THE PROPER PRONUNCIATION OF *CERTIORARI*

THE SUPREME COURT'S SURPRISING SIX-WAY SPLIT

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I. THE QUESTION PRESENTED

THE SUPREME COURT OF THE UNITED STATES, like many state supreme courts, has the discretion to review a case on appeal by granting a writ of certiorari. At English common law, certiorari was "an original writ commanding lower court judges to certify and transfer the record of the lower court proceedings in a case under review to a higher court."[1] These writs served as "the medieval equivalent of 'Get me the file on such and such a matter.'"[2] They are central to the work of the

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[1] STEPHEN M. SHAPIRO ET AL., SUPREME COURT PRACTICE 75 (10th ed. 2013).

[2] EDITH G. HENDERSON, FOUNDATIONS OF ENGLISH ADMINISTRATIVE LAW: CERTIORARI AND MANDAMUS IN THE SEVENTEENTH CENTURY 89-90 (1963).

Supreme Court, and now account for virtually all of its caseload.[3] Anyone who practices before that Court, or who studies its work, devotes a great deal of discussion to certiorari petitions. And any lawyer appearing before the Court must be prepared to address whether some matter is within the scope of the questions on which the Court granted certiorari, a topic that is raised at oral argument with great frequency.[4]

When the topic is raised, any sensible lawyer will want to say "certiorari" the way the justices expect it to be pronounced. Justice Antonin Scalia and Bryan Garner have cautioned that an appellate court will judge the sophistication of lawyers by whether they have taken care to master the orthodox pronunciation of legal terminology that is preferred among educated people.[5] When a lawyer mispronounces some word, Justice Scalia has warned, the judges are "inclined to think this person is not the sharpest pencil in the box."[6]

But what is the right way to say *certiorari*?

Leading legal dictionaries are surprisingly unhelpful. Bryan Garner correctly observes that the "most troublesome aspect" of this

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[3] During the first century of its existence, from 1789 to 1891, the Court had only obligatory types of appellate jurisdiction, known as appeals and writs of error. SHAPIRO, *supra* note 1, at 75. In 1891, Congress gave the Court some discretion in selecting lower court decisions for review through a writ of certiorari, and subsequent statutes abolished virtually every other form of appellate jurisdiction that had once been conferred upon the Court. *Id.* at 75-76.

[4] SUPREME COURT RULE 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court."). A search of Supreme Court transcripts in the Westlaw database SCT-ORALARG discloses that the word *certiorari* has been used by an attorney or a justice at oral argument in hundreds of cases.

[5] ANTONIN SCALIA AND BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES 144-45 (2008). They note that many words have more than one pronunciation, sometimes with two variants that are equally acceptable, but maintain that "more often . . . one pronunciation typifies educated speech and the other uneducated speech." *Id.* at 144. Ironically, those co-authors do not agree on the ideal pronunciation of *certiorari*. *See infra* note 28.

[6] Debra Weiss, *Scalia Airs Pet Peeves at Texas Bar Meeting*, ABA JOURNAL (June 29, 2009), www.abajournal.com/news/scalia_airs_pet_peeves_at_texas_bar_meeting.

word is its pronunciation.[7] Recent editions of *Black's Law Dictionary* each list three different pronunciations as acceptable, without indicating a preference for any one of them.[8]

There is no point in speculating about how the word was spoken by those who made it up, because they have been dead for many centuries. The first Congressional enactment on the topic was over a century ago, in 1891,[9] and English courts used this term as far back as the thirteenth century.[10] Although the word first appeared in Latin legal passages,[11] it is technically a form of "Law Latin,"[12] a corrupted and debased version of Latin with a mixture of French and English influences.[13] It is now more or less universally agreed, at least among Supreme Court justices, that the word is so thoroughly Anglicized that it is no longer subject to normal principles of classical Latin pronunciation, if it ever was.[14]

But even if dictionaries cannot agree on the pronunciation of *certiorari*, it would be valuable for appellate practitioners to know how the word is spoken by the Supreme Court justices. I had always assumed there was likely to be considerable agreement among them on that topic, since they get together in conference to discuss and vote on thousands of certiorari petitions each year. Moreover, be-

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[7] BRYAN A. GARNER, GARNER'S DICTIONARY OF LEGAL USAGE 145 (3d ed. 2011).

[8] BLACK'S LAW DICTIONARY 258 (9th ed. 2009); BLACK'S LAW DICTIONARY 241 (8th ed. 2004); BLACK'S LAW DICTIONARY 220 (7th ed. 1999).

[9] *See* SHAPIRO, *supra* note 1, at 75.

[10] "The generic writ certiorari made its first appearance early in the 1270's, just before Edward I came to the throne: it is impossible to be wholly precise about the date because the case materials in print are few and severely edited." HENDERSON, *supra* note 2, at 83.

[11] In one early case, the writ was phrased "rex . . . certiorari et errorem si quis intervenit corrigi volens" – meaning "the king . . . wishing to be informed and that error should be corrected if any has occurred." *Id.* at 86 & n.14 (quoting and translating a report from 1287 reprinted at 1 G.O. Sayles, ed., SELECT CASES IN THE COURT OF KING'S BENCH UNDER EDWARD I 168 (1936)).

[12] BLACK'S LAW DICTIONARY 258 (9th ed. 2009).

[13] *Id.* at 965.

[14] *See infra* note 19.

cause the current justices have worked together for such an unusually long time – five of them for the nearly twenty years since Justice Breyer took his seat in August 1994 – one would naturally expect to find that a high level of consensus has developed among them as to how this word should be spoken. Moreover, no other group has the same institutional authority to establish the authoritative pronunciation of this ancient writ. And so, as a public service, I took it upon myself to find out how the justices pronounce that word.

II. METHODOLOGY

To uncover whether there is some officially sanctioned pronunciation of *certiorari*, I naturally listened to the Supreme Court's recordings of the justices speaking from the bench. Because my desire is to assist modern advocates who occasionally appear before the Court and others who speak in public about its work, I did not examine the use of this word by every justice since the invention of the tape recorder. Rather, I investigated the pronunciations favored by every justice since Justice Blackmun retired in 1994, twenty years ago. My survey therefore included a total of thirteen justices: the nine current members of the Court and its four most-recently-departed members – Chief Justice Rehnquist and Associate Justices O'Connor, Souter, and Stevens. Because those four all sat within the past nine years, their views are valuable in ascertaining whether there is a settled contemporary understanding among educated observers about the proper way to say this word, or at least how to say it when addressing the nation's highest court.

Although *certiorari* is frequently mentioned during oral argument, that context does not usually supply the most reliable guide to the pronunciation favored by the justices. Oral arguments tend to be rather fast-paced, as attorneys and justices often race to make their point before someone cuts them off, and so their words are not always spoken with precision and clarity.[15] A more reliable

[15] For example, when reading slowly from a prepared text, almost all the justices in our sample (all but Justices Thomas and Sotomayor) pronounce the second and third syllables of *certiorari* as "shee-or." But in the heat of oral argument, almost all

guide to accepted pronunciation is found on those occasions when the Court announces its judgment from the bench, and the author of the majority opinion reads aloud from a carefully prepared text without hurry or fear of interruption.

For each justice in our sample, therefore, I listened to the most recent opinions announced by that individual for the Court, until I found three occasions when he or she pronounced *certiorari* distinctly.[16] I looked for three examples to ensure that I was not hearing a slip of the tongue or misled by a poor recording. For several justices in the group, this made my task extremely easy, because many of them (including two current members) have routinely observed the Court's hoary tradition of beginning each announcement with some variation of the sentence: "This case comes to us on writ of certiorari to the [Fourth] Circuit."[17] Only a few justices in our sample had not used the word recently and repeatedly in announcing the judgment of the Court; in those cases, I checked their most recent uses of that word at oral argument.

III. FINDINGS

So what is the officially sanctioned pronunciation of *certiorari*? My research revealed that the thirteen modern members of the Supreme Court are profoundly divided.[18] Indeed, there was only one point of unanimous agreement: they all pronounce the beginning of

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of them frequently blend these syllables together to the point where they almost sound like "shore."

[16] These recordings of the opinion announcements and oral arguments can be heard at www.oyez.org, an invaluable website created by Professor Jerry Goldman, now of IIT Chicago-Kent College of Law.

[17] This custom was routinely observed by many justices in the past half century, including Justices Brennan, Stewart, Marshall, Blackmun, O'Connor, and Souter – as well as Justices Scalia and Thomas, the only two now keeping this tradition (barely) alive. Justice Alito observed this custom during his first year on the Court but later abandoned it, presumably after noticing that most of his colleagues took the liberty of trading tradition for stylistic originality when writing summaries of their opinions for the Court.

[18] Although this lack of agreement came as a great surprise to me, I have since

the word "ser," presumably because of its obvious resemblance to *certain*.[19] And two other points are agreed upon by almost everyone: almost every modern justice articulates all five syllables of the word, placing the accent on the fourth syllable,[20] and almost all pronounce the first two syllables as "ser-shee."[21] But that is where their agreement ends. Indeed, the modern members of the Court are split six ways.

A. The Plurality Opinion of the Modern Court's Longest-Serving Justice

Despite his recent retirement, special deference is due to Justice John Paul Stevens because of his extraordinary longevity on the Court. When he started reviewing and talking about certiorari petitions as a law clerk to Justice Wiley Rutledge during the 1947-1948 term, five of the current justices were not yet even born. And he served on the Court for more than thirty-three years, while discussing thousands of certiorari petitions with eighteen other justices. If there were any general consensus on the Court over the past half-century as to the proper pronunciation of this word, he would be the one to know it.

As it turns out, however, Justice Stevens's considerable influence over his junior colleagues never enabled him to command a majority of the Court on this issue. He consistently pronounced the word "ser-shee-or-RAHR-ee," as if it rhymed with *Ferrari* or *car*

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discovered that another observer has noted the same point. Charles Lane, *It's Cert., to Be Sure. But How Do They Say It? Let's Count the Ways*, THE WASHINGTON POST, Dec. 3, 2001, at A19. But his observations correctly describe the way the word is currently pronounced by only three members of the Court. This article therefore updates and expands upon his observations.

[19] Oddly, however, not one justice pronounces the "t" in this word like the "t" in *certain*, and none pronounce the first four letters "kert," as a Latin orator would; virtually all assume that the "tio" should be spoken "shee-o" – like the "tio" in *ratio*.

[20] Justice Sotomayor is the only exception.

[21] Justice Thomas is the only exception.

key.[22] But at the time of his recent retirement, only two of his colleagues followed his example: Justices Clarence Thomas[23] and Samuel Alito.[24] (It may not be entirely accurate to include Justice Thomas in this group, because he is the only justice who pronounces the first two syllables of the word as "sertzee." But I include him in this group because he agrees with the others about the final two syllables, including the accented syllable.[25]) So at the time of his retirement, Justice Stevens spoke for only three members of the Court.[26]

B. The Plurality Opinion of the Current Chief Justice

Out of deference to his position as Chief Justice, not to mention his extensive experience as an unparalleled advocate before the Supreme Court, we naturally give great weight to the judgment of John G. Roberts, Jr. But unlike Justice Stevens, the Chief Justice

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[22] Justice Stevens pronounced the word this way in announcing the opinion for the Court in the following cases: New Process Steel v. NLRB, No. 08-1457 at 1:20 (June 17, 2010); Samantar v. Yousuf, No. 08-1555 at 1:55 (June 1, 2010); American Needle, Inc. v. National Football League, No. 08-661 at 1:25 (May 24, 2010). Except where otherwise indicated, all citations to pronunciation examples are from the announcement of the Court's opinion, found most readily at www.oyez.org by searching for each case by its docket number.

[23] Alleyne v. United States, No. 11-9335 at 0:08 (June 17, 2013); Horne v. Department of Agriculture, No. 12-123 at 0:07 (June 10, 2013); PPL Corp. v. C.I.R., No. 12-43 at 0:10 (May 20, 2013).

[24] McBurney v. Young, No. 12-17 at 0:45 (April 29, 2013); Knox v. Service Employees Internat'l Union, No. 10-1121 at 3:00 (June 21, 2012); Williams v. Illinois, No. 10-8505 at 1:00 (June 18, 2012).

[25] Besides, it is bad enough that the Court is split six ways on this topic. A *seven*-way division of opinion would be positively awkward, and a bit too reminiscent of the unfortunate misadventure at Babel.

[26] Justices Ginsburg and Kagan, former members of this camp, also pronounced the word this way the last time either of them used it at oral argument years ago. *See infra* text accompanying notes 40-49. But it would not be correct to count them among those who endorse that pronunciation, since they have made it plain enough in recent years that they now take a different view of the matter, as we shall see.

consistently refers to a writ of "ser-shee-or-RARE-eye,"[27] as if the writ rhymed with *fair guy*. And just like Justice Stevens, the Chief Justice speaks for only three modern members of the Court on this topic, because this pronunciation is favored by only two other justices (who do not agree on many things): Justices Antonin Scalia[28] and Stephen Breyer.[29]

C. The Plurality Opinion of the Former Chief Justice

Chief Justice Roberts received his first experience handling and talking about certiorari petitions shortly after law school, while he served as a law clerk to then-Justice William Rehnquist. But Roberts did not follow in the example of his mentor. Chief Justice Rehnquist, at the end of his tenure on the Court a few years ago, was one of three justices who called the writ "ser-shee-or-RARE-ee," rhyming with *dairy*. But that once-solid wing of the Court vanished in surprisingly rapid fashion. The three members of this faction, by a strange coincidence, were the first three members to leave the Court after eleven years without any changes in its lineup: Chief Justice Rehnquist[30] and Justices Sandra Day O'Connor[31] and David Souter.[32]

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[27] Hollingsworth v. Perry, No. 12-144 at 2:20 (June 26, 2013); Filarsky v. Delia, No. 10-1018 at 2:48 (April 17, 2012); Snyder v. Phelps, No. 09-751 at 1:49 (March 2, 2011).

[28] Arizona v. Inter Tribal Council of Arizona, No. 12-71 at 0:09 (June 17, 2013); Comcast Corp. v. Behrend, No. 11-864 at 0:08 (March 27, 2013); Florida v. Jardines, No. 11-564 at 0:18 (March 26, 2013). Justice Scalia's co-author, Bryan Garner, does not agree, however. He prefers "ser-shee-or-RAHR-ee." Letter to the author, December 3, 2013.

[29] Justice Breyer used this pronunciation at oral argument in Lawrence v. Florida, No. 05-8820 at 4:22 (argued October 31, 2006); Virginia v. Hicks, No. 02-371 at 37:52 (argued April 30, 2003); and Syngenta Crop Protection, Inc. v. Henson, No. 01-757 at 16:53 (argued October 15, 2002).

[30] Padilla v. Rumsfeld, No. 03-1027 at 2:14 (June 28, 2004); Thornton v. United States, No. 03-5165 at 1:42 (May 24, 2004); Tennessee Student Assistance Corp. v. Hood, No. 02-1606 at 1:55 (May 17, 2004).

[31] Ayotte v. Planned Parenthood of Northern New England, No. 04-1144 at 0:08 (January 18, 2006); Schaeffer v. Weast, No. 04-698 at 0:08 (November 14,

Or was it a coincidence? Although Justice Souter has not yet said so in public, this might shed some light on the mystery of what led him to suddenly resign when he was not even seventy years old, "still middle-aged for a Supreme Court justice."[33] Perhaps, among other reasons, he had grown weary after finding for the first time in all his years on the Court that he was suddenly the only justice who pronounced *certiorari* the way he did? In any event, since his retirement, nobody on the Court is keeping that tradition alive, at least for the time being. Indeed, after Souter's retirement, his pronunciation was quietly deleted without fanfare or explanation from *Garner's Dictionary of Legal Usage*.[34]

On the proper pronunciation of *certiorari*, therefore, the modern justices of the Court are split as evenly as could be imagined. Even if we count all nine current members and the last four justices to leave the Court, we find them split at least three ways, with precisely three votes in support of each of the pronunciations that have been listed as acceptable in *Black's Law Dictionary*. So we naturally turn to the justice who most frequently resolves tie votes among his colleagues in recent years.

D. The Solitary Opinion of the Court's Swing Justice

Justice Anthony Kennedy, the Supreme Court's swing justice, often finds himself in the middle of a split on the Court and in a po-

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2005); Dodd v. United States, No. 04-5286 at 0:23 (June 20, 2005).

[32] Abuelhawa v. United States, No. 08-192 at 0:08 (May 26, 2009); United States v. Eurodif S.A., No. 07-1059 at 0:25 (January 26, 2009); Rothgery v. Gillespie County, Texas, No. 07-440 at 0:10 (June 23, 2008).

[33] JEFFREY TOOBIN, THE OATH: THE OBAMA WHITE HOUSE AND THE SUPREME COURT 124 (2012).

[34] When Justices Rehnquist, O'Connor, and Souter were still on the Court, a leading legal dictionary listed their preferred version, "ser-shee-or-RARE-ee," as the first of three accepted pronunciations for the word. BRYAN A. GARNER, A DICTIONARY OF MODERN LEGAL USAGE 143 (2d ed. 1995). But the latest edition, published shortly after those three left the Court, lists only the pronunciations favored by Justice Stevens and Chief Justice Roberts. GARNER'S DICTIONARY OF LEGAL USAGE 145 (3d ed. 2011).

sition to cast the deciding vote.[35] Unfortunately, rather than break this particular tie, he has managed to find a fourth way to say the word – one not used by any of his colleagues, or endorsed by leading legal dictionaries. Justice Kennedy, ever the maverick, pronounces it "ser-shee-or-ARR-eye," perhaps because he likes the way it sounds like *far cry* or *czar guy*.[36]

E. The Solitary Opinion of the Court's Bilingual Justice

Justice Sonia Sotomayor, one of the newest members on the Court, is the only modern justice to pronounce *certiorari* as if it contained only four syllables. I would not ascribe such an unorthodox pronunciation to her if she did this only now and then, or only in the fast-paced heat of oral argument. All of us frequently drop a syllable or two when speaking quickly. But this is how she always says the word, both during oral argument and even when reading slowly from a prepared text and announcing the opinion of the Court. Ever since her first term on the Court, she has invariably and distinctly said "ser-shee-ARR-ee," as if the word were spelled "certiari."[37]

F. The Joint Opinion of the Court's Most Pragmatic Justice and Her Young Protégé

When one considers the striking range of disagreement among her colleagues, it is easy to understand why Justice Ruth Bader Ginsburg has evidently taken what can only be described as a sixth view on this topic. Her judgment, it seems, is that *certiorari* should simply not be spoken aloud in polite society. While questioning ad-

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[35] Erwin Chemerinsky, *When It Matters Most, It Is Still the Kennedy Court*, 11 GREEN BAG 2D 427 (Summer 2008); Douglas M. Parker, *Justice Kennedy: The Swing Voter & His Critics*, 11 GREEN BAG 2D 317 (Spring 2008).

[36] Lafler v. Cooper, No. 10-209 at 1:36 (March 21, 2012); Martinez v. Ryan, No. 10-1001 at 2:19 (March 20, 2012); FCC v. Fox Television Stations, No. 10-1293 at 3:57 (June 21, 2012).

[37] Tarrant v. Regional Water Dist. v. Herrmann, No. 11-889 at 2:51 (June 13, 2013), Peugh v. United States, No. 12-62 at 3:15 (June 10, 2013); Hillman v. Maretta, No. 11-1221 at 2:20 (June 3, 2013).

vocates over the last decade, Justice Ginsburg has referred more than forty-five times to something she invariably calls a *"cert"* petition,[38] and she once used that word eight times at a single argument.[39] But during those ten years, she has never uttered the word *certiorari* at oral argument, and has apparently not done so in nearly twenty years.[40]

Justice Ginsburg is not the only justice who refers to a *cert* petition at oral argument. Almost every justice uses that monosyllabic alternative on a regular basis.[41] But no other justice has such an unmistakable record of straining to avoid any public attempt to pronounce *certiorari*. That pattern cannot be coincidence, and can only be the product of a disciplined commitment to a conscious choice. This avoidance is especially conspicuous when she reads aloud from her prepared summaries of the Court's holdings. When she *writes* an opinion for the Court, she recites the procedural history and virtually always mentions that the Court had granted certiorari. But when announcing the opinion of the Court from the bench, she almost invariably manages to speak about the case and its procedural history for several minutes without using that word.[42] In one recent opin-

[38] I searched only back to October 2004, because the older transcripts, as collected by Westlaw, do not contain the names of the justices who asked each question, but merely preface each comment by one of the justices with the word *Question*.

[39] Lawrence v. Florida, No. 05-8820 (October 31, 2006).

[40] It is more difficult to find her uses of this word before October 2004, when the available transcripts began identifying each justice by name. I therefore searched all transcripts in which *certiorari* appeared within fifty words of *Ginsburg*, to find all arguments in which the writ was mentioned by some justice who was then identified by name in the attorney's response ("Yes, Justice Ginsburg"). This search generated dozens of cases between 1995 and 2004 in which Ginsburg used the word *cert*, but not one in which she allowed herself to get caught saying *certiorari* since *Hercules, Inc. v. United States*, No. 94-818 at 55:04 (October 30, 1995), when she pronounced it "ser-shee-or-RAHR-ee."

[41] "The full formal phrase is *writ of certiorari*, but this mouthful typically gets clipped to the monosyllable *cert*." GARNER, *supra* note 7, at 145.

[42] In the past two terms (the 2011 and 2012 terms), Justice Ginsburg has announced the opinion of the Court in sixteen cases, but mentioned "certiorari" in only one of them, presumably in an unguarded moment. Los Angeles County Flood Con-

ion, Justice Ginsburg wrote that "[w]e granted *a writ of certiorari* to resolve a Circuit conflict" on an issue.[43] But just as her opinion was filed with the Clerk downstairs, while announcing the judgment of the Court and reading aloud from her prepared summary of that holding, she stated: "We granted *review* to resolve a Circuit conflict on this issue."[44] And this was just one of three cases, in the 2012-2013 term alone, when Justice Ginsburg *wrote* that the Court had granted "certiorari," but simultaneously *announced* that the Court had granted "review."[45]

In the judgment of Justice Ginsburg, therefore, *certiorari* may be routinely used in written opinions, but should be pronounced at oral argument simply as *cert* – and in slightly more formal contexts as if it were spelled *review*.

It is no surprise that Justice Elena Kagan, the newest member of the Court, has chosen to follow Justice Ginsburg's lead, for the two have a great deal in common.[46] Both women are former law professors, former Harvard Law School students, and brilliant liberal Jewish scholars from New York City. And they are almost exactly the same height.[47]

Shortly before Justice Kagan was elevated to the Supreme Court, during one of the first cases she argued before the Court as Solicitor

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trol District v. Natural Resources Defense Council, Inc., No. 11-460 at 3:58 (January 8, 2013) (again pronouncing it "ser-shee-or-RAHR-ee").

[43] United States v. Davila, 133 S.Ct. 2139, 2145 (2013) (emphasis added).

[44] United States v. Davila, No. 12-167 at 2:27 (June 13, 2013).

[45] In addition to *Davila*, the other two cases were *McQuiggin v. Perkins*, 133 S.Ct. 1924, 1930 (2013), and *Metrish v. Lancaster*, 133 S.Ct. 1781, 1786 (2013).

[46] I have not yet had the privilege of meeting Justice Kagan but I came tantalizingly close a couple of times. I was offered, but tragically declined, a place in the Princeton College class of 1981, where she and I would have been classmates. After graduation, we both went to Harvard Law School, where we were *almost* classmates once again, but for the fact that she first studied at Oxford for two years, so I was a third year law student by the time she was a first year student. I would have liked to have known her but she was just a kid; now my candle will burn out long before her legend ever will.

[47] www.supremecourt.gov/publicinfo/press/investiture/images/10114_Kagan_3.jpg.

General, she did what most attorneys do when appearing before that Court: rushing in where cautious justices fear to tread, she showed no hesitation in using the word "certiorari."[48] But somebody evidently got to her – presumably Justice Ginsburg – and changed her view of the matter right after she became an associate justice. In the hundreds of cases that have been argued during Justice Kagan's first three years on the bench, she is invariably an active questioner and has asked attorneys about *cert* many times, but has never used the word *certiorari* during oral argument. She has also assiduously refrained, with almost complete success, from saying that word on the twenty-two occasions when she announced the judgment of the Court. Indeed, she forgot herself and used it only once, two years ago,[49] but she has since abandoned the use of the word altogether, and did not use it once when announcing eight different opinions for the Court during her third term, in 2012-2013.

IV. CONCLUSION

On the frequent occasions when a Supreme Court justice asks whether some matter is within the scope of the questions on which the Court granted *certiorari*, lawyers display strikingly little reluctance to use that word when answering, just as Justice Kagan did when she was Solicitor General. Although those lawyers employ many different pronunciations, they all speak the word without any trace of hesitation, just as they would say their own names, and with the supreme confidence that can only come from the knowledge that what they say sounds so familiar – even though such assurance

[48] Salazar v. Buono, No. 08-472 at 17:38 (argued October 7, 2009) (where Solicitor General Kagan spoke of a writ of "ser-shee-or-RAHR-ee"). Curiously, Justice Kagan – just like Chief Justice Roberts – did not follow the example of the Justice for whom she once clerked; her mentor, Justice Thurgood Marshall, preferred "ser-shee-or-RARE-eye." Johnson v. Home State Bank, No. 90-693 at 0:10 (June 10, 1991); Eastern Airlines, Inc. v. Floyd, No. 89-1598 at 0:16 (April 17, 1991).

[49] In *Holder v. Gutierrez*, No. 10-1542 at 3:12 (May 21, 2012), Justice Kagan stated that the Court had granted "ser-shee-or-RAHR-ee" to decide a question, pronouncing it just as she did when she was Solicitor General.

probably comes entirely from the way they have grown accustomed to hearing themselves talk. The overwhelming majority of them are surely oblivious of the extent to which they are treading into a realm of linguistic controversy that has so thoroughly divided the Court.

Someday, perhaps under the leadership of a more authoritarian Chief Justice, the Supreme Court may learn to speak with one voice and settle upon some reasonable measure of agreement as to the right way to say *certiorari*. But until that day arrives, cautious advocates appearing before that Court must be warned. No matter how you say this word, a majority of the justices will think to themselves: "That is not how *I* would have said it" – that is, unless you wisely follow the example of Justices Ginsburg and Kagan, and simply avoid any public mention of the writ that dare not speak its name.