Best to be Last:

Order effects in legal decisions in the field and in the lab

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- Many decisions involving rights-interests balancing are made sequentially
  - Parole judges
  - Police officers
  - Prosecutors
- Each case is independent
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Editorial

How to Make Sure Your Paper is Desk Rejected

A Practical Guide to Rejection in *EJPA*

Samuel Greiff[1] and Matthias Ziegler[2]

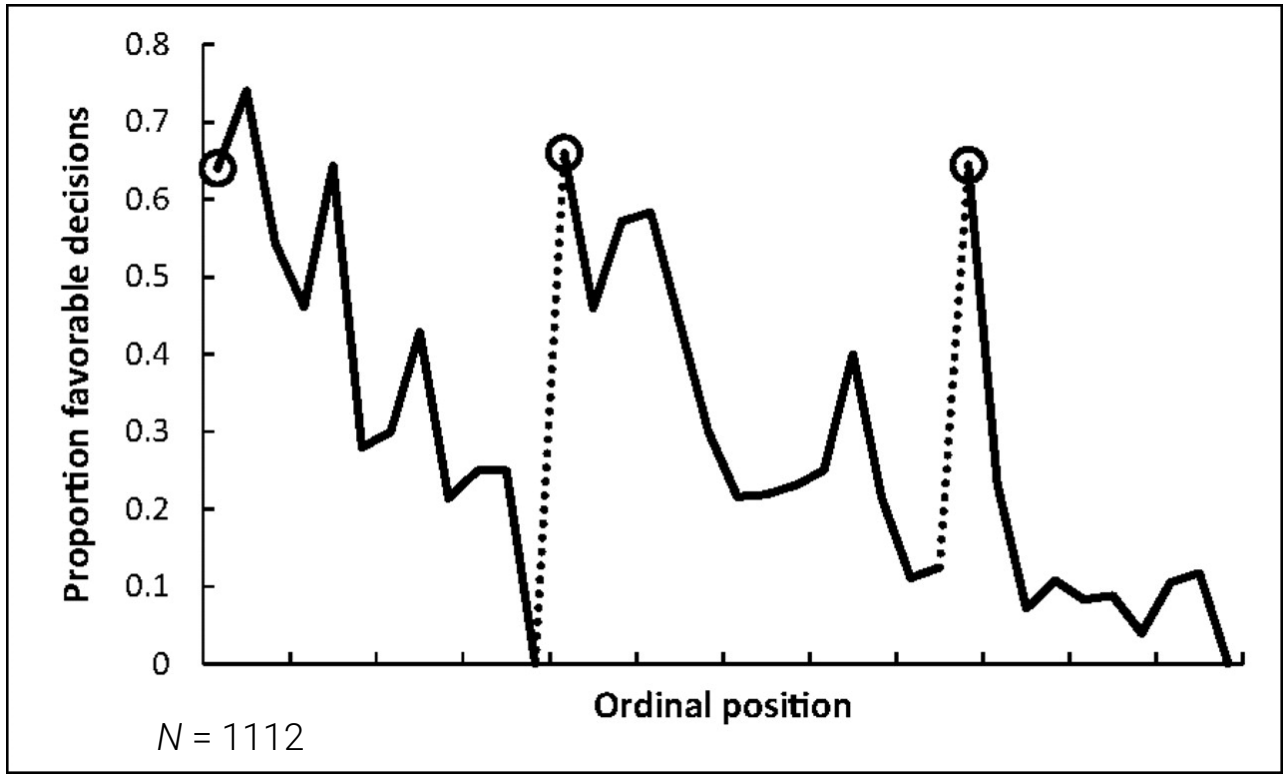
[1]Cognitive Science and Assessment, University of Luxembourg, Esch, Luxembourg,
[2]Humboldt-Universität zu Berlin, Germany

Orazbayev (2017)

Bruine de Bruin (2006)

Glejser & Heynelds (2001)

But…



Danziger, Levav, & Avnaim-Pesso (2011)

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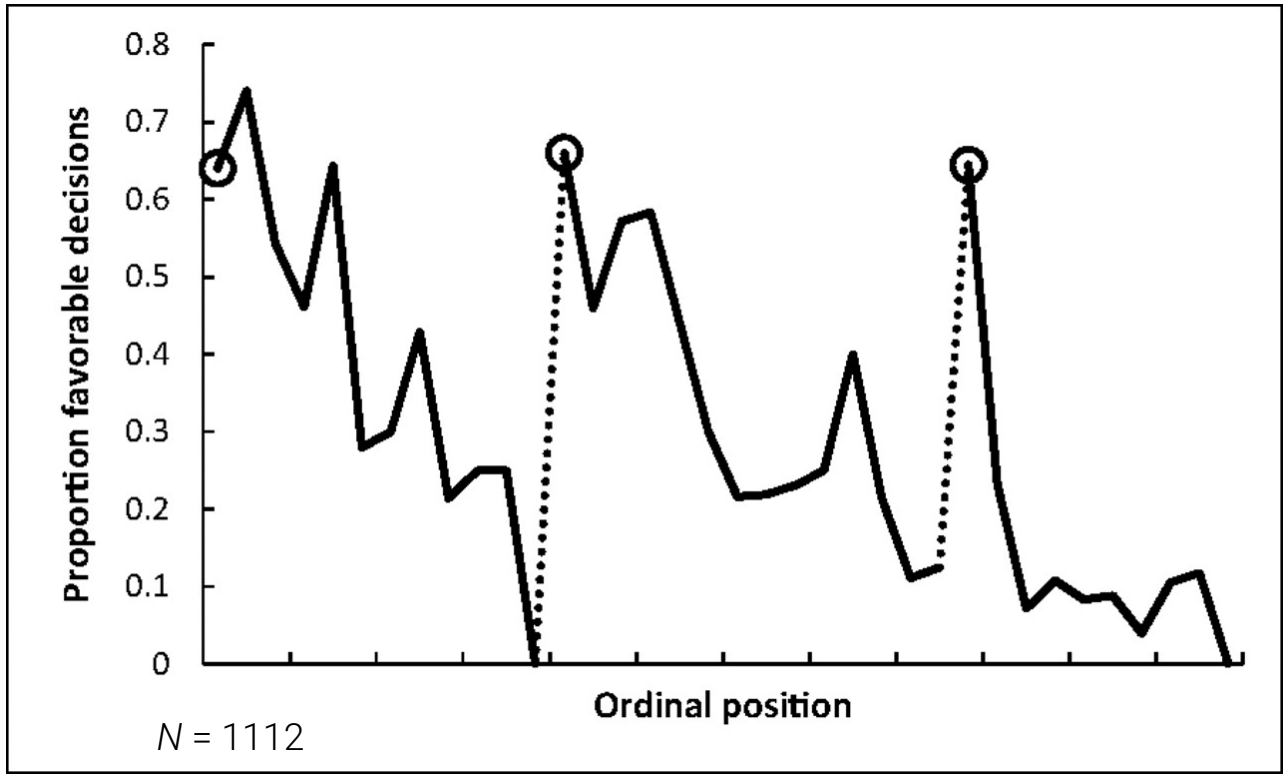

Danziger, Levav, & Avnaim-Pesso (2011)

- Is the effect different in legal contexts?
- What is the effect of serial position on sequential legal decisions?

Field observational data

- US Asylum courts data
- 53 immigration courts
- 1980-2013
- 425 judges, 8.54 avg. years of experience
- *N* = 386,109
- Within courts, cases randomly assigned to judges
- Judges handle cases first-come-first-served
- 1-5 cases heard each day

Results

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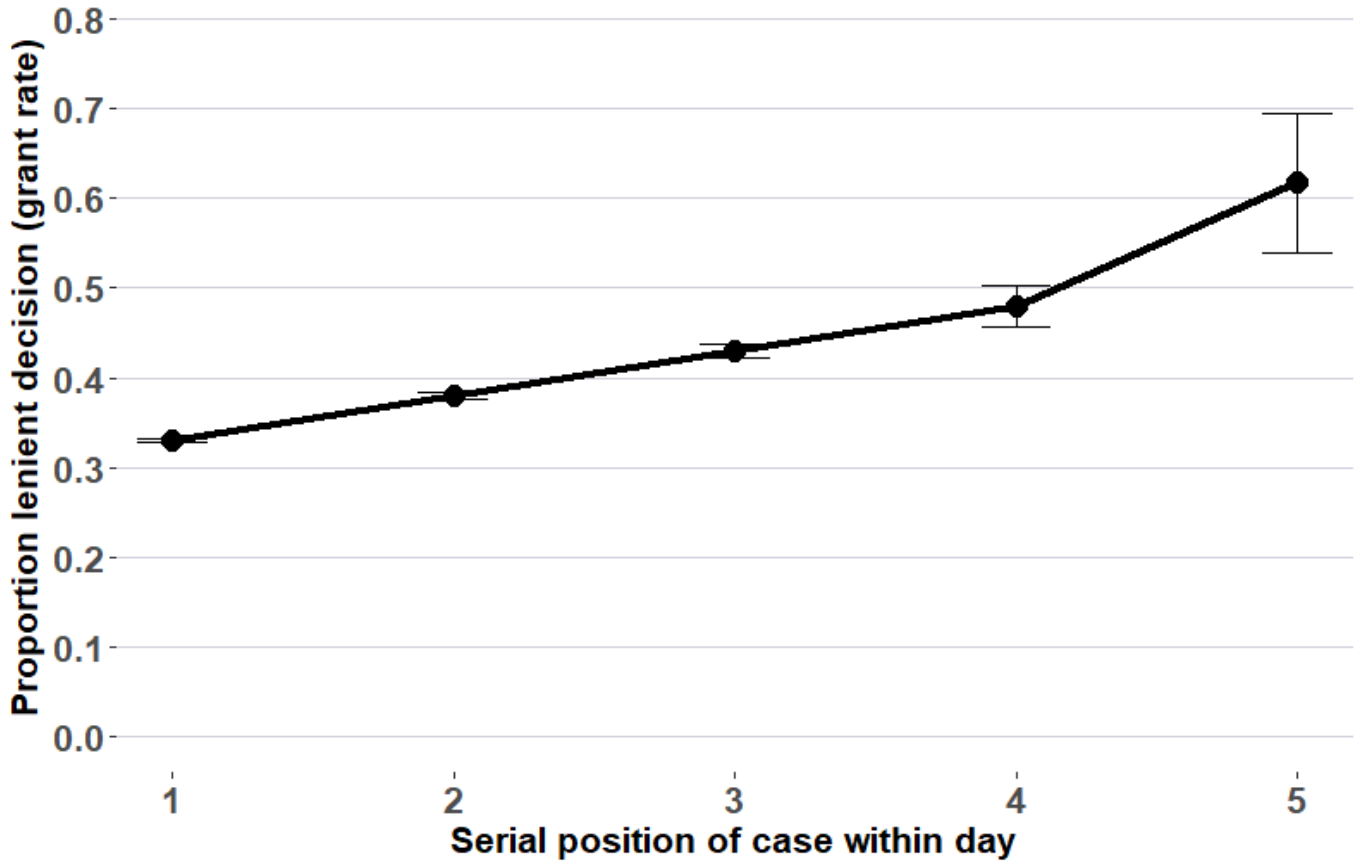

OR = 1.054, 95% CI [1.04.1.07]

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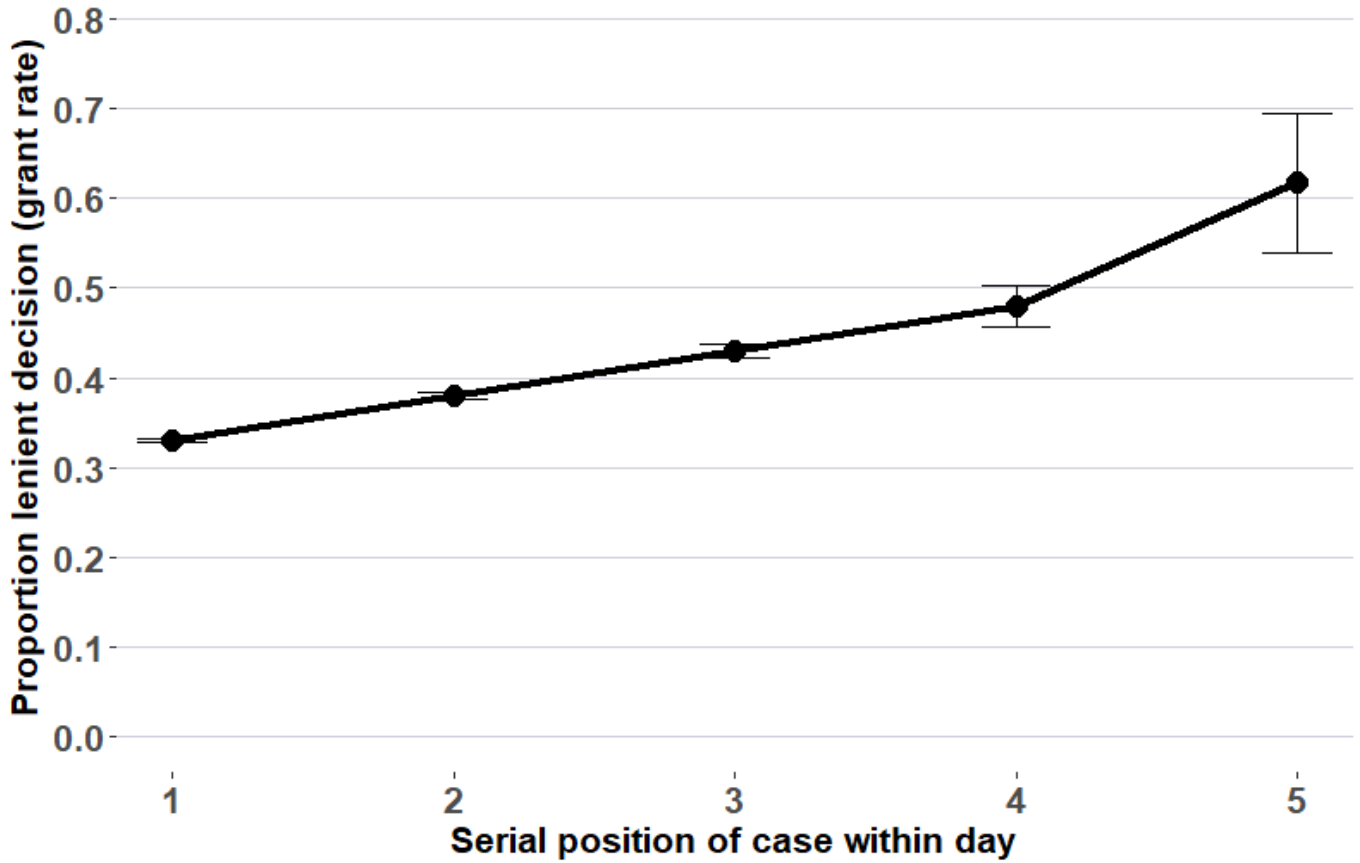
Effect robust to:



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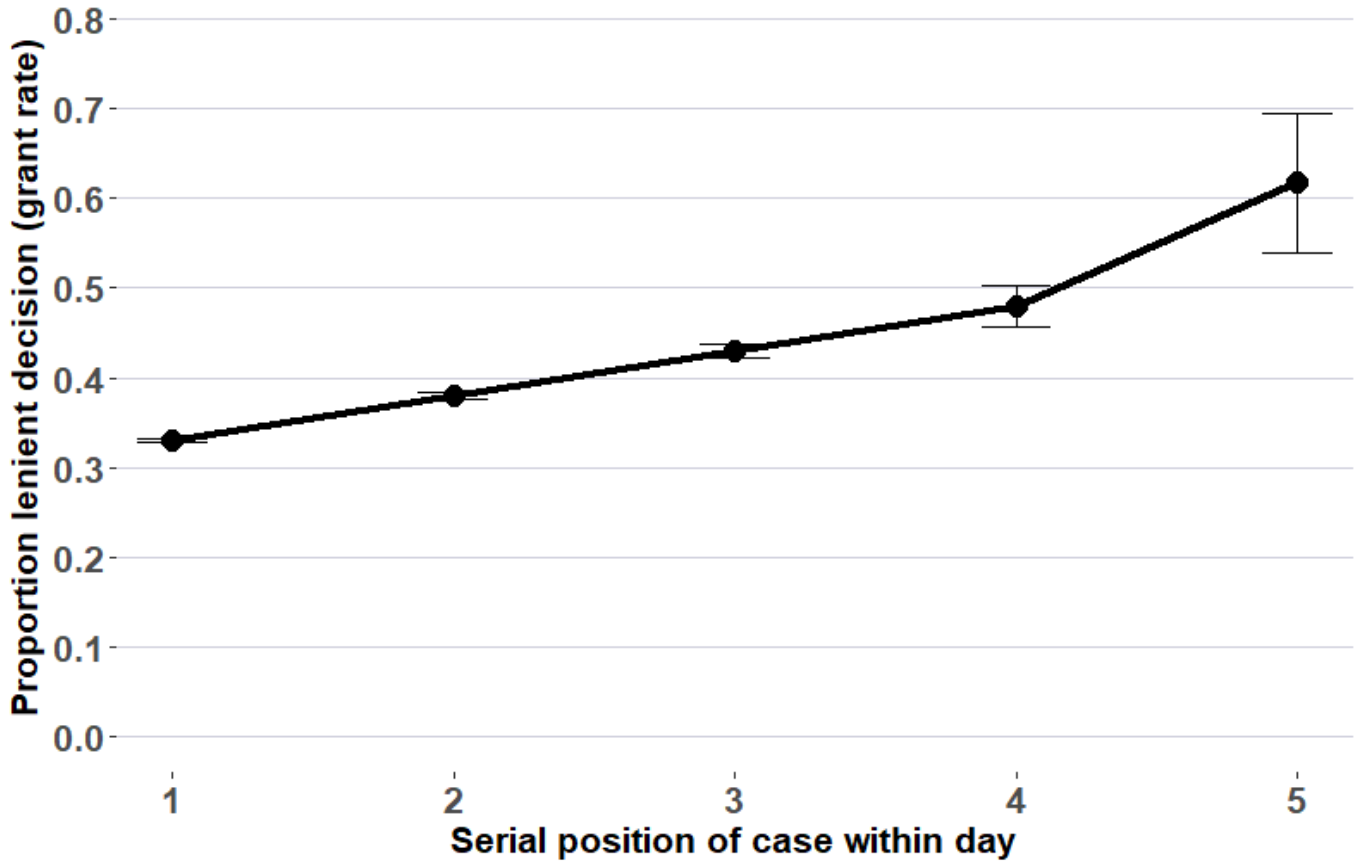

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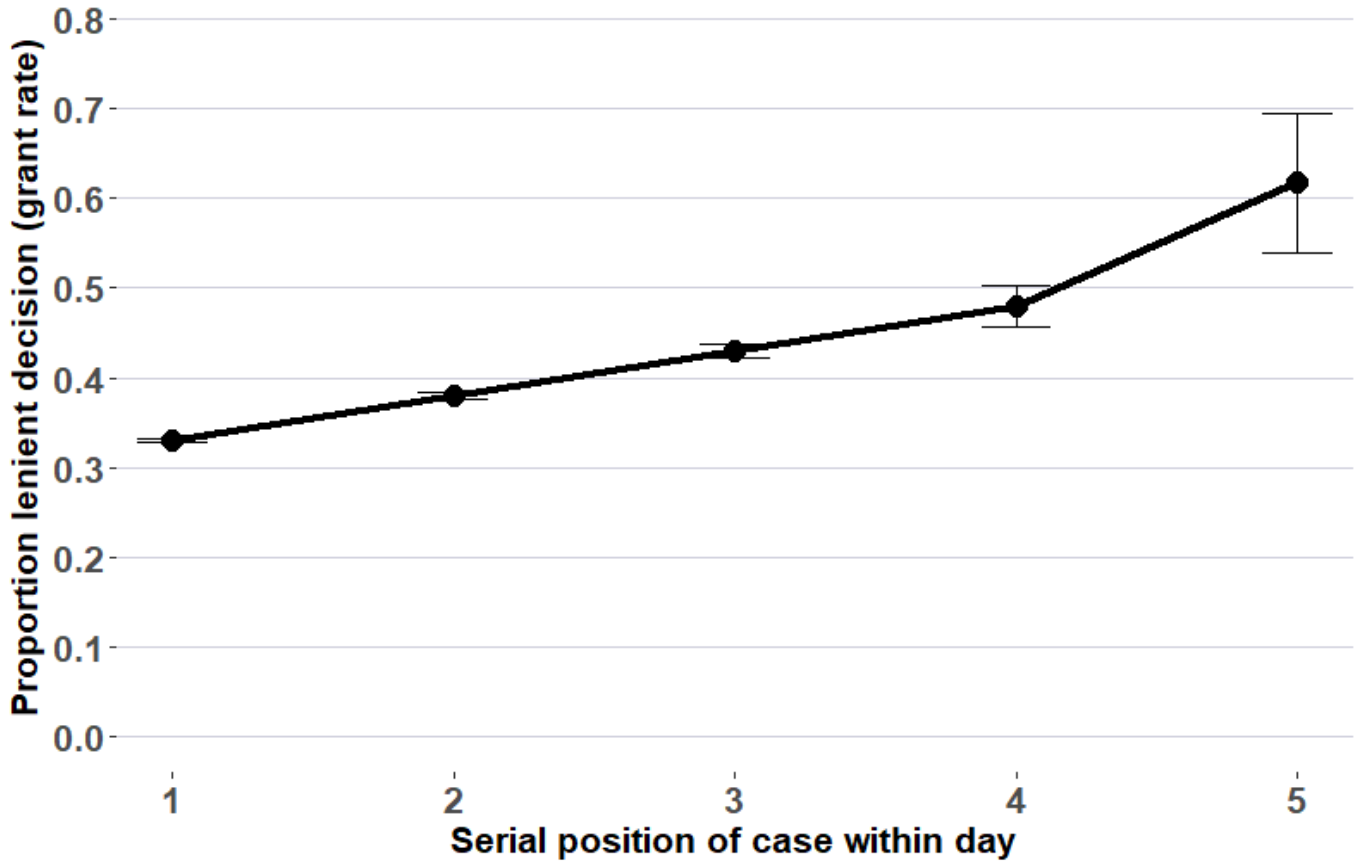

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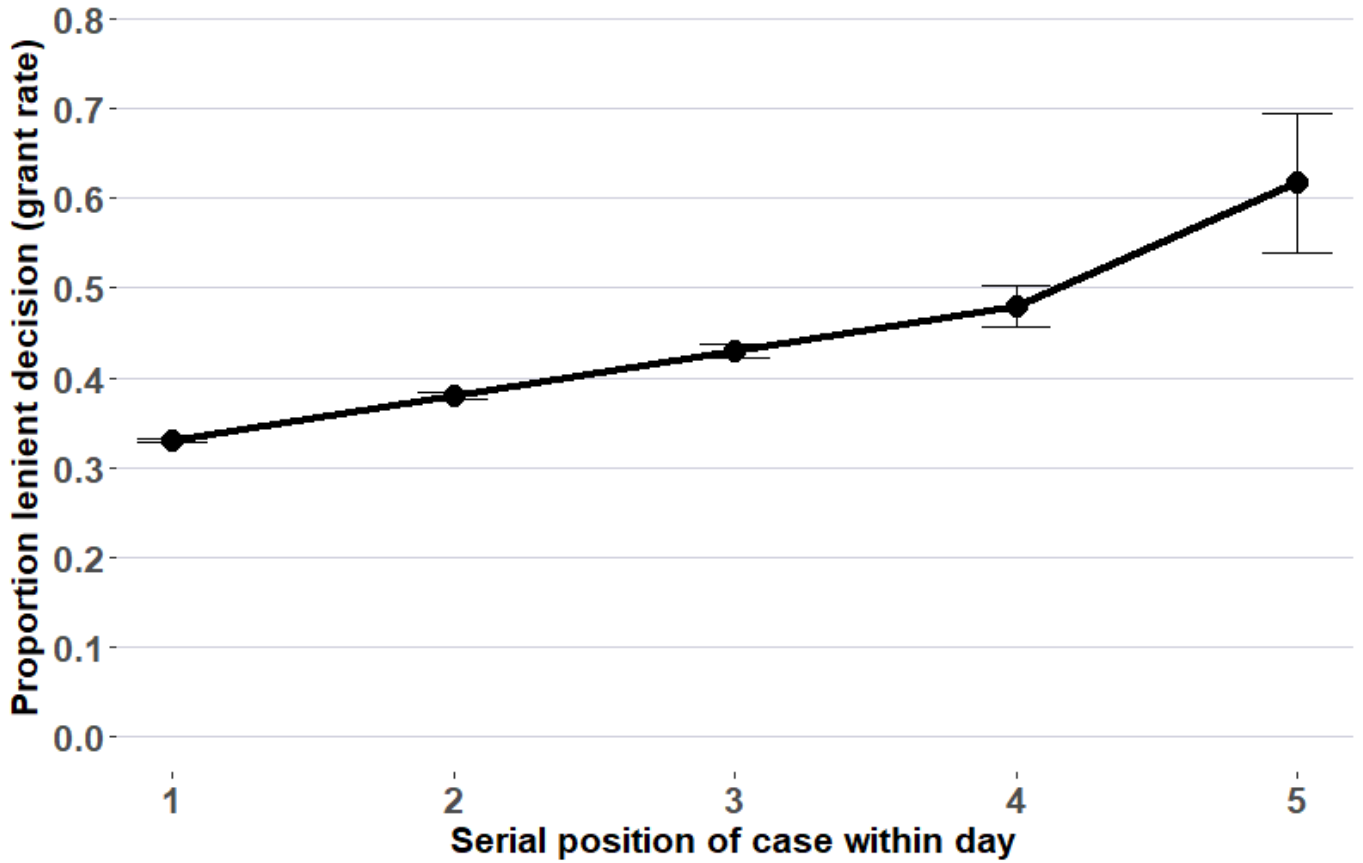

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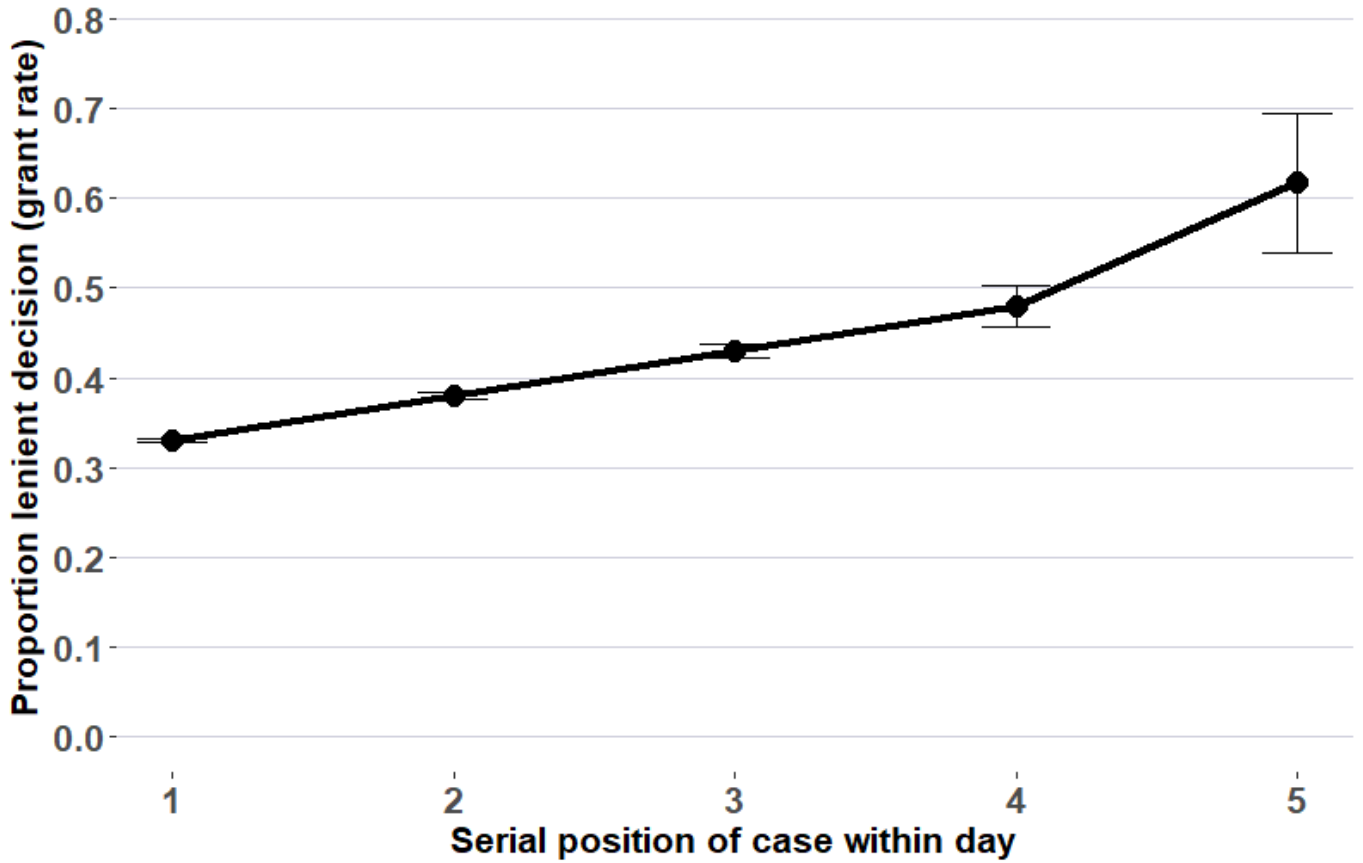

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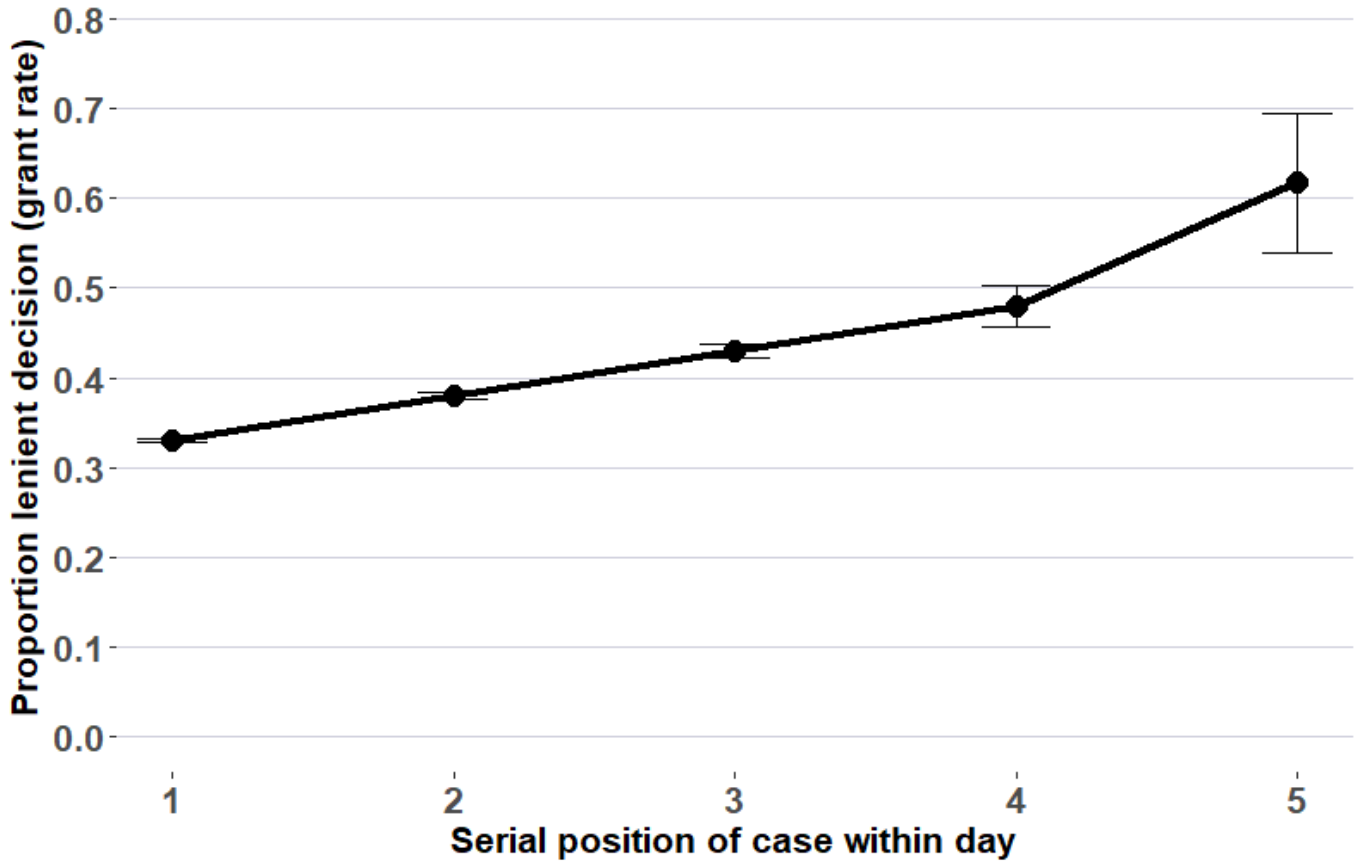
Results

Effect robust to:

- Hour of day
- Case length
- Judge experience
- Case attributes (nationality, lawyer, case type)
- Within-day comparisons



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- But, this is observational data
  - Parole judges data criticized for unobservables
  - We cannot know for sure that cases are randomly ordered
- Does the effect replicate in both
  - ✓ legal contexts; and
  - ✓ when we do know for sure cases are randomly ordered

3 controlled experiments

- Laypeople
- Sequences of legal vignettes
  - Conflicts between the public interest and an individual's right
  - Randomly ordered
- For each vignette:
  1. Read
  2. Decide to restrict the right (unfavorable decision) or not (favorable)
  3. Move to next vignette

Experiment 1

Goals:

1. Replicate the effect in the lab
    - 6 hypothetical vignettes
    - Set bail or not
2. Test if it corresponds with the field
    - 3 conditions
        - Main (as if the judge)
        - 2 Checking if the effect in the lab is related to lack of experience

N = 901

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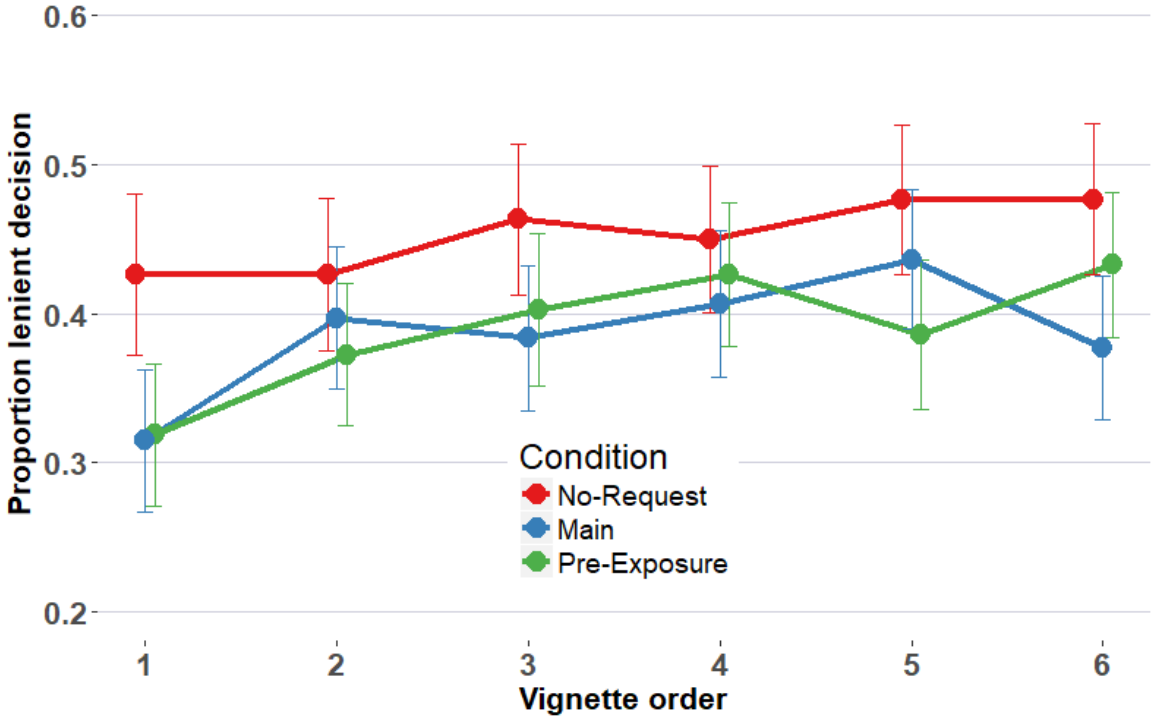

Experiment 2

Goals:

1. Replicate in another context
   - 6 hypothetical vignettes
   - Issue administrative restraining orders
2. More favorable or less unfavorable?
   “Best to be last” or “worst to be first”?
   - Sequence of decisions /
     Single decision

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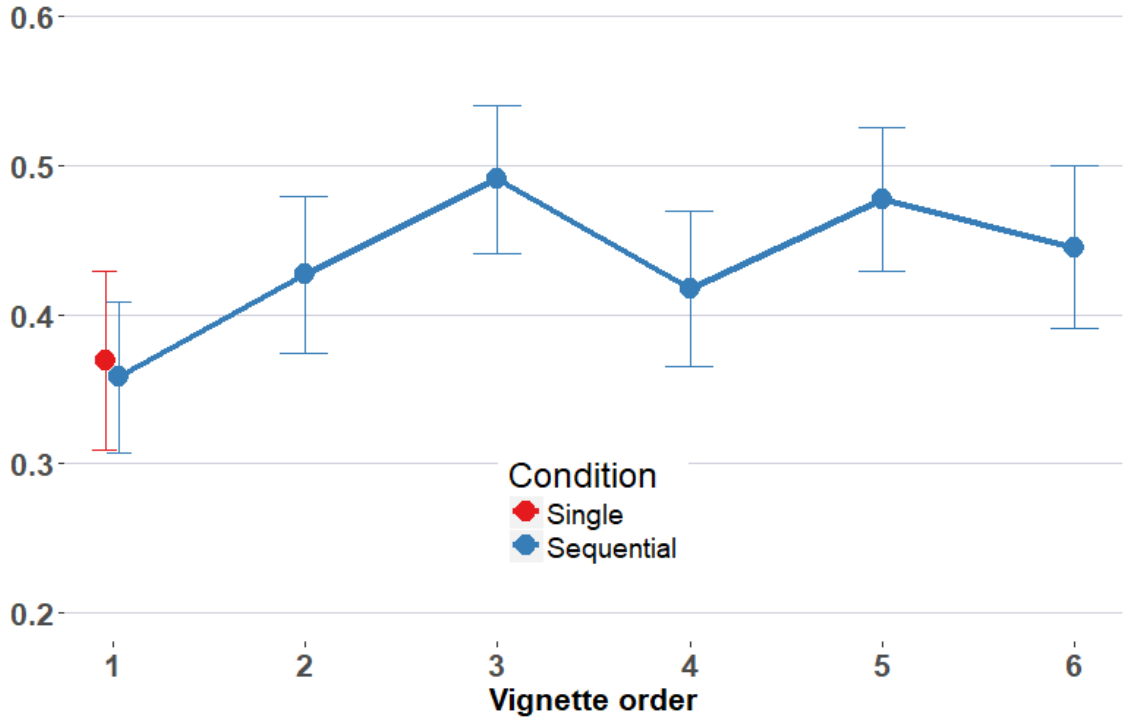

N = 470

Experiment 3

Goals:

1. Double length
   - 12 hypothetical vignettes
   - administrative restraining orders
2. Check if effect is driven by fatigue or quotas
   - 8 “Normal” cases
   - 4 “Extreme” cases

Experiment 3

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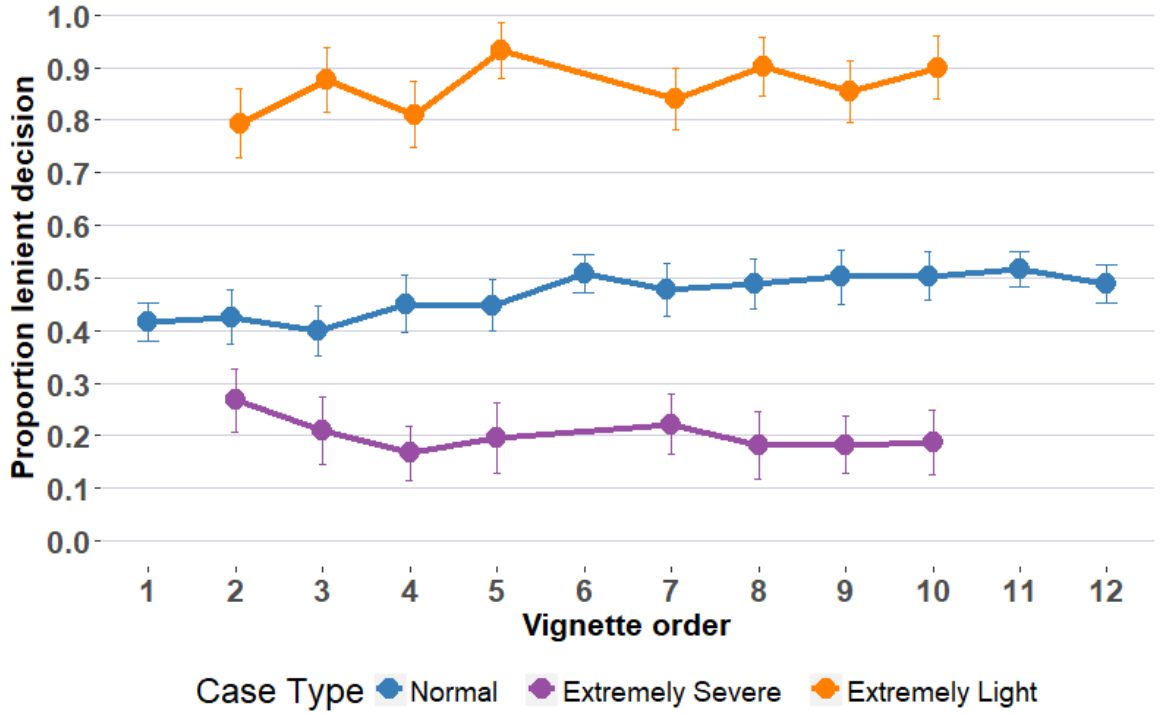

- *N* = 501

Possible explanation: “Direction of comparison”

In sequential decisions:

- Each case is implicitly compared to previous cases
- Decision makers focus on novel features of the case
  - That they do not remember seeing in previous cases
- But, negative features are more easily remembered than positive features
- Positive features of a case more likely considered novel
- New cases are perceived more favorably

Bruine de Bruin (2005)

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Summary

- In non-legal domains, step-by-step judgements are often more favorable with serial position
- Both real world observational data and controlled experiments show that in legal domains as well, decision get more favorable with position
- An attention/memory account may explain the results, and interventions targeting it may help debias decisions
- Till then… It is best to be last