

SENTENCING BY AN ADMINISTRATIVE BOARD

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In most jurisdictions of the United States and its territories, convicted criminals are sentenced by judges alone. The indeterminate-sentence laws of an increasing number of jurisdictions, however, provide a spread between minimum and maximum terms, thus giving their parole boards responsibility for determining the actual time a prisoner will serve. As long ago as 1917, for example, a California law was enacted which modified the "arbitrary sentencing power of the judge" and provided that "actual terms be fixed by the Board of Prison Directors (later the Adult Authority) within statutory limits."¹ Within these legal restrictions, the California Adult Authority determines not only the length of time an offender will be imprisoned, but also the duration of his parole and even the date for his final discharge from parole.

On July 1, 1939, the Board of Pardons and Paroles of the Territory of Hawaii began operation. It was empowered to fix minimum terms of imprisonment for convicted felons, but its actions were subject to review by the courts. During the year ending June 30, 1954, 206 minimum sentences were fixed by this Board, fifty-eight of which were modified by trial judges.² Accordingly, this Board has been trying, albeit unsuccessfully, through the legislature, to limit the function of the judges to imposition of the maximum sentence as prescribed by law and to vest in the Board sole authority to determine the minimum sentence.

After a bloody 1934 riot at Washington State Penitentiary, the state legislature enacted a law which the Hawaiian Board now regards as a model.³ This legislation established an independent full-time Board of Prison Terms and Paroles, composed of three members to be appointed for staggered six-year terms by the Governor, subject to approval by the Senate. With certain offenses excepted,⁴ it is still the duty of the trial court judge to decide whether he will grant probation or send a convicted offender to prison. If he chooses the latter course, however, he may set only the maximum sentence, which, to a considerable extent, is determined by law.⁵ The Board must set the minimum sentence within six months of the imposition of

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¹ *A Chronology of Corrections*, 3 N.P.P.A.J. 413, 416 (1957).

² BOARD OF PARDONS AND PAROLES, TERRITORY OF HAWAII, FIFTEENTH ANN. REP. I (1954).

³ WASH. REV. CODE c. 43.67 (1952).

⁴ Probation may not be granted in Washington State to offenders guilty of murder, burglary in the first degree, arson in the first degree, robbery, carnal knowledge of a female child under ten years of age, or rape. *Id.* § 9.95.200 (Supp. 1956).

⁵ *Id.* § 9.95.010.

the maximum sentence.⁶ Originally, after the minimum sentence was fixed, it was not subject to change, except for minors; but flexibility was added by a recent amendment, which provides that, with the exception of mandatory-life-imprisonment, habitual-criminal, deadly-weapon and certain embezzlement cases, minimum sentences may now be reconsidered after one year has been served, at which time they may be reduced or extended.⁷

Since Washington State affords the clearest example of a jurisdiction in which an administrative board sets the minimum sentence and since the writer served several years on this Board (1951-56), both as a member and as its chairman, special attention will be given in this paper to its operation during this period. Pertinent topics for discussion include the individual and group pressures on the Board, the crime and the criminal record of the offender as factors influencing board decisions, the characteristics of the offender as factors influencing board decisions, and the procedure followed by the Board in setting minimum sentences.

I

INDIVIDUAL AND GROUP PRESSURES

Before setting the minimum sentence, various reports are received by the Board. The prosecuting attorney is required by law to make a statement to the Board concerning the facts of the crime.⁸ Police chiefs and sheriffs often add helpful observations. The defense attorney may prepare a written statement or may interview the Board. Frequently, relatives and friends write letters or talk with a board-member.

Although both the judge and the prosecutor make recommendations as to a minimum sentence, it is not mandatory for the Board to follow them.⁹ A random sample of 1,626 cases showed that both the judge and the prosecutor agreed with the Board in twenty-nine per cent of the terms imposed. The judges' average recommendation was one month and a half shorter and the prosecutors' three-tenths of a month longer than terms fixed by the Board. It was, of course, the substantial deviations in certain cases that irritated a few judges—most of them were satisfied to have the Board make these decisions—and a larger number of prosecutors.

Sometimes, the divergences were attributable to the fact that the judges had overlooked requirements in the law that necessitated longer terms. By far, the most commonly overlooked statutory provision was the following:¹⁰

For persons not previously convicted of a felony, but armed with a deadly weapon either at the time of commission of his offense, or a concealed deadly weapon at the time of his arrest, the duration of confinement shall not be fixed at less than five years.

For a person previously convicted of a felony, however, the minimum term had to be set at not less than seven and a half years. The following case illustrates the kind of difficulty that this provision has occasioned:

⁶ *Id.* § 9.95.040.

⁸ *Id.* § 9.95.031.

¹⁰ *Id.* § 9.95.040(1) and (2).

⁷ *Id.* § 9.95.050.

⁹ *Id.* § 9.95.030.

Howard, aged twenty-one, had been convicted of second degree assault and grand larceny. When Howard (all names used in cases are fictitious) was eighteen years old, he had pleaded guilty to a charge of grand larceny. Although the case had been dismissed about a year later so that he could enter the armed services, according to an opinion of the attorney general, it did count as a prior felony. Three months after the grand larceny case had been dismissed, Howard had pleaded guilty to a charge of second degree assault. To quote the prosecutor in this rural county: "While he and three other individuals were unlawfully hunting game animals, he accidentally shot and severely injured a minor girl. He seems to have an ability to be where trouble is." He had been placed on probation for this assault, but this probation had been revoked about a year later when he had pleaded guilty to a second charge of grand larceny. The prosecutor and the judge had both recommended three years as a minimum sentence, and the judge had ordered the two cause numbers (assault and larceny) to run concurrently. Unfortunately, this last order was illegal in Washington. Furthermore, it was mandatory, according to the deadly-weapon statute, to impose a minimum sentence of at least seven and a half years for the assault. With a six-month sentence to be served consecutively on the grand larceny charge, therefore, the total minimum sentence imposed had to be eight years. The only mitigating circumstance here is the fact that Howard was a minor when he committed the assault. Consequently, that sentence can be reconsidered and reduced by the Board whenever Howard has earned such a concession by his record at the reformatory.¹¹

Several cases of extreme unfairness in the operation of this deadly-weapon statute have been corrected through the granting of conditional pardons by the Governor.

In general, it has been more difficult to work smoothly with prosecutors than with judges. Prosecutors like to make deals with the offender or his attorney, and in some instances, they become irritated when the Board does not honor these arrangements. A case in point follows:

Jim had been involved with three others in an armed and masked robbery

¹¹ To clarify the problem raised by such cases, Governor Arthur B. Langlie sent the following letter to every judge and prosecutor in the state:

"My attention has been called to a problem that involves the relationships between various agencies of government.

"Because of the number of recommendations received by the Board of Prison Terms and Paroles from courts and prosecutors that a term in a deadly weapon case be fixed at less than the mandatory minimum required by law, I feel that it is important that this doubtless inadvertent cause of much embarrassment to and dissatisfaction with the Board be called to your attention.

"In all such cases the prisoner, his relatives, and others interested in him are disposed to feel that the court and prosecutor are higher authorities than the Board and are skeptical when told by board members that the recommendation is erroneous. If convinced by the Board that the recommendation is less than the law requires, they often feel that they have been deliberately misinformed. Not infrequently a prisoner will then contend that he was induced to plead guilty by the promise of a light minimum.

"I am calling this matter to your attention in the hope that by the exercise of more caution in making recommendations consonant with the law, this cause of embarrassment to courts, prosecutors, and the Board will not recur."

which had netted the group \$6800 in cash. One of the quartet, when arrested, had given a statement implicating himself and the others and had been released after having spent a few months in jail. During the period when the other three were awaiting trial, a reporter had dug into the records and exposed evidence of bribery. Prosecutor X had decided that it was more important to "break the bribery case" than to get long terms for the robbers. One of the defendants had jumped bail, had been caught about a year later in another county, and had been sent to prison for burglary, with the robbery charge dismissed. The remaining two defendants, however, had cooperated with the prosecutor, and the bribed official had been convicted. Jim's partner had helped much more than did Jim and had received a deferred sentence with a year in jail. Prosecutor X, nevertheless, had promised Jim a recommendation for three years and did everything possible to achieve this. The story of the pressure on the Board can perhaps best be told by quoting from a notation in the writer's personal journal made shortly after the interview:

The deputy prosecutor spent two hours Friday afternoon talking with me about the case. The deputy was ill during part of this trial and as a result the wrong prosecutor's statement was given us. He wants to give us another statement that makes no mention of the guns used in this "grand larceny." I explained that we now had clear information on the guns and had gone over this with Jim. He had admitted the use of a gun. We had already given Jim a five-year mandatory sentence and this had been released to him.

Shortly after this discussion, which seemed to be on a friendly basis, the deputy returned with the prosecutor who was in an angry mood. "I have always cooperated with the Board," he said. "I defended you with the prosecutors in Port Angeles. In Seattle last May there were strong attacks on the Board. I defended you again at that time. When you wanted a telegram supporting the Board and called my home I sent one at my own expense." (This had been requested by the former chairman.)

"We appreciate this support," I said.

"These are only empty words," he replied. "What we want in this case is cooperation. We made a promise and we want to keep it. If you don't go along I have charges against the Board in my desk that I should act on and will."

I expressed surprise and indignation that he would threaten the Board in this way in order to force us to do something that was clearly illegal.

He backed up. "I will simply report," he said, "that the Board does not cooperate."

Some months after this experience, the writer addressed a letter to the president of the Washington State Association of Prosecuting Attorneys which read in part as follows:

It occurs to this Board that there must be many questions raised in the minds of prosecuting attorneys in this state about our work and our decisions. At the same time, questions are raised in our minds about the actions and recommendations of the prosecuting attorneys. We know it would be helpful to us, and we hope that it will be helpful to you, if we could sit down occasionally with a committee of your association to discuss our mutual problems.

A committee was appointed which met with the Board for three hours. Two crucial questions were raised by the prosecutors: "Why do the sentences you set vary so much from what we recommend?" "Why doesn't the Board back our deals with inmates?" The Board reviewed the deadly-weapon provision and suggested that it would be better jurisprudence to follow the plan used in California, where the presence or absence of a deadly weapon in the commission of the offense is established at the time of trial. The Board also suggested that in the cases where there is a substantial difference between the recommendation of the prosecutor and that of the judge, it would be helpful to the Board to have a letter of explanation. At no time did the Board agree to back promises made to defendants by prosecutors.

Five months later, the Board was invited to meet with the prosecutors at their annual convention. Fifteen cases of beer had been made available for the occasion, a factor which added heat, but not light. At that time, Prosecutor X, mentioned above, made the same accusations that he had made personally in the case of Jim. An assistant attorney general pointed out, however, that the Board was correct in its action. Prosecutor X was assisted in the hour-long grilling by two other prosecutors. Someone declared that prosecutors know much more about criminal offenders than the Board. Another remarked, "We didn't invite these gentlemen to be destructive. This is ridiculous."

Finally, Prosecutor Y got up and talked about his experience with the Board. He had handled about 6000 cases going back to 1940. He was dissatisfied with the Board at first but found that when he set forth the facts in the case, he got the action desired. "It's a bunch of bull that we know them [criminal offenders] better," he said. Then, Prosecutor Z told how he had studied statements sent in by prosecutors while he sat in with the Board and concluded: "Some of our recommendations are terrible." Afterwards, many prosecutors expressed regret at the attitude that had been taken. And Prosecutor X later inquired how he could improve statements he made for the Board!

The police may contribute a verbatim account of an interview or a statement signed by the offender. More frequently, these come by way of the prosecutor. Sheriffs may also provide helpful information. In the following case of rape by four young men of borderline intelligence, the information provided the Board by the prosecutor was so meager that there was uncertainty as to the seriousness of the offense. The sheriff was reached by phone in a neighboring city, however, and without ready access to supporting documentary evidence, he sent us a letter which read in part:

One of our night patrols was on the old state highway when the deputies observed in their headlights a woman obviously struggling to get away from a man. They investigated and the woman made an immediate complaint that she had been raped. An immediate examination by a doctor substantiated the fact of intercourse. The woman was not beaten but was in a hysterical condition and obviously exhausted. The man with whom the woman was struggling was A, and he ran from the officers and did not stop his flight until he was arrested in Arkansas.

The *B*, *C*, and *D* boys at first denied everything, even that they were in the area where the alleged rape occurred. Later, they admitted intercourse but denied the rape.

When *A* was returned from Arkansas, he admitted to me in the presence of your parole officer that they had all had intercourse with the woman.

I believe that all of these men with the exception of *D* were on probation for the rape of a 15-year-old girl 3 years before. We have heard of other women these boys have handled in the same way. With them, it is a case of let us have it or we will take it. Of the bunch, *D* is the best one but all in all they are a lying, stealing, vicious bunch that have caused *O* county a lot of trouble. Individually, they are nothing; collectively, they gain courage like a pack of coyotes.

This letter was later supported by a verbatim record of an interview with the victim. Sentence by the Board: ten years for each of the four. Since these individuals had threatened the sheriff and might conceivably injure his family, a memorandum was dictated for the file³ recommending "that any future Board do not permit these rapists to return to *O* county."

Some attorneys shed "crocodile tears" in the interest of those they were defending. Others presented helpful facts either orally or in writing or both. Occasionally, attorneys have been heartless in their exploitation of the offender or his relatives. One Washington firm, for example, accepted \$700 from a poor Italian family in New York whose son had been involved in an armed robbery in Seattle. The firm knew that a mandatory sentence of five years would be imposed and that there was nothing that could be done about it, but they accepted the money anyway.

Although relatives may provide enlightening information on family background, they are probably more valuable as resources for the encouragement of a man while he is in prison and help when he is on parole. Mothers will stick by their sons under more difficult circumstances than anyone else: "George is not a bad boy at heart. He just got in with bad companions." Wives come next: "Please won't you look at my husband not as 15629, past record very bad, but rather perhaps with eyes looking for a new man?" The wife of a man guilty of armed robbery wrote: "I love my husband very much and would like to enjoy his love before we get too old." But another wife who had suffered too much grief from her husband expressed herself as follows:

When I reminded him that when they released him before, he insisted he had found God and was through with drink and gambling and carousing, he said, "I don't need God until they pick me up—it always helps then. . . ." Both the children and myself are much happier without him. . . . I dread the day he is released again, because I know he will bother me continuously.

II

THE CRIME AND THE CRIMINAL RECORD

About 4,200 minimum terms and approximately 1,200 "continuations" for parole violators were set during the five years under discussion. The two objectives the Board sought were the protection of society and the rehabilitation of the offender.

If conflict existed between the two, the security of the larger community was deemed the more important. In judging a specific case, the Board was influenced by the facts of the crime itself, and to some extent by the public reaction to it, by the criminal record, and by the characteristics of the offender.

In regard to public opinion, the advice of the Advisory Council of Judges of the National Probation and Parole Association is well taken:¹²

The judge must use public opinion constructively as an aid in sentencing, but not be dominated by it; he must respect it, but not be enslaved by it; he must lead the community toward higher standards of justice and treatment, but not be so far ahead of it that it will lose sight of him.

In taking public opinion into account, it is important to consider the reactions of the total community, and not just the individual and group pressures described above. The way a crime is treated in the newspapers rarely throws light on its causation and frequently errs in factual content, but the nature and extent of the treatment is, nevertheless, important. Having on the Board Frank M. Dallam, an ex-editorial writer for a daily newspaper, helped in judging public reactions more accurately. Also, by seeking and gaining the cooperation of key men on the metropolitan and local papers, it was possible to explain to the public the main points about sentencing and parole.

During the 1956 political campaign, the "parole board" was criticized by Albert D. Rosellini, who was later elected governor, for not giving equal sentences for the same crime. It was thought at the time that this was just another argument by a Democrat designed to discredit a Republican administration. But a board officer did a little research and discovered that Arthur B. Langlie in his first campaign for governor sixteen years before had used the same argument. Both gubernatorial candidates had been influenced by the classical school of criminology, which attempts to equate each crime with an appropriate punishment, established in advance by statute.

A few illustrative cases may help to clarify the divergent types of behavior that may be assigned to the same legal category of crime. It should be obvious from these cases that crimes with the same legal designation—robbery, burglary, murder, for example—may vary widely in seriousness.

Unless the crime has been especially heinous, a first offender should receive a lighter penalty than a repeater. The judge would, no doubt, in the following case have placed the offender on probation if there had not previously been a series of purse snatchings in the small town where the crime was committed:

Ray, a husky nineteen-year-old, was disturbed and anxious as he sat down in front of us. After a little conversation, he relaxed and told how he had quarreled with his wife and had left home in anger. Many drinks and three card-rooms later, he had lost all of the twenty-four dollars that he was supposed to have used

¹² ADVISORY COUNCIL OF JUDGES, NPPA, GUIDES FOR SENTENCING 46 (1957).

to pay the fuel bill. "I was afraid to face my wife because I'd gambled it away," he said. "I needed the money for the fuel bill very bad. When I saw a woman on the street, being half drunk, I figured I could take her purse and get the money. I took the purse and ran. The police caught me leaving the freight yards where I hid the purse. (He had taken eleven dollars out of it.) I know I will never do it again. I am very sorry now that I did it." Ray had had no prior record and had been working for more than four and a half years with the Northern Pacific Railroad. Although he had been sentenced to the penitentiary for robbery with a maximum term of twenty years, the Board fixed a minimum term of fifteen months. He was transferred to the reformatory and took full advantage of the educational program there. (His record on parole was excellent.)

If the so-called "F.B.I."—*i.e.*, the official record of arrests and commitments supported by fingerprints—shows a pattern for robbery, burglary, or murder, the sentence should obviously be longer. These are the offenders against whom society needs protection. The crucial question that should be asked, therefore, is whether this man is "just a nuisance" or a menace.

Don was a good looking twenty-two-year-old as he sat before us, more at ease than Ray had been. He admitted to us, as he had to the police, six armed robberies with three or four different guns. The total amount netted in these robberies had been \$4,270, and they had been committed with considerable skill and boldness. "I entered the store at approximately 1:00 A.M. by cutting two bars on a rear window," he told us. "The manager, accompanied by the produce man, came into the store at approximately 8:10. I ordered the manager to open the store safe and told the produce man to stand to one side. The manager opened the safe and placed \$1,400 in currency in a paper sack. I then ordered them to the rear of the store into a linen closet. I placed a wheel truck against the door and told the two of them to stay put for ten minutes. They had been in the closet about two minutes when they tried to come out. I asked them if that was their idea of ten minutes and told them to stay put for another seven minutes before they got on the phone. I then walked to the front of the store, picked up the paper sack containing the currency, walked out the front of the store, and proceeded to my truck, which was approximately three blocks away." Don had spent ten months at a parental school at the age of twelve for running away from home and burglarizing a farm house for food. At the age of seventeen, he had been sent to the state training school for forgery, had escaped, and, after his return, had been sent to the state hospital for examination. The provisional diagnosis was psychopathic personality—*i.e.*, unable to learn from experience and without conscience. At the age of eighteen, he had pleaded guilty to a charge of auto theft and had been given six months in jail and a four-year deferred sentence. After holding one job three years and another two

years, "instead of seeking employment elsewhere, I chose robbery." The maximum sentence for Don was thirty years; the minimum sentence set by us, nine years.

Don was a menace, a "graduate" from juvenile institutions, and was resistant to treatment. By way of contrast, Ray was merely a nuisance, a first offender and, although dull normal in intelligence, a good prospect for education and job adjustment. Both were convicted of the same crime, robbery.

The two men whose cases are summarized below were convicted of burglary. It is obvious, however, that Paul is more likely to adjust well when he returns to outside society than Bob.

With two service companions, Paul, aged twenty-two, had been involved in the burglary of two bundles of clothes from a cleaning establishment. All three had been drinking heavily. Since he had had no prior record of any kind and since this behavior was out of character for Paul and his companions, it was the opinion of the Board that the judge should have requested a presentence investigation and waited for a balanced picture of the problem. Instead, the judge had asked for a recommendation from Paul's company commander. This was a military police company. The commanding officer had been in charge only two months and wanted a good outfit. So, he had recommended incarceration, and Paul had been sentenced to the reformatory. The prosecuting attorney and the judge had recommended twelve months, however, and that was the term set by the board. (A look at Paul's file two and a half years later reveals that he did well on parole and now holds a responsible managerial position.)

In contrast to Paul, Bob had gotten into trouble early. He had been expelled from the third grade. In 1940, at the age of fourteen, he had been sent to a training school in a southern state. His brother had also been sent there. In 1944, he had been sentenced to a penitentiary for burglary. He had been returned to the same penitentiary for the same offense in 1945. By 1948, he had been imprisoned again for burglary, and he had been returned for burglary in 1950. The criminal pattern seems to have become entrenched. In 1955, with three companions he had forced his way into a dime store and broken into the safe. The police had received a call that burglars were in the store. After a chase, Bob had been caught with the money. He is a man of low intelligence and has been assigned to the dish tank in the penitentiary kitchen. The minimum term in this case was set by the Board at fifteen years.

A follow-up study of the 8,954 California male prisoners released on parole during the four-year period 1946-49 showed that by January 1, 1953, forty-nine per cent had been declared violators. Parolees originally committed for homicide had the lowest violation rate, 17.3 per cent.¹³ This experience is confirmed by studies in other

¹³ RONALD H. BEATTIE, CALIFORNIA MALE PRISONERS ON PAROLE 1946-49: A STUDY OF THE PAROLE EXPERIENCE OF THIS GROUP AS OF JANUARY 1, 1953, at 9-10 (1953).

jurisdictions, including Washington State. Despite these findings, however, murder shocks the public conscience, and there is a strong feeling that any killer, as such, should be punished severely. But there is a wide variation in the extent to which society needs protection from individual murderers. This is well illustrated in the two cases that follow:

Henry, aged thirty-one, had been convicted of second degree murder, having fatally stabbed his brother-in-law during a quarrel while drinking. He had had no prior arrests or commitments of any kind and had been honorably discharged from the army after service overseas. A minimum sentence of six years and eight months had been set by the Board in 1951. Henry had participated actively in Alcoholics Anonymous while at the penitentiary and had gained insight into his drinking problem. He had been granted minimum custody after one year and had been among the first to be transferred to a new minimum-security building. As an automobile mechanic, he had been assigned during the past four seasons to the pea harvest and to the servicing of equipment in other operations. To keep trucks and pea-vine spreaders moving in periods of emergency, he had worked sixteen to eighteen hours at a stretch. Most of the repairs were made in the field, in some instances as far as fifteen to twenty miles from the institution. Henry had saved the state \$6,000 during his stay. In addition, he had been a valued member of the Inmate Advisory Council. His parents had a 120-acre farm in a midwestern state which they wanted him to manage. It was not difficult for the Board to decide to reduce his sentence nineteen months and set a parole date. (A file-check two years after Henry's release indicates that he is steadily employed as a miner at \$560 per month, that he is living with his parents, and that he is not drinking.)

Frank, aged twenty-seven, had also been convicted of second degree murder. For no apparent reason, Frank had hit a casual acquaintance over the head four times with a stick, left him dead on a beach, and stolen the victim's car and identification papers. He had cashed two checks using these papers. Frank told the Board that he had an impulse to kill this man at that time. The same thing could have happened eleven times in his life, he said. The prosecutor pointed out that "he is capable of repeating this act at any time and any place." The psychiatrist stated that "no known available psychiatric or medical technique will correct his basic character disorder." His tendency to attack others seems to occur when he gets "blackout spells." Twenty pocket-sized murder story books were in his possession when arrested. The Board gave him a minimum sentence of fifty years.

III

THE CHARACTERISTICS OF THE OFFENDER

By January 1955, reception and guidance units had been established and were functioning in both the reformatory and the penitentiary in Washington State.

The personnel assigned to each of these units included two sociologists, a clinical psychologist, a vocational counselor, and either a full or part-time psychiatrist. This staff, with the assistance of other officials, study and orient the new inmate during his first six weeks in the institution. Their report takes the form of an admission summary, which includes: a face sheet; statements by the prosecutor and the inmate about the crime; juvenile delinquency pattern, if any; official record of arrests and commitments; family, marital, educational, occupational, military, and residential history; social, psychological, vocational, religious, and medical evaluations; and staff recommendations. This is an aid to proper classification and treatment in the institution. It serves the Board much as the presentence investigation serves the sentencing judge. In an increasing number of cases, in fact, it incorporates data gathered by a probation officer in the field. It also profits from similar studies made by other institutions of this same individual and from the observations of agencies, relatives, and friends on the outside.

Prior to the establishment of these units, and especially at the penitentiary, inmates were largely responsible for the data in admission summaries. This made the summaries unreliable, incomplete, and subject to changes or deletions of facts under pressure from other inmates. Two cartons of cigarettes, for example, were sufficient to raise an I.Q. Even after repeated requests, summaries from other institutions that had studied the same men were not secured. Letters similar to the communication from H. M. Randall, Director of Parole and Probation in Oregon, were not uncommon. It reads in part as follows:

Subject's revocation was based on a report submitted by this department dated November 16, 1945, indicating that subject was again engaged in taking indecent liberties with small girls, which was his original crime. This report also contained statements made by two neighbors, which information was given to our investigating officer in confidence.

I am now in receipt of a letter from *F*, dated January 11, 1948, in which he indicates that he had secured copies of our report of November 16, 1945, and had sent copies of this report to the two neighbors mentioned and that they have written him denying that any such statements were made to our investigating officer.

I am not so concerned with the charges *F* makes against this department nor against the parole officer involved. I am concerned, however, to know that an inmate of the penitentiary would have made available to him copies of reports made by this department to the Board of Prison Terms and Paroles, which in my estimation are of a semi-confidential nature.

A complete shift of the confidential sections of inmates' files to the control of civilian employees is the practical answer to situations like this. It is easier, of course, to let inmates take over the control of an institution; but in the long run, such a policy is disastrous.

Personality traits have been cited in cases already summarized. Additional kinds of data on the characteristics of inmates that are made available to the Board by these reception and guidance units may be illustrated by the following cases:

Joe, aged forty-six, had admitted burglarizing \$400 worth of tools from a public school. There had been a prior commitment to the penitentiary for second degree arson, at which time he had served two years. When he was thirteen, his father had been sentenced to a Canadian prison for incest. At the age of fourteen, Joe had run away from a foster home where he and his sister had been forced to work long hours and were cruelly treated. Since then, he had been on his own. In 1936, Joe had been accidentally burned in a gasoline explosion which resulted in hideous facial scars. Plastic surgery had improved his nose, the sides of his face, and his lower lips. His left eye still looked as if it were surrounded by raw beef steak. It had been scheduled for further surgery. And as if this were not enough of a physical handicap, he had suffered a broken vertebra in the lower back just prior to commitment. The vocational psychologist suggested that his best employment outlet after release would be door-to-door selling, where certain types of deformities are often an asset. Perhaps because of his repulsive appearance, the judge and prosecutor had recommended ten years; the Board gave him four.

Ed, aged twenty-two, had entered a small town tavern and stolen cigarettes and money from slot machines. The cigarettes had been sold in Seattle. There had been a prior record of grand larceny and receiving stolen property, for which the sentence had been deferred. The psychiatrist reported him tense and withdrawn. "His interpersonal relations are badly crippled. People make him very nervous unless he is drunk. Two or three years back he was quite upset to discover that his girl friend had gone out with someone else while he was gone. He went up to the door of the other man's house with a gun and states in a matter of fact way that he would have killed his rival had the latter opened the door." Diagnosis: schizophrenia, chronic undifferentiated type. "Potentially he is very dangerous." Recommendation of the judge and the prosecutor, two years; in the light of the unfavorable psychiatric report, sentence by the Board, six years.

IV

THE SENTENCING PROCEDURE

A description of the procedure followed during most of the year and a half when the writer was chairman of the Washington State Board of Prison Terms and Paroles (March 1955 to September 1956) will suggest how an administrative board functions. The present Board follows a similar practice.

In preparation for the interview, there was first a careful study of each sentence and parole-violator case. The record, as indicated earlier, included statements by the prosecuting attorney and sometimes the defense lawyer, an occasional statement by a law-enforcement officer, recommendations by the prosecutor and the judge, letters from relatives and friends, and the admission summary prepared by the

reception and guidance unit of the institution. For every two cases, each member was provided with one legal-length sheet containing the following elementary data, filled in by a secretary: name; number; crime; county; sentence date (the day the judge signed the maximum-sentence paper); arrest date; co-defendant, if any; deadly weapon, if any; age; marital status; maximum term; and maximum expiration date; if a parole violator, minimum term and dates of release and return; names of the judge and the prosecutor; and prior record, if any. The secretary also assigned cases to board members in rotation. Below the items listed for each offender, four or five inches of space were left for pertinent notes which the member might wish to have readily at hand during the interview.

It has been felt in Washington State that if the Board has the facts of a case clearly in mind and the most pertinent items noted in writing, it is better able to study the prisoner's attitudes during the interview. The California Adult Authority, in contrast, does not study cases in advance. The members usually work in panels of two, one man studying the next case while his partner quizzes the inmate before them. They have the assistance of a concise two-page summary of the salient facts prepared by the professional staff. With almost 17,000 prisoners in 1957, as compared with less than 2,500 in Washington State, they have more cases to handle. They argue that the information on a man is fresher when read just prior to seeing him.

Each month in Washington State, hearings are held at the penitentiary and reformatory for an average total of about seventy sentence cases and twenty parole violators. A special room is set aside at each institution for use by the Board. The room contains a long table behind which the three board-members sit. A representative of the institution, usually the associate superintendent in charge of treatment, is at one end of the table. Occasionally, a visitor, who takes no part in the interviews, is at the opposite end. The Board has found it very helpful to have a judge, prosecutor, police chief, or sheriff sit in on the hearings. Nothing seemed to develop better cooperation than to let them see how the Board operated.

There was a time when a telephone was located in each boardroom, and hearings could be interrupted or confused by the ring of the bell or extraneous conversation. These phones were taken out, accordingly, as no such interruptions were wanted. No one was permitted to enter the boardroom during a hearing—only between hearings. The inmate was not being tried. The judge had done that, and the man had either pleaded guilty or been found guilty. The Board's purpose was simply to determine the length of time he would spend in prison. It wanted to concentrate on his story and give him every opportunity to speak freely.

With a buzz from the chairman, an inmate would come in and sit down. The institution representative introduced him to each board-member as Mr. ———. Although not common practice in prison, it was felt that the designation "Mister" gave him more recognition as a person. The name of each member appeared also on a plaque, clearly visible to the inmate, immediately in front of the member.

This helped the inmate to orient himself with reference to the different personalities on the Board.

The member to whom the case had been assigned usually commenced by trying to put the prisoner at ease. He might comment on some athletic facility the inmate had exhibited, make some pleasant remark about the man's home town, or just inquire about his age. The man was usually nervous. If it was summer, he had great wet patches under the arms from perspiration. A human approach made him feel that the members were, after all, not such ogres as he may have thought and that he could relax and talk freely.

There are weaknesses that a board of this type has to watch. All members must know the salient facts of the case. No member should be permitted to dominate the proceeding. It is easy to preach or moralize, but this should be kept at a minimum. A certain amount of levity is desirable to relieve the tension of such sessions, but it should never be at the expense of the inmate. Jokes about inmates must be reserved for times when they are not present. If there is a coffee break, time out should be taken for it. Munching cookies and sipping coffee while trying to talk to a prisoner is inappropriate. In brief, the session should be conducted in quiet dignity with ample opportunity for statements or questions by the man being sentenced. Since the average inmate's educational achievement is less than eighth grade, explanations should be in simple words.

Another aspect of board hearings to remember is that prisoners have time. Many of them use this time thinking about the personalities of the Board and figuring out what "line" would be most effective. The more intelligent may try their best to "con" the Board. For a preacher member, they have gotten religion, are attending Bible class, or perhaps plan to go into religious work when they are paroled. For a lawyer, they purposely play up legal points to draw him out. For a sociologist, it is surprising how many correspondence courses they have taken in that field and how often they are planning to attend college. One should not be too critical, however. It is better to be "conned" occasionally than to discourage a man with an honest story.

The member to whom the case had been assigned asked questions about the past record, the present crime, and about the future. All members were quick to note the man's attitude toward his crime. Did he accept responsibility for what he has done or project the blame onto others. Did he attempt to conceal or minimize the importance of his offenses? What were his feelings about the plan which the reception and guidance staff have worked out with him? Was he going to make constructive use of his time in the institution? For such a hearing, ten or twelve minutes were usually enough, but sometimes it took more than sixty.

Of the two robbers described above, Ray had a good attitude, Don a poor one. Paul, the situational burglar, took an honest look at his crime, whereas to Bob, the habitual burglar, "it was just one of those things." Henry's attitude and institutional achievements were outstanding, but Frank might be dangerous even in prison.

The case which follows introduces a different type of offender: Although the immediate reason for Ralph's coming before the Board was for parole-violation, he presented the characteristics of the "con" forger—*i.e.*, an individual who writes bad checks using considerable skill, or commits frauds, with a prior record for the same kind of behavior. During his interview, Ralph did not admit dishonesty of any kind.

Ralph had been gambling heavily since he was overseas in 1947. In that year, he had collected a receivable account from an auto dealer and had failed to turn in the money to the finance adjusting company. In 1951, he had been sentenced to the reformatory for grand larceny. He had cashed a \$92.35 check in a supermarket with no funds to cover it. He had signed names on the check without permission. He also had admitted at that time issuing \$783.65 worth of additional bad checks. In January 1955, in justice court, Ralph had been found guilty of unlawful issuance of bank checks. His mother had made restitution for these checks, there had been promises, and he had been placed back on parole. As a matter of fact, his mother had spent between \$6,000 and \$7,000 helping him, but was "about fed up," and his wife was soon to get a divorce. Ralph had made unauthorized withdrawals from the company for which he worked of more than \$4,000. He had given himself a raise from \$450 to \$500 without authority. He claimed the extra money was due him as an accrued bonus. It had been used to entertain customers and to gamble on the horses. Ralph had received a rating of 148 on the Army General Classification Test, which was the highest in the experience of the vocational psychologist. He needed a long process of self-revaluation. It was the feeling of the Board that he was a "con" forger, and we gave him a continuance of five years. This is handled as if it were a flexible minimum sentence.

After the prisoner had left the room, the chairman asked for individual judgments as to minimum sentence. The member to whom the case had been assigned usually made the first suggestion. The others either concurred or made different proposals. In the beginning of a board experience, there is likely to be divergence. When members have been working together for a period of time, however, their opinions tend to become similar. Discussion followed a difference in judgments, and there was often a compromise. The final decision was recorded, and a copy left with the institution. The inmate was informed of his sentence within a few days. All of the decisions were released to the press about two weeks later.

At the end of the period under observation, the chairman, a sociology professor, had served five and a half years; the oldest member, a journalist, seven years; the youngest member, an ex-police chief, one and a half years. The journalist seemed to have the sharpest insight into the reaction of the larger society to the crime under consideration; the law-enforcement man was the least likely to be taken in by a smooth but fictitious convict story and was more likely to think in terms of de-

terrence; the sociologist was most concerned with backgrounds, attitudes, and future prospects. An advantage of varied backgrounds such as these is that they tend to balance each other. The net result will probably show less variability than sentences set by individual judges.

Prior to June 1955, except for minors, minimum sentences set by the Board were inflexible, and all that an inmate could earn by good behavior was one-third off. Since then, however, sentences for most cases have been flexible. As stated above, except in cases involving mandatory life imprisonment, habitual criminals, those who used a deadly weapon, and certain embezzlements, the Board may reconsider the minimum sentence after the man has served one year. As a matter of policy, the Board interviewed each inmate at the end of one-third of his sentence, or five years, whichever was shorter. For these interviews, resident parole officers at the institutions had prepared progress reports. These were carefully studied. Only when there had been, from the beginning, a better-than-average work and conduct record or when a clear-cut change for the better in attitude and behavior had occurred, would a minimum sentence be reduced. On the other hand, a very poor work and conduct record or a change of attitude for the worse would cause a minimum sentence to be increased.

George, whose case follows, was a first offender with a conscience. He maintained an outstanding record at the reformatory.

Early in 1954, at the age of twenty-four, George had participated with a police officer in a burglary in which his share of the loot came to \$6,000. When he had been caught, he had made restitution to the full extent of his resources at that time, which was \$4,500. The burglarized company had released him from further obligation, but at the time of his interview with the Board, on his own initiative, George acknowledged a moral obligation to repay the remaining \$1,500 balance. He had had an outstanding record in the Navy. In fact, his unit had been cited by the Secretary of the Navy for unusual heroism under fire. At the reformatory he was described as an outstanding worker in the hospital. His attitude and adjustment in the institution were rated as "way above average." If paroled, using the so-called "G.I. Bill," George planned a three-year college course in medical technology. The Board decided to reduce his sentence of two years by five months and ten days and set a parole date. (Three years later, he had succeeded on parole, but had not repaid the \$1,500.)

Carl, in contrast, although also a burglar, was serving his second "continuation" as a parole violator. He had escaped from the reformatory several months before his interview, had been picked up twelve miles away, and had been returned the same day. Later, he had been tried in court for the escape and, incredibly, the jury had found him not guilty. Because of this finding, the Board could not extend his sentence as punishment for the escape. The progress report by the institution parole officer, however, left much to be desired in Carl's

behavior. Among other things, it revealed that Carl had been hospitalized fifty-seven days for a hunger strike. Later, he had asked the psychiatrist to "come down and see him" and complained, as was his custom, about his stomach. The psychiatrist reported that "he is an almost impossible prospect for therapy. Not only is hypochondria itself a very difficult thing to treat, but in this case it overlays a seriously disordered character. Carl does not hesitate to use his complaints, I believe quite consciously, for whatever 'good' he can get out of them." He had been assigned to ten different work crews, in nearly all of which he had been reported "average." There had been two rule violations besides the escape, one of them for "receiving stolen property." Carl admitted that he had not earned his good time. The Board added two months to his minimum sentence. (Less than ten months after his release, Carl again violated parole. Six months later, he was committed to a mental institution.)

Sentencing by an administrative board can have the following disadvantages as compared with top-quality judicial sentencing:

1. The salaries may be so low¹⁴ or the governor's policy in making appointments so political¹⁵ that the members will not possess personal qualifications equivalent to those of high judicial officers, educational backgrounds broad enough to provide knowledge of those fields most closely related to correction—*e.g.*, psychiatry, psychology, social work, sociology, education, law—or experience in probation, parole, law enforcement, or correctional administration.¹⁶

2. Under such circumstances, members may lack the judgment necessary to make wise decisions or the character to resist pressures from prosecutors or influential politicians who demand favorable action with respect to their clients.

Where salaries are comparable to those of judges and where standards influencing appointments are high, however, sentencing by an administrative board has the following advantages:

1. Decision about the sentence can be delayed until a significant body of knowledge concerning the offender has been collected and organized. If this is done by the professional staff of a reception center, it can include what a trained probation officer might incorporate in a presentence report plus the result of weeks of observation, interviewing, and testing in the admission unit. Having more facts, the Board is able to make more intelligent judgments.

¹⁴ Each of the seven members of the California Adult Authority receives an annual salary of \$15,000. The annual salaries of parole board members in Washington are \$8,500; but those of superior court judges in the same state are \$15,000.

¹⁵ NPPA, STANDARD PROBATION AND PAROLE ACT 4 (1955), recommends the following merit system of selection: "Within ninety days after this act becomes effective, the members of the board shall be appointed from a list of nine persons whose names shall be submitted to the governor by a panel of five persons constituted as follows: the chief justice of the state supreme court, the president of the state conference of social work, the president of the state probation and parole officers association, the president of the state bar association, and the president of the state prison association." Three names would be submitted by the same panel for any vacancy.

¹⁶ See NATIONAL CONFERENCE ON PAROLE, PAROLE IN PRINCIPLE AND PRACTICE: A MANUAL AND REPORT 76-77 (1957).

2. One of the weaknesses of sentencing by judges is the wide variability in sentences for offenders who have committed similar crimes, have similar prior records, and have similar personal characteristics. When the judgments of three members are pooled, the ultimate decisions are likely to be more uniform in comparable cases than would be the decisions of one judge at different times or the decisions of many judges operating independently.

3. With more adequate facts, attention can be given not merely to the crime and the criminal record, but also to problems peculiar to the individual offender.

4. When laws are sufficiently flexible, sentences can later be reconsidered in the light of progress and readjusted appropriately.