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 12: Only a Single Lower Court 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 cases that were reviewed by only a single lower court were treated differently by the Court in terms of the review decision. The results show that although cases with the same source and origin courts had a higher acceptance rate than other cases, there were differences between state and federal courts, as well as differences between courts at both the state and federal levels.

Agenda Setting on the Burger Court
Paper 12: Only a Single Lower Court as a Factor

This is the twelfth 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.

Single Lower Court Review

In the sixth paper in this series I looked at whether the level of the immediate lower court was a factor in the Court's agenda setting.[3] The results indicated that the Court was more likely to accept cases coming from state supreme courts than those coming from either state courts of appeals or state trial courts (Tables 6-1 to 6-3).[4] One thought regarding this result was that cases coming from higher state courts had more "ripening" of a sort in that those cases had usually been heard by one or two lower state courts before reaching the state supreme court. Those lower courts would allow the issues to be clarified and provide additional judicial examination of them. Reaching the state supreme court would also mean a more authoritative holding regarding state law.

Of course, not all cases coming from the state supreme courts were reviewed by state intermediate appeals or trial courts. For example, cases involving attorney discipline generally start in a state supreme court and then may be appealed to the United States Supreme Court. Even so, it is certainly true that cases coming from lower state courts would have fewer opportunities for additional judicial review.

Unfortunately, that notion of ripening did not seem to work for cases coming from the federal courts. The results presented in Table 6-4 showed that the Court was over seven times more likely to accept cases for review that came directly from a United States District Court than from a United States Court of Appeal (84.0% versus 11.3%). The analysis in the sixth paper then went on to examine whether the number of judges involved in the district court was the reason for the surprising result. (I hope this is not a spoiler but it was not; see Table 6-7.)

[3] The paper is titled, "Agenda Setting on the Burger Court, Paper 6, Court Level as a Factor."
[4] To make it easier to refer to the tables of the prior papers I will use the notation indicating the prior paper number and the table number. Thus, Table 6-1 refers to Table 1 of the sixth paper, and so on.

What the sixth paper did not examine was whether it made a difference if the first court to hear a case, the origin court, was also the only court to hear the case before being appealed to the US Supreme Court, making it also the source court.[5] In other words, if the first court was the only court to hear a case it would be both the origin and source court before being appealed to the Supreme Court.

The eleventh paper in the series focused on administrative action as a factor in Supreme Court agenda setting.[6] Toward the end of that paper I examined court level related to administrative action. The results presented in Tables 11-13 and 11-14 indicated that the Court was more likely to accept cases where the source and origin courts were the same. This was particularly so when federal district courts were included (Table 11-13). Table 11-14 focused only on cases coming from US Courts of Appeal and then whether they were also the origin court. Even for this comparison the Court was more likely to accept cases where the source court was also the origin court.

As a result of these prior findings, and particularly given the different results for state and federal courts, it is worth taking a more specific look at court level as a factor to get a better sense of if, and perhaps when, it makes a difference for agenda setting for the source court to also be the origin court.

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

[5] "ORIGIN" and "SOURCE" are the field names used in Spaeth's database (see below) for these courts and I have used them as well.
[6] The paper is titled, "Agenda Setting on the Burger Court, Paper 11, Administrative Action as a Factor."

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.[7] Included in this number are 23 cases that originally appeared on the Court's miscellaneous docket and were moved to the appellate docket.[8]

An additional note on the coding for this examination is worthwhile before proceeding. Coding for the source and origin courts is relatively straightforward. As noted above, the first court to hear a case, regardless of the level of that court (trial, intermediate appellate, or supreme) is designated the origin court. The court that reviews the case immediately before the case is appealed to the US Supreme Court, again regardless of level, is the source court.

For example, a federal case involving action by the Interstate Commerce Commission would usually be heard by a three-judge panel in a US District Court and then be appealed

[7] 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.

[8] 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.)

directly to the Supreme Court. That would make the District Court both the source and origin court for that case. Another example noted in the sixth paper occurs when there is administrative action by federal agencies such as the National Labor Relations Board. The losing party to the administrative action can then bring suit in a US Court of Appeals. From there the case is appealed to the Supreme Court. That makes the Court of Appeals both the source and origin court for that case.

State cases may vary a bit more in terms of why a case goes to one court rather than another, but the approach is the same in terms of identifying the source and origin courts.

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%.[9]

Table 1 shows the comparison of those cases when the source court was also the origin court with those cases when the source court was not the origin court. Combining state and federal cases and regardless of level there were 4,376 cases when the source court was also the origin court (which I will refer to as SO cases from here on). This is 13.4% of all the cases, so a not insignificant amount. The Court granted review to 1,498 of these cases (34.2%). In comparison, of the 28,385 cases when the source and origin courts were not the same (non-SO cases) the Court granted review to 2,839 (10.0%). Using a two-tailed difference of means test this difference is significant at the $p < .001$ level.

TABLE 1 ABOUT HERE

[9] 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.

That the Court was more likely to grant review where only one court below had reviewed the cases seems to run counter to the notion that review by more than one lower court provides additional ripening, at least in this form. Even so, and as prior results suggest, we must drill down a bit to get a clearer picture of what was occurring for these types of cases. To that end, Table 2 shows the comparison between state SO cases with all cases when the two courts are different.

TABLE 2 ABOUT HERE

There were 714 SO cases from state courts. The Supreme Court granted review to 49 of these cases (6.9%). There were 8,177 state non-SO cases and the Court granted review to 667 of them (8.2%).[10] These percentages are much closer and the difference does not reach statistical significance. Even so, that the acceptance percentage for the non-SO cases is a bit higher is consistent with the notion that more courts reviewing a case as it works its way up the judicial ladder would increase the likelihood of acceptance by the Court. We know from the sixth paper in the series, however, that there was a difference in the acceptance rates for cases coming from state supreme courts versus lower state courts (Tables 6-1 and 6-2). Thus, the next step is to break out these state cases based on court level.

TABLE 3 ABOUT HERE

Table 3 shows the comparison of state supreme court SO cases with all state supreme court non-SO cases. There were 421 SO cases from state supreme courts of which the Court granted review to 34 (8.1%). There were 4,645 non-SO state supreme court cases of which the Court granted review to 484 (10.4%). Once again, the Court was slightly more accepting of cases with

[10] For the corresponding examinations of the Vinson Court the second row in all the tables used the non-SO figures from the second row of Table 1. It seems, however, that it would be better to separate the non-SO cases into those from state and federal courts as appropriate given prior findings suggesting that the Court treats cases from state and federal courts differently. I did this separation for the Warren Court and do so for the Burger Court here.

more lower court examinations, though not to a statistically significant degree. It seems likely that the Court viewed state supreme decisions as more authoritative than those from lower state courts, so the next step is to examine SO cases from lower state courts.

TABLE 4 ABOUT HERE

Given that the acceptance rate for state supreme court SO cases was higher than for all such state non-SO cases, it should be no surprise that the acceptance rate for lower state court SO cases was even lower. This is shown in Table 4 where we see that although the number of cases was much smaller than those from state supreme courts at 293, the Court only accepted 15 of them (5.1%). There were still a fair number of state lower court non-SO cases at 3,532, but the Court only accepted 183 of them (5.2%). Once again, this difference is not statistically significant.

One might reasonably wonder why the acceptance rate for lower state court SO cases would be lower than SO cases coming from the state supreme courts. Again, part of the reason likely has to do with the Court's view of the greater authority of the state high courts. It may also turn in part on the types of cases coming from each court level. In particular, a large portion of the cases coming from a lower state courts involved criminal issues. The results presented in the eighth and ninth papers in the series showed that the acceptance rates for certain types of cases involving criminal issues parties tended to be lower.[11] With those results in mind, it is worth comparing state SO cases while excluding those with criminal issues.

TABLE 5 ABOUT HERE

Table 5 shows the comparison of state SO cases of all levels with all state non-SO cases after excluding the cases with criminal issues. This results in 646 state SO cases of which the

[11] The eighth paper is titled, "Agenda Setting on the Burger Court, Paper 8, Law Enforcement Parties as a Factor." The ninth paper is titled, "Agenda Setting on the Burger Court, Paper 9, Criminal Defendants as a Factor."

Court granted review to 46 (7.1%). There were 5,360 state non-criminal, non-SO cases of which the Court granted review to 455 (8.5%). Although the percentages for both the SO and non-SO cases were higher than when the criminal cases were included, the difference is rather small. We usually think that the bulk of cases with criminal defendants, particularly those coming from lower state courts, were likely thought to be frivolous by the Court and denied review accordingly. That may still be true, but apparently the Court did not find much greater interest in the non-criminal state cases either.

Having examined how the Court treats SO cases coming from the state courts we can now turn to an examination of SO cases coming from the federal courts.

TABLE 6 ABOUT HERE

Table 6 shows the comparison between SO cases coming from the federal courts and all non-SO cases from the federal courts. There were 3,657 federal SO cases and the Court granted review to 1,448 of them (39.6%). There were 20,208 federal non-SO cases and the Court granted review to 2,172 of them (10.7%). This acceptance rate for federal SO cases was well over three times the rate for all federal non-SO cases and the difference reaches a high level of statistical significance. We know from prior examinations, Table 11-11 in particular, that the Court's acceptance rate for cases coming from the US District Courts was significantly higher than the rate for cases coming from the US Courts of Appeals. Thus, as with the state SO cases, we must drill down to better understand this different treatment.

TABLE 7 ABOUT HERE

Table 7 shows the comparison of SO cases coming from US Courts of Appeals and all non-SO cases. There were only 2,014 SO cases from the Courts of Appeals and the Supreme Court granted review to 347 of them (17.2%). As in Table 6, the comparison here is with all

federal non-SO cases. These same numbers for this row will also be used in the remaining tables. The acceptance rate for the SO cases was sufficiently higher than the acceptance rate for the non-SO cases to reach statistical significance. The acceptance rate for SO cases from the Courts of Appeals was consistent with the acceptance rate for SO cases from the Courts of Appeals that involved administrative action shown in Table 11-14.[12]

TABLE 8 ABOUT HERE

Having examined the acceptance rate for SO cases coming from the US Courts of Appeals the next step is to examine those SO cases from lower federal courts. I use the phrase "lower federal courts" here because this includes both the US District Courts as well as the US Court of Claims and Special Railroad Court[13] which also function as a trial courts. In Table 8 we see that there were 1,643 cases that came from lower federal courts and the Court granted review to 1,101 of them (67.0%). Again, given the findings from prior papers, and in particular the results presented in Tables 6-5 and 6-7, it is no surprise that the cases from the lower federal courts had such a high acceptance rate. Again, however, it is worth drilling down a bit more. Given that SO cases from the Court of Claims were included in Table 8 it makes sense to examine those cases separately from those SO cases coming from US District Courts.

TABLE 9 ABOUT HERE

Beginning with the SO cases from the District Courts, Table 9 shows the comparison of those cases with all federal non-SO cases. There were 1,281 SO cases from the District Courts and the Court granted review to 1,078 of them (84.2%). In Table 6-5 the comparison focused on SO cases from District Courts versus cases from the Courts of Appeals, Court of Claims, and

[12] The comparison in Table 11-14 was with a much narrower set of non-SO cases (only those involving federal administrative action) and the difference there did not reach statistical significance.
[13] The Special Railroad Court was created by the Regional Rail Reorganization Act of 1973. The court existed from 1974 to 1997. See https://www.fjc.gov/history/courts/special-railroad-court-1974-1997.

Special Railroad Court. Here, the focus is on SO versus non-SO cases but restricting the Court of Appeals cases here to non-SO cases actually resulted in a lower acceptance rate.

Table 6-7 looked at the comparison of cases coming from single-judge and three-judge US District Courts. Both types of courts had very high acceptance rates (65.7% and 93.4%, respectively), but the difference between them still reached statistical significance. In the next two tables these rates are compared to the set of all federal non-SO cases.

TABLE 10 ABOUT HERE

Table 10 shows the comparison of SO cases coming from three-judge US District Courts with all federal non-SO cases. There were 847 of these cases and the Court granted review to 791 of them (93.4%). As expected, this difference was very large and highly significant.

TABLE 11 ABOUT HERE

Table 11 shows the comparison of SO cases coming from single-judge US District Courts with all federal non-SO cases. There were 432 of these cases and the Court granted review to 286 of them (66.2%). Despite the smaller number of these cases the difference was still highly significant.

TABLE 12 ABOUT HERE

Finally, Table 12 examines the comparison between SO cases from the Court of Claims and Special Railroad Court versus all non-SO cases. There were 362 SO cases from the Court of Claims and the Court granted review to only 23 of them (6.4%). This acceptance rate was well below the rate for all federal non-SO cases and reaches a traditional level of statistical significance.

Discussion

As we have seen in previous papers in this series, the results for this examination were more nuanced than a single factor might indicate. The notion that the justices of the Supreme Court prefer to let issues ripen in the lower courts may have some validity, but the results presented in this paper do not seem to indicate that a factor in such ripening is simply whether more than one lower court ruled on the case before it was appealed to the Court.

As shown in Table 1, in looking at all the cases when there was only one lower court, meaning when the source and origin courts were the same, the Burger Court was over three times more likely to accept cases for review when there was only one lower court compared with those with two or more lower courts. This result was certainly contrary to the notion of a case being more ripe if more courts had heard it. Not surprisingly, however, a closer examination of the cases when the source and origin courts were the same—the SO cases—found that the Court's acceptance of these cases was more nuanced.

In particular, there was a distinct difference in the acceptance rates for SO cases from state and federal courts (Tables 2 and 6, respectively). Despite the difference in the acceptance rates for state and federal SO cases, more distinctions appeared when drilling down even further. Not surprisingly, the Court was more accepting of SO cases from state supreme courts (Table 3) than from lower state courts (Table 4), though the difference was only a few percentage points. Interestingly, there was not a large number of state criminal cases and when they were excluded from the examination the acceptance rate for the remaining cases only increased a few tenths of a point (Table 5). We would normally expect criminal cases to have a lower acceptance rate on the assumption that more of them were frivolous or at least longshots. This was true for the

Burger Court, but the acceptance rate for SO criminal cases was only a few points below the SO non-criminal cases (3 of 68 cases for 4.4% compared to 7.1% shown in Table 5).

Although SO cases from the federal courts had a much higher acceptance rate than SO cases from the state courts, there were also differences based on the type of federal court involved. One might reasonably guess that the Court would be more accepting of cases from the Courts of Appeals than the District Courts, but this was shown to not be the case. It was not surprising that the acceptance rate for SO cases from the Courts of Appeals (Table 7) was higher than the rate for SO cases from the state supreme courts (Table 3), but that rate was much lower than the acceptance rate for SO cases from all lower federal courts (Table 8) and in particular from the District Courts (Table 9).

Indications of the unusually high acceptance rate for SO cases coming from the federal District Courts were shown in the sixth and eleventh papers in the series. The sixth paper, which examined the level of the source court as a factor, compared single- and three-judge federal district courts and found the rate for three-judge district courts was nearly 30 points higher (Table 6-7). Nevertheless, both types of district court had exceptionally high acceptance rates and in this paper, Tables 10 and 11 compared those rates with the rate for non-SO cases and found the differences to be highly significant. It was not just a matter of the Court's willingness to hear cases from federal trial courts, however, as Table 12 examined the acceptance rate for SO cases coming from the Court of Claims and Special Railroad Court and found the acceptance rate to be well below the rate for the non-SO cases to a statistically significant degree.

Conclusion

An initial suggestion that SO cases might not be seen as sufficiently ripe by the Court, or put differently, that cases that have been reviewed by more than one lower court are more ripe for review proved to not be the case. In fact, in nearly every comparison the SO cases had higher acceptance rates than non-SO cases. Nevertheless, to the extent SO cases were related in some way to the notion of ripening that factor appears to be influenced by the type of court (state or federal), the court level (supreme or lower at the state level) and the subject matter of the case (criminal or not, federal administrative action in three-judge federal courts). Thus, although SO cases may be worthy of examination, the fact that the source and origin courts were the same may be a proxy for other factors that were also, if not more, important for the Burger Court.

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Table 1

Acceptance Rates for Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
SO Cases	1,498	2,878	4,376	34.2%*
Non-SO Cases	2,839	25,546	28,385	10.0%
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 State Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State SO Cases	49	665	714	6.9%
Non-SO Cases	667	7,510	8,177	8.2%
Column Total	716	8,175	8,891	8.1%

Table 3

Acceptance Rates for State Supreme Court Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State Supreme Court SO Cases	34	387	421	8.1%
Non-SO Cases	484	4,161	4,645	10.4%
Column Total	518	4,548	5,066	10.2%

Table 4

Acceptance Rates for State Lower Court Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State Lower Court SO Cases	15	278	293	5.1%
Non-SO Cases	183	3,349	3,532	5.2%
Column Total	198	3,627	3,825	5.2%

Table 5

Acceptance Rates for State Non-Criminal Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
State Non-Criminal SO Cases	46	600	646	7.1%
Non-SO Cases	455	4,905	5,360	8.5%
Column Total	501	5,505	6,006	8.3%

Table 6

Acceptance Rates for Federal Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal SO Cases	1,448	2,209	3,657	39.6%*
Non-SO Cases	2,172	18,036	20,208	10.7%
Column Total	3,620	20,245	23,865	15.2%

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

Table 7

Acceptance Rates for Federal Courts of Appeals Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Court of Appeals SO Cases	347	1,667	2,014	17.2%*
Non-SO Cases	2,172	18,036	20,208	10.7%
Column Total	2,519	19,703	22,222	11.3%

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

Table 8

Acceptance Rates for Federal Lower Court Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Lower Court SO Cases	1,101	542	1,643	67.0%*
Non-SO Cases	2,172	18,036	20,208	10.7%
Column Total	3,273	18,578	21,851	15.0%

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

Table 9

Acceptance Rates for Federal District Court Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal District Court SO Cases	1,078	203	1,281	84.2%*
Non-SO Cases	2,172	18,036	20,208	10.7%
Column Total	3,250	18,239	21,489	15.1%

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

Table 10

Acceptance Rates for Federal Three-Judge District Court Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Three-Judge District Court SO Cases	791	56	847	93.4%*
Non-SO Cases	2,172	18,036	20,208	10.7%
Column Total	2,963	18,092	21,055	14.1%

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

Table 11

Acceptance Rates for Federal Single-Judge District Court Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Single-Judge District Court SO Cases	286	146	432	66.2%*
Non-SO Cases	2,172	18,036	20,208	10.7%
Column Total	2,458	18,182	20,640	11,9%

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

Table 12

Acceptance Rates for Federal Court of Claims Cases With Source and Origin Courts the Same Compared With Cases With Different Source and Origin Courts on the Burger Court's Appellate Docket

	Accepted	Denied	Row Total	Acceptance Rate (%)
Federal Court of Claims SO Cases	23	339	362	6.4%*
Non-SO Cases	2,172	18,036	20,208	10.7%
Column Total	2,195	18,375	20,570	10.7%

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