staunton, Chief Judge of the District Court, Mr. Clarrie Briesse, Chief Magistrate, Mr. Paul Byrne, then Law Reform Commissioner, New South Wales Law Reform Commission, Mr. Tom Kelly and Mr. Rob Arden, then of the Legal Aid Commission, Mr. Brian Roach, then Solicitor for Public Prosecutions and Clerk of the Peace and Mr. Bob McClelland, Director, Criminal Courts Registry.

His Honour, Judge Knoblanche kindly allowed the researcher to observe the proceedings of appeals in his court.

I would particularly like to acknowledge the work done by Mr. Bruce Jenkins, both while he was at the Office of the Solicitor for Public Prosecutions, and later, in the Management Information Services Branch of the N.S.W. Attorney General's Department, in providing information from the Case Tracking System which formed the basis of data used in this study.

Within the Bureau, a number of people contributed to the study. The study was initiated by Dr. Don Weatherburn. Ms. Lesley Leslie was responsible for the coding. Mr. Jason McDonald, Ms. Anita Mak, Ms. Anne-Marie Hume, Ms. Alix Goodwin and Ms. Julie Stubbs were involved in the administration of the study. Mr. Johnny Bruce was responsible for the design and production of the report. Dr. Don Weatherburn, Dr. Tom Robb and Ms. Bronwyn Lind read drafts of the report and provided valuable comments.

I also appreciate the comments made on drafts of the report by Ms. Angela Dane, Mr. Paul Byrne then of the New South Wales Law Reform Commission and Mr. Barrie Thorley, then Chief Executive of the Judicial Commission of New South Wales.

Main Findings

- ◆ There was approximately one appeal against sentence or conviction for every 30 cases dealt with in Local Courts.
- ◆ Approximately 75% of the appeals determined were successful.
- ◆ In approximately 40% of appeals on all grounds the conviction was quashed.
- ◆ Defendants were more likely to lodge an appeal if they had been sentenced to a prison term in the Local Court.
- ◆ Serious driving offences were over-represented among appeals compared with Local Court appearances. Drink-drive offences were also over-represented but not to the same extent. Drink-drive offences accounted for around one third of appeals.
- ◆ Approximately 25% of the appeals lodged were abandoned, either withdrawn or the appellants failed to appear.
- ◆ Drink-drive offences were not significantly over-represented among withdrawn appeals.
- ◆ Legal representation did not increase the chances of a successful appeal, either against conviction or sentence.
- ◆ Legally represented cases did not take longer to dispose of on appeal than cases in which the appellant was not legally represented.

Background¹

General

Appeals from the Local Court to the District Court differ from appeals to the Court of Criminal Appeal in a number of ways. At the time of the study only defendants, not the prosecution, had a right to appeal.² A defendant who is convicted is entitled to a rehearing of the case before a District Court judge, without any need to demonstrate an error on the part of the magistrate.

The appeal may be lodged as an all grounds appeal (i.e. an appeal against both the conviction and the severity of the sentence) or an appeal against the severity of the sentence alone. A plea of guilty before the magistrate does not bar an appellant from lodging and prosecuting an appeal on all grounds. An all grounds appeal can be confined to a severity appeal should it appear that a plea of guilty is appropriate.

In the case of an all grounds appeal, the presiding judge decides if there is sufficient evidence to prove beyond reasonable doubt that the appellant is guilty. The judge is the tribunal of fact and law. If the appeal against conviction fails, the appeal proceeds as a severity appeal with the judge determining the penalty. In all appeals the judge has the power to reduce, confirm or increase the penalty imposed by the magistrate.

Although there is no statutory right to withdraw an appeal, in practice an appellant may seek leave of the presiding judge to withdraw the appeal. Leave will usually be granted and the appeal will be dismissed and the original orders of the magistrate confirmed.

A judge may dismiss an appeal where the appellant fails to appear in court to proceed with the appeal.

The principal avenue of appeal from a judge hearing an appeal in the District Court in a criminal matter is by way of case stated, on a question of law, to the Court of Criminal Appeal. There is no further appeal on issues of fact arising on appeal.

Procedure for lodging appeals

The appeal may be lodged within 21 days of the conviction or order appealed against, at any Local Court in New South Wales. In the case of appellants in custody, the appeal may be lodged with the prison authorities. There is a standard form of Notice of Appeal. After the 21 day period has lapsed, a defendant may apply, within three months of the conviction or order, to the District Court for leave to appeal.

Conduct of the appeal

A single District Court judge presides at appeal cases heard in the District Court. In the metropolitan area, judges are on a roster for appeals and usually sit on appeals for one month at a time. Appeals from country Local Courts are heard in the District Court, sitting from time to time nearest the Local Court where the conviction or order was made. Judges hear appeals as part of their circuit.

In the case of an all grounds appeal, the appeal proceeds by way of hearing "de novo" (i.e. anew) before the judge. The depositions (or written statements) that were taken before the magistrate in the Local Court hearing may be read by the judge as evidence in the appeal if the appellant wants this to be done. The appellant may consent to the complete depositions being read as evidence on appeal, or limit this to the depositions of certain witnesses.

¹Information presented in this section is based on Chapter 1.7 of the *Lawyers Practice Manual (N.S.W.)* entitled "Appeals to the District Court in Criminal Matters", written by Peter Johnson, and has been supplemented with advice from a number of practitioners in, and administrators of, the court system who were consulted during the course of the study.

²This was the situation at the time of the study. It was altered in November 1988. It is now possible for the prosecution to lodge an appeal against the sentence to the District Court.

Legal aid in appeals cases

The means test applicable in criminal matters in Local Courts applies also on appeal. In addition, a merit test applies in that there must be reasonable prospects for success on appeal. The Legal Aid Commission represents those adult appellants who are legally assisted, in the Sydney metropolitan area, Gosford, Newcastle and Wollongong. The Commission assigns legal aid to private practitioners in relation to appeals outside those areas and in all appeals from Children's Courts. The Legal Aid Commission does not keep aggregate information on appeals in which it is involved. Officers from the Legal Aid Commission estimated, however, that they represent about 60% of defendants who bring appeals in the city and metropolitan area.

Methodology

Information available

1. The file papers

The Criminal Courts Registry acts as the registry for appeals to the District Court. It maintains a file for each appeal lodged. Each file contains, among other papers :

- the Notice of Appeal to the District Court
- the charge sheet
- the running sheet of the magistrate
- the transcript of the case heard in the Local Court (in the case of an appeal on all grounds)
- the letter returning (annotated appeal brief sheet).

The Notice of Appeal provides information on :

- the appellant's name and address
- the offence which is the subject of the appeal
- the date of conviction or order
- the name of the magistrate and the location of the Local Court
- the District Court where the appeal is to be heard, and
- the grounds of appeal.

The charge sheet contains information relating to the appellant and the offence with which the appellant was charged. As well, the appellant's name and address, sex and date of birth are recorded. Information on the offence consists of a description of the offence, the act and section under which the charge was laid and the name and address of the informant. It also includes the date and time of apprehension and the name, rank and position of the apprehending officer.

On the magistrate's running sheet, the magistrate records certain details of the case. This includes the date and the outcome of the hearing and the penalty imposed. There is also space for the magistrate to record such data as plea and legal representation.

The appeal brief sheet records information on :

- the grounds of the appeal
- the appellant's date of birth
- the appellant's name
- the District Court where the appeal is listed
- the offence and the date of commission
- the Local Court and the date of conviction, and
- the order of the Local Court.

When the appeal has been finalised, the reverse side of the appeal brief sheet is completed with the following information :

- the name of the judge hearing the appeal
- the date the appeal was heard

- the location of the District Court
- the judge's orders.

Information is also recorded on the file cover. This includes the type of appeal, the progress of the appeal, the judge's decisions at each hearing and the judge's final orders.

2. The computerised case tracking system

Appeals are included in the computerised case tracking system maintained within the Attorney General's Department. The system has been set up so that any individual case can be called up and its stage of processing, as well as some of its history, provided. Only a subset of information contained in the file papers is recorded on the computer system. At the time of the design of the present study, aggregate information on appeals was not produced from this system as a matter of course.

Study design

The study has been designed to utilise information from both the computerised case tracking system and the file papers to provide a picture of appeals from Local Courts in New South Wales.

The first part of the study is based on all appeals on the case tracking system which were "closed" in 1987.³ The first part of the study consists of the analysis of aggregate information from these cases on a small number of items of interest which could be extracted from the computerised system. The information on appeals closed in 1987 is compared with information on appeals closed in 1986, also available from the case tracking system.

For the second part of the study, a sample of the appeals cases finalised in 1987 was selected for further analysis. The total number of appeals cases closed in 1987 (5137 cases) was divided into three groups (strata). Appeals were first divided into all grounds appeals and appeals against sentence. The appeals against sentence were then further divided into appeals against sentence involving drink-drive offences and those involving all other offences. These strata were chosen, firstly, because it is necessary to look at both all grounds appeals and appeals against sentence. Within appeals against sentence, drink-drive offences were of particular interest as they represent a substantial proportion of appeals against sentence. In each of the three strata, a random sample was selected by computer which provided file numbers on the cases included in the sample. The three groups are shown in Table 1, which also shows the number of cases in each group in the population and in the selected sample.

³This means that the Office of the Director of Public Prosecutions had administratively completed the case and the relevant open file on the case tracking system was closed. For 95% of the cases in the study court action was completed in 1987. For the remaining 5% of cases court action had been completed earlier than 1987.

TABLE 1
Strata: population and sample sizes

Type of appeal	Closed in 1987	Selected sample
All grounds appeals	1745	251
Against severity - Drink drive offences	1302	183
Against severity - Other offences	2090	335
Total	5137	769

Of the 769 appeals selected in the original sample, 685 (89%) were in the final sample. The final sample was smaller than the original sample because some files were not accessible. Files were retrieved from each of the regional offices of the Solicitor of Public Prosecutions namely Sydney, Parramatta, Newcastle, Wollongong, Lismore, Wagga and Dubbo. The proportion of files located at most of the regional offices was high and very few could not be located at all. Unfortunately, the Parramatta office was in the process of relocating its files at the time of the study and a number of files were not accessible. This accounted for the majority of files not located.

Data collection

For each appeal, data were transferred from the file papers to a coding form. The coding form was divided into four sections in which information was recorded relating to ;

1. The Local Court case
2. The District Court appeal
3. Detail of the penalty imposed at the Local Court and on appeal
4. Each offence.

Most of the information from the court files was derived from the letter returning (annotated appeal brief sheet) and from the file cover. Information on the plea entered at the Local Court was only recorded on the magistrate's running sheet. In most cases it was not necessary to refer to the information recorded on the Notice of Appeal, or to details recorded on the charge sheet. The coding of the type of appeal, that is whether the appeal was all grounds or against severity, was based on information recorded on the appeal brief sheet and/or the file cover⁴.

TABLE 2
Type of appeal 1987

Type of appeal	Closed in 1987	%
All grounds appeals	1745	35.0
Against severity - Drink drive offences	1302	25.3
Against severity - Other offences	2090	40.7
Total	5137	100.0

⁴It is possible that some appeals were heard as appeals against sentence severity while still being recorded as all grounds appeals in the court papers. The effect of this in the current study would be to overstate the number of all grounds appeals and to understate the proportion of all grounds appeals where the appeal was upheld and the convictions were quashed.

Results - All Appeals Finalised in 1987

This section presents information available from the computerised case tracking system. In 1987, 5137 appeals were recorded as closed on the case tracking system. (See Footnote 3 for an explanation of cases closed.) Approximately one third of the appeals were all grounds appeals and approximately two thirds were appeals against severity. Appeals against severity relating to drink drive offences comprised a quarter of all appeals finalised (see Table 2). In addition, 194 of the 1745 all grounds appeals related to drink drive offences, making a total of 1496 appeals (29%) which related to drink drive offences.

More than one fifth of appeals were conducted in Sydney (see Table 3). More than half of appeals (57%) were heard in the Sydney metropolitan area (the regions of Sydney, Parramatta, Liverpool and Penrith). A further 28% of appeals were heard in Newcastle and Wollongong. The remainder were heard in the country regions of Lismore, Dubbo and Wagga. While only 21% of all appeals were heard in Sydney, it is noteworthy that almost a third of the all grounds appeals were heard in Sydney.

TABLE 3
Type of appeal by region of appeal 1987

Region	All grounds		Against severity		Total	
	No.	%	No.	%	No.	%
Sydney	560	32.1	524	15.4	1084	21.1
Parramatta	180	10.3	458	13.5	638	12.4
Liverpool	230	13.2	700	20.6	930	18.1
Penrith	94	5.4	190	5.6	284	5.5
Newcastle	269	15.4	511	15.1	780	15.2
Wollongong	149	8.5	487	14.4	636	12.4
Lismore	78	4.5	133	3.9	211	4.1
Dubbo	100	5.7	209	6.2	309	6.0
Wagga	85	4.9	180	5.3	265	5.2
Total	1745	100.0	3392	100.0	5137	100.0

Between 1986 and 1987 there was a 17% increase in the number of Local Court appearances. There was also a substantial increase in the number of appeals finalised in 1987 compared with 1986 (see Table 4). In 1987, 5137 appeals were finalised compared with 3883 in 1986, an increase of 32%. The increase was uniform across

the types of appeals. That is, in both years, all grounds appeals represented about a third of all appeals finalised and appeals against sentence represented approximately two thirds. Appeals against sentence in the case of drink drive offences represented one quarter of appeals finalised in both 1986 and 1987.

TABLE 4
Type of appeal 1986

Type of Appeal	No.	%
All grounds	1410	36.3
Against severity - Drink drive offences	982	25.3
Against severity - Other offences	1491	38.4
Total	3883	100.0

The increase in the number of appeals finalised was also spread fairly uniformly across the regions. Appeals in Sydney represented about one fifth of all appeals in the State in both years (see Tables 3 and 5). Appeals in the Sydney metropolitan area accounted for about 60% of all appeals in both years. One third of all grounds appeals were heard in Sydney in both years.

TABLE 5
Type of appeal by region of appeal 1986

Region	All grounds		Against severity		Total	
	No.	%	No.	%	No.	%
Sydney	465	33.0	410	16.6	875	22.5
Parramatta	164	11.6	326	13.2	490	12.6
Liverpool	199	14.1	463	18.7	662	17.0
Penrith	91	6.5	217	8.8	308	7.9
Newcastle	154	10.9	304	12.3	458	11.8
Wollongong	135	9.6	290	11.7	425	10.9
Lismore	47	3.3	69	2.8	116	3.0
Dubbo	79	5.6	149	6.0	228	5.9
Wagga	76	5.4	245	9.9	321	8.3
Total	1410	100.0	2473	100.0	3883	100.0

Results - Sample of Appeals Finalised in 1987

This section presents the results of the second part of the study. As described above, a sample of cases closed on the case tracking system in 1987 was selected for the more detailed analysis of information contained in the file papers. Information was collated from a stratified proportionate random sample of 685 files out of the 5137 cases closed on the case tracking system in 1987.

Distribution of Local Court cases resulting in appeals to the District Court

The 685 appeals originated from Local Court cases heard in all regions of New South Wales: there were cases from 108 different Local Courts. The number of appeals from any one court varied from one or two in a large number of courts (46), up to 52 cases from 302 Castlereagh Street, the largest Local Court complex in the State.

The appeals originated from Local Court cases heard by 105 different magistrates. The number of appeals from cases heard by any one magistrate ranged from one or two, in the case of 25 magistrates, up to 20-30 in the case of four magistrates (see Table 6). To calculate the rate of appeals lodged against magistrates, it is necessary to know their caseloads. It would also be preferable to base these calculations on the total number of appeals, to minimise the problems of small numbers and sample bias.

Table 6 does show, however, that the four magistrates who had heard the greatest number of cases represented 4% of magistrates in the sample but were associated with 15% of the appeals.

TABLE 6*
Distribution of cases heard by magistrates
resulting in an appeal to the District Court

Number of appeals lodged against any one magistrate	Magistrates		Total appeals	
	No.	%	No.	%
1-2	25	23.8	38	5.6
3-4	23	21.9	80	11.8
5-9	37	35.2	243	35.8
10-14	11	10.5	135	19.9
15-19	5	4.8	84	12.4
20+	4	3.8	98	14.5
Total	105	100.0	678	100.0

*In seven cases the identity of the magistrate was not clear from the file. Of the magistrates in the sample who had heard more than 20 cases, one had heard 22 cases, two had heard 24 and the other had heard 28 cases which resulted in an appeal.

Distribution of appeal hearings at the District Court

The 685 appeals were heard at 54 District Courts across the State. In some courts only one or two appeals were heard. The courts at which the greatest number of appeals were heard were Sydney (168), Parramatta (90) and Liverpool (81).

Appeals were heard by 48 District Court Judges. Table 7 shows the distribution of appeals heard by the judges. The number of appeals heard by any one judge ranged from one or two for 13% of the judges to 25 or more for 8% of judges. Two judges heard a particularly large number of appeals - one heard 46 and the other 51.

TABLE 7
Distribution of number of appeals heard by District Court Judges

Number of appeals	Judges	
	No.	%
1-2	6	12.5
3-4	4	8.3
5-9	6	12.5
10-14	11	22.9
15-19	9	18.8
20-24	8	16.7
25+	4*	8.3
Total	48	100.0

* Of the four judges who had heard more than 25 appeals, the number of appeals heard were 27, 29, 46 and 51. It is possible that some judges may have heard more cases than others if they were rostered on to clear the backlog of appeals cases.

Characteristics of Appeals Determined in 1987

Of the 685 cases in the sample, 134 (20%) were withdrawn by the appellant. In another 43 cases (6%), there was no appearance by the appellant and the appeal was dismissed by the judge. There was a small number of files (11) where leave to appeal was not granted, or where the case concerned custody issues. One matter concerned the correction of a penalty handed down by the magistrate relating to the suspension of a driver's licence. The remaining 497 appeals (referred to hereafter as appeals determined) form the basis for the analysis to follow.

As the number of cases in which the appeal was withdrawn or there was no appearance by the appellant represent such a significant proportion of the cases handled by the Court, these will be discussed in a separate section of the report (Appeals Abandoned p.26).

The following section provides, first of all, information on the characteristics of the 497 appeals determined in 1987. Wherever possible comparisons are made with information on all cases finalised in Local Courts in N.S.W. during 1986. This information is available from the Local Courts Statistical Collections maintained by the N.S.W. Bureau of Crime Statistics and Research. The Bureau maintains three collections: general offences, drink-drive offences and drug offences. Secondly, this section describes the outcomes of these appeals. And thirdly, the relationship between outcome and the other characteristics of the appeal is investigated.

Of the 497 appeals which form the basis of this section of the study, 53% relate to Local Court cases finalised in 1987, 43% relate to Local Court cases finalised in 1986 and the remaining 5% relate to cases finalised in 1985.

Legal representation

The proportion of appellants who had been legally represented at the Local Court (79%) is similar to the general pattern observed in Local Courts in 1986. Of defendants appearing on general offences, 70% were represented at their final appearance; 82% of defendants on drink-drive offences and 79% of defendants on drug offences were legally represented at their final appearance.

While 79% of the appellants were legally represented at the Local Court, a higher proportion (85%) were represented at the appeal. As Table 8 shows, 71% of appellants had legal representation at both hearings. Eleven percent of appellants were not represented at the Local Court but were represented at the appeal, while 7% were represented at the Local Court but not at the appeal. A further 7% were not represented at either hearing.

TABLE 8
Legal representation
at the Local Court and at appeal

Legally represented at local court	Legally represented at appeal							
	Yes		No.		Not recorded		Total	
	No.	%*	No.	%	No.	%	No	%
Yes	354	71.2	36	7.2	1	0.2	391	78.7
No	54	10.9	34	6.8	0	-	88	17.7
Not recorded	13	2.6	5	1.0	0	-	18	3.6
Total	421	84.7	75	15.1	1	0.2	497	100.0

* The percentages reported in this table are percentages of the total, 497.

Offence

In this study, data were collected on each separate offence which was the subject of appeal. Data were not collected about each count of each offence. However, the number of counts of each offence was recorded. This ranged from one to twenty-eight. For 88% of the offences there was only one count. In most cases there was only one offence which was the subject of appeal (83% of all grounds appeals and 70% of appeals against severity), although the number of offences subject to appeal ranged from one to eight.

TABLE 9
Number of offences, which were the subject of appeal

Number of offences	All grounds		Against severity		Total	
	No.	%	No.	%	No.	%
1	124	83.2	238	69.6	362	72.8
2	20	13.4	66	9.3	92*	18.5
3	3	2.0	29	8.5	32	6.4
4+	2	1.3	9	2.6	11	2.2
Total	149	100.0	342	100.0	497*	100.0

* There were six appeals in which two offences were the subject of appeal, with one offence being the subject of an all grounds appeal and the other offence being the subject of an appeal against sentence.

Table 10 shows the types of offences proven in Local Courts in 1986. In the Local Court statistical collections, the principal offence is coded according to the N.S.W. principal offence classifications. The principal offence is defined as that offence which attracts the highest penalty.

In this study, a different approach was adopted. The study was interested in the overall outcome and penalties for all offences which were subject to appeal, not just the principal offence. (Table 9 shows, however, that in the majority of appeals there was in fact only one offence.) To allow comparisons to be made with data from the Local Courts statistical collections, in those appeals where more than one offence was involved, the offence regarded as the most serious in the N.S.W. Offence Classification is recorded as the principal offence. For example, if two offences are subject to appeal, one being an offence against the person and the other being a property offence, the offence against the person takes precedence as its numerical code is lower. If there is a break, enter and steal together with larceny, then break, enter and steal takes precedence.

Table 10 shows that the distribution of the types of offence which were the subject of appeal followed, in general, the distribution of offences proven at the Local Courts. Those offences which represented a large proportion of proven offences at the Local Court also represented a large proportion of appeals. Similarly, those offences which represented a small proportion of proven offences at the Local Court also represented a small proportion of appeals.

However, 14% of appeals related to minor offences or other matters not covered by the collection maintained by the Bureau. These matters included minor traffic matters, tax matters and such matters as "overloading a truck", "dog out of control", and "fail to vote".

Excluding these 'other' offences for the purpose of comparison with the distribution of offences covered by the Bureau collections, Table 10 shows that serious driving offences occurred as appeals to a greater extent (21%) than they appeared as proven offences (8%). Drink-driving offences were not over-represented to the same extent (33% compared with 29%). Furthermore, the analysis of appeals withdrawn shows that drink drive offences are not over-represented among withdrawn appeals (p.27).

This finding runs counter to the occasionally made claim that "drink-drive" offenders, convicted in large numbers during the summer holidays, lodge appeals simply to preserve their licence for the journey home.

TABLE 10
Offence type
in Local Court and on appeal

Category	Proven offences Local Courts 1986	Offences subject to appeal	
	%	⁽¹⁾ %	⁽²⁾ %
Against person	8.5	8.4	7.2
Sexual	0.1	0.2	0.2
Prostitution	0.3	0.0	0.0
Fraud	3.2	3.7	3.2
Break, enter and steal	2.1	2.8	2.4
Larceny	14.8	13.7	11.9
Unlawful possession	2.9	2.6	2.2
Found with intent	0.2	0.2	0.2
Serious driving	8.3	21.2	18.3
Betting and gaming	0.5	0.7	0.6
Firearms	1.4	1.4	1.2
Damage property	3.8	1.9	1.6
Offensive behaviour	4.3	0.9	0.8
Other general	8.8	2.8	2.4
Drink-drive	29.4	33.0	28.6
Drugs	11.5	6.5	5.6
Other			13.5
Total number	66365 100.0%	430 100.0%	497 100.0%

(1) Excluding other offences ie, those not included in Bureau statistics

(2) Including other offences

Plea at Local Court

For the appeals in the sample, data were collected from the file papers on the plea at final appearance at the Local Court for each offence which was subject to appeal. In Table 11 the plea relating to the first offence coded is compared with the plea at all final appearances in the Local Courts statistical collections maintained by the Bureau of Crime Statistics and Research.

In general, the pattern of plea among those who appealed against severity is very similar to the pattern of pleas at final appearance in the Local Court, with an expected under-representation of not guilty pleas. This is hardly surprising given that for those defendants who pleaded not guilty and were found not guilty at the local Court, there would be no reason to lodge an appeal.

Among the appellants making all grounds appeals, there is a very high proportion (15%) who had pleaded guilty at the Local Court. While it is possible, according to the law, to lodge an appeal on all grounds when the plea in the Local Court was guilty, such a high proportion was not anticipated. In most cases the court papers had not provided much information about these appeals. The transcript of the appeal is not included in the files. However, two examples of such appeals shed some light on the situation.

In one appeal, the defendant at the Local Court had entered a plea of guilty saying that he did have a gun licence but thought it was out of date. He later found the licence which in fact was current, and then lodged his appeal. In another case, the defendant entered a plea of guilty to stealing a packet of frozen food, but maintained that it was an oversight. He lodged an appeal on all grounds.

It is of interest to note that in 10 (43%) of the 23 all grounds appeals in this study where there was a plea of guilty at the Local Court, the appeal was upheld and the convictions quashed. This was the same as the rate observed among the total number of all grounds appeals.

Caution should be exercised, then, in interpreting the finding that a substantial number of people who appeal against their conviction actually pleaded guilty in the Local Court (see Baldwin and McConville, 1987).

TABLE 11
Plea at the Local Court

Plea	Appearances* 1986 %	All grounds %	Against severity %
Guilty	77.0	15.4	83.0
Not guilty	11.2	58.4	5.6
Ex parte**	2.9	13.4	2.0
No plea	5.8	6.0	3.2
s75B***	3.0	6.0	1.5
Not recorded	0.1	0.7	4.7
Total number	75380	149	342

* The Bureau of Crime Statistics and Research maintains three separate collections on general offences, drink-drive offences and drug offences. The numbers of appearances in each collection have been aggregated to provide the distribution of plea overall.

** For summary matters or for those matters which although indictable may be dealt with summarily without the accused's consent, a magistrate may in appropriate circumstances proceed to determine a case and sentence an accused even though the accused has failed to appear.

*** For certain summary offences brought to court by summons or attendance notice, where the defendant does not appear and is not represented, if it is clear that the summons or notice has been correctly served by the appropriate officer, and provided that it is satisfied that the alleged facts constitute the offence, the court may impose the penalty which would have been imposed had the defendant been found guilty of the offence.

Outcome of appeals

For more than three-quarters of the 497 appellants the appeal was successful. That is, either the conviction was quashed, or the offence was proven but no conviction was recorded, or the penalty was reduced. In most of the remaining cases the penalty was the same after the appeal as it was before. However, in a small number of cases (5) the appellant's penalty was increased. The increases in penalty were:

- ◆ from six months in prison with a non-probation period not specified to eighteen months in prison with six months non-probation period.
- ◆ from \$500 fine and licence suspension for two years to \$500 fine and licence suspension for three years.
- ◆ from \$600 fine and licence suspension for one year to \$600 fine and licence suspension for three years.
- ◆ from periodic detention for six months and licence suspension for five years to periodic detention and licence suspension for five years and a licence restriction to be for two years thereafter.
- ◆ from \$150 fine to recognizance for two years and \$200 donation to charity, as a condition of recognizance.

While the number of such cases is small, it is of interest to note that all five increases occurred in appeals conducted by one judge. More thorough investigation of patterns of sentencing on appeal will be possible when data are available from the Justice Information System being developed by the Bureau of Crime Statistics and Research.

Table 12 shows that in 43% of the all grounds appeals the convictions were quashed. In another 3% the offence was proven but a conviction was not recorded. In a further 34% of the all grounds appeals, some or all of the convictions were upheld but the penalty was decreased. Lastly, in 21% of these appeals the convictions were upheld and the penalty remained the same.

In 73% of the appeals against severity, the convictions were upheld but the penalty was decreased. In a further 22% of the appeals against sentence, the convictions were upheld and the penalty remained the same, and in 14 cases (4%) the offences were found proven but no conviction was recorded. Finally, in five cases, the convictions were upheld and the penalty was increased.

TABLE 12
Outcome of appeals, 1987

Outcome	All grounds	Against severity	All grounds & against severity	Total
All offences not proven - convictions quashed	64 43.0	0 -	0 -	64 12.9
s556A at appeal	4 2.7	14 4.1	0 -	18 3.6
Some/all convictions upheld - penalty decreased	50 3.6	249 72.8	4 66.7	303 61.0
All convictions upheld - penalty same	31 20.8	74 21.6	2 33.3	107 21.5
All convictions upheld - penalty increased	0 0.0	5 1.5	0 -	5 1.0
Total	149 100.0%	342 100.0%	6 100.0%	497 100.0%

It is sometimes suggested that the success of an appeal depends on the judge hearing the matter. It was not possible to investigate the sentencing patterns of individual judges in this study because of the relatively small numbers of appeals per judge. However, judges have been grouped according to the number of appeals they heard into five groups as presented in Table 13. A success rate was calculated for each group: a successful appeal was one where the penalty was reduced or where the conviction was quashed. Table 13 shows that, on average, there was a lower success rate (about two thirds) among judges hearing fewer than 10 appeals. There was a higher success rate (closer to 80%) among judges who heard at least 10 appeals.

TABLE 13
Success rate of appeals according to Judges' caseload

Number of Appeals Heard	Success Rate
1-4	68.0%
5-9	66.7%
10 -14	79.9%
15-19	79.5%
20+	76.9%

Penalties imposed

Table 14 shows the distribution of penalties which were imposed by magistrates, and the distribution of penalties imposed by judges on those appellants whose offences were found proven at the appeal. The main difference between these distributions is that the proportion of prison sentences⁵ has decreased from 34% of appellants to 14% of appellants whose offences were found proven.

In addition, there was a greater proportion of recognizances after appeal: 16% compared with 2%.

The distributions of penalties otherwise did not differ markedly. In particular, a fine together with suspension of driver's licence still applied to about one third of appellants whose offences were proven, and a fine with or without another penalty other than licence suspension continued to apply to about a quarter of the appellants. These outcomes are discussed in detail below.

There was little use made of community service orders (10 cases) or periodic detention (11 cases) by judges at the appeal stage.

An outcome of s556A appeared in only 5% of appeals where the offence was found proven. This rate is similar to rates observed in the Local Court. In 1986, s556A was the outcome in 9% of general offences, 6% of drink-drive offences and 3% of drug offences. This lends some support to the popular belief that those defendants who considered that they should have received a s556A at the Local Court are more likely to lodge an appeal.

⁵Included as prison sentences are sentences to institutions in the case of six juvenile offenders

TABLE 14
Penalty at the Local Court and on appeal

	Local Court		On Appeal	
	No.	%	No.	%
s556A only	2	0.4	21	4.8
Community service order	0	-	10	2.3
Recognizance (sentence not deferred)	3	0.6	13	3.0
Recognizance only (sentence deferred)	9	1.8	53	12.2
Recognizance (sentence deferred) + other	0	-	2	0.5
Suspension of driver's licence (+ other)	3	0.6	16	3.7
Fine only	116	23.3	70	16.2
Fine + other (not suspension)	5	1.0	20	4.6
Fine + suspension of driver's licence only	163	32.8	130	30.0
Fine + suspension + other	3	2.6	27	6.2
Periodic detention only	10	2.0	6	1.4
Periodic detention + other	5	1.0	5	1.2
Prison only	103	20.7	32	7.4
Prison + suspension of driver's licence	47	9.5	22	5.1
Prison + other	17	3.4	6	1.4
Total	497*	100.0	433**	100.0

The inclusion of 'other' in a category refers to other penalties already mentioned above it in the table.

* In one case, the result of the Local Court hearing was the cancellation of a private enquiry licence. The appeal was successful.

** This total does not include the 64 appeals in which the convictions were quashed.

Prison sentences at the Local Court: result on appeal

Defendants given a prison sentence at the Local Court are much more likely to appeal: one third of appellants had been sentenced to prison at the Local Court, whereas the proportion of prison sentences handed down as penalties in Local Courts is less than 10% in each of the three major offence groups forming the basis of the Bureau collections. In 1986, prison sentences were handed down to 8% of defendants convicted of general offences, 2% of defendants convicted of drink-drive offences and 6% of defendants convicted of drug offences.

On appeal, the proportion of prison sentences dropped markedly to only 14% of appellants whose offences were proven. There were 167 appellants who had a prison term as part or all of their penalty from the Local Court. After the appeal, there were only 60 appellants who had a prison term as part or all of their penalty. In the majority of these cases, the length of prison sentence remained the same. However in 20 cases (one-third), the length of the prison term was reduced.

Of the 103 appellants who were sentenced to prison (and no other penalty) at the Local Court, only 32 had a prison sentence on appeal. In seven cases where the original sentence was a prison sentence the conviction was quashed on appeal. In one case the result was a s556A. In nine appeals the prison sentence was replaced by a community service order. More commonly, however, the prison sentence was replaced by a recognizance (41 cases). In nine appeals the prison term was replaced by a fine, and in a further four cases the penalty on appeal was periodic detention.

Of the 47 appellants whose original penalty was prison and suspension of their driver's licence, 22 were sentenced to prison and licence suspension at the appeal and one to prison, licence suspension and a fine. In six cases the sentence was reduced to a recognizance (sentence deferred) and another penalty (including either licence suspension or recommendation for licence restriction), in seven cases it was reduced to suspension of driver's licence and a community service order, and in a further seven cases to a fine and licence suspension. In one case the sentence was reduced to a community service order, in another to fine and licence suspension and community service order. In the remaining two cases the penalty on appeal was periodic detention and licence suspension.

Of the remaining 17 appellants who had a prison sentence and another penalty, other than licence suspension, from the Local Court, only four had a prison sentence as part of their revised sentence on appeal.

Sentences of fine only at the Local Court: result on appeal

There were 116 cases where the penalty imposed by the Local Court was a fine only. On appeal the conviction was quashed in 38 cases (33%) and s556A was the outcome in 12 cases. In 52 cases the penalty remained a fine: the fine was reduced in 25 cases and remained the same in 27 cases.

In the remaining 14 cases where the Local Court penalty was a fine only, the outcome on appeal was most often a recognizance.

Sentences of fine and suspension of driver's licence at the Local Court: result on appeal

Of the 163 cases where the penalty from the Local Court was a fine and suspension of driver's licence (and no other penalty) this penalty remained the same after appeal in 119 (73%) cases. The amount of the fine remained the same in 98 (82%) of the cases,

was decreased in 14 cases and was increased in seven. In each of the seven cases in which there was an increase in the amount of the fine this was accompanied by a decrease in the length of licence suspension, i.e. one penalty was traded for the other.

While the amount of fine was not often reduced in these cases, the length of suspension was reduced in the majority of them. There was a decrease in 79 cases (66%), an increase in one case and the length of suspension remained the same in 39 cases (33%). The average length of suspension of these 119 cases before the appeal was 23 months and after the appeal it was 14 months.

In 11 appeals where the Local Court sentence was a fine and suspension, the appeal resulted in the conviction being quashed and in three cases the appeal outcome was a s556A. In nine cases the outcome was a recognizance and in seven cases a fine only. In a further three cases the outcome was a recognizance with licence suspension and/or a recommendation for restriction. In one case the outcome was a fine and recognizance. In ten cases the outcome was a fine and suspension with another penalty.

The relationship between appeal outcome and other factors

The above analysis of the sample of 497 appeals determined in the District Court in 1987 provides a description of the cases brought to appeal and their outcome. It shows that defendants given a prison sentence at the Local Court are more likely to appeal. Cases involving serious driving offences are found more often among appeals than at the Local Court. Contrary to expectation, drink-drive offences are not over-represented, although they represent a substantial proportion of appeals against severity. The analysis shows that some defendants who plead guilty at the Local Court are lodging an appeal on all grounds. A number of appeals are brought by appellants whose Local Court hearing was conducted in their absence (as ex parte or s75B hearings). Most of these are appeals on all grounds. Once the appellants arrive at the District Court, the majority are legally represented. The analysis has shown that, unlike severity appeals from the Higher Courts to the Court of Criminal Appeal (see Weatherburn 1988), the majority of appeals from the Local Court to the District Court are successful.

This section investigates the relationship between the outcome of the appeal and the other (independent) factors. It answers questions such as - is there a higher rate of success among appellants who are legally represented? Defendants with a prison sentence from the Local Court are more likely to lodge an appeal, but are they more likely to have a successful appeal? What is the difference in the outcome of appeals relating to general criminal offences, to drink-drive offences and to minor criminal matters?

In order to provide answers to these questions the statistical technique of log-linear analysis was employed, using the software package GLIM (Generalised Linear Interactive Modelling). Log-linear analysis provides a method for the analysis of a multi-way table consisting of categorical data. In particular, it shows the association between any independent factor and the dependent factor (here, appeal outcome), having taken into account the association between the independent factors themselves. This enables an evaluation, for example, of the separate contributions of offence and legal representation to the probability of a successful appeal.

The analysis was carried out separately for all grounds appeals and for appeals against severity. Inclusion of factors in the analysis was limited in two ways: firstly by the information which is included in court files - the data source for this study, and secondly by the statistical requirement to include, in the analysis, terms which can be covered adequately by the number of cases. In one case the outcome was a fine and recognizance. This latter consideration determines the number of factors included and the number of categories for each factor.

In looking at all grounds appeals the outcome categories used in the analysis were:

1. appeal upheld, convictions quashed;
2. penalty decreased; and
3. penalty remained the same.

The independent factors included were:

- ◆ legal representation at the appeal (the categories were yes and no);
- ◆ the offence (considered as two categories, namely, general offences, including drugs and drink-drive, because of their relatively small numbers among all grounds appeals, and 'other' (minor offences);
- ◆ plea at the Local Court (three categories of guilty, not guilty, and other s75B and ex parte hearings) and
- ◆ whether or not the penalty from the Local Court included a prison term.

Excluded from the analysis are some factors which may have an impact on the outcome of the appeal, for example, any particulars of the presentation of the appeal, and the appellant's prior criminal history. It may be hypothesised that the outcome of the appeal depends on the presiding judge, on the magistrate who heard the Local Court case (appeals against particular magistrates may be successful more often) and the quality of legal representation. Data on these aspects of the appeal have not been included in this statistical analysis.

Table 15 shows that, of the four factors included in the analysis, offence was significantly related to outcome. For a greater proportion of appellants whose offence was in the 'other' (minor) category the penalty remained the same on appeal (41% compared with 18% of appellants whose offence was in the general category). A lower proportion of appellants whose offence was in the 'other' category had their penalty decreased (10% compared with 38%), although the proportion of cases where the appeal was upheld did not differ from general offences. (See Table 16.)

The difference in outcome depending on plea at the Local Court was not statistically significant.

Although the presence of a prison term in the Local Court sentence made it more likely that an appeal would be lodged, appellants whose penalty included a prison sentence were not more likely to have their appeal upheld or to have their sentence reduced (although sentence reductions in cases where the original penalty included a prison sentence are of particular interest - see the discussion on p.19).

The majority of appellants were legally represented. Legal representation did not make a significant difference to the probability of a successful appeal.

TABLE 15
Factors related to the appeal outcome:
all grounds appeals - results from log-linear analysis

Factor	Degrees of Freedom	Chi-square statistic
Legal representation	2	2.4
Prison sentence	2	1.0
Offence	2	9.7*
Plea	4	9.3

Note: The model with all two-way interactions and no higher order terms was found to be statistically adequate
(chi-square statistic = 37.8, df = 45)

* significant at .01

TABLE 16
Outcome of all grounds appeals: associated factors

Factor	Outcome			No.
	Convictions quashed	Penalty reduced	Penalty the same	
	(Percentages sum across rows)			
Legal Representation				
Yes	41.9	35.5	22.6	124
No	60.0	20.0	20.0	25
Prison Sentence from Local Court				
Yes	50.0	40.0	10.0	20
No	44.2	31.8	24.0	129
Plea at Local Court				
Guilty	43.5	43.5	13.0	23
Not guilty	51.7	29.9	18.4	87
s75B or ex parte	30.8	33.3	35.9	39
Offence				
General	44.2	38.3	17.5	120
Other	48.3	10.3	41.4	29

In the analysis of outcomes of appeals against severity the same factors were included as for the analysis of outcomes of all grounds appeals, although changes were made to some categories. The outcome variable now has only two categories, namely, a decrease in penalty and no change in penalty. The small number of cases in which the penalty was increased are not included in this analysis. Offence has three categories, namely, general offences, (including drugs, drink-drive as separate categories, and 'other' (minor) offences. The other independent factors included in the analysis were: legal representation, plea at the Local Court and whether or not the Local Court penalty included a prison term.

The interaction between each of the factors and appeal outcome was not statistically significant. Appellants with legal representation did not experience a greater rate of success. While appellants with a prison sentence were more likely to lodge an appeal, their success rate was the same as those with other sentences.

The success rate was similar in the three broad offence categories. Plea at the Local Court did not have a significant association with the appeal outcome.

TABLE 17
Factors related to the appeal outcome:
appeals against severity - results from log-linear analysis

Factor	Degrees of Freedom	Chi-square statistic
Legal representation	1	2.0
Prison sentence	1	0.4
Offence	2	2.5
Plea	2	0.5

Note: The model with all two-way interactions and no higher order terms was found to be statistically adequate
(chi-square statistic = 42.9, df = 45)

TABLE 18
Outcome of appeals against severity: associated factors

Factor	Outcome		No.
	Penalty reduced	Penalty the same	
	(Percentages sum across rows)		
Legal Representation			
Yes	78.5	21.5	289
No	70.2	29.8	47
Prison Sentence from Local Court			
Yes	78.5	21.5	143
No	76.7	21.3	193
Plea at Local Court			
Guilty	76.7	23.3	279
Not guilty	84.2	15.8	19
s75B or ex parte	79.5	20.5	39
Offence			
General	78.2	21.8	174
Drink-drive	74.0	26.0	127
Other	86.1	13.9	36

Appeals Abandoned: Withdrawn and No Appearance

As indicated on p.10, a substantial proportion of the files included in the sample of 685 appeals cases finalised in 1987 were either withdrawn by the appellant, or the appellant did not appear to proceed with the appeal and the appeal was dismissed by the judge. Of the 685 files, 134 (20%) related to appeals which had been withdrawn, and 43 (6%) related to cases where the appellant did not appear in Court.

This section looks at which factors relating to the case differentiate between appeals which continued to determination and those which were withdrawn or in which the appellant did not appear to proceed with the appeal. The statistical technique of log-linear modelling is used as it was for the analysis of all grounds appeals and appeals against severity. The four factors considered in those analyses are also included here. These factors are: legal representation, prison sentence from the Local Court, offence category and plea. Table 19 shows that the associations between three of the factors and the continuation of the appeal were statistically significant.

TABLE 19
Factors related to the continuation of the appeal
- results from log-linear analysis

Factor	Degrees of Freedom	Chi-square statistic
Legal representation	2	168.3**
Prison sentence	2	10.2**
Offence	4	5.5
Plea	4	12.3*

** = significant at .01

* = significant at .05

There is a significant interaction between the presence of legal representation and what happens to the appeal. In the 497 appeals which were proceeded with, 85% of appellants were legally represented. Half of the appellants who withdrew their appeals were legally represented, while there was legal representation in only 7% of cases where the appellant did not appear in court to proceed with the appeal. (See Table 20.)

Having a prison sentence from the Local Court was also significant in its association with the continuation of the appeal. One third of appellants who proceeded with their appeals had a prison sentence from the Local Court. This proportion was similar among appeals which were withdrawn (30%), but much lower among those appellants who did not appear in Court to proceed with the appeal (12%).

The majority (62%) of appellants who proceeded with their appeals had pleaded guilty at the Local Court. This was also the case for appellants who withdrew their appeals. However, the proportion of guilty pleas was lower (40%) among appellants who did not appear in Court, among whom there was also a higher proportion of Local Court cases which had been heard in the absence of the defendant (30% compared with 16% of appeals determined and 11% of appeals withdrawn). When considered with the lower proportion of prison sentences, this suggests that the offences of those appellants who did not appear in court were of a less serious nature than either appellants who withdrew their appeals or continued their appeals.

There was no significant difference in the likelihood of the case being withdrawn according to the three broad offence groups of general criminal offences, drink-drive offences, and 'other' (minor) offences.

TABLE 20
The result of lodging an appeal: some characteristics

	Result of Appeal Lodged		
	Determined	Withdrawn	No Appearance
Number in Sample	497	134	43
Legal Representation	84.7%	50.0%	7.0%
Prison Sentence from Local Court	33.6%	29.9%	11.6%
Plea at Local Court			
Guilty	62.4%	63.4%	39.5%
Not guilty	21.5%	25.4%	30.2%
s75B or ex parte	16.1%	11.2%	30.2%
Offence			
General	57.9%	50.7%	46.5%
Drink-drive	28.6%	35.8%	32.6%
Other	13.5%	13.4%	20.9%

On the four factors considered, those cases where the appellant did not appear in court to continue the appeal are quite different from those cases where the appeal was continued and where the appeal was withdrawn. The limited data suggest that, in general, such cases involve less serious offences and therefore penalties which are not as severe as the other appeals cases (although 13% of these appellants did have prison sentences).

Time between Local Court Case and finalisation of Appeal

This section of the report analyses the time taken from the completion of the Local Court case to the completion of the appeal. Information is presented on the time taken in cases which were abandoned (i.e., either withdrawn by the appellant or dismissed by the judge where the appellant did not appear to proceed with the appeal) in comparison with the time taken in appeals which were proceeded with and determined. The difference in the time taken to finalise all grounds appeals and appeals against severity is also examined. Data are presented on the effect of legal representation on the time taken. There is no information on the actual court time involved, only the lapse of time from the Local Court case to the completion of the appeal.

The period between the date the Local Court case was finalised and the date the appeal was finalised by the District Court ranged from six days to almost thirty months. Table 21 shows that half of the cases were finalised within four months of the Local Court case. The time taken to finalise appeals which were continued by the appellant was the same as the time taken in those cases where the appellant withdrew the appeal. However, the time taken to finalise cases where there was no appearance by the appellant was longer. Only one-third of these cases were finalised within four months of the Local Court case. This suggests that the Court makes an effort to ensure that appellants are properly notified of the proceedings before the appeals are dismissed.

TABLE 21*
Time from Local Court case to finalisation of appeal
by result of the appeal

Time	Result of Appeal %			
	Determined	Withdrawn	Appearance	Total
6 weeks	8.6	13.9	4.3	9.3
9 weeks	17.3	22.6	8.5	17.8
3 months	36.3	37.2	29.8	36.1
4 months	48.2	54.7	34.0	48.5
6 months	62.9	66.4	38.3	61.9
9 months	78.8	81.0	70.2	78.6
1 year	86.9	92.7	89.4	88.3
18 months	96.5	97.8	95.7	96.7
more than 18 months	100.0	100.0	100.0	100.0
Number	490	137	47	674

* The numbers and percentages reported in this table are cumulative. For example, 48% of appeals determined were finalised within four months of the Local Court case.

Table 22 shows that the time period taken to finalise all grounds appeals is substantially longer than for appeals against severity. Half of the appeals against severity were finalised within three months, whereas it took nine months for half of the appeals on all grounds to be finalised. In practice, the actual court time involved in an all grounds appeal would be longer. There is greater scope for adjournments and there would be more difficulty in actually scheduling an appeal on all grounds, given the expectation that it would take more of the court's time. Arrangements for witnesses, if they are to be called, also need to be made.

TABLE 22
Time taken from Local Court case to finalisation of appeal
by type of appeal

Time	Type of Appeal %	
	All grounds	Against severity
6 weeks	2.1	11.5
9 weeks	3.4	23.7
3 months	6.8	49.7
4 months	10.3	65.4
6 months	21.9	81.1
9 months	51.4	90.5
1 year	66.4	95.6
18 months	91.8	98.5
more than 18 months	100.0	100.0
Number	146	338

Table 23 shows that there is no difference in the time taken to finalise an appeal where there is legal representation and where there is not. This is so in all grounds appeals and appeals against severity.

TABLE 23
Time between Local Court case and finalisation of appeal
by legal representation

Time	All grounds		Against severity	
	Legally represented at appeal			
	Yes %	No %	Yes %	No %
6 weeks	2.4	0.0	11.3	13.0
9 weeks	4.1	0.0	23.4	23.9
3 months	6.5	8.7	49.8	47.8
4 months	9.8	13.0	65.6	63.0
6 months	22.0	21.7	81.8	76.1
9 months	51.2	52.2	90.4	91.3
1 year	66.7	65.2	95.5	95.7
18 months	91.1	95.7	98.6	97.8
more than 18 months	100.0	100.0	100.0	100.0
Number	123	23	291	46

* As for Table 21, the numbers and percentages reported in this table are cumulative.

Summary

In 1987, 5137 appeals from Local Courts in New South Wales were finalised in the District Court. Approximately one-third of these were all grounds appeals. A quarter were appeals against severity relating to drink-drive offences. The remainder were appeals against severity on offences other than drink-drive. Data from this study produce the estimate that, in 1987, there was one appeal determined in the District Court for every 30 appearances in Local Courts (as defined by the Bureau's Local Courts Statistical Collections).*

This study answers questions such as: which characteristics, if any, of the Local Court case make it more likely that an appeal will be lodged, what is the outcome of appeals, and what is the relationship between characteristics of the appeal and its outcome? The information which forms the basis of the study was derived from the court papers of a random sample of 685 appeals finalised in 1987.

A number of characteristics of the Local Court case make an appeal more likely to be lodged. Those defendants who, at the Local Court, were given a prison sentence as part of the penalty were more likely to lodge an appeal. These appellants represent about one-third of all appeals (compared with 6% at the Local Court level). Another one-third of appellants had, as their penalty, a fine and suspension of driver's licence (reflecting the number of appellants whose appeals related to drink-drive or serious driving offences). One quarter of appellants had a fine alone.

The distribution of the type of offence involved in appeals follows the general distribution of offences in the Local Courts. Serious driving is represented more often among appeals than at the Local Court. Contrary to expectation, drink-drive offences are not particularly over-represented among appeals, although they represent a substantial proportion of appeals, especially as appeals against severity. It is worth noting that 14% of appeals related to matters not included in the general collections of the Bureau of Crime Statistics and Research. These matters are minor matters or other matters outside the scope of the Bureau collections, and they consisted mainly of minor traffic matters. These minor matters were often matters which were heard at the Local Court as *ex parte* or s75B hearings.

A significant number of defendants who entered a plea of guilty at the Local Court lodged an appeal on all grounds. The observed rate of the appeal being upheld and the convictions quashed in these cases was the same as for other all grounds appeals.

Unlike appeals to the Court of Criminal Appeal (Weatherburn 1988 reported that 27% of defence appeals were successful) more than 75% of the appeals from Local Courts which were determined, were successful. In 43% of all grounds appeals the convictions were quashed, while a s556A was the result in a further 3%. In 34% of the all grounds appeals the penalty was decreased. In only 21% of the all grounds appeals did the penalty remain the same.

In 73% of appeals against severity, the penalty was decreased and, in a further 4%, the result was a s556a. In 22% of appeals against severity the penalty remained the same, while in 2% the penalty was increased. As discussed in the introduction, the judge has the power to reduce, confirm or increase the penalty imposed by the magistrate. While the number is small, it is of interest to note that all five increases occurred in appeals conducted by one judge. More thorough investigation of patterns of sentencing on appeal will be possible when data are available from the Justice Information System.

While about 85% of appellants were legally represented, the success rate was not significantly different in appeals with legal representation and those without legal representation. This was so in both the all grounds appeals and appeals against severity.

*Estimate derived as follows: 5,000 appeals finalised in 1987, less 1,250 (approximately 25% of appeals abandoned), less 560 (approximately 15% of appeals determined related to offences not included in the Local Courts Statistical Collections). This leaves approximately 3,200 appeals determined compared to 88,000 appearances in Local Courts in 1987.

In the case of appeals against severity, the outcome was not related to any of the four factors tested, namely, legal representation, offence (classified as general, drink-drive, and minor), plea at the Local Court, or whether or not a prison term was part of the penalty from the Local Court. In the case of all grounds appeals, the outcome was not related to plea at the Local Court, to legal representation or to whether or not a prison term was part of the Local Court penalty. The appeal outcome in all grounds appeals was linked to the type of offence; the penalty remained the same as the Local Court in a greater proportion of appeals relating to minor offences.

The impact of the high success rate of appeals is seen in the alterations made to the Local Court sentences. A substantial proportion of appellants with all types of sentences had their sentence reduced. This is particularly striking amongst those who came from the Local Court with a prison sentence.

For almost two-thirds of the appellants with a prison sentence from the Local Court, the prison sentence was changed to another penalty or, in some cases, the convictions were quashed altogether. Furthermore, in one-third of the cases where a prison term remained, the length of the sentence was reduced. In other words, in less than a quarter of the appeals which included a prison term as part of the Local Court sentence did the sentence remain the same.

Another important penalty change was that associated with the penalty of fine together with suspension of driver's licence. While the majority of appellants who came to appeal with such a penalty continued to have the same combination on appeal, the length of suspension was decreased in two-thirds of the cases. On the other hand, it was unusual for the amount of fine to be reduced. In a small number of cases where the amount of fine was increased, the length of suspension was decreased.

Although, in the majority of appeals, the resultant penalty was less severe than the Local Court penalty, the pattern of sentencing still followed a similar pattern, with fines, fines and suspension and prison sentences accounting for almost three-quarters of sentences on appeal. Recognizances were the popular form of replacement penalties used by the judges and these were used in proportions similar to the pattern observed among general offences in the Local Courts (around 15% of people convicted). Also used in fairly low proportions by the judges in appeals cases were community service orders and periodic detention. Again, the rates at which these were used in appeals were low (around 2%), but comparable with rates observed in the Local Courts.

In 5% of appeals where the convictions were found proven, the appellant was given a s556A. While the rate is low, it is comparable with rates observed at Local Courts and lends some support to the suggestion that defendants who consider that they should have been given a s556A at the Local Court are more likely to appeal.

A substantial proportion (26%) of the 685 appeals in the sample were discontinued, being either withdrawn by the appellant or dismissed by the judge in cases where the appellant did not appear to continue the appeal.

The appeals which were withdrawn by the appellant did not differ from appeals which were proceeded with on the grounds of type of offence, plea at the local court and whether or not there was a prison sentence from the local court. In particular, appeals related to drink-drive offences were not withdrawn at a greater rate than appeals related to other offences.

There was a difference in the rate of legal representation between withdrawn appeals and appeals that were determined. While there was legal representation in the majority of appeals which were determined, this was so in only half of appeals which were withdrawn. It is possible that, a number of appeals were withdrawn because the appellant applied for but was not granted legal aid. The means test applicable in criminal matters in Local Courts applies also on appeal. In addition, however, the Legal Aid Commission offers legal aid only if the appeal has reasonable

prospects for success. This may also account for the high rate of success among appeals which are determined.

While the characteristics of appeals withdrawn by the appellant were similar to the characteristics of appeals which were determined, those appeals which were dismissed by the judge because the appellant did not appear in court to continue the proceedings were quite different. These cases included a higher proportion of minor offences, of cases which had been heard in the Local Court as s75B or ex parte hearings, and a lower proportion of cases which had a prison sentence from the Local Court. This suggests that, overall, these cases may involve less serious offences and therefore penalties which were not as severe. The proportion of legal representation in these appeals was very low at less than 10%.

The study provided information on the time taken from the Local Court hearing to the finalisation of the appeal. Half of the appeals were heard within four months. The time taken to finalise appeals which were determined was similar to the time taken to finalise appeals which were withdrawn. However, the time taken to finalise appeals where the appellant did not appear to proceed with the appeal was longer, suggesting that the Court made some efforts to ensure that the appellant had the opportunity to be properly informed of the proceedings and to appear in court.

The time period for the completion of all grounds appeals was substantially longer than that for appeals against severity. While half of the appeals against severity were finalised within three months it took nine months for half of the all grounds appeals to be finalised.

There was no difference in the time taken between appeals where the appellant was legally represented and appeals where the appellant was not legally represented. This was so in all grounds appeals and appeals against severity.

This study provides a picture of appeals from the Local Courts, heard in the District Court of New South Wales. The information forming the basis of the study was derived from the court files. While the information available provides a description of a system not previously described, there are some gaps which it might be productive to follow up. The most important of these is the question of what proportion of cases involve the admission of new evidence and what effect this has on the outcome of the appeal. There are, however, a number of other intriguing questions worth pursuing. For example, what is the impact of the merit test in the provision of legal aid in appeals, to what extent do appellants who have been refused legal aid continue with the appeal and what is the outcome? While the majority of appellants are legally represented, what are the reasons behind the finding that the success rate of appeals where there was legal representation and where there was not is not significantly different? Why are sentence alternatives like recognizances, community service orders and periodic detention used in a minority of appeals, and similarly in a minority of Local Court cases? These questions may be examined more closely once data from the Justice Information System become available.

References

Baldwin, J. and McConville, M. (1977), *Negotiated Justice*, Chapter 4: "Claiming Innocence Yet Pleading Guilty", Martin Robertson.

Weatherburn, D. (1988), *Appeals Against Sentence Severity: Sentencing Judgements of the N.S.W. Court of Criminal Appeal*, N.S.W. Bureau of Crime Statistics and Research.