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 9: Criminal Defendants 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). The specific question addressed in this paper is whether criminal defendants are treated differently by the Court in terms of the review decision. Consistent with the findings of prior papers, the results show that the Court is generally less likely to accept cases for review from criminal defendants. One exception is when the criminal defendant is the appellee. Although the number of cases in this category is small, the Court is very likely to accept such cases for review.

Agenda Setting on the Vinson Court
Paper 9: Criminal Defendants as a Factor

This is the ninth 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]

Criminal Defendants as Litigants

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

Table 10 of the seventh paper also found that in criminal cases the Court was more likely to accept a case for review if the government party was a federal entity as

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

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

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

In the eighth paper in the series I followed up on the government party theme and focused specifically on law enforcement entities as parties.[4] The results were consistent with the seventh paper in that the Court was more likely to accept a case for review when a law enforcement entity was the appellant but less likely when a law enforcement entity was the appellee.

In examining the role of government entities and more specifically law enforcement entities in the prior two papers I noted that such entities might fall into the notion of "importance" noted by Perry as a criterion for acceptance (1991, 253-260). I also noted how Ulmer, Hintze, and Kirklosky mention the role of the federal government as a petitioning party. Those factors would still apply to an examination of criminal defendants, but from a different perspective.

The examination in the seventh paper looked generally at government entities. Although part of the analysis involved cases whose primary issue was criminal in nature, the definition of the parties was not specifically limited to law enforcement entities. Moreover, some cases that were criminal in origin were actually coded as civil rights or liberties cases. For example, a criminal obscenity case would be coded as a

[4] The paper is titled, "Agenda Setting on the Vinson Court, Paper 8: Law Enforcement Parties as a Factor."

First Amendment issue rather than a criminal one. Thus, a variety of cases involving law enforcement entities were not included in that analysis.

In the eighth paper the focus was on law enforcement entities as parties regardless of the primary issue in the case as filed before the Supreme Court. That focus was broader and included cases on a wider range of issues, which went beyond those that might be considered primarily criminal issues. Using an obscenity case as an example again, a producer of materials who was charged with violating a criminal obscenity statue would be coded based on his or her role in the issue rather than as a criminal defendant. Without getting too deep into the coding procedures, a quick example would be that a theater owner charged with showing an obscene movie would be coded THEATER rather than one of the codes for a criminal defendant.[5] At the same time, the issue would reflect the obscenity issue rather than something that would be in the standard range for criminal issues. As another example, those protesting discrimination by holding a sit-in might be charged with trespass, but the issue code and code for the defendant protestors would reflect the free speech or civil rights issue rather than a simple criminal issue.

The focus of this paper is narrower and is specifically on criminal defendants—those either accused or convicted of a crime—who are not placed in a broader free speech, civil rights, or similar category. Despite the narrower definition, these cases can

[5] My database follows the coding of Spaeth's United States Supreme Court Judicial Database for many fields. The coding for the party fields was in all capital letters so I will refer to them that way here as well.

still be quite important in terms of constitutional rights involving issues such as search and seizure, the death penalty, and so on.

As in previous papers, the tables that follow will examine several aspects of how the Court treats cases involving accused and convicted criminal defendants.

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.[6] The review decisions for 72 of these 121 cases

[6] 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.

were made after the 1952 Term but are included in the dataset given that those cases were initially filed during the Vinson Court. Also, included in the dataset are 67 cases that originally appeared on the Court's miscellaneous docket and were moved to the appellate docket.[7] 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.[8] This results in a dataset of 5,727 cases.

An additional note on the coding for this examination is necessary before proceeding. As indicated above the focus of this paper is on criminal defendants. Whether a particular case is included in the analysis depends on how the person or entity is coded. In particular, this examination focuses on parties coded AC (person accused of a crime) or CC (person convicted of a crime). Although my database follows the coding of Spaeth's United States Supreme Court Judicial Database for the party codes, there are a few differences and the use of these two codes is one of them. Spaeth's use of these two codes is a bit more complex in that he looks to when the issue (e.g., an illegal search) occurred. My approach to these codes is simpler in that CC is

[7] 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.)

[8] 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.

used if the person, regardless of the issue or its timing, was ultimately convicted of a crime. AC is used when the accused person has not yet been convicted. The latter can include instances such as challenges to excluded evidence or other interlocutory appeals. The distinction between the two codes is that although both types of parties may be under jeopardy for constitutional purposes, it is still more of a potential for someone only accused of a crime rather than someone who has been convicted.

Before proceeding I should also note that there is a third code involving criminal defendants, namely, PRISONER. The basic difference between the CC and PRISONER codes is whether the case is still part of the initial appeals process (CC) or if the convicted defendant is seeking a petition for a writ of habeas corpus (PRISONER) or other collateral attack on the original conviction. Cases with parties coded PRISONER code can also involve challenges to prison conditions or procedures. Cases with parties coded PRISONER will be dealt with separately following the examination of cases with parties coded AC and CC.

Results

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

Table 1 shows the acceptance rates for cases that have a criminal defendant party, either accused or convicted, compared to those cases that do not have a criminal defendant as a party. Unless specified otherwise, no distinction is made between state

or federal cases. The results in Table 1 also do not distinguish between when the accused or convicted person is the appellant or appellee.

TABLE 1 ABOUT HERE

As can be seen from Table 1, about one-eighth of the cases involved a criminal defendant party (701 with criminal defendant party versus 5,026 without). Of the 701 cases involving a criminal defendant party, the Court accepted 112 of them of them for review (16.0%). In contrast, the Court granted review to 1,057 of the 5,026 cases without a criminal defendant party (21.0%). Using a simple difference of means test (Wonnacott and Wonnacott (1972)), the difference in the acceptance rates between cases with a criminal defendant party and those without is significant at $p < .001$ using a two-tailed test.

That the Court is less likely to accept cases for review with a criminal defendant party is not unexpected. We saw in Table 1 of the eighth paper that the Court was less likely to take cases with a law enforcement entity. Having narrowed the examination to cases that are more strictly criminal (i.e., without broader civil rights or liberties issues) it is not surprising that the Court is less likely to accept such cases for review. In addition, for this first comparison the criminal defendant party could be either the appellant or appellee (as could the corresponding law enforcement party). It is also worth noting that the data presented in Table 1 are also not limited to cases petitioning the Court for a writ of certiorari.[9]

[9] In the second paper in the series, "Certiorari and Appeal on the Vinson Court Agenda," I examined the difference in acceptance rates for cases on appeal and those petitioning for a writ of certiorari. Although it was true that the Court was more likely to accept for review cases on appeal, acceptance was far from

TABLE 2 ABOUT HERE

As in the prior two papers the next step is to examine the party of interest as appellant and as appellee. In Table 2 we see the results for comparing cases with criminal defendants as appellants with cases that do not have a criminal defendant as a party. There were 662 cases when the criminal defendant was the appellant and the Court granted review to 81 of them (12.2%). The second row in Table 2 is the same as in Table 1 and shows the Court granted review to 1,057 of the 5,026 cases that did not have a criminal defendant as a party (21.0%). The difference here is even greater than in Table 1, but, again, this is no surprise. Criminal defendants may have little to lose by appealing, particularly if someone else is funding the litigation. Even if these appeals are not clearly frivolous, there certainly seems to be a lower percentage of cases the Court deems worthy of review among them.

TABLE 3 ABOUT HERE

In contrast, Table 3 compares the cases in which a criminal defendant is the appellee with those cases that do not have a criminal defendant as a party. Here, although the number of such cases is much smaller the Court was much more willing to accept them for review. The Court granted review to 31 of the 39 cases when the criminal defendant was the appellee (79.5%). Again, the second row is the same as in Table 1. It is interesting to compare the results here with those of Table 2 in the eighth paper. There the comparison was between cases with a law enforcement entity as the

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automatic and in later papers I usually did not distinguish between the two methods of reaching the Court.

appellant. In Table 3 here a law enforcement entity is the appellant as well, but the focus on the parties and issues is a bit different. The narrower focus on more strictly criminal issues actually results in an increase in the willingness of the Court to accept such cases for review.

As hinted at above, one reason to distinguish between criminal defendant parties coded as AC versus CC is the realized jeopardy present in the latter. The question to then ask is whether the Court might be more willing to accept cases from criminal defendant parties for whom the jeopardy is no longer a potential, in other words, those who have been convicted. Aside from the jeopardy question, there may also be an issue of ripeness. It could be that the Court would be less willing to accept cases from those only accused of a crime on the theory that the issues need not be resolved unless the person is actually convicted. Either way, the next six tables separate accused and convicted criminal defendants for additional comparisons. Note that the second row of these six tables showing the cases without a criminal defendant is the same as in Table 1.

TABLE 4 ABOUT HERE

Table 4 shows the comparison between cases with an accused criminal defendant and those cases without a criminal defendant as a party. The number here is relatively small, only 52 cases, the Court granted review to 27 of them (51.9%). This percentage is much higher than what we saw in Table 1 for the combination of accused and convicted criminal defendants. It also runs counter to the expectations that the Court might be less willing to take such cases. Even so, the difference between these cases and cases

without a criminal defendant still reaches a high level of statistical significance, ($p <$ .001). Of course, the distribution of cases when the accused criminal defendant is the appellant or the appellee may make a difference.

TABLE 5 ABOUT HERE

Table 5 shows the comparison between cases when the appellant is an accused criminal defendant and those cases without a criminal defendant as a party. Of the 28 such cases, the Court granted review to only five of them (17.9%). That percentage is a bit higher than the corresponding percentage in Table 2, but not remarkably so. The difference between the two types of cases compared in this table does not reach a traditional level of statistical significance because the difference is only slightly more than 3% and due to the small number of cases with an accused criminal defendant as the appellant.

TABLE 6 ABOUT HERE

Table 6 shows the comparison between cases with an accused criminal defendant as the appellee and those cases without a criminal defendant as a party. There were only 24 cases with an accused criminal defendant as the appellee but the Court granted review to 22 of them (91.7%). This percentage is well above the corresponding percentage from Table 3 and despite the small number of cases reaches a high level of statistical significance given the overwhelming percentage of acceptances.

The next three tables follow the same pattern as the prior three while examining convicted criminal parties. As in prior tables, the second row for cases without a criminal defendant as a party is the same as in Table 1.

TABLE 7 ABOUT HERE

Table 7 shows the comparison between cases with a convicted criminal defendant as a party and those without a criminal defendant as a party. There are far more cases with convicted criminal defendants as parties than those with just accused criminal defendants as parties. In this table we see that there were 649 cases with a convicted criminal defendant and 85 of them were accepted for review (13.1%). The acceptance rate for cases with a convicted criminal defendant as a party is well below the percentage of the comparison cases and the difference is statistically significant. This is not surprising. We saw in Table 1 that the difference between all cases with a criminal defendant as a party was below that for cases without. Given how we saw in Table 4 that the acceptance rate for cases with an accused criminal defendant as a party was much higher (51.9%), the rate for just convicted criminal defendants must necessarily be lower than the overall percentage shown in Table 1.

TABLE 8 ABOUT HERE

Table 8 shows the comparison between those cases with a convicted criminal defendant as an appellant and those cases without a criminal defendant as a party. There were 634 of these cases and the Court granted review to 76 of them (12.0%). The acceptance rate for just cases with a convicted criminal defendant as a party is only slightly lower than what we saw for the overall rate in Table 2. This is because the number of cases with just an accused criminal defendant as shown in Table 5 was small and the acceptance rate for them was only slightly higher than the overall rate (17.9%).

TABLE 9 ABOUT HERE

Table 9 shows the comparison between cases with a convicted criminal defendant as an appellee and those cases without a criminal defendant as a party. As with the cases with an accused criminal defendant as the appellee, the number is quite small, in this instance only 15. The Court granted review to nine of these cases (60.0%). That acceptance rate is well above the acceptance rate for cases with a convicted criminal defendant as an appellant (Table 8), but still below the acceptance rate for cases with an accused criminal defendant as an appellee (Table 6).

Although I do not include a table for it, there is one more comparison worth mentioning. In prior papers I often compared state versus federal courts for the factor under examination. The numbers for cases with just an accused criminal defendant are too small for reliable comparisons. The numbers for cases with convicted criminal defendants are larger, but it turns out there is little difference between cases coming from the state or federal courts. More specifically, there were 333 cases with a convicted criminal defendant from the federal courts and 37 of them were granted review (11.1%). There were also 301 cases from state courts with a convicted criminal defendant of which the Court accepted 39 for review (13.0%). A small difference that does not reach statistical significance.

As noted above, another category of cases with criminal defendants are those coded PRISONER. Again, the CC code is mainly used for parties challenging their criminal conviction as part of the normal appeals process. In contrast, the PRISONER code usually refers to parties attempting a collateral challenge to their conviction,

usually via a petition for a writ of habeas corpus. Cases with the PRISONER code can also involve issues of prison conditions or procedures.

TABLE 10 ABOUT HERE

Table 10 shows the comparison between all cases with a prisoner as a party and those without. Note that the second row in this table is not the same as in previous tables. Here, and for the next two tables, the second row indicates the number of cases without a prisoner as a party, but includes cases that have an accused or convicted criminal defendant as a party.[10] There were 478 cases with a prisoner as a party and the Court granted review to 42 of them (8.8%). In contrast, there were 5,249 cases without a prisoner as a party and the Court granted review to 1,127 of them (21.5%). This difference is statistically significant and is consistent with what we saw in Table 1 with cases involving either accused or convicted criminal defendants.

TABLE 11 ABOUT HERE

Following the prior pattern, Table 11 shows the comparison between cases with a prisoner as the appellant and those without a prisoner as a party. There were 466 cases with a prisoner as the appellant and the Court granted review to only 32 of them (6.9%). Although the percentage here is much lower, the result is consistent with what we observed in Table 2 for both accused and convicted criminal defendants, as well as in Table 8 for only convicted criminal defendants.

TABLE 12 ABOUT HERE

[10] Although not mentioned previously, the cases indicated in the second row of prior tables included cases with a prisoner as a party.

Completing the pattern, Table 12 shows the comparison between cases with a prisoner as an appellee and those without a prisoner as a party. The number of such cases is quite small, only 12, but the Court granted review to 10 of them (83.3%). This acceptance rate is consistent with what we saw for cases involving an accused criminal defendant as the appellee in Table 6.

TABLE 13 ABOUT HERE

Finally, Table 13 shows the comparison between cases coming from federal and state courts when a prisoner is the appellant. As with cases involving only an accused criminal defendant as a party, those where the prisoner was the appellee are too few for separate examination regarding this aspect of the cases. What we see from Table 13 is that there were 85 cases with a prisoner as the appellant that came from federal courts of which the Court accepted 13 for review (15.3%). In sharp contrast, there were 381 of these cases coming from the state courts and only 19 of them were granted review (5.0%).

Although the difference between cases coming from federal or state courts when the appellant is a prisoner is statistically significant, those familiar with such cases might wonder about the result. In particular, a common pattern for such cases is for a someone convicted in state court to then challenge the conviction in federal court. It is possible, of course, for a state prisoner to challenge a prison policy in state court. Nevertheless, it is more than a little surprising that the number of cases coming from state courts is so high.

A closer examination of these cases reveals an unusual situation. Based on prior court decisions, there were a very large number of resulting cases filed from prisoners in Illinois who challenged their convictions. In fact, of the 362 state cases for which the Court denied review, 334 of them were in just the 1946 Term and 254 of those involved an Illinois warden.[11] In contrast, only one of the 19 cases the Court accepted for review were from the 1946 Term and involved an Illinois warden.

This large set of cases resulting from a particular Court decision casts some doubt on the results in Tables 10 and 11. We might expect that the acceptance rate for cases involving a prisoner might not be all that different from that of cases involving convicted criminal defendants. Although the acceptance rate in Tables 10 and 11 is lower than in Tables 7 and 8, it is not so much lower that we would be suspicious of the result without knowing about the Illinois cases. On the other hand, the point of examining cases with prisoners separate from those with other convicted criminal defendants was to see if the Court treated them differently.

The results of Table 12 are likely more reliable despite the distortion caused by the Illinois cases. The 12 cases with prisoners as the appellee all came from federal courts and only one was from Illinois. That suggests the Court's treatment of these cases was not influenced by the influx of other cases. The acceptance rate for these cases is also in line with the rates for accused criminal defendants and convicted criminal defendants as appellees in Tables 6 and 9, respectively.

[11] In most instances, when a prisoner files a case the opposing party is the warden of the prison in which he or she is housed.

Concluding Comments

It is not surprising that the results in this examination are consistent with those of the eighth paper in the series. That paper examined acceptance rates when law enforcement entities were parties. The examination here involves when criminal defendants were parties. Although the overlap between the cases contained in the two examinations is large, it is not exact. The point here was to narrow the focus to only include cases that were more likely to have a specifically criminal focus rather than something that might be considered more broadly as a civil rights or liberties issue. Although there were some differences in the acceptance rates in the two examinations, they were largely consistent.

Those familiar with the Court's docket are aware of the large number of criminal cases on it. Many of these cases are on what was called the Miscellaneous Docket during the Vinson Court era. Even so, there are still a large number of such cases that appeared on the Court's Appellate Docket. One can point to criminal cases the Court accepted for review and used to make important changes in the law, but the acceptance rate for criminal cases is generally lower than other cases as seen in Table 1 of the eighth paper and Table 1 in this examination.

Both papers also show a distinct difference in whether the law enforcement or criminal defendant party is the appellant or appellee. Not surprisingly, the bulk of cases involving either a law enforcement or criminal defendant party are those with the criminal defendant as the appellant (or law enforcement entity as the appellee). These

cases have a very low acceptance rate, as shown in Table 3 of the eighth paper and Table 2 here.

In sharp contrast, although the number of cases in which the criminal defendant is the appellee (or the law enforcement entity is the appellant) is much smaller, the Court is much more willing to grant review to them, as shown in Table 2 of the eighth paper and Table 3 here. For the criminal defendant to be the appellee (or the law enforcement entity to be the appellant) it means that there must have been either a ruling during the trial or a reversal on appeal in favor of the criminal defendant. At least as to reversals, the fifth paper in the series found that the Court was more likely to accept cases for review when there was a reversal in the courts below.[12]

The results here also showed there to be a difference in how the Court treats cases involving accused versus convicted criminal defendants. As appellants the Court was less likely to accept cases for review from convicted criminal defendants. The rate for accused criminal defendants was higher and the difference from cases without a criminal defendant as a party was not significant, as shown in Table 5. As appellees, the Court was much more likely to accept cases involving both accused and convicted criminal defendants compared to cases without a criminal defendant as a party, but the percentage was much higher for accused criminal defendants. Even so, the number of cases with accused criminal defendants as either appellant or appellee were relatively

[12] The paper is titled, "Agenda Setting on the Vinson Court, Paper 5: Lower Court Reversals and Dissents as Factors."

small, so we should take care to not read too much into them without further examination of the particular cases.

Looking more closely at the data proved important for the third group of cases with criminal defendants, those involving prisoners. Although the results for prisoner cases generally followed expectations based on the prior results, there seemed to be an unusually large number of such cases from state courts. Closer examination of the cases found a very large concentration of these cases in a single term and from one state. Arguably, they are still part of the population of cases to be examined, but they also seem to be a distortion in the type of cases that came before the Court during this period.

As I noted in prior papers, the examination here was bivariate. Even so, we see hints in the results how other factors may also be in play and a later multivariate analysis will undoubtedly help to provide a more complete picture of the Court's agenda setting and the interactions between the several factors that have been shown to be important, here and in prior papers.

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Table 1

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Criminal Defendant Party	112	589	701	16.0%*
Without Criminal Defendant Party	1,057	3,969	5,026	21.0%
Column Total	1,169	4,558	5,727	20.4%

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

Table 2

Acceptance Rates for Cases With a Criminal Defendant as Appellant Compared With Those Without a Criminal Defendant Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Criminal Defendant Appellant	81	581	662	12.2%*
Without Criminal Defendant Party	1,057	3,969	5,026	21.0%
Column Total	1,138	4,550	5,688	20.0%

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

Table 3

Acceptance Rates for Cases With a Criminal Defendant as Appellee Compared With Those Without a Criminal Defendant Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Criminal Defendant Appellee	31	8	39	79.5%*
Without Criminal Defendant Party	1,057	3,969	5,026	21.0%
Column Total	1,088	3,977	5,065	21.5%

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

Table 4

Acceptance Rates for Cases With an Accused Criminal Defendant Compared With Those Without a Criminal Defendant Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Accused Criminal Defendant	27	25	52	51.9%*
Without Criminal Defendant Party	1,057	3,969	5,026	21.0%
Column Total	1,084	3,994	5,078	21.3%

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

Table 5

Acceptance Rates for Cases With an Accused Criminal Defendant as Appellant Compared With Those Without a Criminal Defendant Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Accused Criminal Defendant Appellant	5	23	28	17.9%
Without Criminal Defendant Party	1,057	3,969	5,026	21.0%
Column Total	1,062	3,992	5,054	21.0%

Table 6

Acceptance Rates for Cases With an Accused Criminal Defendant as Appellee Compared With Those Without a Criminal Defendant Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Accused Criminal Defendant Appellee	22	2	24	91.7%*
Without Criminal Defendant Party	1,057	3,969	5,026	21.0%
Column Total	1,079	3,971	5,050	21.4%

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

Table 7

Acceptance Rates for Cases With a Convicted Criminal Defendant Compared With Those Without a Criminal Defendant Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Convicted Criminal Defendant	85	564	649	13.1%*
Without Criminal Defendant Party	1,057	3,969	5,026	21.0%
Column Total	1,142	4,533	5,675	20.1%

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

Table 8

Acceptance Rates for Cases With a Convicted Criminal Defendant as Appellant Compared With Those Without a Criminal Defendant Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Convicted Criminal Defendant Appellant	76	558	634	12.0%*
Without Criminal Defendant Party	1,057	3,969	5,026	21.0%
Column Total	1,133	4,527	5,660	20.0%*

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

Table 9

Acceptance Rates for Cases With a Convicted Criminal Defendant as Appellee Compared With Those Without a Criminal Defendant Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Convicted Criminal Defendant Appellee	9	6	15	60.0%*
Without Criminal Defendant Party	1,057	3,969	5,026	21.0%
Column Total	1,066	3,975	5,041	21.1%

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

Table 10

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Prisoner Party	42	436	478	8.8%*
Without Prisoner Party	1,127	4,122	5,249	21.5%
Column Total	1,169	4,558	5,727	20.4%

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

Table 11

Acceptance Rates for Cases With a Prisoner as Appellant Compared With Those Without a Prisoner Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Prisoner Appellant	32	434	466	6.9%*
Without Prisoner Party	1,127	4,122	5,249	21.5%
Column Total	1,159	4,556	5,715	20.3%

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

Table 12

Acceptance Rates for Cases With a Prisoner as Appellee Compared With Those Without a Prisoner Party on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Prisoner Appellee	10	2	12	83.3%*
Without Prisoner Party	1,127	4,122	5,249	21.5%
Column Total	1,137	4,124	5,261	21.6%

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

Table 13

Acceptance Rates for Cases With a Prisoner as Appellant from Federal Courts Compared With Those from State Courts on the Vinson Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Courts	13	72	85	15.3%*
State Courts	19	362	381	5.0%
Column Total	32	434	466	6.9%

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