

Justices' jabs reveal ideological, partisan splits

Richard Wolf, USA TODAY [\(/staff/1128/richard-wolf\)](/staff/1128/richard-wolf) 4:37 p.m. EDT May 12, 2014



(Photo: Jack Gruber, USA TODAY)

21
CONNECT

(<https://twitter.com/intent/tweet?url=http://usat.ly/1ldGLKU&text=Justices%20jabs%20reveal%20>)

53
TWEET

WASHINGTON — Things are getting a bit snippy at the Supreme Court.

That is, if you consider one justice calling another's dissent "quite niggling." Or a third complaining that six colleagues "blind themselves to the obvious." How about a fourth calling the majority's legal analysis "fatally flawed?"

Then there was the court's lone Hispanic member bemoaning "how little my colleagues understand about the reality of race in America" — including the lone African American. That prompted a "does-more-harm-than-good" scolding from the chief justice.

Sharply written opinions are nothing new inside the court's marble palace, where even the most pointed dissents customarily conclude "with respect." What the latest jibes and jawbones suggest is that the court is more sharply divided than it has been in decades. And it shows.

"This court really is polarized in a way that we have not seen in recent generations," says Stephen Vladeck, a law professor at American University's Washington College of Law. "What is different about recent developments is a combination of new voices on the court ... with increasingly entrenched positions."

It's no surprise that as a long winter finally turned to spring, the justices had disposed of many easier cases and turned to the more contentious ones on their docket — those that can lead to a few rhetorical flourishes.

Through March, 23 of the high court's 30 rulings had been decided 9-0, according to the website [Scotusblog.com](http://scotusblog.com). There were no high-drama 5-4s.

Since April, however, the sharp knives have come out. Four of the 11 cases decided since then were 5-4 rulings; three others drew dissents as well. Only four times did the justices go all-in.

Court-watchers weren't shocked April 2 when the ruling in a campaign finance case consumed 88 pages. Chief Justice John Roberts and his conservative colleagues wiped out the aggregate limits on how much donors can give to all candidates, committees and political parties. Justice Stephen Breyer and the court's liberal bloc said the ruling, combined with 2010's toxic-to-liberals *Citizens United* decision, "eviscerates our nation's campaign finance laws."

Three weeks later, tempers clearly were rising. The court couldn't get more than three justices to agree on anything when it came to Michigan's law banning racial preferences for public university admissions. Six of them upheld the law, but for different reasons. Justice Sonia Sotomayor took 58 pages to blast them for it.

Quoting one of Roberts' most famous lines — "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race" — Sotomayor said, "It is a sentiment out of touch with reality." That elicited Roberts' tart response, a two-pager defending his view that racial preferences may "do more harm than good."

The customarily soft-spoken Justice Ruth Bader Ginsburg spoke up the following week with a 6-2 ruling that endorsed how the Obama administration charges some states for air pollution that blows into other states. Justice Antonin Scalia belittled the ruling for having no basis ("Look Ma, no hands!"). Ginsburg called his alternative "both inefficient and inequitable."

By last week, the boxing gloves had been transferred to Justices Elena Kagan and Samuel Alito. The issue was Christian-dominated prayers at government meetings, which the court's conservatives found just fine and its liberals, led by Kagan, deemed antithetical to America's "mosaic of religious faiths."

To fix the practice, Kagan said, the town of Greece, N.Y., should have given clergy general guidelines, or extended invitations to other religious leaders outside the town's boundaries. That led to Alito's assertion that her dissent was "really quite niggling."

To be sure, the justices' juicier jabs are pabulum compared to the taunts heard regularly in the halls of Congress or the lies heaved during political campaigns. Still, they can be expected to grow sharper in the weeks to come, when the term's remaining hot-button cases — from Obama's appointments power to his health care law's so-called "contraception mandate" — get decided.

Part of the reason is the maturing roles played by Obama nominees Sotomayor and Kagan, completing their fifth and fourth terms on the court, respectively. They are counter-punching with Roberts and Alito, President George W. Bush's nominees, who have moved the court in a more conservative direction for most of the past decade.

"It is really easy to lump the justices together, not just conservative-liberal but almost Democratic-Republican, in a way that you've never been able to lump them together," says Neal Devins, director of the Institute of Bill of Rights Law at William & Mary Law School. "They came to the court with harder views that were more ideologically identifiable ... (and) they're sticking to those views."

For that reason, the poison pens and sharp elbows can be expected to remain for years to come.

"The two Obama nominees have found their footing and emerged as a powerful counterweight, particularly in some very spirited dissents," says Doug Kendall, president of the Constitutional Accountability Center. "We can expect this fight of ideas and words to continue and probably even get more heated over the coming years and decades."

21
CONNECT

53
TWEET

<https://twitter.com/intent/tweet?url=http://usat.ly/1ldGLKU&text=Justices%20jabs%20reveal%20ideological,%20partisan%20spli>

USA NOW



Donald Sterling's attack on Magic
'malicious' USA NOW magic-malicious-
May 13, 2014 usa-now/