Journal of Criminal Law and Criminology

Volume 53
Issue 3 *September*

Article 6

Fall 1962

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JUDICIAL BACKGROUNDS AND CRIMINAL CASES

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Various scholars of the judicial process have compiled data on differences in the backgrounds of American judges, but they have not shown that these background characteristics correlate with differences in the decisions of the judges analyzed.[1] Various other scholars of the judicial process have compiled data on the different decisional tendencies of American judges, but they similarly have not shown that these decisional propensities correlate with differences in the backgrounds of the judiciary.[2] It is the purpose of this paper to explore the empirical relationships between various background and attitudinal characteristics of judges and their decisions in criminal cases.[3]

THE RESEARCH DESIGN[4]

The judges analyzed consist of the 313 state and federal supreme court judges listed in the 1955 *Directory of American Judges*;[5] 15 judges so listed left the bench before the end of the year, however, and as a result were included in only certain portions of the study.[6] The background characteristics of the judges were determined by consulting the *Directory of American Judges*, *Who's Who in America*,[7] the *Martindale-Hubbell Law Directory*,[8] and the governmental directories published by many of the states. The attitudinal characteristics of the judges were determined on the basis of their answers to mailed questionnaires.

The cases analyzed consist of the full-court criminal cases which these judges heard in 1955. By full-court cases is meant cases heard by all judges in the sample from the court involved. By criminal cases is meant cases in which one party was charged with an act subject to fine, imprisonment, or other penalty owed to the collectivity rather than to the individuals who may have been particularly harmed. The cases involved both appeals and habeas corpus proceedings, and they centered around questions of guilt, punishment, or procedure. Tax and business regulation cases were excluded because they were analyzed separately in the larger study of which this paper is a part.

Each judge was given a decision score representing the proportion of times he voted for the defense out of all the times he voted in the criminal cases. For example, in the 21 Pennsylvania criminal cases,[9] Justice Arnold voted 3 times for the de-

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The writer gratefully thanks the Political Theory and Legal Philosophy Committee of the Social Science Research Council for providing funds for conducting a study of relations between judicial characteristics and judicial decision-making of which study this paper is a part. Thanks are also owed to the members of the 1960 SSRC Summer Research Institute on the Administration of Criminal Justice for the suggestions which they made relevant to the completion of this paper.

[1] *E.g.*, Schmidhauser, *The Justices of the Supreme Court: A Collective Portrait*, 3 M.W.J. OF POL. SCI. 1 (1958); EWING, THE JUDGES OF THE SUPREME COURT 1789–1937 (1938); Mott, *Judicial Personnel*, 167 ANNALS 143 (1933).

[2] *E.g.*, Gaudet, *Individual Differences in Sentencing Tendencies of Judges*, 32 ARCHIVES OF PSYCHOLOGY 1 (1938); Iverson, *Human Element in Justice*, 10 J. CRIM. L. & C. 90 (1919); PRITCHETT, THE ROOSEVELT COURT (1948); SCHUBERT, QUANTITATIVE ANALYSIS OF JUDICIAL BEHAVIOR (1959).

[3] Non-statistical speculations on the relations between judicial characteristics and judicial decisions include Haines, *General Observations on the Effects of Personal, Political, and Economic Influences on the Decisions of Judges*, 17 ILL. L. REV. 96 (1922); FRANK, COURTS ON TRIAL 146–56, 165–85 (1950); CARR, THE SUPREME COURT AND JUDICIAL REVIEW 231–57 (1942); and Hall, *Determination of Methods for Ascertaining the Factors that Influence Judicial Decisions in Cases Involving Due Process of Law*, 20 AM. POL. SCI. REV. 127 (1926).

[4] For a more detailed analysis and justification of the judges, the cases, and the analysis used in the research design than can be given here see Nagel, Testing Relations Between Judicial Characteristics and Judicial Decision-Making (a mimeographed paper presented at the 1961 Midwest Conference of Political Scientists). Copies of this paper are available on request from the writer.

[5] DIRECTORY OF AMERICAN JUDGES (Liebman ed. 1955). This source is sometimes referred to herein as the DIRECTORY.

[6] The term "supreme court" is used as a synonym for "highest court" or "court of last resort." Statements in this paper describing the background characteristics of the judges are based on all 313 judges, except for those who did not supply the relevant background information. Statements describing the relations between backgrounds and decisional tendencies, however, are based on 298 judges (313 minus the 15 judges who left the bench before the end of the year), except for those who did not supply the relevant background information, who sat only on unanimous cases, or who sat on courts that were homogeneous as to the relevant background characteristics.

[7] 26, 27, 28 WHO'S WHO IN AMERICA (Sammons ed. 1954, 1956, 1958).

[8] MARTINDALE-HUBBELL INC., MARTINDALE-HUBBELL LAW DIRECTORY (1955).

[9] Commonwealth v. Burdell, 380 Pa. 43, 110 A.2d 193 (1955); Commonwealth v. Edwards, 380 Pa. 52, 110 A.2d 216 (1955); Commonwealth v. Mackley, 380 Pa. 70, 110 A.2d 172 (1955); Commonwealth v. Grays, 380 Pa. 77, 110 A.2d 422 (1955); Commonwealth *ex.*

fense, resulting in a decision score of .14. Sometimes a judge did not vote clearly for either the prosecution or the defense, as where he concurred in part and dissented in part. In one Pennsylvania case,[10] Justice Musmanno cast such a half-way vote, resulting in a decision score of 11½ out of 21 or .55.

The data were analyzed to determine what judicial characteristics, if any, were associated with a decision score above the average for a given court. For example, the question was posed whether being a Democrat rather than a Republican is associated with a decision score above the average for one's court. The answers to this and similar questions for the data used are presented in the Table which accompanies this paper.

The Table includes data for only those courts on which both groups compared are present, because if, for example, there are all Democrats or all Republicans on a court, then comparisons within the court between judges from the two parties cannot be made. The Table also includes data for only non-unanimous cases, because the unanimous cases have no bearing on who is above or below the average decision score of a court.

The probability scores listed in the far right column represent the probability of the observed differences occurring merely by chance, given the number of judges involved in each group.[11] Where the scores are less than .05 (i.e., less than 5 out of 100), the differences have been regarded as statistically significant and not merely attributable to chance, in accordance with conventional statistical procedures. In the discussion which follows, each row will be discussed separately, and an illustrative court will be described for each relationship which falls below the .05 level of chance probability.

rel. Dunn v. Ruch, 380 Pa. 152, 110 A.2d 240 (1955); Commonwealth *ex. rel.* Lane v. Baldi, 380 Pa. 201, 110 A.2d 409 (1955); Commonwealth v. Chaitt, 380 Pa. 532, 112 A.2d 379 (1955); Commonwealth v. LaRue, 381 Pa. 113, 112 A.2d 362 (1955); Commonwealth v. Lane, 381 Pa. 293, 113 A.2d 290 (1955); Commonwealth v. Thompson, 381 Pa. 299, 113 A.2d 274 (1955); Commonwealth v. Mason, 381 Pa. 309, 112 A.2d 174 (1955); Commonwealth v. Cisneros 381 Pa. 447, 113 A.2d 293 (1955); Commonwealth v. Bolish, 381 Pa. 500, 113 A.2d 464 (1955); Commonwealth *ex rel.* Matthews v. Day, 381 Pa. 617, 114 A.2d 122 (1955); Commonwealth v. Farrow, 382 Pa. 61, 114 A.2d 170 (1955); Commonwealth v. Capps, 382 Pa. 72, 114 A.2d 338 (1955); Commonwealth v. Wable, 382 Pa. 80, 114 A.2d 334 (1955); Commonwealth *ex rel.* Taylor v. Superintendent of the County Prison, 382 Pa. 181, 114 A.2d 343 (1955); Commonwealth *ex rel.* Bishop v. Maroney, 382 Pa. 324, 114 A.2d 906 (1955); Commonwealth v. Thomas, 382 Pa. 639, 117 A.2d 204 (1955); Commonwealth v. Moon, 383 Pa. 18, 117 A.2d 96 (1955).

[10] Commonwealth v. Edwards, 380 Pa. 52, 110 A.2d 216 (1955).

[11] YUKER, A GUIDE TO STATISTICAL CALCULATIONS 64–66 (1958); SIEGEL, NON-PARAMETRIC STATISTICS FOR THE BEHAVIORAL SCIENCES 13–14 (1956).

THE RESEARCH FINDINGS

Political Party Affiliation

The first row of the Table tends to indicate that on the bipartisan supreme courts Democratic and Republican judges do differ from one another in deciding criminal cases. In 1955, 15 bipartisan state and federal supreme courts decided at least one non-unanimous criminal case on which all their judges sat. These courts were comprised of 85 judges who gave a party affiliation in the sources consulted. Fifty-five per cent of the 40 Democrats were above the average of their respective courts on the decision score, whereas only 31 per cent of the 45 Republicans were above the average of their respective courts on the decision score.

The California Supreme Court illustrates this statistically significant difference. Two of the California judges, Justices Carter and Traynor, declared themselves as Democrats in the *Directory*, and 2, Justices Shenk and Spence, declared themselves as Republicans. Justices Edmonds, Gibson, and Schauer did not indicate party affiliation. It is unusual for so many judges on a supreme court not to give party affiliation. The California Supreme Court, however, is not an elected court. Partly to eliminate partisan influence, the judges are appointed initially by the governor with the approval of a Commission on Qualifications, and they appear on the ballot for voter approval every 12 years thereafter. In 1955 only Missouri had a similar system of judicial election. In spite of this attempt to eliminate partisan divisions, Democrats Carter and Traynor were on opposite sides of Republicans Shenk and Spence in a large number of cases of different types. All 7 judges of the court heard 14 criminal cases together in which non-unanimous decisions were reached.[12] The 2 Democrats had an

[12] Lyons v. Superior Court, 43 Cal. 2d 755, 278 P.2d 681 (1955); *In re* Chessman, 44 Cal. 2d 1, 279 P.2d 24 (1955); People v. Sykes, 44 Cal. 2d 166, 280 P.2d 769 (1955); Bompensiero v. Superior Court, 44 Cal. 2d 178, 281 P.2d 250 (1955); *In re* Bartges, 44 Cal. 2d 241, 282 P.2d 47 (1955); People v. Cavanaugh, 44 Cal. 2d 252, 282 P.2d 53 (1955); People v. Terry, 44 Cal. 2d 371, 282 P.2d 19 (1955); People v. Cahan, 44 Cal. 2d 434, 282 P.2d 905 (1955); People v. Berger, 44 Cal. 2d 459, 282 P.2d 509 (1955); People v. Jackson, 44 Cal. 2d 511, 282 P.2d 898 (1955); *In re* Hess, 45 Cal. 2d 171, 288 P.2d 5 (1955); People v. Acosta, 45 Cal. 2d 538, 290 P.2d 1 (1955); People v. Tarantino, 45 Cal. 2d 590, 290 P.2d 505 (1955); Calhoun v. Superior Court, 46 Cal. 2d 18, 291 P.2d 474 (1955).

TABLE

HOW JUDGES OF DIFFERING BACKGROUNDS AND ATTITUDES DIFFER IN THEIR CRIMINAL CASE DECISIONS
Based on the non-unanimous cases of the state and federal supreme courts of 1955 on which both groups being compared are present.

Group 1 (Hypothesized to be less defense minded)	Group 2 (Hypothesized to be more defense minded)	Number of Judges Involved in Each Group (1)	(2)	% of Group 1 Above Their Court Average on the Decision Score*	% of Group 2 Above Their Court Average on the Decision Score*	Difference	Probability of the Positive Difference Being Due to Chance
PARTY							
Republicans	Democrats	45	40	31%	55%	+14	Less than .05
PRESSURE GROUPS							
Members of a business group	Did not indicate such membership	15	71	47	52	+5	.20 to .50
Members of ABA	Did not indicate such membership	105	88	37	52	+15	Less than .05
Members of a nativist group	Did not indicate such membership	11	33	36	48	+12	.20 to .50
OCCUPATIONS							
Former businessmen	Did not indicate such occupation	22	71	32	40	+8	.05 to .20
Former prosecutors	Did not indicate such occupation	81	105	36	50	+14	Less than .05
EDUCATION							
Attended high tuition law school	Attended low tuition law school	24	22	54	59	+5	.20 to .50
AGE							
Over age 65	Under age 60	67	66	43	42	−1	Negligible diff.
GEOGRAPHY							
Practiced initially in small town	Practiced initially in large city	31	37	35	35	0	Negligible diff.
RELIGION AND ANCESTRAL NATIONALITY							
Protestants	Catholics	39	18	31	56	+25	Less than .05
High income Prot. denomination	Low income Prot. denomination	54	54	41	50	+9	.05 to .20
Only British Ancestry	Part non-British ancestry	96	97	38	47	+9	.05 to .20
ATTITUDES							
Low general liberalism score	High general liberalism score	22	23	27	57	+30	Less than .05
Low criminal liberalism score	High criminal liberalism score	26	17	27	59	+32	Less than .05

* Decision Score: proportion of times voting for the defense in criminal cases.

average decision score in these cases of 85 per cent for the defense, whereas the 2 Republicans had an average decision score in the same cases of only 18 per cent for the defense. In the famous Chessman case of 1955, for example, the only 2 dissenters in favor of the defense were Democrats Carter and Traynor.

Other supreme courts in which the Democrats had a higher average decision score for the defense than did the Republicans include the supreme courts of Colorado, Idaho, Maryland, Michigan, Montana, New Jersey, Rhode Island, North Dakota, and Pennsylvania. Of the 15 courts with qualifying criminal cases, only the Illinois, New York, Ohio, Utah, and federal supreme courts followed an opposite pattern, although not to as

great extent as the 10 courts which followed the general pattern.

Pressure Group Affiliations

Many of the judges were members of pressure groups which endorse various kinds of legislation. The types of pressure groups most frequently mentioned were professional groups (e.g, the American Bar Association), veterans' groups (e.g., the American Legion), business groups (e.g., chambers of commerce), and nativist groups (e.g., the Sons of the American Revolution). Decision scores of the judges who were members of these groups did not differ to a statistically significant extent from the decision scores of the non-member judges, with the exception of the scores pertaining to membership in the American Bar Association. The Table shows that 52 per cent of the judges who indicated (in the *Directory*, *Who's Who*, or *Martindale-Hubbell*) that they were not members of the A.B.A. had decision scores above the average for their respective courts, whereas only 37 per cent of the judges who indicated that they were members of the ABA had such scores.

On the United States Supreme Court, for instance, Justices Black, Douglas, Frankfurter, and Minton did not indicate ABA membership, while Mr. Chief Justice Warren and Justices Burton, Clark, Harlan, and Reed, did indicate such membership. In the 9 full-court non-unanimous criminal cases of 1955, the 4 non-ABA members had an average decision score of 70 per cent for the defense, whereas the 5 ABA members had only an average decision source of 51 per cent.[13] Subsequent to 1955 the Chief Justice withdrew from the ABA on ideological grounds. If Warren were considered a non-ABA member in 1955, then the average decision score of the non-ABA group would move up to 71 per cent for the defense, and the average decision score of the ABA group would move down to 45 per cent for the defense.

Pre-Judicial Occupations

Many of the judges indicated that they had formerly held occupations other than the private practice of law. The types of occupations most frequently mentioned were prosecuting attorney, legislator, corporation counsel, businessman, teacher, public administrator, attorney general, and regulatory agency attorney. The pre-judicial occupations thought to have the most relevance to decisional differences among judges in criminal cases were those of businessman and prosecuting attorney. Although judges who were former businessmen tended to have a lower decision score for the defense in criminal cases than did judges who were not, the difference was not quite statistically significant. However, 50 per cent of the judges who did not indicate being former prosecutors had decision scores above the average for their respective courts, whereas only 36 per cent of the judges who did indicate being former prosecutors had such scores.

The Pennsylvania Supreme Court exemplifies the general pattern found on supreme courts having some judges who were former prosecutors. On this court, 3 of the judges (Justices Arnold, Bell, and Chidsey) indicated they had been prosecutors before becoming judges. In the 9 nonunanimous criminal cases which the full court heard in 1955, the other 4 judges in the court (Justices Jones, Musmanno, Stearne, and Stern) had an average decision score of 26 per cent for the defense, whereas the 3 judges who were former prosecutors had an average decision score for the defense of only 7 per cent.[14] Mr. Justice Musmanno, the famous defense lawyer in the Sacco-Vanzetti case and other criminal cases, alone had a decision score of 94 per cent for the defense in these cases.

Education, Age, and Geography

Approximately one-third of the 313 supreme court judges serving in 1955 went to law schools whose annual tuition was under $120 in 1927 (the earliest year for which school-by-school tuition figures are available), and approximately one-third went to law schools whose annual tuition was over $240.[15] A higher percentage of judges who

[13] Bell v. United States, 349 U.S. 81 (1955); In the Matter of Murchison, 349 U.S. 133 (1955); Quinn v. United States, 349 U.S. 155 (1955); Emspak v. United States, 349 U.S. 190 (1955); Bart v. United States, 349 U.S. 219 (1955); Williams v. Georgia, 349 U.S. 375 (1955); Donaducy v. Pennsylvania, 349 U.S. 913 (1955); United States *ex rel.* Toth v. Quarles, 350 U.S. 11 (1955); Michel v. Louisiana, 350 U.S. 91 (1955).

[14] Commonwealth v. Edwards, 380 Pa. 52, 110 A.2d 216 (1955); Commonwealth *ex rel.* Dunn v. Ruch, 380 Pa. 152, 110 A.2d 240 (1955); Commonwealth *ex rel.* Lane v. Baldi, 380 Pa. 201, 110 A.2d 409 (1955); Commonwealth v. Chaitt, 380 Pa. 532, 112 A.2d 379 (1955); Commonwealth v. LaRue, 381 Pa. 113, 112 A.2d 362 (1955); Commonwealth v. Mason, 381 Pa. 309, 112 A.2d 174 (1955); Commonwealth v. Cisneros, 381 Pa. 447, 113 A.2d 293 (1955); Commonwealth *ex rel.* Taylor v. Superintendent of the County Prison, 382 Pa. 181, 114 A.2d 343 (1955); Commonwealth v. Thomas, 382 Pa. 639, 117 A.2d 204 (1955).

[15] Tuition figures for the last law school each judge attended were taken from REED, REVIEW OF LEGAL EDUCATION IN THE UNITED STATES AND CANADA FOR THE YEAR 1928 (1929).

went to low tuition law schools (under $120) had decision scores above the average for their respective courts than did judges who went to high tuition law schools (over $240). This difference, however, was not statistically significant. Likewise there was no statistically significant difference between judges in the bottom third age group (under 60) and judges in the top third age group (over 65).

There was also no statistically significant difference between judges who practiced law initially in small towns with populations under 5,000 (the bottom third among the judges) and judges who practiced initially in large cities with populations over 100,000 (the top third among the judges).[16]

Because in this study comparisons are made only within courts, comparisons are not made between judges of different regions. If southern supreme courts were compared with northern supreme courts, however, one might hypothesize that the southern courts would have a higher per cent of judgments granted to the defense than would the northern courts because (1) violence is possibly more condoned in the south than in the north, except violence by a Negro against a white, (2) less efficient southern police are possibly more likely to bring innocent persons to trial than are northern police, and (3) southern lower courts are possibly more likely to commit reversible error than are northern lower courts.

Religion and Ancestral Nationality

Most of the judges with entries in the *Directory of American Judges* listed their religion in response to the *Directory* questionnaire. There were too few Jewish supreme court judges to make comparisons between Jewish and non-Jewish judges. There were 11 supreme courts, however, which had some Catholic and some Protestant judges, and which heard some non-unanimous criminal cases with all judges present. These 11 supreme courts had 57 judges who indicated they were either Catholics or Protestants. 56 per cent of the 18 Catholic judges had decision scores above the average for their respective courts, whereas only 31 per cent of the 39 Protestants had such scores.

This statistically significant difference is illustrated by the New Jersey Supreme Court. Justices Brennan and Heher indicated they were Catholics; Justices Oliphant, Vanderbilt, and Wachenfeld indicated they were Protestants; and Justices Burling and Jacobs gave no religious affiliation. In the 12 non-unanimous criminal cases which the full New Jersey Supreme Court heard in 1955, the 2 Catholics had an average decision score for the defense of 52 per cent, whereas the 3 Protestants had an average decision score for the defense of only 28 per cent.[17]

The members of certain Protestant denominations are traditionally thought to have a higher average income than that of members of other Protestant denominations. The relatively high income denominations are the Congregationalist, Episcopalian, Presbyterian, and Unitarian; and the relatively low income denominations are the Baptist, Lutheran, and Methodist.[18] When judges from each of the two groups sitting on the same supreme court criminal cases were compared, the judges from the relatively low income denominations tended to have a higher decision score for the defense than did the judges from the relatively high income denominations. The difference, however, was not quite statistically significant.

The ancestral nationality of each judge can be roughly determined by taking each judge's paternal and maternal family names or their component parts to Elsdon C. Smith's *Dictionary of Family Names* (1956), which in dictionary form gives the nationality origin of over 10,000 family names. If one compares judges whose ancestral nationality is exclusively British (which includes English, Scotch, or Welsh) with judges on the same court whose ancestral nationality is at least partly non-British (to the extent determinable in the Smith book), one finds that the judges of partially non-British derivation tend to have higher decision scores for the defense than do the judges of wholly British derivation on the same courts. This difference, however, is not quite statistically significant.

[16] Population figures for the place of initial law practice of each judge were taken from 1 U.S. BUREAU OF THE CENSUS, DEP'T OF COMMERCE, CENSUS OF POPULATION 178–320 (1920). The year 1920 was the census year nearest to the year when the average judge among the 313 judges began practicing law.

[17] State v. Schmelz, 17 N.J. 227, 111 A.2d 50 (1955); State v. Newton, 17 N.J. 271, 111 A.2d 272 (1955); State v. Low, 18 N.J. 179, 113 A.2d 169 (1955); State v. Cianoi, 18 N.J. 191, 13 A.2d 176 (1955); Johnson v. State, 18 N.J. 422, 114 A.2d 1 (1955); In the Matter of White, 18 N.J. 449, 114 A.2d 261 (1955); State v. Haines, 18 N.J. 550, 115 A.2d 24 (1955); State v. Wise, 19 N.J. 59, 115 A.2d 62 (1955); State v. Fary, 19 N.J. 431, 117 A.2d 499 (1955); State v. D'Ippolita, 19 N.J. 540, 117 A.2d 592 (1955); State v. DeMeo, 20 N.J. 1, 118 A.2d 1 (1955); State v. Kociolek, 20 N.J. 92, 118 A.2d 812 (1955).

[18] Allinsmith, *Religious Affiliation and Politico-Economic Attitudes*, 12 PUBLIC OPINION Q. 377 (1948).

Off-the-Bench Attitudes

In the spring of 1960 a mailed questionnaire was sent to each of the 313 state and federal supreme court judges of 1955 in order to determine their attitudes on various issues. One hundred and nineteen of the judges returned answered questionnaires. The questionnaire represented a condensed and revised version of a liberalism-conservatism questionnaire written by H. J. Eysenck.[19] The judges were asked to indicate whether on the whole they agreed a lot, agreed a little, neither agreed nor disagreed, disagreed a little, or disagreed a lot with a list of statements. The questionnaire was primarily designed to measure the degree of sympathy a respondent has for less privileged groups and the degree of acceptance he has toward long run social change. These two components make up what is generally referred to as liberalism.[20] The questionnaire was scored in such a way that a respondent could receive a liberalism score ranging from 41 to 195. The median liberalism score actually received was 109. Seventeen supreme courts that heard full-court non-unanimous criminal cases had at least one judge with a score over 109 and at least one judge with a score at or below 109. Fifty-seven per cent of the judges scoring above 109 were above the average of the respondents of their respective courts on the decision score, whereas only 27 per cent of the judges scoring at or below 109 were above the average of the respondents of their respective courts on the decision score. This difference is statistically significant, but a specific example cannot be given because the judges were promised anonymity if they responded to the questionnaire.

There was one particularly relevant statement to which the judges were asked to respond by indicating whether and how much they agreed or disagreed. This statement read "Our treatment of criminals is too harsh; we should try to cure not to punish them." Twenty-four of the 119 responding judges indicated they strongly disagreed on the whole with the statement, 48 disagreed but not strongly, 22 neither disagreed nor agreed, 20 agreed on the whole but not strongly, and 5 agreed strongly. The average responding judge was thus in between disagreeing mildly and being neutral. Fifty-nine per cent of those who were neutral or who agreed with the statement were above the average of the respondents of their respective courts on the decision score, whereas only 27 per cent of those who disagreed with the statement were above the average of the respondents of their respective courts on the decision score. This difference is statistically significant.

[19] EYSENCK, PSYCHOLOGY OF POLITICS 122–24 (1954).
[20] MACIVER, THE WEB OF GOVERNMENT 215–17 (1951).

REASONS AND REMEDIES

How might one account for the relationships between judicial characteristics and judicial decision-making that have been described? Some of the relationships found are easily attributable to chance. Others, however, are not. The latter are those where the odds are more than 95 to 5, or 19 to 1, of obtaining the differences purely by chance given the size of the differences and the size of the groups. They include the differences between Democratic and Republican judges, non-ABA members and ABA members, non-former prosecutors and former prosecutors, Catholic judges and Protestant judges, and relatively liberal judges and relatively conservative judges as measured by their off-the-bench attitudes.

To some extent a criminal case represents a conflict of social groups, in that the defendant generally tends to be a member of the lower-middle or working class (particularly if tax and business regulation cases are analyzed separately),[21] and the prosecutor tends to be a member of the upper-middle or upper class, enforcing laws promulgated by upper-middle and upper class legislators and judges.[22] Mass data show that persons holding certain positions (e.g., being a Democrat or a Catholic) with respect to background characteristics (e.g., party or religion) tend to have greater sympathy for lower economic and social groups than do persons holding obverse positions.[23] Given the nature of the average criminal case, judges holding such positions with respect to background characteristics are therefore likely to have a higher decision score for the defense than do judges holding obverse background positions. The correlation between a judge's position on background characteristics and his relative degree of sympathy for lower economic and social groups may account for the differences found concerning party, pressure groups, religion, and liberal-conservative attitudes.

[21] TAFT, CRIMINOLOGY 131–33 (1950).
[22] MATTHEWS, THE SOCIAL BACKGROUND OF POLITICAL DECISION-MAKERS 23–30 (1954).
[23] CAMPBELL, GURIN & MILLER, THE VOTER DECIDES (1954); TURNER, PARTY AND CONSTITUENCY: PRESSURES ON CONGRESS (1951).

However, it probably does not account for the differences found between former prosecutors and their opposite number; judges who are former prosecutors are probably on the average not substantially more or less ideologically liberal than judges who have not been prosecutors. Their lower decision scores for the defense are possibly more attributable to a relatively pro-prosecution frame of reference which caused them to become prosecutors or which they acquired or had reinforced when they served as prosecutors.

Many devices are available for minimizing the influence of judicial backgrounds, including the availability to defendants of easy appeals, the requirement that judges write opinions to justify their decisions, the use of multi-judge courts with judges of diversified backgrounds, and the drafting of clearer and more detailed substantive statutes thereby limiting the area of judicial discretion.

Because criminal cases frequently involve value-oriented controversies, however, and because different background and attitudinal positions tend to correspond to different value orientations, there will probably always be some correlation between judicial characteristics and judicial decision-making in criminal cases.