Agenda Setting on the Burger Court

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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 6: Court Level as a Factor

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Abstract

Although thousands of petitions seeking review by the Supreme Court are filed each year, the justices only accept about 150 or fewer for plenary review, with perhaps a few hundred more disposed of summarily. Because of this low acceptance rate scholars have long thought that the justices must use some strategy or process to reduce their workload to manageable levels. Although the examination of agenda setting on the Supreme Court is of continuing interest to judicial scholars, previous studies have usually focused only on cert petitions, specific issues, particular terms, or sampling for their data collection. A more comprehensive examination of the cases filed before the Supreme Court will provide a clearer picture of how the justices set their agenda.

Drawing from an ongoing database project this study examines all cases filed before the Burger Court (1969 to 1985 Terms). The specific question addressed in this paper is whether a form of ripening occurs based on the level of the lower court (trial court, court of appeals, state supreme court) or the number of judges on a lower court which increases the chances for acceptance by the Supreme Court. The results show that ripening seems to be a factor for cases coming to the Supreme Court from lower state courts but not for the cases coming from lower federal courts. In fact, cases coming from federal district courts have a much higher acceptance rate than those from federal courts of appeal, regardless of whether the case was from a three-judge or single-judge district court.

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

This is the sixth 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 appeal (Klein 2002).

Of course, agenda setting and its attendant strategic considerations have also been the focus of many studies. *Marbury v. Madison* (1803) may have been the earliest and most famous example of strategic agenda setting or decision making by the Supreme Court. Despite a general view at the time that judges were not policy makers—at least not along the lines of executives and legislators (see, for example, Spaeth 1979, chapter 1)—histories of the Court have certainly

recognized strategic aspects to the Court's decision making (e.g., Rodell 1955). Walter Murphy's *Elements of Judicial Strategy* (1964) is one of the earliest and most important examinations of how strategic considerations may affect judicial decision making. Other scholars have expanded and refined Murphy's arguments (e.g., Epstein and Knight 1998). A related line of research focused more specifically on the ideological preferences of judges (e.g., Segal and Spaeth 2002) and a book by Brenner and Whitmeyer (2009) compared various models of strategic judicial behavior.

One aspect of strategic judicial behavior lies in agenda setting, which means how the Supreme Court decides which cases it will take to decide on the merits. Although several thousand petitions seeking review by the Supreme Court are filed each year, the justices only accept about 150 or fewer for plenary review (i.e., full briefs submitted, oral arguments held, and opinions written), with maybe a few hundred more disposed of summarily (i.e., the Court simply affirms, reverses, or vacates in a very short per curiam opinion, sometimes as little as "Judgment affirmed."). Thus, scholars have long thought that the justices must use some strategy or process to reduce their workload to manageable levels (e.g., Hagle 1990).

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

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

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

Lower Court Level

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

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

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

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

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

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

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

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

Data

Data for this study were drawn from an ongoing database project involving all cases on the Supreme Court's appellate docket 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 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.[4] Included in this number are 23 cases that originally appeared on the Court's miscellaneous docket and were moved to the appellate docket.[5]

Results

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

State Courts

As shown in Table 1, at the state court level there were 5,066 cases on the Burger Court docket that came from state high courts. Of these, 518 were accepted for review and 4,548 were denied review for an acceptance rate of 10.2%. In contrast, there were 3,825 cases that came from either state trial courts or state intermediate appellate courts. Of these cases, 198 were granted review and 3,627 were denied review, for an acceptance rate of 5.2%.

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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, and into the Burger Court, 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.)

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

TABLE 1 ABOUT HERE

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

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

TABLE 2 ABOUT HERE

Table 2 shows the comparison between the acceptance rate for state high courts and state intermediate appellate courts. The top row shows the figures for state supreme courts and it is the same as in Table 1: 518 cases accepted for review and 4,548 denied for an acceptance rate of 10.2%. The second row shows the figures for state intermediate courts of appeal: 192 cases accepted and 3,498 denied for an acceptance rate of 5.2%. Given rounding, the acceptance rate for state intermediate appellate courts is the same as what we saw for the combination of state lower courts, but it is still lower than that of state supreme courts with the difference reaching the $p < .001$ level of significance.

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

TABLE 3 ABOUT HERE

The first row of Table 3 presents the figures for state intermediate appellate courts, which are the same as in the second row of Table 2: 192 accepted cases and 3,498 denied for an acceptance rate of 5.2%. The second row of Table 3 presents the figures for state trial court

cases. There were only 135 cases from state trial courts and the Court granted review to 6 of them for an acceptance rate of 4.4%. With the acceptance rate less than a percentage point below that of state intermediate appellate courts, and because of the small number of trial court cases involved, it is not surprising that the difference does not reach statistical significance.

Federal Courts

Turning to cases from federal courts, Table 4 shows the basic comparison between the Circuit Courts of Appeals and the District Courts. Here we see that of the 22,213 cases filed from federal Courts of Appeals, the Supreme Court accepted 2,514 cases and denied 19,699 cases for an acceptance rate of 11.3%. The second line of Table 4 shows that of the 1,289 cases coming to the Supreme Court directly from federal District Courts, 1,083 were granted review and only 206 were denied for an acceptance rate of 84.0%. That percentage is not a mistake—believe me, I checked several times. Because the results were not in the direction expected, I used a two-tailed test but the results were still highly significant at $p < .001$.

TABLE 4 ABOUT HERE

Contrary to expectations, the Supreme Court accepts a surprisingly higher percentage of cases from District Courts than from Courts of Appeals. Moreover, given the usual understanding that the Court takes a low percentage of any type of case filed before it, an acceptance rate of 84.0% is stunning. Understandably, it also requires further examination.

Two sets of federal cases left out of those examined in Table 4 were those from the US Court of Claims and from the Special Railroad Court.[7] The these two courts do not fit neatly into either the trial or appellate category. Both are trial courts in that they are court of first

[7] The Special Railroad Court is probably not well known. It was created in 1974, composed of three judges, and heard cases involving reorganization and management of railroads undergoing bankruptcy. See here for more information: https://www.fjc.gov/history/courts/special-railroad-court-1974-1997.

instance, but multiple judges hear the cases and appeals go directly to the Supreme Court. To be sure the exclusion of these cases did not affect the results shown in Table 4 I included them and checked the difference of means test again. The results are presented in Table 5.

TABLE 5 ABOUT HERE

During the Burger Court years there were 363 cases filed from the Court of Claims and Special Railroad Court. Of these, 23 were granted review, 339 were denied, and one dismissed on the motion of petitioner. The acceptance rate for these two courts was only 6.4%, well below that of even the Court of Appeals cases. As such, their inclusion did not affect the results.

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

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

TABLE 6 ABOUT HERE

There were 868 cases filed before the Burger Court that came from three-judge District Courts. Of these, 796 were granted review, 56 were denied, and 16 were dismissed by rule or on motion of the petitioner for an acceptance rate of 93.4% (796 of 852). In Table 5 these cases were part of the District Court row. In Table 6 these cases have been moved to the Multi-Judge

row. That increases the number of cases to 23,428, of which 3,333 were granted review and 20,095 were denied for an acceptance rate of 14.2%. In contrast, the Single-Judge row, now with only those cases from single-judge District Courts, shows 435 cases of which 286 were accepted and only 149 denied for an acceptance rate of 65.7%. Although the acceptance rate for three-judge District Courts is high, the number of them is overwhelmed when combined with the other multi-judge cases so that the overall acceptance rate rises only slightly from Table 5 (11.2% versus 14.2%). Thus, the difference between multi-judge and single-judge cases is still highly significant at $p < .001$.

TABLE 7 ABOUT HERE

Finally, Table 7 compares the difference in acceptance rates between three-judge and single-judge District Courts. As suggested by the figures noted above, the difference between the two types of District Courts is far less than when comparing District Courts with Courts of Appeals and the Court of Claims. Three-judge District Courts have an acceptance rate of 94.4% (796 of 852 cases) and those from single-judge District Courts have an acceptance rate of 65.7% (286 of 435 cases). Despite the smaller difference it still reaches statistical significance at $p < .001$.

Discussion

At least for those cases coming from state courts, the results support the notion that the justices of the Supreme Court prefer cases to have been more thoroughly reviewed in the lower courts before they are accepted for review. We saw this in Tables 1 and 2, where cases from state supreme courts had a higher acceptance rate than lower state courts. This was also true when comparing acceptance rates separately for state supreme courts and state intermediate

appeals courts. On the other hand, to the extent ripening was a factor it did not seem to matter much when comparing state trial courts with state intermediate appeals courts (Table 3).

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

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

Federalism concerns would not apply regarding cases coming from the lower federal courts, but we still might expect that the notion of ripening would. This proved not to be the case, at least for a simple bivariate examination. As shown in Tables 4 and 5, the Supreme Court accepted for review an unexpectedly high percentage of cases coming from federal district courts (84.0%). Although, the acceptance rate for cases coming from federal courts of appeals was

similar to that of cases coming from state supreme courts (11.3% compared to 10.2%)[8], that percentage was far below that for cases coming from the federal district courts.

A major difference in the types of cases coming from the federal district courts was whether the case was from a single-judge or three-judge court. Given prior suggestions that the Supreme Court might at least prefer cases from multi-judge courts, the idea being that a multi-judge court provides an additional form of ripening, we might have expected a higher acceptance rate for three-judge districts courts relative to single-judge courts. This proved to be the case as single-judge courts had an acceptance rate several points below that of three-judge courts (65.7% compared to 93.4%).

A likely explanation for the high acceptance rate for federal district courts lies in the difference between cases coming to the Court on appeal versus those that are petitions for writs of certiorari. The second paper in this series took a closer look at certiorari and appeal as methods of reaching the Court and found that cases on appeal were much more likely to be accepted for review.[9] In fact, the 79.9% acceptance rate for all federal cases coming before the Supreme Court on appeal (see Table 2 of the prior paper) is consistent with the acceptance rates found here for both three-judge and single-judge federal district courts (Table 7). Not surprisingly, the vast majority of federal district court cases coming before the Court were on appeal rather than a petition for a writ of certiorari (1,133 versus 135).[10] Thus, at the very least it seems the notion of ripening in the federal courts is overshadowed by another factor that proved important in examining the Burger Court's agenda setting.[11]

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[8] Although not the focus of this paper, though relatively small this difference was statistically significant at $p < .05$ using a two-tailed difference of means test.
[9] Hagle (2025), "Agenda Setting on the Burger Court, Paper 2:Certiorari and Appeal on the Burger Court Agenda."
[10] One case that was accepted for review came before the court on a petition for a writ of mandamus.
[11] Perry provides a relatively short explanation of the Supreme Court's jurisdiction on appeals from federal district courts (1991, 303-307). A much more detailed examination can be found in Stern and Gressman (1969, 34-70).

Conclusion

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

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

This series of papers is focused largely examining aspects of the Supreme Court's agenda setting in a bivariate fashion. Determining whether a particular factor seems to be related to agenda setting helps to provide a foundation for later multivariate work. Nevertheless, and despite the value of initially considering factors in isolation, the present results remind us of the need for later multivariate study. The difference between the results for the state and federal cases on the question of ripening raised the possibility of how aspects of federalism might come

into play. In addition, the failure of the federal cases to show an effect of ripening, even as loosely defined here, made clear that other considerations can overshadow those that seem logical in a general sense. Thus, a more thorough examination of the federal cases will be necessary to determine the extent to which the method of coming to the Supreme Court (certiorari or appeal) dominates other considerations in the context of agenda setting.

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Table 1

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
Supreme Court Cases	518	4,548	5,066	10.2%*
Lower Court Cases	198	3,627	3,825	5.2%
Column Total	716	8,175	8,891	8.1%

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

Table 2

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
Supreme Court Cases	518	4,548	5,066	10.2%*
Intermediate Appellate Cases	192	3,498	3,690	5.2%
Column Total	710	8,046	8,756	8.1%

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

Table 3

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
State Court of Appeals	192	3,498	3,690	5.2%
State Trial Courts	6	129	135	4.4%
Column Total	198	3,627	3,825	5.2%

Table 4

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
Courts of Appeals	2,514	19,699	22,213	11.3%*
District Courts	1,083	206	1,289	84.0%
Column Total	3,597	19,905	23,502	15.3%

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

Table 5

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
Courts of Appeals and Court of Claims	2,537	20,039	22,576	11.2%*
District Courts	1,083	206	1,289	84.0%
Column Total	3,620	20,245	23,865	15.2%

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

Table 6

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
Multi-Judge	3,333	20,095	23,428	14.2%*
Single-Judge	286	149	435	65.7%
Column Total	3,619	20,244	23,863	65.7%

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

Table 7

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
Three-Judge	796	56	852	93.4%*
Single-Judge	286	149	435	65.7%
Column Total	1,082	205	1,287	84.1%

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