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 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 Warren Court (1953 to 1968 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 was generally less likely to accept cases for review from criminal defendants. One exception was when the criminal defendant was the appellee. Although the number of cases in this category was small, the Court was very likely to accept such cases for review.

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

This is the ninth 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.

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 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

[3] The paper is titled, "Agenda Setting on the Warren Court, Paper 7: Government Parties as a Factor."
[4] The paper is titled, "Agenda Setting on the Warren Court, Paper 8: Law Enforcement Parties as a Factor."

Ulmer, Hintze, and Kirklosky (1972) mentioned 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 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.

[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.

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 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 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.[6] Included in this number are 308

[6] 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.

cases that originally appeared on the Court's miscellaneous docket and were moved to the appellate docket.[7]

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 used if the person, regardless of the issue or its timing, was ultimately convicted of a crime. AC is used when the accused person had 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

[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 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.)

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 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%.[8]

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 was the appellant or appellee.

TABLE 1 ABOUT HERE

As can be seen from Table 1, about one-fifth of the cases involved a criminal defendant party (2,936 with criminal defendant party versus 12,770 without). Of the 2,936 cases involving a criminal defendant party, the Court accepted 401 of them of them for review (13.7%). In contrast, the Court granted review to 2,698 of the 12,770 cases without a criminal defendant party (21.1%). Using a simple difference of means test (Wonnacott and Wonnacott (1972)), the

[8] This number is less than the 15,858 noted previously because it does not include 152 cases where the Court did not make a review decision on the substance of the case. One hundred and forty-eight were due to requests for dismissal by the petitioner before the review decision and the remaining four were due to other rule dismissals.

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 was less likely to accept cases for review with a criminal defendant party is not unexpected. 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 was 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]

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 2,872 cases when the criminal defendant was the appellant and the Court granted review to 360 of them (12.5%). The second row in Table 2 is the same as in Table 1 and shows the Court granted review to 2,698 of the 12,770 cases that did not have a criminal defendant as a party (21.1%). 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

[9] 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.

In contrast, Table 3 compares the cases in which a criminal defendant was the appellee with those cases that did not have a criminal defendant as a party. Here, although the number of such cases was much smaller the Court was much more willing to accept them for review. The Court granted review to 41 of the 64 cases when the criminal defendant was the appellee (64.1%). 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 appellant. In Table 3 here a law enforcement entity was 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 was relatively small, only 178 cases, and the Court granted review to 41 of them (23.0%). This percentage was 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. Given that the acceptance rate for cases with an accused criminal defendant was slightly above the rate for cases with no criminal defendant the difference failed to reach a traditional level of statistical significance. Of course, the distribution of cases when the accused criminal defendant was the appellant or the appellee may make a difference.

TABLE 5 ABOUT HERE

Table 5 shows the comparison between cases when the appellant was an accused criminal defendant and those cases without a criminal defendant as a party. Of the 147 such cases, the Court granted review to only 16 of them (10.9%). That percentage is a bit lower than the corresponding percentage in Table 2, but not remarkably so. The difference between the two types of cases compared in this table reaches a traditional level of statistical significance despite 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 31 cases with an accused criminal defendant as the appellee but the Court granted review to 25 of them (80.6%). That 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 very high 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 were 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 2,758 cases with a convicted criminal defendant and 360 of them were accepted for review (13.1%). The acceptance rate for cases with a convicted criminal defendant as a party was 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 higher (23.3%), the rate for just convicted criminal defendants must necessarily have been 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 2,692 of these cases and the Court granted review to 344 of them (12.8%). The acceptance rate for just cases with a convicted criminal defendant as a party was slightly higher 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 slightly lower than the overall rate (10.9%).

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 was quite small, in this instance only 33. The Court granted review to 16 of these cases (48.9%). That acceptance rate was 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 1,810 cases with a convicted criminal defendant from the federal courts and 236 of them were granted review (13.0%). There were also 948 cases from state courts with a convicted criminal defendant of which the Court accepted 124 for review (13.1%). A minimal 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 288 cases with a prisoner as a party and the Court granted review to 82 of them (28.5%). In contrast, there were 15,418 cases without a prisoner as a party and the Court granted review to 3,017 of them (19.6%). This difference is statistically significant but is inconsistent with what we saw in Table 1 with cases involving either accused or convicted criminal defendants. Here, cases involving prisoners had a much higher acceptance rate than those with an accused or convicted criminal defendant.

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 184 cases with a prisoner as the appellant and the Court granted review to 63 of them (34.2%). Interestingly, this acceptance rate was even higher. That means it also moved in the opposite direction from those cases involving an accused or convicted criminal defendant as the appellant (Tables 2, 5, and 8).

TABLE 12 ABOUT HERE

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 was fairly small, only 104, and the Court granted review to 19 of them (18.3%). As with the prior two tables, the results here are inconsistent with prior results for accused and convicted criminal defendants. In this case, the acceptance rate is much lower and only slightly below the rate for cases without a prisoner.

TABLE 13 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.

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 111 cases with a prisoner as the appellant that came from federal courts of which the Court accepted 43 for review (38.7%). In contrast, there were 73 of these cases coming from the state courts and only 29 of them were granted review (27.9%).

Although the difference between cases coming from federal or state courts when the appellant was a prisoner is over 10 points, the difference fails to reach a traditional level of statistical significance.

Discussion

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 Warren Court era. Even so, there were 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 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.[11]

The results here also showed there to be a difference in how the Court treats cases involving accused versus convicted criminal defendants. Overall, the Court was more likely to accept cases for review from accused criminal defendants than convicted ones. Interestingly, however, the acceptance rate for accused criminal defendants was lower than for convicted criminal defendants when they appeared as appellants, but much higher when they appeared as appellees. Even so, the number of cases with accused criminal defendants as either appellant or

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

appellee were relatively 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. The results for the prisoner cases do not follow the same pattern as for the other criminal cases. The acceptance rate for them in general was higher than for both criminal defendant cases and all other cases. It was also higher when the prisoner was the appellant, but lower than when the appellee.

Vinson Court Comparison

As with the eighth paper in the series, there seemed to be more differences in the results with the Vinson Court here than in the earlier papers. When looking at all cases with an accused or convicted criminal defendant both Courts were less likely to grant review to such cases than all other cases, the Warren Court even less so than the Vinson Court. The acceptance rate for both Courts was nearly equal when the criminal defendants appeared as the appellant, but the Warren Court had a much higher acceptance rate when the criminal defendant was the appellee.

In looking only at the cases with an accused criminal defendant, the Vinson Court was much more likely to grant review. This was true for both when the accused criminal defendant was the appellant or the appellee. Even so, for both Courts the numbers were relatively low.

For cases with a convicted criminal defendant both Courts had nearly equal acceptance rates. The rates were also almost the same when the convicted criminal defendant appeared as an appellant. When the convicted criminal defendant appeared as an appellee the Vinson Court had a much higher acceptance rate than the Warren Court, but the numbers were very low for both Courts (only 15 during the Vinson Court and 33 during the Warren Court).

It is with the prisoner cases that we see some substantial differences between the Courts. The Vinson Court was significantly less likely to grant review to a case involving a prisoner but the Warren Court was significantly more likely to do so. This difference also held for cases with the prisoner as the appellant. When the prisoner appeared as the appellee, the Vinson Court was very likely to grant review (though there were only 12 such cases). In contrast, the Warren Court was slightly less likely to grant review compared to non-prisoner cases.

Finally, when comparing state and federal cases when the prisoner was an appellant, there was a significant difference in favor of the federal court cases during the Vinson Court. In contrast, although the percentage difference for the Warren Court was about the same ten points in favor of the federal cases, the difference was not statistically significant. This was because the numbers for such cases were much smaller during the Warren Court (only 184 compared to 466 during the Vinson Court).

Conclusion

One particular factor is worth emphasizing at this point. During the Vinson Court there was a very large set of cases involving prisoners challenging their convictions. This group of cases came at essentially the same time and from the same state (Illinois). These cases undoubtedly skewed the results involving such cases during the Vinson Court. There was no similar set of cases during the Warren Court, so what we see here may be closer to normal. On the other hand, the liberal leanings of the Warren Court were manifested here in a greater tendency to take cases with criminal defendants.

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 Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Criminal Defendant Party	401	2,535	2,936	13.7%*
Without Criminal Defendant Party	2,698	10,072	12,770	21.1%
Column Total	3,099	12,607	15,706	19.7%

* $p < .001$, 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 Warren Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Criminal Defendant Appellant	360	2,512	2,872	12.5%*
Without Criminal Defendant Party	2,698	10,072	12,770	21.1%
Column Total	3,058	12,584	15,642	19.5%

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

Table 3

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Criminal Defendant Appellee	41	23	64	64.1%*
Without Criminal Defendant Party	2,698	10,072	12,770	21.1%
Column Total	2,739	10,095	12,834	21.3%

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

Table 4

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Accused Criminal Defendant	41	137	178	23.0%
Without Criminal Defendant Party	2,698	10,072	12,770	21.1%
Column Total	2,739	10,209	12,948	21.2%

Table 5

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Accused Criminal Defendant Appellant	16	131	147	10.9%*
Without Criminal Defendant Party	2,698	10,072	12,770	21.1%
Column Total	2,714	10,203	12,917	21.0%

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

Table 6

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Accused Criminal Defendant Appellee	25	6	31	80.6%*
Without Criminal Defendant Party	2,698	10,072	12,770	21.1%
Column Total	2,723	10,078	12,801	21.3%

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

Table 7

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Convicted Criminal Defendant	360	2,398	2,758	13.1%*
Without Criminal Defendant Party	2,698	10,072	12,770	21.1%
Column Total	3,058	12,470	15,528	19.7%

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

Table 8

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Convicted Criminal Defendant Appellant	344	2,348	2,692	12.8%*
Without Criminal Defendant Party	2,698	10,072	12,770	21.1%
Column Total	3,042	12,420	15,462	19.7%

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

Table 9

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Convicted Criminal Defendant Appellee	16	17	33	48.9%*
Without Criminal Defendant Party	2,698	10,072	12,770	21.1%
Column Total	2,714	10,089	12,803	21.2%

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

Table 10

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Prisoner Party	82	206	288	28.5%*
Without Prisoner Party	3,017	12,401	15,418	19.6%
Column Total	3,099	12,607	15,706	19.7%

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

Table 11

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Prisoner Appellant	63	121	184	34.2%*
Without Prisoner Party	3,017	12,401	15,418	19.6%
Column Total	3,080	12,522	15,602	19.7%

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

Table 12

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Prisoner Appellee	19	85	104	18.3%
Without Prisoner Party	3,017	12,401	15,418	19.6%
Column Total	3,036	12,486	15,522	19.6%

Table 13

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Courts	43	68	111	38,7%
State Courts	20	53	73	27.4%
Column Total	63	121	184	34.2%