

Overlooked factors in the analysis of parole decisions

Danziger et al. (1) concluded that meal breaks taken by Israeli parole boards influence the boards' decisions. This conclusion depends on the order of cases being random or at least exogenous to the timing of meal breaks. We examined data provided by the authors and obtained additional data from 12 hearing days ($n = 227$ decisions).^{*} We also interviewed three attorneys, a parole panel judge, and five personnel at Israeli Prison Services and Court Management, learning that case ordering is not random and that several factors contribute to the downward trend in prisoner success between meal breaks. The most important is that the board tries to complete all cases from one prison before it takes a break and to start with another prison after the break. Within each session, unrepresented prisoners usually go last and are less likely to be granted parole than prisoners with attorneys. Using the same decision rules as Danziger et al., our data indicate that unrepresented prisoners account for about one-third of all cases, but they prevail only 15% of the time, whereas prisoners with counsel prevail at a 35% rate.

This nonrandom order of cases might have become apparent had the authors not limited their analysis. They lumped together decisions rejecting parole and cases that were deferred to a later date. Theoretically and in practice, deferrals are not comparable to rejections of parole.

Excluding these deferred cases, our data indicate a success rate of 67% for prisoners with counsel and 39% for unrepresented prisoners. Excluding deferrals in the authors' data yields very similar success rates, beginning at about 75% and dropping to 42% at the end of a session. Thus, we strongly suspect that the pattern of declining success rates is a result

^{*}These consist of all hearings in one of the four parole boards from June 2011. The data appear similar to the data analyzed by Danziger et al. but unfortunately do not include information about case ordering. The boards have not changed procedure since the Danziger research.

of hearing represented prisoners first and unrepresented prisoners last.

In addition, our data showed that on average, 4.1 prisoners per day had "shared counsel." All interviewees said this is a common phenomenon and that an attorney usually presents all his or her cases together, in such order as the attorney desires. We suspect that attorneys present their best cases first and save their weakest cases for last, adding to the downward trend of prisoner success.

Finally, the authors conclude that parole decisions are influenced by "legally irrelevant situational determinants" because their statistical analysis does not explain the decision pattern. However, they have no data concerning prisoners' in-prison behavior, a key factor specified by the Parole Release Law of 2001. In addition, they apparently have no data indicating whether the prisoner had an attorney. Even without these crucial variables, the authors should have suspected that factors not reflected by their limited data might reasonably influence parole decisions (or case ordering). A broad basis for decision is surely suggested by the fact that parole decisions are made by a panel of three voting members, including one judge, a criminologist, and a social worker, not by a single judge as Danziger et al. suggest.

The authors' analysis does not support their conclusion that parole decisions are influenced by legally irrelevant factors. The phenomenon of favorable decisions peaking after a meal break is likely an artifact of the order of case presentation. It is not evidence that meal breaks affect the boards' decisions.

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1. Danziger S, Levav J, Avnaim-Pesso L (2011) Extraneous factors in judicial decisions. *Proc Natl Acad Sci USA* 108:6889–6892.

Author contributions: K.W.-M. performed research; J.S. and K.W.-M. analyzed data; and J.S. and K.W.-M. wrote the paper.

The authors declare no conflict of interest.

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