RANDOMNESS PRE-CONSIDERED

Recognizing and Accounting for "De-Randomizing" Events When Utilizing Random Judicial Assignment

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SUMMARY: This article adds to the growing literature challenging the general assumptions of random judicial assignment by identifying a set of common assignment procedures that I call "de-randomizing" events. These events, which include non-random assignment itself, should be accounted for in order to make unbiased causal claims but are commonly either ignored or not even recognized by researchers utilizing random judicial assignment. This article also attempts to fill in what others have noted to be a dearth of information on the assignment protocols of courts other than the U.S. Courts of Appeals by presenting original data from a survey of the 30 largest state-level criminal courts, outlining their assignment protocols, and identifying the extent to which they feature these "de-randomizing" events.

"DE-RANDOMIZING" EVENTS IN JUDICIAL ASSIGNMENT

TYPES OF JUDICIAL ASSIGNMENT PROCEDURES:

- Random Assignment: A judicial assignment procedure can be defined as random when cases are assigned to judges independently of any value, characteristic, or variable other than a truly exogenous assignment mechanism. The probability of assignment across judges does not have to be equal, but it does have to be known.
  Examples: Computer-generated numbers, drawing names from an envelope, drawing numbers from a hat.
- As-If-Random Assignment: A judicial assignment procedure can be considered "as-if-random" when cases are assigned to judges based on one or more of a case's pre-treatment characteristics (defendant demographics, case type, etc.) that are arguably independent of potential outcomes (potentially strong assumption). If truly independent, as-if-random assignment mechanisms function in the same way as a set of random numbers.
  Examples: (maybe): Name of defendant, day of the week crime was committed, name of officer who made arrest.
- Non-Random Assignment: A judicial assignment procedure is not random when cases are assigned to judges based on one or more pre-treatment characteristics that are not independent of potential outcomes.
  Examples: Case type, complexity of case, past history of defendant.
- WARNING: Courts will often say that their assignment procedure is random, even when it is not. "[W]e always tell people that these assignments are random, even though there are things that regularly come up that change things around." (Anonymous Court Clerk)

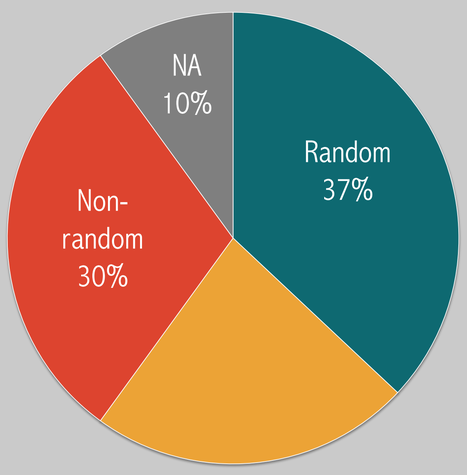
SPECIAL ASSIGNMENT PROCEDURES:

- THE PROBLEM: Nearly all courts, even those that use random assignment for most cases, assign certain types of cases to specific judges based off of case characteristics that are not independent of potential outcomes.
- Judicial Specialization: Some judges specialize in certain types of cases and are always assigned those types of cases. These judges may or may not take on regular case loads.
- Administrative Discretion: Administrative discretion functions similarly to specialization, except the deviations from the normal assignment procedure are generally done by the administrative judge on a case-by-case basis. Unlike case specialization, administrative discretion is utilized on an ad hoc basis, making it more difficult to identify.
- Repeat and Probationary Offenders: If the defendant had previously been convicted of a crime or is being tried for a crime in the jurisdiction in which his or her new case is being processed, it is common for courts to assign these defendants directly to the judges who previously oversaw or who are currently presiding over previous cases. In order to include repeat offenders who are re-assigned to their original judges in an analysis, we have to assume that each judge in the analysis group creates the same number and type of repeat offenders.
- THE SOLUTION: Exclude these cases, but make sure to account for possible effects on assignment probability.

THE SURVEY

30 Largest County Courts Based on Population* • Phone Conversations With Judges/Clerks/IT

DISTRIBUTION OF ASSIGNMENT PROCEDURES



County	Assignment Type	Assignment Mechanism	Type of Random	Case-type Specialization	Geographic Specialization	Block Type	Repeat Offender Returns	Pending/ Probation Returns	Codefendants Consolidated	Changes When Overscheduled	Post-assignment Changes
Clark	Random	Computer	Simple	Yes	Yes	Individual	No	No	Yes	No	Yes
Cook	Random	Computer	Simple	Yes	No	Daily	No	Yes	Yes	Yes	Yes
Cuyahoga	Random	Computer	Simple	Yes	No	Individual	No	Yes	Yes	Yes	Yes
Dallas	Random	Computer	Simple	Yes	No	Depends	NA	Yes	Yes	No	Yes
Harris	Random	Computer/List	Complete	Yes	No	Individual	No	Yes	Yes	No	Yes
Hillsborough	Random	NA	Complete	Yes	No	Individual	No	Yes	Yes	No	Yes
Maricopa	Random	Computer	Simple	Yes	No	Individual	No	Yes	Yes	No	Yes
Nassau	Random	Envelope	Complete	Yes	No	Individual	NA	Yes	Yes	Yes	Yes
Philadelphia	Random	Computer/Area	Simple	Yes	Yes	Individual	No	No	Yes	Yes	Yes
Tarrant	Random	Computer	Simple	Yes	No	Individual	NA	Yes	Yes	No	Yes
Wayne	Random	Computer	Complete	Yes	No	Individual	Yes	Yes	Yes	Yes	Yes
Bexar	As-if Random	Cycled List	NA	Yes	No	Individual	No	No	Yes	No	Yes
Broward	As-if Random	Cycled List	NA	Yes	No	Individual	No	Yes	Yes	Yes	Yes
Middlesex	As-if Random	Cycled List	NA	No	No	Individual	NA	NA	NA	No	Yes
New York	As-if Random	Multi-level List	NA	Yes	No	Individual	No	Yes	NA	Yes	Yes
Orange	As-if Random	Cycled List	NA	Yes	No	Individual	Depends	Depends	Yes	No	Yes
San Bernardino	As-if Random	Alpha/Numeric	NA	No	Yes	Individual	Yes	Yes	Yes	Yes	Yes
Suffolk	As-if Random	Cycled List	NA	Yes	No	Individual	Yes	NA	Yes	Yes	Yes
Alameda	Non-random	Schedule	NA	NA	NA	NA	NA	NA	NA	NA	NA
Bronx	Non-random	Schedule	NA	Yes	No	Daily	No	Yes	Yes	No	Yes
King	Non-random	Area/Schedule	NA	Yes	Yes	Individual	No	No	Yes	No	Yes
Kings	Non-random	Area	NA	Yes	Yes	Individual	NA	Yes	Yes	Yes	Yes
Miami-Dade	Non-random	Schedule	NA	Yes	No	Individual	Yes	NA	Yes	Yes	Yes
Riverside	Non-random	Schedule	NA	Yes	Yes	Individual	No	No	Yes	No	Yes
Sacramento	Non-random	Schedule	NA	Yes	No	Bi-daily	No	NA	Yes	No	Yes
San Diego	Non-random	Area/Schedule	NA	Yes	Yes	Individual	No	No	Yes	No	Yes
Santa Clara	Non-random	Area/Schedule	NA	Yes	Yes	Individual	No	Yes	Yes	No	Yes

* Los Angeles, Palm Beach, and Queens Counties Declined Participation

DIFFERING ASSIGNMENT PROBABILITIES:

- THE PROBLEM: Many cases are randomly assigned at different probabilities for different judges. This generates potentially biased point estimates because the judges' dockets are not identical in expectation.
- Scheduling: Due to scheduling conflicts, courts often lower the number of new cases being assigned to a particular judge (a decrease in the relative probability of being assigned) or take that judge off of the assignment schedule altogether (zero probability of assignment).
- Codefendants: Codefendants' individual cases are often consolidated to just one judge. In courts systems that utilize a complete or rolling randomization, consolidation of a large number of codefendants can remove a judge from the assignment process for a substantial period of time.
- THE SOLUTION: Know the probability of assignment for each case and use inverse-probability weights.

POST-ASSIGNMENT JUDICIAL CHANGES:

- THE PROBLEM: Sometimes, cases are re-assigned after the original assignment procedure. These post-assignment changes are often orthogonal to the outcomes of interest.
- Administrative Discretion: Often, the court or judge will identify some reason to make a change in judicial assignment after the initial assignment process has concluded, including: recusal, inexperience, or scheduling.
- Party Discretion: While the original assignment process is always under the discretion of the court system, rules and procedures sometimes give opportunities for the parties involved in the case to ask for post-assignment changes in judicial oversight either through a peremptory challenge or a request for recusal.
- THE SOLUTION: Treat these cases as non-compliers and compute the ITT and the CACE/LATE or, less ideally, exclude these cases from the study.

MISSING OUTCOMES:

- THE PROBLEM: Case outcomes are often unavailable to researchers. If the propensity for attrition is related to outcomes of interest, point estimates will likely be biased.
- Plea Bargaining / Settlements: A large number of cases are resolved though either plea bargaining (for criminal cases) or settlements (civil cases). This generally means that the outcomes of interest for that particular case are no longer available.
- Selective Publication of Opinions or Records: Most studies utilizing random judicial assignment are concerned with outcomes based on case outcomes or court records. In some cases, particularly when sensitive information or vulnerable parties are involved, the data for a case will be unavailable to researchers.
- Lost or Incorrect Records: Due to human error, some court records and outcomes will simply be lost. Similarly, if the research's outcomes of interest relate to behavior after the case has concluded (recidivism, public behavior, etc.) many individuals will fall off the map or be unwilling to provide data.
- THE SOLUTION: Attrition is a serious threat to unbiased point estimates and cannot easily be accounted for. Researchers can either make strong assumptions regarding the nature of attrition or by bounding estimated treatment effects if attrition rates are sufficiently low.

WHAT ABOUT BALANCE CHECKS (RANDOMIZATION TESTS)?

- Balance checks provide a way to test whether prognostic variables are distributed as the researcher would expect (generally equal across judges). When the relevant pre-treatment variables are balanced, it suggests that the "de-randomizing" effects described above do not exist or are not salient enough to be of concern. However, this approach relies on the strong assumption that all the important variables have been identified and tested for, and is a secondary option behind identifying and accounting for the effects described above.