Agenda Setting on the Vinson Court

Timothy M. Hagle
The University of Iowa

The paper that follows is one of a series of papers I wrote regarding agenda setting on the Vinson Court. As each paper was completed updates and corrections may have changed some of the specific numbers presented in earlier papers, but the general results did not change. The papers were eventually combined into a book titled, *Supreme Court Agenda Setting: The Vinson Court* (available on Amazon.com). The individual papers became chapters in the book and the updated numbers were used for that version.

Again, the paper that follows is the original version. Some numbers may have been updated for the version included as a chapter in the book version, but the changes were usually minor and did not affect the overall results.

Agenda Setting on the Vinson Court
Paper 8: Law Enforcement Parties as a Factor

Timothy M. Hagle
The University of Iowa

Agenda Setting on the Vinson Court
Paper 8: Law Enforcement Parties as a Factor

Abstract

Although thousands of petitions seeking review by the Supreme Court are filed each year, the justices only accept about 150 or fewer for plenary review, with perhaps a few hundred more disposed of summarily. Because of this low acceptance rate scholars have long thought that the justices must use some strategy or process to reduce their workload to manageable levels. Although the examination of agenda setting on the Supreme Court is of continuing interest to judicial scholars, previous studies have usually focused only on cert petitions, specific issues, particular terms, or sampling for their data collection. A more comprehensive examination of the cases filed before the Supreme Court will provide a clearer picture of how the justices set their agenda.

Drawing from an ongoing database project this study examines all cases filed before the Vinson Court (1946 to 1952 Terms). The specific question addressed in this paper is whether the presence of law enforcement parties in a case affects the chances for acceptance by the Supreme Court. The results show that the Court is less likely to accept a case for review when a law enforcement entity is present. A more detailed examination, however, shows the Court to be more likely to accept a case when a law enforcement entity is the appellant and less likely when the appellee. There were also differences between law enforcement and other government entities and between federal and state or local law enforcement entities as parties.

Agenda Setting on the Vinson Court
Paper 8: Law Enforcement Parties as a Factor

This is the eighth paper in a series examining agenda setting on the Vinson Court. The examinations are largely empirical, but with a general grounding in familiar aspects of behavioral judicial politics. Although part of a series, I would like each paper to stand on its own. Thus, some explanatory material will be repeated from one paper to the next to provide background or context.

The decisions on the merits of cases made by the justices of the United States Supreme Court may be the most important aspect of judicial policy making, but scholarly examination of other aspects of the judicial decision making process have contributed to our overall understanding of judicial behavior and politics. A few examples of such research includes examination of opinion writing of the Supreme Court justices (Maltzman, Spriggs, and Wahlbeck 2000), acclimation effects of new justices (Hagle 1993), the use of precedent on the Supreme Court (Segal and Spaeth 1999), and dealing with the lack of precedent in the federal courts of appeal (Klein 2002).

Of course, agenda setting and its attendant strategic considerations have also been the focus of many studies. *Marbury v. Madison* (1803) may have been the earliest and most famous example of strategic agenda setting or decision making by the Supreme Court. Despite a general view at the time that judges were not policy makers—at least not along the lines of executives and legislators (see, for example, Spaeth 1979, chapter 1)—histories of the Court have certainly recognized strategic aspects to the Court's

decision making (e.g., Rodell 1955). Walter Murphy's *Elements of Judicial Strategy* (1964) is one of the earliest and most important examinations of how strategic considerations may affect judicial decision making. Other scholars have expanded and refined Murphy's arguments (e.g., Epstein and Knight 1998). A related line of research focuses more specifically on the ideological preferences of judges (e.g., Segal and Spaeth 2002) and a book by Brenner and Whitmeyer (2009) compares various models of strategic judicial behavior.

One aspect of strategic judicial behavior lies in agenda setting, which means how the Supreme Court decides which cases it will take to decide on the merits. Although several thousand petitions seeking review by the Supreme Court are filed each year, the justices only accept about 150 or fewer for plenary review (i.e., full briefs submitted, oral arguments held, and opinions written), with maybe a few hundred more disposed of summarily (i.e., the Court simply affirms, reverses, or vacates in a very short per curiam opinion, sometimes as little as "Judgment affirmed."). Thus, scholars have long thought that the justices must use some strategy or process to reduce their workload to manageable levels (e.g., Hagle 1990).

In his book-length examination of Supreme Court agenda setting Perry (1991) notes that aspects of agenda setting have been of interest to judicial scholars at least since Schubert (1959). Perry also notes that a few years later Tanenhaus, Schick, Muraskin, and Rosen, (1963) formulated "cue theory" as a way of explaining how the justices were able to navigate the "sea of work that must be processed" (1991, 114). As Perry goes on to note, cue theory fell out of favor when later, more sophisticated,

studies failed to replicate the initial results (1991 116). Nevertheless, although a study by Ulmer, Hintze, and Kirklosky rejected two of the three cues Tanenhaus et al., found significant, a third—the federal government as a petitioning party—was significant and the authors concluded that cue theory retained some viability (1972, 642).

Regardless of how cue theory itself has developed, like these two early examinations of the Supreme Court's agenda setting many later studies focused on how the justices deal with the large number of petitions for writs of certiorari.[1] Caldeira and Wright (1988), for example, examined organized interests in agenda setting with respect to the cert petitions filed during the Court's 1982 Term. In a recent edition of his text on the Supreme Court, Baum (2013, 88) provides an example of recent work examining litigant status (Black and Boyd 2012). Thus, although the examination of agenda setting on the Supreme Court is of continuing interest to judicial scholars previous studies have usually focused only on cert petitions (Tanenhaus et al. 1963), specific issues (Caldeira and Wright 1988; Black and Boyd 2012), particular terms (Ulmer, Hintze, and Kirklosky 1972), or sampling for their data collection (Tanenhaus et al. 1963; Perry 1991). A more comprehensive examination of the cases filed before the Supreme Court will provide a

[1] Cases come before the Supreme Court via two basic methods: petitions for writs of certiorari and appeals. Because this study will not distinguish between "cert" petitions and appeals, I hesitate to wade too deeply into their differences. Briefly, however, cert petitions are discretionary, which means that the justices are free to grant or deny them as they see fit. No legal meaning is attached to a denial except that the Supreme Court chose not to hear the case. Technically, the Supreme Court must hear cases that come as appeals, but the justices may avoid review by indicating that a case was not properly presented as an appeal for one reason or another. The Court may then treat the appeal papers as a petition for a writ of certiorari and grant or deny the petition. See Perry (1991, Chapter 2) for more on the difference between cert petitions and appeals. See also Stern and Gressman (1978) for a more extended discussion of the topic. Of course, changes to the law in 1988 (Public Law No: 100-352) removed several categories of the Supreme Court's mandatory jurisdiction in appeals.

clearer picture of how the justices set their agenda. To that end, this study will examine all cases on the Vinson Court's appellate docket.[2]

Law Enforcement Parties as Litigants

In the seventh paper in this series I found that the presence of government entities as parties in cases filed before the Supreme Court had an effect on the chances that a case would be accepted for review. In many instances there was an increased chance of acceptance, but in a few situations the chances were decreased. In particular, the chances were lessened when the government entity was the appellee in the case. (See Table 3 of the previous paper.[3]) The results also examined cases involving criminal issues and found it more likely for the Court to accept a case for review if the government party was the appellant as opposed to being the appellee. This proved true for the federal government, as well as for state and local government entities. (See Tables 8 and 9 of the previous paper.)

The results of the prior paper also found that in criminal cases the Court was more likely to accept a case for review if the government party was a federal entity as

---

[2] Until the Court changed its numbering system for filed cases there were essentially three dockets: appellate, miscellaneous, and original. The appellate docket contained what are usually referred to as the "paid" cases, the miscellaneous docket contained the "unpaid" cases (also known as paupers, *in forma pauperis,* or *ifp* cases), and the original docket contained those cases coming to the Court via its limited original jurisdiction. Given my concern about excluding cases on appeal from prior analyses one might reasonably wonder why I do not examine all cases on the Court's three dockets. The original jurisdiction cases can be excluded because they are so few and are of a fundamentally different character. It is well documented that the *ifp* cases on the Court's miscellaneous docket are treated differently, on average, than cases on the appellate docket (e.g., Perry 1991, Chapter 2; Baum 2013, 96-100). Nevertheless, the Court sometimes grants review to unpaid cases (and sometimes grants *in forma pauperis* status to cases on the appellate docket). See below for more on how these cases are treated for this study.

[3] The paper is titled, "Agenda Setting on the Vinson Court, Paper 7: Government Parties as a Factor."

opposed to a state or local one. (See Table 10 of the previous paper.) This finding was consistent with a finding of by Ulmer, Hintze, and Kirklosky (1972) who found that the federal government as a petitioning party was a significant factor in whether a case would be accepted for review by the Court.

The examination in the seventh paper looked generally at government entities. Although part of the analysis involved cases whose primary issue was criminal in nature, the definition of the parties was not specifically limited to law enforcement entities (though there were very few criminal cases with non-law enforcement parties). Moreover, some cases that were criminal in origin were actually coded as civil rights or liberties cases. For example, a criminal obscenity case would be coded as a First Amendment issue rather than a criminal one. Thus, a variety of cases involving law enforcement entities were not included in the prior analysis. In this paper the focus is on law enforcement entities as parties regardless of the primary issue in the case as filed before the Supreme Court.

In the prior paper I noted Perry's comment on "importance" as a factor in whether a case would be accepted for review by the Court (1991, 253-260). He noted that one aspect of such importance is the breadth of the effect a case may have (1991, 254). As I noted in the prior paper, cases involving the federal government would certainly have nation-wide scope, though how broadly any particular case affected people would vary depending on the nature of the issue. This was true for government entities in general, but also for law enforcement entities in particular. As I also noted, cases involving state or local government entities might not be seen as having the same scope or breadth as

cases involving a federal government entity. On the other hand, even cases coming from local government entities could have national implications when various constitutional rights are involved.

Also as noted in the previous paper, although Ulmer, Hintze, and Kirklosky (1972) mention as a significant factor the federal government as the petitioning party, one could make an argument for the importance of cases involving the government as the appellee as well. As the appellant, the government might be seeking to reestablish its power or authority that was limited in some way in the lower courts. On the other hand, cases involving a government entity as the appellee might involve instances when the appellant—usually a criminal defendant—believes the government has overstepped its authority or violated a constitutional right. This may be particularly important for cases involving law enforcement entities where the primary issue of the case is not limited to simple criminal matters and includes civil rights or civil liberties issues.

Because of the various possibilities involving law enforcement entities at different levels, I will examine several aspects of government entities as parties in cases seeking review before the Supreme Court.

Data

Data for this study were drawn from an ongoing database project involving all cases on the Supreme Court's appellate docket from the 1946 Term on. Data are

complete for the Vinson Court (1946 through 1952 Terms) and provide a relatively stable period in which to examine the Court's docket.

Information on the cases in the database was drawn from several sources including the *United States Law Week*, various reporters for the state and federal courts, LEXIS, and other online sources. Every case that received an appellate docket number during the 1946-1952 Terms is included in the database. This results in 5,905 cases. Included in this number are 156 cases originally filed before the 1946 Term (the first term of the Vinson Court). The review decision for 95 of these 156 cases was made prior to the 1946 Term and those cases are not included in the dataset for this study. At the end of the Vinson Court 121 cases eventually received a 1953 Term (the first term of the Warren Court) or later docket number.[4] The review decisions for 72 of these 121 cases were made after the 1952 Term but are included in the dataset given that those cases were initially filed during the Vinson Court. Also, included in the dataset are 67 cases that originally appeared on the Court's miscellaneous docket and were moved to the appellate docket.[5] Not included in the dataset are 64 cases that were dismissed on the

[4] Prior to the 1971 Term cases held over to the next term, before or after a review decision, were renumbered at the start of each term and there was no two-digit term indicator. For example, *Brown v. Board of Education* was initially filed during the Court's 1951 Term and given the docket number 436. It was held over to the 1952 Term with the new docket number 8, and again for the 1953 Term with the docket number 1.

[5] Through the Vinson and Warren Courts, cases originating on the miscellaneous docket (sometimes referred to as the "pauper's docket") that were granted review were usually moved to the appellate docket (sometimes referred to as the "paid docket") and given a new docket number. The Expanded United States Supreme Court Judicial Database, Harold J. Spaeth principal investigator, lists 26 cases with a miscellaneous docket number (with an "M" in the DOCKET field, meaning they were not transferred to the appellate docket) during the 1946-1952 Terms. Of these, 17 were granted review (with eight of those disposed of in a short per curiam), but are not included here. On the other hand, this dataset includes 19 cases initially filed on the appellate docket for which the Court granted *in forma pauperis* status to one of

motion of the petitioner prior to the review decision, 18 cases that were dismissed by a Supreme Court rule (e.g., late filing, failure to pay fees), and one case where no review decision could be found.[6] This results in a dataset of 5,727 cases.

An additional note on the coding for this examination is necessary before proceeding. The focus here is on government entities acting in a criminal law enforcement capacity. I phrase that a bit differently than just "law enforcement entity" because in some instances an entity normally thought of as law enforcement might be acting in another capacity. For example, we normally think of the Federal Bureau of Investigation (FBI) as a law enforcement entity. The FBI could, however, be involved in a case involving a personnel matter. In such a case the FBI would be coded as an administrative government entity and not included in the current analysis. In addition, the FBI could be coded as a generic government entity (i.e., neither law enforcement nor administrative) if the case involved something like a simple car accident unrelated to any criminal situation (e.g., an FBI employee hits another car on the way to work). Thus, although the primary issue in the cases included is not limited to what were defined as "criminal" in the prior paper, the government entities here must have been acting in some criminal law enforcement capacity for the case to be included.

---

the parties (only one of which was granted review). (This is an older version of the Supreme Court Database before it was moved online, which, as of this writing, can be viewed at http://scdb.wustl.edu.)

[6] Without going into great detail, it appears that the case in question was withdrawn shortly after filing and refiled a month later with a new docket number. The latter case, *Deena Products Co. v. National Labor Relations Board* (1952) is included in the database and was denied review.

Results

I begin by noting that of the 5,727 cases in the dataset the Court accepted 1,169 of them for review. That results in an overall acceptance rate of 20.4%

Table 1 shows the acceptance rates for cases that have at least one law enforcement party compared to those with no law enforcement parties.[7] Unless specified otherwise, a law enforcement party or entity can be any federal, state, or local unit or person acting in an official criminal law enforcement capacity.

TABLE 1 ABOUT HERE

As can be seen from Table 1, about one-quarter of the cases involved at least one law enforcement party (1,470 with a law enforcement party versus 4,257 without). Of the 1,470 cases involving at least one law enforcement party, the Court accepted 268 of them of them for review (18.2%%). In contrast, the Court granted review to 901 of the 4,257 cases without a law enforcement party (21.2%).

Using a simple difference of means test (Wonnacott and Wonnacott (1972)), the difference in the acceptance rates between cases with a government party and those without is significant at $p < .02$ using a two-tailed test. Again, although one can make an argument that we should expect the Court to be more likely to accept cases with a law enforcement party, unlike Ulmer, Hintze, and Kirklosky (1972) for this comparison I am not limiting the examination to the federal government as the petitioning party

[7] There were two cases with law enforcement parties on both sides of the case. One was federal-federal, the other was federal-state, and both were accepted for review.

(i.e., as the appellant). I am also not limiting the examination to cases petitioning the Court for a writ of certiorari.[8]

The difference between these two types of cases is less than what was found in the prior paper for all government entities. This is not entirely surprising, however, given that another finding from the prior paper suggested that the Court was less likely to take cases with criminal issue when the government party—which was most likely a law enforcement entity—was the appellee. Even so, Table 1 makes no distinction whether the law enforcement entity is the appellant or appellee, or whether it is federal or a state or local entity. Thus, the use of a two-tailed test is appropriate and although the difference reaches a traditional level of statistical significance, the difference is less than for government entities as a whole.

TABLE 2 ABOUT HERE

I now begin the process of fleshing out the differences of how cases involving law enforcement entities are handled by the Court. Table 2 compares cases with a law enforcement entity as the appellant to those cases without a law enforcement party. The row for non-law enforcement parties is the same as in Table 1. There were only 112 cases with a law enforcement entity as the appellant, but the Court granted review to 84 of them (75.0%). This is a much larger percentage than the acceptance rate for cases without a law enforcement party, which was only 21.2%. Given the findings from the previous paper we might expect the Court to have a higher acceptance rate for cases

[8] In the second paper in the series, "Certiorari and Appeal on the Vinson Court Agenda," I examined the difference in acceptance rates for cases on appeal and those petitioning for a writ of certiorari. Although it was true that the Court was more likely to accept for review cases on appeal, acceptance was far from automatic and in later papers I usually did not distinguish between the two methods of reaching the Court.

involving a government party. This proved to be true specifically for law enforcement entities as the appellant. In fact, the acceptance rate for all government parties as appellants, as shown in Table 2 of the prior paper was 57.3%, which is well below the 75% acceptance rate for law enforcement entities as appellants.

TABLE 3 ABOUT HERE

Moving on to cases when a law enforcement entity is the appellee, given prior findings we can expect the Court to be less likely to grant review to such cases. Table 3 shows this to be the case. In Table 3 we see that there were 1,360 cases with a law enforcement entity as the appellee. Once again, the non-law enforcement row is the same as in Table 1. Of the cases with a law enforcement entity as the appellee, the Court granted review to only 186 (13.7%). That percentage is substantially below the percentage for cases without a law enforcement party (21.2%). This finding is consistent with that of Table 3 in the previous paper where we saw that the Court was less likely to accept cases for review with a government entity as the appellee compared to cases without a government party. The difference here, however, is even greater. Thus, the Court is even less likely to accept a case for review when a law enforcement entity is the appellee.

The next step is to look specifically at federal law enforcement parties. The next three tables will consider federal law enforcement parties in general, as appellants, and as appellees.

TABLE 4 ABOUT HERE

Table 4 compares the acceptance rates for cases with a federal law enforcement party as a litigant, appellant or appellee, with those cases with no law enforcement litigant. For this table, as well as the next two, the row for non-law enforcement cases is the same as in Table 1. There were 639 cases when a federal law enforcement entity was a party. Of these, the Court accepted 161 for review (25.2%). That is a higher acceptance rate than we saw in Table 1 for all law enforcement entities (i.e., when state and local law enforcement entities are included). The higher percentage for federal law enforcement entities is not surprising given the finding of Table 5 in the previous paper which showed a higher rate for federal government parties as litigants as opposed to all government parties. As mentioned previously, the Court seems to give additional consideration to federal government entities and the findings in Table 4 confirm that specifically for federal law enforcement litigants.

TABLE 5 ABOUT HERE

Table 5 shows the more specific comparison of federal law enforcement entities as appellants with cases without a law enforcement entity as a party. There were only 95 of these cases, but the Court accepted 75 of them for review (78.9%). This percentage is slightly higher than that of Table 2 (75.0%), which also included state and local law enforcement entities as appellants. Once again it appears the Court is more accepting of cases with federal rather than state or local parties as appellants.

TABLE 6 ABOUT HERE

To complete this set, Table 6 compares the acceptance rates of federal law enforcement entities as appellees with cases without a law enforcement litigant. There

were 545 cases with a federal law enforcement entity as the appellee. Of these, the Court granted review to 87 of them (16.0%). This is consistent with the finding of Table 3, in that the Court is less likely to accept a case for review with the law enforcement party as the appellee when state and local law enforcement parties are included. Even so, the acceptance rate is a bit higher, 16.0% compared with 13.7% shown in Table 3. That suggests once again that the Court is a be more receptive to cases involving a federal government party. Despite this increased percentage, the difference with cases without a law enforcement entity still reaches a traditional level of significance.

Before moving to comparisons involving state and local law enforcement it is worth considering how federal law enforcement entities do when another federal government entity is a party. We have seen that the Court is more likely to accept cases when federal government entities are litigants, in general and also specifically for federal law enforcement entities. We have also seen this to be true when the federal government entity is the appellant. In contrast, the Court is less likely to accept a case for review when a federal government entity is the appellant. Given slight differences in these findings when looking at all federal government entities as opposed to specifically federal law enforcement entities, it is worth examining whether there is a difference in how different types of federal government entities are treated.

The next three tables will follow the pattern set above by examining when a federal law enforcement entity is a party, appellant or appellee, and the other party is also a federal government entity, when the federal law enforcement entity is the appellant and another federal government entity is the appellee, and then when a

federal law enforcement entity is the appellee and another federal government entity is the appellant.

TABLE 7 ABOUT HERE

Table 7 compares the acceptance rate for cases with a federal law enforcement entity, as appellant or appellee, with those cases that have a non-law enforcement federal government entity (i.e., any federal government entity not acting in a law enforcement capacity) as appellant or appellee. The federal law enforcement row is the same as in Table 7. Specifically, there were 639 cases when a federal law enforcement entity was a litigant and the Court granted review to 161 of them (25.2%). There were 1,740 cases in which some other federal government entity was a litigant in a case. The Court accepted 517 of these cases for review (29.7%). The difference in acceptance rates, which reaches statistical significance, indicates that the Court is less likely to take a case from a federal law enforcement entity than some other federal government entity.

TABLE 8 ABOUT HERE

Table 8 shows the comparison of acceptance rates between federal law enforcement and other federal government entities when they are appellants. The federal law enforcement row is the same as in Table 5. There were 95 cases in which a federal law enforcement entity was the appellant and the Court accepted 75 of them for review (78.9%). For other federal government entities, there were 389 cases when they were the appellant and the Court granted review to 250 of them (64.3%). Although that acceptance rate is quite high, it is still well below the rate for federal law enforcement entities to a statistically significant degree.

TABLE 9 ABOUT HERE

Table 9 shows the comparison of acceptance rates between federal law enforcement and other federal government entities when they are appellees. The federal law enforcement row is the same as in Table 6. There were 545 cases in which a federal law enforcement entity was the appellee and the Court accepted 87 of them for review (16.0%). There were 1,359 cases in which a non-law enforcement federal government entity was the appellee and the Court granted review to 272 of them (20.0%). This difference is relatively small, though it still reaches traditional levels of statistical significance.

From Tables 7, 8 and 9 we see that when comparing law enforcement to other federal government entities the Court is more likely to accept cases involving non-law enforcement entities (Table 7), but the specifics are more nuanced. The Court is much more likely to accept a case when a federal law enforcement entity is the appellant (Table 8) but less likely to do so when such entities are the appellee (Table 9). The findings of Tables 8 and 9 are consistent with those of Tables 5 and 6 in that whether the federal law enforcement entity is the appellant or appellee makes a clear difference in the likelihood of the case being granted review.

The next step is to examine the acceptance rates for state and local law enforcement entities. The approach will be the same as the examinations for federal law enforcement entities. The next three tables will compare the acceptance rates for cases with a state or local law enforcement entity with those for cases without a law enforcement party in general, as appellant, and then as appellee.

TABLE 10 ABOUT HERE

Table 10 shows the comparison in acceptance rates in cases with a state or local law enforcement entity with those cases without a law enforcement entity. The non-law enforcement row is the same as in Table 1, and will be the same in Tables 11 and 12. There were 832 cases in which a state or local law enforcement entity was a party and the Court accepted 108 of them for review (13.0%). For cases without a law enforcement entity the Court accepted 901 of 4,257 cases for review (21.2%). Thus, the Court is less likely to take cases involving a state or local law enforcement entity. This finding is different from what we saw in Table 4 for federal law enforcement entities where the Court was more likely to accept such cases for review.

TABLE 11 ABOUT HERE

Table 11 shows the comparison of acceptance rates between cases when a state or local law enforcement entity is the appellant and those without a law enforcement entity. There were only 17 such cases and the Court granted review to nine of them (52.9%). This acceptance rate is well above the acceptance rate for non-law enforcement cases, but also well below the rate for federal law enforcement entities as appellants shown in Table 5. The difference is statistically significant, but a note of caution is warranted because of the small number of cases with a state or local law enforcement entity as the appellant.

TABLE 12 ABOUT HERE

Table 12 shows the comparison of acceptance rates between cases when a state or local law enforcement entity is the appellee and those without a law enforcement entity.

There were 815 of these cases and the Court accepted 99 of them for review (12.1%). This result is not surprising given the findings of prior tables.

The results of Tables 11 and 12 are consistent with those of Tables 5 and 6. The Court is more accepting of cases where law enforcement entities are the appellant, regardless of whether that entity is at the federal level or state and local. Similarly, the Court is less willing to accept cases when the law enforcement entity is the appellee, again, regardless of the governmental level. The difference between Tables 4 and 10, that the Court is more willing to accept cases with federal law enforcement (appellant or appellee) and less willing to accept those with state or local law enforcement, can likely be explained in part by federalism. A more practical reason, however, is based simply on the numbers involved. Although there are over five times as many cases with federal law enforcement as appellee than as appellant, the difference is nearly 50 times greater for state and local law enforcement.

The next three tables involve state and local law enforcement and follow the pattern for the federal law enforcement in Tables 7, 8, and 9. As with federal law enforcement, it will be interesting to see whether there are differences in how the Court treats various types of state and local government entities.

TABLE 13 ABOUT HERE

Table 13 compares the acceptance rates of all cases with a state or local law enforcement entity as a party with those cases that have a non-law enforcement state or local government entity as a party. The state and local law enforcement row is the same as in Table 10. There were 832 such cases and the Court granted review to 108 of them

(13.0%). There were 657 cases with a non-law enforcement state or local government party and the Court granted review to 179 of them (27.2%). This result is not surprising given that we know the large imbalance between whether the state or local law enforcement entity is the appellant or appellee (Tables 11 and 12).

TABLE 14 ABOUT HERE

Table 14 shows the comparison in the acceptance rates between cases with a state or local law enforcement entity as the appellant with the cases when the appellant is a non-law enforcement state or local government entity. The state and local law enforcement row is the same as in Table 11. Again, there were only 17 cases involving a state or local law enforcement entity as the appellant and the Court accepted nine of them (52.9%). In contrast, there were 182 cases with a state or local non-law enforcement government entity as appellant and the Court granted review to 58 of them (31.9%). This finding is consistent with prior findings, though it is interesting to see that the acceptance rate for non-law enforcement state or local government entity cases is less than half that of the federal level (Table 8). This is the first of the comparisons for which the difference did not reach a traditional level of statistical significance using a two-tailed test. One could make an argument that we should expect the Court to grant review to a higher percentage of cases when the state or local law enforcement entity is the appellant. That would allow the use of a one-tailed test and the significance level would reach $p < .05$. The percentage difference between the two acceptance rates is over 20 points, but the real problem is the small number of cases involved, particularly in the law enforcement row.

TABLE 15 ABOUT HERE

Table 15 shows the comparison in acceptance rates between cases with a state or local law enforcement entity as the appellee and those cases with a non-law enforcement state or local government entity. The law enforcement row is the same as in Table 12. There were 815 cases with a state or local law enforcement entity as the appellee and the Court accepted 99 of them for review (12.1%). There were 501 cases with a non-law enforcement state or local government entity as the appellee and the Court granted review to 124 of them (24.8%). We saw in Table 12 that the Court is not particularly inclined to accept cases with a state or local law enforcement entity as the appellee. What we see in this table is that the acceptance rate for such cases is less than half the rate for other state or local government entities as the appellee. Interestingly, the rate for non-law enforcement state or local government entities as the appellee is nearly five points higher than for federal non-law enforcement entities (Table 9).

The final three tables compare the acceptance rate for cases with federal law enforcement entities in the three situations (as either party, as appellant, and as appellee) with those when the law enforcement entity is state or local. Note that the two rows for each of the following tables appeared in prior tables. For example, the federal law enforcement row of Table 16 is the same as in Table 4 and the state and local row is the same as in Table 10. The difference is that the figures in the two rows are now being compared with each other.

TABLE 16 ABOUT HERE

Table 16 shows the comparison in acceptance rates when cases have a federal law enforcement entity as a party (appellant or appellee) with those when one of the parties is a state or local law enforcement entity. As we might have guess from prior findings, the federal acceptance rate, 25.2%, is much higher than for the state or local rate of 13.0%. Again, this result is not surprising given what we know about the distribution of the state and local cases between appellant and appellee.

TABLE 17 ABOUT HERE

Table 17 compares the acceptance rates for the two levels when the law enforcement entity is the appellant. Recall that the acceptance rate when a federal law enforcement entity is the appellant is a very high 78.9%. The rate for state and local law enforcement entities also fairly high at 52.9%, though still well below the federal rate. The large difference in these percentages reaches a traditional level of statistical significance despite the small number of cases for the state and local level.

TABLE 18 ABOUT HERE

Finally, Table 18 shows the acceptance rates for the two levels when the law enforcement entity is the appellee. The acceptance rate when a federal law enforcement entity is the appellee is only 16.0%. The acceptance rate when a state or local law enforcement entity is the appellee is an even lower 12.1%. Although this difference is less than four percentage points, because of the large number of cases involved it does reach a traditional level of statistical significance.

Concluding Comments

The results from this examination clearly show that the Supreme Court treats cases involving law enforcement entities differently than other cases for purposes of granting review. The differences are nuanced, however, and digging more deeply into the details provided a better understanding of the Court's preferences.

Some of the results shown in this paper confirm aspects of conventional wisdom about how cases involving law enforcement entities are handled at the review stage. We would expect, for example, that the Court would be less likely to accept cases for review when the law enforcement entity is the appellee. This follows from the understanding that many appeals from criminal defendants clearly lack the criteria necessary for review by the Court.

The results are also consistent with the results of the seventh paper in the series which examined government parties more generally. In particular, from the prior paper we learned that the Court was more likely to accept cases with government entities, both in general and when the government party was the appellant. On the other hand, the Court was less likely to accept cases for review when the government party was the appellee. The Court was also more likely to accept cases involving federal government entities as opposed to those involving state or local government entities. Cases involving criminal issues changed the dynamic and provided the impetus for this paper.

In thinking about cases involving law enforcement entities we could reasonably expect that there will be certain differences from the Court's review decisions involving

government parties more generally. In particular, we could expect there to be far more cases with the law enforcement entity as the appellee than as the appellant. That expectation proved correct as shown in Tables 2 and 3, and in later tables when separating federal from state and local law enforcement parties. The different balance between the cases when law enforcement entities appeared as appellant or appellee significantly changed the comparison of these cases relative to cases not involving a law enforcement entity. Although the prior paper found that the Court was more likely to accept a case for review if it involved a government party, Table 1 in this paper showed the opposite to be the case when only law enforcement entities are considered.

Examining the cases in more detail found that there was a large imbalance in the cases when a law enforcement entity appeared as the appellant versus as the appellee. For example, from Tables 2 and 3 we saw that there were over 12 times as many cases when the law enforcement entity was an appellee than as an appellant. The imbalance was not as drastic for federal law enforcement at a bit under six times as many (Tables 8 and 9), but at the state and local level it was nearly 50 times as great (Tables 11 and 12).

Consistent with the findings from the prior paper, the Court is more likely to accept cases for review when a law enforcement entity is the appellant. A law enforcement entity's ability to appeal is more limited than that of a criminal defendant's, so the issues are more likely to be ones involving constitutional issues or concerns about government power. On the other hand, from a substantive perspective a criminal defendant's ability to appeal is much broader—at least in theory. The reality is that although there are certainly some cases in which criminal defendants raise

important constitutional issues that the Court accepts for review and establishes a new precedent, the vast majority of appeals by criminal defendants have little merit in the eyes of the justices. In examining these cases one finds that vague claims of "Due Process" violations are frequent.

The large number of cases with law enforcement entities as the appellee reduces the Court's general inclination to accept cases involving government entities, including law enforcement. This proved particularly true at the state and local level given the very small number of cases when state or local law enforcement entities appeared as the appellant.

Comparisons between law enforcement and other government entities at the same level indicated that although the Court was more likely to accept a case with a law enforcement entity as the appellant than if some other government entity was the appellant, it was less likely to grant review when the entities appeared as the appellee. Again, the large appellant/appellee imbalance in the law enforcement cases was the basis for the difference.

As in the prior paper, the results here suggest a federalism component to the Court's preferences. As a percentage, the Court was more likely to accept cases for review if a federal law enforcement entity was involved, in general or as appellant or appellee. These differences proved statistically significant when directly compared in Tables 16, 17, and 18.

To conclude, three basic points seem to follow from these findings. First, the type of party involved in a case made a difference. This is no surprise to those who study

the Court, but the results provide details regarding a specific type of government entity. Second, and particularly for cases involving law enforcement entities, whether the entities appeared as appellant or appellee made a difference. The difference was certainly based on the specific nature of these cases and in particular the large appellant/appellee imbalance, but the basis for the difference is certainly worth knowing. Third, an element of federalism appeared to be present in the Court's review decisions for cases involving law enforcement entities. As with government entities more generally, the Court was more likely to accept cases involving federal law enforcement entities as opposed to those involving state or local law enforcement. This element of federalism has appeared in other papers, so it is important to see how it affected the Court's agenda setting in other contexts.

As with previous papers in this series, the results of this examination provide additional information and context about the Supreme Court's agenda setting.

References

Baum, Lawrence. 2013. *The Supreme Court*, 11th Edition. Washington, DC: CQ Press.

Black, Ryan C., and Christina L. Boyd. 2012. "U.S. Supreme Court Agenda Setting and the Role of Litigant Status." *Journal of Law, Economics & Organization*, (June 2012): 286-312.

Brenner, Saul, and Joseph M. Whitmeyer. 2009. *Strategy on the United States Supreme Court*. New York: Cambridge University Press.

Brown v. Board of Education, 347 US 483 (1954).

Caldeira, Gregory A., and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review*, 82:1109-1127.

Deena Products Co. v. National Labor Relations Board, 344 US 827 (1952).

Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, DC: CQ Press.

Hagle, Timothy M. 1990. "So Many Cases, So Little Time: Judges as Decision Makers." In *American Politics in the Heartland*, ed. Douglas Madsen, Arthur H. Miller, and James A. Stimson. Dubuque, Iowa: Kendall/Hunt.

Hagle, Timothy M. 1993. "'Freshman Effects' for Supreme Court Justices." *American Journal of Political Science*, 37:1142-1157.

Hagle, Timothy M. 2012. "Certiorari and Appeal on the Vinson Court Agenda." Typescript.

Hagle, Timothy M. 2015. "Agenda Setting on the Vinson Court, Paper 5: Lower Court Reversals and Dissents as Factors." Typescript.

Hagle, Timothy M. 2017. "Agenda Setting on the Vinson Court, Paper 7: Government Parties as a Factor." Typescript.

Klein, David E. 2002. *Making Law in the United States Courts of Appeals*. New York: Cambridge University Press.

Maltzman, Forrest, James F. Spriggs II, and Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. New York: Cambridge University Press.

Marbury v. Madison, 5 US 137 (1803).

Murphy, Walter F. 1964. *Elements of Judicial Strategy*. Chicago: The University of Chicago Press.

Perry, H.W., Jr. 1991. *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Cambridge, MA: Harvard University Press.

Rodell, Fred. 1955. *Nine Men: A Political History of the Supreme Court of the United States from 1790 to 1955*. New York: Random House.

Schubert, Glendon. 1959. "The Certiorari Game." In *Quantitative Analysis of Judicial Behavior*, ed. Glendon Schubert New York: Free Press.

Segal, Jeffrey A., and Harold J. Spaeth. 1999. *Majority Rule or Minority Will: Adherence to Precedent on the U.S. Supreme Court*. New York: Cambridge University Press.

Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.

Spaeth, Harold J. 1979. *Supreme Court Policy Making*. San Francisco: W.H. Freeman.

Spaeth, Harold J. 1998. *Expanded United States Supreme Court Judicial Database, 1946-1968 Terms*. [Computer file]. 4th ICPSR version. East Lansing, MI: Michigan State

University, Dept. of Political Science [producer]. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 1999.

Stern, Robert L., and Eugene Gressman. 1978. *Supreme Court Practice*, 5th edition. Washington, DC: The Bureau of National Affairs.

Tanenhaus, Joseph, Marvin Schick, Matthew Muraskin, and Daniel Rosen. 1963. "The Supreme Court's Certiorari Jurisdiction: Cue Theory." In *Judicial Decision Making*, ed. Glendon Schubert. New York: Free Press.

Ulmer, S. Sidney, William Hintze, and Louise Kirklosky. 1972. "The Decision to Grant or Deny Certiorari: Further Consideration of Cue Theory." *Law and Society*, 6:637-643.

Wonnacott, Thomas H., and Ronald J. Wonnacott. 1972. *Introductory Statistics for Business and Economics*. New York: John Wiley & Sons.

Table 1

Acceptance Rates for Cases With a Law Enforcement Party Compared With Those Without on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Law Enforcement Party	268	1,202	1,470	18.2%*
Without Law Enforcement Party	901	3,356	4,257	21.2%
Column Total	1,169	4,558	5,727	20.4%

* $p < .02$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 2

Acceptance Rates for Cases With a Law Enforcement Party as Appellant Compared With Those With No Law Enforcement Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Law Enforcement Appellant	84	28	112	75.0%*
No Law Enforcement Party	901	3,356	4,257	21.2%
Column Total	985	3,384	4,369	22.5%

* $p < .001$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 3

Acceptance Rates for Cases With a Law Enforcement Party as Appellee Compared With Those With No Law Enforcement Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Law Enforcement Appellee	186	1,174	1,360	13.7%*
No Law Enforcement Party	901	3,356	4,257	21.2%
Column Total	1,087	4,530	5,617	19.4%

* $p < .001$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 4

Acceptance Rates for Cases With a Federal Law Enforcement Party Compared With Those Without on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Party	161	478	639	25.2%*
No Law Enforcement Party	901	3,356	4,257	21.2%
Column Total	1,062	3,834	4,896	21.7%

* $p < .05$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 5

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellant Compared With Those With No Law Enforcement Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellant	75	20	95	78.9%*
No Law Enforcement Party	901	3,356	4,257	21.2%
Column Total	976	3,376	4,352	22.4%

* $p < .001$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 6

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellee Compared With Those With No Law Enforcement Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellee	87	458	545	16.0%*
No Law Enforcement Party	901	3,356	4,257	21.2%
Column Total	988	3,814	4,802	20.6%

* $p < .01$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 7

Acceptance Rates for Cases With a Federal Law Enforcement Party Compared With Those With a Federal Non-Law Enforcement Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Party	161	478	639	25.2%*
Federal Non-Law Enforcement Party	517	1,223	1,740	29.7%
Column Total	678	1,701	2,379	28.5%

* $p < .05$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 8

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellant Compared With Those With a Federal Non-Law Enforcement Party as Appellant on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellant	75	20	95	78.9%*
Federal Non-Law Enforcement Appellant	250	139	389	64.3%
Column Total	325	159	484	67.1%

* $p < .01$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 9

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellee Compared With Those With a Federal Non-Law Enforcement Party as Appellee on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellee	87	458	545	16.0%*
Federal Non-Law Enforcement Appellee	272	1,087	1,359	20.0%
Column Total	359	1,545	1,904	18.9%

* $p < .05$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 10

Acceptance Rates for Cases With a State or Local Law Enforcement Party Compared With Those Without on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Party	108	724	832	13.0%*
No Law Enforcement Party	901	3,356	4,257	21.2%
Column Total	1,009	4,080	5,089	19.8%

* $p < .001$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 11

Acceptance Rates for Cases With a State or Local Law Enforcement Party as Appellant Compared With Those With No Law Enforcement Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Appellant	9	8	17	52.9%*
No Law Enforcement Party	901	3,356	4,257	21.2%
Column Total	910	3,364	4,274	21.3%

* $p < .01$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 12

Acceptance Rates for Cases With a State or Local Law Enforcement Party as Appellee Compared With Those With No Law Enforcement Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Appellee	99	716	815	12.1%*
No Law Enforcement Party	901	3,356	4,257	21.2%
Column Total	1000	4,072	5,072	19.7%

* $p < .001$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 13

Acceptance Rates for Cases With a State or Local Law Enforcement Party Compared With Those With a State or Local Non-Law Enforcement Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Party	108	724	832	13.0%*
State or Local Non-Law Enforcement Party	179	478	657	27.2%
Column Total	287	1,202	1,489	19.3%

* $p < .001$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 14

Acceptance Rates for Cases With a State or Local Law Enforcement Party as Appellant Compared With Those With a State or Local Non-Law Enforcement Party as Appellant on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Appellant	9	8	17	52.9%*
State or Local Non-Law Enforcement Appellant	58	124	182	31.9%
Column Total	67	132	199	33.7%

* $p < .05$, 1-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 15

Acceptance Rates for Cases with a State or Local Law Enforcement Party as Appellee Compared With Those With a State or Local Non-Law Enforcement Party as Appellee on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Appellee	99	716	815	12.1%*
State or Local Non-Law Enforcement Appellee	124	377	501	24.8%
Column Total	223	1,093	1,316	16.9%

* $p < .001$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 16

Acceptance Rates for Cases With a Federal Law Enforcement Party Compared With Those With a State or Local Law Enforcement Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Party	161	478	639	25.2%*
State or Local Law Enforcement Party	108	724	832	13.0%
Column Total	269	1,202	1,471	18.3%

* $p < .001$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 17

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellant Compared With Those With a State or Local Law Enforcement Party as Appellant on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellant	75	20	95	78.9%*
State or Local Law Enforcement Appellant	9	8	17	52.9%
Column Total	84	28	112	75.0%

* $p < .05$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 18

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellee Compared With Those With a State or Local Law Enforcement Party as Appellee on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellee	87	458	545	16.0%*
State or Local Law Enforcement Appellee	99	716	815	12.1%
Column Total	186	1,174	1,360	13.7%

* $p < .05$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).