ACCOUNTABILITY AND THE LEGAL SYSTEM:

DRUG CASES TERMINTATING IN THE DISTRICT COURT 1980-1982.

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FOR:

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PREFACE

For the greater part, criminological research tends to unfold pretty much in the way envisaged by those responsible for its design. Occasionally, the pre-ordained plan of approach needs to be set aside because, serendipitiously, a more fruitful line of inquiry opens up.

This is what happened in the present study. In the initial application for funding,mention was made of the possible need to examine connections between robbery offences and the drug trade. It was in the process of a preliminary consideration of that connection* that several of the socially crucial and disquieting features of the handling of drug offences detailed in the following report, first came to attention. There was no choice but to pursue these matters. The result, we believe, has been to enhance the significance of our report to the Criminology Research Council and those concerned with the administering of criminal justice in Australia.

Although one of the authors (TV) was the recipient of the CRC grant, the study has required the combined efforts of many people, several of whom are co-authors of the report. The conception of the research task, initially and in its developmental stages, required knowledge and experience additional to that possessed by the authors. Fortunately, these attributes were forthcoming in the assistance rendered to the project by Mr. John Hatton, independent member of the N.S.W. Parliament. His professional counsel has been invaluable, his personal integrity an example to the researchers. We also wish to acknowledge the research assistance of Brett O'Halloran, the secretarial help of Chris Mangos, and the support of the other people who contributed to the successful completion of the project.

Data on robbery offences already was being compiled.

INTRODUCTION

It is now 15 years since systematic data was first collected on the way the courts respond to drug offences in New South Wales. The picture revealed by the statistics has been that of an ever spiralling number of cases and seemingly, an increasingly selective response to the personal use of illicit drugs and their commercial exploitation.

At least that is the impression created by the simple cross tabulation of offence categories and penalties. But the very general form in which the official statistics are cast tells us little about the consistency with which similar cases are handled. Nor, by virtue of the purposes they are intended to serve, and the type of information included, are the statistics very helpful in exploring possible reasons for disparities in the treatment of offenders. As a result, the official statistics play little part in helping to make those who administer the legal system, from the state's Attorney General and advisers, to judicial and court officers, police, and lawyers who serve the courts, publicly accountable for their actions.

Our study attempts to break new ground by examining the consistency with which relatively serious drug offences are treated by the New South Wales legal system. We attempt, by using a wide range of legal, administrative and social data, to gain an understanding of disparities in sentencing. The ultimate purpose of the research is to identify some of the main requirements for a more accountable system of legal administration.

With the permission of the relevant departments, data for the study has been extracted from court files and, to a lesser extent, police records. These records are intended primarily to serve purposes other than research. To enhance the prospects of their being available and complete it was decided to confine the sample to cases that terminated between 1980 and 1982. The extraction of data was very time consuming. It started late in 1984 and continued until July, 1986. For practical reasons, it also was decided to confine the sample to Sydney District Court, which deals with indictable drug offences committed mainly by residents of the Sydney metropolitan area. The District Court deals with relatively serious drug offences including, at the time of our study, those of supply, sell, distribute and cultivate/possess in quantities deemed to be for commercial purposes.

Our data covers a three year period and our sample does not coincide with other official statistical collections or research projects. The information gathered on each case included:

Demographic, personal characteristics of offender - age, sex area of residence,drug/ alchohol use,early residential history

Criminal history - juvenile/adult,summary/indictable, recognizances;

Legal processing of case - charge, arresting police, court personnel,plea,bail conditions, no bills;

Nature of offence - drugs involved, their value (expressed in 1984 prices), changes in drugs impounded;

Outcome - penalty, declared leniency, appeals.

SAMPLE

The age and sex composition of our sample of metropolitan drug cases closely resembles cases dealt with by the New South Wales Higher Criminal Courts. Our sample is predominantly male and between 20 and 39 years of age:

	Sample (N = 276)	N.S.W. Higher Criminal Courts.
Male	90.2	86.6
20 -39 years	88.0	86.4

* N.S.W. Bureau of Crime Statistics and Research Court Statistics 1982, Sydney, Department of Attorney-General and Justice, 1983, p.41.

A little more than a third of our sample (36.0 per cent) had no previous convictions, a proportion somewhat higher than for the Higher Criminal Courts generally (24.1 per cent in 1982). Almost two out of every five of our sample had adult but no prior juvenile offences and one in four had both. The majority (80.1 per cent) had no previous indictable drug offences, and a little over half (54.7 per cent had no previous summary drug offences. One in ten were on a bond at the time of the offence. One in five admitted to the authorities that they were heroin users. Twice as many (41.7 per cent) acknowledged using hemp/cannabis. Small numbers said they used LSD (1.4 per cent), cocaine (0.7 per cent) or other drugs (2.5 per cent). One in ten said they had been institutionalised as a child.

The social class profiles of offender groups are invariably skewed in the direction of an over-representation of low status groups (NSW Bureau of Crime Statistics, 1974[1]). Our sample appears to be an exception, at least in so far as it includes a larger proportion of high status people than one usually finds in samples of adults and juveniles before the courts or in correctional institutions. We relied, for this part of our analysis, on a status ranking of Sydney suburbs that divides areas into seven strata (Congalton 1969[2] Cunningham, 1984[3]). Twice as many (19.1 per cent) of the drug offenders resided in suburbs of the top two strata as might have been expected in a random sample of the general population (9.8 per cent).*

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* This general population estimate, if anything, overstates the proportion in the top two strata (Congalton, 1969[2] p.131).

RESULTS

Offence Characteristics

Most cases centered on a single drug. This was true of nine cases out of ten with hemp/cannabis and heroin predominant. Considered from the point of view of the main drug involved*, almost three-fifths of the defendants were charged with hemp/cannabis offences and one third with heroin offences:

Main drug involved (N = 276 defendants)	
Heroin	34.1
Hemp/Cannabis	58.0
Cocaine	0.7
LSD	1.8
Other	2.5
Not established	2.9

The value of the drugs ranged from $100 to $1.2 million. In a fifth of the cases they were valued at less than $1,000, in another quarter at between $1,000 and $5,000 and one in eight were between $5,000 and $10,000. A little over a quarter (27.5 per cent) of the cases involved drugs valued at more than $10,000. The average (median) value was $6,000. The value of the drugs could not be ascertained from the files in one case in seven (14.5 per cent).

At this point we should note a general difficulty in calculating the value of drugs. All drugs are submitted to the Government Analyst who then issues a certificate stating the purity of them. In the case of heroin this is expressed as a percentage of diamorphine contained in the sample submitted. This percentage of purity varies greatly depending on how often the drug has been 'cut', and can be an indication of how high an offender is on the supply chain. Most heroin passes through many hands before it reaches the consumer, almost every dealer will dilute the drug with glucose, or some other substance, as it passes through his hands.

* Determined where necessary, by monetary value.

Thus to say a gram of heroin is worth X number of dollars is meaningless without knowing the purity of the drug involved, and as the purity varies from ten to ninety percent simply assigning a dollar value can be quite misleading. In most drug cases the police assign a value to the drugs, and this then becomes the value adopted by the court. This value can vary widely. Two examples illustrate this problem:

In the case of 'G' there were 27.9 grams of heroin which was 37.8 per cent pure, or, put another way, 10.5 grams of pure heroin. This was valued by police at $15,000 thus assigning a value of $1,428 for each gram of pure heroin.

In the case of 'N' there were three bags totalling 29.88 grams with a purity of 70 per cent according to the Government Analyst, giving a total of 22.07 grams of pure heroin. This was valued by police at $5,000. Here the pure heroin was valued at only $226 per gram.

As these were two different cases heard before different court personnel this vast difference in value appears not to have attracted anyone's attention.

The valuation of hemp is a much more subjective and difficult matter. When hemp is submitted to the Government Analyst a certificate simply is issued stating the weight of the material and its THC content. As the resin impregnated 'heads' of the plant have a street value ten times greater than the leaf of the plant, such certificates are of little use in determining the dollar value of a parcel of hemp.

Because of these difficulties in estimating the worth of drugs all dollar values used in this study have been arrived at by assigning a consistent value per gram for the drug involved, taking into account purity only in the case of heroin.

These problems in calculating the value of drugs highlight the difficulties faced by judicial officers. Judges and magistrates can do little but accept the veracity of the valuations presented to the court, even though such valuation may not accord with their professional experience. Until a more objective system of valuation is devised these problems will recur.

Variations of Charge

In approximately one case in twelve the initial charge was varied. Independent legal assessment of these changes indicated that in about half of them the effect was to make the defendant eligible for reduced penalties. In the other half, the changes appeared to have either the opposite or no effect.

Bail

Bail was granted four times out of five and was opposed by the police in only 21.4 per cent of cases. Bail conditions related mainly to reporting (37.7 per cent) and surety (62.5 per cent). Passport surrender was an infrequent requirement (one case in eight) and place of residence was prescribed in approximately one case in twelve. Changes to bail conditions occurred in two out of every five cases with the most usual variations involving the relaxation of reporting and surety conditions.

Of the 59 cases in which bail was initially opposed, it was later granted in 29 of them. Half of the cases where the granting of bail was delayed involved heroin charges, the other half concerned alleged hemp/cannabis offences.

What factors influence the decision to grant bail? Over and above the immediate importance of this question, the issue is of additional strategic significance to our study. In particular, it will be instructive at a later stage to compare the factors associated with the granting or withholding of bail on the one hand, and the handing down of severe or comparatively lenient penalties, on the other. As far as the decision to grant bail is concerned, our initial analysis (Table 1) indicates the importance of five factors. Table 1 is based on simple associations between background and offence characteristics and the granting of bail. Shortly we will see that the range of variables associated with this decision narrows when their combined effects are considered but, in the first instance, having the following characteristics reduces the prospect of obtaining bail:

(i) a criminal history,
(ii) a history of drug offences (indictable and summary)
(iii) an alleged current offence involving heroin, and
(iv) an alleged current offence involving drugs of substantial value.

Defendants with a history of indictable drug offences and those involved in heroin cases where the drugs seized are of high value, are among the least likely to be granted bail.

Next we examine the combined effects of the five variables found to be individually related to the granting of bail. Since the outcome variable, the granting of bail, is binary, a logistic regression can be carried out with the five factors listed above as the predictors. When the five factors are considered together in this way, three remain significant - type of drug, previous indictable drug offences,and value of the drugs involved in the alleged offence (X^2 Res = 40.1., df=33., p > .10). On the evidence of the regression coefficients, it can be concluded that a history of indictable drug offences and current charges involving heroin of substantial value (especially in excess of $50,000), lessen the likelihood that a defendant will obtain bail. In the next section, we examine whether judges of the District Court adopt the same standards in determining the penalties for those finally convicted of indictable drug offences.

Table I : Factors Associated with the Granting of Bail (N = 276)

	% granted bail		
	Yes	No	N
1.Previous criminal history			
none	91.2	8.8	91
adult	84.4	15.6	96
adult & juvenile	73.7	26.3	57
	X^2 = 8.19, df=2, p <.02		
2. Previous drug offences			
2.1 Indictable			
Yes	48.0	52.0	25
No	88.9	11.1	216
	X^2 = 25.8, df=1, p <.001		
2.2 Summary			
Yes	78.9	21.1	90
No	89.3	10.7	149
	X^2 = 4.8, df=1, p <.05		
3. Principal drug involved			
Heroin	73.4	26.6	94
Hemp/Other	85.2	14.8	169
	X^2 = 12.3, df=1, p <.001		
4. Value of drugs			
$			
0 - <999	80.4	19.6	
1,000 - 4,999	85.9	14.1	
5,000 - 9,999	88.2	11.8	
10,000 - 49,999	88.7	11.3	
50,000 +	46.2	53.8	
	X^2 = 16.9, df=4, p <.002		

TRIAL AND OUTCOME

The majority of the defendants in our study (71.4 per cent) pleaded guilty. Two out of three cases involved only one indictable offence. A little more than a quarter (27.9 per cent) of the defendants changed their plea in the course of the proceedings, in almost every instance from not guilty to guilty.

Of the 276 cases, 19 resulted in 'no bills', nine in not guilty verdicts, and 246 in guilty verdicts. Two outcomes could not be established. Approximately a third (35.2 per cent) received non-custodial sentences, mainly a combination of a fine and bond, and the remainder (54.5 per cent) received custodial sentences ranging from six months to in excess of 10 years. Approximately one in seven of the defendants received sentences exceeding five years. An equal number - 18.5 per cent - received sentences of either (i) three to five years, or (ii) less than three years. On the other hand, only 4.2 per cent of cases receiving a custodial sentence involved a non parole period of more than three years.

Table II : Outcome of Sample of Indictable Drug Cases, Sydney District Court, 1980 - 82 (N = 276)

General Outcome	n	%
No bill	20	7.2
Not guilty	9	3.3
Non custodial	97	35.2
Custodial:		
0 - 6 months	2	0.7
6 months less than 12 months	10	3.6
12 months less than 24 months	11	4.0
24 months less than 36 months	29	10.5
36 months less than 48 months	35	12.7
48 months less than 60 months	16	5.8
5 years less than 10 years	34	12.3
10 years +	3	1.1
Periodic detention	8	2.9
Not established	2	0.7

Non Parole Period	n	%
Not applicable	147	
0 - 6 months	26	20.2
6 months less than 12 months	40	31.0
13 months less than 18 months	21	16.3
19 months less than 24 months	18	14.0
25 months less than 36 months	14	10.9
36 months +	6	4.6
Not established	4	3.0

What characteristics of defendants and/or features of their drug offences are associated with varying degrees of severity of punishment? Analyses designed to answer this question can proceed at several different levels, not all of which can be reported within the confines of a single article. Fortunately, the analyses all point to the overriding importance of two factors - not three, as we found in decisions to grant bail. In our consideration of court outcomes, the predictor variables have been restricted to those thought to impact directly on either the verdict or, more especially, the sentence received. Hence bail has not been included as a predictor variable for it can be argued that any relationship between the granting of it and the general outcome of cases, is spurious. The relationship may simply be the result of the connection between bail and offence characteristics on the one hand, and outcome and offence characteristics, on the other. The predictor variables that we have used include previous criminal history (including drug offences), the nature of the offence and demographic and personal characteristics.

The convergence in the findings of different analyses of court outcome can be illustrated by treating the final result of drug cases in two different ways. First, we classify outcome in terms of three categories:

(i) not guilty/no bill,

(ii) non-custodial penalty,

(iii) custodial penalty.

When these categories are cross-classified with the above-mentioned predictor variables, the result is to emphasise the importance of two factors, the type and value of the drug involved. A defendant was more likely to be imprisoned if the principal drug concerned was heroin and/or if the drugs seized were of substantial value:

Table III : Predictors Associated with Severity of Outcome (N = 276)

	Not Guilty %	Non-Custodial Sentence %	Custodial Sentence %
Principal drug involved			
Heroin (N = 93)	8.6	22.6	68.8
Hemp/Other (N = 172)	11.0	48.2	40.8

$X^2 = 19.9$, df = 2, $p < .01$

	Not Guilty	Non-Custodial	Custodial
Value of drugs			
$			
0 - 999 (N = 53)	17.0	41.5	41.5
1,000 - 4,999 (N = 70)	10.0	37.1	52.9
5,000 - 9,999 (N = 35)		57.1	42.9
10,000 - 49,999 (N = 61)	9.8	24.6	65.6
50,000 + (N = 14)	7.1	21.4	71.5

$X^2 = 18.6$, df = 8, $p < .02$

The forgoing conclusion is supported by the results of two further analyses which are restricted to those who were found guilty. The first of these compares those receiving noncustodial sentences with those receiving custodial sentences. Because of the binary nature of outcome, a logistic regression was carried out: both type and value of drug were significant but not the interaction (X^2 = 2.0; df = 4; p >.05). Custodial sentences are associated with either drug type (heroin rather than hemp) and/or drugs of high value.

The second analysis focused on the length of sentence received. For this analysis outcome was treated as an ordinal variable (0-12 months = 1, 12-36 months = 2, 36-60 months = 3; greater than 60 months =4) and a two way ANOVA employed with drug type and value as the factors. Drug type was significant (F = 18.0; df = 1,110; p < .001) but not value of drug (F = 2.1; df = 4, 110; p >.05). Offenders involved with heroin received longer sentences (in the range 36-60 months) than those involved with hemp (in the range 12-36 months); but the value of the drug did not affect the length of sentence.

The results from this second analysis were supported by an analysis of the duration of non-parole period. Only the type of drug was significant (F = 6.2; df = 1, 110; p $\leq$ .02) with heroin offenders receiving longer non parole periods ($\bar{X}$ = 18.6 months) than those involved with hemp ($\bar{X}$ = 12.0 months). The value of the drug was not significant (F = 1.0; df = 4,110; p >.05).

From these analyses we can conclude that custodial sentences are associated with heroin rather than hemp and/or drugs of high value, but that value has no effect on the actual length of sentence. Unlike our findings in relation to bail, a history of previous drug offences appears to have no bearing on the severity of the penalty imposed.

VARIATIONS IN SENTENCING

Having identified the main factors influencing the final result of drug cases, we are now in a position to see whether there are any court outcomes that are 'anomalous' given the types of drugs involved and/or their value. Examination of the residuals from the logistic regression of outcome on drug type and value reveal at least two, and arguably three extreme cases: one involving heroin, the estimated value of which exceeded $50,000 and in which a non- custodial sentence was imposed, and two cases involving hemp, also valued in excess of $50,000, with non-custodial sentences.

The first of these cases involved a thirty year old man charged with supplying a drug of addiction. He had in his possession 2.7kg of hashish (THC 4.8 per cent). The offender had no previous convictions, pleaded guilty, and was fined $1,000 and placed on a three year bond. In passing sentence, the judge commented that he felt the defendant had been "A pawn in the scheme".

The second anomalous case concerned a young man with a substantial history of juvenile and adult (summary) drug convictions. The details of this case must remain confidential but the defendant pleaded guilty to a charge of supplying heroin of considerable value. The offender was placed on a bond and received a comparatively small fine. The judge noted that the defendant had been of assistance to the police. No appeal was lodged in this case.

The third and less clear cut of the three statistically anomalous cases involved a 50 year old man with no previous convictions, charged with cultivating a prohibited drug and selling a drug of addiction (indian hemp weighing 49 kilos). This case exemplifies the previously mentioned inconsistencies in police evaluation of the worth of drugs. Applying consistent 1984 values we estimated the worth of the drugs in this case to be $129,000. Because the plants were harvested prematurely, the police valued them at $36,000. The penalty in this case comprised a four year bond and a fine of $3,000. The Crown lodged an appeal against the leniency of the sentence and the appeal was upheld. The original sentence was replaced by a two and a half year prison term with a non-parole period of one year.

Appropriateness, consistency of penalties

The penalties imposed in two of the three cases identified as statistically anomalous can more readily be understood in the light of the remarks of the sentencing judges. That is not to say that merely noting the existence of such remarks satisfies the requirements of an effective system of reviewing sentences. Our views on this question can most appropriately be stated in the discussion section that follows the presentation of the findings of our study. However, since several of those findings bear on the question of the appropriateness of the sentences imposed on drug offenders, it is convenient to draw them together at this point to provide a basis for our later recommendations. We need, at this point, to consider three main issues:

(i) assessments of relative culpability;

(ii) wide variations in penalties; and

(iii) limited appeals by the Crown.

Assessments of Relative Culpability

Judges' interpretations of the motives of individual defendants and the roles they have played in matters involving more than one offender, very often depend on inferences and assessments of a most general kind. These interpretations probably are influenced by sources as varied as a judge's attitudes and professional experience but they can also be affected by information placed before the court by the police who have investigated a case. Hence, as we have seen in one of the three 'anomalous' cases mentioned above, leniency was extended because the defendant was considered to be merely "A pawn in the scheme". In another of the cases that attracted a markedly lenient penalty, the judge commented that the defendant had been of considerable assistance to the police.

The fact that in more than seven out of ten indictable drug offence cases the task facing the District Court is essentially one of determining an appropriate penalty, highlights the importance of the way in which the defendant's complicity in an offence is presented to a Court. Even judges of extremely independent outlook may feel obliged to exercise leniency towards a defendant because of mitigating circumstances outlined by the police.

An effective review system would need to consider statistically anomalous outcomes in the context of other anomalous cases. Most obviously, the legal aspects of these cases would need to be reviewed but so too would the pattern of involvement of judicial, legal, police and court personnel. In a later section we illustrate some of the possibilities of this type of analysis. Before leaving the point, however, it should be noted that although they did not emerge from the statistical analysis as being markedly anomalous, there were six cases involving heroin and eight involving hemp/cannabis, where the estimated value of the drugs was between $10,000 - $50,000, and a non-custodial sentence was imposed. These outcomes might well be considered worthy of inclusion in an effective review of sentencing.

Wide variations in penalties

We have already noted that more than one in three of the cases examined in this study resulted in non-custodial penalties. We have also seen that relatively severe penalties were more likely to be imposed in cases involving heroin and/or drugs of considerable value. However, behind these statistical generalisations lie some instances in which the sentences imposed were so varied as to bring into question the breadth of the discretion delegated to sentencers. We will illustrate the problem with seven cases before presenting further relevant statistical evidence.

A 21 year old man, charged with possession of buddah sticks, indian hemp in leaf form and hashish oil capsules conceded that he had sold some 'deals' to support his own habit. The estimated value of the drugs involved in this case was $2,000. The defendant had no previous convictions, lived with his parents, and had completed an apprenticeship and was undertaking further trade training. He presented good trade and social references, testifying to his character and industriousness, to the court and the claims made in the references were conceded by the trial judge. However, His Honour commented on the high level of public concern about the use of illicit drugs and stated that young people can be introduced to more serious drug habits by the use of indian hemp. The young man received a prison sentence of six years with a two and a half year non-parole period. His appeal against the severity of the penalty was disallowed.

It is difficult to reconcile the action taken in the above case with the penalties imposed by the same judge on two other drug offenders, both men in their early thirties. One of the defendants had four previous summary convictions for possessing a drug of addiction. His inclusion in our study followed charges of supplying indian hemp and supplying LSD. He received a penalty of 150 hours of community service. There was nothing in the court papers indicating grounds for lenient treatment in this case. The same was true of a second case in which the defendant pleaded guilty to two counts of supplying a drug of addiction (heroin), estimated to be worth $128,000. He was given a 12 month gaol term.

In a case before a different judge, a man in his early thirties, with no previous convictions, was charged with one count of Supply Indian Hemp and one count of Cultivate Indian Hemp. The impounded drugs weighed nearly a kilo and had an estimated value of $26,000. The defendant pleaded guilty and was given a two year bond.

The outcome in another case involving the supply of indian hemp contrasted sharply with the treatment given to the 21 year old mentioned in our first illustration. Two defendants were charged following a carefully planned observation of the delivery of a parcel to a suburban address. At first, the man who delivered the parcel claimed he did not know what was in it. Later, he acknowledged opening the parcel prior to delivery and smelling its contents. "Then I knew". When the police asked the recipient of the parcel what its contents were, he replied 'Hash'. Further, he indicated plans to sell it to an interstate contact.

The magistrate who presided over the committal proceedings in this case took a serious view of it. He referred to the hashish as 'having a street value of $29,000' and reminded one of the accused (the alledged recipient of the parcel), that he appeared as a person with previous drug convictions and was still on a recognizance to be of good behaviour. When eventually this defendant appeared in the District Court he received a deferred sentence conditional upon the payment of a fine of $2,000 and his willingness to accept the supervision of the Probation and Parole Service. Following the sentence, conflicting advice concerning the advisability of an appeal was tended to the Attorney General. Advice recommending an appeal against the leniency of the sentence included reference to four previous drug offences, two of them for using proscribed substances (indian hemp and LSD), one for smoking indian hemp and cultivating indian hemp, and one for supplying a drug of addiction. The advice against lodging an appeal referred to the fact that the offender had a history of debilitating illness. No appeal was lodged in this case nor in relation to the fine and bond imposed on the co-defendant.

There were two other cases which, on the basis of previous criminal history and the nature and value of the drugs involved, might have been expected to attract relatively lenient penalties. In fact, prison sentences of five years were imposed in both cases. In the first, a 33 year old man with no previous convictions, was charged with Supply Indian Hemp. At the time of his arrest he had the comparatively small amount of 269 grammes in his possession. However, he admitted to having purchased, with two associates, $1,200 worth of indian hemp and dividing it up for sale. He pleaded guilty and received a five year sentence with a two year non-parole period. The second case involved a man of 40 years of age, with no previous convictions, who was charged with supplying indian hemp and also assaulting a constable in the execution of his duty. The defendant had in his possession 914 grammes of indian hemp (estimated value $2,500). He pleaded not guilty, was convicted, and sentenced to five years imprisonment with a three year non-parole period.

The disparities in sentencing reflected in the above cases can also be seen in the tabulated outcomes for 'like' cases (matched in terms of the main drugs involved, their value, and the criminal histories of the defendants). For example, among defendants with no previous convictions, and where the substance involved was other than heroin, the following diverse penalties were imposed:

First offence/
not heroin

	Outcome				
Value of substance	Non Custo-dial	Less than 12 Months	12 months, less than 3 years	3 years less than 5 years	5years+
i) less than $1,000 (N=10)	8	-	1	-	1
ii) $ 1,000-$ 5,000 (N=17)	8	1	5	1	2
iii) $ 5,000-$10,000 (N= 8)	4	-	3	-	1
iv) $ 10,000-$50,000 (N=14)	5	-	5	3	1
v) $ 50,000 + (N= 3)	2	-	-	1	-

All but two of the ten defendants in the lowest value category received non-custodial penalties but one received a prison sentence of 5 years. A more even spread of penalties was evident in the $1,000 to $5,000 category but again the contrast between the use of non- custodial and substantial prison sentences is marked. At the other extreme, two of the defendants in cases where the drugs were valued at more than $50,000, received non-custodial sentences, the other a substantial prison sentence (3-5 years).

When the above tabulation is repeated for first time heroin offenders, the diversity of sentences is no less compelling:

First offence/ heroin

	Outcome				
Value of substance	Non Custo- dial	Less than 12 months	12 months, less than 3 years	3 years less than 5 years	5 years +
i)less than $1,000 (N= 1)	-	-	1	-	-
ii) $ 1,000- $ 5,000 (N= 9)	1	-	-	2	6
iii)$ 5,000- $10,000 (N= 5)	3	-	1	-	1
iv) $10,000- $50,000 (N= 7)	3	-	-	3	1
v) $50,000 + (N= 3)	2	-	-	1	-

The proportion of offenders receiving non-custodial sentences actually increases in the higher drug value categories. There was only one case involving heroin valued at less than $1,000 but in the $1,000 $5,000 category, all but one of the nine defendants received prison sentences of upwards of three years. Thereafter, the proportion receiving prison sentences of the same magnitude drops to 1/5th ($5,000 - $10,000), 4/7ths ($10,000 - $50,000) and 1/3rd ($50,000+).

Limited appeals by the Crown

Appeals against the leniency of penalty were lodged by the Crown in five of the 248 relevant cases. On the other hand, 25 defendants entered appeals, 17 on the grounds of the severity of the sentence received. Two of these appeals were upheld. All seven defendants who appealed against their conviction, had their appeals dismissed.*

Crown Appeals

It is difficult to discern any system in the Crown's decisions to appeal against the leniency of the penalties imposed in drug cases. To some extent, the uncertainties of the situation have already been illustrated by the cases cited in the previous section. Recommendations that appeals should be lodged are sometimes couched in terms of the anticipated response of the Appeals Court. This is obviously an important consideration and likely to remain a feature of any review system, but missing from the process is any reference to systematically compiled data on the range of 'typical' outcomes. A brief summary follows of the five cases in which the Crown lodged appeals.

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* The grounds for one appeal could not be ascertained but it was unsuccessful.

The first case involved a twenty-three year old heroin addict charged with supplying a prohibited drug. The drugs that were seized in this case included indian hemp and heroin with an estimated value of $1,650. The defendant had a history of previous offences, pleaded guilty, and was sentenced to a three year bond with probation. The Crown appeal against the sentence on the grounds of leniency was dismissed.

Another case in which the Crown lodged an appeal involved several defendants charged with supplying a prohibited drug (heroin). One of the defendants, a woman, had in her possession heroin valued at almost $19,000. She received a three year sentence with a non-parole period of six months. Another male defendant had in his possession heroin to the value of almost $3,000 but because he was considered the main instigator of the offences, received a sentence of eight years imprisonment with a non-parole period of three years. Another male, 39 years of age with no previous convictions, had less than a thousand dollars worth of heroin in his possession. However, $4,350, allegedly the proceeds from the sale of drugs, was also taken into account. He was sentenced to two years imprisonment with a non-parole period of six months. The Crown appeal against the leniency of his sentence was dismissed.

A third case involved a 50 year old man with no previous convictions, who was charged with cultivating a prohibited drug and supplying a drug of addiction. This case has already been referred to in a previous section dealing with statistically anomalous outcomes. In this instance, the police seized a little under 49 kilos of indian hemp worth an estimated $129,000. The defendant pleaded guilty and was placed on a four year bond and given a fine of $3,000. The Crown appeal against the leniency of the sentence was upheld, a prison sentence of 2.5 years (non-parole period 12 months) being substituted for the original sentence.

The next two cases involving Crown appeals were unusual in that they concerned the same individual. A 23 year old man pleaded guilty to a charge of supplying indian hemp. He had a history of eight previous summary convictions, (drink/driving, larcency, malicious injury, break, enter and steal, breach of recognizance, and one count of smoking indian hemp and another of possessing indian hemp). The estimated value of the drugs involved in this instance was approximately $3,300. He pleaded guilty, and was given a three year bond. An appeal against the leniency of the sentence was upheld. A one year prison sentence was substituted for the three year bond. A little later the same defendant was convicted on a further charge of supplying indian hemp and was given a bond. Again the Crown appealed and an 18 months goal term was substituted for the bond, the sentence commencing at the completion of the sentence imposed following the first appeal by the Crown.

COMBINATIONS OF POLICE, LAWYERS, JUDICIAL OFFICERS

The available data permits not only the consideration of general patterns of outcome in drug cases before the District Court, but also the effects of particular combinations of police investigators, lawyers and judicial officers (magistrates and judges). Before inferences can be drawn about the interactions of different individuals occupying the above roles, there has to be a sufficient number of instances of their mutual involvement in cases for any claimed effect to be credible, let alone satisfy the requirements of statistical significance.

Some of the difficulties, as well as potential benefits, of this type of analysis are reflected in the statistical interactions between the defendants' solicitors and the judges who presided over the trials and/or sentencing phases of the drug cases. One hundred and thirty four solicitors took part in the 276 cases. Only 12 participated in four or more cases - two were involved in seven cases, another in nine, another in 25 cases. On the other hand, 34 judges presided over the trial and/or sentencing of the 259 defendants whose cases were not terminated by the issuing of a no bill. Ten judges handled eight or more cases, with five of them presiding over 20 or more cases.

It is clear from the above figures that we would not have much to go on if the participation of individual solicitors and judges in particular cases reflected their respective shares of the total number of cases. A sufficient number of judges had caseloads large enough for patterns to emerge but this was not matched on the side of the solicitors. However, the case involvement of judges and solicitors did not always strictly accord with such expectations. In particular, the combination of one judge with one solicitor was associated with a number of statistical anomalies. Before detailing what they were, it should be noted that there may be perfectly acceptable legal reasons for any pattern of court statistics. Nevertheless, if judicial officers are in any degree to be held accountable for their decisions, the following pattern revealed by our analysis of drug cases would surely represent one instance in which an explanation might be sought.

A solicitor (S) who took part in 25 drug cases (9.0 per cent of the total) might have expected to appear in three or four (3.7%) of the drug cases handled by Judge J. In fact S took part in nine of the judge's cases - approximately 2.5 times the number we might have expected. The S/J cases involved a disproportionate number of investigations by a particular police unit but more striking was the fact that all nine defendants pleaded guilty. By comparison, 28.6 per cent of all cases involved a plea of not guilty and this pattern was approximated in the remainder of S's cases and to a lesser extent in J's cases (30.7 and 16.2 per cent respectively). Six of the nine S/J cases changed their plea from not guilty to guilty as they proceeded through the courts, compared with one in four of the other drug cases in our sample. That

is, S/J cases were 2.5 times more likely to change their plea than was generally the case with other combinations of solicitors and judges.

At first glance, some of the sentences imposed on the nine defendants appear, in the context of the overall pattern revealed by the study, to be relatively severe. In four cases prison sentences were imposed, ranging from three years (two cases) to 2.5 years and one year. This appearance of relative severity is not difficult to understand, given the substantial value of the drugs involved. However, in all four cases a non-parole period of six months was imposed. This was a somewhat unusual result given that three of the cases involved heroin (average non-parole period in the total sample = 18.6 months) and the remaining case involved hemp (average NPP = 12.0 months). The remaining five cases involved the granting of bonds, in four cases with the additional penalty of a fine. Apart from the judge and the solicitor, the personnel involved in these nine cases varied. For example, there were five different barristers.

The pattern of penalties in the S/J cases might be ascribed to the comparative leniency of the judge involved or the general efficiency of the solicitor in contributing to the defence of clients. To further examine these possibilities, the results of the S/J cases have been compared with the outcomes in other cases involving S, other cases involving J, and all 250 cases in which a penalty was imposed (excluding no bills and findings of not guilty). From Table IV (below) it can be seen that it was only in S/J cases that non-parole periods were confined to six months. The general trend was for non-parole periods of more than six months to be imposed in about a third of cases and that was what happened in the remainder of Judge J's cases and to an even greater extent in the remainder of solicitor S's cases. Neither general leniency or special skills appear to be reflected in the outcomes of these cases.

Examination of other combinations of court personnel failed to locate outcomes that differed to any great degree from the general pattern of results for all cases. For example, the cases heard by one judge involved a disproportionately large number prosecuted by a particular police unit, with outcomes that were consistently 'lenient' (in the sense of involving very few custodial sentences). Detailed consideration of procedural variables and the personnel involved, failed to throw any light on the severity of the penalties imposed. A Crown Prosecutor was involved in just under half of the 25 cases presided over by a particular judge and all but one of the defendants in these 12 cases pleaded guilty. The pattern of outcomes, however, was virtually identical with that found in the judge's remaining cases. Thus the previously discussed S/J cases remained distinct in the way their outcomes differed from:

(i) the general pattern of sentences in drug cases, and

(ii) the sentences imposed in J's interactions with other solicitors and S's interactions with other judges.

TABLE IV : OUTCOMES IN SOLICITOR S AND JUDGE J DRUG CASES

	CATEGORY	NON CUSTODIAL		PERIODIC DETENTION		CUSTODIAL			
						NPP 6 months		NPP > 6 months	
(i)	All court Determined Cases (N = 250)	99	(39.6%)	8	(3.2%)	44	(17.6%)	99	(39.6%)
(ii)	Solicitor S /Judge J (N = 9)	5	(55.5%)	-		4	(44.5%)	-	
(iii)	Judge J /Other Solicitors (N = 30)	17	(56.7%)	-		3	(10%)	10	(33.3%)
(iv)	Solicitor S /Other Judges (N = 13)	5	(38.5%)	-		1	(7.7%)	7	(53.8%)

No Bills

Nineteen of the 276 cases in our sample resulted in the granting of no bills. The stated reasons for these decisions were:

		Number
(i)	Insufficient evidence for a jury to convict on an indictable charge	11
(ii)	Defendant's ability to establish that drugs were for personal use	5
(iii)	Change in proscribed level since charges laid	2
(iv)	Defendant already the subject of more comprehensive charge	1

Nine of the 19 no bill cases were subsequently dealt with by way of summary charges. In seven cases no further action was taken and in three cases we were unable to ascertain whether or not action had ceased following the granting of no bills.

The scope and resources of our project have not permitted us to examine the no bill cases in detail. Because of our concern with the consistency and fairness of the Law's handling of drug offences, we have scratched beneath the surface of a number of cases. We will comment here on just three of these cases. It needs to be reiterated that our explorations have been severely restricted by the virtual absence of investigative staff. Nevertheless, sufficient has been revealed by even the most preliminary of inquiries to again bring into question the care and consistency with which the criminal law is administered in New South Wales.

In the first illustrative case a young man was taken into custody when the police interrupted a delivery of indian hemp. In a subsequent search of the accused's home police found a further quantity of the same drug. According to the police, the accused admitted complicity in the supply of indian hemp and there was a corroborating statement from a co-accused. At the committal hearing the defence alleged that the police record of interview with the defendant was a fabrication. However, a legal officer of the Department of the Attorney General made the following submission in relation to the alleged fabrication:

> ...it would appear to me this would be a matter for the jury and prima facie there is a strong Crown case against the accused...

The point of concern in this case is that the prosecution of it was delayed by the simultaneous and protracted emotional illness of two police officers who were key witnesses. In a departmental submission to the Attorney General successfully recommending the granting of a no bill, it was pointed out that both police officers had each been under the care of the same psychiatrist for six months, receiving treatment for an unspecified "nervous disorder". The psychiatrist had indicated in writing that neither officer was well enough to attend court. The submission argued that the evidence of both officers was of considerable importance to the prosecution of the case and it would be "unrealistic" to proceed without it. The psychiatrist was unable to say when the police might be expected to be well enough to attend Court.

One might have thought that, to even the most unsophisticated in such matters, the coincidence of both witnesses simultaneously suffering emotional illnesses was at least worthy of further inquiry. There is no evidence of any such inquiry being undertaken. Nor is there any indication that the matter will be re-examined following the recent conviction of one of the two key police witnesses for serious drug offences.

In another case, a man charged with supplying and cultivating indian hemp, had a history of seven previous convictions, including the possession and cultivation of indian hemp. In departmental submissions to the Attorney General successfully recommending the granting of a no bill, it was argued that the quantity of drugs involved in this case barely exceeded the limit required for the offence to be dealt with on indictment. It was said that the defendant would have little difficulty in sustaining the defence that the drugs were for his own use. It was recommended that summary charges of possession be substituted for the more serious supply and cultivation charges.

However, the departmental submissions only refer to the quantities of drugs involved in one of the two initial charges, namely, that of supply. At the very least, the police handling of the cultivation charge appears to have been incompetent. The plants seized from the backyard of the defendant's home were not properly submitted to the Government Analyst and no evidence was offered by the police on the cultivation charge. Yet, our independent checking of the police Crime Incident Report in this case revealed that:

> ....in the backyard (police) found 30 indian hemp plants ranging in size from a few inches to about 4'. Inside the house we found a garbage bag with indian hemp plant tops, and another small white paper bag with cut hemp. The offender stated that they were for his own use, and that they had just sprung up from the ground, without and assistance.

Had the above 'haul' been taken into account, there is no doubt that the defendant would have been dealt with on indictment. We have seen that some first offenders convicted of supplying indian hemp valued at less than $5,000, have received prison sentences of up to five years. It is hardly equitable that, as a result of inadequate investigation, an offender with numerous past convictions, is dealt with summarily rather than in a higher criminal court on the more serious charge of 'supply'.

The looseness of investigative procedures is highlighted by another case which did not result in the award of a no bill. Rather, the case lapsed because of the reported death of the defendant who had been charged with supplying heroin valued at more than $15,000. The police tended a letter to the Court indicating that the defendant had died in New Caledonia in November, 1981. No death certificate or other corroborating documents appear to have been presented to the Court.

Our own inquiries in New Caledonia have uncovered a more complicated chain of events than that apparently communicated to the Court. An Australian, identified as someone other than the defendant in this case, drowned while swimming with friends at Noumea on the evening of the 19th October, 1981 (not November as indicated to the Court). According to public records in New Caledonia, in April, 1982 New South Wales police found that the man thought to have drowned was alive. They identified the deceased man as the defendant.

DISCUSSION

The legal response to serious drug offences in New South Wales is muddled and inconsistent. That such inconsistency results in the inequitable handling of individual offenders is clear from our study of metropolitan District Court cases. Whether the disorder is accompanied by the manipulation of court proceedings is a question on which our evidence is necessarily less decisive. Nevertheless, those who believe the administration of the criminal law should be above suspicion will derive little comfort from our findings. They will wish to see the introduction of safeguards to prevent improper influences being brought to bear on court and legal review procedures.

There are at least four things that can be done to help overcome the problems that we have identified. Essentially, they involve removing the institutional barriers that have shielded the workings of the criminal justice system from effective public scrutiny:

(i) development of an adequate court information system;

(ii) establishment of a Sentencing Council;

(iii) establishment of Probity Council;

(iv) provision of statutory support for necessary data collection.

(i) ADEQUATE INFORMATION SYSTEM

The present study has shown that existing court statistics are of limited help in understanding variations and inconsistencies in sentencing. The summary data that are currently made available to the public are deficient both with respect to their limited analysis and the range of variables included. The published statistics present broad profiles of offenders and offences, on the one hand, and general patterns of outcome, on the other – with little or nothing in between. To gain a better understanding of the processes that link charges with particular penalties requires the incorporation of data on judicial and legal officers, police and court personnel, and legal procedures. Until such analyses are performed as a matter of routine, the only overview of the disposition of cases will remain that performed, on the present evidence haphazardly, by Crown law officers on the basis of opinion rather than empirical data.

The development of an adequate criminal data system for the Higher Criminal Courts requires the design of a more efficient record system than that which currently exists. However, any delay in developing further the method of statistical audit initiated by the present study, on the grounds that it is first necessary to improve the basic record system, would be inexcusable. Our own work, conducted on an extremely modest budget, has shown that it is possible, even working with the existing records, to gain a great deal of systematic and administratively relevant information. Our experience has also indicated an appropriate research strategy. In any given period the aim should be to audit specific categories of offences, with extensions where necessary into related criminal fields, rather than attempt a simultaneous broad coverage of cases heard by the Higher Criminal Courts.

The agency that collects and analyses the recommended data needs to be independent, professionally competent, and of unquestionable integrity. These attributes may be promoted by the staffing and structure of the organisation chosen to carry out the research functions described. But their presence would also be assisted in large part by the character and expectations of the authorities that would request and make use of the data gathered by the research agency. We propose two such state authorities. Broadly speaking, one would need to concentrate on the question of sentencing fairness and consistency. Its activities should be public and persuasive. The other authority should keep under review the probity of all concerned with the courts. Its activities should be private, although it should report periodically on the performance of its duties. Since these two authorities form the organisational context in which the research audit should be conducted, they will now be discussed in greater detail. We will then be in a position to show how an existing state government research unit could, with additional resources and statutory protection of its independence, provide the information needed by the two authorities.

(ii) A Sentencing Council

The power that the criminal courts exercise over individuals is not matched by public understanding of their operations. Nor are there adequate safeguards against unfairness in the courts' handling of individual cases. Of course, we are not the first to make these observations. Many authorities have argued that judicial decision making should be more even-handed and open to public scrutiny. What has yet to happen in New South Wales is the practical incorporation of such recommendations in the administering of the Law. The intolerable inconsistencies in sentencing revealed by our study demand that immediate action be taken to correct this situation.

Fortunately, a carefully conceived remedy has already been formulated by the Australian Law Reform Commission (ALRC, 1980)[4]. Various studies and enquiries undertaken by the Commission have convinced it that, in each Australian jurisdiction, "Judicial officers are concerned about keeping discrepancies in sentencing in like cases to an absolute minimum. They generally accept and espouse the principle of justice that like offences and offenders should be given like punishment. At the same time, they are also keenly aware of the importance of maintaining judicial discretion and independence in sentencing". One of the main ways in which these objectives might be achieved, according to the Law Reform Commission, is by the establishment of a Sentencing Council. The Council would review existing sentencing practices and publish sentencing guidelines and statistical and other data for the guidance of judicial officers.

The Commission's proposals relate to the sentencing of federal offenders but we believe they could help overcome many of the New South Wales problems highlighted by our findings. The recommendations concerning the establishing of a Sentencing Council have been outlined in some detail (ALRC, 1980, pp.270-275), and we are in substantial agreement with the Commission's interim recommendations.* In

* A final report currently is being prepared.

particular, the Council needs to be independent and enjoy the respect of the Courts. There should be a judicial majority on the Council but it should also include members drawn from a variety of backgrounds, including justice administrators, corrections officers, legal practitioners and academics. Its functions should be provided for in legislation and should include the review of sentencing practices and development of non-mandatory sentencing guidelines based, in part, on the empirical study of the range of penalties currently employed.

These guidelines should not be prescriptive, but should be intended and designed to assist in general terms, rather than coerce the exercise of judicial discretion. The necessary methodology already exists. It is one in which the weight given by judges to factors such as those considered in our own study (for example, previous criminal history, nature and value of drugs), are established and provided in simple chart form to sentencers. The Commission has stressed that the resultant guidelines should be advisory only, a means of - 'structuring not eliminating - judicial discretion', to aid judges in reaching fair and equitable sentencing decisions.

The existence of sentencing guidelines would also help overcome another of the concerns that arose out of our consideration of appeal procedures in New South Wales drug cases. As the Law Reform Commission has argued, the decision on whether or not to initiate an appeal against a particular sentence could be assessed against the guideline sentences. Moreover, the Appeal Courts would benefit for they would have some measure against which to test the adequacy of the punishment imposed in a particular case being reviewed by them.

There is no suggestion that the Appeal Courts should be restricted in their determinations by prevailing standards of punishment. If a court reached the conclusion that the guidelines were not appropriate for a particular type of offence, it would be in a position to declare that view and indicate an alternative policy. This explicit evaluation of the elements of a case warranting a more or less punitive response would exert an influence to modify the guidelines. There would be much firmer grounds on which Crown law officers could tender advice on the desirability of an appeal. In the light of our own findings, one might reasonably hope that such recommendations would, henceforth, focus on specific elements of the case in question, and the weights attached to them by judicial officers and appeal courts, rather than vague anticipations of how an appeal court might react if the matter were placed before it.

(iii) Probity Council

The consistency or otherwise of sentencing should be a matter of public record and debate. Consideration of the probity of court officers and related officials should be on a more confidential basis. The rights of the officials concerned must be respected and, while they should be held accountable for their decisions, they should not be required to work in a threatening environment. Once the need for an effective system of court review has been accepted and a Probity Council established, the latter should operate rigorously but discretely. The public accountability requirement of the Council should be fulfilled by the issuing of periodic reports.

The existence of a Probity Council, including people of solid professional achievement and integrity, and demonstrating a willingness to take its task seriously, would go a considerable distance towards lessening public anxiety about the court system. The membership of the Council obviously should reflect the jurisdictions it is intended to cover. That issue cannot be resolved here. With our study of cases heard by the District Court in mind, we propose the following structure for the Council:

- Chief Judge of the District Court
- One other judge of the District Court
- Representative of the Bar Association
- Representative of the Law Society
- Senior Public Defender
- Senior Public Prosecutor
- Auditor General
- Representative of the New South Wales Law Schools
- Such representation of the general community as the Government deems to be appropriate.

The majority of the proposed members occupy statutory appointments and represent groups that make vital contributions to the effective operation of the courts. The inclusion of the Auditor General is recommended because of the nature of the task to be undertaken and the high credibility of the office of the Auditor General in discharging such duties. Representation of the law schools should be on a rotating basis. The number of community representatives should not be so great as to make the Probity Council unweildy. The Council should report annually to the Parliament.

The Council's main function should be to conduct a systematic audit of the operations of the Criminal Courts. It should commission data collections and analyses and should have right of access to the files and court records of cases that have been finalised. The Council may seek clarification of the actions and decisions of officials. Where appropriate, it should report the facts uncovered by its investigations to the Chief Justice and any other relevant person or authority, including the police.

In addition to monitoring the operations of the Criminal Courts, there is one other worrying aspect of legal administration that should be reviewed by the Probity Council. Our examination of the award of No Bills was necessarily limited but the cases we did consider gave rise to serious concern about the care and consistency with which they had been handled. It would be quite unacceptable if this facet of legal administration should continue to remain totally shielded from independent scrutiny. The officers who, by their expression of views and presentation of information, exert great influence on the course of no Bill applications, must be rendered accountable for their actions.

Without wishing to limit the discretionary power to waive prosecutions, there is need for all concerned - the general public, defendants, the Attorney - to be confident that recommendations have been carefully and consistently prepared. Those responsible for preparing the recommendations should be aware that their work is subject to audit and we believe the Probity Council should carry out this function. The knowledge and experience of its members, supported by the research unit described in the next section, would enable the Council to perform this duty effectively. At the same time, the required degree of accountability would be achieved and the general findings of the Probity Council disseminated by means of periodic reports to the Parliament.

(iv) Statutory support for data collection

Probing, incisive statistical analysis will be the lifeblood of the Sentencing and Probity Councils. There already exists in New South Wales a government unit with the technical experience and professional credibility to meet the research design, data gathering and analysis requirements of the two Councils. Since the establishment of the Bureau of Crime Statistics and Research within the Department of Attorney General and Justice in the early 1970s, successive ministers of different political persuasions generally have respected the Bureau's need for professional independence. Nevertheless, there have been times when the need to protect that independence from bureaucratic and political controls has caused some officials, including the Bureau's founding minister, the late John Maddison, to canvas the need for the research unit to be made a statutory authority.

If such action was considered advisable in the past, the necessity for it would increase many times over were the Bureau of Crime Statistics and Research to be assigned the tasks we have proposed for it in relation to the Sentencing and Probity Councils. The Bureau's status as a statutory authority would:

(i) guarantee the integrity of its statistical analyses and the resultant inferences and conclusions;

(ii) guarantee its access to the data sources needed to fulfil its statutory obligations; and

(iii) ensure that the independence of the statutory appointees on the two proposed Councils is not compromised when the information they require to discharge their responsibilities, is being gathered.

Our proposals concerning the role of the Bureau of Crime Statistics and Research resemble, in some respects, recommendations of the Australian Law Reform Commission concerning the role of the Australian Institute of Criminology in relation to a Federal Sentencing Council. The Institute was established as a statutory authority under the Criminology Research Act, 1971. Its functions are clearly defined and staff enjoy an appropriate degree of professional independence in carrying out their responsibilities under the Act. The same circumstances need to apply to the Bureau of Crime Statistics and Research so that it can carry out its proposed functions in relation to the Sentencing and Probity Councils. These functions would entail an increase in the Bureau's workload and some additional skilled staff would need to be engaged. Appointment to the position of Director should be for a limited period, preferably five years.

The combined effect of these four measures, an adequate court information system, a Sentencing Council, Probity Council and an

independent research unit, would be to ensure a fairer and safer system of criminal justice than that revealed by our research. Unless the proposed measures are adopted, the traditional trappings and hierarchies of New South Wales legal administration will only continue to dignify a system of justice that is neither systematic or just.

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