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.

Circuit Differences in Agenda Setting on the Vinson Court

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Abstract

Agenda setting of the United States Supreme Court is a matter of continuing interest to judicial scholars. Previous studies have examined several aspects of the agenda setting process. These studies have usually focused on 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. To that end, this study will examine all cases on the Vinson Court's appellate docket. As a first cut with a more comprehensive dataset, this study will examine four empirical questions related to cases filed before the Supreme Court: 1) is there a difference in acceptance rates between state and federal cases, 2) is there a difference in acceptance rates between federal circuits, 3) is there a difference in acceptance rates for state cases in the federal circuits, and 4) is there a difference in acceptance rates between state and federal cases from the same federal circuits?

Circuit Differences in Agenda Setting on the Vinson Court

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 appeals (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/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 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

recent 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 thousands of 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.

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, et al., (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). Even so, 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, most later studies focused on how the justices deal with 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 the most recent edition of his text on the Supreme Court, Baum (2010, 87) provides examples of recent work focusing on in forma pauperis petitions (Watson 2004; Black and Boyd 2007). 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; Watson 2004; Black and Boyd 2007), 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 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]

Four Empirical Questions

Regardless of whether one subscribes to some form of cue theory, it is clear that judicial scholars have examined Supreme Court agenda setting for decades. As noted above, however, an underlying assumption in most previous studies was the distinction between cases coming before the Court on a petition for a writ of certiorari and those before the Court on appeals. Perry discusses the distinction at some length (1991,

Chapter 2) and it seems logical to focus attention on the more discretionary cert petitions. Even so, and as the saying goes, we should start at the very beginning. For present purposes this means examining all the cases on the Court's appellate docket.

Current theories and models of Supreme Court agenda setting are heavily based on the examination of cert petitions. This may or may not be appropriate for the entire agenda-setting process. The primary goal of this study is to take a more fundamental look at the Court's agenda-setting. As Chalmers notes, "Scientific theories are derived in some rigorous way from the fact of experience acquired by observation and experiment" (1982, 1). Because a fundamental approach must focus more heavily on the observational, I label the items to be tested empirical questions rather than hypotheses. Even so, I do not intend this examination to be theory-free and the specific questions examined were certainly selected with at least an eye to current theories and models, even if they are not directly tested here. In short, a goal of this study is to perform initial observation and testing so that later studies can more directly examine current theories and models in a broader agenda-setting context.

Thus, as a first cut with a more comprehensive dataset, this study will step back from the prior appeal/certiorari distinction and examine four empirical questions related to all cases filed on the Supreme Court's appellate docket: 1) is there a difference in acceptance rates between state and federal cases, 2) is there a difference in acceptance rates between federal circuits, 3) is there a difference in acceptance rates for state cases in the federal circuits, and 4) is there a difference in acceptance rates between state and federal cases from the same federal circuits? Again, although I call these empirical

questions, they are not atheoretical. Rather, the questions are loosely related to aspects of the legal model (jurisdiction) as well as the attitudinal model (expertise of judges, expertise of collective courts).[3]

Data

Data for this study were drawn from a larger, ongoing database project involving all cases on the Supreme Court's appellate docket. 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. Although there were 1512 cases on the 1946 Term appellate docket, this was more than twice the average number of cases for the remaining six terms. Beginning with the early Warren Court, the number of filings on the appellate docket rose steadily until it reached a high of 1338 in the 1968 Term (the last of the Warren Court) and continued to grow during the Burger Court, eventually surpassing 2,000 cases in the 1979 Term.

Information on the cases was drawn from a variety of sources including the *United States Law Week*, various reporters for the state and federal courts, LEXIS, and other online sources. Each case that received a docket number during the 1946-1952 Terms is included in the dataset. 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) and 121 cases that eventually received a 1953 Term (the first term of the Warren Court) or later docket number.[4] Also, included in this number are five cases that originally appeared on the Court's miscellaneous docket.[5]

Acceptance Rates for State and Federal Cases

Table 1 compares acceptance rates for cases coming from state courts versus those coming from federal courts.[6] At one level this comparison speaks to whether the justices may see themselves as more a part of the federal system and therefore more likely to grant review to cases from federal courts. At another level differences here may speak to questions regarding the quality of state versus federal judging.[7] Regardless of the reason, we see that there is a significant difference in the Court's acceptance rates.

TABLE 1 ABOUT HERE

Although there were nearly two and one half times as many cases from federal courts (4218 versus 1658 from state courts)[8], the Court granted review to over three times as many federal cases, 979 to only 289 state cases. Thus, during this period the Court granted review to 23.2% of cases coming from the federal courts, but only 17.4% of those from state courts. Although we might have suspected this result in favor of federal courts given even a fairly basic knowledge of the Court's agenda setting, as the goal here is to take a fresh look at the data I used a 2-tailed significance test. Despite this more rigorous test, the difference between the acceptance rates for state and federal cases is highly significant ($p < .001$).

Circuit Differences

Having established a difference in how the Court treats state and federal cases, I now turn to an examination of the extent to which this difference can be explained by, or is a function of, differences among the federal circuits. As with reasons why the justices may treat state and federal cases differently, the basis for possible differences among the circuits is loosely related to theoretical concerns involving views of the Court's role and the quality of judging. As to the latter, this may speak to questions of the judicial selection process or to some form or regionalism.[9] Perry also relates how clerks of the justices (and presumably the justices themselves) were aware of circuit differences on some issues (1991, 94). Of course, before we can begin to theorize as to reasons for differences we must establish that such differences exist.

Federal cases

We begin with an examination of whether there are differences in acceptance rates of the cases coming to the Supreme Court from the various federal courts. Given the basic jurisdictional structure of the federal court system, it seems logical to begin by dividing the cases into their respective geographic circuits. During the Vinson Court there were ten numbered circuits (First through Tenth) and the District of Columbia Circuit. Although the Federal Circuit was not established by name until 1982, cases coming from "non-geographic" courts such as the Court of Claims, Court of Customs and Patent Appeals and the Emergency Court of Appeals were grouped together as a "circuit" for this analysis.[10]

TABLE 2 ABOUT HERE

The results for the twelve circuits are presented in Table 2. The first thing one notices about the acceptance rates for the circuits is the *lack* of variation. Nine of the circuits fall in the narrow range of 21.7% to 25.6%. Of the three circuits that fall outside this range, the differences for two reach statistical significance.[11] The cases from the Federal Circuit have a lower, and statistically significant, acceptance rate. The cases in this circuit come from the three courts mentioned previously. The vast majority of the cases grouped in this circuit come from the Court of Claims (209 of 265 cases). Closer examination shows that cases from the Court of Claims actually had an acceptance rate of 22.5%, which puts it above the cases from the Fourth, Eighth, and Tenth Circuits. The reason the Federal Circuit as a whole has a lower, and statistically significant, acceptance rate is due to the fact that the Supreme Court only granted review to one of the 43 cases from the Emergency Court of Appeals and for none of the 13 cases from the Court of Customs and Patent Appeals.

Of particular interest is that cases coming from the DC Circuit have a significantly higher acceptance rate. Although a thorough examination of the reasons for this difference is beyond the scope of this study, a bit of speculation based on conventional wisdom suggests that this result is not entirely surprising. It is well known that the DC Circuit hears more cases coming from federal agencies. Given the limited geographic jurisdiction of the DC Court of Appeals, it is also likely that it hears substantially fewer cases involving state laws, including criminal cases. To the extent that the difference between state and federal cases lies in some notion by the Supreme Court justices of an

increased responsibility for the federal courts, it may be that on balance the cases coming from the DC Circuit may be more "federal" than those from other circuits (by which I mean, fewer cases based on state law, such as diversity of citizenship, habeas corpus cases from state prisoners, etc.).

State cases within federal circuits

The data presented in Table 1 demonstrated a clear difference in the Court's acceptance rate between state and federal cases. On the other hand, the data in Table 2 demonstrated that there was little variation in the acceptance rates of federal cases from the various geographic circuits. For the same reasons that we might have anticipated some differences in the acceptance rates for federal courts from the various circuits, we might also anticipate some differences in the acceptance rates for state cases as grouped by the federal circuits.

Grouping the states by their federal circuits does not coincide precisely with how we might ordinarily think of regional grouping. Most regional groupings would divide the states into four or perhaps five groups. In contrast, using the circuits places the states into 10 groups with an unequal number of states in each.[12] Even so, most of the circuits maintain a regional feeling: First through Third in the northeast, Ninth and Tenth in the west, Seventh and Eighth in the midwest and plains, Fifth in the south. The Fourth may be considered generally southern, despite the presence of West Virginia and Maryland. The Sixth may have the least regional identity given the midwest/southern grouping of Michigan, Ohio, Kentucky, and Tennessee. One could

certainly argue for or against various other groupings, but adhering to the federal circuits is, at a minimum, consistent with the way the justices are assigned circuits from which they handle applications for stays (often a stay of execution, see Perry 1991, 94). The data for the acceptance rates for state cases grouped by the ten federal circuits is presented in Table 3.[13]

TABLE THREE ABOUT HERE

Unlike the federal cases, the state cases show more variation among the circuits. At the low end of the scale are state cases from the Seventh Circuit at only 9.4%. This is followed by state cases from the Fifth and Sixth Circuits (both at 16.4%) and then those from the Eighth Circuit (16.5%). At the high end of the scale, state cases from the First Circuit had the highest acceptance rate (33.3%), followed by those from the Second Circuit (26.0%) and the Tenth Circuit (25.4%).

Despite the greater variation among the state cases (as grouped by federal circuits), only two circuits stand out as statistically significant. The cases from the state courts in the Second Circuit have a higher acceptance rate that is statistically significant from the state cases in the other circuits. I should point out here that although the cases from the state courts in the First Circuit have a much higher acceptance rate, the fairly small number of cases from these states (only 27) keeps the difference from reaching statistical significance given the use of a more rigorous 2-tailed test.

At the other end of the scale, the cases coming from the state courts in the Seventh Circuit have a statistically significant lower acceptance rate. Even so, and without delving too deeply in to the specifics of the cases, an unusually large number of cases

came through the Illinois courts involving state prisoners. More specifically, there were 263 such cases, of which only five were granted review.[14]

State versus federal cases within circuits

Although there was a clear difference in the acceptance rates between cases coming from the state and federal courts, differences among the circuits for state or federal cases have been concentrated in just a few circuits. Despite this somewhat surprising result, the remaining question to address is whether there are differences in the acceptance rates between state and federal cases within each of the federal circuits. As noted previously, differences here may speak to perceptions the Supreme Court justices may have regarding the quality of the judging of state versus federal judges. The data for this comparison are presented in Table 4.

TABLE 4 ABOUT HERE

The percentages in the Acceptance Rate columns of Table 4 come from Tables 2 and 3. The comparison in Table 4 is between the acceptance rates of state versus federal cases within each of the ten indicated geographic federal circuits (leaving out the District of Columbia Circuit). Looking at the Total line we see that the overall difference between the acceptance rate for these ten circuits is 5.4%, which is statistically significant at $p < .001$.[15] Given this overall difference in the treatment between state and federal cases, it is reasonable to expect there to be differences within the circuits as well and this is confirmed in Table 4. The results in Table 4 also show more variation among the circuits. As indicated by the right column, the differences in the acceptance

percentages for federal versus state cases range from a high of 13.4% in the Seventh Circuit to a low of -7.7% in the First Circuit.

Given that the acceptance rate of 22.8% for federal cases from the Seventh Circuit is identical to the average rate for federal cases from all ten circuits, the difference in this circuit is driven by the very low acceptance rate for state cases. As previously noted, a very large number of cases involving Illinois state prisoners contributed to the very low acceptance rate for state cases from the Seventh Circuit. Without such a high concentration of these cases the difference in this circuit would not be statistically significant.

Aside from the Seventh Circuit, the difference in acceptance rates reached statistical significance in three other circuits.[16] Federal cases from the Third and Sixth Circuits had an acceptance rate 7.3% higher than the state cases from those circuits. The difference for the Fifth Circuit was slightly lower at 6.4%.

Contrary to the overall pattern, in four circuits the acceptance rate for state cases was higher than for federal cases. This occurred for the First, Second, Fourth, and Tenth Circuits. For the Fourth Circuit the difference is a minimal -0.6%. The next largest difference is in the Second Circuit, with -2.8%. Recall from Table 3 that the state cases from the Second Circuit were the only ones to have a significantly higher acceptance rate than the states from other circuits. The difference for the Tenth Circuit was slightly larger at -3.7%. The largest difference was in the First Circuit at -7.7%. Interestingly, cases from the First Circuit had the highest acceptance rate for both state (33.3%) and federal cases (25.6%). Although the absolute value of the difference for the First Circuit

is larger than for the Third, Fifth, or Sixth Circuits, the difference does not reach statistical significance given the small number of cases. As can be seen from Tables 2 and 3, the First Circuit had the fewest number of both state and federal cases. With 86 federal cases and only 27 state cases, the First Circuit had well less than half as many cases as any other circuit. This includes the Tenth Circuit, which was the only other circuit to have fewer than 100 state cases.

FIGURE 1 ABOUT HERE

Following up on this point, Figure 1 provides a visual representation of the number of state and federal cases from the ten indicated circuits and the proportion of those cases accepted and denied. The two circuits with the highest acceptance rates for state cases, the First and Tenth, were also the two circuits with the fewest state cases. In general, there is a relatively strong correlation between the number of cases filed from state and federal courts from the given circuits ($r = 0.69$). The correlation between the acceptance rates between state and federal cases, however, is more moderate ($r = 0.35$). For the federal cases from these ten circuits, it comes as little surprise given the results presented in Table 2 that there seems to be little correlation between the number of cases filed and the acceptance rate ($r = 0.02$). Conversely, there is a rather dramatic inverse relationship between the number of state cases filed and the acceptance rate for those cases ($r = -0.72$).

Conclusion

Judicial scholars have long studied agenda setting on the United States Supreme Court. Many such studies, however, have restricted their data to cases coming to the Court on petitions for writs of certiorari, cases from selected terms, cases from select subject areas, or some combination of these limitations. The primary purpose of this study is to perform a more comprehensive examination of all cases filed on the Vinson Court's appellate docket. By starting this more comprehensive examination without prior limitations on the cases allows for a more fundamental and complete view of the cases being filed and the Supreme Court's review decisions of them.

Rather than proceeding from extant theories and models of the Court's agenda setting this study proceeds from the notion that one must observe before theorizing and hypothesizing. Put another way, is there any thing there worth studying (or, even more colloquially, is there any "there" there)? With at least a nod to current theories and models, an initial question to ask is whether the Court treats cases coming from the state courts differently than those from the federal courts. The answer, as presented by the data in Table 1, is a resounding yes.

Having established this difference in treatment between state and federal cases at the Supreme Court's agenda setting stage, the next step is to begin to flesh out and explain this difference. Two immediate factors come to mind: filing type (cert versus appeal) and the disposition on the merits (with an eye to an error correction strategy). As each of these factors is sufficiently important to warrant a separate study, for present

purposes I chose to explore three aspects of the state/federal difference in relation to geographic factors.

The notion of a geographic aspect to judges and judging is certainly not new. It is certainly well known at the judicial selection level (e.g., Nixon's "Southern strategy," Carp and Stidham 2001, 140). Substantively, notions of a geographic aspect to judicial decision making come by way of specific studies (e.g., Hagle 1992), anecdotal evidence (e.g., Perry 1991, 94), or just conventional wisdom (e.g., the Court is more likely to defer to the Court of Appeals for the Second Circuit on economic matters). The results presented in Tables 2 through 4 show a mixed pattern regarding a geographic aspect to agenda setting on the Vinson Court. In Table 2 we saw very little variation in the acceptance rate for cases coming from the First through Tenth Circuits. There were statistically significant variations in the District of Columbia Circuit and from the courts that would eventually belong to the Federal Circuit. The differences in the DC and Federal Circuits deserve additional study. The lack of variation from the other circuits also deserves closer examination to determine whether it holds up on closer examination considering factors such as the disposition on the merits, subject matter, etc.

More variation was found among the states as grouped by federal circuits. This was true when comparing state cases across circuits and when comparing state versus federal cases within circuits. Some of these differences may be easily explained as the result of an unusual set of cases (e.g., the state prisoner cases from Illinois), but, again, additional study is necessary to explain the nature of the differences.

On the whole, this study provides a solid foundation for more extensive and detailed examinations of agenda setting on the Vinson Court. Moreover, although the period covered by the Vinson Court was a relatively short seven years, the stability of the number of filings on the Court's appellate docket during this period provides a good baseline from which additional examinations of the Warren Court (or a combination of the two) can proceed.

Notes

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 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. 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. 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.
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 complaint 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 2010, 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. See Brenner and Whitmeyer (2009) for a general discussion and comparison of the legal, attitudinal, and strategic models.
4. Until the 1971 Term, held over cases 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 that were granted review were sometimes moved to the appellate docket and given a new docket number. The United States Supreme Court Judicial Database, Harold J. Spaeth principal investigator, lists 26 cases with a miscellaneous docket number ("M") during the 1946-1952 Terms. Of these, 17 were granted review (and eight of those disposed of in a short per curiam), but are not included here. On the other hand, the dataset includes 19 cases 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).

6. I will use the shorthand "state cases" to refer to cases coming from state courts and "federal cases" to refer to those coming from federal courts. Cases considered accepted for review include those where the Court granted review and disposed of the case on the merits. This includes 17 cases in which the Court initially denied review. Also, included are seven cases in which the Court granted review then dismissed on motion of the petitioner and one case that was a rule dismissal after granting review. Cases considered to have been denied review include denials of cert and dismissed appeals. Also included are those initially granted review then denied and rule dismissals prior to a grant of review (on motion of petitioner or other).
7. Perry notes that during the Burger Court the cert pool memo contained information on the judges in the lower court as well as who authored the opinion and any judges who dissented (1991, 42). It seems reasonable to believe that this information was included as part of the pool memo because prior justices found it useful, possibly as an indicator of the quality of the judging.
8. Not included in this table are 25 cases from the District of Columbia, Puerto Rico, and Hawaii courts appealed to federal courts of appeals before being filed with the Supreme Court (thus mixing state and federal courts), three cases from the Philippines' courts, and one case from a noncourt source.
9. As Murphy, et al. (2006, 154), note, debates have continued over the "best" method of judicial selection even though there does not seem to be significant differences in the qualifications of the judges produced by the different selection processes (citing

Glick and Emmert, 1987). Rather than qualifications, differences may depend more on the outlook of selected judges toward the judicial role, public policy, and accountability (Murphy, et al., 2006, 154). Regional differences may also be difficult to demonstrate, but their perception persists for Supreme Court justices (Carp and Stidham 2001, 140). Carp and Stidham also note that a bit more evidence exists regarding regional differences at the federal court of appeals level (2001, 140).

10. Cases in the Emergency Court of Appeals (1942-1961) were handled a bit differently than those in the Temporary Emergency Court of Appeals (1971-1992). The ECA primarily heard cases coming from various federal agencies. The later TECA functioned more like a regular (i.e., geographic) court of appeals in that it heard appeals from various federal district courts, but with limited subject matter jurisdiction. It is also worth mentioning here that cases coming directly to the Supreme Court from a federal district court (usually 3-judge district courts) are grouped as part of that circuit's cases. For example, the eight cases coming directly from the United States District Court for the Eastern District of Virginia are considered part of the Fourth Circuit.
11. As with the difference between state and federal cases I assume no difference beforehand and therefore use a 2-tailed test. The acceptance rate for cases from the Eighth Circuit lies just outside the traditional level of significance at $p < 0.056$.
12. Leaving aside the District of Columbia circuit, the Second and Third Circuits have the smallest number of states with three each (though the Virgin Islands was also assigned to the Third Circuit beginning with the 1951 Term) and the Ninth Circuit

13. There is obviously no "federal" circuit for state cases. No cases from the District of Columbia courts were appealed directly to the Supreme Court. As previously indicated in Note 8, cases begun in the District of Columbia courts and eventually appealed to the United States Court of Appeals for the District of Columbia Circuit were not included in this analysis. There were seven such cases.
14. Excluding these prisoner cases would leave 185 cases of which 37 were granted review for an acceptance rate of 20.0%, which is about in the middle of the cases from the other circuits.
15. The difference here from Table 1 is the exclusion of the federal cases from the District of Columbia and Federal Circuits. This exclusion was made to directly compare state and federal cases within the ten indicated geographic circuits. The discussion concerning the results presented in Table 1 suggested possible reasons why the acceptance rate for cases from the DC and Federal Circuits were significantly different from those of the other circuits. Regardless of the reasons for the differences for those two circuits, from the results in Table 4 we see that even without those circuits federal cases have a significantly higher acceptance rate than state cases.
16. Unlike in Tables 2 and 3, here the comparisons are within each circuit. Although the indicators of statistical significance are positioned next to the difference in percentage, the difference of means tests were done on the underlying numbers of

accepted and denied cases within each circuit. Given the results from Table 1, we could expect federal cases to have a higher acceptance rate, so a 1-tailed test was used.

References

Baum, Lawrence. 2010. *The Supreme Court*, Tenth Edition. Washington, DC: CQ Press.

Black, Ryan C., and Christina L. Boyd. 2007. "Litigant Status and Agenda Setting on the U.S. Supreme Court." A paper presented at the annual meeting of the Midwest Political Science Association, Chicago, April 2007.

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.

Carp, Robert A., and Ronald Stidham. 2001. *The Federal Courts*, fourth edition. Washington, DC: CQ Press.

Chalmers, A.F. 1982. *What is this thing called Science?*, second edition. Melbourne, Australia: University of Queensland Press.

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

Glick, Henry R., and Craig F. Emmert. 1987. "Selection Systems and Judicial Characteristics: The Recruitment of State Supreme Court Judges." *Judicature* 70:228-235.

Hagle, Timothy M. 1992. "But Do They Have to See It to Know It? The Supreme Court's Obscenity and Pornography Decisions." *Western Political Quarterly*, 44:119-128.

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

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.

Murphy, Walter F., C. Herman Pritchett, Lee Epstein, and Jack Knight. 2006. *Courts, Judges, & Politics*, sixth edition. Ney York: McGraw Hill.

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.

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.

Watson, Wendy L. 2004. "The U.S. Supreme Court's Selection of Petitions *In Forma Pauperis*." Ph.D. Dissertation, Ohio State University, Chapter 5.

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

Table 1

Acceptance Rates for State and Federal Cases on the Vinson Court's Appellate Docket

	Accepted	Denied	Acceptance Rate (%)
State	289	1369	17.4%*
Federal	979	3239	23.2%
Total	1268	4608	21.6%

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

Table 2

Circuit Differences in Acceptance Rates for Federal Cases on the Vinson Court's Appellate Docket

	Accepted	Denied	Acceptance Rate (%)
First Circuit	22	64	25.6%
Second Circuit	152	503	23.2%
Third Circuit	86	267	24.4%
Fourth Circuit	52	182	22.2%
Fifth Circuit	116	393	22.8%
Sixth Circuit	69	222	23.7%
Seventh Circuit	114	387	22.8%
Eighth Circuit	44	194	18.5%
Ninth Circuit	103	341	23.2%
Tenth Circuit	52	188	21.7%
District of Columbia Circuit	121	281	30.1%**
Federal Circuit	48	217	18.1%*
Total	979	3239	23.2%

* $p < .05$, 2-tail test
** $p < .001$, 2-tail test

Table 3

Acceptance Rates for State Cases Within Federal Circuits on the Vinson Court's Appellate Docket

	Accepted	Denied	Acceptance Rate (%)
First Circuit	9	18	33.3%
Second Circuit	51	145	26.0%*
Third Circuit	19	92	17.1%
Fourth Circuit	23	78	22.8%
Fifth Circuit	35	178	16.4%
Sixth Circuit	27	138	16.4%
Seventh Circuit	42	406	9.4%**
Eighth Circuit	19	96	16.5%
Ninth Circuit	46	165	21.8%
Tenth Circuit	18	53	25.4%
Total	289	1369	17.4%

* $p < .01$, 2-tail test
** $p < .001$, 2-tail test

Table 4

Acceptance Rates for State and Federal Cases Within Federal Circuits on the Vinson Court's Appellate Docket

	State Cases Acceptance Rate (%)@	Federal Cases Acceptance Rate (%)#	Difference (Federal – State)
First Circuit	33.3%	25.6%	-7.7%
Second Circuit	26.0%	23.2%	-2.8%
Third Circuit	17.1%	24.4%	7.3%*
Fourth Circuit	22.8%	22.2%	-0.6%
Fifth Circuit	16.4%	22.8%	6.4%*
Sixth Circuit	16.4%	23.7%	7.3%*
Seventh Circuit	9.4%	22.8%	13.4%**
Eighth Circuit	16.5%	18.5%	2.0%
Ninth Circuit	21.8%	23.2%	1.4%
Tenth Circuit	25.4%	21.7%	-3.7%
Total	17.4%	22.8%	5.4%**

@Percentages are from column three of Table 3
#Percentages (except Total) are from column three of Table 2
* $p < .05$, 1-tail test
** $p < .001$, 1-tail test