



THE MISTAKE IN SUPREME COURT STATISTICS AND HOW TO CORRECT IT

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READERS OF THE *GREEN BAG* will probably be surprised to learn that for years one statistic concerning the Supreme Court has been incorrectly reported. The mistake concerns the number of petitions for a writ of certiorari (cert. petitions) docketed in every Term of the Court. Those making the mistake, doubtless inadvertently, include the Court itself and the Administrative Office of the U.S. Courts (AO).

Both the Court and the AO have purported to report for every year the number of cert. petitions filed *in the Court's Term*, which begins on the first Monday in October and ends on the day before the first Monday in October of the following year. In fact, they have been reporting the number of cert. petitions filed in the approximately 12-month period from the start of the Court's summer recess (usually late June or early July) until the start of that recess in the following year.

The difference between the number of cert. petitions filed in a Court Term and the number filed in a recess-to-recess period is not large, but all court statistics should be accurate. Importantly, the number of cert. petitions filed in a Term should be accurate because it is the basis for the widely reported percentage of cert. petitions granted in a Court Term.

This article reports the origin of the mistake and an easy way to fix it.

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The problem stems from the Court’s change in the duration of its “Term.” By statute, the Supreme Court’s Term begins on the first Monday in October.¹ However, the statute does not say when a Term ends. In an earlier time, the Court ended its Term on the day it issued its last decision before starting its summer recess.² If an emergency matter had to be decided during the summer, the Court held a “Special Term.”³

In 1979, the Court began to hold a continuous Term.⁴ The Court formalized this practice ten years later by adopting a rule stating, “The Court holds a continuous annual term commencing on the first Monday in October and ending on the day before the first Monday in October of the following year.”⁵ The number of cases docketed in a Term should be the number docketed between the first Monday in October and the end of the Term in October of the following year. But that’s not what the Court and the AO report.

Let’s start with the statistics reported by the Court. The Court purports to report cert. petitions docketed in a Term in three places: the Court’s *Journal*, the *United States Reports*, and the appendix to the annual report of the Chief Justice.

THE COURT’S JOURNAL

The *Journal of the Supreme Court of the United States* contains numerous tables of statistics concerning the Court. The *Journal* is searchable from the Supreme Court’s website.⁶ Selecting, for example, the link for what is labeled “October 2020” leads to a document titled “OCTOBER TERM 2020.” Page ii of that document displays a table titled “STATISTICS AS OF JULY 2, 2021.” Near the top of that table are the following lines:⁷

Cases docketed during term:

Paid cases	1828
<i>In forma pauperis</i> cases	3477

¹ See 28 U.S.C. § 2.

² See STEPHEN M. SHAPIRO ET AL., SUPREME COURT PRACTICE § 1.2.(f). (11th ed. 2019).

³ See, e.g., *Cooper v. Aaron*, 358 U.S. 1 (August Special Term 1958).

⁴ See SHAPIRO ET AL., § 1.2.(f). n.13.

⁵ Sup. Ct. R. 3.

⁶ See Sup. Ct. website, “Case Documents” tab, “Journal” link, www.supremecourt.gov/orders/journal.aspx.

⁷ Sup. Ct. J. 2020 Term ii.

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Although the document is titled “October Term 2020,” the table reports statistics “as of July 2, 2021.” So when the *Journal* reports 1,828 paid cases and 3,477 *in forma pauperis* (IFP) docketed “during term,” it is not reporting paid and IFP cases docketed during the October 2020 Term, which ended October 3, 2021 (the day before the first Monday in October 2021). Instead, as reflected by the title “STATISTICS AS OF JULY 2, 2021,” the *Journal* is reporting paid and IFP cases docketed in the approximately 12-month period ending July 2, 2021. That period began July 9, 2020,⁸ when the Court began its 2020 summer recess.⁹ This can be seen from the *Journal*’s comparable table for what purports to be the October 2019 Term, reporting cases docketed “as of July 9, 2020.”¹⁰

THE U.S. REPORTS

The bound volume of the *United States Reports* that contains the last opinions of an October Term includes a table of statistics concerning the Supreme Court. The table is located just before the index at the end of the volume. The latest volume available when this article was written is No. 573, containing the last opinions from the October 2013 Term. The table in that volume is titled “STATEMENT SHOWING THE NUMBER OF CASES FILED, DISPOSED OF, AND REMAINING ON DOCKETS AT CONCLUSION OF OCTOBER TERMS 2011, 2012, AND 2013.”¹¹

That table has a column headed “PAID” for 2013 and three rows titled “Number of cases on dockets,” “Number disposed of during term,” and “Number remaining on docket.”

For 2013, the number in the first row is 1,869, in the second row 1,568, and in the third row 301.¹² These numbers are identical to the numbers in the *Journal*’s table of statistics for what the *Journal* calls “the 2013 Term.”¹³

⁸ On July 9, 2020, Chief Justice Roberts announced, “The Court will be in recess from today until the first Monday in October 2020 . . . at which time . . . the October 2020 Term of the Court will begin.” Sup. Ct. J., 2019 Term at 809 (July 9, 2020).

⁹ See *id.* (statement of Roberts, C.J.).

¹⁰ See *id.* at ii.

¹¹ 573 U.S. at 992.

¹² See *id.*

¹³ Sup. Ct. J., 2013 Term at ii.

That table is headed “STATISTICS AS OF JULY 1, 2014.” Thus, when the table in volume 573 of the *U.S. Reports* states that it is reporting the number of cases filed, disposed of, and remaining on dockets “at conclusion of October Term 2013,” it is reporting the numbers for the approximately 12-month period ending July 1, 2014 (the recess-to-recess period), just as the *Journal* does.

APPENDIX TO THE ANNUAL REPORT OF THE CHIEF JUSTICE

The appendix to the annual report of the Chief Justice also purports to report the number of paid and IFP cases brought to the Court in the Court’s October Term. The appendix uses the term “filed,” but, as will be seen, it is counting paid and IFP cases *docketed*. The distinction is of negligible significance because cases are docketed within a day or two after filing.

The appendix for the most recent annual report states that it is reporting cases filed “[i]n the 12-month period ending September 30, 2021.”¹⁴ However, what appears under the bar graph in the appendix is “OT 20,”¹⁵ indicating that the figures reported purport to be for the October 2020 Term, which ended Oct. 3, 2021, not Sept. 30, 2021.

More importantly, the appendix reports 1,830 paid cases and 3,477 IFP cases for the period covered.¹⁶ Because the 1,830 total of paid cases includes 2 original jurisdiction cases, the appendix is reporting 1,828 paid cert. petitions. 1,828 and 3,477 are identical to the numbers of paid and IFP cases reported by the *Journal* for the period from July 9, 2020 to July 2, 2021. That is not a coincidence. The appendix makes the same mistake the *Journal* does. It is not reporting the number of cases docketed in the October 2020 Term; it is reporting the number of cert. petitions docketed in the recess-to-recess period for 2020-21. This is not an isolated occurrence. The appendices for the last several years, although referring to “OT 19,” “OT 18,” and OT 17,” report the same number of paid cert. petitions (after

¹⁴ Supreme Court website, “News Media” tab, “Chief Justice’s Year-End Reports on the Federal Judiciary” link, “2021 Year-End Report” link, Appendix at 7, www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf

¹⁵ *Id.*

¹⁶ *Id.*

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subtracting the 2 or 3 original jurisdiction cases) and the same number of IFP cert. petitions that the *Journal* reports were docketed in the recess-to-recess periods of 2019, 2018, and 2017.

AO STATISTICS

The AO compiles numerous tables of statistics concerning the federal courts.¹⁷ The one table that reports statistics only for the Supreme Court is Table A-1. That table reports, for several years, “Number of Cases on Docket” and “Number Remaining on Docket.”¹⁸ For 2020, the table reports 2,137 paid cases on docket;¹⁹ for the previous year, 2019, the table reports 309 paid cases remaining on the docket.²⁰ Subtracting 309 from 2,137 yields 1,828, which is the number of paid cases the table is reporting as having been docketed for the period that the table covers. For 2020, the table reports 3,982 IFP cases on docket;²¹ for the previous year, 2019, the table reports 505 IFP cases remaining on docket.²² Subtracting 505 from 3,982 yields 3,477, which is the number of IFP cases the table is reporting as having been docketed for the period that the table covers.

The title of the table states that the table is reporting cases for October Terms.²³ So the numbers for 2020 purport to be for the October 2020 Term. However, the fact that the numbers of paid and IFP cases reported are identical to the number of paid and IFP cases reported by the *Journal* for the period from July 9, 2020, to July 2, 2021, rather than the October 2020 Term, indicates that the AO is making the same mistake as the *Journal*.

Perhaps inadvertently, the AO acknowledges this mistake in a note to Table A-1. That note states, “An ‘October Term’ is the term of the Supreme Court of the United States, which by statute begins on the first Monday in October and ends in late June or early July of the following year.”²⁴ How-

¹⁷ See United State Courts website, “Statistics and Reports” tab, “Caseloads Statistics Data Tables” link, www.uscourts.gov/statistics-reports/caseload-statistics-data-tables.

¹⁸ *Id.* Table A-1. The AO reports Table A-1 data for the 12-month period ending Sept. 30.

¹⁹ *Id.* Table A-1, 2020 entries (Sept. 30, 2021).

²⁰ *Id.* 2019 entries.

²¹ *Id.* 2020 entries.

²² *Id.* 2019 entries.

²³ *Id.* Table A-1.

²⁴ *Id.* Table A-1 note.

ever, no statute ever specified that or any other ending date. That alleged ending date stated in the note results from the Court's earlier practice, by custom, of ending a Term the day before the summer recess began.

THE COURT'S CASE NUMBERING SYSTEM

The numbers in these Court and AO reports of paid and IFP cases docketed in the approximately 12-month period ending when the Supreme Court begins its summer recess are related to the Court's unusual case numbering system. The case numbers for docketed cert. petitions and appeals use the format “__-____,” The first blank shows the last two digits of a year. This aspect of the case-numbering format began in 1971.²⁵ The second blank shows the sequential number of the cert. petition (or, rarely, an appeal) being docketed.

The unusual feature of the Court's case-numbering system is that, on the day when the summer recess starts, the Court changes the first two digits of case numbers docketed on and after that day to the last two digits of the year.²⁶

The sequential numbering of paid cert. petitions starts at 1 on that day, rather than at the beginning of the Term in October. For example, the first paid cert. petition docketed after the start of the summer recess in 2020 was *Davis v. United States*, docketed July 9, 2020, as 20-1. The first paid cert. petition docketed at the beginning of the October 2020 Term was *Sequeira v. Nicaragua*, docketed Oct. 5, 2020, as 20-428.

The Court makes this same change in the first two digits of IFP cert. petitions, but with an added wrinkle. The Court's sequential numbering system for IFP cert. petitions begins with “__-5001.” The first IFP petition docketed after the Court began its summer recess in 2020 was *Norris v. United States*, docketed July 9, 2020, as 20-5001. The first IFP cert. petition docketed at the beginning of the October 20 Term was *Skandha v. Bates*, docketed Oct. 5, 2020, as 20-5899.

²⁵ See Shapiro et al. at 1-60.

²⁶ See Bennett Boskey & Eugene Gressman, *The Supreme Court's 1999 Revisions of Its Rules*, 183 F.R.D. 603, 608 (1999); see also Kevin Russell, *Mystery of the Premature Docket Number*, SCOTUSblog (Sept. 28, 2009), available at www.scotusblog.com/2009/mystery-of-the-premature-docket-number.

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*The correct numbers.*²⁷ In the Court's October 2020 Term, the correct number of paid cert. petitions docketed is 1,889, and the correct number of IFP cert. petitions docketed is 3,431, making a total of 5,320 cert. petitions docketed in the 2020 Term. 5,320 is considerably smaller than the ballpark estimate of "approximately 7,000 to 8,000 cases" reported on the Court's website as the number of cases filed each Term.²⁸

Numbering original jurisdiction cases. Changing the first two digits of the case numbers of paid and IFP cert. petitions at the start of the summer recess, instead of at the start of the Court's October Term, is not the only oddity of the Court's case-numbering system. The Court's case-numbering system for original jurisdiction cases ("original cases"), such as suits between states, is also unusual. The case-numbering format for these cases is "22O__" (the letter "O," not the number "0," and without a hyphen). Use of "22" most likely results from the fact that the earliest original case returned by the Court's docket search page is *Wisconsin v. Illinois*, docketed July 14, 1922, as 22O1.²⁹

The unusual feature of the case-numbering system for original cases is that the case numbers of *all* subsequent original cases begin with "22," even though they were docketed in later years. *Michigan v. Illinois* was docketed Mar. 8, 1926, as 22O2. *New York v. Illinois* was docketed Oct. 23, 1926, as 22O3. With the exception of 22O65, *Texas v. New Mexico*, docketed June 27, 1974, the Court's search page returns no original cases until June 3, 2002, when *Alabama v. North Carolina* was docketed as 22O132. The most recent original case, *New York v. New Jersey*, was docketed Mar. 14, 2022, as 22O156.

Scott Harris, the Clerk of the Supreme Court, informed me that the Court's docket search page returns only these four pre-2001 original cases because docket entries were made for those cases after 2001.

²⁷ The task of calculating correct numbers is rather complicated. For an explanation, see the Appendix at pages 17-18 below.

²⁸ See Sup. Ct. website, "About the Court" tab, "Supreme Court at Work" link, "The Term and Caseload" link, www.supremecourt.gov/about/courtatwork.aspx.

²⁹ See Sup. Ct. website, "Case Documents" tab, "Docket Search" link, www.supremecourt.gov/docket/docket.aspx.

CORRECTING THE MISTAKE

There is a simple way to correct the mistake of reporting the number of cases docketed in the 12-month period ending when the Court begins its summer recess as if that were the number of cases docketed in an October Term. The Court could instruct its Clerk's Office not to change the first two digits of the case numbers of cert. petitions until the first day of each Term. That is how all the Courts of Appeals change the case numbers of cases docketed in their courts. The first paid cert. petition docketed in the Supreme Court's 2023 Term would be numbered "23-1," and the first IFP cert. petition would be numbered "23-5001."

That change would also enable the Court and the AO to report accurately the number of paid and IFP cert. petitions docketed *in each Term*. The number of paid cert. petitions docketed in a Term would be the four-digit sequential number of the last paid cert. petition docketed before the beginning of a new Term. The number of IFP cert. petitions docketed in a Term would be the four-digit sequential number of the last IFP petition docketed before the beginning of a new Term minus 5,001 (the four-digit sequential number of the first IFP cert. petition docketed in a new Term) plus 1.

When making this simple change, the Court could also change the case-numbering of original cases by beginning each case number with the last two digits of the year in which the case is docketed, instead of continuing to begin the case number of every year's original case with 22. The first original case docketed in the Court's 2023 Term would be numbered 23O1. That change would enable anyone looking at the case number of an original case to know immediately in what year the case was docketed and to determine how many original cases were docketed in that Term by looking at the sequential number of the last original case docketed in the Term.

Courts are usually slow to change procedures. Perhaps in this instance the Supreme Court might act promptly to correct the mistake it and the AO have been making in reporting the number of cert. petitions docketed in a Term.

APPENDIX
CALCULATING CERT. PETITION FILINGS
IN A TERM

The task of calculating the correct number of cert. petitions filed in an October Term has been complicated by the Court's current case numbering system. Performing the task for the Court's October 2020 Term, for example, requires first dividing the Term into two periods: (1) the approximately nine-month period ending when the Court stopped numbering cert. petitions "20-____" and (2) the approximately three-month period when the Court started numbering cert. petitions "21-____," and then analyzing each period separately.

The nine-month period. The Court's 2020 Term began on Oct. 5, 2020. The first paid cert. petition docketed in that Term was *Sequeira v. Republic of Nicaragua*, docketed Oct. 5, 2020, with docket number 20-428. The last paid cert. petition filed with a docket number beginning "20-" was *Monbo v. Blair*, docketed about nine months later on July 1, 2021, with docket number 20-1829. Thus, paid cert. petitions docketed in the approximately first nine months of the 2020 Term, numbered consecutively from docket numbers 20-428 to 20-1829, totaled 1,402 (1,829-428+1).³⁰

The three-month period. The first paid cert. petition beginning with "21-" was *Abell v. United States*, docketed July 6, 2021, with docket number 21-1. The Court's 2020 Term ended about three months later on Oct. 3, 2021. The last paid cert. petition docketed before Oct. 3, 2021, was *Oklahoma v. Fox*, docketed Oct. 1, 2021, with docket number 21-488. Between docket numbers 21-1 and 21-488 was 21-12, an *appeal* in *Federal Election Commission v. Cruz*, docketed July 7. Thus, paid cert. petitions docketed in the approximately last three months of the 2020 Term, numbered consecutively from docket number 20-1 to 21-11 and 21-13 to 20-488 (omitting the one appeal), totaled 487.

Adding 1,402 to 487 yields 1,889. That was the number of *paid* cert. petitions docketed in the 2020 Term.

³⁰ To calculate how many numbers are in any series of consecutive numbers, for example, 2 to 4, subtracting the lower number 2 from the higher number 4 and adding 1 yields the right answer, 3. When a series of consecutive numbers begins with 1, for example, 1 to 3, the right answer, 3, is the last number in the series

The same analysis for IFP petitions, explained in the margin,³¹ reveals that IFP cert. petitions docketed in the 2020 Term totaled 3,431. Adding 1,889 (paid cert. petitions docketed) to 3,431 (IFP cert. petitions docketed) yields 5,320. Thus, the total number of cert. petitions docketed in the 2020 Term was 5,320.



³¹ The first IFP petition docketed in the 2020 term was *Skandha v. Bates*, docketed Oct. 5, 2020, with docket number 20-5899. The last IFP cert. petition docketed with a docket number beginning “20-” was *Aguilar v. United States*, docketed July 1, 2021, with docket number 20-8477. Thus, IFP cert. petitions docketed in the approximately first nine months of the 2020 Term, numbered consecutively from 20-5899 to 20-8477, totaled 2,578 (8,477-5,899+1).

The first IFP cert. petition docketed in the 2020 Term beginning with “21-” was *Smith v. Illinois*, docketed July 2, 2021, with docket number 21-5001. The Court’s 2020 Term ended Oct. 3, 2021, the day before the first Monday in October 2021. The last IFP petition docketed before Oct. 3, 2021, was *Gaston v. Maine*, docketed Oct. 1, 2021, with docket number 21-5853. Thus, IFP cert. petitions docketed in the approximately last three months of the 2020 Term, numbered consecutively from 20-5001 to 20-5853, totaled 853 (5,853-5,001+1).

Adding 2,578 to 853 yields 3,431. That is the number of IFP cert. petitions docketed in the 2020 Term.