Agenda Setting on the Vinson Court

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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.

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Paper 13: Ideological Error Correction as a Factor

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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) on its appellate docket. The specific question involves the extent to which the Court takes cases to reverse them on ideological grounds. The results proved to be mixed in that although the Court reversed more cases than it affirmed, whether ideology was driving those results or the underlying selection of the cases for review was not entirely clear when examining case origins (federal or state) or how cases came before the Court (certiorari or appeal). Although the results presented cannot confirm or reject the notion of ideological error correction they provide some interesting aspects to the Court's agenda setting.

Agenda Setting on the Vinson Court
Paper 13: Ideological Error Correction as a Factor

This is the thirteenth 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]

Ideological Error Correction

Although the papers in this series are primarily empirical with a basic grounding in behavioral judicial politics, a few additional comments are needed regarding the concept of error correction and more specifically what I have termed ideological error correction.

The concept of error correction regarding Supreme Court decision making should be a familiar one. The basic idea is that the Supreme Court has a tendency to take cases to reverse them. Given how many cases are filed before the Court each year and how few it accepts for review, the concept of error correction suggests that of necessity the Court must take more cases to correct errors in the lower courts than it might otherwise prefer. On the other hand, few mention error correction as a recognized reason for accepting a case for review. For example, in discussing the factors motivating the granting of certiorari, Stern and Gressman (1950, 97 et seq.) devote sections to conflict between decisions (e.g., lower court conflict with Supreme Court decisions, conflicting

[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.

decisions between federal courts of appeals) and the importance of the issues as factors increasing the chances for review. Stern and Gressman do have a section on erroneous lower court decisions as a factor (1950, 113-115), but they note at the outset that, "It has been reiterated many times that the Supreme Court is not primarily concerned with the correction of errors in lower court decisions." A footnote at the end of that sentence (omitted here) provides an example by directing the reader to an address by Chief Justice Vinson before the American Bar Association. Years later, in his interviews of Supreme Court justices and their clerks, Perry indicates that they told him "the purpose of cert. is not error correction" (1991, 36).

In his brief study of error correction Brenner (1997) quotes Perry as well as a later edition of Stern and Gressman's work for the notion that error correction is not an official reason for granting review to a case.[3] On the other hand, Brenner (1997, 2) notes that even Stern, Gressman, and Shapiro (1986, 222) suggest that "on occasion the Court does accept a case for review for no apparent reason other than error in the lower court decision." This exact phrase also appeared in the first edition of their work (1950, 113-114).[4]

If the justices and Supreme Court scholars suggest that error correction is not a factor in setting the Court's agenda, one must wonder why the notion persists. Brenner (1997) also notes that scholars have regularly addressed the error correction question.

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[3] Brenner cites Stern, Gressman, and Shapiro (1986), which is the sixth edition of the book. I have cited the first edition in part because it was published during the middle of the Vinson Court period, but also to show that the general disapproval of error correction has persisted for a long time.

[4] In the fifth edition of their book Stern and Gressman (1978, 292) note, "There have been several prominent types of cases in which the Court seems to have granted certiorari predominantly to correct an erroneous ruling on the particular facts."

In particular he cites Baum (1992, 104) who notes that the justices "are more likely to vote to accept a case when they disagree with the position of the lower court." That language was in the fourth edition of Baum's book. By the twelfth edition Baum had soften the language a bit, but still indicated justices "can act on their policy goals primarily in two ways. First, they may vote to hear cases because they disagree with the lower-court decision . . ." (2016, 92). In addition, in discussing procedures related to petitions for certiorari Stern and Gressman essentially advise petitioners to argue that the lower court ruling was in error because, "after taking all other factors into account, the Court is more inclined to review a decision which it thinks to be wrong" (1978, 469).

Brenner (1997) discusses the back and forth regarding error correction a bit more and also directs readers to Segal and Spaeth (1993, 194-196) for a review of the literature. Regardless of whether error correction is a preferred or approved approach to Supreme Court decision making, it is hard to deny that the Court has a tendency to overturn more cases than it affirms. In particular, Baum (2016, 92) indicates that the Court "overturns the lower court altogether or in part in more than two-thirds of its decisions." That proportion may vary based on time period and issue area. For example, Hagle and Spaeth (1992) found that the Burger Court reversed lower court business decisions 2.6 times more often than it affirmed them. Hagle (1992) found that the Court reversed over 80% of lower court obscenity and pornography decisions. To the extent such variations exist it is reasonable to ask why.

The "why" question hints at another aspect of error correction. Specifically, what is meant by an error. There seem to be two main possibilities. The first is that there was

some type of legal or factual error in the lower court decision. The second is that the Court decided that it did not agree with the ideological outcome in the lower court, thus viewing it as an error. Of course, the two are not unrelated. In ideologically divided Supreme Court opinions it is not unusual to see justices in favor of upholding the lower court decision to see it as correct while the justices in favor of reversing it to see it as incorrect. The language from Stern and Gressman (1950, 113-114) seems to suggest the former while Baum (1992, 104; 2016, 92) suggests the latter fairly directly.

Determining whether a true legal or factual error exists in the lower court decision would be a fairly difficult task given that nearly every appellant seeking Court review believes the lower court decision was erroneous for one reason or another.[5] In contrast, it is relatively easy to determine whether the lower court decision was liberal or conservative. Thus, to be more precise regarding the focus of this examination I will use the phrase ideological error correction.

There are two aspects to ideological error correction. The first is what the Court does with cases on the merits. Does it, for example, overturn more liberal lower court decisions than conservatives ones? The second aspect has to do with agenda setting. Specifically, is the Court more likely to grant review to liberal lower court decisions or conservatives ones?[6]

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[5] Recall the advice provided by Stern and Gressman (1978, 469) noted above. Along similar lines, claims of conflict among the circuits or violations of due process are far more frequent than is actually the case.

[6] It is worth recognizing the difference between aggregate versus individual decisions regarding review decisions and error correction. It is, of course the individual justices who vote to review the lower court decisions. That is why Brenner (1997) chose to examine Justice Burton's clerks' memos to determine the reasons why he voted one way or the other on granting certiorari. Although examining the individual

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.[7] 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

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decisions makes sense, this series of papers and the work of many others have examined "Court" decisions even to the extent it represents an aggregate of individual level decisions.

[7] 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.

appellate docket.[8] Not included in the dataset are 64 cases that were dismissed on the 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.[9] This results in a dataset of 5,727 cases. Because of the differing criteria used for the tables to follow, the number of cases included for any given comparison will vary from that total number.

An additional note on the coding for this examination is worthwhile before proceeding. Regarding the dispositions of the cases to which the Court granted review the comparison will be between those cases affirmed and those cases the Court either reversed, reversed and remanded, vacated, vacated and remanded, or affirmed in part and reversed in part (and possibly remanded). This division comports with Baum's language about cases reversed in whole or part noted above (2016, 92). The ideological classification, liberal or conservative, of the lower court and Supreme Court dispositions follows the principles of Spaeth's coding for the United States Supreme Court Judicial Database.

[8] 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 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.)

[9] 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

To begin, following the indicated criteria the Supreme Court disposed of 1,155 cases on the merits. Of these, 306 (44.8%) were affirmed and 637 (55.2%) were reversed or vacated in whole or part.[10]

TABLE 1 ABOUT HERE

In Table 1 we can see the comparison with the Supreme Court's disposition and the ideological direction of the lower court decision. Of the 1,155 cases the Court accepted for review and disposed of on the merits, 446 (38.6%) had a liberal lower court decision and 709 (61.4%) had a conservative lower court decision. Of the liberal lower court decisions, the Court affirmed 212 (47.5%) of them and reversed 234 (52.5%). For the conservative lower court decisions, the Court affirmed 306 (43.2%) of them and reversed 403 (56.8%). Although the Vinson Court was more likely to reverse conservative lower court decisions than liberal ones by a little over four percentage points, the difference was not enough to reach traditional levels of significance using a two-tailed difference of means test (Wonnacott and Wonnacott 1972).

Given the findings from several prior papers in this series it is worth exploring whether there is a difference in how the Supreme Court deals with cases from state and federal lower courts. Tables 2 and 3 show the same comparison as in Table 1 by looking at federal and state cases, respectively.

TABLE 2 ABOUT HERE

[10] For brevity, from this point forward "reverse" or "reversed" will refer to cases reversed or vacated in whole or part.

Table 2 compares the Court's disposition of lower court liberal and conservative decisions from lower federal courts. There were 886 of these case of which 366 (41.3%) were liberal and 520 (58.7%) were conservative. Here we see that the Court affirmed 165 of 366 (45.1%) liberal lower court decisions. Although the Court granted review to a larger number of conservative lower federal court decisions the Court affirmed nearly the same percentage of them at 43.1% (224 of 520).

TABLE 3 ABOUT HERE

Table 3 shows the comparison in the Court's disposition of liberal and conservative decisions from state lower courts. The Court granted review to a much smaller number of state court cases, only 269, of which 80 (29.7%) were liberal and 189 (70.3%) were conservative. Here the Court affirmed 47 of the 80 (58.8%) of the liberal state court decisions. The Court accepted for review over twice as many conservative state court cases and affirmed only 43.4% (82 of 189) of them. This difference is statistically significant at the $p < .02$ level using a two-tailed test.

Most of the prior studies touching on error correction have only or primarily examined cases before the Supreme Court on petitions for writs of certiorari. The basic reason, as I explained in the second paper in the series, was that the decision to grant review to a certiorari petition was discretionary but to an appeal was not.[11] Although I generally feel it is inappropriate to exclude cases before the Court on appeal from examinations of the Court's agenda setting, I do think it is worthwhile to explore possible differences between such cases. At the very least such examinations can

[11] The second paper in the series is titled, "Certiorari and Appeal on the Vinson Court Agenda."

confirm or reject reasons for only focusing on certiorari petitions. To that end, the next three tables follow the pattern of the first three but only by examining cases seeking review by certiorari. The three tables after that focus on those cases before the Court on appeal.

TABLE 4 ABOUT HERE

Table 4 shows that the Court granted review and disposed of 826 cases that were before the Court on a petitions for a writ of certiorari. Of these, 285 (34.5%) were liberal lower court decisions and 541 (65.5%) were conservative. Of the liberal lower court decisions the Court affirmed 109 of 285 (38.2%). Interestingly, the affirmance rate for conservative lower court decisions was not much higher at 39.2% (212 of 541). Clearly this minimal difference is not significant. Then again, note that the Court granted review to and reversed nearly twice as many conservative lower court decisions as liberal ones (329 conservative compared with 176 liberal). This is despite the fact that the overall affirmance rate is a percentage point higher for conservative cases.

TABLE 5 ABOUT HERE

In Table 5 we see the comparison of the Supreme Court's grant of review and disposition of liberal and conservative decisions coming from lower federal courts on grants of certiorari. Once again, the Court was more likely to take conservative cases for review, 402 of 649 (61.9%) in this category. Of the 247 liberal lower court decisions before the Court on certiorari the Court affirmed 93 (37.7%). As in Table 4, the affirmance rate for conservative lower federal court decisions before the Court on certiorari was only slightly higher at 39.8% (160 of 402).

TABLE 6 ABOUT HERE

Table 6 shows the comparison of liberal and conservative state lower court decisions before the Supreme Court on certiorari petitions. There were 177 of these cases of which a large majority, 78.5% (139 of 177), were conservative. There were only 38 liberal state court decisions granted review by the Court on certiorari petitions and the Court affirmed 16 (42.1%) of them. In contrast, the Court affirmed only 37.4% (52 of 139) of the conservative state court decisions. Although the difference between 42.1% and 37.4% does not reach statistical significance, once again note that the Court overturned just shy of three times as many conservative state court decisions as liberal ones (87 conservative versus 22 liberal).

TABLE 7 ABOUT HERE

Turning to the cases on appeal to which the Supreme Court granted review, in Table 7 we see that there were 327 such cases. Of these, the Court affirmed 196 (59.9%) and reversed only 131 (40.1%). This affirmance rate is much higher than the rate for cases before the Court on certiorari. This finding—that the Court is more likely to affirm cases on appeal—is consistent with Table 4 of the second paper in the series. There we saw that the affirmance rate for cases on appeal was about 22% higher than cases before the Court on certiorari. Table 7 shows that there was a much more equal distribution of liberal and conservative lower court decisions before the Court on appeal, with 160 liberal and 167 conservative. The Court affirmed 103 of the 160 (64.4%) liberal lower court decisions but only 93 of the 167 (55.7%) conservative ones. This

difference is notable, but does not reach a traditional level of statistical significance at $p < .11$.

TABLE 8 ABOUT HERE

Table 8 shows the comparison of liberal and conservative decisions on appeal from federal courts. There were 235 of these cases in which the ideological division was nearly equal with 118 liberal and 117 conservative decisions. The Court affirmed 72 of the 118 (61.0%) liberal decisions and 63 of the 117 (53.8%) conservative ones. Again, the seven percentage point difference is notable, but well away from traditional levels of statistical significance.

TABLE 9 ABOUT HERE

Table 9 shows the comparison of liberal and conservative decisions on appeal from state courts. There were only 92 of these cases in which 42 were liberal (45.7%) and 50 (54.3%) were conservative. Of the 42 liberal lower court decisions the Court affirmed 31 (73.8%). In contrast, the Court affirmed 60.0% (30 of 50) of the conservative lower court decisions. Despite the nearly 14% difference, the smaller number of cases means this comparison does not reach statistical significance. Even so, and despite the fact that the Court affirmed more cases than it reversed, note that the Court reversed nearly twice as many conservative state cases on appeal than it reversed.

The first nine tables show some differences in how the Supreme Court disposed of liberal and conservative lower court decisions. On the whole it reversed more conservative decisions than liberal ones. The differences in affirmative rates between liberal and conservative decisions usually failed to reach statistical significance, but the

Court also tended to accept more conservative cases for review, which produced a higher number of reversed conservative decisions. That leads to the question of whether the Court accepted a higher percentage of the available conservative cases. Tables 10 through 12 address this question.

TABLE 10 ABOUT HERE

Table 10 shows the comparison of the acceptance rate of liberal lower court decisions with that of conservative lower court decisions. There were 5,725 cases in this group. Of these 2,274 (39.7%) of the lower court decisions were liberal and 3,451 (60.3%) were conservative. Thus, as a starting point, there were simply more conservative decisions for the Court to choose from when making its review decisions. Of the 2,274 liberal lower court decisions the Court accepted 453 (19.9%) for review. As it turned out, that acceptance rate was not much different from the rate for conservative lower court decisions, which was 20.7% (716 of 3,451).

TABLE 11 ABOUT HERE

Table 11 shows the comparison of the acceptance rate for liberal lower court decisions coming from the federal courts with conservatives ones. There were 4,100 cases from the lower federal courts. Of these, 1,867 (45.5%) were liberal and 2,233 (54.5%) were conservative. Of the 1,867 liberal lower federal court decisions the Court accepted 373 (20.0%) for review. In contrast, the Court accepted 527 of the 2,233 (23.6%) conservative cases for review. Although the difference is only 3.6%, the large number of cases makes the difference statistically significant.

TABLE 12 ABOUT HERE

Table 12 shows the comparison of the acceptance rates for liberal lower court decisions coming from the state courts with conservatives ones. There were 1,625 cases from the state courts. Of these, 407 (25.0%) were liberal and 1,218 (75.0%) were conservative. The Court accepted 80 of the 407 (19.7%) liberal state cases for review. In contrast, the Court granted review to 189 of the 1,218 (15.5%) conservative state cases. This difference comes close to traditional levels of statistical significance at $p < .06$. Of particular note is that although the Court's acceptance rate for liberal lower court decisions was nearly the same for federal (20.0%) and state (19.7%) courts, there is a substantial difference in the Court's acceptance rate for conservative lower court decisions depending on whether they come from federal courts (23.6%) or state courts (15.5%).

Following the prior pattern, the next step is to separately examine the ideological direction of cases before the Court on certiorari petitions and appeals separately. The next six tables do this.

TABLE 13 ABOUT HERE

Table 13 compares the acceptance rate for liberal and conservative lower court decisions coming to the Court on petitions for writs of certiorari. There were 5,144 cases before the Court on certiorari petitions, 2,005 (39.0%) liberal and 3,139 (61.0%) conservative. The Court granted review to 287 of the 2,005 (14.3%) liberal lower court decisions and 547 of the 3,139 (17.4%) conservative ones. Although a three percent difference does not seem like a lot, because of the large number of cases it does reach statistical significance ($p < .01$).

TABLE 14 ABOUT HERE

Turning to the cases petitioning for a writ of certiorari coming from the federal courts, in Table 14 we see that there were 3,837 such cases of which 1,736 (45.2%) had a liberal lower court decision and 2,101 (54.8%) had a conservative one. Of the 1,736 cases with a liberal lower court decision the Court granted review to 249 (14.3%) of them. The acceptance rate for cases with a conservative lower court decision was 19.4% (408 of 2,101 cases). This difference proved to be highly significant ($p < .001$).

TABLE 15 ABOUT HERE

Table 15 shows the comparison of liberal and conservative cases seeking a certiorari petition coming from state courts. There were 1,307 of these cases, 269 (20.6%) liberal and 1,038 (79.4%) conservative. The Court accepted 38 (14.1%) of the cases with a liberal lower court decision for review. That acceptance rate was slightly higher than the 13.4% acceptance rate for cases with a conservative lower court decision (139 of 1,038). Despite the much larger percentage of conservative cases coming from the state courts the Court took a nearly equal proportion of liberal and conservative cases for review.

TABLE 16 ABOUT HERE

Turning to the cases on appeal before the Court, Table 16 shows the comparison between liberal and conservative decisions. There were only 575 such cases, 265 (46.1%) with liberal lower court decisions and 310 (53.9%) with conservatives ones. The Court granted review to 162 of the 265 (61.1%) cases with a liberal lower court decision. The acceptance rate for cases with a conservative lower court decision was 54.2% (168 of 310

cases). This difference is more than we have seen elsewhere, but fails to reach traditional levels of statistical significance using the two-tailed test.

TABLE 17 ABOUT HERE

Table 17 shows the comparison of liberal and conservative lower court decisions on appeal before the Court that came from lower federal courts. There were 257 of these cases, 127 (49.4%) liberal and 130 (50.6%) conservative. The Court granted review to 120 of the 127 (94.5%) of the liberal lower court decisions and 118 of the 130 (90.8%) of the conservatives ones. The exceptionally high acceptance rates for these cases is consistent with the findings of prior papers in the series.[12]

TABLE 18 ABOUT HERE

Finally, Table 18 shows the comparison between liberal and conservative cases before the Court on appeal from state courts. There were 318 such cases, 138 (43.4%) had liberal lower court decision and 180 (56.6%) had a conservative one. The Court granted review to 42 of the 138 (30.4%) cases with a liberal lower court decision and 50 of the 180 (27.8%) cases with a conservative lower court decision. Given the relatively small number of cases in this category the difference was not significant.

Concluding Comments

Overall the results for this examination did not prove as statistically significant as those in previous papers. The results are quite interesting nevertheless. As a starting

[12] See, for example, Table 10 of the twelfth paper in the series that showed the acceptance rate for cases coming to the Court directly from a three-judge federal district court to be nearly 90%.

point, the first nine tables examined various aspects of the Court's disposition of the cases for which it granted review. From Table 1 in particular we saw that although the Court certainly reverses more cases than it affirms, the percentage, 55.2%, was not as large as has been indicated elsewhere. One reason for this difference with prior studies of error correction might be their focus on particular issues areas. Another reason might be the terms examined. As to the latter, it might be that during the Vinson Court era (1946 to 1952 Terms) the Court was less inclined to accept cases for review due to error correction. This could be because the Court was less ideologically-inclined during those years, at least, perhaps, as compared with the Warren Court. At a more practical level it could simply be because fewer cases were filed during the Vinson Court terms than in later terms. Other than the 1946 Term which seemed to have an unusually large number of cases filed, no other term during the Vinson Court period had more than 800 cases filed. In contrast, during the Warren Court era (1953 to 1968 Terms) the number of cases steadily grew until it was over 1,300 cases for the final two terms. Part of the argument supporting the notion of error correction is that as more cases are filed there is more pressure on the Court to focus on the decisions that need correcting. It will be interesting to eventually compare these results with those for the Warren Court.

Aside from the overall results, distinguishing between the types of lower courts, federal or state, and the difference between cases on certiorari and appeal yielded some interesting results.

Although there did not seem to be much of a difference how the Court disposed of cases coming from the federal courts, there was a significant difference in the

dispositions of liberal and conservative state court decisions. That the Court was much more likely to affirm liberal state court decisions lends some support to the notion of ideological error correction.

Examining the differences between federal and state lower court decisions and between cases filed by certiorari and appeal provides some interesting results. To the extent that granting petitions for certiorari is more discretionary than granting review to cases on appeal one might expect that if error correction exists it would be more evident in the cases before the Court on certiorari. That did not prove to be the case as we saw that the affirmance rate for liberal and conservative lower court decisions shown in Tables 4, 5, and 6 for cases before the Court on certiorari was much closer than they were for cases on appeal in Tables 7, 8 , and 9.

Of course, even if affirmance rates are nearly equal, the larger number of conservative cases as shown in Table 1 at least gives the impression of an error correction leaning to the liberal side. That leads to an examination of the pool of cases from which the Court chooses those to review.

In Table 10 we saw that there were about half again as many cases with conservative lower court decisions seeking review before than liberal ones. Table 10 also showed that the acceptance rate for liberal and conservative lower court decisions was nearly equal. On the other hand, when these cases are broken out by those coming from federal and state lower courts we saw that there is a significant difference in the cases coming from the lower federal courts and one that is nearly so in the cases from the state courts. Of particular interest is that the differences are in the opposite

directions. For cases from the federal courts the Supreme Court was more likely to accept conservative decisions for review, but for cases from the state courts it was more likely to accept liberal decisions. For the cases from the federal courts, a higher acceptance rate for conservative decisions coupled with a lower affirmance rate (Table 2) produces the larger number of conservative decisions that were reversed. As for the cases coming from the state courts, although the acceptance rate was lower for conservative decisions, given that there were nearly four times as many cases with conservative decisions seeking review resulted in well more than twice as many conservative decisions granted review. Combined with the significant difference in affirmances rates shown in Table 3, this appears to provide some support for ideological error correction.

The separate examinations for the cases on appeal versus certiorari petitions proved particularly informative regarding the cases from lower federal courts. Consistent with the findings from prior papers in the series, there was a very high acceptance rate for cases on appeal from federal courts. For both liberal and conservative lower court decisions on appeal the acceptance rate was over 90.0%. Once the cases on appeal were removed, the difference in the cases before the Court from lower federal courts seeking certiorari petitions became even more pronounced. The significantly higher acceptance rate for conservative lower federal court decisions was entirely the result of the cases seeking a writ of certiorari. Given the larger number of lower federal court cases with a conservative lower court decision, the higher affirmance rate resulted in more than half again as many conservative decisions chosen

for review. Thus, even though we saw in Table 5 that the Court was more likely to affirm conservative lower federal court cases before the Court on writs of certiorari by about two percentage points, the result was that more than half again as many conservative decisions were reversed than liberal ones.

On the whole, the results of this examination do not provide conclusive evidence regarding the Court's use of an ideological error correction strategy, but neither do they provide evidence against it. To the extent that ideological error correction might be a factor in the Court's agenda setting (as well as decision making), it seems to be somewhat complex and possibly related to other factors. These other factors include the greater discretion associated with petitions for writs of certiorari as opposed to appeals and the possibility of the Court's greater willingness to oversee the federal courts relative to the state courts. Additional factors not examined here could also include differences in issue areas as well as the increasing number of cases seeking review that occurred after the Vinson Court period. This examination provides some interesting information on the Court's agenda setting and decision making regarding liberal and conservative lower court decisions, but the extent to which error correction is a factor is still to be determined.

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Table 1

Affirmance Rates for Cases With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions on the Vinson Court's Appellate Docket

	Affirmed	Reversed	Row Total	Affirmance Rate (%)
Liberal	212	234	446	47.5%
Conservative	306	403	709	43.2%
Column Total	518	637	1,155	44.8%

Table 2

Affirmance Rates for Cases With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from Lower Federal Courts on the Vinson Court's Appellate Docket

	Affirmed	Reversed	Row Total	Affirmance Rate (%)
Liberal	165	201	366	45.1%
Conservative	224	296	520	43.1%
Column Total	389	497	886	43.9%

Table 3

Affirmance Rates for Cases With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from State Courts on the Vinson Court's Appellate Docket

	Affirmed	Reversed	Row Total	Affirmance Rate (%)
Liberal	47	33	80	58.8%*
Conservative	82	107	189	43.4%
Column Total	129	140	269	48.0%

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

Table 4

Affirmance Rates for Cases before the Supreme Court on Petitions for Writs of Certiorari With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions on the Vinson Court's Appellate Docket

	Affirmed	Reversed	Row Total	Affirmance Rate (%)
Liberal	109	176	285	38.2%
Conservative	212	329	541	39.2%
Column Total	321	505	826	38.9%

Table 5

Affirmance Rates for Cases before the Supreme Court on Petitions for Writs of Certiorari With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from Lower Federal Courts on the Vinson Court's Appellate Docket

	Affirmed	Reversed	Row Total	Affirmance Rate (%)
Liberal	93	154	247	37.7%
Conservative	160	242	402	39.8%
Column Total	253	396	649	39.0%

Table 6

Affirmance Rates for Cases before the Supreme Court on Petitions for Writs of Certiorari With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from State Courts on the Vinson Court's Appellate Docket

	Affirmed	Reversed	Row Total	Affirmance Rate (%)
Liberal	16	22	38	42.1%
Conservative	52	87	139	37.4%
Column Total	68	109	177	38.4%

Table 7

Affirmance Rates for Cases before the Supreme Court on Appeal With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions on the Vinson Court's Appellate Docket

	Affirmed	Reversed	Row Total	Affirmance Rate (%)
Liberal	103	57	160	64.4%
Conservative	93	74	167	55.7%
Column Total	196	131	327	59.9%

Table 8

Affirmance Rates for Cases before the Supreme Court on Appeal With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from Lower Federal Courts on the Vinson Court's Appellate Docket

	Affirmed	Reversed	Row Total	Affirmance Rate (%)
Liberal	72	46	118	61.0%
Conservative	63	54	117	53.8%
Column Total	135	100	235	57.4%

Table 9

Affirmance Rates for Cases before the Supreme Court on Appeal With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from State Courts on the Vinson Court's Appellate Docket

	Affirmed	Reversed	Row Total	Affirmance Rate (%)
Liberal	31	11	42	73.8%
Conservative	30	20	50	60.0%
Column Total	61	31	92	66.3%

Table 10

Acceptance Rates for Cases With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Liberal	453	1,821	2,274	19.9%
Conservative	716	2,735	3,451	20.7%
Column Total	1,169	4,556	5,725	20.4%

Table 11

Acceptance Rates for Cases With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from Lower Federal Courts on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Liberal	373	1,494	1,867	20.0%*
Conservative	527	1,706	2,233	23.6%
Column Total	900	3,200	4,100	22.0%

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

Table 12

Acceptance Rates for Cases With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from State Courts on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Liberal	80	327	407	19.7%*
Conservative	189	1,029	1,218	15.5%
Column Total	269	1,356	1,625	16.6%

* $p < .06$, two-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 13

Acceptance Rates for Cases before the Supreme Court on Petitions for Writs of Certiorari With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Liberal	287	1,718	2,005	14.3%*
Conservative	547	2,592	3,139	17.4%
Column Total	834	4,310	5,144	16.2%

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

Table 14

Acceptance Rates for Cases before the Supreme Court on Petitions for Writs of Certiorari With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from Lower Federal Courts on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Liberal	249	1,487	1,736	14.3%*
Conservative	408	1,693	2,101	19.4%
Column Total	657	3,180	3,837	17.1%

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

Table 15

Acceptance Rates for Cases before the Supreme Court on Petitions for Writs of Certiorari With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from State Courts on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Liberal	38	231	269	14.1%
Conservative	139	899	1,038	13.4%
Column Total	177	1,130	1,307	13.5%

Table 16

Acceptance Rates for Cases before the Supreme Court on Appeal With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Liberal	162	103	265	61.1%
Conservative	168	142	310	54.2%
Column Total	330	245	575	57.4%

Table 17

Acceptance Rates for Cases before the Supreme Court on Appeal With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from Lower Federal Courts on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Liberal	120	7	127	94.5%
Conservative	118	12	130	90.8%
Column Total	238	19	257	92.6%

Table 18

Acceptance Rates for Cases before the Supreme Court on Appeal With Liberal Lower Court Decisions Compared With Cases With Conservative Lower Court Decisions from State Courts on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Liberal	42	96	138	30.4%
Conservative	50	130	180	27.8%
Column Total	92	226	318	28.9%