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 8: Law Enforcement Parties 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 the presence of law enforcement parties in a case affects the chances for acceptance by the Supreme Court. The results show that the Court is slightly more likely to accept a case for review when a law enforcement entity is present. A more detailed examination, however, shows the Court to be much more likely to accept a case when a law enforcement entity is the appellant and slightly less likely when the appellee. There were also differences between law enforcement and other government entities and between federal and state or local law enforcement entities as parties.

Agenda Setting on the Warren Court
Paper 8: Law Enforcement Parties as a Factor

This is the eighth 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 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.

Law Enforcement Parties 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 had an effect on 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, the chances were lessened when the government entity was the appellee in the case. (See Table 3 of the previous paper.[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. (See Tables 8 and 9 of the previous paper.)

The results of the prior 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 opposed to a state or local one. (See Table 10 of the previous paper.) This finding was consistent with a finding of 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.

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 (though there were very few criminal cases with non-law enforcement parties). 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 First Amendment issue rather than a criminal one. Thus, a variety of cases involving law enforcement entities were not included in the prior analysis. In this paper

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

the focus is on law enforcement entities as parties regardless of the primary issue in the case as filed before the Supreme Court.

In the prior paper I noted Perry's comment on "importance" as a factor in whether a case would be accepted for review by the Court (1991, 253-260). He noted that one aspect of such importance is the breadth of the effect a case may have (1991, 254). As I noted in the prior paper, cases involving the federal government would certainly have nation-wide scope, though how broadly any particular case affected people would vary depending on the nature of the issue. This was true for government entities in general, but also for law enforcement entities in particular. As I also noted, cases involving state or local government entities might not be seen as having the same scope or breadth as cases involving a federal government entity. On the other hand, even cases coming from local government entities could have national implications when various constitutional rights are involved.

Also as noted in the previous paper, although Ulmer, Hintze, and Kirklosky (1972) mention as a significant factor the federal government as the petitioning party, one could make an argument for the importance of cases involving the government as the appellee as well. As the appellant, the government might be seeking to reestablish its power or authority that was limited in some way in the lower courts. On the other hand, cases involving a government entity as the appellee might involve instances when the appellant—usually a criminal defendant—believed the government had overstepped its authority or violated a constitutional right. This may be particularly important for cases involving law enforcement entities where the primary issue of the case is not limited to simple criminal matters and includes civil rights or civil liberties issues.

Because of the various possibilities involving law enforcement entities at different levels, I will examine several aspects of government entities as parties in cases seeking review before the Supreme Court.

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 15,858 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]

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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

An additional note on the coding for this examination is necessary before proceeding. The focus here is on government entities acting in a criminal law enforcement capacity. I phrase that a bit differently than just "law enforcement entity" because in some instances an entity normally thought of as law enforcement might be acting in another capacity. For example, we normally think of the Federal Bureau of Investigation (FBI) as a law enforcement entity. The FBI could, however, be involved in a case involving a personnel matter. In such a case the FBI would be coded as an administrative government entity and not included in the current analysis. In addition, the FBI could be coded as a generic government entity (i.e., neither law enforcement nor administrative) if the case involved something like a simple car accident unrelated to any criminal situation (e.g., an FBI employee hits another car on the way to work). Thus, although the primary issue in the cases included is not limited to what were defined as "criminal" in the prior paper, the government entities here must have been acting in some criminal law enforcement capacity for the case to be included.

Results

I begin by noting that of the 15,706 cases in the dataset where the Court made a review decision it accepted 3,099 of them for review. That results in an overall acceptance rate of 19.7%.[6]

Table 1 shows the acceptance rates for cases that have at least one law enforcement party compared to those with no law enforcement parties.[7] Unless specified otherwise, a law

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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] This number is less than the 15,858 noted previously because it does not include 152 cases where the Court did not make a formal review decision. Four of those cases were due to Rule dismissals before the decision and 148 were due to requests for dismissal by the petitioner.

[7] There were three cases with law enforcement parties on both sides of the case. One was federal-state, one was state-federal, and one was local-local. Only the local-local case was granted review.

enforcement party or entity can be any federal, state, or local unit or person acting in an official criminal law enforcement capacity.

TABLE 1 ABOUT HERE

As can be seen from Table 1, about one-quarter of the cases involved at least one law enforcement party (4,036 with a law enforcement party versus 11,670 without). Of the 4,036 cases involving at least one law enforcement party, the Court accepted 841 of them of them for review (20.8%). In contrast, the Court granted review to 2,258 of the 11,670 cases without a law enforcement party (19.3%).

Using a simple difference of means test (Wonnacott and Wonnacott (1972)), the difference in the acceptance rates between cases with a government party and those without is significant at $p < .05$ using a two-tailed test. Again, although one can make an argument that we should expect the Court to be more likely to accept cases with a law enforcement party, unlike Ulmer, Hintze, and Kirklosky (1972) for this comparison I am not limiting the examination to the federal government as the petitioning party (i.e., as the appellant). I am also not limiting the examination to cases petitioning the Court for a writ of certiorari.[8]

The difference between these two types of cases was less than what was found in the prior paper for all government entities. This is not entirely surprising, however, given that another finding from the prior paper suggested that the Court was less likely to take cases with a criminal issue when the government party—which was most likely a law enforcement entity—was the appellee. Even so, Table 1 makes no distinction whether the law enforcement entity was the appellant or appellee, or whether it was federal or a state or local entity. Thus, the use of a two-

[8] In the second paper in the series, "Agenda Setting on the Warren Court, Paper 2: Certiorari and Appeal on the Warren 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 automatic and in later papers I usually did not distinguish between the two methods of reaching the Court.

tailed test is appropriate and although the difference reaches a traditional level of statistical significance, the difference is less than for government entities as a whole.

TABLE 2 ABOUT HERE

I now begin the process of fleshing out the differences of how cases involving law enforcement entities are handled by the Court. Table 2 compares cases with a law enforcement entity as the appellant to those cases without a law enforcement party. The row for non-law enforcement parties is the same as in Table 1. There were only 262 cases with a law enforcement entity as the appellant, but the Court granted review to 120 of them (45.8%). This was a much larger percentage than the acceptance rate for cases without a law enforcement party, which was only 19.3%. Given the findings from the previous paper we might expect the Court to have a higher acceptance rate for cases involving a government party. This proved to be true specifically for law enforcement entities as the appellant. In fact, the acceptance rate for all government parties as appellants, as shown in Table 2 of the prior paper was 52.4%, which was even above the 45.8% acceptance rate for law enforcement entities as appellants.

TABLE 3 ABOUT HERE

Moving on to cases when a law enforcement entity was the appellee, given prior findings we can expect the Court to have been less likely to grant review to such cases. Table 3 shows this to be the case. In Table 3 we see that there were 3,777 cases with a law enforcement entity as the appellee. Once again, the non-law enforcement row is the same as in Table 1. Of the cases with a law enforcement entity as the appellee, the Court granted review to only 722 (19.1%). That percentage was below the percentage for cases without a law enforcement party (19.3%), but only barely. This finding is consistent with that of Table 3 in the previous paper where we saw that the Court was slightly less likely to accept cases for review with a

government entity as the appellee compared to cases without a government party. The difference here, however, was even smaller.

The next step is to look specifically at federal law enforcement parties. The next three tables will consider federal law enforcement parties in general, as appellants, and as appellees.

TABLE 4 ABOUT HERE

Table 4 compares the acceptance rates for cases with a federal law enforcement party as a litigant, appellant or appellee, with those cases with no law enforcement litigant. For this table, as well as the next two, the row for non-law enforcement cases is the same as in Table 1. There were 2,316 cases when a federal law enforcement entity was a party. Of these, the Court accepted 453 for review (19.6%). That was a lower acceptance rate than we saw in Table 1 for all law enforcement entities (i.e., when state and local law enforcement entities were included). The lower percentage for federal law enforcement entities is a bit surprising given the finding of Table 5 in the previous paper which showed a higher rate for federal government parties as litigants as opposed to all government parties. As mentioned previously, the Court seemed to give additional consideration to federal government entities but the findings in Table 4 do not confirm that for federal law enforcement litigants when not controlling for whether they are the appellant or appellee.

TABLE 5 ABOUT HERE

Table 5 shows the more specific comparison of federal law enforcement entities as appellants with cases without a law enforcement entity as a party. There were only 106 of these cases, but the Court accepted 86 of them for review (81.1%). This percentage was much higher than that of Table 2 (45.8%), which also included state and local law enforcement entities as

appellants. Once again it appears the Court was more accepting of cases with federal rather than state or local parties as appellants.

TABLE 6 ABOUT HERE

To complete this set, Table 6 compares the acceptance rates of federal law enforcement entities as appellees with cases without a law enforcement litigant. There were 2,210 cases with a federal law enforcement entity as the appellee. Of these, the Court granted review to 367 of them (16.6%). This is consistent with the finding of Table 3, in that the Court was less likely to accept a case for review with the law enforcement party as the appellee when state and local law enforcement parties were included. Even so, the acceptance rate was a bit lower, 16.6% compared with 19.1% shown in Table 3. That suggests once again that the Court was a bit less receptive to cases involving a federal government party. The acceptance rate for federal law enforcement entities as the appellee was sufficiently below the rate for cases without a law enforcement entity that it reaches a statistical level of significance ($p < .01$).

Before moving to comparisons involving state and local law enforcement it is worth considering how federal law enforcement entities do when another federal government entity was a party. We have seen that the Warren Court was more likely to accept cases when federal government entities were litigants, in general and also specifically for federal law enforcement entities. We have also seen this to be true when the federal government entity was the appellant. In contrast, the Court was less likely to accept a case for review when a federal government entity was the appellant. Given slight differences in these findings when looking at all federal government entities as opposed to specifically federal law enforcement entities, it is worth examining whether there was a difference in how different types of federal government entities were treated.

The next three tables will follow the pattern set above by examining when a federal law enforcement entity was a party, appellant or appellee, and the other party was also a federal government entity, when the federal law enforcement entity was the appellant and another federal government entity was the appellee, and then when a federal law enforcement entity was the appellee and another federal government entity was the appellant.

TABLE 7 ABOUT HERE

Table 7 compares the acceptance rate for cases with a federal law enforcement entity, as appellant or appellee, with those cases that have a non-law enforcement federal government entity (i.e., any federal government entity not acting in a law enforcement capacity) as appellant or appellee. The federal law enforcement row is the same as in Table 7. Specifically, there were 2,316 cases when a federal law enforcement entity was a litigant and the Court granted review to 453 of them (19.6%). There were 4,326 cases in which some other federal government entity was a litigant in a case. The Court accepted 1,120 of these cases for review (25.9%). The difference in acceptance rates, which reaches statistical significance, indicates that the Court was less likely to take a case from a federal law enforcement entity than some other federal government entity.

TABLE 8 ABOUT HERE

Table 8 shows the comparison of acceptance rates between federal law enforcement and other federal government entities when they are appellants. The federal law enforcement row is the same as in Table 5. There were 106 cases in which a federal law enforcement entity was the appellant and the Court accepted 86 of them for review (81.1%). For other federal government entities, there were 669 cases when they were the appellant and the Court granted review to 472

of them (70.6%). Although that acceptance rate is quite high, it is still well below the rate for federal law enforcement entities to a statistically significant degree.

TABLE 9 ABOUT HERE

Table 9 shows the comparison of acceptance rates between federal law enforcement and other federal government entities when they are appellees. The federal law enforcement row is the same as in Table 6. There were 2,210 cases in which a federal law enforcement entity was the appellee and the Court accepted 367 of them for review (16.6%). There were 3,679 cases in which a non-law enforcement federal government entity was the appellee and the Court granted review to 661 of them (18.0%). This difference is relatively small and does not reach traditional levels of statistical significance.

From Tables 7, 8 and 9 we see that when comparing law enforcement to other federal government entities the Court is more likely to accept cases involving non-law enforcement entities (Table 7), but the specifics are more nuanced. The Court was much more likely to accept a case when a federal law enforcement entity was the appellant (Table 8) but slightly less likely to do so when such entities were the appellee (Table 9). The findings of Tables 8 and 9 are consistent with those of Tables 5 and 6 in that whether the federal law enforcement entity was the appellant or appellee made a clear difference in the likelihood of the case being granted review.

The next step is to examine the acceptance rates for state and local law enforcement entities. The approach will be the same as the examinations for federal law enforcement entities. The next three tables will compare the acceptance rates for cases with a state or local law enforcement entity with those for cases without a law enforcement party in general, as appellant, and then as appellee.

TABLE 10 ABOUT HERE

Table 10 shows the comparison in acceptance rates in cases with a state or local law enforcement entity with those cases without a law enforcement entity. The non-law enforcement row is the same as in Table 1, and will be the same in Tables 11 and 12. There were 1,722 cases in which a state or local law enforcement entity was a party and the Court accepted 388 of them for review (22.5%). For cases without a law enforcement entity the Court accepted 2,258 of 11,670 cases for review (19.3%). Thus, the Court was more likely to take cases involving a state or local law enforcement entity. This finding is similar to what we saw in Table 4 for federal law enforcement entities where the Court was more likely to accept such cases for review though the difference here is greater and reaches statistical significance.

TABLE 11 ABOUT HERE

Table 11 shows the comparison of acceptance rates between cases when a state or local law enforcement entity was the appellant and those without a law enforcement entity. There were only 156 such cases and the Court granted review to 34 of them (21.8%). This acceptance rate was above the acceptance rate for non-law enforcement cases, but also well below the rate for federal law enforcement entities as appellants shown in Table 5. The difference with non-law enforcement entities is not statistically significant.

TABLE 12 ABOUT HERE

Table 12 shows the comparison of acceptance rates between cases when a state or local law enforcement entity was the appellee and those without a law enforcement entity. There were 1,567 of these cases and the Court accepted 355 of them for review (22.7%). This result is not surprising given the findings of prior tables.

The results of Tables 11 and 12 are not consistent with those of Tables 5 and 6. Although the Warren Court was much more accepting of federal law enforcement entities as the appellant, they were much less so when the entity was state or local law enforcement. Conversely, the Court was less likely to accept a case when federal law enforcement was the appellee than when it was state or local law enforcement. The difference between Tables 4 and 10, that the Court was only slightly more willing to accept cases with federal law enforcement (appellant or appellee) compared to cases without a law enforcement entity and a bit more willing to accept those with state or local law enforcement, cannot be explained by federalism where the Court might be more likely to take cases from federal government entities.

The next three tables involve state and local law enforcement and follow the pattern for the federal law enforcement in Tables 7, 8, and 9. As with federal law enforcement, it will be interesting to see whether there are differences in how the Court treats various types of state and local government entities.

TABLE 13 ABOUT HERE

Table 13 compares the acceptance rates of all cases with a state or local law enforcement entity as a party with those cases that have a non-law enforcement state or local government entity as a party. The state and local law enforcement row is the same as in Table 10. There were 1,722 such cases and the Court granted review to 388 of them (22.5%). There were 2,322 cases with a non-law enforcement state or local government party and the Court granted review to 599 of them (25.8%). This result is not surprising given that we know the large imbalance between whether the state or local law enforcement entity was the appellant or appellee (Tables 11 and 12).

TABLE 14 ABOUT HERE

Table 14 shows the comparison in the acceptance rates between cases with a state or local law enforcement entity as the appellant with the cases when the appellant was a non-law enforcement state or local government entity. The state and local law enforcement row is the same as in Table 11. Again, there were only 156 cases involving a state or local law enforcement entity as the appellant and the Court accepted 34 of them (21.8%). In contrast, there were 585 cases with a state or local non-law enforcement government entity as appellant and the Court granted review to 204 of them (34.9%). This finding is consistent with prior findings, though it is interesting to see that the acceptance rate for non-law enforcement state or local government entity cases was about a quarter that of the federal level (Table 8).

TABLE 15 ABOUT HERE

Table 15 shows the comparison in acceptance rates between cases with a state or local law enforcement entity as the appellee and those cases with a non-law enforcement state or local government entity as the appellee. The law enforcement row is the same as in Table 12. There were 1,567 cases with a state or local law enforcement entity as the appellee and the Court accepted 355 of them for review (22.7%). There were 1,800 cases with a non-law enforcement state or local government entity as the appellee and the Court granted review to 406 of them (22.6%). We saw in Table 12 that the Court was only slightly more inclined to accept cases with a state or local law enforcement entity as the appellee. What we see in this table is that the acceptance rate for such cases was basically the same as the rate for other state or local government entities as the appellee. Interestingly, the rate for non-law enforcement state or local government entities as the appellee was nearly five points higher than for federal non-law enforcement entities (Table 9).

The final three tables compare the acceptance rate for cases with federal law enforcement entities in the three situations (as either party, as appellant, and as appellee) with those when the law enforcement entity is state or local. Note that the two rows for each of the following tables appeared in prior tables. For example, the federal law enforcement row of Table 16 is the same as in Table 4 and the state and local row is the same as in Table 10. The difference is that the figures in the two rows are now being compared with each other.

TABLE 16 ABOUT HERE

Table 16 shows the comparison in acceptance rates when cases have a federal law enforcement entity as a party (appellant or appellee) with those when one of the parties was a state or local law enforcement entity. As we might have guessed from prior findings, the federal acceptance rate, 19.6%, was lower than for the state or local rate of 22.5%. Again, this result is not surprising given what we know about the distribution of the state and local cases between appellant and appellee.

TABLE 17 ABOUT HERE

Table 17 compares the acceptance rates for the two levels when the law enforcement entity was the appellant. Recall that the acceptance rate when a federal law enforcement entity was the appellant was a very high 81.1%. The rate for state and local law enforcement entities was only 21.8%. The large difference in these percentages reaches a traditional level of statistical significance despite the relatively small number of cases for the two rows.

TABLE 18 ABOUT HERE

Finally, Table 18 shows the acceptance rates for the two levels when the law enforcement entity was the appellee. The acceptance rate when a federal law enforcement entity was the appellee was only 16.6%. The acceptance rate when a state or local law enforcement entity was

the appellee wss several points higher at 22.7%. This difference reaches a traditional level of statistical significance.

Discussion

The results from this examination clearly show that the Warren Court treated cases involving law enforcement entities differently than other cases for purposes of granting review. The differences are nuanced, however, and digging more deeply into the details provided a better understanding of the Court's preferences.

Some of the results shown in this paper confirm aspects of conventional wisdom about how cases involving law enforcement entities are handled at the review stage. We would expect, for example, that the Court would be less likely to accept cases for review when the law enforcement entity is the appellee. This follows from the understanding that many appeals from criminal defendants clearly lack the criteria necessary for review by the Court.

The results are also consistent with the results of the seventh paper in the series which examined government parties more generally. In particular, from the prior paper we learned that the Warren Court was more likely to accept cases with government entities, both in general and when the government party was the appellant. On the other hand, the Court was less likely to accept cases for review when the government party was the appellee. The Court was also more likely to accept cases involving federal government entities as opposed to those involving state or local government entities. Cases involving criminal issues changed the dynamic and provided the impetus for this paper.

In thinking about cases involving law enforcement entities we could reasonably expect that there would be certain differences from the Court's review decisions involving government

parties more generally. In particular, we could expect there to be far more cases with the law enforcement entity as the appellee than as the appellant. That expectation proved correct as shown in Tables 2 and 3, and in later tables when separating federal from state and local law enforcement parties. The different balance between the cases when law enforcement entities appeared as appellant or appellee significantly changed the comparison of these cases relative to cases not involving a law enforcement entity. Although the prior paper found that the Court was almost twice as likely to accept a case for review if it involved a government party compared to the cases that did not involve a government party, Table 1 in this paper showed the difference between cases with a law enforcement party and those without to be minimal (though still statistically significant).

Examining the cases in more detail found that there was a large imbalance in the cases when a law enforcement entity appeared as the appellant versus as the appellee. For example, from Tables 2 and 3 we saw that there were over 14 times as many cases when the law enforcement entity was an appellee than as an appellant. The imbalance was even greater for federal law enforcement at just shy of 21 times as many (Tables 8 and 9), but at the state and local level it was only 10 times as great (Tables 11 and 12).

Consistent with the findings from the prior paper, the Court was more likely to accept cases for review when a law enforcement entity was the appellant. A law enforcement entity's ability to appeal is more limited than that of a criminal defendant's, so the issues are more likely to be ones involving constitutional issues or concerns about government power. On the other hand, from a substantive perspective a criminal defendant's ability to appeal is much broader—at least in theory. The reality is that although there are certainly some cases in which criminal defendants raise important constitutional issues that the Court accepts for review and establishes

a new precedent, the vast majority of appeals by criminal defendants have little merit in the eyes of the justices. In examining these cases one finds that vague claims of "Due Process" violations are frequent.

The large number of cases with law enforcement entities as the appellee reduced the Court's general inclination to accept cases involving government entities, including law enforcement. Interestingly, this proved particularly true for federal law enforcement entities which had an acceptance rate about six points below that of state and local law enforcement entities.

Comparisons between law enforcement and other government entities at the same level indicated that for federal entities although the Court was more likely to accept a case with a law enforcement entity as the appellant than if some other government entity was the appellant, it was less likely to grant review when the government entities appeared as the appellee. In contrast, at the state and local level non-law enforcement entities had a higher acceptance rate as appellants and the rates were nearly equal when the government entities were appellees.

As in the prior paper, the results here question whether there was a federalism component to the Warren Court's preferences. As a percentage, the Court was more likely to accept cases for review if a federal law enforcement entity was involved as the appellant. In general or as the appellee, state and local law enforcement entities had higher acceptance rates. These differences proved statistically significant when directly compared in Tables 16, 17, and 18.

Comparison with Vinson Court

When comparing the results for the Warren Court with those for the Vinson Court we still see some similarities, but there were more differences than for previous papers. One similarity

to note at the outset is that the ratio of cases with law enforcement parties was nearly identical for both Courts despite the increase in the number of cases during the Warren Court period. Nevertheless, there was a slight flip in acceptance rates. For the Vinson Court the acceptance rate for cases with law enforcement entities was about three points lower than for cases without a law enforcement entity. For the Warren Court cases with a law enforcement entity were about a point and a half higher.

When separating the cases into those with the law enforcement entity as appellant and appellee the dramatic differences seen for the Vinson Court were greatly reduced. As appellant, the acceptance rate was about 30 points lower for the Warren Court, though still over twice that for cases without a law enforcement entity. As appellee, a seven point difference in favor of cases without a law enforcement entity was reduced to only 0.2%.

When considering the acceptance rates for only federal law enforcement entities, a four point difference for the Vinson Court was reduced to only 0.3% for the Warren Court. Even so, the differences when considering the federal law enforcement entity as appellant and appellee were similar and both remained statistically significant.

There were also similarities when comparing federal law enforcement entities with other federal government entities. For both Courts, non-law enforcement entities had a higher acceptance rate. The large difference when the entities appeared as appellants was also maintained. As appellees, however, the difference in favor of non-law enforcement entities was reduced for the Warren Court to only 1.4% and not statistically significant.

Turning to the state and local law enforcement entities, it was a bit surprising that an eight point lower difference compared to cases without a law enforcement entity during the Vinson Court turned into a three point advantage during the Warren Court. Interestingly, this flip was

not the result of an increased acceptance rate when the law enforcement entity appeared as an appellant, which went from a 30 point advantage during the Vinson Court to only 2.5% during the Warren Court. As appellee, an eight point disadvantage during the Vinson Court became a three point advantage during the Warren Court.

When comparing state and local law enforcement versus non-law enforcement entities we see a pattern similar to the prior comparisons. The difference when either appellant or appellee was reduced, as was the difference when the entities were appellants. The same was true when the state or local government entities were appellees. There the difference was more than double in favor of non-law enforcement entities during the Vinson Court, but essentially equal during the Warren Court.

Finally, when comparing federal with state and local law enforcement entities the 12 point advantage federal law enforcement entities had during the Vinson Court was flipped to a three point disadvantage. As appellants, federal law enforcement had an even larger advantage during the Warren Court. As appellees, however, a four point advantage during the Vinson Court was flipped to a six point disadvantage during the Warren Court.

Conclusion

To conclude, three basic points seem to follow from these findings. First, the type of party involved in a case made a difference. This is no surprise to those who study the Court, but the results provide details regarding a specific type of government entity. Second, and particularly for cases involving law enforcement entities, whether the entities appeared as appellant or appellee made a difference. The difference was certainly based on the specific nature of these cases and in particular the large imbalance between whether the law enforcement entity appeared

as an appellant or an appellee. Even so, the basis for the difference is certainly worth knowing. Third, an element of federalism that appeared in prior papers did not seem to be present in the Court's review decisions for cases involving law enforcement entities. As noted in the prior paper, the notion of federalism used here is very general and suggests that the Court would be more willing to take cases involving federal entities. The Warren Court, however, was less likely to accept cases involving federal law enforcement entities than those that were state or local. An explanation for this difference may be related to the increasing liberalism of the Warren Court, particularly in the area of criminal justice.

As with previous papers in this series, the results of this examination provide additional information and context about the Supreme Court's agenda setting.

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Table 1

Acceptance Rates for Cases With a Law Enforcement Party Compared With Those Without on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Law Enforcement Party	841	3,195	4,036	20.8%*
Without Law Enforcement Party	2,258	9,412	11,670	19.3%
Column Total	3,099	12.607	15,706	19.7%

* $p < .05$, 2-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

Table 2

Acceptance Rates for Cases With a Law Enforcement Party as Appellant Compared With Those With No Law Enforcement Party on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Law Enforcement Appellant	120	142	262	45.8%*
No Law Enforcement Party	2,258	9,412	11,670	19.3%
Column Total	2,378	9,554	11,932	19.9%

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

Table 3

Acceptance Rates for Cases With a Law Enforcement Party as Appellee Compared With Those With No Law Enforcement Party on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Law Enforcement Appellee	722	3,055	3,777	19.1%
No Law Enforcement Party	2,258	9,412	11,670	19.3%
Column Total	2,980	12,467	15,447	19.3%

Table 4

Acceptance Rates for Cases With a Federal Law Enforcement Party Compared With Those Without on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Party	453	1,863	2,316	19.6%
No Law Enforcement Party	2,258	9,412	11,670	19.3%
Column Total	2,711	11,275	13,986	19.4%

Table 5

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellant Compared With Those With No Law Enforcement Party on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellant	86	20	106	81.1%*
No Law Enforcement Party	2,258	9,412	11,670	19.3%
Column Total	2,344	9,432	11,776	19.9%

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

Table 6

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellee Compared With Those With No Law Enforcement Party on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellee	367	1,843	2,210	16.6%*
No Law Enforcement Party	2,258	9,412	11,670	19.3%
Column Total	2,625	11,255	13,880	18,9%

* $p < .01$, 2-tail difference of means test.

Table 7

Acceptance Rates for Cases With a Federal Law Enforcement Party Compared With Those With a Federal Non-Law Enforcement Party on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Party	453	1,863	2,316	19.6%*
Federal Non-Law Enforcement Party	1,120	3,206	4,326	25,9%
Column Total	1,573	5,069	6,642	23.7%

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

Table 8

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellant Compared With Those With a Federal Non-Law Enforcement Party as Appellant on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellant	86	20	106	81.1%*
Federal Non-Law Enforcement Appellant	472	197	669	70.1%
Column Total	558	217	775	72.0%

* $p < .02$, 2-tail difference of means test.

Table 9

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellee Compared With Those With a Federal Non-Law Enforcement Party as Appellee on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellee	367	1,843	2,210	16.6%
Federal Non-Law Enforcement Appellee	661	3,018	3,679	18.0%
Column Total	1,028	4,861	5,889	17.5%

Table 10

Acceptance Rates for Cases With a State or Local Law Enforcement Party Compared With Those Without on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Party	388	1,334	1,722	22.5%*
No Law Enforcement Party	2,258	9,412	11,670	19.3%
Column Total	2,646	10,746	13,392	19.8%

* $p < .01$, 2-tail difference of means test.

Table 11

Acceptance Rates for Cases With a State or Local Law Enforcement Party as Appellant Compared With Those With No Law Enforcement Party on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Appellant	34	122	156	21.8%
No Law Enforcement Party	2,258	9,412	11,670	19.3%
Column Total	2,292	9,534	11,826	19.4%

Table 12

Acceptance Rates for Cases With a State or Local Law Enforcement Party as Appellee Compared With Those With No Law Enforcement Party on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Appellee	355	1,212	1,567	22.7%*
No Law Enforcement Party	2,258	9,412	11,670	19.3%
Column Total	2,613	10,624	13,237	19.7%

* $p < .01$, 2-tail difference of means test.

Table 13

Acceptance Rates for Cases With a State or Local Law Enforcement Party Compared With Those With a State or Local Non-Law Enforcement Party on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Party	388	1,334	1,722	22,5%*
State or Local Non-Law Enforcement Party	599	1,723	2,322	25.8%
Column Total	987	3,057	4044	24.4%

* $p < .05$, 2-tail difference of means test.

Table 14

Acceptance Rates for Cases With a State or Local Law Enforcement Party as Appellant Compared With Those With a State or Local Non-Law Enforcement Party as Appellant on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Appellant	34	122	156	21.8%*
State or Local Non-Law Enforcement Appellant	204	381	585	34.9%
Column Total	238	503	741	32.1%

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

Table 15

Acceptance Rates for Cases with a State or Local Law Enforcement Party as Appellee Compared With Those With a State or Local Non-Law Enforcement Party as Appellee on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State or Local Law Enforcement Appellee	355	1,212	1,567	22.7%
State or Local Non-Law Enforcement Appellee	406	1,394	1,800	22.6%
Column Total	761	2,606	3,367	22.6%

Table 16

Acceptance Rates for Cases With a Federal Law Enforcement Party Compared With Those With a State or Local Law Enforcement Party on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Party	453	1,863	2,316	19.6%*
State or Local Law Enforcement Party	388	1,334	1,722	22.5%
Column Total	841	3,197	4,038	20.8%

* $p < .05$, 2-tail difference of means test.

Table 17

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellant Compared With Those With a State or Local Law Enforcement Party as Appellant on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellant	86	20	106	81.1%*
State or Local Law Enforcement Appellant	34	122	156	21.8%
Column Total	120	142	262	45.8%

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

Table 18

Acceptance Rates for Cases With a Federal Law Enforcement Party as Appellee Compared With Those With a State or Local Law Enforcement Party as Appellee on the Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Law Enforcement Appellee	367	1,843	2,210	16.6%*
State or Local Law Enforcement Appellee	355	1,212	1,567	22.7%
Column Total	722	3,055	3,777	19.5%

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