

IT IS LOGISTICALLY IMPOSSIBLE FOR U.S. SUPREME COURT JUSTICES TO PERFORM THEIR JOB COMPETENTLY

By Evan Gutman CPA, JD (2013)

This short essay is designed to present one point. The point is that it is logistically impossible for U.S. Supreme Court Justices to perform their job competently. The reason is simple. The caseload is too big and the point I am making is easy to prove.

In 2007, according to Table A-1 containing U.S. Supreme Court statistical data obtained from the Federal Courts website, a total of 9,602 cases were on the docket of the U.S. Supreme Court. The overwhelming majority of these cases are denied review by the Court. However, in order to determine whether review should be granted, it would seem to be a fair assumption that a Justice would have to actually read the Petitions being filed. The bottom line is that it is logistically impossible for each Justice to read 9,602 Petitions. There's simply not enough work hours in the year.

U.S. Supreme Court Rule 33(g) lists page limits for Petitions for a Writ of Certiorari and indicates the maximum number of pages is 30. Although I have not been able to find statistical data indicating the average number of pages for Petitions filed, I think 25 is probably a fair estimate. Concededly, I don't have empirical data to back that number up. Maybe, the actual average is 21, 24, 27 or 28. But, I do think that 25 is a rough fair estimate.

Additionally, I am assuming as a very rough estimate that the average U.S. Supreme Court Justice can read, synthesize and consider 60 pages of written legal material per hour. Using these rough estimates, it would take each U.S. Supreme Court Justice 4,000 hours per year ($9,602 \text{ times } 25 = 240,050$ pages; then divided by 60 pages per hour equals 4,000), just to read the Petitions. It simply can't be done. Even if you were to assume that the average Petition had only 21 pages, and that the average Justice could read, synthesize and consider 90 pages of written legal material per hour, it would still take 2,240 hours per year ($9,602 \text{ times } 21 \text{ divided by } 60 = 2,240$) just to read the Petitions.

I don't know exactly how many hours per year the Justices work. I do know that typically the average person has 1,920 work hours per year (52 weeks minus two weeks vacation minus holidays and sick days times 8 hours per day = 1,920). There is clearly a gap in available hours for the Justices, and that is before giving any type of consideration to cases that they actually adjudicate, which I understand takes up the majority of their time. Under the reasonable

scenarios presented above, if the Justices were to actually read all the Petitions themselves, they would have absolutely no time to write any opinions, no time for any oral arguments, no time for case conferences or any other duties.

The bottom line is that the only way the Justices can lay claim to properly performing their duties, is if they are actually reading the Petitions. The Petitions are the means that determine, which cases are adjudicated by the Court. And it's simply a logistical impossibility for the Justices to read them all. That means the determination of which cases are heard by the Court, is largely being made in one of two ways. Either the law clerks, many of whom have virtually no legal experience, are reading the Petitions and then deciding which Petitions should be presented to the Justices; or alternatively, many Petitions are simply not being carefully read or considered by anyone. Neither prospect is particularly appealing.

When FDR presented his Court packing plan in the 1930s, the Justices scoffed at his assertion that they were overworked, as the justification for more seats on the U.S. Supreme Court. Since then, the number of Petitions filed has skyrocketed. But, Court packing will not resolve the problem, and would probably exacerbate it for the following reason.

If additional Justices were added to the Court, you would simply have more Justices, with each possessing an individual duty to read all of the 9,602 Petitions filed. It is simply not acceptable to divide the filed Petitions between the Justices to determine which cases warrant review. To the contrary, in order for the job to be performed properly, every single Justice who has a vote on whether to grant or deny review should be reading every single Petition. But, it's not logistically possible.

Indigent prisoners are generally the ones who file the Petitions, which are in all likelihood treated like trash by the Court. Yet, they have a greater interest at stake than virtually any other litigant before the Court. They have their freedom at stake.

In short, and in conclusion on this issue, I really don't have a suggestion as to how to solve the problem. But, it is a problem. The Petitions are not being properly reviewed, if for no other reason than it is logistically impossible to properly review them due to the time constraints and caseload. That means the Justices cannot genuinely lay claim to doing their job properly, although I do concede it is through no fault of their own on this isolated issue. By the same token, the Justices of the U.S. Supreme Court cannot expect help on the issue, until they acknowledge the problem.

As the old saying goes, no one can help you, until you admit you have a problem. The doctrine of judicial immunity provides no exemption for U.S. Supreme Court Justices on this issue.