

# Supreme Court “Opinion Dumping,” 1950 & Today

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On Monday, June 5, 1950, the last day of its 1949-50 term, the Supreme Court of the United States announced its judgments and released written opinions in seventeen cases. The Court then began its summer recess. The public, beginning with the daily press, struggled to read and absorb such a quantity of Court decisions.

A week later, the *Washington Post* editorialized against what it called the Supreme Court’s end-of-term practice of “Judicial Dumping”:

Our courts have been notoriously backward in their public relations, and in none of them is this failing more conspicuous than in the Supreme Court of the United States. Last week, for example, that high tribunal dumped 18 [sic] opinions into the lap of bewildered newspaper and radio reporters. Some of these opinions were of great importance.... It was utterly impossible for the newsmen to read and digest so many opinions in so few hours, and if they could have done so most newspapers would have had great difficulty in giving adequate coverage to so large an output.

Such a heavy accumulation of cases usually occurs only at the end of the term. But that is serious enough, for the justices have a habit of putting off until the last opinion day some of the most troublesome and important cases. The result is that some momentous decisions go almost unnoticed by the public. Perhaps it is of no concern to the court whether its output is properly communicated to the people.

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Yet we do not see how any body in a democratic land could take such an attitude, and this seems to apply especially to the Supreme Court, which, lacking both purse and sword, is dependent upon the acceptance of its rulings by public opinion.

Even at the cost of some inconvenience to itself, we should think the court would abandon its dumping practice and regulate the flow of its opinions to the public more evenly. It is difficult to see how any harm could be done by such a policy, and it would certainly facilitate understanding of the court and its opinions on the part of the public.<sup>1</sup>

When the next Supreme Court term began in October 1950, the *Post* continued to make this argument. Chal Roberts, a legendary *Post* reporter, after privately surveying his Supreme Court press corps colleagues, reported their unanimous view that the Court should assist press and public understanding by "spreading the opinions over the entire week instead of dumping them all on Monday."<sup>2</sup>

The Supreme Court has, over time, to some degree, listened. It now hands down decisions on multiple days of some weeks, especially toward the end of its term. In the current month, for example, as this Court term headed to its end, the Justices announced decisions on six separate days, including three days last week.

But some Court work, like all human work, gets done against a final deadline, even if it is one that is self-imposed. Each Court term will have a final "opinion day." And sometimes, such as today (June 26, 2017), it will be a Monday.

The Supreme Court today completed its scheduled work for the 2016-17 term. It announced judgments and released opinions in three cases that had been argued in April. It also vacated the lower court

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<sup>1</sup> *Judicial Dumping*, WASH. POST, June 13, 1950, at 10 (editorial).

<sup>2</sup> Chalmers M. Roberts, *Supreme Court Day And The Newspapers*, WASH. POST, Oct. 2, 1950, at 9; *accord Timing Court Opinions*, WASH. POST, Oct. 2, 1950, at 8 (editorial). A few weeks later, the POST reported that, because of its spotlight on the Supreme Court's opinion-dumping on Mondays, the U.S. Court of Claims had announced that henceforth its decisions would come down on Tuesdays, and the U.S. Court of Appeals for the District of Columbia had shifted its opinion-announcing day from Monday to Thursday. See *Court of Claims*, WASH. POST, Nov. 1, 1950, at 14 (editorial).

judgment in another case and sent it back for reconsideration in light of a major Court decision (*Ziglar v. Abbasi*—see below) that was announced last week. The Court put two other cases, in which it had heard oral arguments last winter as an eight-justice Court, before Justice Gorsuch’s appointment, over for reargument next Fall. And in two cases challenging President Trump’s “travel ban” executive order, the Court granted in part and denied in part the President’s request to stay lower court orders enjoining the executive order, and it ordered the parties to file briefs on a schedule that will permit the Court to hear oral arguments in the cases next October.

That is—today’s decisions are—a lot to digest. As the justices prepare to relax, work on cases ahead, travel, and teach during their summer recess, the rest of us will work to catch up. (For the decisions of the just-completed term, [click here](#), and for orders, including some accompanied by opinions, [click here](#).)

The Supreme Court’s latest decisions include many of legal significance and general public interest. For students of Justice Robert H. Jackson’s career, one recent decision to note is *Ziglar v. Abbasi* ([click here](#)), where the Court, by a vote of 4-2, dismissed claims against federal officials who were accused of responsibility for the severe mistreatment of Middle Eastern men who were in the U.S. illegally at the time of the 9/11 attacks and were detained for immigration violations. In his *Ziglar v. Abbasi* dissenting opinion, Justice Stephen Breyer, joined by Justice Ruth Bader Ginsburg, quoted two of Justice Jackson’s most striking and enduring metaphors, and cautions: that the Constitution should not be misinterpreted as a “suicide pact” (from Jackson’s dissenting opinion in *Terminiello v. United States* (1949)), and that mistakenly broad views of executive power under the Constitution can lie about “like a loaded weapon”.... (from Jackson’s dissent in *Korematsu v. United States* (1944)).