

Dissents from the Bench: A Compilation of Oral Dissents by U.S. Supreme Court Justices*

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Oral dissents identify some of the Supreme Court justices' most deeply held minority opinions. While print dissents are published routinely, oral dissents are not systematically tracked. This article presents the results of our AALL grant-funded project to locate oral dissents issued from October 1969 through today, discusses the methodology used in compiling our list, and describes various aspects of oral dissents that may make some more difficult to find.

"I exercise the privilege we have – though rarely used – to dissent orally. This is a uniquely important case ..." Opening sentences of Justice Powell's oral dissent in *Davis v. Passman*, 442 U.S. 228 (1979).¹

In modern times, when the Supreme Court hands down a decision, the chief justice announces that a result has been reached and the author of the majority speaks briefly about the case.² There is no advance notice to the public about the fact that an opinion will be announced. An oral dissent, or "dissenting statement," is a declaration that a justice makes aloud in open Court, immediately following the majority's announcement of the Court's opinion. Oral dissents are rare, occurring only a few times each year at most, and they are an added gesture justices make when they wish to underscore that, in their view, the majority opinion is flawed or fundamentally wrong.³

While the text of dissenting opinions are common and published routinely, the dissenting statements justices make in open court have not been systematically tracked or

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¹ Justice Lewis F. Powell Jr., "Dissent from the bench" text for *Davis v. Passman*, 442 U.S. 228 (1979) (June 4, 1979) (on file with the Lewis F. Powell Jr. Papers, Washington and Lee University School of Law).

² In the Supreme Court's early years, justices only issued their opinions orally and individually, or "in seriatim," with the most junior justice speaking first. Written opinions were not issued. By Chief Justice John Marshall's tenure (1801-1835) that practice had ended and justices delivered opinions for the Court as a whole. Prior to 1940, there was a norm by which justices did not issue dissents orally or in writing, but by the Warren Court (1953-1969), oral dissents were relatively popular, examples of which include: *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) (Black, J., dissenting orally); *Stewart v. United States*, 366 U.S. 1 (1961) (Frankfurter, J., dissenting orally); and *Watkins v. United States*, 354 U.S. 178 (1957) (Clark, J., dissenting orally), all cited in *New York Times* news accounts. For a brief historical account of oral and written dissents see Jeff Bleich, Michelle Friedland, Aimee Feinberg & Dan Bress, *Dissenting from the Bench*, *Supreme Court Watch*, S.F. ATTORNEY, Spring 2008, at 30; and Lee Epstein et al., *The Norm of Consensus on the U.S. Supreme Court*, 45 AM. J. POL. SCI. 362 (2001). Additional oral dissent sources are listed in the Selected Bibliography.

³ Linda Greenhouse, *Oral Dissents Give Ginsburg a New Voice on Court*, N.Y. TIMES, May 31, 2007, at A1.

transcribed.⁴ Except for the occasional reading of an entire opinion, such as Justice Stewart's reading of his entire dissenting opinion in *Fullilove v. Klutznick* (1980), justices' dissenting statements can be worded differently than their published dissenting opinions.⁵ Despite the potential value to Supreme Court researchers, few, if any, lists exist identifying the cases in which oral dissents have occurred.⁶

Our goal is to present as complete a list as possible of Supreme Court cases, from the Burger, Rehnquist, and Roberts Courts (October Term 1969–current) in which an oral dissent was issued, along with citable support for each included case. Our list appears in the accompanying Appendix. Care was taken to correctly identify cases receiving an oral dissent and otherwise note those cases in which an oral concurring statement occurred. As detailed in the methodology section, we used sources such as Supreme Court opinion announcement audio via The Oyez Project ("Oyez"), secondary sources, and the justices' papers to compile our list. We also describe the Supreme Court opinion announcement audio existing at the National Archives Records Administration ("NARA"). In the final section of the article, we detail aspects of oral dissents that may make some oral dissents more difficult to find.

Inevitably cases will be added to this list as the Supreme Court moves forward with its caseload and as additional research tools become available. We welcome such additions. We view this work as a first step toward filling a bibliographic need in Supreme Court research and seek to document these potentially lost occurrences in the most comprehensive manner possible. In doing so, we hope to add to the historical record and to preserve the tradition of oral dissents.⁷

⁴ The Journal of the Supreme Court of the United States [hereinafter Supreme Court Journal] notes oral dissents sporadically in the 1990s and more comprehensively today. The Oyez Project at Oyez.org has made great strides in increasing accessibility to the opinion announcement audio housed at the National Archives in College Park, Maryland.

⁵ Listen, for example, to Justice Ginsburg's oral dissent in *Ledbetter v. Goodyear Tire and Rubber Company*, which starts "Justice Alito announced four members of this Court..." and compare it with her written dissent which starts "Lilly Ledbetter was a supervisor at Goodyear Tire and Rubber's plant in Gadsden, Alabama..." Compare The Oyez Project, *Ledbetter v. Goodyear Tire and Rubber Company*, 550 U.S. 618 (2007), http://oyez.org/cases/2000-2009/2006/2006_05_1074 (Opinion Announcement, J. Ginsburg at 3:48) with *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 643 (2007) (Ginsburg, J., dissenting); see also *Blackmun*, in *Unusual Action, Denounces 5-to-4 Ruling*, N.Y. TIMES, Nov. 3, 1976, at 70 ("Justice Blackmun's written dissent today, however, was not as critical as his oral opinion. Presumably, this was because in his written dissent he spoke for three other Justices as well.").

⁶ In early 2008, at the time of our grant application, we were aware of the need for a list of Supreme Court cases receiving an oral dissent. While writing, that need was underscored as evidenced by the inclusion of our interim work in Lani Guinier, *Supreme Court 2007 Term Foreword: Demosprudence Through Dissent*, 122 HARV. L. REV. 4, n. 44 *et. seq.* (2008). Today, multiple groups seek to create oral dissent datasets. See, e.g., Timothy R. Johnson, Ryan C. Black & Eve M. Ringsmuth, *Hear Me Roar: What Provokes Supreme Court Justices to Dissent from the Bench* (forthcoming in MINN. L. REV.) and William D. Blake & Hans J. Hacker, *The Brooding Spirit of the Law: Supreme Court Justices Reading Dissents from the Bench*, <http://ssrn.com/abstract=1328496>.

⁷ See John Paul Stevens, *Random Recollections* 42 SAN DIEGO L. REV. 269, 272 (2005) ("Potter [Stewart] also is the Justice who told me that John Harlan asked him to make sure to preserve the tradition of making at least one oral

Project History

We began this project in the height of oral dissent “season.”⁸ What would seem like one in-depth research question (which Supreme Court cases since October Term 1969 received an oral dissent?) became a myriad of individual research questions: What is the condition of the opinion announcement audio at NARA? Where are the personal papers of the justices serving on the Court since October Term 1969? What are the restrictions? What efforts to digitize opinion announcement audio exist? How do reporters reference “oral dissents” in the news?

We worked together, across several states, to answer these questions and compile our results. By design this project had technological and geographic challenges, but unbeknown to us, we were approaching a wave of both interest in this topic and increased resources available for its completion. The next section describes the resources we used to compile our list, details the opinion announcement audio collection at NARA, and describes some of the difficulties in compiling such a list, using *Roe v. Wade* (1973) as a case study.

Methodology

At the outset, we compiled an Excel spreadsheet of Supreme Court cases using the Case Citation Finder from the Supreme Court’s web site. The “master list,” as we dubbed it, listed the official citation for each Supreme Court case, from the Burger Court (October Term 1969) to the present.⁹ We used the master list to log the opinion announcements we listened to and track the oral dissents we found.

With the list in place, we determined that we needed to work on it collaboratively. We also started gathering copious amounts of supporting documentation, particularly news articles from ProQuest Historical Newspapers, and realized that we were in need of a central repository. After evaluating several vendors, including Google Docs, and receiving advice from a fellow law librarian, we began using Huddle to share our work with one another.¹⁰

announcement of a dissenting opinion each Term. It was shortly after Byron White and I advised Justice Scalia of that tradition that he delivered his first, and probably most notable, oral dissent in the independent counsel case.”).

⁸ Since the Supreme Court hands down many opinions late in the term, May, June and July are popular, though not exclusive months, *see, e.g., Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984) (decided Jan. 17, 1984; Blackmun, J., dissenting orally), for oral dissents.

⁹ We investigated using the ALLCOURT database compiled by Harold J. Spaeth and housed at the Judicial Research Initiative, <http://www.cas.sc.edu/poli/juri/sctdata.htm>, but did not have ready access to statistical software on our home computers and felt that a straightforward list with the names of the cases would be most useful to us in our compiling and annotating.

¹⁰ We thank Kumar Jayasuriya for suggesting Huddle. Huddle allowed us to set up various folders in a password-protected environment and to store our changing versions of our master list and our supporting documentation in one workspace. Wikis, such as PBWorks, also offer an easy way to navigate through large amounts of material.

Supreme Court Resources

The U.S. Reports contain the official written opinions of the Court, but are not an oral dissent text source. We knew that more recent oral dissents had not been published in the U.S. Reports, but we also searched for some earlier dissents. We found only one instance of an oral dissent published in the U.S. Reports: a Justice Bradley dissent from 1885.¹¹

The Supreme Court Journal,¹² which contains the official minutes of the Court, did not begin consistently logging the dissenting opinion announcements until October Term 2002, using the language “Dissenting opinion announced by” in its opinion summaries. Prior to this time, the Journal noted some dissenting opinion announcements in its index or text, but not with reliable consistency. For example, the index from October Term 1998¹³ contains Justice Scalia’s oral dissent in *Chicago v. Morales* (1999), but omits the fact that Justice Ginsburg read her dissent a week later in *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc.* (1999). In complex cases, it can be difficult to ferret out an oral dissent in the Journal. The Journal entry for *Demore v. Kim* (2003)¹⁴ illustrates how the summary of the holding does not allow for an easy search on “dissenting opinion announced.”

The justices’ personal papers provide original, firsthand accounts of some oral dissents,¹⁵ and valuable information about the Supreme Court audio recordings, but were not ideal sources of information for this project in other ways. As of this writing, only certain papers are open to researchers.¹⁶ Due to copyright restrictions and the sheer volume of materials,¹⁷ the papers are not online and, therefore, searching through them requires a

¹¹ *Phoenix Ins. Co. v. Erie & Western Transp. Co.*, 118 U.S. 210 (1886) (“an imperfect copy of [Justice Bradley’s oral dissent] having found its way into print, he prepared and filed the following.”).

¹² Journal of the Supreme Court of the United States, <http://www.supremecourtus.gov/orders/journal.html> [hereinafter Supreme Court Journal, OT [Term Year]].

¹³ Supreme Court Journal, OT1998, at III (1999), <http://www.supremecourtus.gov/orders/journal/jnl98.pdf>.

¹⁴ Supreme Court Journal, OT 2002, at 901 (2003), <http://www.supremecourtus.gov/orders/journal/jnl02.pdf> (“Opinion announced by Justice Souter, with whom Justice Stevens and Justice Ginsburg join, concurring in part and dissenting in part. Opinion by Justice Breyer, concurring in part and dissenting in part.”). Also, searching the PDFs themselves is not entirely reliable, as shown by the page break that appears in the entry for *Bell v. Thompson* (2005), see Supreme Court Journal, OT 2004, at 1071-1072 (2005), <http://www.supremecourtus.gov/orders/journal/jnl04.pdf> (“Dissenting opinion announced by Justice Breyer”) (page breaks at “Dis-”).

¹⁵ For a non-exhaustive list of oral dissent texts available in manuscript collections, see *infra* “Delivery of Oral Dissents” identifying texts available in the Blackmun, Powell and Marshall papers respectively.

¹⁶ For the justices that served on the Court from Oct. Term 1969-present, the papers of Justices Blackmun, Douglas, and Marshall (Library of Congress) and Justice Harlan II (Princeton) are open without restrictions. Justices Black and Brennan (Library of Congress), Powell (Washington & Lee) and Chief Justice Rehnquist (Stanford University) require permission and/or have restrictions on accessible content.

¹⁷ By way of reference, the Harry A. Blackmun Papers at the Library of Congress contain hundreds of case files, and materials can be requested four boxes at a time. See CONNIE L. CARTLEDGE ET AL., HARRY A. BLACKMUN: A REGISTER OF HIS PAPERS IN THE LIBRARY OF CONGRESS (2003). <http://hdl.loc.gov/loc.mss/eadmss.ms003030>.

researcher to be on-site.¹⁸ Moreover, oral dissent materials are not always where one may expect to find them. In the William O. Douglas Papers, for example, we discovered a memorandum that verified that Justice Douglas announced his dissents in *Younger v. Harris* (1971) and *Boyle v. Landry* (1971), but it was contained in the *Perez v. Ledesma* (1971) folder, another case that was announced on the same day.¹⁹

Articles and Books

Most of our leads came from secondary sources including: newspapers in Lexis, Newspaper Archive, ProQuest, and Westlaw; journals and law reviews in HeinOnline, JSTOR, Lexis, Westlaw, and Google Scholar; and books in Google Books and HeinOnline. We quickly learned that the phrase “oral dissent” is not common terminology, so searching for phrases like “read aloud” or “from the bench” in conjunction with “Supreme Court,” and other variations, proved useful.²⁰ It may be that researchers will find other articles using variations of “high court” or “read aloud” or other language capturing a dissent from the bench, especially given the number of articles such searches yield; however, our searches generally produced the same articles and cases reassuring us that we had exhausted the sources available to us.

Since authors do not always use the term “oral dissent” to describe a dissenting statement, the term is rarely indexed and, given the number of books about the Supreme Court and its justices, we considered it most productive to stick with electronic searching for books.²¹ Even when searching, we sometimes discovered issues with citations to the oral dissents such as citations to the written opinion²² or no citation for the proposition at all.²³

¹⁸ We did, however, receive extraordinary long-distance assistance from archivists John Jacobs at Washington and Lee University School of Law and Sarah Wilson at Stanford Law School. We are indebted to them for their assistance with the Powell and Rehnquist Papers, respectively.

¹⁹ Memorandum from William O. Douglas to Hugo L. Black (Feb. 20, 1971) (on file with the Library of Congress, Manuscript Division, William O. Douglas Papers, Box 1506, *Perez v. Ledesma* folder) (“In No. 2 – Younger v. Harris and in No. 4 – Boyle v. Landry, I will say a few words in dissent.”).

²⁰ See *infra* Appendix: Oral Dissents, October Term 1969-Present for annotations quoting the variety of language that was found denoting oral dissents.

²¹ See, e.g., JOAN BISKUPIC, SANDRA DAY O’CONNOR 251 (2005) (“So it was a telling moment on March 4, 1991, when O’Connor for the first time in her tenure offered a dissent from the bench.”) This oral dissent was located through a Google Books search of the book. A perusal of the index itself does not reference this material under dissent, oral dissent, opinion, or even, O’Connor, and would be difficult to locate manually without reading the book in its entirety. Nevertheless, we read some books in their entirety, such as Linda Greenhouse’s *Becoming Justice Blackmun*, due to its copious references to the Blackmun papers.

²² See, e.g., HENRY J. ABRAHAM, THE JUDICIARY 229-30 (10th ed. 1996) (citing the written opinion in *Fullilove v. Klutznick*, 448 U.S. 448 (1980), as authority that Justices Stewart and Stevens orally dissented).

²³ See, e.g., J. Harvie Wilkinson III, Goss v. Lopez: *The Supreme Court As Superintendent*, 1975 SUP. CT. REV. 45 (1975) (stating, without footnote, “The decision provoked Mr. Justice Powell to his first verbal dissent from the bench.”); JOHN C. JEFFRIES, JR., LEWIS F. POWELL, JR. 401 (1994) (stating, without footnote, that Chief Justice Burger “took the unusual step of delivering his opinion orally, glaring down the bench at Powell as he read excerpts

We faced similar hurdles with respect to the results from our news searching. We discovered that many news articles used words like “said” or “delivered” with respect to dissenting opinions, but this language did not necessarily mean that the justice *spoke from the bench*. Instead, it could simply refer to an opinion that was filed with the Clerk of the Court. When news articles referenced oral dissents, it was sometimes necessary to perform a second search to determine the name of the case discussed. We found it most helpful if the news article gave identification information, such as the case name or docket number,²⁴ but this didn’t always happen.²⁵ While cross-referencing was time-consuming and detail-oriented, electronic resources such as ProQuest Historical Newspapers and Google Books made this project significantly easier than it would have been just a few years ago. We expect that additional oral dissents will be revealed as advancements in technology continue.

Audio Recordings

Supreme Court opinion announcement audio is not comprehensive for this timeframe. Originally, we planned to use Oyez’s opinion announcement audio as a secondary check on our research.²⁶ When we started our project, only a handful of relevant terms had significant audio representation on Oyez. During the course of our research, however, Oyez released copious amounts of opinion announcement audio (and transcribed audio) making the site a primary source for information. As of this writing, Oyez has released approximately 2,100-plus opinion announcements of the over 4,500 opinion announcements for this timeframe. Together, we listened to over 2,200 opinion announcements via Oyez’s automatic RSS/Podcast/iTunes feed²⁷ and the NARA audio cassettes, logging our progress and any unusual occurrences, such as incomplete or incomprehensible recordings.²⁸

from his dissent” in *Brewer v. Williams*). Note: both authors clerked for Justice Powell so it may be their knowledge comes firsthand.

²⁴ See, e.g., Linda Greenhouse, *High Court Kills Law Banning Guns in a School Zone*, N.Y. TIMES, Apr. 27, 1995, at A1, D24 (“The decision, *United States v. Lopez*, No. 93-1260”) or Charles Lane, *High Court Backs Vice President*, WASH. POST, June 25, 2004, at A1, A11 (“The case is *Cheney v. the United States District Court for the District of Columbia* No. 03-475.”).

²⁵ See, e.g., *Justices, 5-4, Back Adult-Film Zoning*, N.Y. TIMES, June 25, 1976, at A1; John P. MacKenzie, ‘*Fine-or-Jail*’ Is Held Unfair, WASH. POST, Mar. 3, 1971, at A1. Neither article mentions the case name or docket number.

²⁶ The Oyez Project, <http://www.oyez.org>, offers digital audio of selected Supreme Court oral arguments and, most recently, select opinion announcements. The term “Oyez” comes from the call “Oyez Oyez Oyez” announced at the start of each Supreme Court session.

²⁷ The feed enabled us to set up our computers to automatically track any new opinion announcements that were added to the site. Each case was checked off our master list after we listened to it on Oyez and confirmed whether it did or did not have a dissent.

²⁸ See, e.g., *Kelly v. Robinson*, 479 U.S. 36 (1986), at http://www.oyez.org/cases/1980-1989/1986/1986_85_1033 (cuts off at 0:08 after the Chief states that Justice Powell will deliver the opinion); *Rizzo v. Goode*, 423 U.S. 362

While greatly aiding our research and producing several “finds,” not all opinion announcement audio for this time period is currently available via the Oyez web site, and some audio may simply not exist. Oyez is currently undergoing a project to load all the opinion announcement audio available at NARA to the internet.²⁹ However, according to Oyez, not all opinion announcements were transmitted from the Supreme Court to NARA in the first place:

Though the Court recorded all public sessions, it did not always deliver all recorded sessions to the Archives. For a period in the 1980s, Court officials archived recordings from days of oral argument, withholding opinion announcements from its archival responsibility. The National Archives did not routinely accession opinion announcements, however. Thus, with access to the original master tapes submitted to the Archives, it is now possible to make public the announcement of opinions whenever possible. We do so whenever possible at The Oyez Project.³⁰

Correspondence in the justices’ papers on this point is particularly illuminating. A 1991 memorandum to Justice White from Alfred Wong, then Marshal of the Supreme Court, reviewed the taping procedures with respect to oral arguments and opinion announcements. In the memo, Wong stated:

Over the years, all proceedings in the Courtroom were recorded, including opinions from the Bench. A period of a number of years followed where opinions were deliberately omitted. Then later all proceedings again were recorded. At the present time an attempt is being made to record opinions on a single tape. This is possible only on non-argument days. On argument days, the opinions are included just prior to beginning of oral argument. Needless to say, the recording of opinions over the years has been hodge-podge and guidance is necessary.³¹

Wong elaborated that the agreement between the Court and NARA with respect to the tapes did not expressly mention the opinion announcements and was primarily focused on the taping of oral arguments. As such, the Marshal’s Office sought counsel from the Conference as to whether recording of the opinion announcements could be discontinued. A document entitled “Taping in the Courtroom,” attached to

(1976), at http://www.oyez.org/cases/1970-1979/1975/1975_74_942 (audio speeds up and slows down during playback).

²⁹ In making these audio recordings accessible via the internet, the Oyez Project has made significant contributions to making studies such as this one possible. In the past, the only method available for studying the opinion announcements would have been to visit NARA in person, requiring an extremely large time investment.

³⁰ *Audio at the National Archives*, The Oyez Project: About, <http://www.oyez.org/about>.

³¹ Memorandum from Alfred Wong, Marshal, to Justice White (May 10, 1991) (on file with the Library of Congress, Manuscript Division, Thurgood Marshall Papers, Box 512, folder 8); *see also* Tony Mauro, *Marshall Nugget*, LEGAL TIMES, Aug. 21, 1995, at 8 (summarizing correspondence in the Marshall Papers with respect to audio recordings).

the memo, detailed the procedures used by the Marshal's Office for making the recordings in the courtroom.

Almost three weeks later, Justice Kennedy circulated a memorandum to the Conference summarizing the justices' conclusion that they "agreed at [their] last meeting that [the Court] should tape the announcement of opinions from the bench."³² Clarifying the release of the tapes at NARA, Justice Kennedy recommended "treating the tapes of oral announcements and tapes of arguments in the same way."³³ The Court's response to the opinion announcement audio may have signaled a shift in views amongst Court members from just twenty years earlier. In January 1973, Justice Blackmun circulated a memorandum to the Conference³⁴ seeking review of his eight-page opinion announcement that he planned to release to the press for two upcoming abortion cases, *Roe v. Wade* (1973) and *Doe v. Bolton* (1973). Justice Brennan wrote back to him, advising that "Our practice in the past has always been not to record oral announcements of opinions in order to avoid the possibility that the announcement will be relied upon as the opinion or as interpreting the filed opinion."³⁵ In this instance, Justice Brennan appeared to be referring to "recording" as the documentation of the opinion announcements, but it is still a strong message that opinion announcements are not legal authority and thus treated subordinately to other proceedings before the Court.

The Supreme Court audio recordings at NARA vary in formats, from reel-to-reel tapes, to audio cassettes, to compact discs.³⁶ Since the Court's agreement with NARA was to provide the oral arguments, transmittal of opinion announcement audio was not a primary goal. As such, opinion announcement audio is not in the collection for some cases, and NARA arranges the audio by oral argument date. In other words, to find an opinion announcement recording at NARA, one needs to cross-reference the recording containing the oral argument released on the same day as the opinion announcement. Since the Court often releases opinions on non-argument days, particularly at the end of the term when

³² Memorandum from Justice Anthony M. Kennedy to the Conference (May 29, 1991) (on file with the Library of Congress, Manuscript Division, Thurgood Marshall Papers, Box 512, folder 8).

³³ *Id.*

³⁴ Memorandum from Harry A. Blackmun to the Conference (Jan. 16, 1973) (on file with the Library of Congress, Manuscript Division, Thurgood Marshall Papers, Box 98, folder 10 (70-18, *Roe v. Wade* case file)).

³⁵ Memorandum from Justice William J. Brennan, Jr. to Justice Harry A. Blackmun (Jan. 17, 1973) (on file with the Library of Congress, Manuscript Division, Thurgood Marshall Papers, Box 98, folder 10 (70-18, *Roe v. Wade* case file)); see also TINSLEY E. YARBROUGH, HARRY A. BLACKMUN: THE OUTSIDER JUSTICE 225-6 (2008) (summarizing the exchange between Blackmun and members of the Conference with respect to his planned opinion announcement in the abortion cases).

³⁶ These materials are indexed in two loose-leaf binders for Record Group 267 and housed at the Motion Picture, Sound, and Video Research Room, National Archives and Records Administration, College Park, MD.

most of the controversial cases are handed down, some audio simply does not exist in the collection. That said, the Court has started transmitting audio for non-argument day opinions allowing for preservation of these announcements going forward.³⁷

The following table illustrates the completeness of our audio examination. Given the breadth of this project, it was necessary to use the audio available at Oyez rather than consult the NARA audio as a matter of course.³⁸ We expect that the completeness of the audio listening portion will increase as additional opinion announcement audio is loaded to Oyez or, alternatively, if more time is devoted to the NARA recordings in the future.

Table 1: Completeness of Audio Examination

Terms	Audio Checked³⁹	Total Opinions Announced⁴⁰	Percentage
1969-1971	0	391	0%
1972-1974	152	449	34%
1975-1977	418	436	96%
1978-1980	71	409	17%
1981-1983	153	462	33%
1984-1986	50	459	11%
1987-1989	138	425	32%
1990-1992	268	337	80%
1993-1995	208	252	83%
1996-1998	96	254	38%
1999-2001	223	236	94%
2002-2004	225	227	99%
2005-2007	212	214	99%
TOTAL	2,214	4,551	49%

³⁷ See, e.g., Audio tapes: 267.1031 (6 tapes of opinion announcements, labeled with dates ranging from May 27, 1997 to June 27, 1997) (on file with Motion Picture, Sound, and Video Research Room, National Archives and Records Administration, College Park, MD). Holdings for the recordings are not consistent and consultation with the staff at NARA is recommended.

³⁸ Even NARA generally refers users to the Oyez web site for its ease of use over the archival audio collections. Telephone interview with Les Waffan, Chief, Motion Picture, Sound & Video Branch, NARA (June 11, 2009). Oyez will become an even more valuable resource once they have completed their project to backdate the opinion announcement audio.

³⁹ Includes logged cases from our master list for those listened to via Oyez (2,154) and at NARA (60 total: 5 from OT1979, 13 from OT1992, 27 from OT1995, and 15 from OT1996). At the outset, we intended to separate out unanimous opinions from our listening, but decided to include them to catch any anomalies that may have occurred.

⁴⁰ Compiled by adding the “Number of written opinions of the Court” and the “Per curiam opinions in argued cases” figures from the Statistics tables in the Supreme Court Journal. These numbers were selected because they reflected the same numbers used by Chief Justice Burger in a July 2, 1984 memorandum to the Conference about the status of opinions announced during OT 1981-1983 (on file with the Library of Congress, Manuscript Division, William J. Brennan Jr. Papers, Box I:632, Opinion Announcements folder). We did not eliminate unanimous opinions from this total, thus the results could be even more complete than shown in the table, albeit only slightly.

Case Study: Roe v. Wade

An interesting, and somewhat overwhelming, aspect to this project was that any time we discovered a lead but could not confirm it, pursuing the lead became its own research question. For example, if an author claimed a justice issued an oral dissent in a particular case, but only offered the opinion as the source of authority, we would search news, journal, audio, book, and manuscript sources, among others, to try to substantiate the lead.

Roe v. Wade (1973) provides a good example. Sources claimed that both Justices White and Rehnquist read oral dissents in *Roe*. One book cited the written opinions in the case,⁴¹ while another cited to a Bill Moyers interview of Justice Blackmun in 1987.⁴² Fortunately, we were able to track down the interview, now on the somewhat outdated technology of VHS, and watch it. In the interview, Justice Blackmun confirms at least one dissenting statement in *Roe*, but does not state who issued the oral dissent(s).⁴³

Oyez provides the oral argument and the oral re-argument audio for *Roe v. Wade*, but not the opinion announcement audio. The index to the recordings at NARA shows no tape from the date of the decision, January 22, 1973. It was a Monday non-argument day and, at that time in the Court's history, the Court focused on recording oral arguments, not opinion announcements.

Although *Roe v. Wade* received widespread media attention, and still garners considerable commentary today, the focus tends to be on the decision itself, not the opinion announcement. Even Justice Blackmun commented that the cases did not receive as much media attention as expected when first issued.⁴⁴ A check of several major newspapers, both on ProQuest and on microfilm at the Library of Congress, yielded nothing further regarding possible oral dissents.

The Blackmun Papers are similarly silent on the issue of oral dissents in this case, although Justice Blackmun, the author of the majority opinion, was known to keep

⁴¹ LAURIE COLLIER HILLSTROM, *DEFINING MOMENTS: ROE V. WADE* 59 (2008).

⁴² MARIAN FAUX, *ROE V. WADE: THE UNTOLD STORY OF THE LANDMARK DECISION THAT MADE ABORTION LEGAL* 300, 351 (1998) (citing "Blackmun, television interview with Bill Moyers, PBS, 1987").

⁴³ *In Search of the Constitution with Bill Moyers: Justice Harry A. Blackmun* (PBS television broadcast, 1987) (at approximately 33:00, discussing *Bowers v. Hardwick* (1986): Bill Moyers: "Why did you disagree so strongly in that case that you took the unusual tack of reading your dissent from the bench?" Justice Blackmun: "Well, about once a year, a dissent is announced from the bench. I've had it done against me. I had it done against me in *Roe* against *Wade*.").

⁴⁴ The Justice Harry A. Blackmun Oral History Project: Interviews with Justice Blackmun, conducted by Professor Harold Hongju Koh, Yale Law School, July 6, 1994-Dec. 13, 1995, at 492, available at <http://lcweb2.loc.gov/cocoon/blackmun-public/page.html?FOLDERID=D0901&SERIESID=D09> ("On that very day, however, January 22, 1973, Lyndon B. Johnson died, and news of the abortion cases was distinctly secondary.").

meticulous files. Justice Blackmun's oral history interviews⁴⁵ revealed that Justice White issued an oral dissent. Yet, this still did not confirm whether then-Justice Rehnquist delivered his dissent from the bench. Fortunately, the Rehnquist papers opened in late 2008, for the October 1972-1974 terms, the time period that includes the *Roe v. Wade* (1973) case file.⁴⁶ However, further research in these papers revealed nothing more. As of this writing, we still only have confirmation that Justice White orally dissented in *Roe v. Wade* (1973).

In sum, our methodology allowed us to handle the various resource changes we experienced, such as the sudden increase in opinion announcement audio via Oyez, and gave us the ability to follow many leads. As our case list filled in and our results began to reveal themselves to us, we noticed some aspects of oral dissents that may be of particular interest to Supreme Court researchers. The following section describes how the manner in which oral dissents are delivered or the types of opinions in which they occur may impact a researcher's ability to find them.

Interesting Aspects for Researchers

Delivery of Oral Dissents

The way a justice delivers a dissent from the bench may bear upon the likelihood of finding the text. Several of Justice Black's oral dissents have been described as "ad-libbed" such as his oral dissents in *Goldberg v. Kelly* (1970)⁴⁷ and *Whiteley v. Warden* (1971)⁴⁸ suggesting that a prepared text may not exist (and may never have existed). Justice Blackmun, however, who recommended ending the tradition of announcing opinions from the bench altogether, prepared dissenting statement *drafts*, many of which are available in his personal papers at the Library of Congress.⁴⁹ Justice Powell also prepared dissenting

⁴⁵ The Justice Harry A. Blackmun Oral History Project: Interviews with Justice Blackmun, conducted by Professor Harold Hongju Koh, Yale Law School, July 6, 1994-Dec. 13, 1995, at 492, available at <http://lcweb2.loc.gov/cocoon/blackmun-public/page.html?FOLDERID=D0901&SERIESID=D09>.

⁴⁶ Adam Liptak & Jonathan D. Glater, *Papers Offer Close-Up of Rehnquist and the Court*, N.Y. TIMES, Nov. 18, 2008, at A12.

⁴⁷ John P. MacKenzie, *Relief Cutoff Without Hearing Barred*, WASH. POST, Mar. 24, 1970, at A1, A11 ("Ad-libbing from the bench, Black said with fervor....").

⁴⁸ John P. MacKenzie, *2 Justices Accuse Court of Bad Faith*, WASH. POST, Mar. 30, 1971, at A1 (describing the Justice as providing a "15-minute ad lib discussion," while "the targets of the dissent – John M. Harlan, William O. Douglas, William J. Brennan Jr., Potter Stewart, Byron R. White and Thurgood Marshall – listened impassively.").

⁴⁹ LINDA GREENHOUSE, *BECOMING JUSTICE BLACKMUN* 43 (2006) (noting Justice Blackmun's distaste for opinion announcement). Oral dissent texts in the Harry A. Blackmun Papers at the Library of Congress, in the respective case files, include those prepared for: *Sierra Club v. Morton*, 405 U.S. 727 (1972); *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978); *Gannett Co. v. DePasquale*, 443 U.S. 368 (1979); *Lassiter v. Department of Social Services of Durham County*, 452 U.S. 18 (1981); *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982); *Bowers v. Hardwick*, 478 U.S. 186 (1986); *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989); and *Herrera v. Collins*, 506 U.S. 390 (1993). Note: the dissenting statement for *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982) is a copy of the slip opinion with marked portions of text to read.

statement drafts, the texts of which are available in his personal papers at Washington and Lee University School of Law.⁵⁰ The text of Justice Brennan's statement in *Regents of the University of California v. Bakke* (1978) can be found amongst the twenty-four folders of material he kept for that case.⁵¹ The files of other justices are less complete. Justice Marshall's dissenting statement in *Milliken v. Bradley* (1974) appears in his papers at the Library of Congress⁵², although other oral dissent texts such as those from *Regents of the University of California v. Bakke* (1978) and *United States v. Ross* (1982) are not found there. Justice Douglas' and Justice Black's files offered occasional proof that they issued oral dissents, either through memoranda or news clippings, respectively, but their files did not contain any oral dissent texts.

Sometimes a justice will read a dissenting statement on behalf of another justice, as was the case in Justice Douglas' oral dissent in *Milliken v. Bradley* (1974). Like Justice Marshall, Justice Douglas issued an oral dissent in *Milliken* but Justice Brennan delivered the statement on Justice Douglas' behalf. When one justice announces a dissent on behalf of another, researchers may have trouble correctly identifying the person actually holding the dissenting view, especially researchers listening to audio, but may have added manuscript collection choices for retrieving the text.

Type of Opinion

The kind of opinion the Court issues can impact the finding process as well. Plurality opinions, in which there is no opinion supported by the majority of the Court, may be lengthy and intricate. The opinion announcement in *Regents of the University of California v. Bakke* (1978), for example, lasted over one hour - well over four times the length of most opinion announcements in this timeframe. Justice Powell stated the judgment of the Court followed by Justices Stevens, Brennan, Blackmun and Marshall who each announced their dissenting and concurring views. The announcement of plurality opinions may also sound unusual due to the number of speakers. For example, *Planned Parenthood of Southeastern Pa. v. Casey* (1992) was authored and announced by three justices - Justices O'Connor, Kennedy and Souter. Each read the majority opinion while Chief Justice

⁵⁰The dissenting statement texts available include those prepared for: *Goss v. Lopez*, 419 U.S. 565 (1975) (noting "as delivered from bench the day this case was handed down"); *Castaneda v. Partida*, 430 U.S. 482 (1977) (noting "text of oral delivery of my dissent on 3/23"); *Agosto v. INS*, 436 U.S. 748 (1978) (including the line "what prompts me to speak at this length in dissent"); *TVA v. Hill*, 437 U.S. 153 (1978) (starting "I dissent orally") and *Davis v. Passman*, 442 U.S. 228 (1979) (noting "dissent from the bench.").

⁵¹ On file with the Library of Congress, Manuscript Division, William J. Brennan Jr. Papers, Box I:441, folder 3 (76-811, *Board of Regents v. Bakke*, file 5 of 24) (includes handwritten notations on typed manuscript that correspond with the audio on Oyez, as well as a note from Justice White stating "you were great" and requesting a copy of the statement).

⁵² On file with the Library of Congress, Manuscript Division, Thurgood Marshall Papers, Box 131, folder 4 (73-434, *Milliken v. Bradley* case files) (marked "Read in Court by Justice Marshall").

Rehnquist announced his dissent.⁵³ We included dissenting statements from plurality opinions.

Split majority rulings may also pose challenges to those listening to opinion announcement audio. Justice Stevens' dissenting statement in *United States v. Booker* (2005) occurs in the middle of the opinion announcement unlike most others, which occur at the end.⁵⁴ In *Booker*, Justice Stevens announced the opinion of the Court, that the sentencing guidelines were unconstitutional as applied; then Justice Breyer announced the opinion of the Court with respect to the remedy. Before switching speakers, Justice Stevens stated "[b]efore Justice Breyer begins his announcement, I shall briefly state that the four Justices who do not join the Court's remedial conclusion believe that it is not necessary to invalidate any part of the guidelines or the sentencing statute"⁵⁵ before explaining the dissenters' reasoning for these views.

Similarly, concurring statements can be deceptive as they sound like oral dissents but on closer examination prove to be otherwise. Concurring announcements happen when a justice agrees with the majority's holding but disagrees with its reasoning. By definition, concurring statements do not proclaim the minority view. We chose not to include them in our list of cases and did not search for them separately since they are not oral dissents, though we made note of oral concurring opinions when we encountered them along the way.⁵⁶ However, we did include oral statements when a justice concurred in part and dissented in part, as we found them to be more akin to dissents than concurrences.⁵⁷

⁵³ The Oyez Project, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), http://oyez.org/cases/1990-1999/1991/1991_91_744; *All Things Considered: SCOTUS Upholds Roe v. Wade With Restrictions* (NPR radio broadcast, June 29, 1992) ("Rehnquist also spoke from the bench, and in his written opinion, said that Roe should be reversed and that today's ruling leaves it only barely intact.").

⁵⁴ *Arizona v. Fulminante*, 499 U.S. 279 (1991), is another example of this type of fractured opinion. Described by the Court as "another kettle of fish," Justice White delivered the majority as to part of the opinion; Chief Justice Rehnquist then announced his three-part opinion, part of which is a dissent, part of which is the majority; and finally Justice White announced his oral dissent.

⁵⁵ The Oyez Project, *United States v. Booker*, 543 U.S. 220 (2005), http://oyez.org/cases/2000-2009/2004/2004_04_104 (Opinion Announcement, J. Stevens at 7:02). But note that we declined to include Chief Justice Rehnquist's one-sentence summary of the dissenting part of his opinion in *Arizona v. Fulminante* (1991) as an oral dissent because it appeared to be only a cursory mention in order to give context to the majority part of his opinion. See The Oyez Project, *Arizona v. Fulminante*, 499 U.S. 279 (1991), http://oyez.org/cases/1990-1999/1990/1990_89_839 (Opinion Announcement, C.J. Rehnquist at 1:21).

⁵⁶ A non-exhaustive list of concurring opinion announcement cases for this timeframe includes: *Gregg v. Georgia*, 428 U.S. 153 (1976) (White, J., concurring orally); *Proffitt v. Florida*, 428 U.S. 242 (1976) (White, J., concurring orally); *Jurek v. Texas*, 428 U.S. 262 (1976) (White, J., concurring orally); *California v. Texas*, 437 U.S. 601 (1978) (per curiam) (White, J., concurring orally); *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978) (Stewart, J., concurring orally); *Missouri v. Jenkins*, 495 U.S. 33 (1990) (Kennedy, J., concurring orally); *Vieth v. Jubelirer*, 541 U.S. 267 (2004) (Scalia, J., reading Justice Kennedy's concurrence from the bench); *Rapanos v. United States*, 547 U.S. 715 (2006) (Kennedy, J., concurring orally); *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701 (2007) (Kennedy, J., concurring orally); *Bilski v. Kappos*, 561 U.S. 593 (2010) (Stevens, J. concurring orally); *National Labor Relations Board v. Noel Canning*, 573 U.S. ____ (2014) (Scalia, J. concurring orally);

As expected, many blockbuster cases had oral dissents such as abortion, death penalty, private conduct, school busing, flag burning, and school desegregation cases.⁵⁸ But fairly technical cases garner dissenting statements too, such as Justice Blackmun's oral dissent in *United States v. Foster Lumber Co.* (1976), a complicated tax case, described as "not one of general interest."⁵⁹

Adding to the unpredictable nature of oral dissents, the Rehnquist Court (1986–2005) illustrated that oral dissents occurred in close cases as well as in those in which only one justice wrote in dissent.⁶⁰ Many 5-4, or otherwise close decisions receive oral dissents, such as Justice Stevens' oral dissent in *Texas v. Johnson* (1989), Justice Kennedy's oral dissent in *Alexander v. United States* (1993), and Justice Souter's oral dissent in *Alden v. Maine* (1999). In *Pacific Mutual Life v. Haslip* (1991), however, Justice O'Connor read her full, lone dissenting opinion - the first oral dissent of her tenure.⁶¹

Surprisingly oral dissents occurred in per curiam opinions, such as Justice Douglas' oral dissents in *Jones v. Board of Ed. of Tenn.* (1970) and *United States v. Armour & Co.* (1970) and Justice Stewart's oral dissent in *Kentucky v. Whorton* (1979). Since per curiam opinions are not signed by a particular justice but rather issued by the Court as a whole, they were unsuspected case candidates for oral dissents but yet provided unexpected finds.

Whatever can be said about searching for oral dissents, one thing is clear: justices issue them when they feel strongly about the case at hand. Regarding his dissent in *Herrera v. Collins* (1993), Justice Blackmun stated "I suspect I felt rather strongly about that one, and thus, wrote and announced a dissent."⁶² Justice Stevens once said he read a dissent from the bench because he "didn't want his views to get lost in the shuffle of the day's

Glossip v. Gross, 576 U.S. ____ (2015) (Scalia, J. concurring orally in response to Justice Breyer's oral dissent). Please see The Oyez Project at <http://www.oyez.org> for the respective opinion announcement audio.

⁵⁷ See, e.g., The Oyez Project, *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), http://www.oyez.org/cases/2000-2009/2003/2003_03_6696 (Opinion Announcement, J. Souter at 8:36) (Justice Souter using most of his statement from the bench to summarize why he and Justice Ginsburg have dissented from the plurality opinion).

⁵⁸ See, e.g., *Roe v. Wade*, 410 U.S. 113 (1973) (abortion); *Milliken v. Bradley*, 418 U.S. 717 (1974) (school busing); *Bowers v. Hardwick*, 478 U.S. 186 (1986) (private conduct); *Texas v. Johnson*, 491 U.S. 397 (1989) (flag burning); *Herrera v. Collins*, 506 U.S. 390 (1993) (death penalty); *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701 (2007) (school integration).

⁵⁹ *Blackmun, in Unusual Action, Denounces 5-to-4 Ruling*, N.Y. TIMES, Nov. 3, 1976, at 83.

⁶⁰ The Burger and Roberts Courts also illustrate this point. In the Burger Court, compare *Sierra Club v. Morton*, 405 U.S. 727 (1972) (4-3) (Douglas, J., and Blackmun, J., dissenting orally) with *Younger v. Harris*, 401 U.S. 37 (1971) (8-1) (Douglas, J., dissenting orally). In the Roberts Court, compare *Rapanos v. United States*, 547 U.S. 715 (2006) (5-4) (Stevens, J., dissenting orally) with *Scott v. Harris*, 550 U.S. 372 (2007) (8-1) (Stevens, J., dissenting orally).

⁶¹ Letter from Justice O'Connor to Justice Powell (Mar. 6, 1991) (on file with the Lewis F. Powell Jr. Papers, Washington and Lee University School of Law); Ruth Marcus, *Justices Reject Limit on Punitive Damages*, WASH. POST, Mar. 5, 1991, at A1.

⁶² Harry A. Blackmun, Letter from Justice Blackmun to Ms. Holt dated Feb. 4, 1993, regarding *Herrera v. Collins*, in the Personal Papers of Harry A. Blackmun, Library of Congress, Box 620.

news.”⁶³ Regarding his oral dissent in *Chicago v. Morales* (1999), Justice Scalia simply stated, “I think this is a very important case, and so ... would like to state briefly, some of the reasons for my dissent.”⁶⁴ If a search engine allowed researchers to search by the field “importance of issue to the justice,” our list would be complete.

Conclusion

Our goal is to present as complete a list as possible of Supreme Court cases, from the Burger, Rehnquist, and Roberts Courts (October Term 1969–current) in which an oral dissent was issued, along with citable support for each included case. Our list appears in the accompanying Appendix. We used sources such as Supreme Court opinion announcement audio via the Oyez Project, secondary sources, and the justices’ papers to compile our list and we endeavored to capture the state of affairs in Supreme Court opinion announcement audio as it exists at the National Archives. Finally, we pointed out any aspects of oral dissents that may make some more difficult to find.

We plan to post this article, and to continue to update our list, on the Social Science Research Network (“SSRN”). Ultimately, we would like to share our results with organizations that are compiling freely accessible versions of Supreme Court data, such as The Oyez Project or The Supreme Court Database.⁶⁵ Our goal is to make our work readily available to those studying the Supreme Court, and particularly, those interested in Supreme Court oral dissents. We intend to start including oral dissents prior to October Term 1969 as time permits, and we welcome leads and comments regarding our work.

⁶³ Joan Biskupic, *Voicing Supreme Dissent: Rare, Loud and Clear*, WASH. POST, July 5, 1999, at A19.

⁶⁴ The Oyez Project, *Chicago v. Morales*, 527 U.S. 41 (1999), http://oyez.org/cases/1990-1999/1998/1998_97_1121 (Opinion Announcement, J. Scalia at 4:51).

⁶⁵ The Supreme Court Database is housed at <http://scdb.wustl.edu/>. It seeks to make the Spaeth ALLCOURT database materials more user-friendly by providing a front-end web interface.

Oral Dissents: A Selected Bibliography

John Q. Barrett, *Commending Opinion Announcements by Supreme Court Justices*, 2007, available at <http://www.stjohns.edu/media/3/55c14b0772794f148fec48e3c14851a7.pdf>.

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William D. Blake & Hans J. Hacker, *The Brooding Spirit of the Law: Supreme Court Justices Reading Dissents From the Bench*, available at <http://ssrn.com/abstract=1328496>.

Jeff Bleich, Michelle Friedland, Aimee Feinberg, & Dan Bress, *Dissenting from the Bench, Supreme Court Watch*, S.F. ATTORNEY, Spring 2008, at 30.

Linda Greenhouse, *Oral Dissents Give Ginsburg a New Voice on Court*, N.Y. TIMES, May 31, 2007, at A1.

Lani Guinier, *The Supreme Court, 2007 Term Foreword: Demosprudence Through Dissent*, 122 HARV. L. REV. 4 (2008).

Timothy R. Johnson, Ryan C. Black, & Eve M. Ringsmuth, *Hear Me Roar: What Provokes Supreme Court Justices to Dissent from the Bench* (forthcoming in MINN. L. REV.), available at http://www.polisci.umn.edu/~tjohnson/MyPapers/Johnson5_2fmt.pdf.

Linda C. McClain, *Supreme Court Justices, Empathy, and Social Change: A Comment on Lani Guinier's Demosprudence Through Dissent*, 89 B.U. LAW REV. 589-604 (2009).

Gerald N. Rosenberg, *Romancing the Court*, 89 B.U. LAW REV. 562 (2009).

Appendix: Oral Dissents, October Term 1969-Present

This list contains 161 oral dissents. Dissents are grouped by the term in which they were decided, in ascending order by U.S. Reports citation. In cases with multiple dissents, each justice's dissent is listed separately, in ascending order of seniority. We have not included cases in this list unless we could verify the oral dissent through some type of contemporaneous authority, such as the audio recording, a news article from the time period, or the justices' papers. Also note that the list below is not exhaustive in terms of sources. For purposes of brevity, we have contained the Appendix to no more than two or three sources per dissent.

Since concurring statements do not proclaim the minority view, they are not included in this list and we did not search separately for them, though we made note of oral concurring opinions when we encountered them along the way.⁶⁶ We did include statements for opinions that were concurring in part and dissenting in part, as we found them more akin to dissents.⁶⁷ If an oral dissent was issued in addition to an oral concurrence or a fractured majority opinion, such as a plurality or a split majority, it is included in this list.⁶⁸ Finally, we are aware that additional oral dissents may be discovered as information becomes more readily accessible online, and we invite others to send their suggestions.

October Term 1969

Douglas: *Jones v. Board of Ed. of Tenn.*, 397 U.S. 31 (1970) (per curiam)⁶⁹

Black: *Goldberg v. Kelly*, 397 U.S. 254 (1970)⁷⁰

Douglas: *Walz v. Tax Comm'n of City of New York*, 397 U.S. 664 (1970)⁷¹

Douglas: *United States v. Armour & Co.*, 398 U.S. 268 (1970) (per curiam)⁷²

October Term 1970

Douglas: *Younger v. Harris*, 401 U.S. 37 (1971)⁷³

⁶⁶ See *supra* note 56.

⁶⁷ See *supra* note 57 and accompanying text.

⁶⁸ *Rapanos v. United States*, 547 U.S. 715 (2006) (Kennedy, J., concurring orally, but Stevens, J., dissenting orally) and *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992) (majority opinion read by Justices O'Connor, Kennedy, and Souter; dissenting opinion read by Chief Justice Rehnquist) are examples of these instances.

⁶⁹ John P. MacKenzie, *Supreme Court Dismisses Campus Free-Speech Plea*, WASH. POST, Feb. 25, 1970, at A9 ("In announcing his dissent from the bench, Douglas departed from his text to note....").

⁷⁰ John P. MacKenzie, *Relief Cutoff Without Hearing Barred*, WASH. POST, Mar. 24, 1970, at A1, A11 ("Ad-libbing from the bench, Black said with fervor....").

⁷¹ John P. MacKenzie, *Court Backs Church Tax Exemption*, WASH. POST, May 5, 1970, at A1 ("Only Justice William O. Douglas, declaring from the bench that he took the 'strict constructionist' view of the Bill of Rights....").

⁷² John P. MacKenzie, *Armour Antitrust Action Dismissed*, WASH. POST, June 2, 1970, at D7 ("Douglas asked from the bench in announcing his dissent.").

⁷³ Fred P. Grahams, *Justices Curtail U.S. Courts' Role in State Trials*, N.Y. TIMES, Feb. 24, 1971, at 1, 38 ("In a dissent from the bench, Justice Douglas called the day's decisions an 'inquest upon the famous case of Dombrowski.'"); Memorandum from William O. Douglas to Hugo L. Black (Feb. 20, 1971) (on file with the

Douglas: *Boyle v. Landry*, 401 U.S. 77 (1971)⁷⁴
Black: *Boddie v. Connecticut*, 401 U.S. 371 (1971)⁷⁵
Black: *Whiteley v. Warden, Wyo. State Penitentiary*, 401 U.S. 560 (1971)⁷⁶

October Term 1971

Blackmun: *Sierra Club v. Morton*, 405 U.S. 727 (1972)⁷⁷
Douglas: *Sierra Club v. Morton*, 405 U.S. 727 (1972)⁷⁸

October Term 1972

White: *Roe v. Wade*, 410 U.S. 113 (1973)⁷⁹
Douglas: *United Air Lines, Inc. v. Mahin*, 410 U.S. 623 (1973)⁸⁰

October Term 1973

Stewart: *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115 (1974)⁸¹
Stewart: *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974)⁸²

Library of Congress, Manuscript Division, William O. Douglas Papers, Box 1506, *Perez v. Ledesma* folder) (“In No. 2 – *Younger v. Harris* and in No. 4 – *Boyle v. Landry*, I will say a few words in dissent.”).

⁷⁴ Douglas, *supra* note 73.

⁷⁵ John P. MacKenzie, ‘*Fine-or-Jail*’ Is Held Unfair, WASH. POST, Mar. 3, 1971, at A1, A5 (“It prompted a long oral dissent from the bench by Black.”).

⁷⁶ John P. MacKenzie, *2 Justices Accuse Court of Bad Faith*, WASH. POST, Mar. 30, 1971, at A1 (“All the targets of the Black and Burger dissent – John M. Harlan, William O. Douglas, William J. Brennan Jr., Potter Stewart, Byron R. White and Thurgood Marshall – listened impassively as Black delivered his dissent from Harlan’s majority opinion” and “Then, before launching a 15-minute ad lib discussion, Black read that the decision...”).

⁷⁷ Memorandum from KRR (Kenneth R. Reed), Law Clerk, to William O. Douglas (Apr. 19, 1972) (on file with the Library of Congress, Manuscript Division, William O. Douglas Papers, Box 1545, *Sierra Club v. Morton* folder) (“Mr. Justice Blackmun desires to deliver his dissent orally from the bench but ... he will not do so unless you also deliver your dissent orally. He therefore requests that you dissent orally today.”); Sam Kalen, *Standing on Its Last Legs: Bennett v. Spear and the Past and Future of Standing in Environmental Cases*, 13 J. LAND USE & ENVTL. L. 1, 16 n.89 (citing ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE AND POLICY 723 (2d ed. 1996) stating, without footnotes, that “Justices Douglas and Blackmun ‘felt so strongly about their dissents’ that they read ‘them from the bench when the decision was announced.’”); Bob Woodward & Scott Armstrong, THE BROTHERS 193 (1979) (quoting memorandum to Douglas, without footnotes).

⁷⁸ Memorandum from KRR (Kenneth R. Reed), Law Clerk, to William O. Douglas (Apr. 19, 1972) (on file with the Library of Congress, Manuscript Division, William O. Douglas Papers, Box 1545, *Sierra Club v. Morton* folder) (“Mr. Justice Blackmun desires to deliver his dissent orally from the bench but ... he will not do so unless you also deliver your dissent orally. He therefore requests that you dissent orally today.”); Sam Kalen, *Standing on Its Last Legs: Bennett v. Spear and the Past and Future of Standing in Environmental Cases*, 13 J. LAND USE & ENVTL. L. 1, 16 n.89 (citing ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE AND POLICY 723 (2d ed. 1996) stating, without footnotes, that “Justices Douglas and Blackmun ‘felt so strongly about their dissents’ that they read ‘them from the bench when the decision was announced.’”); Bob Woodward & Scott Armstrong, THE BROTHERS 193 (1979) (“Douglas read his dissent aloud.”).

⁷⁹ The Justice Harry A. Blackmun Oral History Project: Interviews with Justice Blackmun, conducted by Professor Harold Hongju Koh, Yale Law School, July 6, 1994-Dec. 13, 1995, at 492, available at <http://lcweb2.loc.gov/cocoon/blackmun-public/page.html?FOLDERID=D0901&SERIESID=D09> (“It proved to be one of those rare instances when the dissent was announced separately from the bench. We do this perhaps once or twice a year to maintain what Stewart used to call ‘this art form.’ Byron White was rather emotional in delivering the dissent, and stressed the ‘raw judicial power’ business. Why was Byron White so strongly on that side of those cases? It surprised me a little, and I’ve never asked him.”).

⁸⁰ Glen Elsasser, *Aviation Fuel Tax Is Upheld*, CHI. TRIB., Mar. 6, 1973, at A4 (“The 6 to 3 decision provoked the first oral dissent of the court’s current term when Justice William O. Douglas charged from the bench that the court, for the first time, was approving a state’s meddling in interstate commerce.”).

⁸¹ The Oyez Project, *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115 (1974), http://oyez.org/cases/1970-1979/1973/1973_72_1554 (Opinion Announcement, J. Stewart at 2:43).

Stewart: *Cardwell v. Lewis*, 417 U.S. 583 (1974)⁸³
Stewart: *Parker v. Levy*, 417 U.S. 733 (1974)⁸⁴
Marshall: *Milliken v. Bradley*, 418 U.S. 717 (1974)⁸⁵
Douglas (read by Brennan): *Milliken v. Bradley*, 418 U.S. 717 (1974)⁸⁶

October Term 1974

Powell: *Goss v. Lopez*, 419 U.S. 565 (1975)⁸⁷

October Term 1975

Stewart: *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976)⁸⁸
Stewart: *North v. Russell*, 427 U.S. 328 (1976)⁸⁹
Marshall: *Gregg v. Georgia*, 428 U.S. 153 (1976)⁹⁰
White: *Woodson v. North Carolina*, 428 U.S. 280 (1976)⁹¹
White: *Roberts v. Louisiana*, 428 U.S. 325 (1976)⁹²
Blackmun: *United States v. Foster Lumber Co.*, 429 U.S. 32 (1976)⁹³

October Term 1976

Burger: *Brewer v. Williams*, 430 U.S. 387 (1977)⁹⁴

⁸² The Oyez Project, *Mitchell v. W. T. Grant Co.*, 416 U.S. 600 (1974), http://oyez.org/cases/1970-1979/1973/1973_72_6160 (Opinion Announcement, J. Stewart at 1:25).

⁸³ The Oyez Project, *Cardwell v. Lewis*, 417 U.S. 583 (1974), http://oyez.org/cases/1970-1979/1973/1973_72_1603 (Opinion Announcement, J. Stewart at 3:59).

⁸⁴ The Oyez Project, *Parker v. Levy*, 417 U.S. 733 (1974), http://oyez.org/cases/1970-1979/1973/1973_73_206 (Opinion Announcement, J. Stewart at 4:18); John P. MacKenzie, *Military Code Is Upheld*, WASH. POST, June 20, 1974, at A1, A17 (“Stewart’s dissenting opinion, which he read slowly from the bench....”).

⁸⁵ The Oyez Project, *Milliken v. Bradley*, 418 U.S. 717 (1974), http://oyez.org/cases/1970-1979/1973/1973_73_434 (Opinion Announcement, J. Marshall at 24:39).

⁸⁶ The Oyez Project, *Milliken v. Bradley*, 418 U.S. 717 (1974), http://oyez.org/cases/1970-1979/1973/1973_73_434 (Opinion Announcement, J. Brennan reading for J. Douglas at 18:25).

⁸⁷ John P. MacKenzie, *Court Extends Pupils’ Rights On Suspension*, WASH. POST, Jan. 23, 1975, at A1, A5 (“Justice Powell, who like most of the court’s members ordinarily does not discuss his dissents from the bench, made an exception and delivered key excerpts from the dissenting opinion in open court.”).

⁸⁸ The Oyez Project, *Young v. American Mini Theatres*, 427 U.S. 50 (1976), http://oyez.org/cases/1970-1979/1975/1975_75_312 (Opinion Announcement, J. Stewart at 3:07); *Justices, 5-4, Back Adult-Film Zoning*, N.Y. TIMES, June 25, 1976, at A1, D13 (“[Justice Stewart] gave his dissent added emphasis by reading aloud from it in court this morning after Justice Stevens announced the decision.”).

⁸⁹ The Oyez Project, *North v. Russell*, 427 U.S. 328 (1976), http://oyez.org/cases/1970-1979/1975/1975_74_1409 (Opinion Announcement, J. Stewart at 0:24).

⁹⁰ The Oyez Project, *Gregg v. Georgia*, 428 U.S. 153 (1976), http://oyez.org/cases/1970-1979/1975/1975_74_6257 (Opinion Announcement, J. Marshall at 14:35).

⁹¹ The Oyez Project, *Woodson v. North Carolina*, 428 U.S. 280 (1976), http://oyez.org/cases/1970-1979/1975/1975_75_5491 (Opinion Announcement, J. White at 13:18).

⁹² The Oyez Project, *Roberts v. Louisiana*, 428 U.S. 325 (1976), http://oyez.org/cases/1970-1979/1975/1975_75_5844 (Opinion Announcement, J. White at 3:05).

⁹³ The Oyez Project, *United States v. Foster Lumber Co.*, 429 U.S. 32 (1976), http://oyez.org/cases/1970-1979/1975/1975_74_799 (Opinion Announcement, J. Blackmun at 2:42); *Blackmun, in Unusual Action, Denounces 5-to-4 Ruling*, N.Y. TIMES, Nov. 3, 1976, at 83 (“In an unusual statement from the bench, Supreme Court Justice Harry A. Blackmun angrily denounced today a decision in favor of the Government....”).

⁹⁴ The Oyez Project, *Brewer v. Williams*, 430 U.S. 387 (1977), http://oyez.org/cases/1970-1979/1976/1976_74_1263 (Opinion Announcement, C.J. Burger at 3:13); Lesley Oelsner, *Justices, Split 5-4, Reaffirm Evidence Rule*, N.Y. TIMES, Mar. 23, 1977, at B2 (“In an unusual move, Burger read part of his dissent from the bench.”); Morton Mintz, *High Court, 5-4, Rejects Dilution Of Miranda Rule*, WASH. POST, Mar. 24, 1977, at A1 (“Moreover, Chief Justice Warren E. Burger, in a rare action, read aloud a 15-page dissent attacking the decision....”).

Powell: *Castaneda v. Partida*, 430 U.S. 482 (1977)⁹⁵

October Term 1977

Stewart: *Stump v. Sparkman*, 435 U.S. 349 (1978)⁹⁶

Stewart: *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978)⁹⁷

Powell: *Agosto v. INS*, 436 U.S. 748 (1978)⁹⁸

Powell: *TVA v. Hill*, 437 U.S. 153 (1978)⁹⁹

Stewart: *Parker v. Flook*, 437 U.S. 584 (1978)¹⁰⁰

Stevens: *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978)¹⁰¹

Brennan: *Regents of the University of California v. Bakke*, 438 U. S. 265 (1978)¹⁰²

Marshall: *Regents of the University of California v. Bakke*, 438 U. S. 265 (1978)¹⁰³

Blackmun: *Regents of the University of California v. Bakke*, 438 U. S. 265 (1978)¹⁰⁴

Stevens: *Regents of the University of California v. Bakke*, 438 U. S. 265 (1978)¹⁰⁵

October Term 1978

Stewart: *Kentucky v. Whorton*, 441 U.S. 786 (1979) (per curiam)¹⁰⁶

Powell: *Davis v. Passman*, 442 U.S. 228 (1979)¹⁰⁷

⁹⁵ The Oyez Project, *Castaneda v. Partida*, 430 U.S. 482 (1977), http://oyez.org/cases/1970-1979/1976/1976_75_1552 (Opinion Announcement, J. Powell at 4:26); *Court Finds Jury Can Be Biased*, N.Y. TIMES, Mar. 24, 1977, at A19 (“The ruling drew several sharp dissents, however, including one spoken from bench in open court, by Lewis F. Powell Jr.”).

⁹⁶ The Oyez Project, *Stump v. Sparkman*, 435 U.S. 349 (1978), http://oyez.org/cases/1970-1979/1977/1977_76_1750 (Opinion Announcement, J. Stewart at 2:35); Morton Mintz, *High Court Rules Judge Isn’t Liable*, WASH. POST, Mar. 29, 1978, at A1 (“In recent years, dissenters have only frequently given opinions from the bench. Yesterday, however, Justice Potter Stewart read aloud most of his five-page dissent... Chief Justice Warren E. Burger, one of the majority, was at Stewart’s right as the dissenter spoke in a strong, controlled voice. As one cutting phrase tumbled on another, Burger’s face reddened. Other justices also appeared to be uncomfortable. The tension struck observers as almost palpable.”).

⁹⁷ The Oyez Project, *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978), http://oyez.org/cases/1970-1979/1977/1977_76_864 (Opinion Announcement, J. Stewart at 2:25).

⁹⁸ The Oyez Project, *Agosto v. INS*, 436 U.S. 748 (1978), http://oyez.org/cases/1970-1979/1977/1977_76_1410 (Opinion Announcement, J. Powell at 2:28).

⁹⁹ The Oyez Project, *TVA v. Hill*, 437 U.S. 153 (1978), http://oyez.org/cases/1970-1979/1977/1977_76_1701 (Opinion Announcement, J. Powell at 4:38); Glen Elsasser & Jack Fuller, *Supreme Court Rejects TVA Dam to Save Tiny Fish*, CHI. TRIB., June 16, 1978, at 2 (“Justice Lewis Powell delivered a biting oral dissent.”); Warren Weaver Jr., *High Court Bars Dam, Reprieving Rare Fish*, N.Y. TIMES, June 16, 1978, at A1, A12 (“Presenting a summary of his dissent from the bench this morning, Justice Powell predicted...”).

¹⁰⁰ The Oyez Project, *Parker v. Flook*, 437 U.S. 584 (1978), http://oyez.org/cases/1970-1979/1977/1977_77_642 (Opinion Announcement, J. Stewart at 7:46).

¹⁰¹ The Oyez Project, *Houchins v. KQED Inc.*, 438 U.S. 1 (1978), http://oyez.org/cases/1970-1979/1977/1977_76_1310 (Opinion Announcement, J. Stevens at 11:05).

¹⁰² The Oyez Project, *Regents of the University of California v. Bakke*, 438 U. S. 265 (1978), http://oyez.org/cases/1970-1979/1977/1977_76_811 (Opinion Announcement, J. Brennan at 21:45)

¹⁰³ The Oyez Project, *Regents of the University of California v. Bakke*, 438 U. S. 265 (1978), http://oyez.org/cases/1970-1979/1977/1977_76_811 (Opinion Announcement, J. Marshall at 50:35)

¹⁰⁴ The Oyez Project, *Regents of the University of California v. Bakke*, 438 U. S. 265 (1978), http://oyez.org/cases/1970-1979/1977/1977_76_811 (Opinion Announcement, J. Blackmun at 39:55)

¹⁰⁵ The Oyez Project, *Regents of the University of California v. Bakke*, 438 U. S. 265 (1978), http://oyez.org/cases/1970-1979/1977/1977_76_811 (Opinion Announcement, J. Stevens at 13:19)

¹⁰⁶ Morton Mintz, *‘Innocence’ Instruction to Jury Not Always Needed, Court Says*, WASH. POST, May 22, 1979, at A2 (“The ruling drew a sharp dissent, underscored by Justice Potter Stewart when he read it aloud from the bench.”).

Blackmun: *Gannett Co. v. DePasquale*, 443 U.S. 368 (1979)¹⁰⁸

October Term 1979

Stevens: *Harris v. McRae*, 448 U.S. 297 (1980)¹⁰⁹

Stevens: *Fullilove v. Klutznick*, 448 U.S. 448 (1980)¹¹⁰

Stewart: *Fullilove v. Klutznick*, 448 U.S. 448 (1980)¹¹¹

October Term 1980

Blackmun: *Lassiter v. Department of Social Servs. of Durham Cty.*, 452 U.S. 18 (1981)¹¹²

Stewart: *Michigan v. Summers*, 452 U.S. 692 (1981)¹¹³

October Term 1981

Blackmun: *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982)¹¹⁴

Marshall: *United States v. Ross*, 456 U.S. 798 (1982)¹¹⁵

October Term 1982

White: *INS v. Chadha*, 462 U.S. 919 (1983)¹¹⁶

¹⁰⁷ Morton Mintz, *Hill Not Exempt from Bias Suits, Court Rules, 5 to 4*, WASH. POST, June 6, 1979, at A1 (“In addition, exercising the right to dissent orally, Powell contended that the rationale of the ruling cannot be limited to Capitol Hill.”).

¹⁰⁸ Linda Greenhouse, *Justices, 5-4, Limit Courtroom Access by Press and Public*, N.Y. TIMES, July 3, 1979, at A1, A8 (“Associate Justice Harry A. Blackmun wrote a dissenting opinion and took the unusual step of reading excerpts from the bench this morning.”).

¹⁰⁹ Glen Elsasser, *Uphold Welfare Abortion Curbs*, CHI. TRIB., July 1, 1980, at 1, 12 (“Justice John Paul Stevens, a former federal judge in Chicago, read from his dissenting opinion. . .”).

¹¹⁰ Audio tape: 267.322 (tape 6 of 6) (on file with Motion Picture, Sound, and Video Research Room, National Archives and Records Administration, College Park, MD).

¹¹¹ Audio tape, *supra* note 110; Memorandum from Potter Stewart to Warren E. Burger (June 30, 1980) (on file with the Library of Congress, Manuscript Division, Justice Harry A. Blackmun Papers, Box 303, *Fullilove v. Klutznick* folder) (“In my annual effort to preserve the art form, I plan to announce my dissenting opinion in this case on Wednesday.”).

¹¹² Fred Barbash, *Courts Can Take Child From Parents Without Providing Lawyer, Justices Say*, WASH. POST, June 2, 1981, at A1 (“[W]ith Blackmun taking the unusual step of announcing his dissent from the bench.”); *Supreme Court Roundup: Right to Aid in Custody Cases Is Upset*, N.Y. TIMES, June 2, 1981, at B9 (“In one of the most emotionally charged dissents of the judicial term, Associate Justice Harry A. Blackmun, who took the unusual step this morning of announcing his dissenting views from the bench, said that the majority’s conclusion was ‘virtually incredible.’”).

¹¹³ *Supreme Court Widens Police Power on Warrants*, N.Y. TIMES, June 23, 1981, at A15 (“The decision provoked a strong dissent from Associate Justice Potter Stewart who, in his first appearance on the bench since he announced that he would retire next month, took the relatively unusual step of announcing his dissent views in the courtroom.”); Fred Barbash, *Court Deadlocks On Wiretap Suit Against Nixon*, WASH. POST, June 23, 1981, at A1, A6 (“Justice Potter Stewart, joined by Brennan and Marshall, read a strongly worded dissent from the bench yesterday.”).

¹¹⁴ The Oyez Project, *Cabell v. Chavez-Salido*, 454 U.S. 432 (1982), http://oyez.org/cases/1980-1989/1981/1981_80_990 (Opinion Announcement, J. Blackmun at 1:14); Fred Barbash, *Dissent Sees ‘Hostility’ Toward Foreign-Born*, WASH. POST, Jan. 13, 1982, at A1, A4 (“The decision produced an unusually strong dissent, read in full from the bench by Justice Harry A. Blackmun.”).

¹¹⁵ Jim Mann, *Court Broadens Police Power to Search Cars*, L.A. TIMES, June 2, 1982, at B1 (“Marshall took the unusual step of reading most of his dissent in open court, apparently to show his displeasure with the ruling.”).

¹¹⁶ Linda Greenhouse, *Powers May Shift*, N.Y. TIMES, June 24, 1983, at A1, B4 (“He then said that Justice White would read a dissenting opinion. Justice White said it had been many years since he had read an oral dissent aloud. ‘But this is probably the most important case the Court has handed down in many years,’ he said, calling the decision a ‘destructive action’ that was ‘clearly wrong and unnecessarily broad.’”); Fred Barbash, *Decision Alters Balance of Power in Government*, WASH. POST, at A1, A4 (“‘I have not spoken orally in dissent in many years,’

October Term 1983

Blackmun: *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (1984)¹¹⁷
Stevens: *Hudson v. Palmer*, 468 U.S. 517 (1984)¹¹⁸

October Term 1984

None found

October Term 1985

Blackmun: *Bowers v. Hardwick*, 478 U.S. 186 (1986)¹¹⁹

October Term 1986

Stevens: *McNally v. United States*, 483 U.S. 350 (1987)¹²⁰

October Term 1987

Scalia: *Morrison v. Olson*, 487 U.S. 654 (1988)¹²¹

October Term 1988

Stevens: *Texas v. Johnson*, 491 U.S. 397 (1989)¹²²

Blackmun: *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989)¹²³

October Term 1989

White said from the bench yesterday. ‘But this is no ordinary case. It is probably the most important case the court has handed down in many years.’”).

¹¹⁷ Fred Barbash, *Viewer Videotaping of TV Programs Upheld*, WASH. POST, Jan. 18, 1984, at A1, A17 (“Dissenting Justice Harry A. Blackmun ... [r]eading from the bench for added emphasis....”).

¹¹⁸ Al Kamen, *Stricter Limits Set on Inmates’ Rights*, WASH. POST, July 4, 1984, at A1 (“The prison-search ruling prompted Justice John Paul Stevens to take the rare step of reading a dissent from the bench. Stevens said he is concerned that what the court had done might get lost in the rush of other ‘newsworthy’ opinions handed down yesterday.”); *Prisoners Forfeit Rights to Privacy, Justices Say*, N.Y. TIMES, July 4, 1984, at B5 (“Associate Justice John Paul Stevens wrote a dissenting opinion that he took the unusual step of reading from the bench this morning.”).

¹¹⁹ Stuart Taylor Jr., *Division Is Bitter*, N.Y. TIMES, July 1, 1986, at A1 (“The announcement of the decision was unusually dramatic, with Associate Justices Byron R. White, author of the majority opinion, and Harry A. Blackmun, author of an impassioned dissent, both reading detailed passages from the bench.”); Al Kamen, *Court Upholds State Law Prohibiting Sodomy, 5-4*, WASH. POST, July 1, 1986, at A1 (“Justice Harry A. Blackmun, taking the unusual step of reading major portions of a harsh dissent from the bench....”).

¹²⁰ Stuart Taylor Jr., *Justices Narrow Mail Fraud Scope*, N.Y. TIMES, June 25, 1987, at A1, B15 (“Justice Stevens was so upset by the decision that he read portions of his opinion aloud from the bench today. No member of the Court has done that for almost a year.”).

¹²¹ Al Kamen, *Court Upholds Independent Counsel Law*, WASH. POST, June 30, 1988, at A1 (“The lone dissenter, Justice Antonin Scalia, read an unusual and impassioned dissent from the bench, accusing the court majority of ignoring constitutional principles and saying the decision ‘departs from the text of the Constitution and gives no reason.’ Scalia said he was reading his dissent because the decision ‘is one of the most important opinions this court has issued in many years.’”).

¹²² Al Kamen, *Court Nullifies Flag-Desecration Laws*, WASH. POST, June 22, 1989, at A1, A10 (“Justice John Paul Stevens, a member of the minority, took the unusual step of reading his opinion from the bench.”); Ruth Marcus, *Justices Overturn Federal Flag Law*, WASH. POST, June 12, 1990, at A1, A7 (“[U]nlike last year, [Justice Stevens] did not read his dissent from the bench.”).

¹²³ Al Kamen, *5-4 Ruling Stops Short of Overturning ‘Roe’*, WASH. POST, July 4, 1989, at A1 (“Blackmun, who wrote the majority opinion in *Roe*, read his dissent from the bench to a hushed courtroom.”); Linda Greenhouse, *Change in Course*, N.Y. TIMES, July 4, 1989, at A1 (“Then Justice Harry A. Blackmun, the author of the *Roe v. Wade* opinion, read his dissent in a weary and sorrowful tone.”).

Scalia: *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990)¹²⁴

October Term 1990

O'Connor: *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991)¹²⁵

White: *Arizona v. Fulminante*, 499 U.S. 279 (1991)¹²⁶

Stevens: *Payne v. Tennessee*, 501 U.S. 808 (1991)¹²⁷

October Term 1991

Scalia: *Lee v. Weisman*, 505 U.S. 577 (1992)¹²⁸

Rehnquist: *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992)¹²⁹

October Term 1992

Blackmun: *Herrera v. Collins*, 506 U.S. 390 (1993)¹³⁰

Stevens: *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993)¹³¹

Kennedy: *Alexander v. United States*, 509 U.S. 544 (1993)¹³²

October Term 1993

Stevens: *Dolan v. City of Tigard*, 512 U.S. 374 (1994)¹³³

¹²⁴ The Oyez Project, *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), http://oyez.org/cases/1980-1989/1989/1989_88_1569 (Opinion Announcement, J. Scalia at 1:19); Ruth Marcus, *Court Says States Can Restrict Corporate Political Spending*, WASH. POST, Mar. 28, 1990, at A2 (“The ruling drew a stinging dissent from Justice Antonin Scalia, who took the unusual step of reading his dissent from the bench.”); Michael Gartner, *If Corporations Are Silenced in Political Debate, Who’s Next?* WALL. ST. J., Apr. 5, 1990, at A19 (“Justice Scalia said in a dissent that he actually read from the bench because he felt so strongly about the issue.”).

¹²⁵ Ruth Marcus, *Justices Reject Limit on Punitive Damages*, WASH. POST, Mar. 5, 1991, at A1, A4 (“The sole dissenter, Justice Sandra Day O’Connor, who took the unusual step of reading her dissent from the bench despite a cold that left her voice hoarse, said that Alabama procedures were the ‘antithesis of due process.’”).

¹²⁶ The Oyez Project, *Arizona v. Fulminante*, 499 U.S. 279 (1991), http://oyez.org/cases/1990-1999/1990/1990_89_839 (Opinion Announcement, J. White at 3:11); Linda Greenhouse, *High Court, 5 to 4, Softens Stand Against Confession by Coercion*, N.Y. TIMES, Mar. 27, 1991, at A1 (“In a bitter dissenting opinion, which he took the highly unusual step of reading from the bench, Justice Byron R. White....”); Ruth Marcus, *Court Splits On Coerced Confessions*, WASH. POST, Mar. 27, 1991, at A1 (“White, who ordinarily does not announce his reasoning in cases from the bench and who tends to rule against criminal defendants, took the rare step of reading his dissent. It was the first time he has done so since 1983.”).

¹²⁷ The Oyez Project, *Payne v. Tennessee*, 501 U.S. 808 (1991), http://oyez.org/cases/1990-1999/1990/1990_90_5721 (Opinion Announcement, J. Stevens at 5:04).

¹²⁸ The Oyez Project, *Lee v. Weisman*, 505 U.S. 577 (1992), http://oyez.org/cases/1990-1999/1991/1991_90_1014 (Opinion Announcement, J. Scalia at 6:45); Ruth Marcus, *High Court Bans Graduation Prayer At Public Schools*, WASH. POST, June 25, 1992, at A1 (“A somber-sounding Scalia underscored his unhappiness by announcing his dissent from the bench, a tool the justices reserve to signal extreme disagreement.”).

¹²⁹ The Oyez Project, *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), http://oyez.org/cases/1990-1999/1991/1991_91_744 (Opinion Announcement, C.J. Rehnquist at 14:20); *All Things Considered: SCOTUS Upholds Roe v. Wade With Restrictions* (NPR radio broadcast, June 29, 1992) (“Rehnquist also spoke from the bench, and in his written opinion, said that Roe should be reversed and that today’s ruling leaves it only barely intact.”).

¹³⁰ Linda Greenhouse, *Court Discourages Late Claims of Innocence from Death Row*, N.Y. TIMES, Jan. 26, 1993, at A1 (“The decision drew an angry dissent from Justice Harry A. Blackmun, who took the unusual step of reading his opinion from the bench.”).

¹³¹ Audio tape: 267.853 (tape 3 of 4) (on file with Motion Picture, Sound, and Video Research Room, National Archives and Records Administration, College Park, MD).

¹³² Audio tape: 267.853 (tape 4 of 4) (on file with Motion Picture, Sound, and Video Research Room, National Archives and Records Administration, College Park, MD); *All Things Considered: Supreme Court Decides Three Cases Before Ending Term* (NPR radio broadcast, June 29, 1993) (“In an unusual oral dissent from the Supreme Court bench yesterday, Justice Anthony Kennedy said....”).

Scalia: *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994)¹³⁴

October Term 1994

Breyer: *United States v. Lopez*, 514 U.S. 549 (1995)¹³⁵

Ginsburg: *Miller v. Johnson*, 515 U.S. 900 (1995)¹³⁶

October Term 1995

Souter: *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996)¹³⁷

Scalia: *Romer v. Evans*, 517 U.S. 620 (1996)¹³⁸

October Term 1996

O'Connor: *City of Boerne v. Flores*, 521 U.S. 507 (1997)¹³⁹

Stevens: *Printz v. United States*, 521 U.S. 898 (1997)¹⁴⁰

¹³³ The Oyez Project, *Dolan v. City of Tigard*, 512 U.S. 374 (1994), http://oyez.org/cases/1990-1999/1993/1993_93_518 (Opinion Announcement, J. Stevens at 2:08).

¹³⁴ Joan Biskupic, *Court Allows Abortion Clinic Buffer Zones*, WASH. POST, July 1, 1994, at A1 (“Justice Antonin Scalia, who read an impassioned dissent from the bench, said the court ‘has left a powerful loaded weapon lying about today’ that could be used to squelch the speech of objectors of all sentiments.”); Linda Greenhouse, *High Court Backs Limits on Protest at Abortion Clinic*, N.Y. TIMES, July 1, 1994, at A1, A17 (“Then Justice Scalia began an angry rendition of his dissenting opinion, at one point referring to ‘abortion mills,’ a phrase that did not appear in his printed opinion.”); The Justice Harry A. Blackmun Oral History Project: Interviews with Justice Blackmun, conducted by Professor Harold Hongju Koh, Yale Law School, July 6, 1994-Dec. 13, 1995, at 35, available at <http://lcweb2.loc.gov/cocoon/blackmun-public/page.html?FOLDERID=D0901&SERIESID=D09> (“Justice Scalia orally announced his dissent in the *Madsen* case. So that was a little unusual ending the term with a voice raised in dissent on the last case announced. I had the feeling, I may be completely wrong in this, that the chief justice was rather annoyed about having the dissent read, annoyed about the timing of it. We all have a right to read a dissent, of course, if we want to.”).

¹³⁵ Journal of the Supreme Court of the United States, October Term 1994, at III (1995), <http://www.supremecourtus.gov/orders/journal/jnl94.pdf> [hereinafter Supreme Court Journal, OT [Term Year]] (“Breyer, J. reads dissenting opinion (93-1260)”; The Oyez Project, *United States v. Lopez*, 514 U.S. 549 (1995), http://oyez.org/cases/1990-1999/1994/1994_93_1260 (Opinion Announcement, J. Breyer at 2:02); Linda Greenhouse, *High Court Kills Law Banning Guns in a School Zone*, N.Y. TIMES, Apr. 27, 1995, at A1, D24 (“Justice Breyer took the unusual step of reading from the bench this morning a portion of the dissenting he opinion he wrote for himself and three others.”).

¹³⁶ Supreme Court Journal, OT 1994, at III (1995), <http://www.supremecourtus.gov/orders/journal/jnl94.pdf> (“Ginsburg, J. reads dissenting opinion (94-631, et al.)”; The Oyez Project, *Miller v. Johnson*, 515 U.S. 900 (1995), http://oyez.org/cases/1990-1999/1994/1994_94_631 (Opinion Announcement, J. Ginsburg at 6:00).

¹³⁷ Supreme Court Journal, OT 1995, at III (1996), <http://www.supremecourtus.gov/orders/journal/jnl95.pdf> (“Souter, J. Reads first dissenting opinion (94-12)”; *Lawsuits by Indian Tribes Against States Ruled Out*, N.Y.L.J., Mar. 28, 1996, at 1 (“After [Chief] Justice Rehnquist announced the ruling from the bench, Justice Souter took the rare step of reading, for seven minutes, from his dissenting opinion.”); *All Things Considered: High Court Ruling Viewed as States' Rights Victory* (NPR radio broadcast, Mar. 27, 1996) (“In a rare oral dissent from the bench, Justice David Souter, appointed to the Court by President Bush, called the majority opinion ‘fundamentally mistaken.’”).

¹³⁸ The Oyez Project, *Romer v. Evans*, 517 U.S. 620 (1996), http://oyez.org/cases/1990-1999/1995/1995_94_1039 (Opinion Announcement, J. Scalia at 5:43); Joan Biskupic, *Court Declares Gays Not Legally Different; Ruling Rejects Distinctions Based on Prejudice*, WASH. POST, May 22, 1996, at A1 (“Justice Antonin Scalia, who wrote the statement of the three dissenting justices and took the unusual step of reading portions of it from the bench, angrily observed that the majority was putting ‘the prestige of this institution’ behind equal rights for homosexuals.”).

¹³⁹ Supreme Court Journal, OT 1996, at III (1997), <http://www.supremecourtus.gov/orders/journal/jnl96.pdf> (“O'Connor, J. Reads dissenting opinion (95-2074)”; The Oyez Project, *City of Boerne v. Flores*, 521 U.S. 507 (1997), http://oyez.org/cases/1990-1999/1996/1996_95_2074 (Opinion Announcement, J. O'Connor at 4:39).

¹⁴⁰ Linda Greenhouse, *U.S. Power Curbed*, N.Y. TIMES, June 28, 1997, at A1, A9 (“Justice Scalia summarized his opinion and Justice Stevens responded . . . Justice Stevens at times read from a memorandum that contained

October Term 1997

Breyer: *Miller v. Albright*, 523 U.S. 420 (1998)¹⁴¹

Scalia: *Clinton v. City of New York*, 524 U.S. 417 (1998)¹⁴²

October Term 1998

Kennedy: *Davis v. Monroe County Bd. of Ed.*, 526 U.S. 629 (1999)¹⁴³

Scalia: *Chicago v. Morales*, 527 U.S. 41 (1999)¹⁴⁴

Ginsburg: *Grupo Mexicano de Desarrollo, S. A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999)¹⁴⁵

Stevens: *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U.S. 627 (1999)¹⁴⁶

Breyer: *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666 (1999)¹⁴⁷

Souter: *Alden v. Maine*, 527 U.S. 706 (1999)¹⁴⁸

October Term 1999

Breyer: *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000)¹⁴⁹

excerpts from his dissenting opinion. But often he spoke off the cuff, looking directly at the small audience as he explained his disagreement. He made some sly points that his written opinion omitted.”); Joan Biskupic, *Court Voids Background Check Of Gun Buyer Under Brady Law*, WASH. POST, June 28, 1997, at A1 (“In dissent, Justice John Paul Stevens read aloud for nearly 20 minutes his statement protesting the majority.”).

¹⁴¹ Joan Biskupic, *Sexual Stereotypes Split High Court*, WASH. POST, Apr. 23, 1998, at A1, A11 (“Taking the unusual step of reading part of his dissent aloud, Breyer said the citizenship rule rested on the flawed generalization that mothers are significantly more likely than fathers to care for their children and to develop deep relationships with them.”).

¹⁴² *All Things Considered: Supreme Court Rulings* (NPR radio broadcast, June 26, 1998) (“And in a rare oral dissent from the bench, Scalia contended....”); *Few Lawmakers Grieve As Supreme Court Justices Give Line-Item Veto the Ax*, CQ Electronic Library, CQ Almanac Online Edition, cqal98-0000191043. Originally published in CQ Almanac 1998 (Washington: Congressional Quarterly, 1999). <http://library.cqpress.com/cqalmanac/cqal98-0000191043> (accessed Nov. 10, 2008).

¹⁴³ The Oyez Project, *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), http://oyez.org/cases/1990-1999/1998/1998_97_843 (Opinion Announcement, J. Kennedy at 4:50); Linda Greenhouse, *From the High Court, a Voice Quite Distinctly a Woman's*, N.Y. TIMES, May 26, 1999, at A1 (“There was a memorable scene, lasting no more than 10 minutes, as Justice O’Connor and Justice Anthony M. Kennedy summarized their respective majority and dissenting opinions for a courtroom audience of lawyers and tourists.”).

¹⁴⁴ Supreme Court Journal, OT 1998, at III (1999), <http://www.supremecourtus.gov/orders/journal/jnl98.pdf> (“Scalia, J. Reads dissent from bench (97-1121)”); The Oyez Project, *Chicago v. Morales*, 527 U.S. 41 (1999), http://oyez.org/cases/1990-1999/1998/1998_97_1121 (Opinion Announcement, J. Scalia at 4:51).

¹⁴⁵ The Oyez Project, *Grupo Mexicano de Desarrollo v. Alliance Bond Fund*, 527 U.S. 308 (1999), http://oyez.org/cases/1990-1999/1998/1998_98_231 (Opinion Announcement, J. Ginsburg at 5:29); Lyle Denniston, *5-4 Ruling a Major Blow to Creditors*, BALT. SUN, June 18, 1999, at 1C (“Two former law professors on the court -- Justices Ruth Bader Ginsburg and Antonin Scalia -- disagreed animatedly over a legal fine point, with Ginsburg reading from her dissent after Scalia had finished speaking for the majority.”).

¹⁴⁶ Supreme Court Journal, OT 1998, at III (1999), <http://www.supremecourtus.gov/orders/journal/jnl98.pdf> (“Stevens, J. Reads dissent from bench (98-531)”); The Oyez Project, *Florida Prepaid v. College Savings Bank*, 527 U.S. 627 (1999), http://oyez.org/cases/1990-1999/1998/1998_98_531 (Opinion Announcement, J. Stevens at 3:10).

¹⁴⁷ Supreme Court Journal, OT 1998, at III (1999), <http://www.supremecourtus.gov/orders/journal/jnl98.pdf> (“Breyer, J. Reads dissent from bench (98-149)”); The Oyez Project, *College Savings Bank v. Florida Prepaid*, 527 U.S. 666 (1999), http://oyez.org/cases/1990-1999/1998/1998_98_149 (Opinion Announcement, J. Breyer at 11:20).

¹⁴⁸ Supreme Court Journal, OT 1998, at III (1999), <http://www.supremecourtus.gov/orders/journal/jnl98.pdf> (“Souter, J. Reads dissent from bench (98-436)”); The Oyez Project, *Alden v. Maine*, 527 U.S. 706 (1999), http://oyez.org/cases/1990-1999/1998/1998_98_436 (Opinion Announcement, J. Souter at 6:43).

Kennedy: *Hill v. Colorado*, 530 U.S. 703 (2000)¹⁵⁰
Scalia: *Hill v. Colorado*, 530 U.S. 703 (2000)¹⁵¹
Thomas: *Stenberg v. Carhart*, 530 U.S. 914 (2000)¹⁵²

October Term 2000

Stevens: *Alexander v. Sandoval*, 532 U.S. 275 (2001)¹⁵³
Ginsburg: *Buckhannon Board & Care Home, Inc. v. West Virginia Dept. of Health and Human Resources*, 532 U.S. 598 (2001)¹⁵⁴

October Term 2001

Breyer: *Federal Maritime Comm'n v. South Carolina Ports Authority*, 535 U.S. 743 (2002)¹⁵⁵
Scalia: *Atkins v. Virginia*, 536 U.S. 304 (2002)¹⁵⁶

¹⁴⁹ The Oyez Project, *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), http://oyez.org/cases/1990-1999/1999/1999_98_1152 (Opinion Announcement, J. Breyer at 6:36).

¹⁵⁰ The Oyez Project, *Hill v. Colorado*, 530 U.S. 703 (2000), http://oyez.org/cases/1990-1999/1999/1999_98_1856 (Opinion Announcement, J. Kennedy at 20:42); Linda Greenhouse, *5-4 Abortion Vote*, N.Y. TIMES, June 29, 2000, at A1, A26 (“Justice Scalia and Justice Kennedy read their impassioned dissenting opinions in the courtroom this morning for more than half an hour, making clear that this First Amendment debate was in many respects a proxy for the court’s ongoing abortion debate.”); Joan Biskupic, *Abortion Debate Will Continue to Rage*, USA TODAY, June 29, 2000, at 9A (“Antonin Scalia, Anthony Kennedy and Clarence Thomas were moved to read portions of their angry dissents in the Nebraska and Colorado cases from the mahogany bench.”).

¹⁵¹ The Oyez Project, *Hill v. Colorado*, 530 U.S. 703 (2000), http://oyez.org/cases/1990-1999/1999/1999_98_1856 (Opinion Announcement, J. Scalia at 7:14); Linda Greenhouse, *5-4 Abortion Vote*, N.Y. TIMES, June 29, 2000, at A1, A26 (“Justice Scalia and Justice Kennedy read their impassioned dissenting opinions in the courtroom this morning for more than half an hour, making clear that this First Amendment debate was in many respects a proxy for the court’s ongoing abortion debate.”); Joan Biskupic, *Abortion Debate Will Continue to Rage*, USA TODAY, June 29, 2000, at 9A (“Antonin Scalia, Anthony Kennedy and Clarence Thomas were moved to read portions of their angry dissents in the Nebraska and Colorado cases from the mahogany bench.”).

¹⁵² The Oyez Project, *Stenberg v. Carhart*, 530 U.S. 914 (2000), http://oyez.org/cases/1990-1999/1999/1999_99_830 (Opinion Announcement, J. Thomas at 7:45); Tony Mauro, *Final Day: In Dissent, Speaking Out*, LEGAL TIMES, July 3, 2000, at 10 (“Justice Clarence Thomas grimly described the ‘horrific’ ‘partial-birth’ abortion procedure that the majority had just permitted in *Stenberg v. Carhart*.”); Matt Kelley & Frank Thompson, *Fractured Court Mirrors Society*, OMAHA WORLD HERALD, June 29, 2000, at 1 (“Thomas, usually silent on the bench, surprised court observers Wednesday by reading his dissent from the court chamber.”).

¹⁵³ The Oyez Project, *Alexander v. Sandoval*, 532 U.S. 275 (2001), http://oyez.org/cases/2000-2009/2000/2000_99_1908 (Opinion Announcement, J. Stevens at 6:40); Linda Greenhouse, *Supreme Court Limits Scope Of a Main Civil Rights Law*, N.Y. TIMES, Apr. 25, 2001, at A14 (“Justice Stevens read portions of his dissent from the bench, a step justices take only rarely to call attention to developments they regard as particularly wrongheaded.”).

¹⁵⁴ The Oyez Project, *Buckhannon Board & Care Home v. West Virginia*, 532 U.S. 598 (2001), http://oyez.org/cases/2000-2009/2000/2000_99_1848 (Opinion Announcement, J. Ginsburg at 3:17); Linda Greenhouse, *Supreme Court Roundup: Ruling Limits Awarding of Legal Fees for Plaintiffs*, N.Y. TIMES, May 30, 2001, at A20 (“In a dissenting opinion that she took the unusual step of reading from the bench, Justice Ruth Bader Ginsburg....”); Charles Lane, *Disabled Pro Golfer Wins Right To Use Cart*, WASH. POST, May 30, 2001, at A1 (“Ginsburg, calling the court’s ruling ‘stunningly harsh,’ read a summary of her views from the bench, a gesture usually reserved by justices for cases they feel particularly strongly about.”).

¹⁵⁵ The Oyez Project, *Federal Maritime Commission v. South Carolina Ports Authority*, 535 U.S. 743 (2002), http://oyez.org/cases/2000-2009/2001/2001_01_46 (Opinion Announcement, J. Breyer at 3:15); Linda Greenhouse, *Justices Expand States’ Immunity in Federalism Case*, N.Y. TIMES, May 29, 2002, at A1, A18 (“The three other dissenters signed Justice Breyer’s opinion, which he took the unusual step of reading from the bench this morning.”); Charles Lane, *Court Backs States in Case Testing Reach of U.S. Agencies*, WASH. POST, May 29, 2002, at A4 (“[W]ith Justice Stephen G. Breyer taking the unusual step of reading his dissenting opinion from the bench after Thomas finished announcing the majority opinion.”).

Souter: *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002)¹⁵⁷
Ginsburg: *Republican Party of Minn. v. White*, 536 U.S. 765 (2002)¹⁵⁸

October Term 2002

Breyer: *Ewing v. California*, 538 U.S. 11 (2003)¹⁵⁹
Souter: *Demore v. Kim*, 538 U.S. 510 (2003)¹⁶⁰
Ginsburg: *American Ins. Assn. v. Garamendi*, 539 U.S. 396 (2003)¹⁶¹
Scalia: *Lawrence v. Texas*, 539 U.S. 558 (2003)¹⁶²

October Term 2003

Stevens: *Vieth v. Jubelirer*, 541 U.S. 267 (2004)¹⁶³
O'Connor: *Blakely v. Washington*, 542 U.S. 296 (2004)¹⁶⁴
Ginsburg: *Cheney v. United States Dist. Court for D. C.*, 542 U.S. 367 (2004)¹⁶⁵
Stevens: *Rumsfeld v. Padilla*, 542 U.S. 426 (2004)¹⁶⁶

¹⁵⁶ The Oyez Project, *Atkins v. Virginia*, 536 U.S. 304 (2002), http://oyez.org/cases/2000-2009/2001/2001_00_8452 (Opinion Announcement, J. Scalia at 6:53); Charles Lane, *Court Bars Execution Of Mentally Retarded*, WASH. POST, June 21, 2002, at A1 (“Scalia read a summary of his opinion from the bench after Stevens finished reading the opinion for the court, a gesture usually reserved only for those cases in which a justice disagrees especially strongly with the majority.”).

¹⁵⁷ The Oyez Project, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002), http://oyez.org/cases/2000-2009/2001/2001_00_1751 (Opinion Announcement, J. Souter at 8:05); Charles Lane, *Court Upholds Ohio School Vouchers*, WASH. POST, June 28, 2002, at A1 (“Reading from the bench a joint statement from the four dissenting justices as a demonstration of their strong disagreement with the majority, Souter called the court’s ruling a ‘potentially tragic’ mistake that would force citizens to subsidize faiths they do not share even as it corrupts religion by making it dependent on government.”).

¹⁵⁸ The Oyez Project, *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), http://oyez.org/cases/2000-2009/2001/2001_01_521 (Opinion Announcement, J. Ginsburg at 9:18); Edward Walsh, *Curbs on Judicial Hopefuls Lifted*, WASH. POST, June 28, 2002, at A10 (“Ginsburg read part of her dissent aloud, usually a sign of a justice’s strong feelings on an issue.”).

¹⁵⁹ Supreme Court Journal, OT 2002, at 707 (2003), <http://www.supremecourtus.gov/orders/journal/jnl02.pdf> (“Dissenting opinion announced by Justice Breyer”); The Oyez Project, *Ewing v. California*, 538 U.S. 11 (2003), http://oyez.org/cases/2000-2009/2002/2002_01_6978 (Opinion Announcement, J. Breyer at 4:12).

¹⁶⁰ Supreme Court Journal, OT 2002, at 901 (2003), <http://www.supremecourtus.gov/orders/journal/jnl02.pdf> (“Opinion announced by Justice Souter, with whom Justice Stevens and Justice Ginsburg join, concurring in part and dissenting in part. Opinion by Justice Breyer, concurring in part and dissenting in part”); The Oyez Project, *Demore v. Kim*, 538 U.S. 510 (2003), http://oyez.org/cases/2000-2009/2002/2002_01_1491 (Opinion Announcement, J. Souter at 3:46).

¹⁶¹ Supreme Court Journal, OT 2002, at 1100 (2003), <http://www.supremecourtus.gov/orders/journal/jnl02.pdf> (“Dissenting opinion announced by Justice Ginsburg”); The Oyez Project, *American Insurance Association v. Garamendi*, 539 U.S. 396 (2003), http://oyez.org/cases/2000-2009/2002/2002_02_722 (Opinion Announcement, J. Ginsburg at 5:15).

¹⁶² Supreme Court Journal, OT 2002, at 1103 (2003), <http://www.supremecourtus.gov/orders/journal/jnl02.pdf> (“Dissenting opinion announced by Justice Scalia”); The Oyez Project, *Lawrence and Garner v. Texas*, 539 U.S. 558 (2003), http://oyez.org/cases/2000-2009/2002/2002_02_102 (Opinion Announcement, J. Scalia at 9:20).

¹⁶³ Supreme Court Journal, OT 2003, at 839 (2004), <http://www.supremecourtus.gov/orders/journal/jnl03.pdf> (“Dissenting opinion announced by Justice Stevens”); The Oyez Project, *Vieth v. Jubelirer*, 541 U.S. 267 (2004), http://oyez.org/cases/2000-2009/2003/2003_02_1580 (Opinion Announcement, J. Stevens at 10:30).

¹⁶⁴ Supreme Court Journal, OT 2003, at 1017 (2004), <http://www.supremecourtus.gov/orders/journal/jnl03.pdf> (“Dissenting opinion announced by Justice O’Connor”); The Oyez Project, *Blakely v. Washington*, 542 U.S. 296 (2004), http://oyez.org/cases/2000-2009/2003/2003_02_1632 (Opinion Announcement, J. O’Connor at 6:09).

¹⁶⁵ Supreme Court Journal, OT 2003, at 1036 (2004), <http://www.supremecourtus.gov/orders/journal/jnl03.pdf> (“Dissenting opinion announced by Justice Ginsburg”); Charles Lane, *High Court Backs Vice President*, WASH. POST, June 25, 2004, at A1, A11 (“Reading a summary of her opinion from the bench, a sign of especially strong disagreement with the majority, Ginsburg said....”).

Souter: *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004)¹⁶⁷
Scalia: *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004)¹⁶⁸

October Term 2004

Stevens: *United States v. Booker*, 543 U.S. 220 (2005)¹⁶⁹
Scalia: *Roper v. Simmons*, 543 U.S. 551 (2005)¹⁷⁰
Breyer: *Bell v. Thompson*, 545 U.S. 794 (2005)¹⁷¹
Scalia: *McCreary County v. American Civil Liberties Union of Ky.*, 545 U.S. 844 (2005)¹⁷²

October Term 2005

Stevens: *Rapanos v. United States*, 547 U.S. 715 (2006)¹⁷³
Thomas: *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006)¹⁷⁴
Scalia: *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006)¹⁷⁵

October Term 2006

Ginsburg: *Gonzales v. Carhart*, 550 U.S. 124 (2007)¹⁷⁶
Stevens: *Scott v. Harris*, 550 U.S. 372 (2007)¹⁷⁷
Ginsburg: *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007)¹⁷⁸

¹⁶⁶ Supreme Court Journal, OT 2003, at 1036 (2004), <http://www.supremecourtus.gov/orders/journal/jnl03.pdf> (“Dissenting opinion announced by Justice Stevens”); The Oyez Project, *Rumsfeld v. Padilla*, 542 U.S. 426 (2004), http://oyez.org/cases/2000-2009/2003/2003_03_1027 (Opinion Announcement, J. Stevens at 4:44).

¹⁶⁷ Supreme Court Journal, OT 2003, at 1036 (2004), <http://www.supremecourtus.gov/orders/journal/jnl03.pdf> (“Opinion announced by Justice Souter, with whom Justice Ginsburg joins, concurring in part, dissenting in part, and concurring in the judgment.”); The Oyez Project, *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), http://oyez.org/cases/2000-2009/2003/2003_03_6696 (Opinion Announcement, J. Souter at 8:36).

¹⁶⁸ Supreme Court Journal, OT 2003, at 1036 (2004), <http://www.supremecourtus.gov/orders/journal/jnl03.pdf> (“Dissenting opinion announced by Justice Scalia”); The Oyez Project, *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), http://oyez.org/cases/2000-2009/2003/2003_03_6696 (Opinion Announcement, J. Scalia at 12:15).

¹⁶⁹ The Oyez Project, *United States v. Booker*, 543 U.S. 220 (2005), http://oyez.org/cases/2000-2009/2004/2004_04_104 (Opinion Announcement, J. Stevens at 7:02).

¹⁷⁰ Supreme Court Journal, OT 2004, at 657 (2005), <http://www.supremecourtus.gov/orders/journal/jnl04.pdf> (“Dissenting opinion announced by Justice Scalia”); The Oyez Project, *Roper v. Simmons*, 543 U.S. 551 (2005), http://oyez.org/cases/2000-2009/2004/2004_03_633 (Opinion Announcement, J. Scalia at 9:40).

¹⁷¹ Supreme Court Journal, OT 2004, at 1071-1072 (2005), <http://www.supremecourtus.gov/orders/journal/jnl04.pdf> (“Dissenting opinion announced by Justice Breyer”); The Oyez Project, *Bell v. Thompson*, 545 U.S. 794 (2005), http://oyez.org/cases/2000-2009/2004/2004_04_514 (Opinion Announcement, J. Breyer at 6:32).

¹⁷² Supreme Court Journal, OT 2004, at 1071 (2005), <http://www.supremecourtus.gov/orders/journal/jnl04.pdf> (“Dissenting opinion announced by Justice Scalia”); The Oyez Project, *McCreary County v. ACLU*, 545 U.S. 844 (2005), http://oyez.org/cases/2000-2009/2004/2004_03_1693 (Opinion Announcement, J. Scalia at 9:21).

¹⁷³ Supreme Court Journal, OT 2005, at 1108 (2006), <http://www.supremecourtus.gov/orders/journal/jnl05.pdf> (“Dissenting opinion announced by Justice Stevens”); The Oyez Project, *Rapanos v. United States*, 547 U.S. 715 (2006), http://oyez.org/cases/2000-2009/2005/2005_04_1034 (Opinion Announcement, J. Stevens at 16:25).

¹⁷⁴ Supreme Court Journal, OT 2005, at 1161 (2006), <http://www.supremecourtus.gov/orders/journal/jnl05.pdf> (“Dissenting opinion announced by Justice Thomas”); The Oyez Project, *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), http://oyez.org/cases/2000-2009/2005/2005_05_184 (Opinion Announcement, J. Thomas at 24:18).

¹⁷⁵ Supreme Court Journal, OT 2005, at 1161 (2006), <http://www.supremecourtus.gov/orders/journal/jnl05.pdf> (“Dissenting opinion announced by Justice Scalia”); The Oyez Project, *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), http://oyez.org/cases/2000-2009/2005/2005_05_184 (Opinion Announcement, J. Scalia at 14:34).

¹⁷⁶ Supreme Court Journal, OT 2006, at 861 (2007), <http://www.supremecourtus.gov/orders/journal/jnl06.pdf> (“Dissenting opinion announced by Justice Ginsburg”); The Oyez Project, *Gonzales v. Carhart*, 550 U.S. 124 (2007), http://oyez.org/cases/2000-2009/2006/2006_05_380 (Opinion Announcement, J. Ginsburg at 7:26).

¹⁷⁷ Supreme Court Journal, OT 2006, at 907 (2007), <http://www.supremecourtus.gov/orders/journal/jnl06.pdf> (“Dissenting opinion announced by Justice Stevens”); The Oyez Project, *Scott v. Harris*, 550 U.S. 372 (2007), http://oyez.org/cases/2000-2009/2006/2006_05_1631 (Opinion Announcement, J. Stevens at 5:17).

Stevens: *Uttecht v. Brown*, 551 U.S. 1 (2007)¹⁷⁹
Souter: *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007)¹⁸⁰
Breyer: *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701 (2007)¹⁸¹
Breyer: *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007)¹⁸²

October Term 2007

Scalia: *Boumediene v. Bush*, 553 U.S. 723 (2008)¹⁸³
Stevens: *District of Columbia v. Heller*, 554 U.S. 570 (2008)¹⁸⁴

October Term 2008

Stevens: *Montejo v. Louisiana*, 556 U.S. 778 (2009)¹⁸⁵
Breyer: *Horne v. Flores*, 557 U.S. 433 (2009)¹⁸⁶

¹⁷⁸ Supreme Court Journal, OT 2006, at 991 (2007), <http://www.supremecourtus.gov/orders/journal/jnl06.pdf> (“Dissenting opinion announced by Justice Ginsburg”); The Oyez Project, *Ledbetter v. Goodyear Tire and Rubber Company*, 550 U.S. 618 (2007), http://oyez.org/cases/2000-2009/2006/2006_05_1074 (Opinion Announcement, J. Ginsburg at 3:48).

¹⁷⁹ Supreme Court Journal, OT 2006, at 1009 (2007), <http://www.supremecourtus.gov/orders/journal/jnl06.pdf> (“Dissenting opinion announced by Justice Stevens”); The Oyez Project, *Uttecht v. Brown*, 551 U.S. 1 (2007), http://oyez.org/cases/2000-2009/2006/2006_06_413 (Opinion Announcement, J. Stevens at 5:18).

¹⁸⁰ Supreme Court Journal, OT 2006, at 1095 (2007), <http://www.supremecourtus.gov/orders/journal/jnl06.pdf> (“Dissenting opinion announced by Justice Souter”); The Oyez Project, *Federal Election Commission v. Wisconsin Right to Life*, 551 U.S. 449 (2007), http://oyez.org/cases/2000-2009/2006/2006_06_969 (Opinion Announcement, J. Souter at 9:43).

¹⁸¹ Supreme Court Journal, OT 2006, at 1099 (2007), <http://www.supremecourtus.gov/orders/journal/jnl06.pdf> (“Dissenting opinion announced by Justice Breyer”); The Oyez Project, *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007), http://oyez.org/cases/2000-2009/2006/2006_05_908 (Opinion Announcement, J. Breyer at 19:02).

¹⁸² Supreme Court Journal, OT 2006, at 1099 (2007), <http://www.supremecourtus.gov/orders/journal/jnl06.pdf> (“Dissenting opinion announced by Justice Breyer”); The Oyez Project, *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007), http://oyez.org/cases/2000-2009/2006/2006_06_480 (Opinion Announcement, J. Breyer at 6:18).

¹⁸³ Supreme Court Journal, OT 2007, at 985 (2008), <http://www.supremecourtus.gov/orders/journal/jnl07.pdf> (“Dissenting opinion announced by Justice Scalia”); The Oyez Project, *Boumediene v. Bush*, 553 U.S. ____ (2008), http://oyez.org/cases/2000-2009/2007/2007_06_1195, (Opinion Announcement, J. Scalia at 9:08).

¹⁸⁴ Supreme Court Journal, OT 2007, at 1037 (2008), <http://www.supremecourtus.gov/orders/journal/jnl07.pdf> (“Dissenting opinion announced by Justice Stevens”); The Oyez Project, *District of Columbia v. Heller*, 554 U.S. ____ (2008), http://oyez.org/cases/2000-2009/2007/2007_07_290, (Opinion Announcement, J. Stevens at 16:20).

¹⁸⁵ Supreme Court Journal, OT 2008, at 891 (2009), <http://www.supremecourt.gov/orders/journal/jnl08.pdf> (“Dissenting opinion announced by Justice Stevens”); The Oyez Project, *Montejo v. Louisiana*, 556 U.S. ____ (2009), http://www.oyez.org/cases/2000-2009/2008/2008_07_1529, (Opinion Announcement, J. Stevens at 7:12); Jesse J. Holland, *Justices Reverse a Rule On Police Questioning*, WASH. POST, May 27, 2009, at A4 (“Stevens read his dissent aloud from the bench. It was the first time this term that a justice had read a dissent aloud.”); David Stout, *Court Eases Rules On Questioning Suspects*, N.Y. TIMES, May 27, 2009, at A15 (“Tuesday’s opinion in *Montejo v. Louisiana*, No. 07-1529, inspired considerable emotion, as displayed by Justice Stevens’s reading of his dissent....”).

¹⁸⁶ Supreme Court Journal, OT 2008, at 999 (2009), <http://www.supremecourt.gov/orders/journal/jnl08.pdf> (“Dissenting opinion announced by Breyer”); The Oyez Project, *Horne v. Flores*, 557 U.S. ____ (2009), http://www.oyez.org/cases/2000-2009/2008/2008_08_289, (Opinion Announcement, J. Breyer at 7:11); *All Things Considered: High Court Eases Oversight Of English Program* (NPR radio broadcast, June 25, 2009) (“That may be one reason Justice Stephen Breyer took the unusual step of reading his dissent from the bench.”); Posting of Kristina Moore to SCOTUSblog, <http://www.scotusblog.com/wp/liveblog-opinions-62509/> (June 25, 2009, 9:35 EST) (at 10:08 a.m. “Justice Breyer is now reading from the dissent.”); Posting of Tony Mauro to The BLT: The Blog of LegalTimes, <http://legaltimes.typepad.com/blt/2009/06/supreme-court-rules-student-strip-search->

Ginsburg: *Ricci v. DeStefano*, 557 U.S. 557 (2009)¹⁸⁷

October Term 2009

Stevens: *Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010)¹⁸⁸

Breyer: *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010)¹⁸⁹

Breyer: *McDonald v. Chicago*, 561 U.S. 742 (2010)¹⁹⁰

Breyer: *Free Enterprise Fund v. Public Accounting Oversight Bd.*, 561 U.S. 477 (2010)¹⁹¹

October Term 2010

Ginsburg: *Connick v. Thompson*, 563 U.S. 51 (2011)¹⁹²

Scalia: *Brown v. Plata*, 563 U.S. 493 (2011)¹⁹³

[unconstitutional.html](#) (June 25, 2009, 12:03 EST) (“The Court also ruled in three other cases, including *Horne v. Flores*, a dispute over the adequacy of programs for English language learners in an Arizona school district. The 5-4 decision prompted Justice Stephen Breyer to read from his dissent from the bench.”). Coverage of the *Horne v. Flores* case was eclipsed by the media coverage of Michael Jackson's death later that day. None of the major newspapers offered confirmation that Justice Breyer actually had read his dissent aloud from the bench.

¹⁸⁷ Supreme Court Journal, OT 2008, at 1019 (2009), <http://www.supremecourt.gov/orders/journal/jnl08.pdf> (“Dissenting opinion announced by Justice Ginsburg”); The Oyez Project, *Ricci v. DeStefano*, 557 U.S. ____ (2009), http://www.oyez.org/cases/2000-2009/2008/2008_07_1428, (Opinion Announcement, J. Ginsburg at 9:42); Robert Barnes, *Justices Rule for White Firemen In Bias Lawsuit*, WASH. POST, June 30, 2009, at A1, A3 (“Justice Ruth Bader Ginsburg, reading her dissent from the bench for emphasis....”); Adam Liptak, *Supreme Court Finds Bias Against White Firefighters*, N.Y. TIMES, June 30, 2009, at A1 (“Justice Ruth Bader Ginsburg, reading a dissenting statement from the bench....”).

¹⁸⁸ Supreme Court Journal, OT 2009, at 505 (2010), <http://www.supremecourt.gov/orders/journal/jnl09.pdf> (“Opinion announced by Justice Stevens”); Robert Barnes, *High Court Shows It Might Be Willing to Act Boldly*, WASH. POST, Jan. 22, 2010, at A4 (“The dissent was read hesitantly by Stevens, the court's longest-serving justice. Thought by many to be ready to leave the bench after this term, Stevens stumbled uncharacteristically in more than 20 minutes of denouncing the majority opinion.”); Adam Liptak, *Justices, 5-4, Reject Corporate Campaign Spending Limit*, N.Y. TIMES, Jan. 22, 2010, at A1, A16 (“...Justice John Paul Stevens contributing a passionate 90-page dissent. In sometimes halting fashion, he summarized it for some 20 minutes from the bench on Thursday morning.”).

¹⁸⁹ Supreme Court Journal, OT 2009, at 998 (2010), <http://www.supremecourt.gov/orders/journal/jnl09.pdf> (“Dissenting opinion announced by Justice Breyer”); Robert Barnes, *Court Upholds Ban on Terror-Related Aid*, WASH. POST, June 22, 2010, at A1, A4 (“Justice Stephen G. Breyer highlighted his disagreement by reading a summary of his dissent from the bench.”); Adam Liptak, *Justices Uphold a Ban on Aiding Terror Groups*, N.Y. TIMES, June 22, 2010, at A1, A3 (“Justice Stephen G. Breyer took the unusual step of summarizing his dissent from the bench.”).

¹⁹⁰ Supreme Court Journal, OT 2009, at 1029 (2010), <http://www.supremecourt.gov/orders/journal/jnl09.pdf> (“Dissenting opinion announced by Justice Breyer”); Robert Barnes and Dan Eggen, *Supreme Court Expands Gun Rights*, WASH. POST, June 29, 2010, at A1, A6 (“Justice Stephen G. Breyer objected to the majority decision and read his dissent from the bench.”); Posting of Erin Miller to SCOTUSblog, <http://www.scotusblog.com/2010/06/live-blog-orders-and-opinions-6-28-10> (June 28, 2010, 9:35 EST) (at 10:18 a.m. “Breyer is now reciting from his dissenting opinion in *McDonald*.”).

¹⁹¹ Supreme Court Journal, OT 2009, at 1030 (2010), <http://www.supremecourt.gov/orders/journal/jnl09.pdf> (“Dissenting opinion announced by Justice Breyer”); Adam Liptak, *Court Backs Accounting Regulator*, N.Y. TIMES, June 29, 2010, at B1 (“Justice Stephen G. Breyer read his dissent from the bench”); Posting of Erin Miller to SCOTUSblog, <http://www.scotusblog.com/2010/06/live-blog-orders-and-opinions-6-28-10> (June 28, 2010, 9:35 EST) (at 11:01 a.m. “Breyer is reciting from his dissent now.”).

¹⁹² Supreme Court Journal, OT 2010, at 725 (2011), <http://www.supremecourt.gov/orders/journal/jnl10.pdf> (“Dissenting opinion announced by Justice Ginsburg”); Adam Liptak, *\$14 Million Jury Award to Ex-Inmate Is Dismissed*, N.Y. TIMES, March 30, 2011, at A14 (“The 5-to-4 decision divided along the court's ideological fault line and prompted the first dissent read from the bench this term, from Justice Ruth Bader Ginsburg.”); Posting of Adam Schlossman to SCOTUSblog, <http://www.scotusblog.com/2011/03/details-on-todays-opinions-7/> (March 29, 2011, 9:54 EST) (“Justice Ginsburg read from her dissent from the bench.”).

Ginsburg: *J. McIntyre Machinery, Ltd. v. Nicaastro*, 564 U.S. 873 (2011)¹⁹⁴
Kagan: *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 564 U.S. 721 (2011)¹⁹⁵

October Term 2011

Ginsburg: *Coleman v. Court of Appeals of Maryland*, 566 U.S. 30 (2012)¹⁹⁶
Scalia: *Missouri v. Frye*, 566 U.S. 134 (2012) & *Lafler v. Cooper*, 566 U.S. 156 (2012)¹⁹⁷
Breyer: *Knox v. Service Employees*, 567 U.S. 298 (2012)¹⁹⁸
Alito: *Miller v. Alabama*, 567 U.S. 460 (2012)¹⁹⁹

¹⁹³ Supreme Court Journal, OT 2010, at 901 (2011), <http://www.supremecourt.gov/orders/journal/jnl10.pdf> (“Dissenting opinion announced by Justice Scalia, with whom Justice Thomas joins”); Adam Liptak, *Justices Order California to Cut Prison Crowding*, N.Y. TIMES, May 24, 2011, at A1, A3 (“Justice Scalia summarized his dissent, which was pungent and combative, from the bench.”).

¹⁹⁴ Supreme Court Journal, OT 2010, at 1030 (2011), <http://www.supremecourt.gov/orders/journal/jnl10.pdf> (“Dissenting opinion, announced by Justice Ginsburg, with whom Justice Sotomayor and Justice Kagan join”); Posting of Debra Cassens Weiss to ABA Journal Law News Now, *Is International Shoe Getting the Boot? Ginsburg Dissent Protests Jurisdictional Bar to Tort Suit*, http://www.abajournal.com/news/article/is_international_shoe_getting_the_boot_ginsburg_dissent_protests_jurisdiction/ (Jun 27, 2011 3:03 PM CDT) (“Ginsburg read aloud from her dissent in the second case, *J. McIntyre Machinery v. Nicaastro*.”).

¹⁹⁵ Supreme Court Journal, OT 2010, at 1030 (2011), <http://www.supremecourt.gov/orders/journal/jnl10.pdf> (“Dissenting opinion, announced by Justice Kagan, with whom Justice Ginsburg, Justice Breyer, and Justice Sotomayor join.”); Adam Liptak, *Justices Reject Another Campaign Finance Law*, N.Y. TIMES, June 28, 2011, at A15 (“In a dissent summarized from the bench, Justice Elena Kagan said the Arizona law advanced First Amendment values.”). Robert Barnes, *Justices Who Will Shape Court Future Pair Up*, WASH. POST, June 29, 2011, at A6 (“And it seemed like the opening act of what will be a very long-running play Monday when Kagan ended her first term with a rare decision to read from the bench ...”).

¹⁹⁶ Supreme Court Journal, OT 2011, at 675 (2012), <http://www.supremecourt.gov/orders/journal/jnl11.pdf> (“Dissenting opinion announced by Justice Ginsburg, with whom Justice Breyer joins, and with whom Justice Sotomayor and Justice Kagan join as to all but footnote 1.”); Adam Liptak, *Justices Limit Suits Filed In Violations Of Leave Act*, N.Y. TIMES, March 21, 2012, at A15 (“The decision prompted the term’s first dissent read from the bench, by Justice Ruth Bader Ginsburg...”); Robert Barnes, *States Can’t Be Sued for Denying FMLA*, WASH. POST, March 21, 2012, at A9 (“The Court’s liberal members disagreed with the ruling, and Justice Ruth Bader Ginsburg summarized their dissent from the bench, an act normally reserved for disagreements of special consequence.”).

¹⁹⁷ Supreme Court Journal, OT 2011, at 677 (2012), <http://www.supremecourt.gov/orders/journal/jnl11.pdf> (“Dissenting opinion announced by Justice Scalia, with whom Justice Thomas joins, and with whom The Chief Justice joins as to all but Part IV.”); Adam Liptak, *Justices Expand Right of Accused in Plea Bargains*, N.Y. TIMES, March 22, 2012, at A1 (“The consequence of the two decisions are hard to predict because, as Justice Antonin Scalia said in a pair of dissents he summarized from the bench...”); Robert Barnes, *Supreme Court Decision Expands Defendants’ Rights*, WASH. POST, March 22, 2012, at A1 (“The decisions prompted a scathing rebuttal from Justice Antonin Scalia, delivered from the bench to signal his displeasure.”).

¹⁹⁸ Supreme Court Journal, OT 2011, at 975 (2012), <http://www.supremecourt.gov/orders/journal/jnl11.pdf> (“Dissenting opinion announced by Justice Breyer, with whom Justice Kagan joins.”); Adam Liptak, *Chief Justice Offers Hint at New Timing For Health Care Ruling*, N.Y. TIMES, June 22, 2012, at A10 (“Justice Breyer summarized his dissent from the bench, only the third time this term that a justice has taken that step, which generally indicates deep dissatisfaction with the majority opinion.”).

¹⁹⁹ Supreme Court Journal, OT 2011, at 996 (2012), <http://www.supremecourt.gov/orders/journal/jnl11.pdf> (“Dissenting opinion, announced by Justice Alito, with whom Justice Scalia joins.”); Adam Liptak, *Mandatory Life Terms Barred for Juveniles in Murder Cases*, N.Y. TIMES, June 26, 2012, at A1, A14 (“In a separate dissent read from the bench, an unusual move indicating deep disagreement with the majority opinion, Justice Alito made a similar case in stronger language.”); Robert Barnes, *Juvenile Murderers: Mandatory Life Sentences Without Parole Are Rejected*, WASH. POST, June 26, 2012, at A1, A7 (“In his first dissent read from the bench in more than five years on the court, Alito accused his colleagues of an ‘elite vision’ that they know better than the people and their representatives.”).

Scalia: *Arizona v. United States*, 567 U.S. 387 (2012)²⁰⁰

Kennedy: *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012)²⁰¹

Ginsburg: *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012)²⁰²

October Term 2012

Ginsburg: *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013)²⁰³

Breyer: *Comcast Corp. v. Behrend*, 569 U.S. 27 (2013)²⁰⁴

Scalia: *Maryland v. King*, 569 U.S. 435 (2013)²⁰⁵

Ginsburg: *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2013)²⁰⁶

²⁰⁰ Supreme Court Journal, OT 2011, at 996 (2012), <http://www.supremecourt.gov/orders/journal/jnl111.pdf> (“Opinion concurring in part and dissenting in part announced by Justice Scalia.”); Adam Liptak, *Court Splits Immigration Law Verdicts; Upholds Hotly Debated Centerpiece*, 8-0, N.Y. TIMES, June 26, 2012, at A1 (“Justice Antonin Scalia summarized his dissent from the bench, a rare move that indicated his deep disagreement.”); Robert Barnes, *Justices Throw Out Parts of Arizona’s Immigration Law*, WASH. POST, June 26, 2012, at A1 (“In an unusual moment Monday, a dissenting Justice Antonin Scalia mentioned Obama’s policy as he spoke from the bench to criticize the majority’s decision.”).

²⁰¹ Supreme Court Journal, OT 2011, at 999 (2012), <http://www.supremecourt.gov/orders/journal/jnl111.pdf> (“Justice Kennedy announced a dissenting opinion by Justice Kennedy, Justice Scalia, Justice Thomas, and Justice Alito.”); Adam Liptak, *Congress’s Taxing Powers Cited – Medicaid Growth Limited*, N.Y. TIMES, June 29, 2012, at A1 (“The majority’s approach, [Justice Anthony M. Kennedy] said from the bench, ‘amounts to a vast judicial over-reaching.’”); Robert Barnes, *Justices Limit Medicare Provision*, WASH. POST, June 29, 2012, at A13 (“It was the mark of the tightrope Roberts walked that, after announcing the court’s decision, he sat impassively while representatives of the court’s conservative and liberal wings read forceful criticisms of his work. Justice Anthony M. Kennedy ... spoke for Justices Antonin Scalia, Clarence Thomas and Samuel A. Alito Jr.”)

²⁰² Supreme Court Journal, OT 2011, at 999 (2012), <http://www.supremecourt.gov/orders/journal/jnl111.pdf> (“Opinion announced by Justice Ginsburg, with whom Justice Sotomayor joins, and with whom Justice Breyer and Justice Kagan join as to Parts I, II, III, and IV, concurring in part, and concurring in the judgment in part, and dissenting in part.”); Adam Liptak, *With Roberts in Majority, Justices Uphold Health Care Law*, 5-4, N.Y. TIMES, June 29, 2012, at A12 (“Justice Ginsburg, speaking to a crowded courtroom that sat rapt for the better part of an hour, drew a different conclusion.”); Robert Barnes, *Justices Limit Medicare Provision*, WASH. POST, June 29, 2012, at A13 (“It was the mark of the tightrope Roberts walked that, after announcing the court’s decision, he sat impassively while representatives of the court’s conservative and liberal wings read forceful criticisms of his work... From the left, Ginsburg criticized Roberts’s decision to join the conservatives in saying the commerce clause does not provide Congress the power to require buying healthcare insurance.”)

²⁰³ Supreme Court Journal, OT 2012, at 709 (2013), <http://www.supremecourt.gov/orders/journal/jnl112.pdf> (“Dissenting opinion announced by Justice Ginsburg and Justice Breyer, with whom Justice Sotomayor and Justice Kagan join.”); Brent Kendall, *High Court Sides With Comcast*, WALL. ST. J., March 28, 2013, at B3 (“The four members of the court’s liberal wing dissented, and both Justices Ruth Bader Ginsburg and Stephen Breyer read portions of their dissents aloud during the court’s morning session, a rare move that signals a justice’s particular displeasure with a case outcome.”)

²⁰⁴ *Id.*

²⁰⁵ Supreme Court Journal, OT 2012, at 928 (2013), <http://www.supremecourt.gov/orders/journal/jnl112.pdf> (“Dissenting opinion announced by Justice Scalia, with whom Justice Ginsburg, Justice Sotomayor, and Justice Kagan join.”); Adam Liptak, *Justices Allow DNA Collection After an Arrest*, N.Y. TIMES, June 4, 2013, at A1 (“From the bench, Justice Scalia repeatedly invoked the generation that fought the Revolutionary War and framed the Constitution. ‘The proud men who wrote the charter of our liberties,’ he said, ‘would not have been so eager to open their mouths for royal inspection.’”); Robert Barnes, *Justices Uphold Md. Law on DNA*, WASH. POST, June 4, 2013, at A9 (“The dissenters were three of the court’s liberals plus conservative Justice Antonin Scalia, who amplified his displeasure by reading a summary of his dissent from the bench.”)

²⁰⁶ Supreme Court Journal, OT 2012, at 1004 (2013), <http://www.supremecourt.gov/orders/journal/jnl112.pdf> (“Dissenting opinion announced by Justice Ginsburg.”); Adam Liptak, *Justices Step Up Scrutiny of Race In College Entry*, N.Y. TIMES, June 25, 2013, at A1, A12 (“Justice Ginsburg, who announced her dissent from the bench, said the race-neutral part of the Texas program worked only because of ‘de facto racial segregation in Texas’ neighborhoods and schools.”); Robert Barnes, *Court Keeps Alive Affirmative Action*, June 25, 2013, at A1, A4

Ginsburg: *University Of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013) & *Vance v. Ball State University*, 570 U.S. 421 (2013)²⁰⁷
Ginsburg: *Shelby County v. Holder*, 570 U.S. 529 (2013)²⁰⁸
Scalia: *United States v. Windsor*, 570 U.S. 744 (2013)²⁰⁹

October Term 2013

Breyer: *McCutcheon v. Federal Election Comm'n*, 572 U.S. 185 (2014)²¹⁰
Sotomayor: *Schuette v. BAMN*, 572 U.S. 291 (2014)²¹¹
Scalia: *EPA v. EME Homer City Generation, L.P.*, 572 U.S. ____ (2014)²¹²
Ginsburg: *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. ____ (2014)²¹³

("But Ginsburg said universities 'need not blind themselves to the still lingering, every day evident, effects of centuries of law-sanctioned inequality.' Programs that 'candidly disclose their consideration of race are preferable to those that conceal or obscure what drives them,' she said in a statement from the bench.") .

²⁰⁷ Supreme Court Journal, OT 2012, at 1004 (2013), <http://www.supremecourt.gov/orders/journal/jnl12.pdf> ("Dissenting opinion announced by Justice Ginsburg, with whom Justice Breyer, Justice Sotomayor, and Justice Kagan join."); Robert Barnes, *Workplace Rulings: In Dissent, Ginsburg Makes Plea*, WASH. POST, June 25, 2013, at A1, A5 ("Both decisions dilute the strength of Title VII in ways Congress could not have intended," Ginsburg said in a dissenting statement read from the bench."); Rob Silverblatt, *Justice Ginsburg's Record-Breaking Day*, U.S. News and World Report, June 25, 2013, available at: <http://www.usnews.com/news/articles/2013/06/25/justice-ginsburgs-record-breaking-day> ("Technically, Ginsburg only read two dissents yesterday. That's because she combined the two employment discrimination cases into one oral dissent.").

²⁰⁸ Supreme Court Journal, OT 2012, at 1005 (2013), <http://www.supremecourt.gov/orders/journal/jnl12.pdf> ("Dissenting opinion announced by Justice Ginsburg, with whom Justice Breyer, Justice Sotomayor, and Justice Kagan join."); Adam Liptak, *Justices Void Oversight of States, Issue at Heart of Voting Rights Act*, N.Y. TIMES, June 26, 2013, at A1 ("Justice Ruth Bader Ginsburg summarized her dissent from the bench, an unusual move and a sign of deep disagreement."); Robert Barnes, *Court Blocks Key Part of Voting Rights Act*, WASH. POST, June 26, 2013, at A1, A10 ("Justice Ruth Bader Ginsburg emphasized the liberals' disagreement with the decision by reading her dissent from the bench.").

²⁰⁹ Supreme Court Journal, OT 2012, at 1007 (2013), <http://www.supremecourt.gov/orders/journal/jnl12.pdf> ("Dissenting opinion announced by Justice Scalia, with whom Justice Thomas Joins, and with whom the Chief Justice joins as to Part I."); Adam Liptak, *Justices Extend Benefits To Gay Couples; Allow Same-Sex Marriages In California*, N.Y. TIMES, June 27, 2013, at A1, A18 ("Dissenting from the bench, Justice Scalia said that that declaration took 'real cheek.'").

²¹⁰ Supreme Court Journal, OT 2013, at 707 (2014), <http://www.supremecourt.gov/orders/journal/jnl13.pdf> ("Dissenting opinion announced by Justice Breyer, with whom Justice Ginsburg, Justice Sotomayor, and Justice Kagan join."); Robert Barnes, *Conservatives Make Their Mark*, WASH. POST, April 3, 2014, at A1, A20 ("The liberal justices sharply disagreed, with Justice Stephen G. Breyer reading his dissent from the bench to emphasize the disagreement."); Adam Liptak, *Justices, 5-4, Kill Key Spending Cap in Political Races*, N.Y. TIMES, April 3, 2014, at A1 ("In a dissent from the bench, Justice Stephen G. Breyer called the majority opinion a disturbing development that raised the overall contribution ceiling to 'the number infinity.'").

²¹¹ Supreme Court Journal, OT 2013, at 765 (2014), <http://www.supremecourt.gov/orders/journal/jnl13.pdf> ("Dissenting opinion announced by Justice Sotomayor, with whom Justice Ginsburg joins."); Robert Barnes, *Sotomayor Writes That Court Can't 'Wish Away' Racial Inequality*, WASH. POST, April 23, 2014, at A6 ("In her most personal moment in 4 ½ years on the court, Sotomayor read part of her dissent from the bench to emphasize her disagreement with six colleagues who upheld Michigan's constitutional amendment banning the consideration of race in public university admissions."); Adam Liptak, *Justices Back Ban on Race as Factor in College Entry*, N.Y. TIMES, April 23, 2014, at A1, A12 ("Justice Sotomayor summarized her dissent from the bench, an unusual move that happens perhaps three times a term.").

²¹² Supreme Court Journal, OT 2013, at 795 (2014), <http://www.supremecourt.gov/orders/journal/jnl13.pdf> ("Dissenting opinion announced by Justice Scalia, with whom Justice Thomas joins."); Robert Barnes and Darryl Fears, *Supreme Court Upholds EPA Rule Limiting Cross-State Pollution*, WASH. POST, April 30, 2014, at A4 ("Justices Antonin Scalia and Clarence Thomas issued a scathing dissent, which Scalia read in part from the bench...").

October Term 2014

Scalia: *Zivotofsky v. Kerry*, 576 U.S. ____ (2015)²¹⁴

Scalia: *King v. Burwell*, 576 U.S. ____ (2015)²¹⁵

Roberts: *Obergefell v. Hodges*, 576 U.S. ____ (2015)²¹⁶

Sotomayor: *Glossip v. Gross*, 576 U.S. ____ (2015)²¹⁷

Breyer: *Glossip v. Gross*, 576 U.S. ____ (2015)²¹⁸

October Term 2015

Alito: *Fisher v. University of Tex. at Austin*, 579 U.S. ____ (2016)²¹⁹

²¹³ Supreme Court Journal, OT 2013, at 993 (2014), <http://www.supremecourt.gov/orders/journal/jnl13.pdf> (“Dissenting opinion announced by Justice Ginsburg, with whom Justice Sotomayor joins, and with whom Justice Breyer and Justice Kagan join as to all but Part III-C.”); Jess Bravin, *Court Grants Health Law Exception*, WALL. ST. J., July 1, 2014, at A1, A6 (“The court’s liberals disputed nearly every aspect of the majority opinion, something Justice Ginsburg underscored by reading her dissent from the bench.”).

²¹⁴ Supreme Court Journal, OT 2014, at 869 (2015), <http://www.supremecourt.gov/orders/journal/jnl14.pdf> (“Dissenting opinion announced by Justice Scalia, with whom The Chief Justice and Justice Alito join.”); Robert Barnes, *A Single Voice on Foreign Borders*, WASH. POST, June 9, 2015, at A1, A5 (“Justice Antonin Scalia also disagreed with the ruling, and he made his displeasure more pronounced by reading portions of his dissent from the bench.”); Adam Liptak, *Justices Reject Passport Law on Jerusalem*, N.Y. TIMES, June 9, 2015, at A1, A15 (“Justice Scalia announced his dissent from the bench, a rare move indicating bitter disagreement.”).

²¹⁵ Supreme Court Journal, OT 2014, at 917 (2015), <http://www.supremecourt.gov/orders/journal/jnl14.pdf> (“Dissenting opinion announced by Justice Scalia, with whom Justice Thomas and Justice Alito join.”); Adam Liptak, *Justices Give Obama Another Health Care Victory: 6-3 Ruling Upholds U.S. Subsidies – Scalia Scathing in Dissent*, N.Y. TIMES, June 26, 2015, at A1 (“[Justice Scalia] announced his dissent from the bench, a sign of bitter disagreement.”); Robert Barnes, *Health-care Act Survives Court: Subsidies Are for All, Justices Say*, WASH. POST, June 26, 2015, at A1, A6 (“‘We should start calling this law SCOTUScare,’ he said. The comment drew laughter as Scalia emphasized his disagreement with the decision by reading part of his dissent from the bench.”).

²¹⁶ Supreme Court Journal, OT 2014, at 919 (2015), <http://www.supremecourt.gov/orders/journal/jnl14.pdf> (“Dissenting opinion announced by The Chief Justice, with whom Justice Scalia and Justice Thomas join.”); Robert Barnes, *Gay’s Right to Wed Affirmed: 5-to-4 Ruling by Supreme Court*, WASH. POST, June 27, 2015, at A1, A12 (“‘If you are among the many Americans – of whatever sexual orientation – who favor expanding same-sex marriage, by all means celebrate today’s decision,’ wrote Roberts, who for the first time in his tenure marked his disagreement with a decision by reading part of his dissent from the bench.”).

²¹⁷ Supreme Court Journal, OT 2014, at 941 (2015), <http://www.supremecourt.gov/orders/journal/jnl14.pdf> (“Dissenting opinion announced by Justice Sotomayor, with whom Justice Ginsburg, Justice Breyer, and Justice Kagan join. Dissenting opinion announced by Justice Breyer, with whom Justice Ginsburg joins.”); Jess Bravin, *Justices Permit Use of Drug for Execution*, WALL. ST. J., June 30, 2015, at A1, A4 (“Justice Breyer, like Justice Sotomayor, summarized his dissent from the bench to emphasize his concern about the majority opinion. Justice Scalia retorted by summarizing his own concurring opinion endorsing the constitutionality of capital punishment.”). One commentator suggests that Justice Scalia’s retort was “a deliberate echo of Breyer’s lament in reading his dissent aloud in the 2007 Seattle schools case, that, ‘It is not often in the law that so few have so quickly changed so much.’” Dahlia Lithwick, *Scalia Goes Off Script*, SLATE, June 29, 2015; http://www.slate.com/articles/news_and_politics/the_breakfast_table/features/2015/scotus_roundup/scalia_in_glossip_v_gross_supreme_court_decision_oklahoma_may_kill_using.html).

²¹⁸ *Id.*

²¹⁹ Supreme Court Journal, OT 2015, at 931 (2016), <http://www.supremecourt.gov/orders/journal/jnl15.pdf> (“Dissenting opinion announced by Justice Alito, with whom The Chief Justice and Justice Thomas join.”); Adam Liptak, *4 Justices Uphold Race-Aware Admissions*, N.Y. TIMES, June 24, 2016, at A1, A16 (“in a lengthy and impassioned dissent delivered from the bench, a sign of deep disagreement, Justice Samuel A. Alito Jr. denounced the court’s ruling...”); Robert Barnes, *Justices Deliver Surprising Boost to Backers of Affirmative Action*, WASH. POST, June 24, 2016, at A1, A9 (“[Justice Alito] characterized the UT policy as ‘affirmative action gone wild’ and read a summary of his opinion from the bench to emphasize that he thought Kennedy’s opinion ‘remarkable – and remarkably wrong.’”).

Alito: *Whole Woman's Health v. Hellerstedt*, 579 U.S. ____ (2016)²²⁰

October Term 2016

Breyer: *Ziglar v. Abbasi*, 582 U.S. ____ (2017)²²¹

Sotomayor: *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. ____ (2017)²²²

October Term 2017

Breyer: *Jennings v. Rodriguez*, 583 U.S. ____ (2018)²²³

Ginsburg: *Epic Systems Corp. v. Lewis*, 584 U.S. ____ (2018)²²⁴

Breyer: *Ohio v. American Express Co.*, 585 U.S. ____ (2018)²²⁵

Breyer: *National Institute of Family and Life Advocates v. Becerra*, 585 U.S. ____ (2018)²²⁶

Breyer: *Trump v. Hawaii*, 585 U.S. ____ (2018)²²⁷

Sotomayor: *Trump v. Hawaii*, 585 U.S. ____ (2018)²²⁸

²²⁰ Supreme Court Journal, OT 2015, at 951 (2016), <http://www.supremecourt.gov/orders/journal/jnl15.pdf> (“Dissenting opinion announced by Justice Alito, with whom The Chief Justice and Justice Thomas join.”); Robert Barnes, *High Court Strikes Texas Clinic Rules*, WASH. POST, June 28, 2015, at A1, A6 (“Alito also objected to the majority and read parts of his dissent from the bench to emphasize his disagreement.”).

²²¹ Supreme Court Journal, OT 2016, at 866 (2017), <https://www.supremecourt.gov/orders/Jnl16.pdf> (“Dissenting opinion announced by Justice Breyer, with whom Justice Ginsburg joins.”); Adam Liptak, *Supreme Court Says Bush Officials Cannot Be Sued for Post-9/11 Policies*, N.Y. TIMES, June 20, 2017, at A15 (“Justice Stephen G. Breyer summarized his dissent from the bench, a sign of deep disagreement.”); Robert Barnes, *U.S. Officials Can't Be Held Liable for Alleged Unconstitutional Treatment of Noncitizens*, WASH. POST, June 20, 2017, at A1, A12 (“Breyer underscored the importance of the case by reading part of his dissent from the bench.”).

²²² Supreme Court Journal, OT 2016, at 896 (2017), <https://www.supremecourt.gov/orders/Jnl16.pdf> (“Dissenting opinion announced by Justice Sotomayor, with whom Justice Ginsburg joins.”); Robert Barnes, *Justices Back Religious Institution in a Major Church-State Decision*, WASH. POST, June 27, 2017, at A1, A5 (“Sotomayor signaled the importance she places on the decision by reading part of her dissent from the bench.”); Adam Liptak, *Church Wins Ruling Over Access to Public Funding*, N.Y. TIMES, June 27, 2017, at A13 (“Justice Sonia Sotomayor summarized her dissent from the bench, an indication of deep disagreement.”).

²²³ Supreme Court Journal, OT 2017, at 535 (2018), <https://www.supremecourt.gov/orders/journal/Jnl17.pdf> (“Dissenting opinion announced by Justice Breyer, with whom Justice Ginsburg and Justice Sotomayor join.”); Adam Liptak, *Sharply Divided Supreme Court Makes It Easier to Keep Immigrants in Jail*, N.Y. TIMES, Feb. 28, 2018, at A14 (“Justice Stephen G. Breyer summarized his dissent from the bench, a rare move signaling intense disagreement.”); Robert Barnes, *Detained Migrants Not Entitled to Bond Hearings*, WASH. POST, Feb. 28, 2018, at A3 (“The ruling brought an impassioned dissent from Justice Stephen G. Breyer, who read part of it from the bench to underscore his disagreement.”).

²²⁴ Robert Barnes, *High Court Sides with Firms on Arbitration*, WASH. POST, May 22, 2018, at A1, A4 (“...a forceful dissent from Justice Ruth Bader Ginsburg, who called the decision ‘egregiously wrong’ and underlined her objections by reading part of her dissent from the bench.”); Adam Liptak, *Supreme Court Delivers a Win For Employers*, N.Y. TIMES, May 22, 2018, at B1 (“Justice Ruth Bader Ginsburg read her dissent from the bench, a sign of profound disagreement.”).

²²⁵ Adam Liptak, *Justices Side With Amex on Merchant Fees*, N.Y. TIMES, June 26, 2018, at B1, B2 (“Justice Stephen G. Breyer read his dissent from the bench, a rare move indicating profound disagreement.”).

²²⁶ Robert Barnes, *Justices: Crisis Pregnancy Centers Don't Have to Give Abortion Information*, WASH. POST, June 27, 2018, at A11 (“Justice Stephen G. Breyer wrote the dissent for the court’s liberals, and read parts of it from the bench.”); Adam Liptak, *Anti-Abortion Health Clinics Win First Amendment Ruling*, N.Y. TIMES, June 26, 2018, at A1, A18 (“In a dissent that he summarized from the bench, Justice Stephen G. Breyer accused the majority of acting inconsistently.”).

²²⁷ Catie Edmondson, *Condemning 'Hostility and Animus,'* N.Y. TIMES, June 26, 2018, at A17 (“Justice Stephen G. Breyer followed, working his way through his dissent mildly and analytically.”)

²²⁸ Adam Liptak and Michael D. Shear, *Justices Back Travel Ban, Yielding to Trump*, N.Y. TIMES, June 27, 2018, at A1 (“In a passionate and searing dissent from the bench, Justice Sonia Sotomayor said the decision was no better than *Korematsu v. United States*, the 1944 decision that endorsed the detention of Japanese-Americans during World War II.”); Robert Barnes and Ann E. Marimow, *High Court Upholds Trump's Travel Ban*, WASH. POST, June 27,

Kagan: *Janus v. State, County, and Municipal Employees*, 585 U.S. ____ (2018)²²⁹

2018, at A1, A11 (“Justice Sonia Sotomayor wrote a stinging rebuttal, joined by Justice Ruth Bader Ginsburg. And she read part of it in a dramatic moment on the bench.”).

²²⁹ Adam Liptak, *Ruling on Collective Bargaining Fees Hurts Unions*, N.Y. TIMES, June 28, 2018, at A1 (“Justice Elena Kagan summarized her dissent from the bench, a sign of profound disagreement.”); Robert Barnes and Ann E. Marimow, *Ruling, Citing Free Speech, Deals A Major Blow to Organized Labor*, WASH. POST, June 28, 2018, at A1, A6 (“Kagan delivered part of her dissent from the bench, a fairly rare move for her.”). Pursuant to the agreement between the Court and NARA, the opinion announcement audio for Oct. Term 2017 will not be released to NARA, and consequently to Oyez, until after the conclusion of the Court’s Term. The Court will conclude Oct. Term 2017 when it begins Oct. Term 2018 on Monday, October 1, 2018. Audio of oral arguments is available on the Court’s web site at http://www.supremecourt.gov/oral_arguments/argument_audio.aspx