# Agenda Setting on the Warren Court

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The paper that follows is one of a series of papers I have written regarding agenda setting on the Warren Court. The papers on Warren Court agenda setting follow the pattern and topics of those I wrote on the Vinson Court's agenda setting. As each paper was completed updates and corrections sometimes changed a few of the specific numbers presented in papers that came earlier in the series. Even so, the general results for each paper did not change. The papers for the Vinson Court were eventually combined into a book titled, *Supreme Court Agenda Setting: The Vinson Court* (available on Amazon.com). The papers for the Warren Court will also be combined in a book to be titled *Supreme Court Agenda Setting: The Warren Court*. It will be available on Amazon.com in the summer of 2023. The book will use the final numbers after all the corrections and updates.

# Agenda Setting on the Warren Court
# Paper 6: Court Level 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 Warren Court (1953 to 1968 Terms). The specific question addressed in this paper is whether a form of ripening occurs based on the level of the lower court (trial court, court of appeals, state supreme court) or the number of judges on a lower court which increases the chances for acceptance by the Supreme Court. The results show that ripening seems to be a factor for cases coming to the Supreme Court from lower state courts but not for the cases coming from lower federal courts. In fact, cases coming from federal district courts have a much higher acceptance rate than those from federal courts of appeal, regardless of whether the case was from a three-judge or single-judge district court.

# Agenda Setting on the Warren Court
# Paper 6: Court Level as a Factor

This is the sixth in a series of papers examining agenda setting on the Warren Court (1953-1968 Terms). This series of papers will follow the structure and topics contained in the series of papers I wrote examining agenda setting on the Vinson Court (1946-1952 Terms). As such, certain elements of the Vinson Court papers will be repeated in the corresponding papers for the Warren Court. The papers for the Vinson Court were eventually combined in a book titled, *Supreme Court Agenda Setting: The Vinson Court 1946 to 1952 Terms*, which is available in electronic form from Amazon.com.

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 focused more specifically on the ideological preferences of judges (e.g., Segal and Spaeth 2002) and a book by Brenner and Whitmeyer (2009) compared 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) noted that aspects of agenda setting have been of interest to judicial scholars at least since Schubert (1959). Perry also noted 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 those 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 (2022) provided 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 clearer picture of how the justices set their agenda. To that end, this study will examine all cases on the Warren Court's appellate docket.[2]

[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. 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 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 2022, 90-91). 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.

## Lower Court Level

In this paper I examine whether the lower court level (trial, intermediate appellate, or state supreme) makes a difference in terms of whether the case is accepted for review by the Supreme Court.

Whether an issue is "ripe" for review is a question that is sometimes considered by court watchers and legal analysts. The basic idea is that when a new issue becomes a matter of litigation it takes time for it to develop in the lower courts before the justices of the Supreme Court feel that it is appropriate for them to weigh in on the matter. The development can take the form of fleshing out the major aspects of the issues involved, determining side issues that may also be important, discovering potential relationships to other issues, uncovering unintended consequences of possible outcomes, and so on.

The Supreme Court will not always stay its hand on new issues. Some may be so clear or so important that the Court is willing to quickly decide an issue. Even so, it is not unusual for a justice to express a desire for caution before the Court wades into a new issue area.[3]

The ripening process obviously involves the lower courts that have an opportunity to consider and decide the issue. Over time, courts in different states and federal jurisdictions may consider a particular issue from different perspectives, may come to different conclusions, and may even weigh in on each other's decisions.

Regardless of the "newness" of an issue, a more practical aspect of this process is the consideration it goes through as it works its way up the judicial hierarchy. Trial courts generally have the first opportunity to deal with an issue. Aspects of a trial court's decision are usually reviewed by an appellate court that may reinforce, refine, or reject the trial court's decision. At

[3] For example, in his concurrence in *Epperson v. Arkansas* (1968) Justice Black noted that, "[T]he Court . . . leaps headlong into the middle of very broad problems involved in federal intrusion into state powers to decide what subjects and schoolbooks it may wish to use in teaching state pupils" (393 US 97, at 110).

the state level, an intermediate appellate court's decision may again be examined by the state supreme court before the case is then appealed to the US Supreme Court. As a result of this process, and at a very basic level, it may be that the justices feel an issue has not gone through enough of the review process if the case is being appealed from either a trial court or an intermediate appellate court as opposed to a state supreme court or a Court of Appeals in the federal system.

The Supreme Court certainly accepts some cases for review that do not come from state supreme courts or a federal Court of Appeals, and the justices undoubtedly look at the nature and quality of the issues involved regardless of what court the case is being appealed from, but to the extent court level matters, we might expect that cases from higher courts in the judicial hierarchy are more likely to be granted review than those from lower ones.

## Data

Data for this study were drawn from an ongoing database project involving all cases on the Supreme Court's appellate docket since the 1946 Term. Data are complete for the Warren Court (1953 through 1968 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 (now called NexisUNI), and other online sources. Every case filed on the Court's appellate docket during the 1953-1968 Terms is included in the dataset. This results in 15,862 cases. Unlike the examinations of the Vinson Court, not included in this number are any cases filed before the 1953 Term that were

held over and received a 1953 Term or later docket number.[4] Included in this number are 308 cases that originally appeared on the Court's miscellaneous docket and were moved to the appellate docket.[5]

## Results

Prior papers in this series have found that the Supreme Court treats cases coming from state courts differently from those coming from federal courts.[6] With that in mind, and given the basic difference between the federal and various state court systems, I will examine cases coming from state courts separately from those coming from federal courts.

### *State Courts*

As shown in Table 1, at the state court level there were 3,349 cases on the Vinson Court docket that came from state high courts. Of these, 562 were accepted for review and 2,787 were denied review for an acceptance rate of 16.8%. In contrast, there were 914 cases that came from either state trial courts or state intermediate appellate courts. Of these 914 cases, 107 were granted review and 807 were denied review, for an acceptance rate of 11.7%.

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[4] 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.

[5] Through the Vinson and Warren Courts, cases originating on the miscellaneous docket (sometimes referred to as the "pauper's docket") that were granted review were usually moved to the appellate docket (sometimes referred to as the "paid docket") and given a new docket number. The Expanded United States Supreme Court Judicial Database, Harold J. Spaeth principal investigator, lists 191 cases with a miscellaneous docket number (with an "M" in the DOCKET field, meaning they were not transferred to the appellate docket) during the 1953-1968 Terms. There are also three cases from the Miscellaneous Docket after the numbering changed. Of these 194 cases, 133 were granted some form of review (usually a short per curiam vacating or reversing), but are not included here. On the other hand, this dataset includes 107 cases initially filed on the appellate docket for which the Court granted *in forma pauperis* status to one of the parties (45 of which were granted review). (For this study I made use of an older version of the Supreme Court Database before it was moved online, which, as of this writing, can be viewed at http://scdb.wustl.edu.)

[6] See, for example, "Agenda Setting on the Warren Court, Paper 5: Lower Court Reversals and Dissents as Factors."

TABLE 1 ABOUT HERE

Using a simple difference of means test, the difference in the acceptance rates between state high courts and state lower courts is statistically significant at $p < .001$. This result comports with the notion that the Supreme Court may prefer to let state cases ripen as they work their way up the court hierarchy before accepting them for review.

One might argue that at least a bit of ripening occurs even for cases that have had state intermediate appellate review. Thus, it is worth exploring whether there is a difference in the acceptance rates between state supreme courts and state intermediate appellate courts.

TABLE 2 ABOUT HERE

Table 2 shows the comparison between the acceptance rate for state high courts and state intermediate appellate courts. The top row shows the figures for state supreme courts and it is the same as in Table 1: 562 cases accepted for review and 2,787 denied for an acceptance rate of 16.8%. The second row shows the figures for state intermediate courts of appeal: 96 cases accepted and 753 denied for an acceptance rate of 11.3%. The acceptance rate for state intermediate appellate courts is slightly lower than what we saw for the combination of state lower courts, but it is still lower than that of state supreme courts with the difference reaching the $p < .001$ level of significance.

Given the findings of Table 2, it is worth examining the difference between state intermediate appellate courts and state trial courts. Table 3 presents this comparison.

TABLE 3 ABOUT HERE

The first row of Table 3 presents the figures for state intermediate appellate courts, which are the same as in the second row of Table 2: 96 accepted cases and 753 denied for an acceptance rate of 11.3%. The second row of Table 3 presents the figures for state trial court

cases. There were only 65 cases from state trial courts and the Court granted review to 11 of them for an acceptance rate of 16.9%. Although this rate is a few percentage points higher than the rate for state intermediate court cases the difference does not reach statistical significance because of the small number of cases involved.

***Federal Courts***

Turning to cases from federal courts, Table 4 shows the basic comparison between the Circuit Courts of Appeals and the District Courts. Here we see that of the 10,082 cases filed from federal Courts of Appeals, the Supreme Court accepted 1,555 cases and denied 8,527 cases for an acceptance rate of 15.4%. The second line of Table 4 shows that of the 907 cases coming to the Supreme Court directly from federal District Courts, 831 were granted review and only 76 were denied for an acceptance rate of 91.6%. That percentage is not a mistake—believe me, I checked several times. Because the results were not in the direction expected, I used a two-tailed test but the results were still highly significant at $p < .001$.

TABLE 4 ABOUT HERE

Contrary to expectations, the Supreme Court accepts a surprisingly higher percentage of cases from District Courts than from Courts of Appeals. Moreover, given the usual understanding that the Court takes a low percentage of any type of case filed before it, an acceptance rate of 91.6% is stunning. Understandably, it also requires further examination.

One set of federal cases left out of those examined in Table 4 were those from the US Court of Claims. The Court of Claims does not fit neatly into either the trial or appellate category. It is a trial court in that it is a court of first instance, but multiple judges hear the cases and appeals go directly to the Supreme Court. To be sure the exclusion of these cases did not

affect the results shown in Table 4 I included them and checked the difference of means test again. The results are presented in Table 5.

TABLE 5 ABOUT HERE

During the Warren Court years there were 450 cases filed from the Court of Claims. Of these, 41 were granted review and 409 were denied. The acceptance rate for these cases was only 9.1%, well below that of even the Court of Appeals cases. As such, their inclusion did not affect the results.

The next factor to consider is whether there is a difference between cases heard by a single judge and those heard by a panel or en banc court. The reason this might make a difference is simply that with more judges deciding a particular case the justices of the Supreme Court might feel that the case has been considered sufficiently in the court below to make review worthwhile.

Federal Courts of Appeal and the Court of Claims hear cases in either a three-judge panel or en banc. Cases in the District Courts are normally heard by a single judge, but some cases of a particular variety are heard by a three-judge panel and appeals then go directly to the Supreme Court. To get at the notion of multi- versus single-judge courts Table 6 shows the comparison of Courts of Appeals, Court of Claims, and three-judge District Court cases versus those from single-judge District Courts.

TABLE 6 ABOUT HERE

There were 545 cases filed before the Warren Court that came from three-judge District Courts. Of these, 520 were granted review and 25 were denied, for an acceptance rate of 95.4%. In Table 5 these 545 cases were part of the District Court row. In Table 6 these cases have been moved to the Multi-Judge row. That increases the number of cases to 11,077, of which 2,116 were granted review and 8,961 were denied for an acceptance rate of 19.1%. In contrast, the

Single-Judge row, now showing only those cases from single-judge District Courts, shows 362 cases of which 311 were accepted and only 51 denied for an acceptance rate of 85.9%. Although the acceptance rate for three-judge District Courts is high, the number of them is overwhelmed when combined with the other multi-judge cases so that the overall acceptance rate rises only slightly from Table 5 (15.1% versus 19.1%). Thus, the difference between multi-judge and single-judge cases is still highly significant at $p < .001$.

TABLE 7 ABOUT HERE

Finally, in Table 7 I compared the difference in acceptance rates between three-judge and single-judge District Courts. As suggested by the figures noted above, the difference between the two types of District Courts is far less than when comparing District Courts with Courts of Appeals and the Court of Claims. Three-judge District Courts have an acceptance rate of 95.4% (520 of 545 cases) and those from single-judge District Courts have an acceptance rate of 85.9% (311 of 362 cases). Despite the smaller difference it does reach statistical significance at $p < .001$.

## Discussion

At least for those cases coming from state courts, the results support the notion that the justices of the Supreme Court prefer cases to have been more thoroughly reviewed in the lower courts before they are accepted for review. We saw this in Tables 1 and 2, where cases from state supreme courts had a higher acceptance rate than other state courts and particularly for state intermediate appellate courts. In an odd twist, however, cases from state trial courts actually had a slightly higher acceptance rate than even state supreme courts (16.9% versus 16.8%).

Although there would likely be disagreement on when a particular issue is ripe for judicial review, particularly by the Supreme Court, most would agree that the issues will be better defined and more clearly understood when a case is reviewed by multiple lower courts and judges. Thus, it was not a surprise that the results for the state cases generally confirmed this logical expectation.

Aside from the notion of ripening, but somewhat related to it, is the way federalism may play into the results. Although there are exceptions, as part of a federal system the Supreme Court will usually allow state courts to interpret their own laws before weighing in on whether those laws are consistent with federal laws. A state trial or intermediate appellate court may have a view of how a state law should be interpreted, but the state supreme court will, of course, have the last say in the matter. Thus, from a federalism perspective, it makes sense for the Supreme Court to prefer cases coming from higher state courts rather than lower ones. Preferring cases from state supreme courts helps to ensure that the Supreme Court will have the most authoritative interpretation of state law possible.

Federalism concerns would not apply regarding cases coming from the lower federal courts, but we still might expect that the notion of ripening would. This proved not to be the case, at least for a simple bivariate examination. As shown in Tables 4 through 6, the Supreme Court accepted for review an unexpectedly high percentage of cases coming from federal district courts (91.6%). Although, the acceptance rate for cases coming from federal courts of appeals was similar to that of cases coming from state supreme courts (15.4% compared to 16.8%)[7], that percentage was far below that for cases coming from the federal district courts.

[7] Although not the focus of this paper, though relatively small this difference was statistically significant at $p < .05$ using a two-tailed difference of means test.

A major difference in the types of cases coming from the federal district courts was whether the case was from a single-judge or three-judge court. Given prior suggestions that the Supreme Court might at least prefer cases from multi-judge courts, the idea being that a multi-judge court provides an additional form of ripening, we might have expected a higher acceptance rate for three-judge districts courts relative to single-judge courts. This proved to be the case as single-judge courts had an acceptance rate several points below that of three-judge courts (85.9% compared to 95.4%).

A likely explanation for the high acceptance rate for federal district courts lies in the difference between cases coming to the Court on appeal versus those that are petitions for writs of certiorari. The second paper in this series took a closer look at certiorari and appeal as methods of reaching the Court and found that cases on appeal were much more likely to be accepted for review.[8] In fact, the 89.1% acceptance rate for all federal cases coming before the Supreme Court on appeal (see Table 2 of the prior paper) is consistent with the acceptance rates found here for both three-judge and single-judge federal district courts (Table 7). Not surprisingly, the vast majority of federal district court cases coming before the Court were on appeal rather than a petition for a writ of certiorari (816 versus 90).[9] Thus, at the very least it seems the notion of ripening in the federal courts is overshadowed by another factor that proved important in examining the Warren Court's agenda setting.[10]

[8] Hagle (2022), "Agenda Setting on the Warren Court, Paper 2:Certiorari and Appeal on the Warren Court Agenda."
[9] One case that was accepted for review came before the court on a petition for a writ of mandamus.
[10] Perry provides a relatively short explanation of the Supreme Court's jurisdiction on appeals from federal district courts (1991, 303-307). A much more detailed examination can be found in Stern and Gressman (1969, 34-70).

## Vinson Court Comparison

As with prior papers in the series, there are similarities with the results from the Vinson Court era and some differences as well. For cases from the state courts, cases from the state supreme courts had a higher acceptance rate than lower state courts in both periods. The same was true when comparing state supreme courts versus state intermediate courts. The main difference was when examining state trial courts. The Vinson Court only accepted 3.9% (10 of 255) of these cases. In contrast, the Warren Court accepted 16.9% (11 of 65). Although the actual number accepted was essentially the same, the much smaller number of these cases filed made the acceptance rate much higher.

In comparing the federal courts, the acceptance rates for courts of appeals and district courts were similar in both periods. The acceptance rate for the courts of appeals was a bit higher during the Vinson Court (17.1% versus 15.4%), but the rate for the district courts was a bit lower (88.0% versus 91.6%). The same basic results held for when Court of Claims cases were added, when comparing multi- versus single-judge courts and for three-judge versus single-judge district courts.

## Conclusion

The notion that the Supreme Court prefers to have cases ripen in some way in the lower courts before it accepts them for review makes sense at a practical level. Such ripening might occur in at least two ways. First, new issues or new twists on familiar issues may need to be considered by multiple courts or judges to get a clearer sense of the scope of the issue. Second, there may be a view, particularly for the state courts, that higher level judges will have a more comprehensive understanding of how the issue fits within current legal requirements and

limitations. Either way, differing points of view of lower court judges can help to highlight various aspects of an issue before review by the Supreme Court.

The results for this examination of ripening in relation to agenda setting on the Warren Court are a bit mixed. The results strongly suggest that the Supreme Court prefers that cases coming from the state courts have gone through more examination below before being accepted for review. On the other hand, the results for cases from the state trial courts and federal district courts seemed to run counter to this notion. That is particularly so given the much higher acceptance rate for cases coming from federal district courts. Nevertheless, both types of cases provide a reminder that more than one factor will affect the Court's agenda setting decisions.

This series of papers is focused largely examining aspects of the Supreme Court's agenda setting in a bivariate fashion. Determining whether a particular factor seems to be related to agenda setting helps to provide a foundation for later multivariate work. Nevertheless, and despite the value of initially considering factors in isolation, the present results remind us of the need for later multivariate study. The difference between the results for the state and federal cases on the question of ripening raised the possibility of how aspects of federalism might come into play. In addition, the failure of the federal cases to show an effect of ripening, even as loosely defined here, made clear that other considerations can overshadow those that seem logical in a general sense. Thus, a more thorough examination of the federal cases will be necessary to determine the extent to which the method of coming to the Supreme Court (certiorari or appeal) dominates other considerations in the context of agenda setting.

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**Table 1**

**Acceptance Rates for State Supreme Court Cases Compared to State Lower Court Cases on the Warren Court's Appellate Docket**

| | Accepted | Denied | Row Total | Acceptance Rate (%) |
|---|---|---|---|---|
| **Supreme Court Cases** | 562 | 2,787 | 3,349 | 16.8%* |
| **Lower Court Cases** | 107 | 807 | 914 | 11.7% |
| **Column Total** | 669 | 3,594 | 4,263 | 15.7% |

* $p < .001$, 1-tail difference of means test (see Wonnacott and Wonnacott 1972, 178)

**Table 2**

**Acceptance Rates for State Supreme Court Cases Compared to State Intermediate Appellate Court Cases on the Warren Court's Appellate Docket**

| | Accepted | Denied | Row Total | Acceptance Rate (%) |
|---|---|---|---|---|
| **Supreme Court Cases** | 562 | 2,787 | 3,349 | 16.8%* |
| **Intermediate Appellate Cases** | 96 | 753 | 849 | 11.3% |
| **Column Total** | 658 | 3,540 | 4,198 | 15.7% |

* $p < .001$, 1-tail difference of means test

**Table 3**

**Acceptance Rates for State Intermediate Appellate Court Cases Compared to State Trial Court Cases on the Warren Court's Appellate Docket**

| | Accepted | Denied | Row Total | Acceptance Rate (%) |
|---|---|---|---|---|
| **State Court of Appeals** | 96 | 753 | 849 | 11.3% |
| **State Trial Courts** | 11 | 54 | 65 | 16.9% |
| **Column Total** | 107 | 807 | 914 | 11.7% |

**Table 4**

**Acceptance Rates for Federal Court of Appeals Cases Compared to District Court Cases on the Warren Court's Appellate Docket**

| | Accepted | Denied | Row Total | Acceptance Rate (%) |
|---|---|---|---|---|
| **Courts of Appeals** | 1,555 | 8,527 | 10,082 | 15.4%* |
| **District Courts** | 831 | 76 | 907 | 91.6% |
| **Column Total** | 2,386 | 8,603 | 10,989 | 21.7% |

* $p < .001$, 2-tail difference of means test

**Table 5**

**Acceptance Rates for Federal Court of Appeals and Court of Claims Cases Compared to District Court Cases on the Warren Court's Appellate Docket**

| | Accepted | Denied | Row Total | Acceptance Rate (%) |
|---|---|---|---|---|
| **Courts of Appeals and Court of Claims** | 1,596 | 8,936 | 10,532 | 15.2%* |
| **District Courts** | 831 | 76 | 907 | 91.6% |
| **Column Total** | 2,427 | 9,012 | 11,439 | 21.2% |

* $p < .001$, 2-tail difference of means test

**Table 6**

**Acceptance Rates for Federal Lower Collegial Court Cases Compared to Single-Judge District Court Cases on the Warren Court's Appellate Docket**

| | Accepted | Denied | Row Total | Acceptance Rate (%) |
|---|---|---|---|---|
| **Multi-Judge** | 2,116 | 8,961 | 11,077 | 19.1%* |
| **Single-Judge** | 311 | 51 | 362 | 85.9% |
| **Column Total** | 2,427 | 9,012 | 11,439 | 21.2% |

* $p < .001$, 2-tail difference of means test

**Table 7**

**Acceptance Rates for Federal Three-Judge District Court Cases Compared to Single-Judge District Court Cases on the Warren Court's Appellate Docket**

| | Accepted | Denied | Row Total | Acceptance Rate (%) |
|---|---|---|---|---|
| **Three-Judge** | 520 | 25 | 545 | 95.4%* |
| **Single-Judge** | 311 | 51 | 362 | 85.9% |
| **Column Total** | 831 | 76 | 907 | 91.6% |

* $p < .001$, 1-tail difference of means test