



TO THE BAG

CERTIORARI IN THE SUMMERTIME

To the *Bag*:

I am surprised that Judge Newman’s interesting article about properly counting Supreme Court petitions for certiorari and notices of appeal (Jon O. Newman, *The Mistake in Supreme Court Statistics and How to Correct It*, 26 Green Bag 2d 9 (2022)) did not mention the apparent rationale for the Court’s numbering system. Any petition filed during the summer recess was originally not generally acted upon until the first Monday in October – the start of the new term. Someone must have concluded that a case is not properly a case “in” the Supreme Court until certiorari is granted (or, for notices of appeals, until jurisdiction is “noted”). Hence summer petitions and notices of appeal should have the year-number of the next term. That rationale has become obsolete, as the Court for some years has granted some petitions before the first Monday in October. Of course, Judge Newman’s point remains: that truth in reporting numbers is a virtue, and an attainable one, at least for petitions for certiorari and notices of appeal.

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¹ Or should I say “V & OT 1971,” because my clerkship (with Justice Harry Blackmun) started in the summer of 1971, when the Court was “in vacation”? See 404 U.S. 801-02, listing eight “Cases Dismissed in Vacation”, starting with *Green v. California* (cert. dismissed July 14, 1971) and ending, at 802, with *Johnson v. United States* (cert. dismissed September 20, 1971).