

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 10: Administrative Parties as a Factor

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Abstract

Although thousands of petitions seeking review by the Supreme Court are filed each year, the justices only accept about 150 or fewer for plenary review, with perhaps a few hundred more disposed of summarily. Because of this low acceptance rate scholars have long thought that the justices must use some strategy or process to reduce their workload to manageable levels.

Although the examination of agenda setting on the Supreme Court is of continuing interest to judicial scholars, previous studies have usually focused only on cert petitions, specific issues, particular terms, or sampling for their data collection. A more comprehensive examination of the cases filed before the Supreme Court will provide a clearer picture of how the justices set their agenda.

Drawing from an ongoing database project this study examines all cases filed before the Burger Court (1969 to 1985 Terms) on its appellate docket. The specific question addressed in this paper is whether administrative parties were treated differently by the Burger Court in terms of the review decision. The results show that cases with administrative parties were more likely to be granted review by the Court. This was particularly true if the administrative party was the appellant rather than the appellee. There were also differences between federal, state, or local administrative parties.

Agenda Setting on the Burger Court

Paper 10: Administrative Parties as a Factor

This is the tenth 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 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.

Administrative Parties as Litigants

In the seventh paper in this series I found that the presence of government 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 party was the appellee in the case.³

In the eighth paper in this series I began to look at specific types of parties and the focus of that paper was on law enforcement parties.⁴ Table 7 of that paper showed the comparison between federal law enforcement and other federal governmental entities (as appellant or appellee) and found that federal parties that were not law enforcement had a higher acceptance rate before the Supreme Court than federal law enforcement parties by 17.9% to 6.2%.

In examining the role of government parties and specifically law enforcement parties in the previously mentioned papers I noted that such parties might fall into the notion of “importance” noted by Perry as a criterion for acceptance (1991, 253-260). I also noted how Ulmer, Hintze, and Kirklosky (1972) mention the role of the federal government as a petitioning party. Those factors would still apply to an examination of administrative parties, but from a different perspective. Administrative parties might not be as involved in some of the constitutional and civil rights issues to the same extent as law enforcement parties, but the cases involving them can certainly be important for a wide range of issues.

As with cases involving law enforcement parties, and criminal cases more generally, we can probably expect that the Court will be more willing to accept cases when the administrative

³ The paper is titled, “Agenda Setting on the Burger Court, Paper 7: Government Parties as a Factor.”

⁴ The paper is titled, “Agenda Setting on the Burger Court, Paper 8: Law Enforcement Parties as a Factor.”

party is the appellant rather than the appellee. Similarly, it is likely that we will see differences in the acceptance rates in cases involving federal administrative parties versus those with state or local administrative parties.

As in previous papers, the tables that follow will examine several aspects of how the Court treats cases involving administrative parties.

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

An additional note on the coding for this examination is necessary before proceeding. As indicated in prior papers, government parties are coded based on whether they are federal, state, or local (e.g., county, city, township) entities. An additional aspect of coding governmental parties for the database is to classify them as either law enforcement, administrative, or other. There are two ways a party can be coded as administrative. The first is if the entity is clearly an administrative entity. This would include a variety of federal agencies, bureaus, commissions, and so on. A prime example is the National Labor Relations Board. The same is essentially true for state and local administrative entities. The second way a party can be coded as administrative is when the party is acting in an administrative capacity. A good example here is the Federal Bureau of Investigation. Normally the FBI is considered a law enforcement entity, but if the case was one challenging a personnel decision then it would be coded as administrative. Similarly, when the United States is a party it is coded as law enforcement in criminal cases, administrative when it is acting in an administrative capacity, and “other” for other types of cases (e.g., suing the United States for personal injuries).

Results

I begin by noting that of the 32,761 cases in the dataset where the Court made a review decision it accepted 4,337 of them for review. That results in an overall acceptance rate of 13.2%.⁷

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 *informa 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>.)

⁷ This number is less than the 33,112 noted previously because it does not include cases where the Court did not make a formal review decision due to Rule dismissals or due to requests for dismissal by the petitioner before the decision.

Table 1 shows the acceptance rates for cases that have an administrative entity as a party (appellant or appellee) compared with those cases that do not have an administrative entity as a party. No distinction is made between state or federal cases for this and the next two tables.

TABLE 1 ABOUT HERE

As can be seen from Table 1, about one quarter of the cases in the dataset have an administrative entity as a party (8,149 of the 32,761 cases). Of the 8,149 cases with an administrative party the Court granted review to 1,660 of them (20.4%). In contrast, there were 24,612 cases that did not have an administrative party and the Court granted review to 2,677 of them (10.9%). Using a simple difference of means test (Wonnacott and Wonnacott (1972)), the difference in the acceptance rates between cases with an administrative party and those without is significant at $p < .001$ using a two-tailed test.

The results in Table 1 are consistent with what we saw in Table 1 of the seventh paper which compared the acceptance rate of cases with any government party to the acceptance rate of cases without a government party.⁸ On the other hand, these results are different from those of Table 8-1 that involved law enforcement parties. The Burger Court accepted a smaller percentage of cases with law enforcement parties than those without, mainly due to the much larger number of cases with the law enforcement entity as the appellee that were denied review.

Following the pattern of the previous papers, the next step is to separately examine the acceptance rates for cases with an administrative party as the appellant and as the appellee.

TABLE 2 ABOUT HERE

Table 2 shows the comparison of acceptance rates for cases with an administrative party as the appellant with those cases without an administrative party. Note that the “Without

⁸ To make it easier to refer to the tables of the prior papers from this point on I will use the notation indicating the prior paper number and the table number. For example, Table 1 of the seventh paper will be indicated as Table 7-1, and so on.

Administrative Party” row is the same as for Table 1. This will also be true for all the tables through Table 12.

In Table 2 we see that there were 2,026 cases with an administrative party as the appellant and the Court accepted 952 of them for review (47.0%). This acceptance rate was significantly higher than that of cases without an administrative party. It was also very similar to the acceptance rate when the appellant was any kind of government party as shown in Table 7-2 (42.0%) and for law enforcement parties as appellants as shown in Table 8-2 (41.1%).

TABLE 3 ABOUT HERE

Table 3 shows the comparison in acceptance rates between cases with an administrative party as the appellee and those without an administrative party. There were 6,335 cases with an administrative party as the appellee and the Court granted review to 763 of them (12.0%). Although the acceptance rate for these cases was just over a quarter of those when the administrative party was the appellant, the rate was still slightly above the acceptance rate of cases without an administrative party and still reached a traditional level of statistical significance. These results were also somewhat similar to those of all government parties as appellee (Table 7-3) and for law enforcement entities as appellee (Table 8-3). For both those other examinations, however, the acceptance rates were well below the rates for the non-government or non-law enforcement entities.

The next three tables examine the acceptance rates for federal administrative parties.

TABLE 4 ABOUT HERE

Table 4 shows the results of comparing the acceptance rate of cases with a federal administrative party with those cases without an administrative party. There were 4,301 cases with a federal administrative party and the Court granted review to 835 of them (19.4%). This

acceptance rate was only a bit below the rate shown in Table 1 that included state and local administrative entities and was still well above the rate for cases without an administrative entity. This acceptance rate was well above the rate for all federal parties shown in Table 7-5 (11.6%) and about three times larger than the rate for federal law enforcement parties shown in Table 8-4 (6.2%).

TABLE 5 ABOUT HERE

Table 5 shows the results of comparing the acceptance rate for cases when a federal administrative party was the appellant in a case with cases without an administrative party. There were 632 cases with a federal administrative party as the appellant and the Court granted review to 465 of them (73.6%). This was a much higher rate than we saw in Table 2 that included all administrative entities, which suggests that the rate for state and local administrative entities will be much lower when we see the number below. As a point of comparison, federal law enforcement parties as the appellant had an even higher acceptance rate of 78.5% as shown in Table 8-5.

TABLE 6 ABOUT HERE

To complete the examination of federal administrative parties, Table 6 shows the comparison when these parties were the appellee in cases with those cases without an administrative party. There were 3,675 cases with a federal administrative party as the appellee and the Court accepted 371 of them for review (10.1%). This rate was below the rate shown in Table 3 and was not much different from the rate for cases without an administrative party. The difference fails to reach a traditional level of significance using a two-tailed test. Comparing this rate once again with the corresponding acceptance rate for federal law enforcement (2.3%) as shown in Table 8-6, we see that the rate here was slightly higher. The rate for federal law

enforcement parties as the appellee was lower than the rate for cases without a law enforcement party and the difference reached statistical significance unlike the comparison here for federal administrative parties as the appellee.

Before turning to the cases with state and local administrative parties it is worth noting that of the 8,149 cases with an administrative party shown in Table 1, 4,301 of them were federal administrative entities (52.8%). It is not surprising that so many of the cases with administrative entities involved the federal government, but that percentage is not so large that the cases with federal administrative parties dominated the numbers shown in Tables 1 through 3. Even so, the distribution of cases with state versus local administrative entities may make a difference.

Because there were a large enough number of cases to do so I will examine the cases with state and local administrative parties separately. The next two sets of three tables will follow the pattern established above by first examining the acceptance rate for all cases at that level and then separately for those when the administrative party was appellant and then as the appellee. As noted previously, the “Without Administrative Party” row for each of these tables is the same as in Table 1.

TABLE 7 ABOUT HERE

Beginning with the cases that have a state administrative party, Table 7 shows the results of comparing these cases with those cases that do not have an administrative party. There were 2,530 cases with a state administrative party and the Court granted review to 632 of them (25.0%). This rate was above the rate shown in Table 1 for all cases with an administrative entity as a party. Given what we saw in Table 4 for cases with a federal administrative entity, that this rate was higher is a little surprising.

TABLE 8 ABOUT HERE

Table 8 shows the results of comparing cases with a state administrative party as an appellant with those cases that did not have an administrative party. There were 831 cases with a state administrative party as the appellant and the Court granted review to 343 of them (41.3%). The difference with cases that did not have an administrative entity as a party reaches statistical significance, but was well below the rate for cases with a federal administrative entity as the appellant as shown in Table 5.

TABLE 9 ABOUT HERE

To complete the state level comparisons, Table 9 shows the comparison of cases with a state administrative party as the appellee to those cases that did not have an administrative party. There were 1,718 cases with a state administrative party as the appellee and the Court accepted 293 of them for review (17.1%). Interestingly, this rate was well above the rate for cases with a federal administrative entity as the appellee as shown in Table 6, and, unlike the federal rate, reaches statistical significance.

TABLE 10 ABOUT HERE

Turning to the cases with local administrative entities as parties, Table 10 shows the results of comparing all cases with local administrative parties to those cases without an administrative party. There were 1,488 cases with a local administrative party and the Court granted review to 242 of them (16.3%). This rate was several percentage points above the rate for cases without an administrative party and the difference reaches statistical significance.

TABLE 11 ABOUT HERE

Table 11 shows the results of comparing the acceptance rates of cases with a local administrative party as the appellant with those cases without an administrative entity as a party. There were only 563 cases with a local administrative party as the appellant and the Court

accepted 144 of them for review (25.6%). This acceptance rate was over nine points higher than the rate shown in Table 10 and once again reaches statistical significance. Even so, this rate was well below the rates for federal and state administrative entities as appellants as shown in Tables 5 and 8.

TABLE 12 ABOUT HERE

In the last of this set of tables, Table 12 shows the results of comparing cases with a local administrative party as the appellee to those cases without an administrative party. There were 942 cases with a local administrative party as the appellee and the Court granted review to 99 of them (10.5%). This acceptance rate was several points below the rate for all cases with a local administrative party shown in Table 10 and fails to reach a traditional level of statistical significance. The rate for local administrative parties as appellee was very similar to the federal rate shown in Table 6, which also failed to reach statistical significance. It is also worth noting that unlike the corresponding cases with federal and state administrative parties there was a much smaller difference in the acceptance rates of cases with local administrative entities as appellants and appellees.

Although I do not provide tables for them, I also compared the combined cases with state and local administrative parties with those cases without an administrative party. The larger number of cases with state administrative parties and their significance levels (as shown in Tables 7, 8, and 9) resulted in the combined state and local cases with administrative parties to also reach statistical significance for the three comparisons to cases without an administrative party (all cases, as appellant, and as appellee).

The final three tables provide comparisons of the acceptance rates of cases with federal administrative entities as parties to cases with state or local administrative parties.

TABLE 13 ABOUT HERE

Table 13 shows the results of comparing cases with federal administrative parties to cases with a state or local administrative party. Note that the numbers in the federal row are the same as in Table 4. (This will also be true for the next two tables relative to the prior corresponding Tables 5 and 6.) There were 4,301 cases with a federal administrative entity as a party and the Court granted review to 869 of them (19.4%). As for cases with a state or local administrative party there were 3,978 of them and the Court granted review to 869 (21.8%). Although the Court was actually a bit more likely to grant review to cases with a state or local administrative entity as a party, the difference was fairly small. The number of cases involved, however, allows the difference to reach statistical significance.

TABLE 14 ABOUT HERE

Continuing the prior pattern, Table 14 shows the results of comparing cases with a federal administrative party as the appellant with cases having a state or local administrative party as the appellant. There were 632 cases with a federal administrative entity as the appellant and the Court accepted 465 of them for review (73.6%). In sharp contrast, there were 1,394 cases with a state or local administrative entity as the appellant and the Court granted review to 487 of them (34.9%). This difference is not surprising given what we saw in prior results (Tables 5, 8, and 11) as the Court clearly favors cases with a federal administrative entity as the appellant.

TABLE 15 ABOUT HERE

Finally, Table 15 shows the comparison between cases with a federal administrative party as the appellee to those cases with a state or local administrative party as the appellee. There were 3,675 cases with a federal administrative party as the appellee and the Court granted review to 371 of them (10.1%). There were 2,660 cases with a state or local administrative party as the

appellee and the Court accepted 392 of them for review (14.7%). Recall from Table 6 that the acceptance rate for cases with a federal administrative entity as the appellee was slightly lower than the rate for cases without an administrative entity and the difference did not reach statistical significance. The state rate shown in Table 9 was higher and did reach statistical significance. Although the local rate shown in Table 12 was only slightly above the federal rate, the combined acceptance rate for cases with a state or local administrative party as the appellee was still sufficiently above the federal rate to reach statistical significance.

Discussion

The results of this examination clearly show that the Burger Court treated cases involving administrative parties differently than other cases for purposes of granting review. This was true for the examination of law enforcement parties as shown in the eighth paper, but there are differences between how the Court treated the two different types of parties.

On the whole, the Court was generally more accepting of cases with administrative parties than cases that did not have administrative parties. Not surprisingly, differences emerge when looking at the government level of the administrative party (federal, state, or local) and whether the administrative party was the appellant or appellee.

Regardless of the governmental level, the Court was more accepting of cases with administrative parties than those without. This difference was statistically significant for all three levels of administrative parties. The lowest acceptance rate was for local administrative entities, so one could reasonably make the argument that cases involving federal and state administrative parties would be more important, on average, than those involving local

administrative parties.⁹ Of course, before drawing general conclusions about administrative parties we also needed to examine the acceptance rates when such parties were appellants and appellees.

As appellants, administrative parties at all levels had higher acceptance rates than cases without administrative parties. Again, this difference was statistically significant for all three levels of governmental administrative parties. Consistent with the findings of prior papers, there was a clear difference in acceptance rates depending on whether the administrative party was the appellant or appellee. For all administrative parties and when separated by level, administrative parties had higher acceptance rates than cases without an administrative party overall and when the administrative entity was the appellant. Interestingly, when the administrative entity was the appellee for the federal and local levels the acceptance rate was just slightly below the rate for cases without a governmental administrative entity. Nevertheless, cases with the administrative party as the appellant consistently had a higher acceptance rate than those cases with the administrative party as the appellee. This difference was most pronounced at the federal level (Tables 5 and 6), smaller at the state level (Tables 8 and 9), and much smaller at the local level (Tables 11 and 12).

The highest acceptance rate shown in the tables was for federal administrative parties as the appellant at 73.6% (Table 5). This rate was a bit below the also very high rate shown for law enforcement parties in Table 8-5 (78.5%). The higher acceptance rate for law enforcement parties as appellants may come from the additional fact that many cases when there was a law enforcement appellant involved a lower court reversal. In the fifth paper in the series I found that reversals in the courts below was associated with higher acceptance rates (Table 5-1). Cases

⁹ A famous case decided during the Warren Court era, *Tinker v. Des Moines Independent Community School District* (1969) is a prime example of an important case involving a local administrative party.

with administrative parties likely have a smaller number of lower court reversals, but the high acceptance rate suggests that the Court was still very interested in cases with federal administrative parties.

The acceptance rates for state and for local administrative parties as the appellant dropped off quickly from the federal rate. At 41.3% (Table 8) the state rate was still statistically significant from the rate for cases without an administrative party. The acceptance rate for local administrative parties was well below the state rate at 25.6% (Table 11), though still well above the acceptance rate for cases without a governmental administrative party.

Interestingly, when the administrative party was the appellee, the differences between the three governmental levels were far less extreme. In fact, the acceptance rates for federal and local administrative parties as the appellee were within a percentage point of each other (10.1% and 10.5%, respectively, Tables 6 and 12). The rate for the state level cases was substantially higher at 17.1% (Table 9) and it was the only one of the three that reached statistical significance relative to the cases without an administrative party.

Although there were far fewer cases with local administrative parties than those with either federal or state administrative parties, the acceptance rates for them, whether as appellant or appellee, varied less than the other levels from cases without an administrative party (Tables 10, 11, and 12). As noted previously, this suggests the possibility that the Burger Court generally viewed cases with federal administrative parties as more worthy of review than cases with state or local administrative parties. The last three tables touched on this point.

Interestingly, although there was not much of an overall difference between the acceptance rates for federal versus state and local cases with an administrative party (Table 13), there were clear differences when the cases were examined based on whether the administrative parties

were appellants or appellees. In Table 14 we saw that the Court was more than twice as likely to grant review to a case with a federal administrative party as the appellant compared with a state or local administrative party. In contrast, however, the Court was more likely to grant review to a case involving a state or local administrative party as the appellee than when it was a federal administrative party. The differences as appellants and appellees were both statistically significant (Tables 14 and 15).

Conclusion

Once again, the results here show important differences in how the Burger Court treated cases within a particular area. Even so, further multivariate examinations are needed because concepts such as importance or being worthy of review are more nuanced than can be captured in simple difference of means comparisons. Nevertheless the bivariate examinations here provide an important starting point. Thus, it will be worth continuing to explore how the Burger Court treated cases based on a variety of factors.

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Table 1

Acceptance Rates for Cases With an Administrative Party Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Administrative Party	1,660	6,489	8,149	20.4%*
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	4,337	28,424	32,761	13.2%

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

Table 2

Acceptance Rates for Cases With an Administrative Party as Appellant Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Administrative Appellant	952	1,074	2,026	47.0%*
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	3,629	23,009	26,638	13.6%

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

Table 3

Acceptance Rates for Cases With an Administrative Party as Appellee Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Administrative Appellee	763	5,572	6,335	12.0%*
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	3,440	27,507	30,947	11.1%

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

Table 4

Acceptance Rates for Cases With a Federal Administrative Party Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Federal Administrative Party	835	3,466	4,301	19.4%*
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	3,512	25,401	28,913	12.1%

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

Table 5

Acceptance Rates for Cases With a Federal Administrative Party as Appellant Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Federal Administrative Appellant	465	167	632	73.6%*
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	3,142	22,102	25,244	12.4%

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

Table 6

Acceptance Rates for Cases With a Federal Administrative Party as Appellee Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Federal Administrative Appellee	371	3,304	3,675	10.1%
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	3,048	25,239	28,287	10.9%

Table 7

Acceptance Rates for Cases With a State Administrative Party Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With State Administrative Party	632	1,898	2,530	25.0%*
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	3,309	23,833	27,142	12.2%

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

Table 8

Acceptance Rates for Cases With a State Administrative Party as Appellant Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With State Administrative Appellant	343	488	831	41.3%*
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	3,020	22,423	25,443	11.9%

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

Table 9

Acceptance Rates for Cases With a State Administrative Party as Appellee Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With State Administrative Appellee	293	1,425	1,718	17.1%*
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	2,970	23,360	26,330	11.3%

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

Table 10

Acceptance Rates for Cases With a Local Administrative Party Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Local Administrative Party	242	1,246	1,488	16.3%*
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	2,919	23,181	26,100	11.2%

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

Table 11

Acceptance Rates for Cases With a Local Administrative Party as Appellant Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Local Administrative Appellant	144	419	563	25.6%*
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	2,821	22,354	25,175	11.2%

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

Table 12

Acceptance Rates for Cases With a Local Administrative Party as Appellant Compared With Those Without an Administrative Party on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Local Administrative Appellee	99	843	942	10.5%
Without Administrative Party	2,677	21,935	24,612	10.9%
Column Total	2,776	22,778	25,554	10.9%

Table 13

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

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Federal Administrative Party	835	3,466	4,301	19.4%*
With State or Local Administrative Party	869	3,109	3,978	21.8%
Column Total	1,704	6,575	8,279	20.1%

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

Table 14

Acceptance Rates for Cases With a Federal Administrative Appellant Compared With Those With a State or Local Administrative Appellant on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Federal Administrative Appellant	465	167	632	73.6%*
With State or Local Administrative Appellant	487	907	1,394	34.9%
Column Total	952	1,074	2,026	47.0%

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

Table 15

Acceptance Rates for Cases With a Federal Administrative Appellee Compared With Those With State or Local Administrative Appellee on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
With Federal Administrative Appellee	371	3,304	3,675	10.1%*
With State or Local Administrative Appellee	392	2,268	2,660	14.7%
Column Total	763	5,572	6,335	12.0%

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