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.

Workload as a Factor in Agenda Setting on the Vinson Court

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Abstract

Judicial scholars have long been interested in Supreme Court agenda setting. Political histories and biographies touch on the topic in relatively general terms and a long line of studies have examined factors related to why some petitions for writs of certiorari are granted review by the Court and others not. Because of the sheer number of certiorari petitions filed each term, most scholars sampled the data. Despite the many studies that have examined various aspects of the Court's agenda setting, my focus here is on a specific aspect of the agenda setting process that has not yet been addressed in the literature. Although legal considerations are clearly important, the Court's workload may affect the justices' agenda setting as well. In this paper I assume that the justices are consistent in the approach they use to cope with their workload. Even so, it is the workload that tends to vary and this leads us to the central question of this study.

In this paper I examine all cases filed on the Vinson Court's appellate docket. Using charts to illustrate the data and difference of means tests to determine the significance of the results I find that that workload does seem to affect certain aspects of the Court's agenda setting, particularly when appeals and petitions for certiorari are considered separately.

Workload as a Factor in Agenda Setting on the Vinson Court

Judicial scholars have been interested in Supreme Court agenda setting for over 50 years. Various political histories touch on the topic of agenda setting in relatively general terms (e.g., Rodell 1955) and biographies of the justices may mention the "rule of four" or the cert pool begun during the early Burger Court (e.g., Jeffries 1994) but often do not provide details beyond what can be obtained from a good text (e.g., Baum 2010). Schubert's "The Certiorari Game" (1959) was the first in a long line of studies concerned with explaining why some petitions for writs of certiorari are granted review by the Court and others not. Judicial scholars such as Tanenhaus, et al. (1963) and Ulmer, et al. (1972) continued to explore the factors affecting the Court's review decisions on "cert" petitions. Provine (1980) examined various aspects of case selection in a book-length study of the 1947-1957 Terms. Because of the sheer number of certiorari petitions filed each term, most scholars sampled the data. Caldeira and Wright (1988) took a different approach and focused on all the certiorari petitions for a single term. In another book-length treatment, Palmer (1990) compiled and examined data for the entire Vinson Court era (1946-1952 Terms). Perry (1991) also used sampled data for his book, but he also conducted dozens of interview with clerks and justices in his examination of the 1976-1980 Terms. Epstein and Knight (1998) provide some insights to the Court's agenda setting in their more general analysis of judicial decision making. Most recently, Baum's (2010) book on the Supreme Court continues to discuss agenda setting, and currently includes citations to newer studies of the Court's

certiorari decisions (Watson (2004) and Black and Boyd (2007)). In addition, Caldeira and Wright (2009) have revisited and updated their prior work.

There are certainly many more studies that have examined various aspects of the Court's agenda setting. Perry (1991), in particular, provides an extensive list of these studies. I do not intend to minimize the importance of the studies I have not mentioned, but my focus here is on a specific aspect of the agenda setting process that has not yet been addressed in the literature.

Although the work of Tanenhaus, et al. (1963) was later criticized by Ulmer, et al. (1972), among others, it nevertheless set the stage for a common approach to the study of the Court's agenda setting. Namely, the search for legal factors that would weigh for or against the Court's granting review. For Tanenhaus, et al., the cues suggesting that the justices would grant review included whether the federal government was the petitioning party, whether the case involved a civil liberty question, or whether there was dissension (i.e., a dissenting vote) in the court(s) below. (See also Ulmer, et al. (1972).) In addition to traditionally legal factors, Provine discussed individual-level factors such as judicial philosophy and general ideological orientation as possible influences on the justices (1980, chapter four). Caldeira and Wright (1988) focused their study on the influence of organized interests (via amicus briefs) on the Court's review decision, but also included in their model legal considerations such as whether there was a conflict (alleged or actual) among the lower courts.

Legal considerations are clearly important to the Court's agenda setting decisions, but others may affect the justices as well. In particular, the workload of the Court may

affect the decision making process. The general thrust of studies considering the Court's workload is usually on the decision on the merits and often takes the view that the justices cannot be comprehensive in their decision making due to human limitations and must find ways to speed the process along. Hagle (1990) provides a brief overview of this approach, which builds on the more general decision making work of Simon (1957, 1981), Steinbruner (1974), and others. We need not explore the workload literature for present purposes except to recognize that those making the review decisions have the usual limitations of any human decision maker. It does not particularly matter whether one posits that the justices are comprehensive decision makers, are using a form of bounded rationality, or are merely satisficing. Instead, I assume that the justices (and, to the extent applicable, their clerks) are consistent in the approach they use to cope with their workload. Even so, it is the workload that tends to vary and this leads us to the central question of this study.

The Supreme Court famously begins its term on the first Monday in October. With some variation, the Court ends its term in June of the following year and then goes on hiatus for July through September. Unlike the Supreme Court, lower courts generally function year round, which, in turn, means that petitions requesting that the Court review these lower court decisions are filed even while the Court is on break. Thus, when the justices return to work in October they face a large backlog of review requests. In a statement to the Hruska Commission[1], Justice Blackmun noted, "The

[1] Established by the US Congress (Public Law 489, 92d Cong., 2d sess., 13 October 1972), the Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures was better known as the Hruska Commission.

heavier the burden, the less is the possibility of adequate performance and the greater is the probability of less-than-well considered adjudication" (Ripple 1980, 175). Although Blackmun was speaking of the general increase in the Court's caseload, the same concern may apply to the extent that the work is not distributed evenly over the course of a term.

Although Perry (1991) did some data analysis in this study of the Court's agenda setting, the more important aspect of his work was the interviews he conducted with dozens of clerks and justices. His interview subjects raised the issue of an uneven workload in two ways at different points during the Court's term. As noted previously, the justices arrive at the Court in October with a large backlog of review requests awaiting them. Of course, the clerks for that term arrive before their justices and begin work on "cert memos."[2] Although the clerks may have had experience clerking on a federal court of appeals, they would not have had to write memos relating to whether the court should review a particular case.[3] The clerks are rarely familiar with the types of issues heard by the Supreme Court when they begin their work, and the justices rarely provide them much advance guidance. (See Perry 1991, 78-79 for some of these specific comments.) As Perry notes, "Clerks are expected to plunge into the cert. process and essentially learn on their own" (1991, 78). Thus, in addition to a summer

[2] These memos are essentially summaries of the petitions indicating whether the lower court decision should be reviewed by the Court. Also, despite the name "cert memo," such memos are also written for cases coming to the Court on appeal. Although I will make distinctions between cases on certiorari and those on appeal below, unlike prior studies I do not exclude appeals from the analysis.

[3] For example, Greenburg notes that in her first term neither O'Connor nor her clerks were familiar with what cases should be heard by the Court and it is only after a few years that justices get a sense of what is important to the Court (2007, 66-67).

backlog of cases that must be processed quickly the clerks are faced a steep learning curve in determining which cases are worthy of review.

Of course, the justices do not have to rely on the memos from their clerks. Although a new justice might also need time to adjust to the Court's workload,[4] experienced justices may rely on their own reading of the petitions, as Brennan apparently did (Jeffries, 1994, 270-271). Even so, and regardless of whether the bulk of the work was done by inexperienced clerks or the justices themselves, one may reasonably wonder whether there is a difference in the agenda setting decisions made during the hectic and pressure-filled (for the clerks) start of the term relative to the rest of the term.

The second point at which workload may affect the Court's review decisions occurs later in the term. Although the clerks, in particular, will have mastered the process after a few months and are able to spend far less time on preparing cert memos (Perry 1991, 80), there is also less time available for the memos (1991, 60). More specifically, as the term progresses, and particularly in late spring, more time is spent on the drafting of opinions. Thus, one may again wonder whether the crush of work on opinions late in the Court's term affected the review decisions.

Thus, we reach the central question of this study: Is the review decision affected by workload pressures. Put another way, is the Court more or less likely to accept a case for review at the beginning of the term when there is a large backlog of cases from

[4] This notion is known as either a "freshman" or "acclimation" effect. Prior studies have considered such an effect in areas such as the decision on the merits (e.g., Brenner 1983; Hagle 1993) and opinion writing (e.g., Brenner and Hagle 1996), but I am not aware of a comprehensive study of such an effect relative to review decisions.

the summer? Similarly, is the Court more or less likely to accept a case for review late in the term when the justices (and clerks) are more focused on finishing opinions in cases already argued?

Data

Data for this study were drawn from an 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.

Information on the cases 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 filed on the Court's appellate docket number during the 1946-1952 Terms is included in the dataset. This results in 5,749 cases. Not included in this number are 156 cases originally filed before the 1946 Term (the first term of the Vinson Court) and held over one or more times. Conversely, 121 cases filed during the Vinson Court that eventually received a 1953 Term (the first term of the Warren Court) or later docket number are included.[5] Also, included in this number are 67 cases that

[5] Prior to 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.

originally appeared on the Court's miscellaneous docket and were moved to the appellate docket.[6]

Does Workload Matter?

Before addressing the central question of whether the workload matters for the Court's review decision we must confirm some initial assumptions. The first is to verify that the cases are filed in a relatively even pattern throughout the year. Figure 1 shows the cumulative number of cases filed each month during the seven terms of the Vinson Court.

FIGURE 1 ABOUT HERE

From Figure 1 we see that November has the lowest total for the seven-year period with only 304. That number is substantially below December, the month with the next lowest total at 412. June has the highest total at 561, with August, March, April, and May also above the 500-mark and several others very near (July, September, and February).

Although the explanation for the lack of case filings in November is beyond the scope of this paper, it is interesting to see the pattern that appears in the cumulative totals. After reaching a peak in August, the cumulative totals decrease through the fall

[6] 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 United States Supreme Court Judicial Database, Harold J. Spaeth principal investigator, lists 26 cases for the Vinson Court with a miscellaneous docket number (with an "M" in the DOCKET field) during the 1946-1952 Terms that did not receive an appellate docket number. 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).

until they dip significantly in November. The filings rebound in December and continue to grow each month through June, with the slight exception of April which is only slightly below the March total. This pattern does not necessarily present itself in every term, though November has the lowest monthly total in all but the 1951 Term. Regardless of the reasons for this overall pattern, or the aberration of November, we can see that there is a fairly even distribution of case filings during the year.

FIGURE 2 ABOUT HERE

The next step is to determine when during the year the Court is making its review decisions. Figure 2 shows the cumulative monthly totals for when the Vinson Court made its review decisions.[7] Not surprisingly, the figure shows no activity while the Court is on summer hiatus,[8] but a large jump for October. The 1782 review decisions made during October were well over the average of 495 for the other eight months (November through June) and were 31% of all review decisions. As with the filing month we see a slight pattern to the timing of the Court's review decisions. After October, the cumulative number of review decisions made each month drops to a low of 319 in February. The number made in March is nearly double the February total at 626. The number drops again in April, then rises to 674 as the Court closes out its term in June.

[7] As noted previously, 121 cases filed during the Vinson Court were held over to the Warren Court period. For 29 of these cases the review decision was made during the Vinson Court and it was the decision on the merits that was held over. For the remaining 72 the review decision was held over to the Warren Court, but these cases are nevertheless included here.

[8] Although no review decisions were made during the month of July during the Vinson Court, there were actually four review decisions made in August and four in September. This number is so small they do not appear in the figure given its scale.

The very large number of review decisions made in October is no surprise and confirms our expectations. June's second highest total is also not surprising as the Court is no doubt looking to finish as much work as possible before leaving for the summer. The jump in the totals from February to March, giving March the third highest monthly total, may generally fit with a period when the Court has been working to finish opinions from cases heard earlier in the term (February) and then turns its attention to a slight backlog in the review decisions (March). Regardless of the reason, we should take a careful look at the review decisions made in March, as well as those for October and June.

FIGURE 3 ABOUT HERE

A different aspect of the timing of the Court's review decisions is how many days it takes for the Court to make a review decision after the case is filed. The average number of days between case filing and review decision on the Vinson Court was 68.56. Of course, there was a good deal of variation based on the month of filing, as shown in Figure 3.

Figure 3 shows the average number of days before a review decision by filing month. Given the Court's summer hiatus, it is no surprise that July has a large average, slightly exceeding three months. Similarly, the decreasing averages for August and September can be expected as the filing date gets closer to the start of the Court's term in October. From October through April the average is relative stable, though there's a slight upward bump December and January. Toward the end of the Court's term in May and June we again see a substantial increase in average time until a review

decision, with June having the highest monthly average. This sharp increase at the end of the term fits with the prior comments noted by Perry (1991, 60) that more of the clerks' (and justices') time is spend on finishing outstanding opinions. Obviously, if a review decision on a case filed at the end of the term cannot be made quickly, it will be held over to the next term, adding at least 90 days to the decision time.[9] In fact, in looking at the dispersion of the values for the number of days until a review decision for each month, May has the largest standard deviation at 73.65 days. June's standard deviation of 48.97, however, is behind both March (60.35) and April (53.58).

Even more than the month in which the review decision was made (Figure 2), the variation by filing month in the number of days until review decision shows distinctive differences in the two periods noted by Perry (1991, 60): the beginning of the term (given the backlog) and end of the term. Even so, it is worth exploring this difference a bit further and determining if there is a difference in the number of days until a review decision for cases granted review and those denied.

FIGURE 4 ABOUT HERE

Figure 4 separates the data from Figure 3 into those granted review ("accepted") and those denied. Each set of columns in the figure follows the general pattern from Figure 3. Specifically, cases filed during the summer months of July have the second longest period between filing and review decision, with that number decreasing for August and then again for September. From October to April the number of days to

[9] The shortest time between filing and review decision was zero days, meaning that the Court issued a review decision on the same day the case was filed. This occurred once each in the months of October and March through June. The longest turnaround time was 814 days. There were 35 cases for which the Court took a year or longer to announce a review decision. There were one or more such cases in every month except August and September.

review decision is relatively stable, with a slight bump in December and January. The time again increases in May and reaches a maximum in June. It is interesting to see that for every month the average number of days until the review decision for accepted cases is larger than for cases denied review. Even so, the difference for any given month is not remarkably large. (The greatest difference in the monthly averages is about 14 days, which occurs for July, September, and June.)

Having established that cases are filed before the Court in a relatively even patter throughout the year (Figure 1), that there are differences in when the Court makes its review decisions (pronounced for October, less so for June; Figure 2), and that there are differences in the number of days until a review decision based on the month of filing (Figures 3 and 4), we can now begin a closer look at possible patterns in acceptance rates.

FIGURE 5 ABOUT HERE

Figure 5 shows the acceptance rate by filing month for the seven terms of the Vinson Court. The overall acceptance rate during this period is 20.04%, with a monthly high of 23.51% in November to a low of 16.96% in October.[10] There is no particular visual pattern to the acceptance rates: the three highest months are July, November, and March, while the three lowest are October, February, and April. Given previously stated concerns with possibly hurried work at the beginning and end of the term, we might have expected lower rates for the summer months. The lower acceptance rate for

[10] The 20.04% figure may seem high, but recall that the 1947 Term was the first in which the in forma pauperis cases were put on the new Miscellaneous docket and far fewer cases were filed before the Court during the Vinson Court as compared with the Warren and later Courts.

cases filed in April generally fits the notion that review decisions at the end of the term (which would likely occur for cases filed in April) might have a lower acceptance rate if the Court has less time to review them as completely. Higher rates for May and June might be explained by the larger number of cases held over until the next term, but the extra time would just place them in the backlog of cases filed during the summer. Thus, even though a difference of over 7% between the months with the lowest and highest acceptance rates would be of interest to the litigants, there is no clear relationship between the filing month and the acceptance rate.

Most prior studies of the Court's agenda setting focus exclusively on certiorari petitions (e.g., Tanenhaus et al., 1963; Ulmer et al., 1972; Provine, 1980; Caldeira and Wright, 1988; Perry 1991). The basic justification was the understanding that the Court's review decisions on petitions for writs of certiorari were discretionary, but their decisions on appeals were not. In a separate paper I examined various differences between the Court's handling of cases on certiorari and those on appeal. The basic conclusion I reached was that cases on appeal should not be excluded out of hand from examinations of the Court's agenda setting.[11] Given possible differences in the two types of cases the next step here is to take another look at the acceptance rate by filing month for each type.

FIGURE 6 ABOUT HERE

[11] I realize, of course, the difficulty for the reviewer when an author mentions an unpublished paper. Regardless of any specific finding in my other paper, results presented here will show that cases on appeal may not be as discretionary as those on certiorari, but they are also not mandatory either. Thus, there inclusion here is appropriate.

Figure 6 shows the acceptance rate by filing month broken out by certiorari and appeal. We can immediately see that the acceptance rates for certiorari cases are below those presented in Figure 5 and all are below 20.0%. Moreover, the acceptance rates for certiorari cases are all well less than half those of appeals. The average acceptance rate for certiorari cases is only 15.96% with a range of 12.69% (October) to 18.82% (January). In sharp contrast, the average acceptance rate for appeals is 55.09% with a low for January of 42.86% and a high for December of 64.71%. Cases on appeal make up slightly over 10% of the cases filed, and that percentage varies only slightly for the individual filing months.

As with Figure 5, there is little in the way of a visual pattern to the monthly acceptance rates for each type of case. For certiorari cases, October, February, and April still have the lowest acceptance rates. January now joins July and March as the months with the highest certiorari acceptance rates, with November dropping to fifth highest. It turns out that the low acceptance rate for October relative to the average for the other months is statistically significant ($p < .025$, 1-tailed test; see Wonnacott and Wonnacott 1972, 178). On the one hand, this significance level is not overly surprising given the large number of certiorari cases. In addition, percentage difference between October and the average for the other months is relatively small (roughly 3.5%). Even so, at one level the lower acceptance rate for certiorari cases in October fits the hypothesis that the Court may be less willing to grant review at this time. By the beginning of the Court's term in October, the justices and clerks will have waded through the large summer backlog of cases. Even though the acceptance rate for July, August, and September is at

or above the overall certiorari acceptance rate of 15.96%, there may be an exhaustion factor, or even a realization that a substantial number of cases have already been granted review, so that cases filed in October are less likely to be granted review.

A bit more of a pattern appears for the cases on appeal. Here we see that the cases filed from July to December appear to have an overall higher acceptance rate than those filed from January to June, but the difference does not reach traditional levels of significance ($p < .10$, 1-tailed test). We also see a sharp drop off in the acceptance rate from December's monthly high (64.71%) to January's monthly low (42.86%). From the January low the rate increases each month through May, with a slight decline as the Court finishes its term in June.

Aside from the sharp drop in the monthly acceptance rate for appeals from December to January, January's rate is sufficiently below the average rate for the other months that it reaches statistical significance ($p < .05$, 1-tailed test). Although one might be tempted to suggest a midterm exhaustion factor of some sort, given that the certiorari acceptance rate actually increases slightly from December to January (15.87% to 17.65%) it would seem the explanation lies elsewhere.

In Figure 2 we saw that the Court made nearly one third of its review decisions in October. We also saw that the number of review decisions dropped sharply for November and then continued to decline through February. In March through June the number increased so that the second largest number of review decisions were made in June as the Court worked to finish its term. Having examined acceptance rates by filing month in Figures 5 and 6, it is worthwhile to do so as well by decision month.

FIGURE 7 ABOUT HERE

Figure 7 shows the acceptance rate by the month in which the Court made its review decision broken out by cases on certiorari and appeal. In looking at Figure 7 I must immediately point out that the 50% column for certiorari cases in September is an anomaly. Although the Court officially begins its term at the beginning of October, I previously noted that during the Vinson Court years the Court actually made four review decisions in August and another four in September. Although all of the cases decided in August were denied, the Court granted review to one of the two certiorari cases in September.

Beginning in October, the acceptance rate for certiorari cases contains some variation, but stays below 20.0% except for December (22.74%). The December high is nearly half again the average for the other months of the term (again, not counting the summer months) and proves to be statistically significant ($p < .01$, 2-tail test). Interestingly, following the December high the monthly certiorari acceptance rate drops to the term's low in January (12.68%). Although the January rate is substantially below the average for the rest of the term, it is just shy of traditional levels of significance ($p < .063$, 2-tail test).

As was seen in Figure 6, appeals once again have much higher acceptance rates. Interestingly enough, December once again has the highest monthly acceptance rate at 72.97%. The difference between December and the average for the other months again reaches statistical significance ($p < .01$, 2-tail test). Once again we also see a substantial drop for January (50.0%), but March actually has the lowest monthly rate (45.0%).

Visually, we see a slight pattern from October to December as the acceptance rate steadily climbs. Similarly, from the low in March, the acceptance rate climbs steadily to June (67.16%) which is the second highest monthly acceptance rate.

Discussion

Having set out to examine aspects of how workload may affect the Vinson Court's agenda setting, it is fair at this point to ask what we have learned from the results presented. The short answer is that there are certainly some differences and patterns in acceptance rates when considering either the filing month or the review decision month, as well as differences in how cases on certiorari and appeal are treated. On the other hand, the patterns and differences, even when statistically significant, do not clearly adhere to the basic notion that an overworked Court might be less inclined to accept cases for review at the beginning and end of the term.[12]

I began by showing that despite some monthly variation, cases are filed regularly throughout the year. Of course, the Supreme Court is not in session during the months of July through September. This means that the justices, and their new clerks, face a large backlog of cases to start the term. In addition, there was a slight but noticeable increase in the number of cases filed during the end of the term as the Court was looking to finish its work before the summer hiatus.

[12] I am sure many researchers have been tempted to quote the opening lines of Buffalo Springfield's song, "For What It's Worth," when faced with mixed results. Having been beaten to the punch by at least one scholar (Rohde 1991), I will resist the temptation.

One aspect of how workload might affect agenda setting is in how quickly the work gets done. Not surprisingly, the time until the Court issued a review decision was much longer for cases filed during the summer hiatus. An interesting pattern occurs at the end of the Court's term as the average number of days until a review decision is made jumps sharply from April to May, and then again from May to June. The standard deviation for May was the largest, suggesting that the Court either made a review decision quickly or waited until the following term. For June, which was the month in which the largest number of cases were filed, about one-ninth of the cases received a review decision that same month, with the rest being held over to the next term.

Somewhat surprisingly, there was little variation in the waiting period for cases granted and denied review with the average delay being about 10 days longer for those accepted. The difference in the monthly average is largest for June (14.42 days) with May the third largest (12.49 days). At one level a simple explanation might be that some cases are so clearly not worth reviewing that a decision can be made very quickly on them (as evidenced by the low of zero which occurred in five of the nine months of the regular term). At another level, the slightly longer waiting period for cases granted review may be a function of the Court's handling of cases on appeal. Although not examined here, the Court often does not issue a separate review decision when it accepts a case on appeal for review. As a practical matter, if the Court decides a case on appeal with a full opinion it must necessarily have decided to review the case well

before the opinion was written. Even so, the relatively small differences in the waiting period mean that further examination of this issue is better left for another day.

In looking at the review decisions relative to the month a case was filed (Figure 5) it was somewhat surprising that the monthly average acceptance rate did not show more of a pattern, particularly for the summer months.

More interesting were the results in Figure 6 when cases on certiorari and appeal were viewed separately. As previously noted, most prior studies of agenda setting only examine cases on certiorari. The justification for excluding appeals was the general understanding that the review decision on certiorari petitions was discretionary and that on appeals was not. Nevertheless, the statute in effect during the Vinson Court set out the legal requirements governing the Court's appellate jurisdiction and the Court had the ability to reject cases on appeal if they did not meet those criteria.[13] The results presented in Figure 6 show that the Court clearly treats appeals differently, but that appeals are not "obligatory" in the usual sense of the word given that even for December, the month with the highest acceptance rate, the Court denied review to roughly 35% of the appeals, and over all the rejection rate for appeals was about 45%. Thus, even though there was a bit of a visual pattern to the results shown in Figure 6, and the January low did reach statistical significance, the more important finding may be that appeals are not treated in an absolute fashion by the Court and may be deserving of greater attention in the context of agenda setting.

[13] See generally, Stern and Gressman (1950, Chapters II and III). As Perry notes, the law was fundamentally changed to make appeals nearly as discretionary as certiorari cases (1991, 25-27).

The results presented in Figure 7 switch from filing month to decision month. As with the results presented in Figure 6, in Figure 7 we see some visual patterns to the monthly acceptance rates and there are some statistically significant differences for certain months. Unlike the filing month, the Court controls the decision month. Cases can be decided quickly, as many were toward the end of the term, or they can be held on to for months or even to the next term. Figure 4 showed that there was a pattern to the average number of days until the Court issued a review decision. Not shown in that figure was that the standard deviations for March through May were the highest for the 12 filing months. Although beyond the focus of this study, the increased standard deviations late in the term suggests that the Court may be performing a sort of triage; review decisions on "easy" cases made quickly and the rest delayed until the following term. At the very least, these results suggest that additional exploration on the details of the Court's agenda setting would be worthwhile.

Conclusion

The purpose of this study was to examine a particular aspect of the Court's agenda setting that had not yet received attention. The focus on workload, particularly when cases were filed and when the Court issued review decisions on them, tapped into general decision making theory related to the limitations of human decision makers. Overall, the results were mixed in that that some visual patterns were found, and some differences reached statistical significance, but there was no clear Aha! finding. That said, the findings were strong enough to suggest, at the very least, that the practical

pressures of workload are related to the Court's agenda setting and that further study is warranted. Moreover, the results clearly show that cases on appeal, which had been regularly excluded from prior agenda setting studies, need a more nuanced approach.

That this study focused on the Vinson Court is not just of historical interest. Even though the Court changed the composition of its Appellate Docket beginning with the 1947 Term)when most in forma pauperis cases were moved to the new Miscellaneous Docket), the Vinson Court era was a relatively stable one for the number of cases filed. Given that the number of cases filed before the Court each term began to sharply increase during the Warren Court, the Vinson Court will provide a good baseline for comparison with later terms.

Similarly, the change in the law respecting the Court's jurisdiction over appeals actually makes the study of appeals during earlier terms of greater interest. Again, given that most prior studies of the Court's agenda excluded appeals and focused on petitions for certiorari, we would not know how the change in the law affected the Court's agenda setting for appeals if we do not examine how the Court treated these cases before the change. Doing so allows us to both determine whether there was a change in how the Court treated appeals before and after the law changed and the extent to which the Court treats appeals and petitions for certiorari similarly under the new law.

In short, this study I took an observational approach to the Court's workload. Not so much as a naïve inductivist that would argue observation must always precede theoretical development (see, generally, Chalmers 1982, Chapter 3), but as one with an

eye to providing an additional perspective beyond extant theories of legal or attitudinal decision making. Having established that some aspects of workload seem to influence the Court's agenda setting, it is worth pursuing these issues in greater depth.

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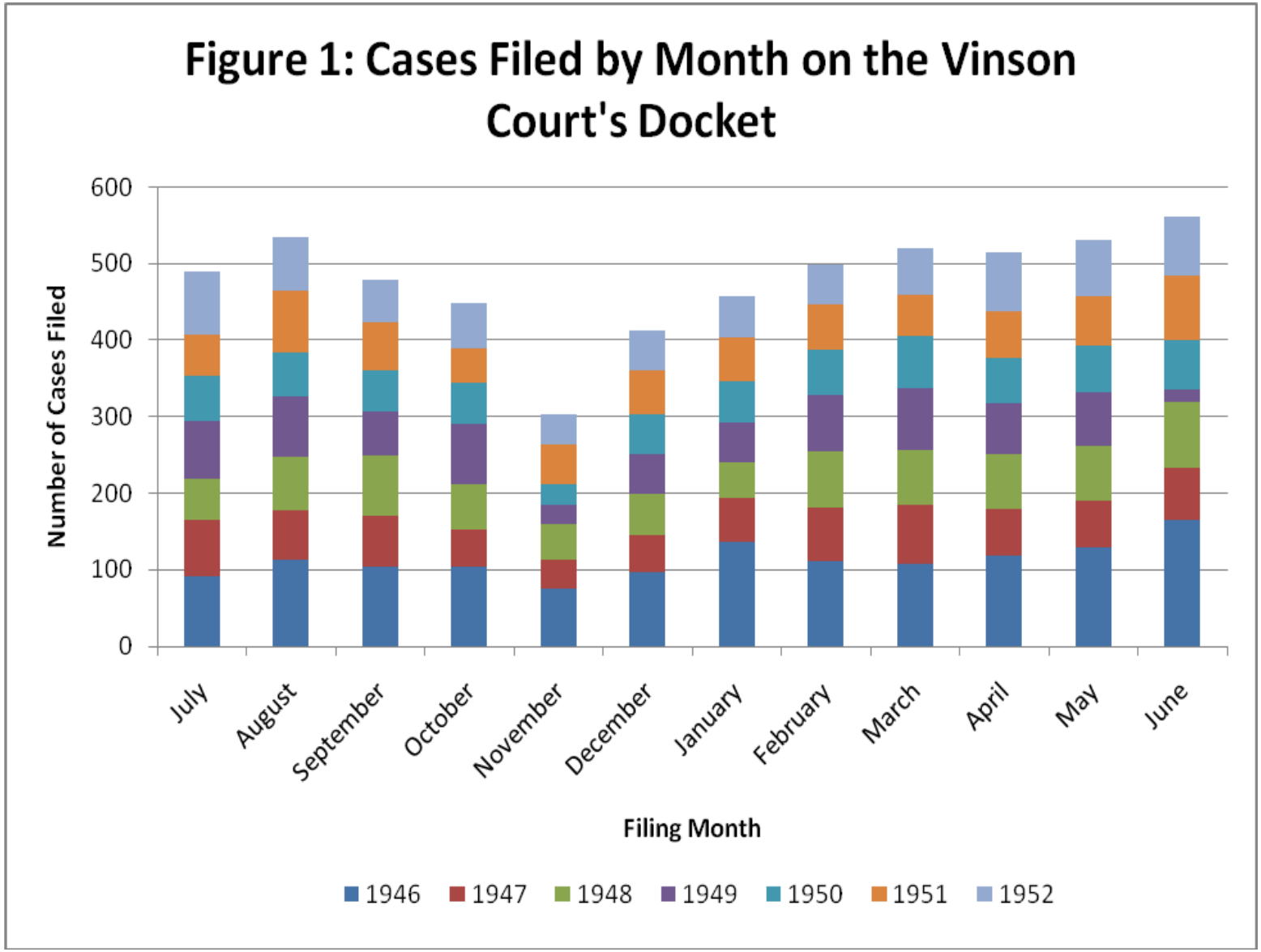
Figure 1: Cases Filed by Month on the Vinson Court's Docket
Number of Cases Filed
600
500
400
300
200
100
0
July
August
September
October
November
December
January
February
March
April
May
June
Filing Month
1946
1947
1948
1949
1950
1951
1952

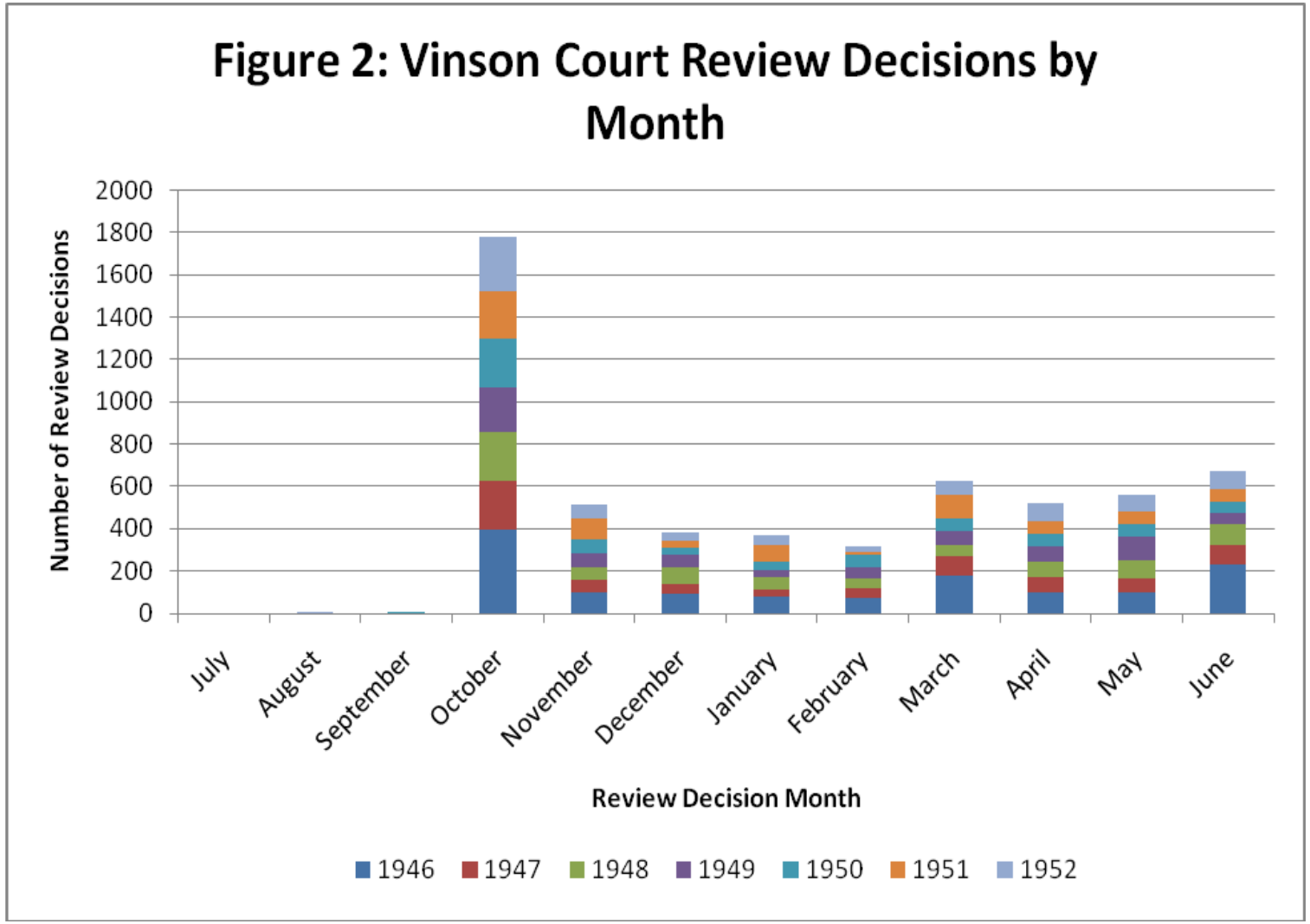
Figure 2: Vinson Court Review Decisions by Month
Number of Review Decisions
2000
1800
1600
1400
1200
1000
800
600
400
200
0
July
August
September
October
November
December
January
February
March
April
May
June
Review Decision Month
1946
1947
1948
1949
1950
1951
1952

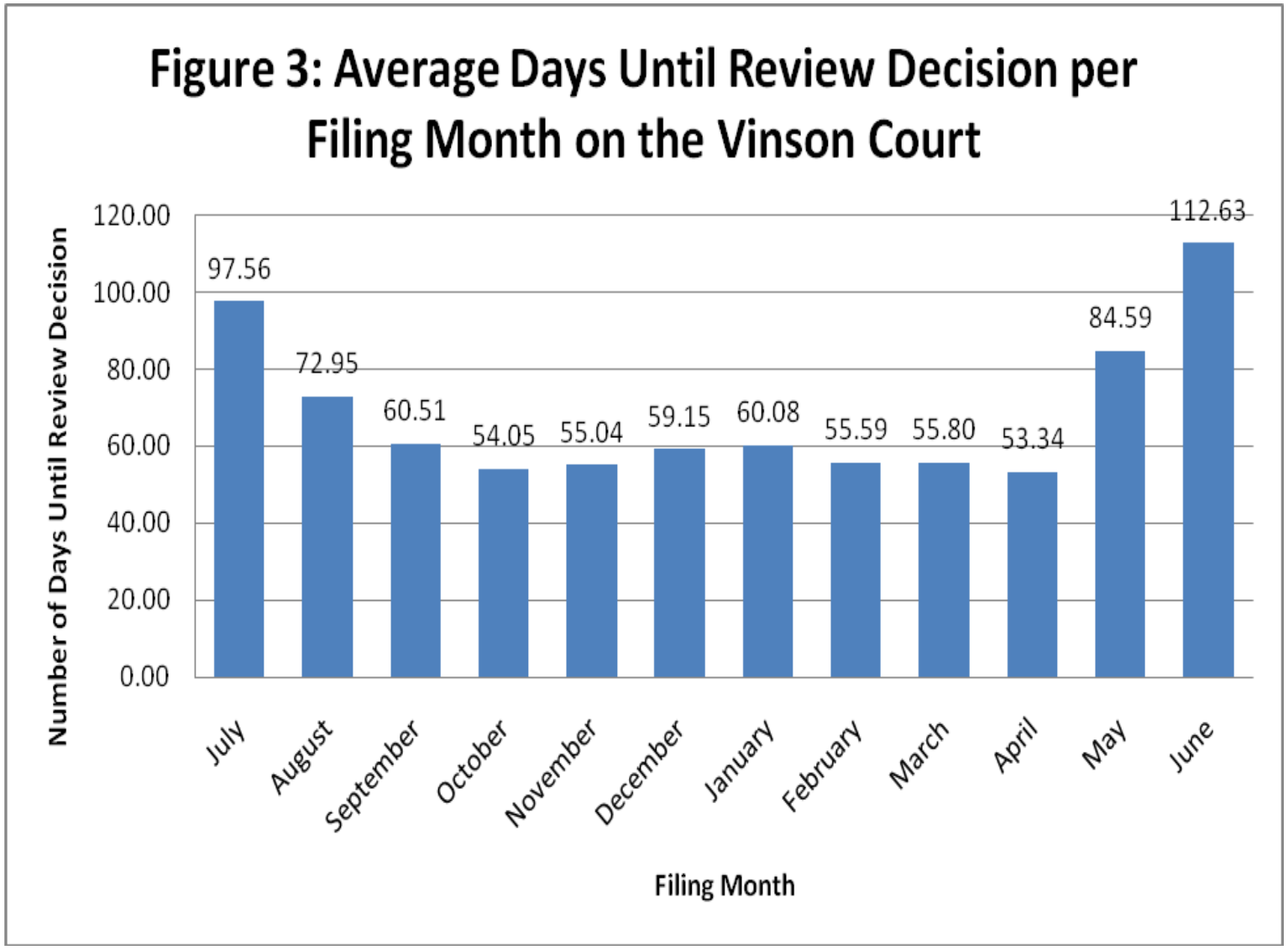
Figure 3: Average Days Until Review Decision per Filing Month on the Vinson Court
Number of Days Until Review Decision
120.00
100.00
80.00
60.00
40.00
20.00
0.00
97.56
72.95
60.51
54.05
55.04
59.15
60.08
55.59
55.80
53.34
84.59
112.63
July
August
September
October
November
December
January
February
March
April
May
June
Filing Month

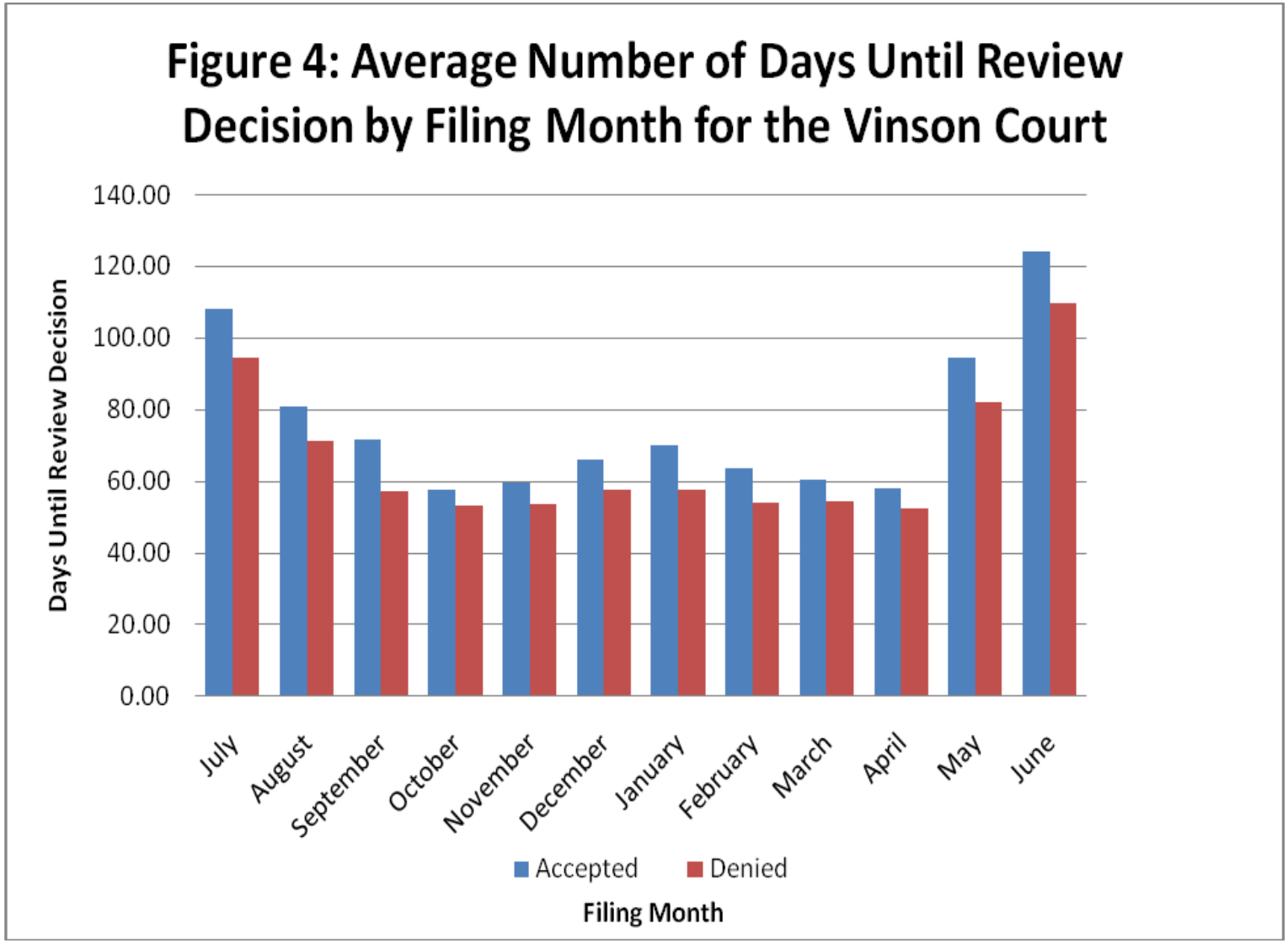
Figure 4: Average Number of Days Until Review Decision by Filing Month for the Vinson Court
Days Until Review Decision
140.00
120.00
100.00
80.00
60.00
40.00
20.00
0.00
July
August
September
October
November
December
January
February
March
April
May
June
Accepted
Denied
Filing Month

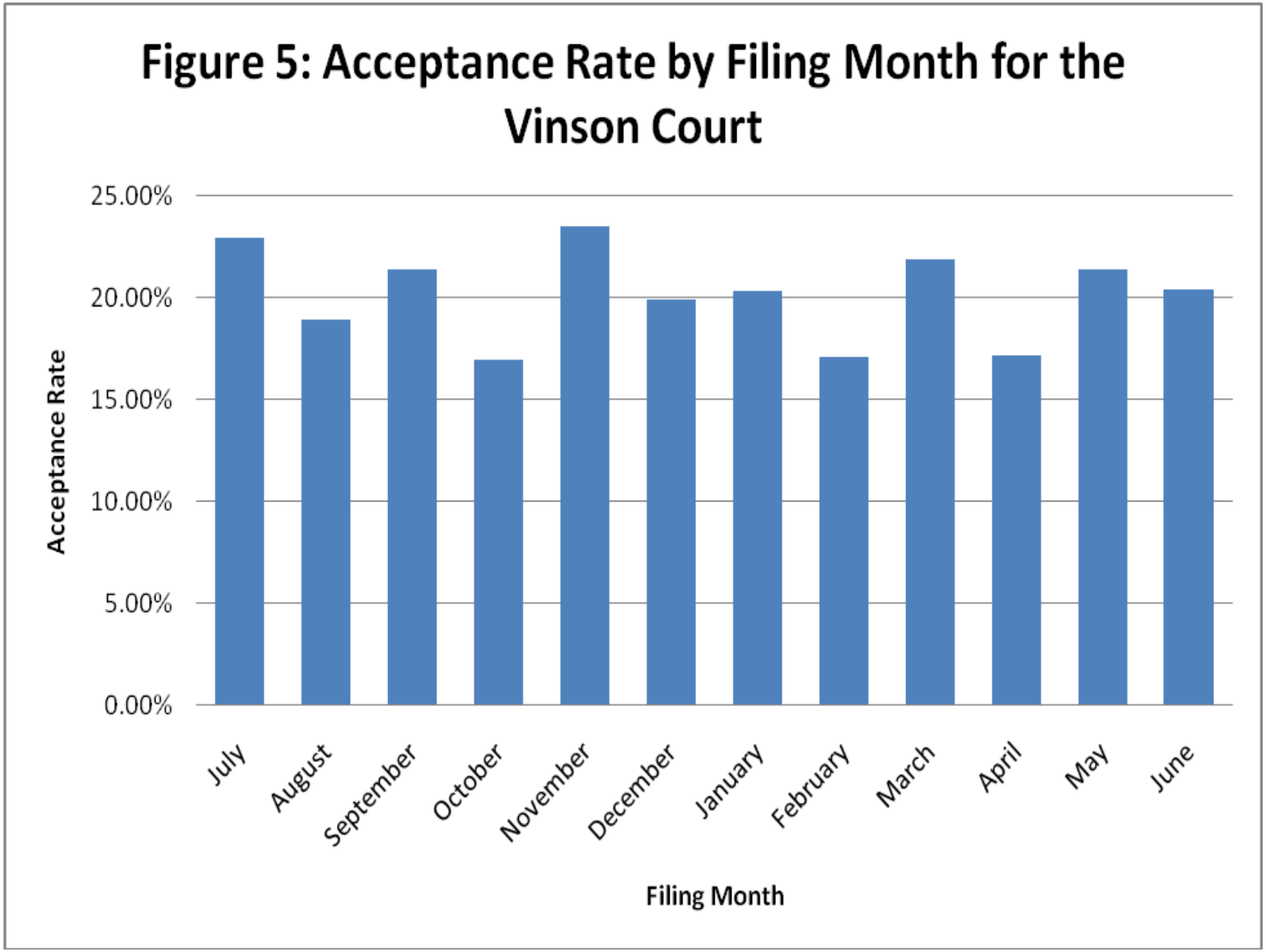
Figure 5: Acceptance Rate by Filing Month for the Vinson Court
25.00%
20.00%
15.00%
10.00%
5.00%
0.00%
Acceptance Rate
July
August
September
October
November
December
January
February
March
April
May
June
Filing Month

Figure 6: Certiorari and Appeal Acceptance Rates by Filing Month for the Vinson Court

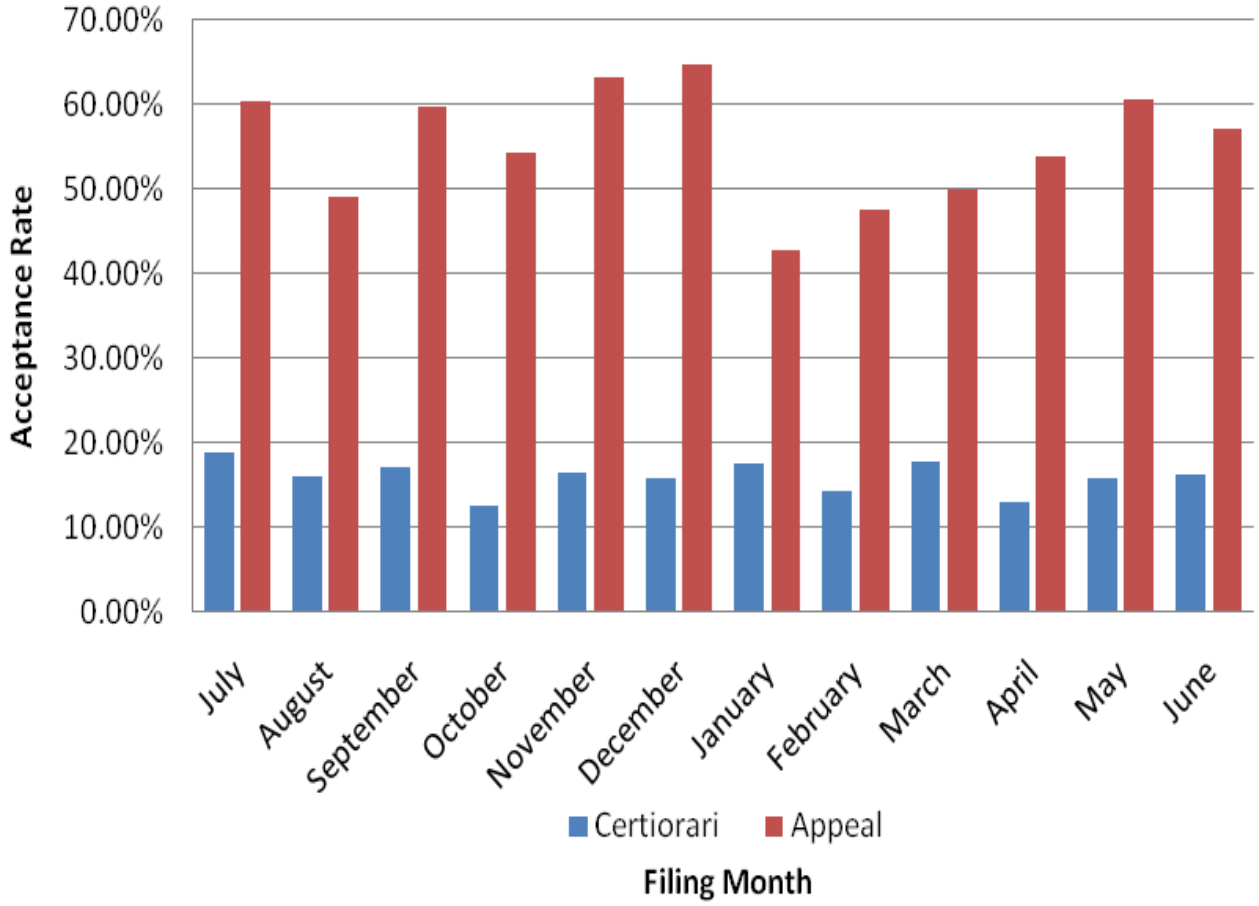

Figure 7: Certiorari and Appeal Acceptance Rates by Decision Month for the Vinson Court