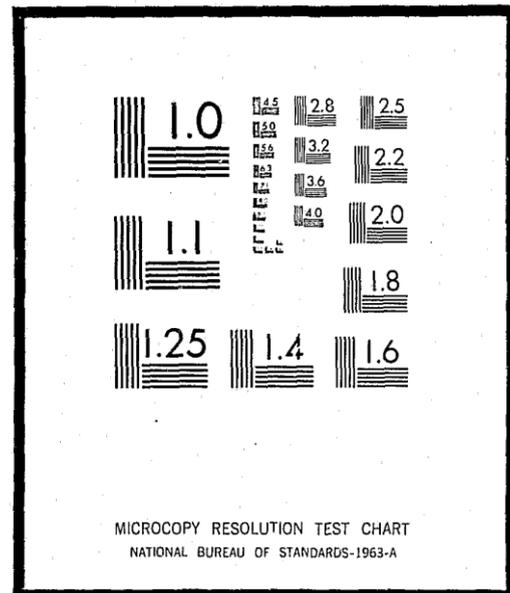


NCJRS

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504.

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U.S. Department of Justice.

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

Date filmed

8/4/75

13544

EFFECT OF REPRESENTATION AT PAROLE HEARINGS

by
JAMES L. BECK*

UNITED STATES BOARD OF PAROLE RESEARCH UNIT:

Report Three

April, 1974

*Research Assistant, United States Bureau of Prisons

INTRODUCTION

In recent years parole board procedures have become subject to increasing scrutiny. One controversy has involved the question of whether or not inmates should be allowed to have representation at parole hearings. The arguments for representation are both ethical and practical. From the ethical standpoint it is argued that, as part of the criminal justice system, parole procedures must be "governed by concepts of propriety and modes of conduct arising from the ideology of American culture and law".¹ Inherent in this ideology is the right to counsel and the right to present witnesses in one's own behalf.

From the practical standpoint, the National Advisory Commission on Criminal Justice Standards and Goals² has argued that representatives at parole proceedings will improve parole decision-making by enlarging the information base available to the decision-makers. That is, representatives may be able to clarify plans and raise issues that inmates might not feel free to discuss. Moreover, it is argued that representation will give inmates an "impression of fairness" and a sense of participation, will provide a measure of moral support, and will help less articulate inmates communicate their feelings to the parole board. Finally, it is argued that representation will serve to open up the parole process to public scrutiny and allow broader participation in the correctional process.

In October 1972, the United States Board of Parole initiated a program to allow limited representation in parole hearings at selected institutions³ as one facet of a "pilot project" designed to improve the parole

decision-making process. Representation had been allowed previously only in parole revocation hearings. Inmates were initially limited to non-attorney representatives; however, this limitation was removed in June, 1973.⁴ The nature of the representation was also limited. Representatives were allowed to speak in behalf of an inmate and to answer questions but were not allowed to challenge or cross-examine the hearing examiners.⁵

Initial reports concerning implementation of this pilot project seem to have justified the Board's logic in allowing representation at parole hearings. The Board's hearing examiners appeared to be pleased with having a new source of information about the parole applicants,⁶ particularly regarding family situation and employment prospects, although an increase in time per hearing meant more work for examiner staff. Inmates and institutional staff, particularly at youth institutions, perceived a more cordial and relaxed hearing atmosphere.⁷ Representatives appeared to provide moral support for inmates and to allow a more open and honest discussion with a concomitant drop in anxiety and acting out behavior during the hearings.

While the above are arguments for representation, at least one unanswered question remains. That is, what effect if any does the presence of a representative have on the actual parole decision? Despite the general acceptance of the idea of representation, one persistent complaint has been that the presence of representatives has had little influence on decision outcome. A number of institutional staff members serving as representatives complained that hearings were "cut and dried matters and that their presence as representatives had no bearing whatsoever on the

outcome of the hearings."⁸

The intent of this paper is to test the following questions:

- 1) did the presence of a representative affect the decision outcome,
- and 2) if so, did this effect vary with type of representative?

RESEARCH METHOD

Of necessity, the method used is a bit complicated. It would be possible to simply compare cases with representation and those without to determine if representation affected the amount of time served before parole was granted or the proportion of those paroled at a particular hearing. The results of such simple analysis, however, would be hopelessly confounded by the interaction of representation by type of inmate. That is, if inmates with less serious offenses and prior records were most likely to produce representatives at parole hearings (not an unlikely possibility) the results would show inmates with representatives being paroled earlier or more often. As these offenders would be more likely to be paroled anyway, the apparent effect of representation could be spurious.

To control for the interaction of representation by the type of inmate, the use of "expected time to be served" under the guidelines was introduced. A major component of the pilot project was the introduction of the use of explicit guidelines to aid parole decision-making.⁹ The guidelines are basically a two dimensional chart delineating the customary range of time to be served before release. One dimension of the guidelines is severity of the commitment offense rated on a six point scale. With increasing offense severity, time to be served before release also increases.

The second dimension (Salient Factor Score) concerns probable risk to the community if released. As the risk increases on a four category scale, time to be served increases. By reporting the data as time served¹⁰ above or below the mean time indicated by the guidelines rather than total time served, control is exercised for the severity of the commitment offense and probable risk of recidivism (including prior record).

The main difficulty with this method was that only cases for which the guidelines are applicable (initial hearings, N= 1100) may be used. This meant excluding NARA cases (N= 30),¹¹ special interest cases (N= 20),¹² "greatest severity" cases (N= 28),¹³ and cases whose continuance was limited to thirty-six months (N= 166).¹⁴ Moreover, cases continued to expiration whose full term expiration (or mandatory release) dates were less than the range stipulated by the guidelines (N= 341) and parole cases whose eligibility date was above the range stipulated by the guidelines (N= 54) posed additional problems. The Board's discretion for these cases is limited (the Board may neither continue a case past expiration of sentence nor parole earlier than parole eligibility) so the effect of representation would also be limited. Therefore, analysis including these latter two categories was computed separately.

Although use of the guidelines was restricted to initial hearings, analysis was also run on 1,023 review cases. The criteria used was the proportion of those paroled with representation versus the proportion of those paroled without representation. However, these results are subject to the limitations discussed earlier.

The information for this study was obtained from the "Pilot Project Evaluation Form" completed by the research unit for each case in the pilot project that came before an examiner panel (see Appendix A). The time period for this study ran from October, 1972, through August, 1973.

FINDINGS: INITIAL HEARING

The data obtained for initial hearings appears to support the hypothesis that representation does affect parole outcome * (see Table I). Adults with representatives were found to serve more than a month and a half less than the mean time indicated by the guidelines while those without representatives served near the mean time indicated. Youths with representatives were found to serve slightly less than the mean indicated while those without representatives served over a month longer than the mean. The overall effect is that inmates with representatives appear to serve approximately one and a half months less than those without representatives, controlling for severity of offense and risk of recidivism. This difference is statistically significant (.01 level).

(INSERT TABLE I HERE)

*Results are reported separately for adult and youth cases because different guidelines are used.

TABLE I (A)

INITIAL HEARINGS*:

ADULT CASES

	Number of cases	Percent of total number	#Mo. above or below mean time specified by the guidelines	Difference in time to be served, representative vs. no representative
All cases	708	100.0	- .84	-
No Rep.	405	57.2	- .15	-
All Rep.	303	42.8	-1.76	-1.61**
Caseworker/ Staff	114	16.1	-1.47	-1.32**
Spouse	89	12.6	-1.47	-1.32**
Friend	37	5.2	-4.13	-3.98**
Parent	27	3.8	- .18	- .03*
Relative	19	2.7	-2.42	-2.27**
Inmate	14	2.0	-2.93	-2.78**
Other	3	.4	+ .02	+ .17*

* N. S.
 ** Sig. @ = .01

* cases paroled above or continued to expiration below the guidelines are not included.

TABLE I (B)

INITIAL HEARINGS*:

YOUTH CASES

	Number of cases	Percent of total number	#Mo. above or below mean time specified by the guidelines	Difference in time to be served, vs. no representative
All cases	392	100.0	+ .61	-
No Rep.	204	52.0	+1.29	-
All Rep.	188	48.0	- .14	-1.43**
Caseworker/ Staff	123	31.4	- .28	-1.57**
Spouse	8	2.0	+1.81	+ .52*
Friend	10	2.6	-1.85	-3.14**
Parent	26	6.6	+ .88	- .41*
Relative	8	2.0	- .12	-1.41*
Inmate	12	3.1	- .79	-2.08**
Other	1	.3	+5.00	+3.71*

* N. S.
 ** Sig. @ = .01

*Cases paroled above or continued to expiration below the guidelines are not included.

A comparison of type of representative reveals that the most frequently occurring representative is "institutional staff" (21.5% of all cases). No doubt this reflects their greater availability. Not too surprisingly, institutional staff members also appear to be among the most effective representatives. It might be expected that hearing examiners would respect the judgment of staff who see the inmate daily.

There are some surprises though. One unexpected finding is that "parents" are poor representatives, having little effect on the decision one way or the other. On the other hand, "friends" and "other inmates" appear to be effective representatives. Intuition would suggest that examiners would be less likely to be swayed by an inmate's own peers. It should be noted, however, that "friends" and "other inmates" as representatives occurred relatively infrequently. Moreover, the category "friends" does not necessarily mean peer group friends but includes family friends or former employers.

The data for the sample (N = 1495) including cases continued to expiration below the guidelines and cases paroled above the guidelines tend to support the results found above (see Table II). The effect of representation is less marked, however, because the inclusion of cases continued to expiration below the guidelines tended to reduce the mean time served for all cases irregardless of representation. Adults and youths with representatives are serving approximately three fourths of a month less than those without representatives. This is significant at the .05 level.

(INSERT TABLE II HERE)

TABLE II:
INITIAL HEARINGS*

ADULT CASES

	Number of cases	Percent of total number	#Mo. above or below mean time specified by the guidelines	Difference in time to be served, vs. no representative
Total cases	1059	100.0	-2.35	-
No Rep.	614	58.0	-2.01	-
All Rep.	445	42.0	-2.83	- .82*

YOUTH CASES

	Number of cases	Percent of total number	#Mo. above or below mean time specified by the guidelines	Difference in time to be served, representative vs. no representative
Total cases	436	100.0	- .01	-
No Rep.	230	52.8	+ .34	-
All Rep.	206	47.2	- .40	- .74*

*Sig. @ = .05

*Cases paroled above or continued to expiration below the guidelines are included.

FINDINGS: REVIEW HEARINGS

The results for review hearings show that cases with representatives were paroled 80.6% of the time while those without representatives were paroled 72.5% of the time (see Table III). This is statistically significant at the .01 level. By type of representative, only "institutional staff" proved to be statistically significant. No other type of representative was found to be significant, though all representatives except inmates tended to increase the chance of parole. As noted, data for review hearings does not control for differences among inmates and thus should be interpreted with caution. Policy tended to be that inmates would be paroled at review hearings if there was evidence of good behavior and compliance with institutional goals. This may explain why only "institutional staff" was found to be significant.

(INSERT TABLE III HERE)

DISCUSSION:

On the basis of these results it would appear that representation is a factor taken into consideration at initial hearings in relation to guideline usage. Taking into account the limited range of discretion in time to be served imposed by the guidelines, a difference of a month and a half appears to be a fairly substantial amount. It would certainly not appear that representatives are being ignored or that hearings are the "cut and dried" affairs described by some institutional staff. Indeed, institutional staff are not only the most frequently occurring representatives, but among the most effective as well.

TABLE III:
REVIEW HEARINGS

	Number of cases	Percent of total number	Percent paroled	Difference representative vs. no representative in percent paroled
All Cases	1023	100.0	76.3	-
No Rep.	539	52.7	72.5	-
All Rep.	484	47.3	80.6	+8.1**
Caseworker/ Staff	346	33.8	81.5	+9.0**
Spouse	38	3.7	81.6	+9.1*
Friend	20	1.9	75.0	+2.5*
Parent	45	4.4	80.0	+7.5*
Relative	17	1.7	76.5	+4.0*
Inmate	13	1.3	69.2	-3.3*
Other	5	.5	80.0	+7.5*

* N. S.
** Sig. @ = .01

A still unanswered question, however, is why some types of representatives appear to be more effective than others. A partial answer might be found by studying the sort of information provided by different types of representatives. Institutional staff, for instance, primarily convey information concerning prison adjustment, compliance with institutional goals, and the degree to which the inmate appears to be "rehabilitated". This type of data might be expected to be of some importance for the hearing examiners and might explain the relative effectiveness of institutional staff. Quoting from summaries dictated at the time of the hearings, typical staff reports are as follows:

"He spoke favorably of (the) subject's response both in the academic program and in his work assignments as an orderly. He stated that the subject requires the minimal amount of supervision and always displays a co-operative attitude."

"He stated that (the) subject was progressing quite well in the basic education program and that further he had been participating fully in the NARA program. He feels that (the) subject is sincere in his desire to improve himself prior to his return to the community."

Equally important may be the balanced information provided by institutional staff not found with other types of representatives. Staff appear much more likely to give negative information about a subject and are less likely to exaggerate whatever good qualities an inmate might possess. This may aid the credibility of institutional staff and increase their effectiveness in the eyes of the examiners.

"Mr....., correctional counselor, states that (the) subject has accomplished some of his goals. He adds that (the) subject has his ups and downs, doing well for a while and then seems to blow. He has a temper problem and is making some effort to control this."

"He briefly reviewed subject's difficulty when he first arrived here and recognizes that (the) subject is quite limited. The general impression is that the prognosis will remain guarded."

"He (the inmate) is a non-reader which is causing difficulty in this school situation. Also he has signs of immaturity but in general is doing well and is a hard worker.

Spouses, also found to be effective representatives, appear to emphasize most often the disruption in the household caused by the loss of the inmate who is often the major source of income as well as head of the household. This, added to the fact that having a spouse is likely to indicate some stability, seems to carry some weight.

"Subject's wife stated that her husband is needed very badly at home. There is a need for financial (help) as well as (a) moral need. She pointed out that (the) subject has always been a good father, a good worker and was never in trouble with the law previously."

"Subject's wife stated that she needed him badly at home. That she is unable to work due to her health problems. She also pointed out that their child missed the father very much and also the child is in need of some psychiatric care due to the fact that the child is disturbed because of the absence of the father."

One of the more surprising findings was the effectiveness of "friends". "Friends" in this study is a broad category including any representative not readily classifiable in the other categories. It was suggested earlier that this type of representative might not be particularly credible. A look at the hearing summaries, however, shows that friends are often willing to provide employment following release from prison. It seems reasonable that this may be a decisive factor in granting parole irregardless of any other information that an inmate's friend might provide.

"He states that (the) subject has always been a hard worker, that he has befriended him because of his hard work and he has offered (the) subject several jobs and also (the opportunity) to come into the partnership. And he certifies that (the) subject is a good person."

"He stated that he has known (the) subject for the past 7-10 years and was surprised when he learned of his difficulty with drugs. He will guarantee subject steady employment once he is released."

Finally, parents as representatives were found to be ineffective.

One possible reason for this might be the feeling that parents are blind to their child's shortcomings to the point that they are not regarded as reliable or useful sources of information.

"Subject was represented by his mother. She spoke in rather glowing terms of her son's past accomplishments and stated that he contributed somewhat to her support. She did state that she was quite surprised by the nature of the instant offense but despite this feels that he merits an early release. Obviously she continues to be most over protective and simply refuses to accept the fact that her son is a manipulator."

It might be noted here that no inmate chose to have legal representation at his parole hearing. Attorneys, however, were allowed to represent inmates only for the last three months of the time period covered by this study. In addition, the limited nature of the representation may have appeared to inmates to somewhat reduce the utility of having an attorney as a representative.

In the final analysis, it may be argued that the deciding factor in allowing representation ought to be ethical rather than "scientific". Demands for fairness and propriety may require representation irregardless of the effect it may have on decision outcome. The fact that representation appears to have some effect upon the decision made may be simply more to the good.

FOOTNOTES

1. National Advisory Commission on Criminal Justice Standards and Goals, Report of the Task Force on Corrections, Texas: Office of the Governor, Criminal Justice Council, 1972, Ch. 13, p. 30.
2. National Advisory Commission on Criminal Justice Standards and Goals, *supra*, note 1.
3. The institutions involved were Lewisburg/Allenwood, Pa., Danbury, Ct., Alderson, W. Va., Morgantown, W. Va., and Petersburg, Va..
4. Sigler, M. H., Statement before Senate Judiciary Committee Subcommittee on National Penitentiaries concerning S. 1463---The Parole Commission Act of 1973, June 13, 1973.
5. Federal Register, Part II, vol. 38, No. 184.
6. Vodvarka, A. J., and Pokinski, J. N., "Pilot Project at U. S. Penitentiary, Lewisburg and Federal Prison Camp, Allentown, Pennsylvania (January 15 thru January 22, 1973)" Pilot Project Monthly Reports, January, 1973.
7. Karacki, Loren and Goodykoontz, Vicki, "New Parole Board Hearing Procedures: Kennedy Youth Center Staff and Student Reaction and the Effect upon Staff Work Schedules". Pilot Project Monthly Reports, December, 1972.
8. Karacki and Goodykoontz, *supra* note 7, p. 3.
9. Federal Register, Part III vol. 38, No. 222, November 19, 1973.
10. Time served was computed by adding the number of months in custody and the number of months of the actual decision (e.g. parole in two months with four months in custody at time of hearing was treated as a time served of (04 + 02 = 06) six months). If the inmate was continued for further review, one additional month was added to allow time for release planning.
11. At the time of this study, guidelines were not available for NARA cases.
12. Special interest cases include cases involved in organized crime or cases involving a great deal of notoriety. These cases were considered by the entire Board.

13. For "greatest severity" cases, such as homicide, the range of severity is too broad and the number of cases too limited to define a meaningful "expected time to be served".
14. It is a policy of the board that no inmate can be given a continuance longer than 36 months. For some cases, the "expected time to be served" under the guidelines exceeds 36 months. Because of policy limitation these cases will be given a continuance less than that suggested by the guidelines.

