Best to be Last: Order effects in legal decisions in the field and in the lab

Ori Plonsky
With Daniel L. Chen, Liat Netzer, Talya Steiner, and Yuval Feldman
• Many decisions involving rights-interests balancing are made sequentially
  • Parole judges
  • Police officers
  • Prosecutors
• Each case is independent
• But is it treated with complete independence?
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But is it treated with complete independence?

In non-legal domains, step-by-step judgements are often more favorable with serial position
Bruine de Bruin (2005)

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Glejser & Heynelds (2001)
Colton & Peterson (1967)
Bruine de Bruin (2005)

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Editorial

How to Make Sure Your Paper is Desk Rejected

A Practical Guide to Rejection in EJPA

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Orazbayev (2017)
But...

Danziger, Levav, & Avnaim-Pesso (2011)

$N = 1112$
But...

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

Danziger, Levav, & Avnaim-Pessoa (2011)
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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$OR = 1.054, 95\% CI [1.04, 1.07]$
Results

Effect robust to:

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Effect robust to:

- Hour of day

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Effect robust to:
- Hour of day
- Case length

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Results

Effect robust to:
- Hour of day
- Case length
- Judge experience

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Results

Effect robust to:
- Hour of day
- Case length
- Judge experience
- Case attributes (nationality, lawyer, case type)

OR = 1.054, 95% CI [1.04, 1.07]
Results

Effect robust to:

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

OR = 1.054, 95% CI [1.04, 1.07]
Decisions get **more favorable with serial position**

- Legal context
• Decisions get more favorable with serial position
  • Legal context
• But, this is observational data
  • Parole judges data criticized for unobservables
  • We cannot know for sure that cases are randomly ordered
• Decisions get more favorable with serial position
  • Legal context

• 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

$N = 901$
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

$N = 901$
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
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

$N = 470$
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

$N = 470$
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

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

• $N = 501$
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

• $N = 501$
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)
Summary
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• Both real world observational data and controlled experiments show that in legal domains as well, decisions get more favorable with position.

• An attention/memory account may explain the results, and interventions targeting it may help debias decisions.
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.