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MURDER, THE PARDON BOARD, AND RECOMMENDATIONS BY JUDGES AND DISTRICT ATTORNEYS

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Among the states that have established Pardon Boards within constitutional or statutory provisions it is not uncommon practice for these Boards to seek advice and evaluation from Judges and District Attorneys regarding individual applications for pardon or commutation. The purpose of this study is to examine these evaluations among petitions for commutation granted to applicants who had been convicted of first and second degree murder.

The purposes and functions of pardoning power are well known and need not be recounted here.¹ Recorded cases of abuses of this power and recommendations for improving the procedure of granting pardons and commutations have often been made.² The composition of Boards of Pardons, types of offenses subject to pardon and commutation, types of hearings, kinds of publicity, and the time when pardon or commutation may be granted vary among the separate states.³ Whatever procedures are involved, some states assume by law or custom that the Trial Judge and the Prosecuting Attorney should have some voice before the Board of Pardons in aiding the Board to pass final judgment on the application.⁴ Un-

fortunately, there has been little empirical research available that examines in detail the activities of Pardon Boards, or that seeks to investigate the evaluations of Judges and District Attorneys among applications for pardon or commutation of sentence.⁵ Particularly if a Board is composed of non-professional personnel, it is important that they have sagacious advice of informed persons to aid in the determination of favorable or unfavorable action on a petition. Such advice should come from the professional staff of the institution where the applicant is incarcerated. In most cases, Judges and District Attorneys are so far removed in time and space from an inmate who applies for commutation that they are unable to evaluate the applicant's socio-psychological condition or his worthiness for executive clemency at the time of his application. Only the institutional staff has extensive data regarding the inmate's vocational, educational, medical, psychological, psychiatric, and other type of personal history⁶ that can be used to advise a pardon Board on the potential capacity of the applicant to benefit from a commutation.

Occasionally, considerable political debate centers around the contention by Judges and other public officials that a Pardon Board has failed to follow the recommendations of Judges and District Attorneys and that a great number of persons were granted commutations despite the opposition of these two groups of advisors. To subject this hypothesis to detailed analysis is the primary purpose of the present study.

¹ See, for example, the Attorney General's SURVEY OF RELEASE PROCEDURES, III, Washington, D. C.: Department of Justice, 1939; WILLIAM SMITHERS, TREATISE ON EXECUTIVE CLEMENCY IN PENNSYLVANIA, Philadelphia: International Printing Co., 1909; APPENDIX TO THE LEGISLATIVE JOURNAL, SESSION OF 1957, Pennsylvania, pp. 4345-4910; CALEB FOOTE, *Pardon Policy in a Modern State*, THE PRISON JOURNAL, (April, 1959), 39: 3-7.

² R. W. ENGLAND, JR., *Pardon, Commutation, and Their Improvement*, THE PRISON JOURNAL, (April, 1959), 39: 23-32. See also, the Attorney General's SURVEY, *op. cit.*, and SMITHERS, *op. cit.*, *passim*.

³ ENGLAND, *op. cit.*

⁴ In Pennsylvania the Board of Pardons also recently decided (April, 1959) to invite the victims (or survivors) of the crime committed by the applicant to testify at Board hearings. It is doubtful what value such testimony may have in determining the merit of application.

⁵ MARVIN E. WOLFGANG, *Analysis of Selected Aspects of the Board of Pardons*, THE PRISON JOURNAL, (April, 1959), 39: 8-22.

⁶ *Ibid.*, pp. 9-10 for a list of types of information that appear with applications before the Board of Pardons in Pennsylvania.

METHODOLOGY

Data have been made available to the writer from the Pennsylvania Board of Pardons, and these data are analyzed in the present study. Comments from Judges and District Attorneys are sought for all cases that appear before the Board.⁷ The Trial Judge who pronounced sentence is presumed to have an interest in the applicant, and if the Judge wishes to register his protest against a pardon, a reduction of a minimum or maximum sentence, or any other form of clemency, he has an opportunity to do so. The District Attorney has the same opportunity. Their opinions about the merits of a particular petition for commutation are based in part on their acquaintance with the offense and the offender at the time of trial. Their separate judgments at the time of application before the Pardon Board form a composite evaluation based upon recollection or upon re-examination of the case.

The Pennsylvania Constitution requires that reasons for the action of the Pardon Board be filed only in those cases in which they make a favorable recommendation, or grant the petition; in all cases of refusal no reasons need be stated. For those cases that received a favorable action from the Board, information is available regarding the comments of the Judge and District Attorney. In summary sheets prepared by the Board, a brief statement after each case indicates whether the Judge, District Attorney, or prison staff (a) was opposed to the petition for commutation or pardon; (b) was willing to rely upon the judgment of the Board; (c) was not opposed, had no objection, or positively favored commutation; or (d) made no comment or reply. Almost invariably in these cases that were granted favorable action, the prison staff is credited with such recommendations as "excellent record," "good record," "worthy risk," "favor clemency," and so forth. It seems safe to assert that regardless of what other factors may be involved in the ultimate decisions of the Pardon Board, there is nearly a one-hundred per cent recommendation for clemency, in the form of commutation or occasionally pardon, by the institutional staff for cases that have resulted in favorable action (and in which

the staff made a recommendation). Because of the extensiveness and pertinence of the kinds of information found in the reports of the prison staff, it is judicious practice for the Board to rely heavily on their recommendations.

For those cases that were refused commutation or pardon, no information has been available concerning recommendations made by Judges, District Attorneys and institutional staffs. Therefore, while it would be enlightening to make statistical comparisons of the patterns of recommendations by these three groups in terms of petitions granted and petitions refused, such analysis is not presently possible.

Because comments made by Judges and District Attorneys appeared, by cursory inspection of the data, to vary in content and to be divergent in many cases from the final favorable action of the Board, analysis of their evaluations of the merits of the petitions was undertaken. We do not know to what extent the recommendations by these two sets of individuals are followed in *all* applications; we have data only for those cases that resulted in favorable action by the Pardon Board. Previous analysis of recommendations of Judges and District Attorneys for 1,052 pardons and commutations granted by the Pennsylvania Board of Pardons between January, 1953 and December, 1956 indicated that in 831, or 80 per cent, of the cases Judges and District Attorneys disagreed.⁸

The present study is concerned only with applicants who had been convicted of first or second degree murder in Pennsylvania. Because of the seriousness of the offense, the severity of punishment, and the extent of public interest in the offense of murder, we may assume that if careful evaluations are made by Judges and District Attorneys in their recommendations for action before a Pardon Board that the greatest amount of care and consideration should be given in murder cases. Moreover, these are cases that are most likely to be readily recalled by the Judges and District Attorneys, for murder trials usually require more time and attention than lesser offenses. Public sentiment is more likely to be considered in, and aware of, favorable action by a Pardon Board in petitions involving persons convicted of murder. Therefore, we may assume that of petitions for commutation or pardon coming from all types of offenders, applications made by persons originally convicted of murder

⁷ Sec. 9, Article IV of the Pennsylvania Constitution of 1874 provides the basis for the present powers, functions, and composition of the Board of Pardons. The Board includes the Lieutenant Governor, Secretary of the Commonwealth, Attorney General, and Secretary of Internal Affairs.

⁸ WOLFGANG, *op. cit.*, pp. 15-18.

will be among those given the most thoughtful and considered evaluation by Judges and District Attorneys.

This analysis includes a total of 368 cases of persons convicted in Pennsylvania of murder and who applied for and received some form of commutation during the years from 1950 to 1957. Information was not available regarding the type of petition made by these persons; that is, it has not been possible to determine from the data whether the applicant petitioned to have a death penalty commuted to a life sentence, to have a life sentence commuted to make the applicant eligible for release on parole, or to have some other form of commutation or pardon.⁹ Most likely, first degree murderers applied generally for a reduction in the life sentence, and second degree murderers petitioned for a reduction in the minimum sentence.

When a Judge or District Attorney is listed as being "opposed" to the petition for commutation, there is little doubt about the meaning of this recommendation. Whatever may have been the reasons for their judgments, "opposed" indicates a definite negative attitude and an obvious opposition to granting the commutation. The listing of "not opposed" or "no objection" indicates that should the Board grant the petitioner his particular request, the Judge or District Attorney would not be opposed to such action. This evaluation is generally considered favorable, although a "no objection" or "not opposed" does not have the full force of positive favor that "recommends" might have. Because the number of "recommends"

⁹ Most petitions heard and granted are for commutation rather than for pardon. Of 954 petitions heard by the Pennsylvania Board of Pardons in 1958, 192, or 20 per cent, were granted. Of those granted, 1 was for commutation of a death penalty to life imprisonment; 102, or 53.1 per cent, for commutation of minimum sentences to make applicants eligible for release after parole by the Board of Parole; 29, or 15.1 per cent, for commutation of life sentences to make applicants eligible for release after parole by the Board of Parole; 11, or 5.8 per cent, for commutation of maximum sentences of applicants on parole; and 49, or 25.5 per cent, for pardons by persons who were not then serving any prison sentence, including those persons previously released on parole, those who never received prison sentences, etc. (See *Ibid.*, pp. 8-14.)

Moreover, the proportion of prisoners released from federal and state institutions between 1939 and 1957 rose from 0.5 per cent to 3.6 per cent and is now twelve times the proportion released by pardon. (PRISONERS IN STATE AND FEDERAL PRISONS AND REFORMATORIES, Bureau of the Census, 1939-1946; NATIONAL PRISONER STATISTICS, Bureau of Prisons, 1950-1957, cited by ENGLAND, *op. cit.*, p. 29.)

(which carries the strongest connotation of being in favor of granting the commutation) is small¹⁰ and for purposes of statistical treatment of the data, these comments have been combined with those of "not opposed" and "no objection." The phrase, "willing to rely on the Board," suggests that the Judge or District Attorney is either unwilling or incapable of giving a definite evaluation or recommendation to the Pardon Board. This category is akin to an abstention, although it indicates a desire to make some comment while putting the full burden of responsibility for decision on the Board. It is certainly not a negative recommendation, for it gives support to the Board's action. If a continuum were established from negative to positive evaluation, "willing to rely on the Board" would probably be placed in a position somewhere between "opposed" and "not opposed," but obviously closer to the latter. "Willing to rely on the Board" shares none of the connotations suggested by "opposed," but does share with "not opposed" the implication that should the Pardon Board turn down or grant the application the Judge or District Attorney would find no objection with the decision.

It is difficult to interpret the meaning of "no comment," for the Board is left with several alternative interpretations. The Judge or District Attorney may recollect little or nothing about the offense or the offender; he may recall the case but wish to maintain a neutral position; or he may simply have failed to respond to the Board's inquiry and request for an evaluation.¹¹ Whatever may be the reasons for a listing of "no comment," this category must assume a neutral position on the continuum of responses, and in effect returns the responsibility for final evaluation to the Board itself. Unlike "willing to rely on the Board," the "no comment" category provides no endorsement of the Pardon Board and permits the Judge, dissatisfied with the Board's action in a particular

¹⁰ Among these murder cases petitioning the Pardon Board for commutation, there were only 30 statements from Judges and 14 from District Attorneys that specifically listed "recommends."

¹¹ Occasionally a vociferous Judge will contend that his recommendations for favorable or unfavorable action on petitions have not been heeded in the past by the Pardon Board, and therefore he refuses to comment any more on the Board's requests for evaluation. For example, see the testimony before the Joint Legislative Committee Conducting An Investigation of the Board of Pardons, APPENDIX TO THE LEGISLATIVE JOURNAL, SESSION OF 1957, Pennsylvania, pp. 4390-4391.

TABLE I
RECOMMENDATIONS OF JUDGES AND DISTRICT ATTORNEYS FOR 368 PARDONS AND COMMUTATIONS
GRANTED BY THE PENNSYLVANIA BOARD OF PARDONS IN FIRST AND SECOND DEGREE
MURDER CASES, JANUARY 1950-DECEMBER 1957

Recommendation	Cases in which J.'s and D.A.'s Agreed		Cases in which J.'s and D.A.'s Disagreed				Combined Cases			
	N	%	J.		D.A.		J.		D.A.	
			N	%	N	%	N	%	N	%
Opposed.....	27	26.5	37	29.1	47	20.8	64	27.9	74	22.6
Willing to Rely on Board.....	20	19.6	53	41.8	46	20.4	73	31.9	66	20.1
Not Opposed or No Objection.....	55	53.9	37	29.1	133	58.8	92	40.2	188	57.3
Total Comments.....	102	100.0	127	100.0	226	100.0	229	100.0	328	100.0
No Comment or No Reply.....	18		121		22		139		40	
Total.....	120		248		248		368		368	

Source: Files of the Board of Pardons, Harrisburg, Pennsylvania

For Combined Cases: $\chi^2 = 16.92$; $df = 2$; $P < .001$; $T = .15$

case, to proclaim publicly his opposition *after* the Board has granted a commutation. However, "no comment" cannot be viewed as a negative comment.

Statistical analysis of the comments by Judges and District Attorneys has been made on two levels. First, a comparison has been made of the amount of agreement and of disagreement of their opinions as two separate and unrelated sets of evaluators. This level asks questions and seeks answers regarding the frequency distributions by types of response among the Judges, on the one hand, and among the District Attorneys, on the other. The proportion of Judges and District Attorneys who are opposed, not opposed, etc. to granting these petitions is shown irrespective of the individual differences of opinion on each particular case. The second level, which is less crude and more detailed, seeks information regarding the concordance and discordance of Judges and District Attorneys for each specific case and on the *same* individual cases. This level is more important for determining the true extent of agreement or disagreement of these evaluators. In this type of analysis we are, in effect, holding constant the specific case while allowing the two evaluators to vary. Significant associations or differences that emerge in the statistical patterns have resulted from applying standard tests of significance. These tests include: test of significance of difference between proportions, with its

critical ratio, or *t* value; chi-square (χ^2), with confidence limits (*P* value) at .01; coefficient of contingency, using either a *C.* or a *T* (Tchupproff) coefficient.¹²

FINDINGS

The frequency distributions of the recommendations of Judges and District Attorneys, by type of recommendation, and according to whether these two sets of evaluators agreed or disagreed, are shown in Table I.¹³ In 120, or 33 per cent, of the 368 cases, Judges and District Attorneys agreed in their evaluations; and in 248, or 67 per

¹² Tchupproff's coefficient of contingency is less commonly used than the other tests of significance mentioned above. The main advantage of this coefficient is not only that it tells us something about the degree of association, but that it enables comparison of results computed for tables of contingency of a variety of cells. The formula applied here is:

$$T = \sqrt{\frac{\frac{\chi^2}{N}}{\sqrt{(s-1)(t-1)}}$$

where *N* means the total number of observations, *s* the number of rows, and *t* the number of columns in the table. For examples of extensive use of Tchupproff's coefficient of contingency, see I. GADOREK, *A DUTCH COMMUNITY*, Leiden, The Netherlands: H. E. Stenfert Kroese N. V., 1956, p. 307 ff.

¹³ Fifteen cases of multiple judgments by more than one Judge or that involved more than one county of jurisdiction in a single case have been omitted in order to maintain a one-to-one relationship between Judge and District Attorney.

cent, they disagreed. One of the statistically significant and obvious differences is that a much higher proportion of Judges (139, or 38 per cent) than of District Attorneys (30, or 11 per cent) failed to supply any comment or make any recommendation about the merits of a petition for commutation ($t = 9.02; P < .001$).

Excluding those cases in which no comment was made, and referring only to cases in which some specific evaluative statement was recorded, we find that 229 judgments were made by Judges and 328 by District Attorneys. These figures combine comments in which the two groups both agreed and disagreed. The 102 concordant statements constitute 45 per cent of the 229 specific recommendations by Judges and 31 per cent of the 328 specific comments by District Attorneys, a difference which also is significant ($t = 3.23; P < .001$).

Applying the null hypothesis to the combined cases in Table I we may assert that there is no significant difference in the distribution of categories of recommendations by Judges and District Attorneys. The hypothesis is rejected, for analysis reveals that there is a statistically significant difference in these distributions ($\chi^2 = 16.92; df = 2; P < .001; T = .15$). This significance is due largely to the fact that a higher proportion of District Attorneys (57 per cent) than of Judges (40 per cent) expressed no opposition to the applications for commutation. Also, a higher proportion of Judges (32 per cent) than of District Attorneys (20 per cent) are willing to rely upon the Board's decision in murder cases. These two categories of response may indicate a lack of opposition to the petition, and perhaps the differences, although statistically significant, are not qualitatively important. On the other hand, since one of the purposes of the Board's inquiry to the Judges and District Attorneys is to have guidance in the form of a recommendation, the fact that in one-third of the murder cases Judges rely upon the Board's decision means that Judges' responses aid little in making final judgment. By adding the 73 replies from Judges that are "willing to rely on the Board" with the 139 "no comment" we find that in 58 per cent of these murder cases up for commutation or pardon that the Board had no guidance from the Trial Judge.

By applying our second and more refined level of analysis, we can observe the actual extent of case-specific agreement and disagreement. Asked what recommendation for action on a particular

case he wishes to make, a Judge may respond "opposed," while the District Attorney for the same case may respond "not opposed." This kind of analysis is much more dynamic than the former, and takes account of the interaction between Judge and District Attorney on the same petitioner.¹⁴ The Judge and the District Attorney did interact during the applicant's original court trial, and the similarity or dissimilarity of their later opinions regarding the merits of the applicant for commutation is considered important by a Pardon Board. We are not suggesting, however, that the Judge and District Attorney consult one another regarding a particular case at the time the Board seeks advice on the petition for commutation. In fact, the empirical data lead us to infer that there is a minimum amount of discussion about applications for commutation.

We may hypothesize that statistical patterns emerging from a case-by-case analysis would reveal a high degree of concordance by Judges and District Attorneys. Table II shows the numerical and percentage frequency distributions of specific recommendations made by Judges and District Attorneys for the 368 petitions of persons convicted of murder. The diagonal cells running from lower right to upper left represent the areas of agreement. As might be expected there is an association between specific statements of Judges and District Attorneys ($\chi^2 = 34.37; df = 9; P < .001$). However, using Tschupproff's coefficient of contingency, we may note that this association is only of rather low intensity or degree of association ($T = .18$). Given the recommendation of one evaluator, for example, it would be extremely difficult to determine in advance the recommendation of the other.¹⁵

Table III lists the rank order of Judge/District Attorney responses according to the frequency of occurrence of these sixteen response combinations. Because these petitions of persons convicted of murder were ultimately granted commutation or

¹⁴ Cf. the structural and dynamic analysis of criminal homicide, where the latter type of analysis includes the victim-offender interrelationship, in MARVIN E. WOLFGANG, *PATTERNS IN CRIMINAL HOMICIDE*, Philadelphia: University of Pennsylvania Press, 1958, especially Chaps. 11-14.

¹⁵ For a variety of reasons it is difficult to apply a coefficient of relative predictability (G value) to Table II. However, analysis was made by using the 188 "not opposed" (which is 51 per cent) of the District Attorneys' 368 comments as the modal group. Using the comments by Judges as predictive variables reduces the original 49 per cent error in prediction by an insignificant amount ($G = .03$).

TABLE II
RECOMMENDATIONS OF DISTRICT ATTORNEYS, BY RECOMMENDATIONS OF JUDGES, MURDER CASES
BEFORE THE PENNA. BOARD OF PARDONS, JANUARY, 1950-DECEMBER, 1957

By Judges	By District Attorneys								
	Opposed		Willing to Rely on Board		Not Opposed		No Comment	Total	
Opposed.....	27	<i>7.34^a</i>	12	<i>3.25</i>	22	<i>5.98</i>	3	<i>.82</i>	64
Willing to Rely on Board.....	11	<i>2.98</i>	20	<i>5.44</i>	36	<i>9.79</i>	6	<i>1.63</i>	73
Not Opposed.....	14	<i>3.80</i>	10	<i>2.72</i>	55	<i>14.95</i>	13	<i>3.53</i>	92
No Comment.....	22	<i>5.98</i>	24	<i>6.52</i>	75	<i>20.38</i>	18	<i>4.90</i>	139
Total.....	74		66		188		40		368

^a Figures in italics refer to percentages of the total combined recommendations (368)
 $\chi^2 = 34.77$; $df = 9$; $P < .001$; $T = .18$

pardon, it is particularly important to ask in what proportion of cases did the Pardon Board in fact grant commutation or pardon in direct conflict with judgments of:

- (a) both the Judge and the District Attorney;
- (b) the Judge only;
- (c) the District Attorney only;
- (d) neither the Judge nor the District Attorney.

Because we can form a qualitatively meaningful dichotomy between "opposed," on the one hand, and all other responses, on the other, the answer to (a) above can be found in the combined Judge/District Attorney response of "opposed/opposed."¹⁶ For the same cases both sets of evaluators are against granting commutation or pardon. This category comprises only 27, or 7 per cent, of the 368 combined possible evaluations. Thus, in only 7 per cent of the total murder cases petitioning for commutation can it be said that the Pardon Board grants commutation in direct conflict with the combined negative recommendations of the Judges and District Attorneys. Reversing the perspective, we may say that in approximately 93 per cent of these cases there was not a *combined* Judge/District Attorney opposition to commutation.

In answer to (b), we must total the "opposed/not opposed" (22, or 6 per cent), the "opposed/willing to rely on the Board" (12, or 3 per cent), and the "opposed/no comment" (3, or .8 per cent). This total comprises 10 per cent of the 368 cases, so that in only one out of ten cases does the Pardon

¹⁶ In this and subsequent references to combined judgments, the Judge's comment will precede that of the District Attorney. Thus, "opposed/not opposed" means that the Judge is opposed and the District Attorney is not opposed.

TABLE III
RANK ORDER OF FREQUENCY OF
JUDGE/DISTRICT ATTORNEY COMBINED
RECOMMENDATIONS

Judge/District Attorney	Number	Per cent
No Comment/Not Opposed.....	75	20.38
Not Opposed/Not Opposed.....	55	14.95
Willing to Rely on Board/Not Opposed.....	36	9.79
Opposed/Opposed.....	27	7.34
No Comment/Willing to Rely on Board.....	24	6.52
No Comment/Opposed.....	22	5.98
Opposed/Not Opposed.....	22	5.98
Willing to Rely on Board/Willing to Rely on Board.....	20	5.44
No Comment/No Comment.....	18	4.90
Not Opposed/Opposed.....	14	3.80
Not Opposed/No Comment.....	13	3.53
Opposed/Willing to Rely on Board.....	12	3.25
Willing to Rely on Board/Opposed.....	11	2.97
Not Opposed/Willing to Rely on Board.....	10	2.72
Willing to Rely on Board/No Comment.....	6	1.63
Opposed/No Comment.....	3	.82
Total.....	368	100.00

Board grant a petition for commutation in direct conflict with an evaluation in which the Judge but not the District Attorney is opposed to the action.

Question (c) is answered in the same fashion except that tabulation is made of those cases in

which the District Attorney but not the Judge is opposed: "no comment/opposed" (22, or 6 per cent), "not opposed/opposed" (14, or 4 per cent), and "willing to rely on the Board/opposed" (11 or 3 per cent). This total comprises 13 per cent of the 368 cases, so that to this extent does the Pardon Board grant a petition for commutation in direct conflict with an evaluation in which the District Attorney but not the Judge is opposed to the action.

Totaling all the remaining combinations that exclude an "opposed" comment from either the Judge, the District Attorney, or the two together reveals the answer to question (d); namely, that in 257 cases, or 70 per cent of the 368, the Pardon Board granted petitions for commutations without opposition from either or both evaluators. Thus, taking all possible combinations of opposition—cases in which both the Judge and the District Attorney opposed commutation as well as cases in which at least one of them opposed it—the total is unimpressive (112, or 30 per cent).

Where one evaluator opposed the petition and the other expressed no opposition or was willing to rely on the judgment of the Board, the Board has as much legitimation for building its final verdict on the one recommendation as upon the other. If one evaluator opposes the petition and the other does not object to granting the petition, the Board can always fall back on the positive recommendation if the Board is later subjected to criticism for its favorable action. Among the situations that should especially concern the Pardon Board are those cases that involve a combined Judge/District Attorney opposition (25, or 7 per cent) and those that involve one evaluator who opposed the petition and the other who expressed no comment (25, or 7 per cent). These situations total only 52 cases, or 14 per cent, for which the Board of Pardons has to defend itself against the opposition of the Judge and District Attorney together or separately.

DISCRIMINATIVE INDEX OF SUPPORT

Political debate occasionally centers around the favorable action of Pardon Boards in granting commutation or pardon to petitioners; and Judges frequently criticize the action of these Boards for failure to follow their recommendations. When a Judge pronounces a penalty which he believes is just and which a Board of Pardons considers too severe, relative to the offender's subsequent

improvement, the Judge is likely to oppose granting the man a commutation of the original sentence. The District Attorney who prosecuted the case and who labored long and hard to win it in court may also oppose executive clemency. However, when asked for their recommendations for action by a Pardon Board, these two persons may agree in their opposition, disagree so that one opposes and the other does not oppose, both submit no comment whatever, etc. These nuances of response are important in determining the degree to which a Pardon Board, in granting petitions, has the positive support of the Judges and the District Attorneys.

It can readily be observed from Table I that 64, or 17 per cent, of the 368 Judges opposed petitions for commutation, and that 74, or 20 per cent, of the 368 District Attorneys opposed petitions. However, there is overlapping in these two figures. They are crude data for the total set of evaluations and indicate nothing about the interactive evaluative relationship between Judges and District Attorneys on the *same* cases. Moreover, these figures do not reveal differences between responses of "opposed," "no comment," and the more positive comments of "not opposed" and "willing to rely on the Board." Because it is of value to a Pardon Board to know the extent of support from Judges and District Attorneys which the Board can rely upon in granting a petition for commutation or pardon, it is necessary to establish some kind of index of support which discriminates among the variable responses which the Board receives.

A Discriminative Index of Support has been formulated in the following manner: When a Judge or District Attorney submits an "opposed" comment, we assign a score of -1 ; because a "no comment" is completely neutral, we assign a score of 0 ; and for a comment of "not opposed" or of "willing to rely on the Board," we assign a $+1$.¹⁷ Multiplying the frequency in each response category by the assigned score, summing the results, and dividing by the total N observations produces a plus or a minus support score.¹⁸ Table

¹⁷ These are, of course, arbitrary scores or weights in the sense that we are assuming equal intervals between a neutral "no comment" and "opposed," on the one hand, and between a "no comment" and "not opposed," on the other.

¹⁸ For example, Judges have a summed raw score of 101; dividing this by the 368 observations results in a support score of $+0.27$.

TABLE IV
SUPPORT SCORES OF RECOMMENDATIONS OF JUDGES AND DISTRICT ATTORNEYS FOR ESTABLISHING A
DISCRIMINATIVE INDEX OF SUPPORT

Recommendations Judges/District Attorneys	(A) Weight		(B)	(A) × (B) Support Score		
	J.'s	D.A.'s	Frequency	J.'s	D.A.'s	Combined
No Comment/Not Opposed.....	0	+1	75	0	75	75
Not Opposed/Not Opposed.....	+1	+1	55	55	55	110
Rely on Board/Not Opposed.....	+1	+1	36	36	36	72
Opposed/Opposed.....	-1	-1	27	-27	-27	-54
No Comment/Rely on Board.....	0	+1	24	0	24	24
No Comment/Opposed.....	0	-1	22	0	-22	-22
Opposed/Not Opposed.....	-1	+1	22	-22	22	0
Rely on Board/Rely on Board.....	+1	+1	20	20	20	40
No Comment/No Comment.....	0	0	18	0	0	0
Not Opposed/Opposed.....	+1	-1	14	14	-14	0
Not Opposed/No Comment.....	+1	0	13	13	0	13
Opposed/Rely on Board.....	-1	+1	12	-12	+12	0
Rely on Board/Opposed.....	+1	-1	11	11	-11	0
Not Opposed/Rely on Board.....	+1	+1	10	10	10	20
Rely on Board/No Comment.....	+1	0	6	6	0	6
Opposed/No Comment.....	-1	0	3	-3	0	-3
Total.....			368	101	180	281

Index of Support for Judges: $101/368 = .27$

Index of Support for District Attorneys: $180/368 = .49$

Combined Mean Index of Support: $281/736 = .38$

IV summarizes this procedure for Judges and District Attorneys separately and combined. The Discriminative Index of Support for Judges is $+.27$ and for District Attorneys, $+.49$. The maximum support score is, of course, $+1.00$; and the minimum score, which indicates total lack of support, is -1.00 .

It can be said, therefore, that in terms of the Index of Support, the Pardon Board has the positive support of evaluations from both Judges and District Attorneys, albeit with considerably higher support from the latter group. The Support Score for Judges and District Attorneys combined¹⁹ is $+.38$. Translating into percentages, we may say that the Pardon Board in its granting petitions has the support of Judges and District Attorneys in amounts approximating 64 per cent and 75 per cent respectively, while the combined discriminative support of both Judges and District At-

torneys is 69 per cent. Statistical analysis shows that there is a significant difference ($t = 6.18$; $P < .001$) between the percentage support from Judges and District Attorneys, and between the Support Score of Judges ($+.27$) and of District Attorneys ($+.49$). In effect, then, the Pardon Board has a significantly greater support from District Attorneys than from Judges in granting commutation to petitioners who had been convicted of murder; and if any attack is made on the Pardon Board's action in these cases, it will much more likely come from Judges than from District Attorneys.

SUMMARY

Judges and District Attorneys who had originally and respectively tried and prosecuted persons later applying to a Board of Pardons for commutation of sentence were asked to give a positive or negative recommendation to the Board for the latter's guidance. We have examined these recommendations made for 368 petitioners who had been convicted of first and second degree murder

¹⁹ This combined Support Score is obtained simply by finding the mean of $+.27$ and $+.49$, or by totaling the summed raw scores for Judges and District Attorneys ($101 + 180 = 281$) and dividing by the total N evaluations ($368 + 368 = 736$).

and who applied for and received some form of executive clemency in Pennsylvania between 1950 and 1957.

Statistical analysis using standard tests of significance has revealed significant differences of opinion between Judges and District Attorneys for the total 368 cases. These two groups of evaluators disagreed in two-thirds of the cases; Judges, in a significantly higher proportion than District Attorneys, fail to supply the Board with any statement; even in judging the same petitioners there is a low degree of association between the evaluations of Judges and District Attorneys; and in only seven per cent of the total murder cases can it be said that the Pardon Board grants

commutation in direct conflict with the combined negative evaluation of Judge and District Attorney.

A Discriminative Index of Support has been established, which considers the combined and variable recommendations which a Pardon Board receives. This Index determines the *degree* of evaluative support (or lack of support) which a Pardon Board has from Judges and District Attorneys in acting favorably on petitions for commutation or pardon. Although in the cases examined the Pardon Board has the positive support of these evaluators, District Attorneys support the Board's decisions in significantly higher proportions than do Judges.