Agenda Setting on the Burger Court

Timothy M. Hagle
The University of Iowa

The paper that follows is one of a series of papers I have written regarding agenda setting on the Burger Court. The papers on Burger Court agenda setting follow the pattern and topics of those I wrote on the Vinson and Warren Courts' 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 were combined in a book titled *Supreme Court Agenda Setting: The Warren Court* (also available on Amazon.com). The paper for the Burger Court will be combined in a book to be titled *Supreme Court Agenda Setting: The Burger Court*. I expect it will be available on Amazon.com in the summer of 2026. The book will use the final numbers after all the corrections and updates.

Agenda Setting on the Burger Court
Paper 5: Lower Court Reversals and Dissents as Factors

Timothy M. Hagle
The University of Iowa

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 Burger Court (1969 to 1985 Terms). The specific question addressed in this paper is whether lower court reversals or disagreement increase the likelihood of a case being accepted for review by the Supreme Court. The results show that for cases coming from both state and federal courts the presence of a reversal or dissent below significantly increases the likelihood of the Supreme Court accepting the case for review.

Agenda Setting on the Burger Court
Paper 5: Lower Court Reversals and Dissents as Factors

This is the fifth in a series of papers examining agenda setting on the Burger Court (1969-1985 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) and the Warren Court (1953-1968 Terms). As such, certain elements of the prior papers will be repeated in the corresponding papers for the Burger 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*, and those of the Warren Court in a book titled, *Supreme Court Agena Setting: The Warren Court (1953 to 1968 Terms*, both of which are 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 appeals (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) was 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 thousands of petitions seeking review by the Supreme Court are filed each year, the justices only accept about 150 or fewer for plenary review (i.e., full briefs submitted, oral arguments held, and opinions written), with maybe a few hundred more disposed of summarily (i.e., the Court simply affirms, reverses, or vacates in a very short per curiam opinion, sometimes as little as "Judgment affirmed."). Thus, scholars have long thought that the justices must use some strategy or process to reduce their workload to manageable levels (e.g., Hagle 1990).

In his book-length examination of Supreme Court agenda setting Perry (1991) notes that aspects of agenda setting have been of interest to judicial scholars at least since Schubert (1959). Perry also notes that a few years later Tanenhaus, Schick, Muraskin, and Rosen, (1963) formulated "cue theory" as a way of explaining how the justices were able to navigate the "sea of work that must be processed" (1991, 114). As Perry goes on to note, cue theory fell out of favor when later, more sophisticated, studies failed to replicate the initial results (1991 116). Nevertheless, although a study by Ulmer, Hintze, and Kirklosky rejected two of the three cues

Tanenhaus et al., found significant, a third—the federal government as a petitioning party—was significant and the authors concluded that cue theory retained some viability (1972, 642).

Regardless of how cue theory itself has developed, like these two early examinations of the Supreme Court's agenda setting many later studies focused on how the justices deal with the large number of petitions for writs of certiorari.[1] Caldeira and Wright (1988), for example, examined organized interests in agenda setting with respect to the cert petitions filed during the Court's 1982 Term. In a recent edition of his text on the Supreme Court, Baum (2022) provided an example of recent work examining litigant status (Black and Boyd 2012). Thus, although the examination of agenda setting on the Supreme Court is of continuing interest to judicial scholars previous studies have usually focused only on cert petitions (Tanenhaus et al. 1963), specific issues (Caldeira and Wright 1988; Black and Boyd 2012), particular terms (Ulmer, Hintze, and Kirklosky 1972), or sampling for their data collection (Tanenhaus et al. 1963; Perry 1991). A more comprehensive examination of the cases filed before the Supreme Court will provide a clearer picture of how the justices set their agenda. To that end, this study will examine all cases on the Burger 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.

Reversals and Dissents in the Lower Courts

One possible signal or cue that justices may use in determining whether to accept a case for review is the existence of disagreement in the lower courts as a case makes its way to the Supreme Court. Such disagreement can take two basic forms: reversals as the case moves up the judicial ladder and dissents among the judges or justices of a particular lower court. Each type of disagreement might signal to the Supreme Court justices that the law is unclear and reasonable legal minds disagree on the issue. This, in turn, might prompt the Supreme Court justices to feel they should accept a case for review to settle the matter.

Although I anticipate cases with such disagreements to have a higher acceptance rate than those without, I recognize that a reasonable counter-argument exists. Specifically, one could argue that such disagreements suggest that the law is not settled sufficiently and that the justices may want to let the issues "percolate" or "ripen" a bit more in the lower courts. One can certainly point to instances where some speculated the Court's justices chose to not hear a case because the issue was not yet ripe for their review.[3] I believe, however, that such instances are small compared to those where the justices feel a need to clarify the law because of reversals and disagreements below.[4]

[3] Although the Court granted review to it, the Court's decision to not resolve the substantive issues in *DeFunis v. Odegaard* (1974) is often seen as an example where the justices wanted to let the affirmative action issue percolate a bit more in the lower courts before they weighed in.

[4] Along similar lines, it is well known that the Court is more likely to grant review to resolve a conflict among the federal circuit courts (Perry 1991, 246-252), which is effectively a form of disagreement (though not one examined here).

Data

Data for this study were drawn from an ongoing database project involving all cases on the Supreme Court's appellate docket from the Vinson Court through the Burger Court (1946 through 1985 Terms). Data are complete for the Burger Court (1969 through 1985 Terms) and provide a relatively lengthy 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 number during the 1969-1985 Terms is included in the dataset. This results in 33,112 cases. Unlike the examinations of the Vinson Court, not included in this number are any cases filed before the 1969 Term that were held over and received a 1969 Term or later docket number.[5] Included in this number are 23 cases that originally appeared on the Court's miscellaneous docket and were moved to the appellate docket.[6]

[5] Prior to the 1971 Term held over cases were renumbered at the start of each term and there was no two-digit term indicator. For example, *Brown v. Board of Education* was initially filed during the Court's 1951 Term and given the docket number 436. It was held over to the 1952 Term with the new docket number 8, and again for the 1953 Term with the docket number 1.

[6] Through the Vinson and Warren Courts, cases originating on the miscellaneous docket (sometimes referred to as the "pauper's docket") that were granted review were usually moved to the appellate docket (sometimes referred to as the "paid docket") and given a new docket number. The Expanded United States Supreme Court Judicial Database, Harold J. Spaeth principal investigator, lists 12 cases with a miscellaneous docket number (with an "M" in the DOCKET field, meaning they were not transferred to the appellate docket) during the 1969-1985 Terms. There were also a large number of cases from the Miscellaneous Docket after the numbering changed. Many of these cases 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 1,344 cases initially filed on the appellate docket for which the Court granted *in forma pauperis* status to one of the parties (587 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.)

Results

I begin by examining cases with one or more reversals versus those without.[9] The first thing to note is that there are many instances where the first court to hear the case is the only one to do so before the case is filed before the Supreme Court. Many cases filed before the Supreme Court come from either state or federal trial courts where there would be no opportunity for a reversal. In addition, there are certain types of issues that begin in a state or federal appellate court and then are appealed directly to the Supreme Court. At the state level a common example concerns attorney discipline cases which typically begin in the state's highest court. At the federal level there are many cases that begin in one of the federal courts of appeal and then proceed to the Supreme Court.[10] Removing cases where there is no opportunity for a reversal to occur results in a dataset of 8,177 state cases and 20,199 federal cases, for a total of 28,376 cases.

One additional point is worth noting before proceeding. In many cases the higher court will issue a decision affirming the lower court in part and reversing in part. Whether such cases were coded as a reversal depended on the issue appealed to the Supreme Court. For example, in criminal cases the lower court might affirm on some counts and reverse on others. The defendant who appealed would do so on the basis of the parts of the lower court opinion affirmed rather than those reversed. Such cases would not be coded as having a reversal for purposes of this examination.[11]

---

[9] Depending on the judicial path the case took to reach the Supreme Court it was possible for it to have more than one reversal in the lower courts. For purposes of this examination I do not distinguish between cases with only one reversal and those with more than one.

[10] Many such cases come from one of several federal agencies with quasi-judicial powers (e.g., National Labor Relations Board, Securities Exchange Commission). Because the federal agencies are not courts, the Courts of Appeals are the first and only court to hear such cases before they are appealed to the Supreme Court.

[11] More generally, this is true for the database as a whole. Although there are codes for cases affirmed in part and reversed (or vacated) in part for the Supreme Court's dispositions, for lower court dispositions the case was examined to determine the part or issue being appealed and coded accordingly.

TABLE 1 ABOUT HERE

Table 1 shows the number of cases accepted or denied review based on whether there were reversals in the lower courts. Of the 28,376 cases where a reversal was possible, 7,314 had a reversal and 21,062 did not. Overall, 2,834 of the 28,376 cases were accepted for review. That produced an overall acceptance rate for these cases of 10.0%. For cases with reversals the percentage was a nearly double at 19.0% (1,389 accepted of 7,314 cases). On the other hand, cases with no reversals had a lower acceptance percentage at 6.9% (1,445 of 21,062 cases). Using a difference of means test (see Wonnacott and Wonnacott 1972, 178), this difference is significant at $p < .001$. Thus, a case with a reversal in the lower courts had a much better chance of being accepted for review than one that did not.

Earlier papers in this series noted differences in how the Supreme Court handles cases coming from the state courts versus those coming from the federal courts. Thus, it is worthwhile to separately examine state and federal cases.

TABLE 2 ABOUT HERE

Table 2 separately presents the results for cases coming to the Supreme Court through state and federal court systems.

For state cases (Table 2A) we see that overall 667 of 8,177 cases were granted review for an acceptance rate of 8.2%. Breaking these cases into those with and without reversals we see that only 13.0% of the cases with reversals were accepted (276 of 2,124), while 6.5% of those without reversals were accepted (391 of 6,053). This difference reaches statistical significance at $p < .001$.

There was a much larger number of federal cases (Table 2B), but the overall acceptance rate of 10.7% (2,167 of 20,199 cases) was relatively close to that of the state cases. Of the cases

with reversals the acceptance rate was 21.4% (1,113 of 5,190 cases), while for those without reversals the acceptance rate was 7.0% (1,054 of 15,009 cases). The difference is significant at $p < .001$.

Although I do not present it in a separate table, it is also interesting to compare the difference in the acceptance rate for state versus federal cases with reversals. Comparing the first row in Table 2A with the first row in Table 2B we see that state cases with reversals had a lower acceptance rate than federal cases with reversals (13.0% compared to 21.4%). This difference is significant at $p < .001$.

These results show that for both federal cases, and the combined totals of state and federal cases, cases with a lower court reversal are more likely to be accepted for review than those without one. Moreover, the likelihood of acceptances for federal cases with a reversal is higher than state cases with a reversal.

The second type of lower court disagreement occurs when one or more judges or justices in the lower courts dissent. Here again, we must begin by eliminating cases in which no dissent is possible. At the state court level this would eliminate all trial courts. At the federal level the issue is a little more complicated as federal district courts can have three-judge panels, and the federal Court of Claims hears cases in panels. Taking these factors into consideration leaves 8,891 state cases and 23,865 federal cases, for a total of 32,756 cases with the possibility of a dissent.

TABLE 3 ABOUT HERE

In Table 3 we see a very large difference in the acceptance rates between cases with and without a lower court dissent. Of the 4,446 cases with a dissent, 1,179 were accepted for review

(26.5%). In sharp contrast, only 3,157 of the 28,310 cases without a dissent were accepted (11.2%). Not surprisingly, this differences is significant at $p < .001$.

TABLE 4 ABOUT HERE

As with reversals, it is worthwhile to separate the state and federal cases with dissents and Table 4 presents those results. Table 4A shows the results for state cases with dissents. Here the Supreme Court accepted 236 of 1,567 cases for an acceptance rate of 15.1%. The acceptance rate for state cases without dissents was much lower at 6.6% (480 of 7,324 cases). Table 4B shows the results for federal cases with and without dissents. As with the state cases, federal cases with dissents had a relatively high acceptance rate of 32.8% (943 of 2,879 cases) which was over two and a half times the rate for those without dissents (12.8%, 2,677 of 20,986 cases). The difference is significant at $p < .001$.

Although not presented in a table, comparing the acceptance rates of state versus federal cases with dissents (the first row from Tables 4A and 4B) we see that like the cases with reversals, federal cases had a higher acceptance rate. This difference is significant at $p < .001$.

The final point to consider is whether there is a compound effect for cases with both reversals and dissents. In other words, do cases with both reversals and dissents in the lower courts have a higher acceptance rate than cases with one or the other, or neither. Table 5 presents these results.[12]

TABLE 5 ABOUT HERE

Table 5A shows the results of comparing cases with both a reversal and a dissent against those that have either a reversal or a dissent. Table 5B shows the results for comparing cases with both a reversal and a dissent with those that have neither. The top row for both tables is the

[12] Without going into the details, the total number of cases indicated in Tables 5 through 7 varies due to the different criteria required to produce cases where either a reversal or dissent, or both, was possible.

same. Specifically, there were 1,753 cases with both a reversal and a dissent and 490 of those were accepted for review (28.0%).

In Table 5A we see that there were 10,668 cases that had either a reversal or a dissent and of those only 1,830 were granted review (17.2%). This difference compared to the cases having both a reversal and a dissent is significant at $p < .001$. The comparison of the both versus neither cases in Table 5B also shows a larger disparity in the acceptance rates. Here, the acceptance rates for the cases with both a reversal and a dissent was nearly twice the rate for neither, which was only 5.5% (1,042 of 19,020 cases). This difference is significant at $p < .001$.

Proceeding as before, Tables 6 and 7 show the comparisons of Table 5 by examining state and federal cases separately.

TABLE 6 ABOUT HERE

Looking first at the state cases, we do not see the pattern from Table 5 repeated. Here, although the difference between those cases with either a dissent or a reversal (13.4%) and those with both (16.3%) reaches statistical significance ($p < .05$) the difference is much smaller than shown in Table 5A. On the other hand, in Table 6B we see the difference between cases with both a dissent and reversal (16.3%) versus those with neither (5.2%) is similar to that shown in Table 5B and is statistically significant ($p < .001$).

TABLE 7 ABOUT HERE

Turning to the federal cases in Table 7, the pattern seen in Table 5 for cases with both a reversal and a dissent is repeated when those cases are compared against cases with one or the other (Table 7A) and those with neither (Table 7B). The acceptance rate for cases with both a reversal and a dissent is 35.5% (378 of 1,065 cases). This is higher than the 18.6% acceptance rate for those with one or the other (1,444 of 7,777 cases) and reaches statistical significance ($p <$

.001). It is also more than twice the 5.6% acceptance rate for cases with neither (767 of 14,813 cases; $p < .001$).

Discussion

Working through the various comparisons in Tables 1 through 7 shows that the existence of some form of disagreement in the lower courts, reversals or dissents, is associated with an increased probability that a case will be accepted for review by the Supreme Court. The increase is fairly robust in that it occurs for both reversals and dissents, but more so for federal than state cases.

When comparing the acceptance rates for state versus federal cases we see a difference between cases with reversals versus those with dissents. For cases with reversals, federal cases had a higher acceptance rate than state cases (21.5% versus 12.9%). Given the findings of prior papers in the series this is as we might have expected. The difference is significant at $p < .001$. Cases with dissents also met the expected pattern. In those cases the acceptance rate for federal cases was higher than that for state cases (32.8% versus 15.1%). This difference is also significant at $p < .001$.

That both reversals and dissents as indicators of lower court disagreement prove to be associated with higher acceptance rates led to the question of whether there is a cumulative difference when both of the factors are present. Tables 5 through 7 examined this possibility by comparing cases with both factors versus cases that had only one factor or neither. Interestingly, although there was a statistically significant difference between the cases with both a reversal and a dissent versus those with one or the other (Table 5A) or with neither (Table 5B) when all cases were considered, it turned out the effect was much stronger in federal cases. For state

cases, both comparisons reached statistical significance, but the difference was rather small, if there was only one factor present (Table 6A).

Aside from the statistical significance of the results, it is worth considering the actual differences in the acceptance rates when these factors are present. For the cases with reversals, that factor was associated with an increased acceptance rate of a bit over 14% in federal cases. On the other hand, state cases with a reversal were a little over 6% more likely to be accepted.

The effect was even greater for cases with dissents. For state cases, the presence of a dissent in the lower courts was associated with an increase in the chances of an acceptance by more than double (moving from 6.6% to 15.1%). The acceptance rate for federal cases started at acceptance rates about twice those of state cases for both cases with and without dissents. Even so, the acceptance rate for cases with a dissent was more than twice that of those without (moving from 12.8% to 32.8%).

Without doing the calculations, the associated increases were also interesting when considering the combined effect of reversals and dissents for the federal cases (Table 7). A dissent in the court below seemed add more to the acceptance rate than a reversal (Tables 4B and 2B), but the combined effect (Table 7) still added a few percentage points to the likelihood of a case being granted review by the Supreme Court.

Conclusion

The idea that the justices of the Supreme Court look for cues of one sort or another in selecting cases for review is not new. Neither is the belief that they are likely to take cases when there are disagreements among the judges and justices in the lower courts. Such disagreements can be manifested in the occurrence of reversals as a case works through the state or federal

court systems to reach the Supreme Court. It can also be manifested in dissents among the lower court judges or justices. The presence of either factor may be a signal to the Supreme Court's justices that the law is unclear or unsettled in some way that is worth their attention. The results show a strong and fairly robust relationship between the presence of these factors and higher acceptance rates. This in turn further informs our understanding of the agenda setting process during the Burger Court years.

As a practical matter, there are several reasons why parties seek Supreme Court review of their cases. For some it is simply a matter of wanting to have the Court reverse an unfavorable lower court ruling. For others it may be a desire to change or test some area of the law. Litigants who wish for a change in the law often seek test cases that will present their position in the best light possible. Of course, before the Supreme Court can rule on an issue it must first agree to review a case presenting it. That means that litigants must also seek test cases that have the best chance possible of being accepted for review. This study has demonstrated that disagreement in the lower courts, manifested by either reversals or dissents, can, in most instances, dramatically improve a case's chances of being accepted by the Court.

References

Baum, Lawrence. 2022. *The Supreme Court*, 14th Edition. Washington, DC: CQ Press.

Black, Ryan C., and Christina L. Boyd. 2012. "U.S. Supreme Court Agenda Setting and the Role of Litigant Status." *Journal of Law, Economics & Organization*, (June 2012): 286-312.

Brenner, Saul, and Joseph M. Whitmeyer. 2009. *Strategy on the United States Supreme Court*. New York: Cambridge University Press.

Brown v. Board of Education, 347 US 483 (1954).

Caldeira, Gregory A., and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review*, 82:1109-1127.

DeFunis v. Odegaard, 416 US 312 (1974).

Epstein, Lee, and Jack Knight. 1998. *The Choices Justices Make*. Washington, DC: CQ Press.

Hagle, Timothy M. 1990. "So Many Cases, So Little Time: Judges as Decision Makers." In *American Politics in the Heartland*, ed. Douglas Madsen, Arthur H. Miller, and James A. Stimson. Dubuque, Iowa: Kendall/Hunt.

Hagle, Timothy M. 1993. "'Freshman Effects' for Supreme Court Justices." *American Journal of Political Science*, 37:1142-1157.

Klein, David E. 2002. *Making Law in the United States Courts of Appeals*. New York: Cambridge University Press.

Maltzman, Forrest, James F. Spriggs II, and Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. New York: Cambridge University Press.

Marbury v. Madison, 5 US 137 (1803).

Murphy, Walter F. 1964. *Elements of Judicial Strategy*. Chicago: The University of Chicago Press.

Perry, H.W., Jr. 1991. *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Cambridge, MA: Harvard University Press.

Rodell, Fred. 1955. *Nine Men: A Political History of the Supreme Court of the United States from 1790 to 1955*. New York: Random House.

Schubert, Glendon. 1959. "The Certiorari Game." In *Quantitative Analysis of Judicial Behavior*, ed. Glendon Schubert New York: Free Press.

Segal, Jeffrey A., and Harold J. Spaeth. 1999. *Majority Rule or Minority Will: Adherence to Precedent on the U.S. Supreme Court*. New York: Cambridge University Press.

Segal, Jeffrey A., and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. New York: Cambridge University Press.

Spaeth, Harold J. 1979. *Supreme Court Policy Making*. San Francisco: W.H. Freeman.

Spaeth, Harold J. 1998. *Expanded United States Supreme Court Judicial Database, 1946-1968 Terms*. [Computer file]. 4th ICPSR version. East Lansing, MI: Michigan State University, Dept. of Political Science [producer]. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 1999.

Tanenhaus, Joseph, Marvin Schick, Matthew Muraskin, and Daniel Rosen. 1963. "The Supreme Court's Certiorari Jurisdiction: Cue Theory." In *Judicial Decision Making*, ed. Glendon Schubert. New York: Free Press.

Ulmer, S. Sidney, William Hintze, and Louise Kirklosky. 1972. "The Decision to Grant or Deny Certiorari: Further Consideration of Cue Theory." *Law and Society*, 6:637-643.

Wonnacott, Thomas H., and Ronald J. Wonnacott. 1972. *Introductory Statistics for Business and Economics*. New York: John Wiley & Sons.

Table 1

Acceptance Rates for Cases With and Without Reversals on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Reversals	1,389	5,925	7,314	19.0%*
No Reversals	1,445	19,617	21,062	6.9%
Column Total	2,834	25,542	28,376	10.0%

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

Table 2

Acceptance Rates for Cases With and Without Reversals on the Burger Court's Appellate Docket—State and Federal

A. State Cases

	Accepted	Denied	Row Total	Acceptance Rate (%)
Reversals	276	1,848	2,124	13.0%*
No Reversals	391	5,662	6,053	6.5%
Column Total	667	7,510	8,177	8.2%

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

B. Federal Cases

	Accepted	Denied	Row Total	Acceptance Rate (%)
Reversals	1,113	4,077	5,190	21.4%*
No Reversals	1,054	13,955	15,009	7.0%
Column Total	2,167	18,032	20,199	10.7%

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

Table 3

Acceptance Rates for Cases With and Without Dissents on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Dissents	1,179	3,267	4,446	26.5%*
No Dissents	3,157	25,153	28,310	11.2%
Column Total	4,336	28,420	32,756	13.2%

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

Table 4

Acceptance Rates for Cases With and Without Dissents on the Burger Court's Appellate Docket—State and Federal

A. State Cases

	Accepted	Denied	Row Total	Acceptance Rate (%)
Dissents	236	1,331	1,567	15.1%*
No Dissents	480	6,844	7,324	6.6%
Column Total	716	8,175	8,891	8.1%

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

B. Federal Cases

	Accepted	Denied	Row Total	Acceptance Rate (%)
Dissents	943	1,936	2,879	32.8%*
No Dissents	2,677	18,309	20,986	12.8%
Column Total	3,620	20,245	23,865	15.2%

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

Table 5

Acceptance Rates for Cases With Both Reversals and Dissents on the Burger Court's Appellate Docket

A. Both Reversals and Dissents Versus One or the Other

	Accepted	Denied	Row Total	Acceptance Rate (%)
Both	490	1,263	1,753	28.0%*
One or the Other	1,830	8,838	10,668	17.2%
Column Total	2,320	10,101	12,421	18.7%

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

B. Both Reversals and Dissents Versus Neither

	Accepted	Denied	Row Total	Acceptance Rate (%)
Both	490	1,263	1,753	28.0%*
Neither	1,042	17,978	19,020	5.5%
Column Total	1,532	19,241	20,773	7.4%

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

Table 6

Acceptance Rates for State Cases With Both Reversals and Dissents on the Burger Court's Appellate Docket

A. Both Reversals and Dissents Versus One or the Other

	Accepted	Denied	Row Total	Acceptance Rate (%)
Both	112	576	688	16.3%*
One or the Other	386	2,505	2,891	13.4%
Column Total	498	3,081	3,579	13.9%

* $p < .05$, 1-tail difference of means test (see Wonnacott and Wonnacott 1972, 178).

B. Both Reversals and Dissents Versus Neither

	Accepted	Denied	Row Total	Acceptance Rate (%)
Both	112	576	688	16.3%*
Neither	275	4,997	5,272	5.2%
Column Total	387	5,573	5,960	6.5%

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

Table 7

Acceptance Rates for Federal Cases With Both Reversals and Dissents on the Burger Court's Appellate Docket

A. Both Reversals and Dissents Versus One or the Other

	Accepted	Denied	Row Total	Acceptance Rate (%)
Both	378	687	1,065	35.5%*
One or the Other	1,444	6,333	7,777	18.6%
Column Total	1,822	7,020	8,842	20.6%

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

B. Both Reversals and Dissents Versus Neither

	Accepted	Denied	Row Total	Acceptance Rate (%)
Both	378	687	1,065	35.5%*
Neither	767	12,981	13,748	5.6%
Column Total	1,145	13,668	14,813	7.7%

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