WOMEN SPEAKING LAW

Christine Venter*

> "Mother, . . . go back up into your quarters, and take up your own work, the loom and the distaff . . . speech will be the business of men, all men, and of me most of all; for mine is the power in this household."[1]

The Odyssey

Ralph Waldo Emerson once wrote that "speech is power."[2] One might be persuaded by this premise when recalling some of the most powerful and influential speeches that had profound impacts on society: Abraham Lincoln's "Gettysburg Address," Winston Churchill's "We will Fight on the Beaches," or Martin Luther King Jr.'s "I Have a Dream." There are fewer well-known public speeches by women arguing for a different vision of society; Susan B. Anthony's impassioned plea for suffrage delivered after her arrest at a teachers'

---

*Teaching Professor, Notre Dame Law School. The author would like to thank Professors Sadie Blanchard, Diane De Sierto, Kari Gallagher, and Brenda Gibson for helpful comments on an earlier draft. Thank you to Professors Kim Holst and Sue Chesler from ASU Law School for hosting a Scholars Roundtable at which this work was presented, and Notre Dame Law School for supporting her research.

1. Mary Beard, *The Public Voice of Women*, 24 WOMEN'S HIST. REV. 809, 810 (2015) (quoting Telemachus speaking to his mother, Penelope); *see* HOMER, THE ODYSSEY 39 (Jeffrey Henderson ed., A.T. Murray trans., Harvard Univ. Press 1995).

2. RALPH WALDO EMERSON, THE COLLECTED WORKS OF RALPH WALDO EMERSON: LETTERS AND SOCIAL AIMS 50 (Joel Myerson ed., Harvard Univ. Press 2010) (1875).

convention[3] and Sojourner Truth's plaintive "Ain't I a Woman?"[4] are perhaps two exceptions. This dearth of female contributions to great oral rhetoric may be attributed to the fact that women were largely excluded from public and political life, and therefore from "power" until the early twentieth century. Their attempts to join the legal profession were also similarly curtailed by the male dominated bench and bar until the same time, with some exceptions,[5] resulting in women having fewer opportunities to publicly engage in policy issues by using the power of speech outside of the home.

By excluding women from political office and the legal profession, men reserved public rhetoric and the power of speech for themselves and used their power to effectively silence women, even denying them the right to vote until 1920. However, since the removal of legal restrictions on women's speech,[6] women have made some

3. Susan B. Anthony, Address of Susan B. Anthony: Is it a Crime for Women to Vote? (1872), https://law2.umkc.edu/faculty/projects/ftrials/anthony/anthonyaddress.html [https://perma.cc/35NS-ZA3Y]. The speech was given in 1872 during a speaking tour after her arrest.

4. Sojourner Truth, Ain't I a Woman (1851), https://www.nps.gov/articles/sojourner-truth.htm [https://perma.cc/EM4P-ZHX7]. The speech was delivered at the 1851 Women's Rights Convention held in Akron, Ohio.

5. For a detailed history of women's struggle to be admitted into the legal profession, see, for example, Elizabeth D. Katz, Kyle Rozema & Sarath Sanga, *Women in U.S. Law Schools, 1948–2021*, 15 J. LEG. ANALYSIS 48, 51–53, 56–59 (2023). Women received the right to vote when Congress approved the Nineteenth Amendment on June 4, 1919. Kendall Verhovek, *The 19th Amendment, Explained*, BRENNAN CTR. FOR JUST. (Mar. 3, 2025), https://www.brennancenter.org/our-work/research-reports/19th-amendment-explained [https://perma.cc/4M4P-4DTU]. Prior to that time, unmarried women in New Jersey could cast ballots in state elections. *Id.* From 1869–1919, a number of states had allowed women to vote. *See* CTR. FOR AMERICAN WOMEN AND POLITICS, WOMEN'S SUFFRAGE IN THE U.S. BY STATE 1 (2014), https://tag.rutgers.edu/wp-content/uploads/2014/05/suffrage-by-state.pdf?inline=1 [https://perma.cc/8UFB-WSB3].

6. One should not assume from the fact that most legal restrictions against women's participation in public life have been lifted that women have now attained parity. According to UN Women, a division of the United Nations, women remain underrepresented in public and political life. *See Facts and Figures: Women's Leadership and Political Participation*, UN WOMEN (Sep. 15, 2025), https://www.unwomen.org/en/articles/facts-and-figures/facts-and-figures-womens-leadership-and-political-participation [https://perma.cc/Q3X6-F5QS]. As of September 12, 2025, there are only 29 countries where women serve as

progress (albeit slow) in representation in political life. We have had a woman vice president, a woman speaker of the house, and multiple women senators.[7] Moreover, currently four women sit on the United States Supreme Court and six women in total have been appointed to the Court since its inception.[8] Thus ostensibly the problem of women's access to speaking in public spaces has been solved: Women are now fully empowered to contribute to,

---

Head of State/Head of Government. *Id.* Women make up only 22% of Cabinet ministers and the most common appointment is in the area of Gender Affairs or Family and Children's Affairs. *Id.* At the current rate, the UN has estimated that it will take 130 years to achieve gender parity. *Id.* Women's lack of representation at the highest echelons is also still a problem in the legal field. According to the International Bar Association, women lawyers make up 51% of the profession but only occupy 32% of senior roles in England and Wales. INTERNATIONAL BAR ASS'N, 50:50 BY 2030: A LONGITUDINAL STUDY INTO GENDER DISPARITY IN LAW 6 (2022), https://www.ibanet.org/document?id=IBA-Gender-Disparity-Report-England-and-Wales-2022 [https://perma.cc/BR59-JXCS]. The situation for women in the legal field in the U.S. is no better. *See* MARC BRODHERSON, LAURA MCGEE & MARIANA PIRES DOS REIS, MCKINSEY & CO., WOMEN IN LAW FIRMS 2 (2017), https://www.mckinsey.com/featured-insights/gender-equality/women-in-law-firms#/ [https://perma.cc/5QWF-PMXN]. While women comprise 51% of the profession, women's representation decreases rapidly at the post-associate level all the way through to the management committee and partner levels. *Id.* at 2–3; *see* discussion *infra* Section II. *See* Marlene Trestman, *Women Advocates Before the Supreme Court*, SUP. CT. HIST. SOC'Y (Nov. 2025), https://supreme courthistory.org/oral-arguments/women-advocates-before-the-supreme-court/ [https://perma.cc/6XEF -96U3]. Marlene Trestman notes that "[d]uring the twenty-first century, thus far, the number of arguments presented by women during each [Supreme Court] term remained at or above 25 for all but three terms (2003, 2017, and 2019, with 24, 19, and 20 arguments, respectively)." *Id.* She goes on to point out that

> [d]uring October Terms 2023 and 2024, when women presented 53 and 44 arguments, respectively, men argued 96 and 120 times. While a comparison of the 1986 term with each of the two most recent terms reflects a dramatic increase in the relative number or arguments by women, men continue to outpace women; instead of the seven-fold difference during the 1986 term, arguments by men in the two most recent terms were about two times greater (1.8 and 2.3, respectively) than those presented by their female counterparts.

Id.

7. *See generally Explore Milestones*, CENTER FOR AMERICAN WOMEN AND POLITICS, https://cawp.rutgers.edu/data-milestones-women-american-politics [https://perma.cc/EG6P-E5FU] (last visited May 15, 2026) (documenting the milestones of women in politics).

8. *See U.S. Supreme Court*, CENTER FOR AMERICAN WOMEN AND POLITICS, https://cawp.rutgers.edu/data/levels-office/us-supreme-court [https://perma.cc/VXR5-NWJ9] (last visited May 15, 2026).

and ultimately make, important policy and legal decisions.

However, while formal barriers to women speaking in places of power have been removed, practical ones remain. These include fewer opportunities for women to pursue paths that lead to public representation, particularly as advocates before the United States Supreme Court.[9] Equitable access still remains an issue. Moreover, even when women attain the opportunity to appear and argue before the Court, or are elevated to a position as a Justice of the Court, their speech is frequently interrupted by male advocates and male Justices, resulting in women having a shorter time to speak than their male counterparts.[10] This creates the impression that the points being made by women (be they advocates or Justices) are of less value than those communicated by men and that women Justices are less worthy of respect, as interrupting a Justice is unacceptable according to Supreme Court guidance on oral argument.[11] So, while women are now formally

9. The path to arguing before the Supreme Court tends to require graduation from an elite law school, a clerkship with a federal court or the Supreme Court itself, then joining the appellate practice group of an elite law firm. More men than women are selected for elite clerkships, even though more women graduate from elite law schools. *See Law School Rankings by Female Employment (2025)*, ENJURIS, https://www.enjuris.com/students/law-school-rankings-by-female-enrollment/ [https://perma.cc/JSF8-X7KS] (last visited May 16, 2026). An analysis of the 2025 arguments before the Supreme Court showed that former Supreme Court clerks argued more than half the cases before the Court. Justin Wise & Jordan Fischer, *Scalia Clerks Argued in Half the Supreme Court Cases This Term*, BLOOMBERG LAW (May 2, 2026, at 05:45 CT), https://news.bloomberglaw.com/us-law-week/scalia-clerks-argued-in-half-the-supreme-court-cases-this-term [https://perma.cc/E56E-KSMZ]. Most of the advocates arguing were men. *See id.*

10. For information about interruptions, see Dana Patton & Joseph L. Smith, *Gender, Ideology, and Dominance in Supreme Court Oral Arguments*, 41 J. WOMEN, POL. & POL'Y 393, 394 (2020). To some degree these gendered discourse patterns appear to occur in political life too, as exemplified by the discussion about Elizabeth Warren in Part IV.B. *infra*. However, a detailed examination of political interactions is beyond the scope of this Article.

11. CLERK OF THE COURT, GUIDE FOR COUNSEL IN CASES TO BE ARGUED BEFORE THE SUPREME COURT OF THE UNITED STATES 9 (2023), https://www.supremecourt.gov/casehand/Guide%20for%20Counsel%202023.pdf [https://perma.cc/KA9U-3CUY].

entitled to participate in the most important policy and legal debates, their actual effective and equitable participation is often being circumvented.

Equitable access for, and equal participation of, women as advocates matters for multiple reasons. One, advocates are not just mouthpieces for their clients. They help shape the arguments, point out the limits of certain approaches, test rules, and weigh and debate policy. Women's voices, perspectives, and contributions matter in these arenas, and their representation also matters, as it is symbolic of women's equal role in the formulation and administration of justice. It is a visible manifestation of the important issues of the day being discussed, argued, and decided on, by male and female representatives of society. It symbolizes what German philosopher Jurgen Habermas referred to as "deliberative democracy."[12] This representation and participation goes beyond window dressing; oral argument can make a difference in the outcome of cases, possibly even around fifteen percent of cases.[13] Additionally, research has shown that arguments by women advocates tend to resonate with women Justices, particularly if the matter involves an issue of concern to

12. JURGEN HABERMAS, THE THEORY OF COMMUNICATIVE ACTION, VOL. 1: REASON AND THE RATIONALIZATION OF SOCIETY 877 (Thomas McCarthy trans., Beacon Press 1985) (1981).

13. Judge Myron Bright of the Eighth Circuit along with two of his colleagues conducted a study in which he found that oral argument changed his mind in 31% of the cases that came before him; his colleagues respectively changed their minds in 17% and 13% of the cases. Myron H. Bright, *The Power of the Spoken Word: In Defense of Oral Argument*, 72 IOWA L. REV. 35, 40 nn. 32–33 (1986). Not all academics agree; *see, e.g.*, TIMOTHY R. JOHNSON, ORAL ARGUMENTS AND DECISION MAKING ON THE UNITED STATES SUPREME COURT 93–124 (Robert J. Spitzer ed., State Univ. of N.Y. Press 2004); Timothy R. Johnson, James F. Spriggs II &, Paul J. Wahlbeck, *Oral Advocacy Before the United States Supreme Court: Does it Affect the Justices' Decisions?*, 85 WASH. U. L. REV. 457, 459–60 (2007). The authors argue that while judges and lawyers may believe that oral argument is important and can change the outcome of cases, political scientists disagree. Johnson, Spriggs & Wahlbeck, *supra* at 459. They contend, rather, that "a host of variables influence the outcomes of cases." *Id.* "Among these explanatory factors are judges' ideological orientations, strategic considerations resulting in intracourt bargaining over opinion drafts, legal norms, contextual factors such as workload, and case characteristics." *Id.* When all of these factors are taken into account, there is a little room for oral argument to play a role in determining the outcome.

women, and specifically if the female Justice has female law clerks on her staff.[14] Thus, arguments by women can profoundly impact the direction of the law. By participating in these arguments, women become participants in "deliberative democracy;"[15] specifically, the policy debates and application of precedents that help to shape the law. The visible representation of women thus confirms their equal membership in society and endows the Justices' decisions with more legitimacy, since multiple members of society have participated in the discussions shaping the Court's decisions. In society, and particularly at the Supreme Court, speech is power, and women's exercise of power should not be circumvented.

Moreover, the gendered dynamics at play in impeding women's speech before the Court must be eradicated. Women's speech should not be discounted through constant interruptions. Several studies have shown that women advocates are far more likely to be interrupted by male Justices when they speak during oral argument and end up speaking far fewer words in their arguments than their male counterparts.[16]

---

14. *See* Shane Gleason, *Beyond Mere Presence: Gender Norms in Oral Arguments at the U.S. Supreme Court*, 73 POL. RSCH. Q. 596, 598 (2020); Dana Patton & Joseph L. Smith, *Lawyer, Interrupted: Gender Bias in Oral Arguments at the US Supreme Court*, 5 J. L. & CTS. 337, 350, 353–54 (2017). In respect of law clerk influence, see, for example, Adam Bonica et al., *Legal Rasputins? Law Clerk Influence on Voting at the Supreme Court*, 35 J.L. ECON. & ORG. 1, 31–32 (2019); Ryan C. Black, Christina L. Boyd & Amanda C. Bryan, *Revisiting the Influence of Law Clerks on the U.S. Supreme Court's Agenda-Setting Process*, 98 MARQ. L. REV. 75, 101–05 (2014) (explaining the influence law clerks have on the Supreme Court's agenda-setting process); Russell Smyth & Vinod Mishra, *Barrister Gender and Litigant Success in the High Court of Australia*, 49 AUSTL. J. POL. SCI. 1, 3 (2014).

15. Kevin Olson, *Deliberative Democracy*, *in* JURGEN HABERMAS: KEY CONCEPTS 140, 140–41 (Barbara Fultner ed., Routledge 2014) (2011).

16. *See, e.g.*, Gleason, *supra* note 14, at 604; Patton & Smith, *supra* note 14, at 338 (noting "that female lawyers are interrupted earlier, allowed to speak for less time between interruptions, and subjected to more and longer speeches by the justices compared to their male counterparts"); Tonja Jacobi & Dylan Schweers, *Justice Interrupted: The Effect of Gender, Ideology, and Seniority at Supreme Court Oral Arguments*, 103 VA. L. REV. 1379, 1384, 1400, 1408–17 (2017) (noting that women Justices are interrupted by their male counterparts more frequently than male Justices).

Additionally, women Justices also are being interrupted both by male counsel and their male judicial colleagues when they attempt to pose questions.[17] This shocking lack of decorum illustrates another way in which "speech is power," in that speaking is being used as a tool of purported dominance and assertion, reminding us that women are still being challenged and silenced when speaking in public fora. Women must stand up to these interruptions and work to eradicate any socialized gender-related characteristics in their speech patterns that make them sound hesitant.[18] Despite the challenge of being interrupted, the current women Supreme Court Justices have demonstrated that they are more than capable of asserting their power, both by persisting in their questioning and through their opinions and dissents, particularly their oral dissents delivered from the bench.[19] These examples show women using the power of speech in a way that provides an example to all women, who must assert their right to speak from an early age, so that they can fully participate in the process of deliberative democracy.

This Article will proceed in five parts. Part I will briefly detail women's struggles to gain full access to legal positions generally throughout history. Part II will emphasize women's lack of representation as oral advocates before the Supreme Court, while suggesting that the disproportionate selection of men as apex court

17. Jacobi & Schweers, *supra* note 16, at 1384.

18. Jennifer M. Roche, Shae D. Morgan & Susan Fisk, *Gender Stereotypes Drive Perceptual Differences of Vocal Confidence*, 151 J. ACOUSTICAL. SOC'Y AM 3031, 3032 (2022) (describing how women's voices are perceived as less confident); PAUL WARREN, UPTALK: THE PHENOMENON OF RISING INTONATION 136–44 (2016) (describing how some women use rising intonation at the end of a declaratory sentence, which makes it sound like a question even if it is not intended as such).

19. *See, e.g.*, Stephen I. Vladeck, *The Most Interesting Justice on the Supreme Court is Also the Loneliest*, N.Y. TIMES (July 8, 2024), https://www.nytimes.com/2024/07/08/opinion/amy-coney-barrett-supreme-court.html [https://perma.cc/M4BM-DNQ4]. Stephen Vladeck, writing in the *New York Times*, referred to Justice Barrett as "the most interesting justice" because of her penetrating questions during oral argument and the insightful analysis in her opinions, concurrences, and dissents. *Id.* He also commended her for hewing to her principles. *Id.*

clerks may be in part responsible. Part III will cover the importance of oral argument and illustrate how women are effectively impeded from participating in a forum where decisions are being made. Part IV will detail how both women advocates and women Justices are continually interrupted by male Justices and counsel, during arguments, to the point where the Supreme Court has allegedly changed its oral argument practices to forestall this. Part V will posit how women might respond, and address how the women Justices themselves are reacting to this flouting of Supreme Court practice. It will also suggest that law schools can work with women students from the outset to ensure women assert their right to speak. The Article will then conclude by reiterating the importance of women's participation in the most important debates about the law, and urging that law schools ensure that women are preparing themselves to engage in these debates by speaking up, both during classes and by means of any academic and professional opportunity that arises, to orally present information.

I. A BRIEF HISTORY OF WOMEN IN THE LAW

Women have long struggled to gain access to public fora for the purpose of speaking, whether that forum is court, Congress, or in public debates. Myra Bradwell's 1869 failed application to the Illinois Bar based on her gender, provides a prime example of women's struggles.[20] In denying Bradwell's appeal, the Illinois Supreme Court noted that "God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth."[21] Bradwell's

20. Christine Lamberson, *Myra Bradwell: The Woman Behind Bradwell v. The State of Illinois*, FED. JUD. CTR., https://www.fjc.gov/history/spotlight-judicial-history/myra-bradwell [https://perma.cc/H48J-F5V5] (last visited Feb. 22, 2026).

21. Bradwell v. Illinois, 83 U.S. 130, 132 (1872) (quoting the Illinois Supreme Court's opinion).

appeal to the United States Supreme Court met a similar fate.[22] In his concurrence, Justice Bradley referred to women's "natural and proper timidity and delicacy," which, he concluded, made them "unfit[] . . . for . . . the occupations of civil life."[23] He further asserted that "[i]n the nature of things, it is not every citizen of every age, sex, and condition that is qualified for every calling and position."[24]

Only a generous reading of Iowa's statute that restricted the practice of law to males over the age of twenty-one allowed Bradwell's compatriot, Arabella Mansfield, to be admitted to the Iowa Bar in 1869.[25] However, she never practiced but pursued a career in academia instead.[26] Perhaps that was because an article in the *New York Tribune* had posited that she should refrain from going to court, suggesting that she "mind the office" while her husband took on court appearances.[27] The article's author went on to note that her performing office work was acceptable as long as it did not "detract[] . . . from her natural position in society."[28]

Belva Lockwood also had to demonstrate considerable persistence to be admitted to practice before the Supreme Court. When her initial application was denied on the grounds that "[she] was a woman," Lockwood, a widow, lamented that she had "done all a woman could do" having raised and educated her daughter.[29] She asserted that "the proper sphere for a

22. *Id.* at 139.

23. *Id.* at 141.

24. *Id.* at 142.

25. *See* Jennifer Gonzalez, *Arabella Mansfield: First Female Lawyer*, LIBR. CONG. BLOGS (Jan. 26, 2024), https://blogs.loc.gov/law/2024/01/arabella-mansfield-first-female-lawyer/ [https://perma.cc/VJG4-TSNF].

26. *Id.*

27. *Petticoats at the Bar*, NEW-YORK TRIBUNE, June 30, 1869, at 4, https://www.loc.gov/resource/sn83030214/1869-06-30/ed-1/?sp=4&q=petticoats&r=0.14,0.162,1.005,0.465,0) [https://perma.cc/R4RJ-EU5T].

28. *Id.*

29. In Re *Lady Lawyers: The Rise of Women Attorneys and the Supreme Court: Belva Lockwood*: *Becoming a Lawyer*, SUP. CT. U.S., https://www.suprem

woman is anything that is respectable and honest" and rejected suggestions that she become a teacher, noting that she had tried it, it was very hard work and poorly paid, whereas law would enable her to earn a living.[30] When Congress passed a bill in 1879 authorizing the admission of women to practice before the Supreme Court, Lockwood speedily gained admission and went on to become the first woman to undertake oral argument at the Supreme Court in *Kaiser v. Stickney*.[31]

Lockwood remained confident that women would one day be fully represented in public and political life;[32] however, likely even she could not have imagined a day when there would be four women Justices on the Supreme Court.[33] Although that momentous change appears to signify that all barriers to women's full participation in the practice of law have been removed, the situation is not quite as rosy as it might seem.

II. THE RELATIVE DEARTH OF WOMEN IN PROMINENT ROLES IN THE LAW

While today there is no formal exclusion of women from prominent speaking roles like arguing before the United States Supreme Court, several factors combine to limit women's access to prominence in the law. First,

---

ecourt.gov/visiting/exhibitions/LadyLawyers/Section2.aspx [https://perma.cc/6SUF-9LSK] (last visited Feb. 22, 2026).

30. *Id.*

31. Jill Norgren, *Belva Lockwood: Blazing the Trail for Women in Law*, PROLOGUE MAG., Spring 2005, https://www.archives.gov/publications/prologue/2005/spring/belva-lockwood-1 [https://perma.cc/X84F-KUSQ]. Ironically, in arguing on behalf of her female client who was sued for defaulting on a debt, Lockwood raised the defense of "coverture," asserting that her client was not liable for a debt as she was subject to the protection and authority of her husband. *See id.* She lost the case but prevailed in her second argument, arguing on behalf of the Cherokee Nation against the U.S. government. *Id.*

32. *See id.* Lockwood even believed that there would one day be a woman in the White House. *Id.*

33. The Justices are, of course, Amy Coney Barrett, Sonia Sotomayor, Elena Kagan, and Ketanji Brown Jackson.

there is now a professionalized Supreme Court Bar[34] that skews largely male. Since men are then seen as having more experience and success before the Court, having had previous opportunities to argue, it is not surprising that clients continue to choose men to represent them in oral arguments. With a few women, such as Lisa Blatt now heading up appellate practices in large firms, this may change, albeit slowly.[35] Second, the situation is complicated by the *Students for Fair Admissions*[36] ruling and by the fact that many law firms are limiting their diversity programs and hiring practices.[37] This effectively precludes all but the bravest firms from seeking out women and advancing their careers. Additionally, the fact that Supreme Court clerks, who then go on to elite positions in the law, tend to skew male,[38] also impacts women's opportunities.

---

34. John G. Roberts, *Oral Advocacy and the Re-emergence of Supreme Court Bar*, 30 J. SUP. CT. HIST. 68, 68 (2005).

35. Lisa Blatt is the head of Williams & Connolly's Supreme Court and Appellate Practice Group. *Supreme Court and Appellate Litigation*, WILLIAMS & CONNOLLY LLP, https://www.wc.com/Practices/Supreme-Court-and-Appellate-Litigation [https://perma.cc/9GJT-4WE3] (last visited May 16, 2026). Under her leadership, two other women in the firm have argued Supreme Court cases. *See Lisa Blatt Honored by Georgetown University Law Center's Supreme Court Institute*, WILLIAMS & CONNOLLY LLP (May 2022), https://www.wc.com/News/184209/Lisa-Blatt-Honored-by-Georgetown-University-Law-Centers-Supreme-Court-Institute [https://perma.cc/BT4U-LTEJ].

36. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181 (2023).

37. For example, on March 6, 2025, Perkins Coie, among other firms, was targeted by an Executive Order issued by the President. *See* Exec. Order No. 14, 230, 90 Fed. Reg. 11781, 17781–82 (Mar. 6, 2025). The order revoked the security clearance of lawyers in the firm and limited their access to government buildings. *See id.* It also called on the Attorney General and EEOC to investigate the firm's hiring practices. *See id.* The Order has since been challenged in court by the firm. Perkins Coie LLP v. U.S. Dep't of Just., 783 F. Supp. 3d 105 (D.D.C. 2025).

38. David Lat, *SCOTUS Clerks 2000 v. 2025: Differing Demographics*, ORIGINAL JURISDICTION (July 30, 2025) [hereinafter Lat, *SCOTUS Clerks 2000 v. 2025*], https://davidlat.substack.com/p/supreme-court-scotus-clerks-clerkships-2000-v-2025 [https://perma.cc/RD7U-EK7A]; *see also* Jeremy D. Fogel, Mary S. Hoopes & Goodwin Liu, *Law Clerk Selection and Diversity: Insights from Fifty Sitting Judges of the Federal Courts of Appeals*, 137 HARV. L. REV 588, 621–22 (2023).

Women themselves may also contribute to the misconception that they deserve less prominent roles in the legal profession. The discourse phenomenon of women speaking less appears to start in law schools. Lani Guinier was the first to document this, culminating in her book *Becoming Gentlemen*.[39] She described how women felt their voices were stolen or silenced, and reported that women were much less likely to speak during class and were often getting drowned out by their male colleagues when they did speak.[40] A follow-up study was conducted at Yale.[41] It confirmed that while there had been some positive changes, men still spoke more than women.[42] One professor reported that more women "conscientiously [sic] try to speak sometimes, as if they have an understanding that studies show they do not participate as much, and that men students are now conscious of not dominating the classroom airtime and creating space for others to contribute."[43] However, students did not necessarily share that opinion; rather, they reported that "69.0% . . . felt that men participate more in large classes and 55.1% of respondents felt that men participate more in medium classes."[44]

Similar research conducted at the University of Chicago Law School in the 2017–18 academic year produced similar results in respect of women's lower participation in classes.[45] Men generally participated

39. *See* LANI GUINIER, MICHELLE FINE & JANE BALIN, BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 27–28, 48, 59–61 (Beacon Press 1997); *see also* Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 4 (1994) (noting that women in her law school class felt they lost their voices at law school).

40. GUINIER, FINE & BALIN, *supra* note 39, at 48, 59.

41. YALE L. WOMEN, YALE LAW SCHOOL FACULTY & STUDENTS SPEAK UP ABOUT GENDER: TEN YEARS LATER (2012), https://ylw.yale.edu/wp-content/uploads/2013/03/YLW-Speak-Up-Study.pdf [https://perma.cc/34ST-WGTZ].

42. *Id.* at 21–24.

43. *Id.* at 21.

44. *Id.* at 21–22.

45. Mallika Balachandran, Roisin Duffy-Gideon & Hannah Gelbort, *Speak Now: Results of a One-Year Study of Women's Experiences at the University of Chicago Law School*, 2019 U. CHI. LEGAL F. 647, 647–48 (2019).

54.9% of the time, while women only participated 46.1%.[46] Significantly men were prone to interrupt or blurt things out 58.4% of the time.[47] The University of Virginia also engaged in a study of how often women speak in class.[48] Their results broadly replicated the Yale and Chicago studies.

However, the gap between the number of times men spoke compared to women narrowed considerably by the end of the students' 3L year.[49] The Virginia study showed that students' participation was malleable and not fixed, especially as women gained a sense of belonging later on in law school.[50] One negative aspect is that backlash against women for speaking "too much" in class comes from other women as well as men.[51] This is disturbing as it seems to signify that women are participating in enforcing outdated stereotypical gendered norms regarding speech. Law professors and women students must be made aware of these possible dynamics and ensure that women are being called out and speak up in class. Moreover, law schools must inculcate a sense of belonging in law schools as students who felt like they belonged spoke more.[52]

Despite these challenges, women have a strong interest in being represented in public and political life.[53]

---

46. *Id.* at 659.

47. *Id.*

48. *See* Molly Bishop Shadel, Sophie Trawalter & J.H. Verkerke, *Gender Differences in Law School Classroom Participation: The Key Role of Social Context*, 108 VA. L. REV. ONLINE 30, 30–32 (2022), https://virginialawreview.org/wpcontent/uploads/2022/02/ShadelTrawalterVerkerke_Book_108_Final.pdf [https://perma.cc/L9L3-ZFRE].

49. *See id.* at 31.

50. *Id.* at 49.

51. *See id.* at 47–48.

52. *See id.* at 49 (noting that women spoke at the same level as men in class when they felt an equal sense of belonging).

53. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which entered into force in 1981, speaks to the right of women "to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government." Dec. 18, 1979, 1249 U.N.T.S. 13; *see also* U.N. Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 23: Political and Public Life, U.N. Doc A/52/38 (1997)

One way in which this has been manifested is that more women than men now graduate from law school.[54] Research suggests that women are successful in obtaining associate positions at large law firms; in fact, a majority of these positions are held by women.[55] Yet, when one looks to how women are generally represented among the elite echelons of the profession, particularly in respect of prominent speaking roles in the law, women do not feature as prominently as men.[56] One reason is because women are far more likely to leave the practice of law than their male counterparts for multiple reasons. The American Bar Association's (ABA's) Commission on Women in the Profession, which was created in 1987 with the purpose of "secur[ing] full and equal participation of women in the ABA, the profession and

(adopted at the Sixteenth Session of the Committee on the Elimination of Discrimination against Women, in 1997). This right is also echoed in a Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Political Rights of Women, the Vienna Declaration, paragraph 13 of the Beijing Declaration and Platform for Action, as well as General Comment No. 25 adopted by the Human Rights Committee. *See* International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171 (adopted by the General Assembly of the United Nations on 19 December 1966); Convention on the Political Rights of Women, Mar. 31, 1953, 27 U.S.T. 1909, 193 U.N.T.S. 135; World Conference on Human Rights, *Vienna Declaration & Programme of Action*, U.N. Doc. A/CONF. 157/23 (June 25, 1993); Fourth World Conference on Women, *Beijing Declaration and Platform for Action with the Beijing +5 Political Declaration and Outcome*, U.N Doc. [ST/]DPI/1766/Rev.1 (1995), https://www.unwomen.org/en/digital-library/publications/2015/01/beijing-declaration [https://perma.cc/R5ZR-T7QX]. General Comment No. 35 on Article 9, Liberty and Security of Person, Hum. Rts. Comm. on Its One Hundred Sixth Session, U.N. Doc. CCPR/C/GC/35 (2014).

54. *Women in the Legal Profession*, A.B.A., https://www.americanbar.org/news/profile-legal-profession/women/ [https://perma.cc/SS53-FFYU] (last visited May 17, 2026).

55. *See* NAT'L ASS'N FOR L. PLACEMENT, 2024 REPORT ON DIVERSITY IN U.S. LAW FIRMS 7 (2025), https://www.nalp.org/uploads/Research/2024-25_NALPReportonDiversity.pdf [https://perma.cc/AM3T-X33U]. According to the Report, 51.62% of associates are women. *Id.*

56. STEPHANIE A. SCHARF & ROBERTA D. LIEBENBERG, A.B.A., FIRST CHAIRS AT TRIAL: MORE WOMEN NEED SEATS AT THE TABLE: A RESEARCH REPORT ON THE PARTICIPATION OF WOMEN LAWYERS AS LEAD COUNSEL AND TRIAL COUNSEL IN LITIGATION 9–13 (2015), https://www.theredbeegroup.com/wp-content/uploads/2020/02/First-chairs-at-Trial-FINAL.pdf [https://perma.cc/298C-V86Q].

the justice system,"[57] has issued a number of reports detailing why women leave the profession in such high numbers, and why they often fail to attain partnerships.[58] The bottom line appears to be that "women lawyers on average do not advance along the same trajectory as men."[59] They receive lower salaries, have limited access to desirable work, and may be mistaken for support staff.[60] The number of women equity partners still only stands at about 24.8% or lower, depending on the study.[61] Moreover, women made up the majority of the lawyers who left major law firms during the Great Resignation of 2021.[62] Senior women in

57. *Women in the Profession*, A.B.A., https://www.americanbar.org/groups/diversity/women/ [https://perma.cc/635R-J8YT] (last visited Feb. 22, 2026).

58. These reports include the following: DESTINY PEERY, PAULETTE BROWN & EILEEN LETTS, A.B.A., LEFT OUT AND LEFT BEHIND: THE HURDLES, HASSLES, AND HEARTACHES OF ACHIEVING LONG-TERM LEGAL CAREERS FOR WOMEN OF COLOR (2020), https://www.americanbar.org/content/dam/aba/administrative/women/2020-and-earlier/leftoutleftbehind-int-f-web-061020-003.pdf [https://perma.cc/68NG-P2K7]; ROBERTA LIEBENBERG & STEPHANIE SCHARF, A.B.A., WALKING OUT THE DOOR: THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE (2019), https://www.americanbar.org/content/dam/aba/administrative/women/2020-and-earlier/walkoutdoor_online_042320.pdf [https://perma.cc/ Y6DQ-VGW6]; JOYCE STERLING & LINDA CHANOW, A.B.A., IN THEIR OWN WORDS: EXPERIENCED WOMEN LAWYERS EXPLAIN WHY THEY ARE LEAVING THEIR LAW FIRMS AND THE PROFESSION (2021), https://www.americanbar.org/content/dam/aba/administrative/women/2021/intheirownwords-f-4-19-21-final.pdf [https://perma.cc/25AQ-BGUH].

59. LIEBENBERG & SCHARF, *supra* note 58, at 2; *see also* ROBERTA D. LIEBENBERG & STEPHANIE A. SCHARF, A.B.A., 2022 PRACTICE FORWARD REPORT: WHERE DOES THE LEGAL PROFESSION GO FROM HERE? (2022), https://www.americanbar.org/content/dam/aba/administrative/law-practice-division/practice-forward/2022-practice-forward-report.pdf [https://perma.cc/JGM8-2MAS] (noting that the ranks of partners remain male dominated despite some progress by women).

60. LIEBENBERG & SCHARF, *supra* note 58, at 7–8.

61. *See* NAT'L ASS'N FOR L. PLACEMENT, *supra* note 55, at 9. According to the NALP study, women make up about 34.3% of non-equity partners. *Id.*

62. *See* LEOPARD SOLUTIONS, WOMEN LEAVING LAW 1, 3–4 (2022), https://www.bakerdonelson.com/webfiles/Bios/Women-Leaving-Law-Final.pdf [https://perma.cc/H4VJ-2QAL]. Women who responded to the study noted "that the trajectory of their careers drove them to move, a signal that many women feel shut out of advancement opportunities. This is in spite of the fact that more than 60 percent of the women we surveyed said that they had longed to become a partner early in their careers." *Id.* at 3.

particular, are leaving the profession in concerning numbers, especially women of color.[63]

Another reason men dominate in prominent leadership roles is because there is often a specific track to attaining these positions. Dr. Adam Feldman notes that what Supreme Court advocates have in common is that they tended to attend elite schools, with Harvard, Yale, and Stanford producing the most advocates; they were male; and they had a federal court of appeals or a Supreme Court clerkship.[64] This puts women at a disadvantage, since more men than women are selected as circuit court and Supreme Court clerks.[65]

This section will detail how more men than women have attained elite positions as Supreme Court clerks, appear in oral arguments before the United States Supreme Court and Federal Circuit Courts, and act as first chairs at trials with relative success.[66]

A. Women as Oral Advocates Before the Supreme Court and Federal Courts

Women are clearly underrepresented in oral arguments before the U.S. Supreme Court.[67] One reason for this may be that, as Chief Justice John Roberts documented, the Supreme Court Bar has become professionalized and is now dominated by repeat players[68]—a small group of elite lawyers who gained good reputations through their success and prior

63. *See* PEERY, BROWN & LETTS, *supra* note 58, at 12–13.

64. Adam Feldman, *Attorneys Who Argue at Supreme Court Skew Male, Ivy League*, BLOOMBERG LAW (Feb. 5, 2024, at 02:30 MT) [hereinafter Feldman, *Attorneys Who Argue*], https://news.bloomberglaw.com/us-law-week/attorneys-who-argue-before-supreme-court-skew-male-ivy-league [https://perma.cc/CC5S-ACRY].

65. *See* Tracey E. George, Albert H. Yoon & Mitu Gulati, *Some Are More Equal than Others: U.S. Supreme Court Clerkships*, 123 COLUM. L. REV. F. 146, 155–56 (2023), https://columbialawreview.org/content/some-are-more-equal-than-others-u-s-supreme-court-clerkships/ [https://perma.cc/8GMH-ZKYF].

66. *Id.*

67. *See* Gleason, *supra* note 14, at 598.

68. *See* Roberts, *supra* note 34, at 75–77.

experience, which led to more people seeking their services. According to the Chief Justice, this transformation took place over a twenty-year period, so now it is relatively common for a few select attorneys to appear multiple times before the Court during the course of one term.[69] Professor Richard Lazarus argues that this trend began with the decision of Sidley Austin to hire former Republican Solicitor General Rex Lee in 1985 and create a Supreme Court and appellate practice at the firm's D.C. office.[70] Other big law firms such as Mayer Brown, Jenner & Block, and Kirkland & Ellis quickly followed suit by recruiting talent from the Justice Department and recent Supreme Court clerks, who are more likely to be men.[71] Since then, the Supreme Court Bar has increasingly seen advocates who were former Supreme Court clerks.

Although the professionalization of the Supreme Court Bar might appear beneficial, as the quality of arguments has likely improved as a result, this trend is problematic for women advocates as parties before the Court tend to seek representation from this small group of experienced advocates who tend to be men.[72] Attorneys with previous experience arguing before the Court are much more likely to have their petitions for certiorari granted. "Of the 17,000 lawyers who petitioned the Court from 2004 to 2012, the top sixty-six succeeded in getting their cases heard six times more often than their competitors."[73] This creates an almost incestuous

69. *See id.* at 75.

70. Richard J. Lazarus, *Advocacy Matters Before and Within the Supreme Court: Transforming the Court by Transforming the Bar*, 96 GEO. L.J. 1487, 1497–98, 1516–17 (2008).

71. *Id.* at 1499–1500; *see also* David Lat, *SCOTUS Clerks, 2000 v. 2025*, *supra* note 39 (noting that while men constituted 42% of law students, they made up 53% of Supreme Court clerks in 2025). Lat also noted that 2025 was one of the most gender diverse classes of Supreme Court clerks in the last 20 years. *Id.*

72. Jeremy Pilaar, *The Making of the Supreme Court Bar: How Business Created a Solicitor General for the Private Sector*, 117 MICH. L. REV. ONLINE 75, 75–76 (2018), https://michiganlawreview.org/the-making-of-the-supreme-court-bar/https://michiganlawreview.org/the-making-of-the-supreme-court-bar/ [https://perma.cc/JPW8-HKE8].

73. *Id.*

relationship between these elite attorneys and the Court, as the lawyers come to have an outsized influence on the cases heard by the Justices. Their success in turn also prompts more clients to hire them to increase the clients' chances of having their cases heard. Professor Lazarus asserts that this has resulted in "docket capture" by big business, as it is mainly large companies that can afford to hire these elite lawyers to pursue their claims before the Court.[74] The trend has also been remarked upon by Lee Epstein, William M. Landes, and Richard A. Posner, who have documented the pro-business approach of the Court in the last few decades.[75]

Aside from co-opting the Court's docket and having an outsized influence on its decisions, the system is self-perpetuating and exclusionary towards women and students from less elite law schools. Tracey George, Albert Yoon, and Mitu Gulati have argued that "[r]esearch shows that Court clerkships favor educational pedigree and status over pure achievement. Post-Court, clerks enjoy a bounty of opportunities that amplify their influence on society writ large. In the elite legal labor market, some people are, in fact, more equal than others."[76] George and her colleagues document the outsized influence that these top lawyers have on society and the development of the law, and assert that they "exercise inordinate control over the origin, development, and enforcement of law."[77] Moreover, many former Supreme Court clerks go on to argue cases before the Supreme Court. For example, Lisa Blatt clerked for Justice Ginsburg before joining the Solicitor General's Office. She then became the head of the Supreme Court and Appellate Litigation practice at

74. *See* Richard J. Lazarus, *Docket Capture at the High Court*, 119 YALE L.J. ONLINE 89, 90–91 (2009).

75. *See* Lee Epstein, William M. Landes & Richard A. Posner, *How Business Fares in the Supreme Court*, 97 MINN. L. REV. 1431, 1468–72 (2013).

76. *See* George, Yoon & Gulati, *supra* note 65, at 146.

77. *Id.* at 149.

Williams & Connolly. Notably, the firm's Supreme Court and Appellate Litigation practice website boasts:[78]

> Partner Amy Saharia, who clerked for Justice Sotomayor, has argued more than thirty appeals, including three Supreme Court cases in the past several Terms. Partner Luke McCloud, who clerked for Justice Sotomayor and then-Judge Kavanaugh, has argued four Supreme Court cases in the past three Terms and served in the U.S. Department of Justice as Assistant to the Solicitor General before his return to Williams & Connolly. The practice counts Supreme Court clerks from a majority of chambers, and the firm's ranks include 16 former Supreme Court clerks and approximately 200 former clerks from all 13 federal courts of appeals.

This elite pipeline, where males are favored, contravenes the notion of democratic deliberation, where representatives of society more generally have the opportunity to debate policy issues and the content of legal rules before the Court. By stacking the deck in favor of the male elites, who attain Supreme Court clerkships and then go on to become advocates before the same Court, society is being deprived of the voices of women in public debate about the application of law and limiting women's roles in public fora. This stands in contrast to Aristotle's notion of the participation of "the multitude" or the people in the decision-making process,[79] since these clerks go on to occupy elite positions in law, government, society, and education.

Although many of these developments have made it more difficult for women to gain experience arguing before the Court, one exception to that claim has been the women from the Solicitor General's Office who have the opportunity to argue on behalf of the United States, as amici. Recent research conducted by Darcy Covert and Annie Wang indicates that between the 2010–11 and

78. *Supreme Court & Appellate Litigation*, WILLIAMS & CONNOLLY LLP, https://www.wc.com/Practices/Supreme-Court-and-Appellate-Litigation [https://perma.cc/577D-P6WU] (last visited Feb. 19, 2026).

79. *See* Jeremy Waldron, *The Wisdom of the Multitude: Some Reflections on Book 3, Chapter 11 of Aristotle's Politics*, 23 POL. THEORY 563, 563 (1995).

2019–20 Terms, the Supreme Court granted 306 out of 307 requests by the Solicitor General to participate in oral argument as an amicus.[80] Many of these arguments were argued by women. One woman who formerly appeared regularly before the Supreme Court as an oralist was Elizabeth Prelogar. She argued before the Supreme Court as Solicitor General more than twenty times.[81] She also argued at least nine times as Assistant Solicitor General. Up until her tenure, there had been only one previous woman who had been confirmed as Solicitor General, Elena Kagan, who was confirmed in 2010. Another prolific Supreme Court advocate was Barbara Underwood, who was appointed Acting Solicitor General in 2001. While other members of the Solicitor General's Office could argue cases before the Court on behalf of the Office, Prelogar chose to argue many of the cases herself; thus, among women, she is one of the most prolific Supreme Court advocates.[82] The woman with the next highest number of arguments, Lisa Blatt, also came out of the Solicitor General's Office; she has argued before the Court thirteen times to date.[83]

Prelogar herself noted the gender discrepancies regarding who gets to argue before the Court in an exchange with Justice Kavanaugh during the *Students for Fair Admission v. University of North Carolina*[84] oral

80. Darcy Covert & Annie Wang, *The Loudest Voice at the Supreme Court: The Solicitor General's Dominance of Amicus Oral Argument*, 74 VAND. L. REV. 681, 683 (2021).

81. Trestman, *supra* note 6.

82. Feldman, *Attorneys Who Argue*, *supra* note 64; *see generally* Alex Badas, Bailey K. Sanders & Katelyn E. Stauffer, *The Role of Judge Gender and Ideology in Hiring Female Law Clerks*, 13 J.L. & CTS. 397, 398 (2025), https://www.cambridge.org/core/journals/journal-of-law-and-courts/article/abs/ role-of-judge-gender-and-ideology-in-hiring-female-law-clerks/B7947280674D9E8AC4EBE89A2435A87D [https://perma.cc/5YWP-TSAW] (noting that the gender of law clerks is significant as law clerks are more likely to go onto to become appellate litigators, or even judges).

83. Feldman, *Attorneys Who Argue*, *supra* note 64; *Lisa S. Blatt*, WILLIAMS & CONNOLLY, https://www.wc.com/Attorneys/Lisa-S-Blatt (last visited July 17, 2026) (click on "Other Government Service" on right side menu).

84. Oral Argument, Students for Fair Admissions, Inc. v. Univ. of N.C., 600 U.S. 181 (2023) (No. 21-707) [hereinafter *Univ. of N.C.* Oral Argument] (consolidated with Students for Fair Admissions, Inc. v. President & Fellows of

argument, a case involving a challenge of various elite schools' admissions policies that took factors like the race of the applicant into consideration.[85]

> The Court is going to hear from 27 advocates in this sitting of the oral argument calendar, and two are women, even though women today are 50 percent or more of law school graduates. And I think it would be reasonable for a woman to look at that and wonder, is that a path that's open to me, to be a Supreme Court advocate?[86]

She went on to question "[a]re private clients willing to hire women to argue their Supreme Court cases? When there's that kind of gross disparity in representation, it can matter and it's common sense."[87] The Court was ultimately not persuaded by this argument and went on to rule in favor of the Petitioner.[88]

Absent this opportunity, however, women would likely have far fewer opportunities to appear before the Supreme Court. For example, Paul Clement argued thirty cases for private clients before the Supreme Court in the period 2016–2021.[89] Neal Katyal similarly argued twenty-two as a private litigator. In contrast, as noted above, Blatt, the woman from private practice with the most Supreme Court arguments to her credit, argued less than half the number of Clement's cases for private clients, and the woman with the next highest number of

---

Harv. Coll., 600 U.S. 181 (2023) (No. 20-1199)), https://www.oyez.org/cases/2022/21-707 [https://perma.cc/E2XM-BHCA].

85. *See* Mark Sherman & Jessica Gresko, *Gender Gap Persists at Arguments Before High Court: Women Presented Less Than a Quarter of the Arguments this Term*, LEGALNEWS.COM (May 1, 2023), https://legalnews.com/Home/Articles?DataId=1522629 [https://perma.cc/NV4N-B9K8].

86. *Univ. of N.C.* Oral Argument, *supra* note 84, at 02:35

87. *Id.*

88. *Students for Fair Admissions, Inc.*, 600 U.S. at 198, 231.

89. Feldman, *Attorneys Who Argue*, *supra* note 64. Caplan asserts that it has "elevat[ed] the voice and the influence of the executive branch . . . to an unprecedented and unjustified level," thereby putting the "executive branch's interests ahead of all other organizations and individuals with cases before the Court." Lincoln Caplan, Response, *The SG's Indefensible Advantage: A Comment on* The Loudest Voice at the Supreme Court, 74 VAND. L. REV. EN BANC 97, 124 (2021).

arguments during this period only argued five cases.[90] Only thirteen women in total have argued twenty cases or more, based on the most recent data available.[91]

Additionally, disproportionately many more men than women argue before federal circuit courts. This fact was pointed out by Judge Amy St. Eve in a recent article.[92] The women who do get to argue in federal courts do so most often on behalf of the government rather than private clients; absent that representation, the number of women performing oral argument would be dismal.[93] In state courts, women are also underrepresented. Women "made up only 27% of all lawyers arguing at the New York Court of Appeals. . . . Women are similarly less likely than men to argue before the highest courts in California (35%), Minnesota (30%), and Missouri (22%)."[94] The U.S. Supreme Court "has the starkest gender imbalance—only 18% of all attorneys arguing at the Court were women for the 2020–2021 term."[95] The study also noted that "[t]his gender gap has not narrowed appreciably in the last decade."[96]

Not surprisingly, even in federal district courts, women appear less often than men. In an attempt to encourage more women and lawyers of color to appear in arguments, Judges David Dugan, Staci Yandle, and Chief Judge Nancy Rosenstengel of the Illinois Federal District Court offered to "[s]trongly consider allocating additional time for oral argument beyond what the Court may otherwise have allocated were a newer, female, or

90. Feldman, *Attorneys Who Argue*, *supra* note 64; *see, e.g.*, Trestman, *supra* note 6.

91. Trestman, *supra* note 6.

92. AMY J. ST. EVE & JAMIE B. LUGURI, HOW UNAPPEALING: AN EMPIRICAL ANALYSIS OF THE GENDER GAP AMONG APPELLATE ATTORNEYS 7 (2021), https://www.americanbar.org/content/dam/aba/administrative/women/2021/how-unappealing-f_1.pdf [https://perma.cc/76G9-3KPB].

93. *Id.* at 14–15.

94. *Id.* at 6.

95. *Id.*

96. *Id.*

minority attorney not arguing the motion."[97] This Order was met with a legal challenge from a nonprofit group, America First Legal.[98] After a complaint about the Order was filed with Chief Judge Diane Sykes, the judges withdrew it.[99]

It should be noted too, that even if women get to argue before the Supreme Court, they should not expect a level playing field there. That gender and power dynamics pertaining to speech play out in law have been well-documented in the literature.

B. Women's Underrepresentation as Clerks

The lower number of women advocates may be related to the fact that former law clerks often go on to careers as appellate litigators; thus if there are fewer women clerks, the pool of potential women appellate litigators is similarly smaller.[100] David Lat has documented the gender breakdown of Supreme Court clerks over the last twenty years.[101] In 2022, Lat reported the breakdown among clerks to be approximately 60% male, 40% female.[102] In 2025, only 53% of the clerks were male, but men now make up only

97. Margaret Cross, *"Oral Argument Affirmative Action?" Non Profit's Ethics Complaint Against Three Federal Justices Raises Questions on the Judicial Role*, FEDERALIST SOC'Y (Feb. 13, 2024), https://fedsoc.org/commentary/fedsoc-blog/oral-argument-affirmative-action-nonprofit-s-ethics-complaint-against-three-federal-judges-raises-questions-on-the-judicial-role [https://perma.cc/4JDA-P2KL].

98. *Id.*

99. America First Legal, "*HUGE VICTORY—U.S. District Court Judges Rescind Discriminatory Policies Following America First Legal's Judicial Complaint",* (Mar. 22, 2024) https://aflegal.org/press-release/huge-victory-u-s-district-court-judges-rescind-discriminatory-policies-following-afls-judicial-complaint/.

100. *See* Badas, Sanders & Stauffer, *supra* note 82, at 398, 400.

101. *See* Lat, *SCOTUS Clerks 2000 v. 2025*, *supra* note 38; *see also* Fogel, Hoopes & Liu, *supra* note 38.

102. David Lat, *Supreme Court Clerk Hiring Watch: Meet the October Term 2022 SCOTUS Clerks*, ORIGINAL JURISDICTION (July 20, 2022), https://davidlat.substack.com/p/supreme-court-clerk-hiring-watch-ee0 [https://perma.cc/L5ZJ-WD73].

42% of law students,[103] yet the over-representation of men as advocates before the Supreme Court does not reflect this shift. Since the pathway to being a Supreme Court advocate often goes through the clerkship route, until there is more gender parity in clerkship selection, women remain at a disadvantage if they aspire to be a Supreme Court advocate. However, resolving this imbalance has been further complicated by the investigations of major law firms by the Trump Administration for allegedly engaging in unlawful diversity, equity, and inclusion (DEI) practices that allegedly afford preferential treatment to women and people of color.[104]

Additionally, it appears that judges may not strictly factor gender into their clerkship hiring decisions. In a recent *Harvard Law Review* article online, Jeremy D. Fogel, Mary Hoopes, and Goodwin Liu surveyed and interviewed fifty sitting federal circuit court judges to ascertain their hiring practices in respect of law clerks.[105] Almost all of the judges in the study expressed that they valued diversity, although how they construed that term varied from diversity based on race, to ideology, geographical background, and political affiliation.[106] Moreover, although diversity implicates a number of factors, the judges in the study often limited their comments to racial diversity, not gender diversity.

Without diminishing the importance of racial diversity in judicial clerkship hiring, the lack of focus on

---

103. Lat, *SCOTUS Clerks 2000 v. 2025*, *supra* note 38.

104. For example, Andrea Lucas, the Acting Chair of the EEOC, sent approximately twenty letters to major law firms, accusing them of potentially violating Title VII means of DEI practices that afforded preferential treatment based on protected characteristics. Press Release, U.S. Equal Emp. Opportunity Comm'n, EEOC Acting Chair Andrea Lucas Sends Letters to 20 Law Firms Requesting Information About DEI-Related Employment Practices (Mar. 17, 2025), https://www.eeoc.gov/newsroom/eeoc-acting-chair-andrea-lucas-sends-letters-20-law-firms-requesting-information-about-dei [https://perma.cc/4LLD-669W]. An example of one such letter from EEOC Commissioner to Perkins Coie dated March 17, 2025 is available here: https://www.eeoc.gov/sites/default/files/2025-03/Law_Firm_Letters_-_03.17.2025.pdf.

105. Fogel, Hoopes & Liu, *supra* note 38, at 591.

106. *Id.* at 612–13.

gender diversity is striking. It is impossible to ascertain if the number of applications for federal clerkships is relatively balanced across genders, since the only data publicly available is based on who gets hired. A recent study by Alex Badas and Katelyn Stauffer suggests that even when women and men have the same self-reported levels of qualification, women are less likely to apply for circuit court and Supreme Court clerkships.[107] Women are able to objectively assess their qualifications through class rank, membership on the law review, et cetera, so Badas and Stauffer initially posited that women were receiving less encouragement to apply for elite federal clerkships. Their analysis, however, proved that was not the case. They ultimately found that women were receiving the same amount of encouragement but needed more encouragement than men to apply for elite clerkships with federal circuit courts and the Supreme Court.[108] Although women can perceive their qualifications to be objectively similar to their male classmates who end up applying for these positions, women often hold themselves to higher standards and consider themselves less worthy of these opportunities.[109] They therefore often end up applying for district court and state court clerkships instead.[110] This ultimately narrows women's paths of opportunity to elite speaking positions in the law, including positions such as appellate advocates, tenure track faculty positions, and in the judiciary itself.[111] Considerations about starting a family also factor into women's decisions about applying for clerkships, especially elite clerkships.

---

107. Alex Badas & Katelyn E. Stauffer, *Gender and Ambition Among Potential Law Clerks*, 11 J.L. & CTS. 116, 130 (2023).

108. *Id.* at 129, 134.

109. *Id.* at 131–32.

110. *Id.* at 136.

111. *See, e.g.*, Katz, Rozema & Sanga, *supra* note 6, at 68–69. In respect to judges, the former President of the ABA, William G. Paul, asserted that "judicial law clerks become leaders in the profession, become judges and partners in law firms." DEBRA M. STRAUSS, BEHIND THE BENCH: THE GUIDE TO JUDICIAL CLERKSHIPS 291–92 (West Acad. Publ'g 2023).

Since the practice of stacking clerkships has emerged,[112] in order to potentially obtain the elusive Supreme Court clerkship, women who wish to have a family must think about when they might do that, as well as compensate financially for the potential pay cut they accept when accepting a clerkship over a big law job.[113]

C. Why Women's Lack of Opportunity to Speak Law Matters

These deficits of women's equal participation in the law and in the process of democratic discourse, are concerning because women should be participating fully in all aspects of the law, particularly in decision-making aspects. Studies have shown that women now make up a majority of law students and first-year associates, so it is clear that women have a keen interest in being active participants in a profession which shapes society through the imposition of rules.[114] Moreover, the Supreme Court itself has opined that the participation of women in deciding issues of the law and justice is vital.

---

112. *See* Greg Costa, *Clerking to Excess? The Case Against Second (and Third and Fourth) Clerkships*, 102 JUDICATURE 23, 23–24 (2018), https://judicature.duke.edu/wp-content/uploads/sites/3/2020/10/JUDICATURE102-3_Clerks.pdf [https://perma.cc/6BW9-V7GU].

113. Law clerks' salaries are subject to the Judicial Salary Plan (JSP). *See Qualifications, Salary, and Benefits*, ONLINE SYS. FOR CLERKSHIP APPLICATION AND REV. (Apr. 26, 2023), https://oscar.uscourts.gov/qualifications_salary_benefits#salary [https://perma.cc/9SMR-54AK]. Most law clerks will be paid at the JSP 11–13 level depending on their legal experience. *See id.* This varies according to locality because of varying costs of living in different markets. For example, in New York, which is one of the most expensive markets, the salary will range from approximately $87,000–$124 000. U.S. CTS., JUDICIARY SALARY PLAN 1 (2026), https://www.uscourts.gov/sites/default/files/document/jsp_new_york_2026.pdf [https://perma.cc/89A6-XNTT]. In contrast, starting salaries for new associates in Big Law are $225,000 for first year associates that could reach $251,000 with bonuses. Paul Carron, *BigLaw Associate Compensation Soars to $251k for 1st Years, $575k for 8th Years*, TAXPROF BLOG (Nov. 24, 2024), https://taxprofblog.aals.org/2024/11/24/biglaw-associate-compensation-soars-to-251k-for-1st-years-575k-for-8th-years/ [https://perma.cc/W5EX-93FF]. It should be noted that firms often pay significant bonuses to associates who join the firm after a clerkship or clerkships. *See* Costa, *supra* note 112, at 23 & n.1.

114. *See Women and People of Color in U.S. Law Firms*, NALP (Mar. 2024), https://www.nalp.org/0324research [https://perma.cc/Y8XJ-XXHP].

In *Taylor v. Louisiana*, the Court found that Louisiana's exclusion of women from petit juries was unconstitutional.[115] Louisiana's Constitution and statutes provided that a woman should not be selected for jury service unless she had previously filed a written declaration of her desire to be subject to jury service.[116] In rejecting that notion, Justice White cited approvingly to *Smith v. Texas*,[117] wherein the Court had held that excluding certain groups from jury participation was "at war with our basic concepts of a democratic society and a representative government."[118] The Court held further, that "[o]ur notions of what a proper jury is have developed in harmony with our basic concepts of a democratic society and a representative government."[119]

The Court subsequently affirmed this principle in *J.E.B. v. Alabama ex rel. T.B.*,[120] a child support case involving a *Batson* challenge, where male jurors were struck on the basis of gender. The Court wrote that

> [e]qual opportunity to participate in the fair administration of justice is fundamental to our democratic system. It not only furthers the goals of the jury system. It reaffirms the promise of equality under the law—that all citizens, regardless of race, ethnicity, or gender, have the chance to take part directly in our democracy . . . . When persons are excluded from participation in our democratic processes solely because of race or gender, this promise of equality dims, and the integrity of our judicial system is jeopardized.[121]

Although the right of women to appear as counsel before the Supreme Court is not a guaranteed Constitutional right, like the Sixth Amendment right to a jury of one's peers, if oral argument does indeed

115. 419 U.S. 522, 537–38 (1975).

116. *Id.* at 523.

117. *Id.* at 527 (citing Glasser v. United States, 315 U.S. 60, 85–86 (1942)).

118. Smith v. Texas, 311 U.S. 128, 130 (1940).

119. *Glasser*, 315 U.S. at 85; *see Taylor*, 419 U.S. at 527 (citing *Glasser*, 315 U.S. at 85–86).

120. 511 U.S. 127 (1994).

121. *Id.* at 145–46.

constitute a form of public deliberation, women should not be excluded from it.

III. THE ORAL TRADITION IN OUR LEGAL SYSTEM—IS HAVING WOMEN "SPEAK LAW" IMPORTANT?

The oral tradition has always been an important part of legal history and moral debates. From the impassioned debates of Socrates, to the arguments of Cicero and Daniel Webster, great oral deliveries, whether they be in oral arguments before the Supreme Court or even oral Socratic exchanges between a professor and students in a law school class, have often been celebrated as an "heroic act" in the law.[122] These heroic acts, along with the practice of announcing decisions and dissents from the bench, are still important components of our legal system because oral arguments and oral announcement of opinions afford the public the opportunity to see differing perspectives, and hear policies and rules being debated and literally given voice to by representative members of society. They are the public's only exposure to the judges' deliberative process. Moreover, oral announcements of decisions and dissents are the equivalent of the modern town square. They allow the public to hear the Justices provide brief rationales for their decisions, as opposed to requiring the public to read what are often one hundred plus pages of dense legal prose. The oral announcement tradition also permits dissenting Justices who feel strongly about the issue to orally dissent from the bench, thereby exposing the public to countervailing legal perspectives.[123] Although a detailed account of the history of oral argument is beyond the scope of this Article, and has

122. Phillip Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 143 (1987). Kissam defines heroic acts as "[p]rofessional behavior that earn[] recognition and status for both the performer and her profession." *Id.* at 142.

123. For a brief history of oral dissents, see generally Christine M. Venter, *Dissenting from the Bench: The Rhetorical and Performative Oral Jurisprudence of Ruth Bader Ginsburg & Antonin Scalia*, 56 WAKE FOREST L. REV. 321 (2021).

been canvassed extensively elsewhere,[124] this part will maintain that the oral component of law remains a vital component of our legal system. This is evidenced not only by the Supreme Court choosing to maintain oral argument during the COVID-19 pandemic, but also the practice of orally announcing decisions from the bench,[125] along with the relatively recent practice of oral dissents.[126]

The purpose of and procedures for oral argument in the Supreme Court are relatively straightforward. Oral argument is meant to "emphasize and clarify the written arguments made in the briefs."[127] Counsel are to assume that the Justices "have read the briefs before arguments."[128] The petitioner or appellant begins the argument and may reserve time for rebuttal. Under Rule 28.7, the Court may permit counsel for an amicus to present argument on the side of one party with that party's consent.[129] The Court may, on motion, also permit an amicus to present argument in the absence of a particular party's consent.[130] During the arguments, positions are advanced, probing questions are asked, the application of precedent is debated, and the limits of rules are tested. Armed with the information that emanates from this process, together with the parties' and amici's briefs, the Justices then confer to ascertain

124. *See* Mark R. Kravitz, *Written and Oral Persuasion in the United States Courts: A District Judge's Perspective on Their History, Function, and Future*, 10 J. APP. PRAC. & PROCESS 247, 249 (2009); David R. Cleveland & Steven Wisotsky, *The Decline of Oral Argument in the Federal Courts of Appeals: A Modest Proposal for Reform*, 13 J. APP. PRAC. & PROCESS 119, 119–22 (2012).

125. According to the Supreme Court website, "[d]uring the months of May and June, the Court meets at 10 a.m. every Monday to release opinions. During the last week of the term, additional days may be designated as 'opinion days.'" *Supreme Court Procedures*, U.S. CTS., https://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/supreme-court-procedures [https://perma.cc/RL26-3PAJ] (last visited Feb. 14, 2026).

126. *See* Venter, *supra* note 123, at 326, 329.

127. 4 SUP. CT. R. 28.1.

128. *Id.*

129. 4 SUP. CT. R. 28.7.

130. *Id.*

where each one of them stands. That these interchanges at oral argument are important is supported by the fact that researchers have noted that oral arguments are getting longer, judges are talking more, as are counsel, despite the usual limits of a half hour each side.[131]

Oral argument is thus an important component of our system of justice for several reasons. First, it is an opportunity for the public to see justice in action, building on the premise that "justice should not only be done, but should manifestly and undoubtedly be seen to be done."[132] Oral arguments are conducted in open court, and the public may obtain tickets to watch Supreme Court arguments or simply enter a federal courthouse to observe appellate arguments there. Judge Myron Bright has described the public opportunity to view appellate arguments as "some semblance of public visibility and accountability." [133] Public justification, Rawls tells us, "is not simply valid reasoning, but argument addressed to others."[134] This is important because the judiciary is generally more isolated and less accountable than the other branches of government, as federal judges are appointed for life. Thus, having the opportunity to view the Justices' process of reaching an outcome, and

131. *See* Adam Feldman, *Measuring Oral Arguments in the 2023/2024 Term*, EMPIRICAL SCOTUS (Jan. 24, 2024) [hereinafter Feldman, *Measuring Oral Arguments*], https://empiricalscotus.com/2024/01/24/measuring-oral-arguments-2023/ [https://perma.cc/ZC8D-4DZW].

132. Rex v. Sussex Justices, [1924] 1 K.B. 256, 259.

133. Myron Bright, *The Power of the Spoken Word: In Defense of Oral Argument*, 72 IOWA L. REV 35, 36 (1986). Bright is not alone in his assertion. Damon Cann & Gregg Goelzhauser note that "oral argument can enhance institutional legitimacy, increase public awareness, guard against noncompliance, and provide judges with a platform for political position taking." Damon Cann & Gregg Goelzhauser, *The Impact of Oral Argument Attendance*, 12 J. L. & CTS. 132, 133 (2024) (citation omitted).

134. JOHN RAWLS, POLITICAL LIBERALISM 465 (Cambridge Univ. Press 2005) (1993). Rawls's theory seems to be based on the concepts of legitimacy and respect. For decisions to be legitimate, they must be the product of open deliberation if they are to bind citizens. Moreover, it is a sign of respect for citizens to openly debate issues pertaining to how people should be governed, as individuals are considered capable of contributing to a discussion of these issues. AMY GUTMANN & DENNIS THOMPSON, WHY DELIBERATIVE DEMOCRACY? 4, 7, 11 (Princeton Univ. Press 2004).

watching diverse members of the Bar make these arguments that help determine the outcome, is crucial to reinforce the notion that the community participates in discussions about legal norms through the medium of lawyers who should be representative of the gender and racial strata of society.

The participatory nature of this particular form of public debate is reinforced through having counsel present different sides of an argument, having amici presenting a slightly different perspective, as well as having judges use their questions to talk to their colleagues on the bench.[135] Jurgen Habermas, a philosopher and social theorist, termed these types of debates "deliberative democracy."[136] He developed a discourse theory of law and society which asserts that law has developed institutionalized procedures to manage and resolve conflicts through communication.[137] Oral argument perfectly encapsulates this concept. As Chambers has pointed out, "[w]e show respect for the free and equal status of our fellow citizens when we approach the justification of laws and policies as mutual justification in which we speak to and address each other's concerns, interests, and priorities."[138]

According to Habermas, in an idealized communicative system, participants would have equal opportunity to raise and counter ideas.[139] His requirements for such a system include that the parties be engaged in a legitimate search for the truth, the better

135. *See generally* Roberts, *supra* note 34 (noting "oral argument is the first time you begin to get a sense of what your colleagues think of the case through their questions").

136. HABERMAS, *supra* note 12. Habermas's theory can really be traced back to Aristotle's concept of the wisdom of the multitude, where encouraging the participation of people in debate about the good brings together a variety of moral insights and perspectives. *See* ARISTOTLE, THE POLITICS OF ARISTOTLE 123 (Ernest Barker trans., Oxford Univ. Press 1946).

137. HABERMAS, *supra* note 12, at 22.

138. Simone Chambers, *Citizens Without Robes: On the Deliberative Potential of Everyday Politics*, 16 J. DELIBERATIVE DEMOCRACY 73, 74 (2020), https://delibdemjournal.org/article/636/galley/4420/view/ [https://perma.cc/RV8Q-U2BQ].

139. Hugh Baxter, *Habermas's Discourse Theory of Law and Democracy*, 50 BUFF. L. REV. 205, 221 (2002).

result, or the common good.[140] He also requires that the situation must exclude all force or coercion, except "the force of the better argument," which should obviously prevail.[141] If one considers oral argument, at its best, it presents exactly this scenario. Parties' representatives raise their best arguments and counter those of the other side. Judges then ask questions, ideally in a search for truth or the best resolution. Hypotheticals are posed to test the limits of proposed rules or the applicability of precedent, and the judges speak to one another as well as counsel, through their questions. As Judge Myron Bright has noted,

> [o]ral argument provides a time when the judges gather in one place to receive answers to all of their remaining questions. The judges know that, soon after the argument, they will be called upon to vote on the result of the case. Oral argument thus serves as a necessary and important step in decision making.[142]

Additionally, if all involved are really concerned about a search for the truth, oral arguments permit that search in a way that briefs do not necessarily provide. As Socrates pointed out in *Phaedrus*, writing is fixed and non-responsive to questions or concerns.[143] Oral argument, on the other hand, is extremely responsive and addresses those issues and concerns raised by the judges and opposing counsel. The positions of both questioners and advocates are challenged and probed in the process. Moreover, in Habermas's idealized rhetorical situation, courts' reasoning and ultimate

---

140. *Id.*

141. HABERMAS, *supra* note 12, at 25. Again, this reverts back to Aristotle's concept of the collective wisdom of the multitude. *See* ARISTOTLE, *supra* note 136.

142. Bright, *supra* note 133, at 44.

143. See PLATO, PHAEDRUS 78 (Christopher J. Rowe trans., Liverpool Univ. Press 1986). It is the same with written words. They seem to talk to you as though they were intelligent, but if you ask them anything about what they say from a desire to be instructed they go on telling just the same thing forever. *Id.* Socrates' argument therefore supports the idea of oral argument, which is responsive to questions raised by judges in a way that written briefs may not be.

conclusions will be rational and responsive, and according to Chambers, "ultimately based only on reasons that withstand objections under demanding conditions of communication."[144] This accords with Rawls's description of courts as exemplary deliberative institutions—"forums in which reasons, explanations, and justifications are both expected and offered for coercive state policies."[145] Conrado Mendes endorses the idea of courts taking the deliberative role seriously, noting,

> [A]n ideal-type deliberative court . . . is one that maximizes the range of arguments from interlocutors by promoting public contestation at the pre-decisional phase; that energizes its decision-makers in a sincere process of collegial engagement at the decisional phase; and drafts a deliberative written decision at the post-decisional phase.[146]

Arguments can only be maximized if they involve both male and female perspectives, as advocates and judges.[147]

Additionally, the conferences held by the Justices post-argument, wherein they presumably discuss the points raised and conceded by counsel and vote on the outcome of the case, are also an opportunity for a continuation of the deliberative democracy, albeit one that takes place out of the public eye. The process culminates in an announcement of the decision from the

---

144. Chambers, *supra* note 138.

145. John Ferejohn & Pasquale Pasquino, *Constitutional Courts as Deliberative Institutions: Towards an Institutional Theory of Constitutional Justice*, *in* CONSTITUTIONAL JUSTICE, EAST AND WEST: DEMOCRATIC LEGITIMACY AND CONSTITUTIONAL COURTS IN POST-COMMUNIST EUROPE IN A COMPARATIVE PERSPECTIVE 21, 22 (Wojciech. Sadurski ed., 2002).

146. CONRADO HUBNER MENDES, CONSTITUTIONAL COURTS AND DELIBERATIVE DEMOCRACY 107 (Oxford Univ. Press 2013).

147. *See generally* Waldron, *supra* note 79 (analyzing Aristotle's philosophy of the multitude). Waldron suggests Aristotle's view was that "deliberation among the many is a way of bringing each citizen's ethical views and insights . . . to bear on the views and insights of each of the others, so that they cast light on each other . . . enabling a position to emerge which is better than any of the inputs." *Id.* at 569–70. Beyond this, in my opinion, it is a matter of equity and just representation.

bench, reinviting the public to hear a brief version of the Court's reasoning, with a more fully fleshed out written decision then being handed down. This is why the Court's current practice of deciding certain cases through a "shadow docket," or publishing decisions without any reasons attached, is so problematic, as it circumvents the process of deliberative democracy.[148]

Another advantage of oral arguments is that, as noted, counsel engaging in debate with the Justices have the opportunity to hear the Justices' positions, and can tailor and address their arguments accordingly. Advocates can therefore spend more time on issues that appear to be of particular concern to the Justices, such as the narrowness or breadth of a proposed rule, and may respond to and rebut their opponents' arguments in a way that is not always done in the briefs. Judge Kravitz has noted that counsel in their briefs sometimes fail to address their opponents' arguments, as if shying away from a particular point, perhaps in the hope that the judges may overlook it.[149] He asserts that this practice is relatively common even in reply briefs.[150] Moreover, Kravitz also recounts that when he was a practicing lawyer, he would sometimes arrive at court for oral arguments to find that the judges hearing the argument had completely misunderstood some of the main points he had made in his brief, but oral argument afforded him the opportunity to rectify that.[151] Oral arguments also give counsel no place to hide, as counsel has little choice but to directly answer judges' questions, which sometimes force them to confront and rebut a point being made by their opponent, or admit a weakness in their own argument.

Finally, judges themselves have recognized that oral argument is important and can influence the outcome of a case. Judge Bright recounts an experiment he

148. *See, e.g.*, Sarah Voehl, *Illuminating the Shadow Docket: On the Increasing Impacts of This Evolving Judicial Procedure*, 23 NEV. L.J. 945, 956–61 (2023).

149. Kravitz, *supra* note 124, at 262.

150. *Id.*

151. *Id.*

conducted at the Eighth Circuit, where he and some of his fellow judges reported that "oral argument changed the tentative result that we had reached after reading the briefs in a substantial number of cases."[152] This finding is consistent with interviews with judges conducted by Bryan Garner and comments from some Supreme Court Justices to the effect that oral arguments can change their minds in a small but significant number of cases.[153] Former Chief Justice Rehnquist has also pointed out that "[o]ral argument is important as a means of giving judges a continuing awareness of their relationship and dependence on others; without it, the judge is isolated from all but a limited group of subordinates."[154]

IV. WHO SPEAKS AND WHO INTERRUPTS? DISCOURSE PRACTICES BEFORE THE SUPREME COURT

Even if women manage to overcome the barriers to arguing before the Court and actually get to do so, they are not arguing on a level playing field. This section will focus on discourse practices before the Supreme Court, with particular attention to the kinds of interruptions that occur during oral argument. Briefly put, there are three kinds of interruptions: the first occurs when the Justices interrupt each other's questions. The second occurs when counsel interrupts the Justices, and the third occurs when Justices interrupt counsel. In all types of interruptions, studies have shown that the person

152. Bright, *supra* note 133, at 40.

153. *See LawProse with Bryan A. Garner*, YOUTUBE, https://www.youtube.com/@lawprosewithbryana.garner6732 [https://perma.cc/WF47-WFLA] (last visited Feb. 15, 2026). Bryan Garner's interviews with judges are available at his YouTube channel Lawprose.com. *See id.* He has conducted interviews with multiple Supreme Court Justices about legal writing and oral argument. *See id.* For a discussion about how oral argument impacts the outcome of cases, see Christine M. Venter, *The Case Against Oral Argument: The Effects of Confirmation Bias on the Outcome of Selected Cases in the Seventh Circuit Court of Appeals*, 14 LEGAL COMM. & RHETORIC: JALWD 45, 53–55 (2017).

154. William H. Rehnquist, *Oral Advocacy: A Disappearing Art*, 35 MERCER L. REV. 1015, 1022 (1984).

interrupted is much more likely to be a woman. While we expect the Justices to interrupt counsel with questions, women advocates get interrupted far more frequently than their male counterparts.[155]

A. Interruptions of a Justice by Fellow Justices

Early research by political scientists examining oral argument focused more on the ideology of the Justice interrupting another Justice than on a Justice's gender. Intra-Justice interruptions are to be somewhat expected in the Court, as several Justices have pointed out that the Justices are having conversations with their colleagues during oral argument.[156] Frederick has suggested that the Justices use oral argument as an opportunity to "express their thoughts or float various theories to gauge the reactions of other Justices without necessarily being committed to a particular viewpoint."[157] Chief Justice Roberts confirmed this when he noted

> there are two sets of conversations taking place at the argument: an obvious one between the advocates and the justices and the usually more subtle one between the justices, because we reveal by the tone and content of our questions clues about how we may be looking at the issues in the case.[158]

---

155. *See, e.g.*, Timothy Johnson, Ryan C. Black & Justin Wedeking, *Pardon the Interruption: An Empirical Analysis of Supreme Court Justices' Behavior During Oral Arguments*, 55 LOY. L. REV. 331 (2009); Stephen L. Wasby, Anthony A. D'Amato & Rosemary Metrailer, *The Functions of Oral Argument in the U.S. Supreme Court*, 62 Q.J. SPEECH 410 (1976). More recent studies have also documented this phenomenon. *See* Gleason, *supra* note 14, at 600; Dana Patton & Joseph L. Smith, *Gender, Ideology, and Dominance in Supreme Court Oral Arguments*, 41 J. WOMEN, POL. & POL'Y 393, 394 (2020).

156. Johnson, Black & Wedeking, *supra* note 155, at 333–35; *see, e.g.*, Wasby, D'Amato & Metrailer, *supra* note 155, at 418.

157. DAVID C. FREDERICK, SUPREME COURT AND APPELLATE ADVOCACY: MASTERING ORAL ARGUMENT 5 (Thomson/West 2003).

158. Adam Liptak, *Roberts Details How Justices Use Questions to Correspond*, N.Y TIMES, Apr. 30, 2024, at 11.

Chief Justice Rehnquist also explained that Justices use oral argument to talk to each other.[159] A recent, albeit limited, study by Adam Feldman, indicated that "[t]he justices' interactions in oral argument matter. They affect the substance of opinions, the foci of cases, and the voting coalitions that form."[160]

A study of interruptions by the Justices during the period 1998–2006 found that Justices who are most diametrically opposed on the ideological spectrum tend to interrupt one another more frequently.[161] For example, Justice Scalia (a prolific interrupter of his colleagues) reserved his most frequent interruptions for Justices Breyer and Souter.[162] Justice Breyer, who did not interrupt his colleagues frequently, returned the favor by interrupting Justice Scalia more than twice as often as he interrupted anyone else. Justices Ginsburg and O'Connor seemingly conformed to gender roles by not interrupting their colleagues much at all. Justice Thomas, who during the period of the study (1998–2006) was the least frequent interrupter, but many times he remained completely silent on the bench during oral argument, so that is unsurprising. Overall, conservative Justices interrupt more, and the people interrupted tend to be liberal.[163]

Additionally, a study conducted by Adam Feldman in 2016 demonstrated a shift towards more gender based interruptions. Feldman noted that during the 2014 Term Justices Kagan and Sotomayor were the most

---

159. William H. Rehnquist, Brainerd Currie Lecture, Mercer University School of Law: Oral Advocacy: A Disappearing Art 32–33 (Oct. 20, 1983). Justice Rehnquist noted,

> [o]ral advocacy is probably more important in the Supreme Court of the United States than in most other appellate courts. . . . [T]he time set for oral argument is the only opportunity that you will have to confront face to face the nine Members of the Court who will ponder and decide your case. The opportunity to convince them of the merits of your position is at its high point.

Id.

160. Feldman, *Measuring Oral Arguments*, *supra* note 131.

161. Johnson, Black & Wedeking, *supra* note 155, at 350.

162. *Id.* at 349.

163. Jacobi & Schweers, *supra* note 16, at 1480.

interrupted Justices.[164] His findings were consistent with Jacobi and Schweers who documented that during the 1990, 2002, and 2015 Terms the three most frequent interrupted Justices on the Court were women: Justices Ginsburg, O'Connor, and Sotomayor.[165] Justice Kagan was number seven on the list.[166] The top seven most frequent interrupters were all male, including a male advocate who interrupted more than the women Justices.[167] While seniority played a minor role in the interruptions, in that more senior Justices tended to interrupt more junior ones, gender was far more significant a predictor of one Justice interrupting another.[168] Importantly, the women Justices do not generally interrupt other women Justices.[169]

B. Interruptions of Women Justices by Counsel

Another common discourse pattern that has more recently gained attention in the literature is women Justices being interrupted by counsel.[170] Traditional Court practice indicates that counsel should immediately stop speaking when one of the Justices asks a question, but in practice, this custom is not always observed when the Justice posing the question is female. The Supreme Court's *Guide for Counsel in Cases to be Argued* reminds counsel to "[n]ever interrupt a Justice who is addressing you. Give your full time and attention to that Justice . . . . If you are speaking and a Justice interrupts

164. Staci Zaretsky, *Gender Dynamics at SCOTUS? Female Justices Interrupted More Often than Male Justices*, ABOVE THE L. (May 31, 2016, at 12:37 MT), https://abovethelaw.com/2016/05/gender-dynamics-at-scotus-female-justices-interrupted-more-often-than-male-justices/ [https://perma.cc/6JG7-V46Y].

165. Jacobi & Schweers, *supra* note 16, at 1473.

166. *Id.*

167. *Id.*

168. *Id.* at 1465–73, 1486–88.

169. *Id.* at 1486.

170. *See, e.g.*, Johnson, Black & Wedeking, *supra* note 155; *see also* Tonja Jacobi & Matthew Sag, *Supreme Court Interruptions and Interventions: The Changing Role of the Chief Justice*, 103 B.U. L. REV. 1741, 1752 (2023) (noting the disproportionate number of interruptions directed at the women Justices).

you, cease talking immediately and listen."[171] Several articles by political scientists and law professors have documented that these courtesies are not necessarily observed when the women Supreme Court Justices are speaking.[172]

Interruptions have been described as "attempts by speakers to maximize their power positions in group settings through assertions of dominance."[173] This transgresses the norms of turn-taking in conversation, but is particularly egregious when the person interrupted is the person of greater status and power.[174] The fact that male counsel interrupt the female Justices far more often than they do the male Justices,[175] seems to indicate that some male counsel, albeit even subconsciously, are unwilling to let women participate fully in the kind of democratic deliberation and discourse that Habermas deemed so important.

Jacobi and Schweers documented the fact that, in contrast to male advocates, women counsel tend not to interrupt the Justices at all.[176] This may be because it is important for female counsel to "play by the rules," while male counsel feel free to disregard them, at least insofar as women Justices are concerned.[177] The authors also suggest that male advocates feel "entitled" to interrupt female Justices.[178] Again, this behavior is prevalent in

171. CLERK OF THE COURT, GUIDE FOR COUNSEL IN CASES TO BE ARGUED BEFORE THE SUPREME COURT OF THE UNITED STATES 9 (2023), https://www.supremecourt.gov/casehand/Guide%20for%20Counsel%202023.pdf [https://perma.cc/KA9U-3CUY].

172. *See* Don Zimmerman & Candace West, *Sex Roles, Interruptions and Silences in Conversation*, *in* LANGUAGE AND SEX: DIFFERENCE AND DOMINANCE 105, 106, 115–17 (Barrie Thorne & Nancy Henly eds., 1975); *see also* Jacobi & Schweers, *supra* note 16; Patton & Smith, *supra* note 14, at 352; Patton & Smith, *supra* note 10.

173. Jacobi & Schweers, *supra* note 16, at 1402.

174. *See* Julia A. Goldberg, *Interrupting the Discourse on Interruptions: An Analysis in Terms of Relationally Neutral, Power-and Rapport-Oriented Acts*, 14 J. PRAGMATICS 883, 883–85 (1990).

175. *See generally* Jacobi & Schweers, *supra* note 16.

176. *Id.* at 1475.

177. *Id.* at 1478.

178. *Id.*

society and other public forums too. One only has to think of Senator Elizabeth Warren on the Senate floor being interrupted and silenced by her Republican colleagues for attempting to read a letter by Coretta Scott King criticizing Senator Jeff Sessions, the then nominee for Attorney General.[179]

An example of counsel interrupting a Justice is evidenced by the interruptions of Justice Sotomayor by Cameron T. Norris arguing for the Petitioner in the case of *Students for Fair Admissions v. Harvard*.[180] At the 8:51 mark of the argument, Justice Sotomayor begins her question, purporting to ask counsel about the record below:

> Sonia Sotomayor: But I don't think you . . . I think the district court made very clear findings that checking the box alone is not what got anybody in . . .
>
> Cameron Norris: That there's a . . . .[181]

The Justice then interrupts back and continues her question, The questioning shifts to Justice Gorsuch. Later at the 15 minute 36 second mark, Justice Sotomayor resumes her questioning, and counsel resumes his interruptions:

> Sonia Sotomayor: So, what do we . . .
>
> Cameron Norris: That's not race consciousness.
>
> [Justice Sotomayor then speaks over counsel to finish her question.]

---

179. *See* Matt Flegenheimer, *Republican Senators Vote to Formally Silence Elizabeth Warren*, N.Y. TIMES (Feb. 7, 2017), https://www.nytimes.com/2017/02/07/us/politics/republican-senators-vote-to-formally-silence-elizabeth-warren.html [https://perma.cc/24TP-BPT8]. Warren later fundraised off the incident under the slogans, "Nevertheless, she persisted" and "Let Liz speak." *See* Megan Garber, *'Nevertheless, She Persisted' and the Age of the Weaponized Meme*, ATLANTIC (Feb. 8, 2017), https://www.theatlantic.com/entertainment/archive/2017/02/nevertheless-she-persisted-and-the-age-of-the-weaponized-meme/516012/ [https://perma.cc/Z9Q5-KGNP]. The phrases seemed to strike a chord with many women. *See id.*

180. *See* Oral Argument at 08:51, 15:36, Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll., 600 U.S. 181 (2023) (No. 20-1199), https://www.oyez.org/cases/2022/20-1199 [https://perma.cc/G83J-5KLT].

181. *Id.* at 08:58.

> Sonia Sotomayor: . . . do about all the legislation that was passed that gave benefits not just to former slaves but to free blacks? That was still remedial in your mind because there was inequality, correct?

While one might surmise that counsel is interrupting Justice Sotomayor in part due to his different ideological positions on the issue, Seth Waxman, arguing for the Respondent, whose position is aligned ideologically with the Justice, also interrupts her. Thus, it is not clear that ideology alone plays a role in these gendered interruptions. For example, later, this exchange occurs:

> Sonia Sotomayor: And how do . . .
>
> Seth P. Waxman: Well . . .
>
> Sonia Sotomayor: . . . you respond to that? He would say . . .
>
> Seth P. Waxman: Well, I . . . I'm not sure I'm ascribing that to Justice Gorsuch, but . . . [182]

Another example of apparent gender-based interruptions comes from the oral argument in *Students for Fair Admissions v. University of North Carolina*,[183] where Justice Brown Jackson is attempting to question Patrick Strawbridge, counsel for Students for Fair Admissions, about standing. This exchange comes at the 15 minute 38 second mark:

> Ketanji Brown Jackson: But you've said *Grutter* needs to be overruled. So, we can't . . . I don't think we can use that decision as the basis for . . .
>
> Patrick Strawbridge: Well . . . well, no, one of the . . .
>
> Ketanji Brown Jackson: . . . standing.
>
> Patrick Strawbridge: One of the problems with *Grutter* that I think illustrates this specifically is Grutter's suggestion that race can only be used as a plus factor and never a minus factor. But, as many

182. *Id.* at 1:11:51.

183. 600 U.S. 181 (2023); *see Univ. of N.C.* Oral Argument, *supra* note 86, at 15:38.

> of the dissenting opinions in that case observed and . . . and cases from . . . or opinions from this Court have since observed, that makes no sense in a zero sum game. . . .
>
> Ketanji Brown Jackson: But . . . but wait. I don't . . .
>
> Patrick Strawbridge: Then, presumably, it must be doing some work.
>
> Ketanji Brown Jackson: I . . . I . . . I actually don't think that that's the way standing ordinarily works, and I'm worried that you're asking us for a special standing rule.[184]

This example appears to show counsel speaking over the Justice and answering her question before she has finished articulating it. He does not apologize for the interruption.

One might have anticipated that interruptions of the Justices by counsel might have become less frequent after the Court changed its oral argument procedure in response to the COVID-19 pandemic, but as these examples show, that is not the case. Prior to the COVID-19 pandemic, argument was more of a free-for-all situation with any Justice jumping in and interrupting counsel at any point. The practice was changed to reflect that counsel had a few minutes to open his or her argument without interruption.[185] The Justices would then take turns to ask questions, usually in the order of seniority. That practice has been modified slightly in that Chief Justice Roberts may begin then Justice Thomas asks a question but after that it seems to have become a somewhat less structured process with any of the Justices jumping in with their questions.

However, Justice Sotomayor suggested during a talk given at New York University Law School that the

184. *Id.* at 16:12.

185. *See* Joan Biskupic, *Why it Matters that Supreme Court Justices Can Look Each Other in the Eye Again*, CNN_POLITICS (Oct. 8, 2021, at 12:00 ET), https://www.cnn.com/2021/10/08/politics/supreme-court-in-person-oral-arguments/index.html [https://perma.cc/C7KK-33AV]. Biskupic argued that returning in person not only creates more "human interaction" but that it also "revives the chance to joust with each other, through questions addressed to the lawyers." *Id.*

practice was in fact changed in part to respond to the frequent interruptions of the women Justices by counsel and male Justices.[186] She asserted that she had personally noticed that this was occurring and attention had been drawn to the phenomenon by the research of Jacobi and Schweers.[187] Justice Sotomayor claimed that the practice of interrupting women or discounting what they say reflects what is commonplace in society generally. She noted that "[m]ost of the time women say things and they are not heard in the same way as men who might say the identical thing."[188]

Although most of the attention in the literature has been paid to negative interruptions by male counsel to women Justices, not all interruptions are negative. For example, an individual might interrupt by saying an affirmative phrase, such as "mm-hmm," to indicate agreement with and affirmation of the speaker, and might suggest ideological alignment and that a Justice is using counsel to make a point to the other Justices.[189] This phenomenon can be seen in the interactions between Michael R. Dreeben and female Justices in the case of *Trump v. United States*.[190] Here is one exchange between Justice Kagan and Mr. Dreeben at the one hour forty-three and thirty second mark:

> Elena Kagan: . . . but we're still in the world of official actions . . .
>
> Michael R. Dreeben: Mm-hmm.
>
> Elena Kagan: . . . and that's where you say there are various statutory construction rules that might come into play. . . .
>
> . . . .

186. Ariane de Vogue, *Scotus Changed Oral Arguments in Part Because Female Justices Were Interrupted, Sotomayor Says*, CNN POLITICS (Oct. 13, 2021, at 21:41 ET), https://edition.cnn.com/2021/10/13/politics/sotomayor-oral-arguments/index.html [https://perma.cc/BAZ3-VT3T].

187. *Id.*; *see* Jacobi & Schweers, *supra* note 16.

188. de Vogue, *supra* note 186.

189. Goldberg refers to these kinds of interruptions as "neutral displays of rapport." Goldberg, *supra* note 174, at 890–96.

190. 603 U.S. 593 (2024).

> So, I wanted to give you an opportunity to say, you know, how that would look, how that analysis would look in a given case. And . . . and in the course of responding to that, you know, I'm sort of thinking of something like the OLC opinion . . .
>
> Michael R. Dreeben: Mm-hmm.
>
> Elena Kagan: . . . which says bribery . . .
>
> Michael R. Dreeben: Mm-hmm.[191]

This exchange does seem to indicate ideological overlap between the questioner and speaker, or that Justice Kagan is not so much questioning counsel but actually making a statement to her fellow Justices. It could also indicate that Dreeben is following the line of questioning and where it is going and signaling his understanding and agreement with Justice Kagan.

C. Interruptions of Counsel by Justices

Interruptions of counsel by the Justices is to be expected during oral argument and is part of the increased questioning that has become a hallmark of the Roberts Court.[192] However, there appears to be some differences at play when women counsel are making their arguments that male counsel are not subjected to. A 2024 study published by Cai, Gupta, and others[193] found that Chief Justice Roberts for example, was twice as likely to interrupt women counsel as he was to

---

191. Oral Argument at 1:43:29, Trump v. United States, 603 U.S. 593 (2024) (No. 23-939) [hereinafter Trump v. U.S. Oral Argument], https://www.oyez.org/cases/2023/23-939 [https://pmc.ncbi.nlm.nih.gov/articles/PMC4881750/].

192. *See* Adam Feldman, *The Changing Face of Supreme Court Oral Arguments*, EMPIRICAL SCOTUS (Dec. 18, 2004) [hereinafter Feldman, *The Changing Face of Supreme Court Oral Arguments*], https://empiricalscotus.com/2024/12/18/the-changing-face-of-supreme-court-oral-arguments/ [https://perma.cc/J95E-HDEM].

193. Erica Cai et al., *"Let Me Just Interrupt You": Estimating Gender Effects in Supreme Court Oral Arguments*, 13 J.L. & CTS. 375, 389 (2025), https://www.cambridge.org/core/services/aop-cambridge-core/content/view/4870F0FD3BEF0E00AF46F8D64EDA2289/S216465702400007Xa.pdf/let-me-just-interrupt-you-estimating-gender-effects-in-supreme-court-oral-arguments.pdf [https://perma.cc/DHC8-7LY8].

interrupt males. The study examined over 3000 oral arguments and confirmed Jacobi and Sag's earlier findings that while ideology plays a role in interruptions, in that conservative Justices are more likely to interrupt advocates arguing for a liberal position,[194] (and vice versa), the gender of the advocate is a 3.5 times more significant factor in predicting interruptions.[195]

A difference in ideology with the position advocated by counsel combined with gendered behavior can also influence Justices interrupting counsel. Prior to Jacobi and Schweers' study, Philips and Carter evaluated whether Justices interacted differently with male and female lawyers.[196] Analyzing 57 cases from 2004 to 2008, Phillips and Carter found that liberal Justices spoke less when female lawyers were presenting, and their questions to women lawyers were more likely to be open-ended or information-seeking. Conversely, conservative Justices spoke more when female lawyers were presenting, and they were more likely to make declarations or ask constraining or leading questions to female lawyers.[197]

A similar pattern emerged in research conducted by Patton and Smith; their analysis shows that the Justices interrupt women lawyers more that they interrupt male counsel.[198] Moreover,

> Lawyers on the winning side are treated substantially more deferentially than lawyers on the losing side. For example, . . . lawyers for the winning side are allowed to speak 22.9 more words before being interrupted for the first time and 9.4 more words between each subsequent inter-

194. Tonja Jacobi & Matthew Sag, *The New Oral Argument: Justices as Advocates*, 94 NOTRE DAME L. REV. 1161, 1220–24 (2019).

195. Cai et al., *supra* note 193, at 388.

196. *See* James C. Phillips & Edward Carter, *Gender and U.S. Supreme Court Oral Argument on the Roberts Court: An Empirical Examination*, 41 RUTGERS L.J. 613, 628–45 (2010).

197. *Id.* at 636–38.

198. Patton & Smith *supra* note 14, at 348.

> ruption. . . . [J]ustices indulge in shorter and fewer speeches during the winning side's presentation.[199]

Overall, women lawyers tend to speak less than men during oral arguments because they are interrupted earlier in their opening statements, and Justices speak more when women are presenting the argument.

Even female Justices tend to interrupt female advocates more than male advocates, although they do so much less frequently than male Justices interrupt.[200] As a result, it is not surprising that many female advocates speak less than their male counterparts. Moreover, Shulman has found that "Justices' questions often increase in number and hostility when they are addressed to the Solicitor General."[201] This may occur because the Solicitor General's office appears regularly before the Court and the interruptions may be based on familiarity. Several counsel who represent the Solicitor General's Office are female, so it is unclear if gender plays a role in the number and tone of the questions. Exceptions to these trends may occur if case involves an issue of women's rights; such as gender discrimination, as the Justices seem more loath to harshly interrupt the women counsel, perhaps deferring to their expertise.[202]

D. Are there Women's Ways of Speaking?

Women have often been described as speaking in a particular gendered way that comes across as "less affirmative and less certain than males."[203] This may be

199. *Id.*

200. *Id.* at 388–91.

201. Sarah Levien Shullman, *The Illusion of Devil's Advocacy: How the Justices of the Supreme Court Foreshadow Their Decisions During Oral Argument*, 6 J. APP. PRAC. & PROCESS 271, 278 n.41(2004).

202. Patton & Smith, *supra* note 14, at 349–50.

203. *See* Robin Lakoff, *Language and Women's Place*, 2 LANGUAGE IN SOC'Y 45, 57 (1973). Lakoff argued that "[t]he marginality and powerlessness of women is reflected in both the ways women are expected to speak, and the ways in which women are spoken of. In appropriate women's speech, strong expression of feeling is avoided, expression of uncertainty is favored . . . ." *Id.* at 45; *see* DEBORAH TANNEN, YOU JUST DON'T UNDERSTAND: WOMEN AND MEN IN CONVERSATION 125 (William Morrow & Co. 1990). Tannen argued that what she

important as it may invite interruptions. The analysis of women's language became prominent in the 1970s and '80s, primarily through the work of linguistics professors, Deborah Tannen and Robin Lakoff, who identified several specific characteristics of women's language, which include hedges and tag questions.[204] Tag questions are described as "midway between an outright statement and a yes-no question."[205] Tag questions are often used when the speaker wants to state a claim but is not confident enough in the claim to make it outright. Amalie Due Svensson asserts that tag questions lie somewhere between declaratives and questions.[206] Some of the women Justices seem to use these types of tag questions. The questions may also contain qualifiers such as words like "maybe," "sort of," or "kind of" that could signify a lack of conviction or a desire not to be too assertive. One might surmise that this apparent hesitation then encourages male counsel to interrupt and explain it to the Justice.[207] Psychologist Martin Seligman and others have reported that women use these type of qualifiers, which Seligman refers to as "hedges."[208] He describes these as "female-linked features" which include "seems," "maybe," "kind of."[209]

---

often finds disturbing about conversations between men and women is "the imbalance . . . . If men often seem to hold forth because they have the expertise, women are often frustrated and surprised when they have the expertise, they don't necessarily get the floor." *Id.*

204. *See* Lakoff, *supra* note 203, at 53 n.3, 54–57.

205. *Id.* at 54.

206. Amalie Due Svensson, *Lakoff and Women's Language: A Critical Overview of the Empirical Evidence for Lakoff's Thesis*, 4 LEVIATHAN: INTERDISC. J. IN ENG. 1, 2 (2019). Svensson makes a valid point. Lakoff's evidence is largely anecdotal.

207. This could be considered a form of "mansplaining," a phenomenon which the Merriam Webster Dictionary defines as a man "explain[ing] something to a woman in a condescending way that assumes she has no knowledge about the topic." *Mansplain*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/mansplain [https://perma.cc/RU6S-KKUW].

208. *See* Gregory Park et al., *Women Are Warmer but No Less Assertive than Men: Gender and Language on Facebook*, 11 PLOS ONE, May 26, 2015, at 2, https://pmc.ncbi.nlm.nih.gov/articles/PMC4881750/ [https://perma.cc/88S2-KZC4].

209. *Id.*

Consider this exchange between Michael Dreeben and Justice Kagan in the *Trump v. United States* oral argument at one hour, forty-eight minutes and twenty-eight seconds, which contains some of these hedges.[210] These may make women's speech longer, they may make her sound uncertain or they may indicate that the Justice is indirectly making a statement to her fellow Justices through the medium of counsel.

> Elena Kagan: Now that set of issues, they seem important and may occasionally be difficult.
>
> Michael R. Dreeben: Mm-hmm.
>
> Elena Kagan: They also seem not really before us in the way Justice Jackson suggested earlier.
>
> Michael R. Dreeben: Mm-hmm.[211]

Justice Kagan seems to be avoiding asking a direct question and is making indirect statements, which she appears to want counsel to confirm. Her use of qualifiers like "seem important" and "seem not really before us" indicate a level of hesitancy in the exchange, although it is also possible that she wants counsel to confirm for the benefit of the other Justices what was at issue and what was not.

Some linguistic research also describes women's language as having higher values of affect[212] and sometimes containing more emotional language.[213] This assertion has been disputed by Seligman and others, who contend that speech patterns are influenced more by culture than by gender. Seligman does acknowledge, however, that there is a "female linked culture that can mold speech patterns, and that algorithms can successfully identify whether a man or woman is speaking over 90% of the time by means of these patterns.[214] According to Professor Janet Ainsworth, there is a fundamental difference between women's and

210. Trump v. U.S. Oral Argument, *supra* note 191, at 1:48:28.
211. *Id.* at 1:48:38.
212. Gleason, *supra* note 14, at 600.
213. *Id.*
214. Park et al., *supra* note 208, at 1, 2.

men's speech.[215] Women's speech tends to be indirect and polite, while men's speech is often more assertive and direct.[216] Assertive speech, according to Tannen is goal oriented, and was traditionally seen as the province of men. [217] Although this research about dichotomous ways of speaking has been challenged recently,[218] some stereotyped speech patterns remain present in female counsels' presentations and even some of the women Justices'.

Fisk and Ridgeway, along with other researchers, have pointed out that gendered stereotypes about men and women are still prevalent in society.[219] These stereotyped perceptions often reinforce the notion that women are less confident and less assertive than men.[220] When listeners perceive women's voices with higher intonations towards the end of the sentence, they assume that the speaker lacks confidence in what she is saying. The practice of letting one's voice drift upwards towards the end of a sentence is often used by women and is sometimes referred to as a "querclarative," a cross between a question and a declarative.[221] If speech is

215. Janet E. Ainsworth, *In a Different Register: The Pragmatics of Powerlessness in Police Interrogation*, 103 YALE L.J. 259, 262–64, 272–74 (1993).

216. *Id.*

217. TANNEN, *supra* note 203, at 239, 297.

218. *See, e.g.*, Emily Amanatullah & Catherine Tinsley, *Punishing Female Negotiators for Asserting Too Much . . . Or Not Enough: Exploring Why Advocacy Moderates Backlash Against Assertive Female Negotiators*, 120 ORG. BEHAV. & HUM. DECISION PROCESSES 110, 119 (2013).

219. *See* Susan R. Fisk & Cecilia L. Ridgeway, *Framing Gender*, *in* HANDBOOK OF THE SOCIOLOGY OF GENDER 157, 159–61 (Barbara J. Risman, Carissa M. Froyum & William J. Scarborough eds., 2d ed. 2018); Roche, Morgan & Fisk, *supra* note 18, at 3031.

220. *See* Jennifer M. Roche et al., *Gender Stereotypes and Social Perception of Vocal Confidence is Mitigated by Salience of Socio-indexical Cues to Gender*, 14 FRONT. PSYCHOL., Dec. 14, 2023, at 1.

221. *See* PAUL WARREN, *supra* note 20. Warren does not use the term "querclarative" but refers to a declaratory statement that sounds like a query. *See id.* The term was first used by J.M. Sadock at the Seventh Regional Meeting of the Chicago Linguistic Society. *See* Jerrold M. Sadock, *Queclaratives*, *in* PAPERS FROM THE SEVENTH REGIONAL MEETING OF THE CHICAGO LINGUISTIC SOCIETY 223, 223 (1971). As a former Moot Court Advisor and coach, I saw this characteristic in a significant number of women, especially when they were nervous. They did not intend their statements or answers to sound like questions

being used as a form of power in argument, women abandon all pretense of power by sounding tremulous and uncertain. It is also much easier to interrupt them when they speak this way.

Gleason's study primarily focused on the language and affect of women counsel, not so much the women Justices; although he and other researchers have noted that "[f]emale justices [are] likely [to] share many of the same experiences as female attorneys and may, therefore, be more sympathetic to their arguments."[222] Gleason also found that women counsel are less successful when they transgress gender norms for women speaking in oral argument or in their briefs, particularly when male Justices write the majority opinion.[223] These transgressions include being aggressive in oral argument or using emotional language in their briefs. Gleason pointed out that gender conformity with language norms is particularly important in the outcome of cases as gender related speech and writing transgressions tend not to be appreciated.[224] In other words, if women use gender related speech and don't transgress gender norms, they are more successful.[225]

Interestingly, women Justices have been derided in the media as aggressive and overly assertive in their questioning despite their apparent use of tag questions and speech imbued by traditional gender or culturally related gender characteristics. For example, an article in the *Seattle Times* described Justices Sotomayor and Kagan as "aggressive additions to what was an already

---

but by letting their intonation rise or their voices trail off towards the end of sentences they came across as timid and unsure.

222. Gleason, *supra* note 14, at 601; *see* Shane A. Gleason, Jennifer J. Jones & Jessica R. McBean, *The Role of Gender Norms in Judicial Decision-Making at the U.S. Supreme Court: The Case of Male and Female Justices*, 47 AM. POL. RSCH, 494, 496, 502–03, 515–16 (2018); Phillips & Carter, *supra* note 196.

223. Gleason, *supra* note 14, at 597.

224. *Id.* at 597, 604–05.

225. *Id.*

assertive court."[226] Additionally, Justice Sotomayor faced many questions over her aggressive style of questioning during her confirmation hearings for the Supreme Court. Judge Guido Calabresi, Sotomayor's mentor, was troubled by these allegations against Sotomayor and therefore began keeping track of the kinds of questions that she asked during oral argument, comparing them to those asked by her male colleagues. He "found no difference at all. . . . [and] concluded that all that was going on was that there were some male lawyers who couldn't stand being questioned toughly by a woman. It was sexism in its most obvious form."[227] Moreover, from the time that women Justices were nominated and confirmed to the Court, articles began appearing describing the women Justices as aggressive in their questioning. Linguistics professor Deborah Tannen pointed out that "[s]ome people don't expect women [Justices] to disagree or ask a lot of tough questions, so there is a tendency to use words like 'aggressive' or 'outspoken.'"[228] This standard has been applied to Justice Jackson too; two weeks after she joined the Court, she was identified as an "aggressive questioner."[229]

---

226. Robert Barnes, *Supreme Court Justices Seem to Be Among the Most Talkative Ever*, SEATTLE TIMES (Mar. 2, 2011, at 00:01 MT), https://www.seattletimes.com/nation-world/supreme-court-justices-seem-to-be-among-most-talkative-ever/ [https://perma.cc/W6SN-CJC5].

227. Nina Totenberg, *Is Sonia Sotomayor Mean*, NPR (June 15, 2009, at 00:35 ET), https://www.npr.org/2009/06/15/105343155/is-sonia-sotomayor-mean [https://perma.cc/EV5C-XWFY].

228. Mallary Tenore Tarpley, *As Supreme Court Begins New Term, How to Explain Justices' Silences, Interruptions, and 'Aggressive' Questions*, POYNTER (Oct. 3, 2011), https://www.poynter.org/reporting-editing/2011/as-supreme-court-reconvenes-how-to-understand-the-justices-silences-interruptions-and-aggressive-questions/ [https://perma.cc/RJK7-GJ8K].

229. Tannen is quoted in an article by John Fritze. *See* John Fritze, *Weeks Into the Job, Justice Ketanji Brown Jackson Is Already Having a Moment on the Supreme Court*, USA TODAY (Oct. 13, 2022), https://www.usatoday.com/story/news/politics/2022/10/13/ketanji-brown-jackson-making-waves-supreme-court/8189798001/?gnt-cfr=1&gca-cat=p [https://perma.cc/K9WG-4S5T]; *see also Justice Jackson*: *Report Card from Supreme Court Scholars*, A.B.A. (Aug. 4, 2023), https://www.americanbar.org/news/abanews/aba-news-archives/2023/08/report-card-from-supreme-court-scholars/ [https://perma.cc/JZ64-NQF2] (noting

V. WHAT'S A WOMAN TO DO?

It is clear that stereotyped expectations of how women Justices and advocates should behave and speak are still prevalent. Given those expectations, several available paths appear to be options open to women: these include convergence with gender and cultural norms, subverting and disregarding those norms by reasserting authority, and learning to speak up from an early age.

A. Interrupting the Interrupters: Adopting "Male" Patterns of Speaking?

In her talk at New York University Law School, Justice Sotomayor told those present that when she gets interrupted by counsel during oral argument, she often mirrored their behavior back to them. "I interrupt back," she told her audience.[230] Justice Sotomayor is not alone. An *Empirical Scotus* article documented how many of the Justices are speaking more and interrupting counsel more.[231] Adam Feldman analyzed the amount of time that each Justice spent speaking and noted that it has risen since 2020.[232] Additionally, the Justices spoke more in the 2022 Term than in any other Term, the year that Justice Jackson joined the Court. That rate dropped only slightly from 2022–2024, but it is clear that the women Justices now speak more than the men, with the exception of Justice Barrett.[233]

---

the Justice's aggressive questioning and jurisprudential approach of progressive originalism).

230. de Vogue, *supra* note 186.

231. *See* Feldman, *Measuring Oral Arguments*, *supra* note 131; *see also* Jake S. Truscott & Adam Feldman, *The New Hot Bench: With Jackson Leading the Way, the Justices Are Speaking More During Oral Arguments*, SCOTUSBLOG (Dec. 30, 2022), https://www.scotusblog.com/2022/12/supreme-court-new-bench-with-ketanji-brown-jackson-justices-speaking-more-oral-arguments/ [https://perma.cc/XRX9-JQ54] (noting increased questioning by the Justices).

232. *See* Feldman, *Measuring Oral Arguments*, *supra* note 131.

233. *See id.*

Despite her lack of seniority, Justice Ketanji Brown Jackson is one of the most prolific questioners; she spends about eight minutes speaking during each argument.[234] She is closely followed by Justice Sotomayor, who spends almost six minutes speaking during each argument. Justice Kagan is almost on a par with Justice Sotomayor. This may reflect the ideological alignment of the Justices, particularly during some of the contentious cases of the 2024 Term, as they may be feeding off each other's questions. In contrast, Justice Barrett spends only about two and a half minutes speaking. Justice Jackson has also adopted the habit of speaking over counsel if they try to interrupt her.

B. Reclaiming Their Voices: Dissenting from the Bench

One way Justices can speak out and continue to participate in deliberative democracy is through oral dissents from the bench. Justice Douglas once wrote

> [i]t is the right of dissent, not the right or duty to conform, which gives dignity, worth, and individuality to man. The right to dissent is the only thing that makes life tolerable for a judge of an appellate court . . . the affairs of government could not be conducted by democratic standards without it.[235]

Women Justices have been doing their best to participate in the democratic process through dissenting more frequently recently. I have argued elsewhere[236] that reading a dissent aloud from the bench when the majority opinion is announced is a form of democratic deliberation, or what Professor Lani Guinier referred to

234. *See* Feldman, *The Changing Face of Supreme Court Oral Arguments*, *supra* note 186; Devin Dwyer, *Justice Ketanji Brown Jackson Blasts 'Narrow Minded' Judging on Supreme Court*, ABC NEWS (June 20, 2025), https://abcnews.go.com/Politics/justice-ketanji-brown-jackson-blasts-narrow-minded-judging/story?id=123056694 [https://perma.cc/X3JF-NJGZ].

235. WILLIAM O. DOUGLAS, AMERICA CHALLENGED 4–5 (Princeton Univ. Press 1960).

236. Venter, *supra* note 123, at 335, 381–82.

as "demosprudence."[237] Guinier described demosprudence as a type of public deliberation characterized by popular participation in shaping and interpreting laws.[238] She saw dissents as "instantiating and reinforcing the relationship between public engagement and institutional legitimacy."[239] She asserted that these types of dissents occur when a Justice is strongly opposed to the majority's position and the dissent is intended to "inspire nonjudicial actors to participate in some form of collective problem solving."[240] These "demosprudential dissents" signal that there is strong debate still ongoing in our democracy about the correct course of action. And that the dissenting Justice strongly disagrees with the approach adopted by the Court.

These dissents are reflective of Habermas's discourse theory, that society should be engaged in a debate about the "best outcome." In an interview with C-SPAN posted on YouTube, Justice Jackson, one of the most prolific oral dissenters, stated that the "state of our democracy" keeps her up at night.[241] She went on to say that she is "really very interested in getting people to focus, to invest, and to pay attention to what is happening in our country and with our government."[242] The Justices use oral dissents as they clearly grab the public's attention and receive a lot of press when they occur because they are fairly unusual and somewhat dramatic events, especially since the Justices appear to be directly speaking to people, usually in relatively

237. Lani Guinier, *Foreword: Demosprudence Through Dissent*, 112 HARV. L. REV. 4, 16 (2008); *see, e.g.*, Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 12 YALE L.J. 2740, 2749 (2014).

238. Guinier, *supra* note 237, at 15–16.

239. Lani Guinier, *Courting the People: Demosprudence and the Law/Politics Divide*, 127 HARV. L. REV. 437, 442 (2013).

240. Guinier, *supra* note 237, at 16.

241. C-SPAN, *Justice Ketanji Brown Jackson on Dissents and What Keeps He Up at Night*, at 04:07 (Youtube, July 11, 2025), https://www.youtube.com/watch?v=AJ0ROPDGQaA [https://perma.cc/7S43-LGNX].

242. *Id.*

straightforward, accessible language. Samuel Moyn and Ryan Doefler pointed out in a *New York Times* opinion that "the truth is that, first and foremost, dissents are political acts in their own moment. Our justices should be evaluated for the good (or harm) they do now."[243] Dissents from the bench provide such an evaluation.

One of Justice Jackson's most impassioned dissents came in the case of *Moyle v. United States*, a case involving Idaho's prohibitive abortion law, which, on its face, seemed to conflict with Emergency Medical Treatment and Labor Act (EMTALA).[244] Justice Jackson's oral summary of her opinion from the bench managed to be both a concurrence and a dissent, although it was labeled a concurrence. While the Justice agreed with the majority opinion that the stay in the case should be lifted, she opined that the case should not be dismissed on the basis that certiorari had been improvidently granted.[245] Jackson chided the Court for failing to decide and dispose of the case on the merits, noting,

> Meanwhile, as this Court doddles and the country waits, pregnant people in emergency situations in that state and elsewhere are paying the price because their doctors have been kept in the dark about what the law actually requires. This Court had a chance to bring clarity and certainty to this tragic situation, and we have squandered it.[246]

Justice Sotomayor also engaged in vociferous oral dissents in the most recent Terms (2023–24, and 2024–25). In *City of Grants Pass v. Johnson,*[247] Justice Sotomayor decried the majority for permitting Oregon to enforce a municipal code that prohibited anyone,

---

243. Ryan D. Doerfler & Samuel Moyn, *A Plea to Liberals on the Supreme Court: Dissent with Democracy in Mind*, N.Y. TIMES (Dec. 22, 2024), https://www.nytimes.com/2022/12/20/opinion/supreme-court-liberal-dissent.html [https://perma.cc/4TJ5-MRZK].

244. Moyle v. United States, 603 U.S. 324, 338 (2024) (Jackson, J., dissenting).

245. Opinion of Justice Jackson at 00:01, *Moyle*, 603 U.S. 324 (No. 23-726), https://www.oyez.org/cases/2023/23-726 [https://perma.cc/Y3UF-7PKA].

246. *Id.* at 04:12.

247. 603 U.S. 520 (2024).

including homeless people, from camping in municipal parks overnight. The majority found that Grants Pass's code did not violate the Eighth Amendment's prohibition on cruel and unusual punishment, and, therefore, the city was therefore free to arrest homeless people for sleeping outside. Justice Sotomayor disagreed vehemently with the decision and ended her dissent by fervently hoping that "someday in the near future, this Court will play its role in safeguarding constitutional liberties for the most vulnerable among us because the Court today abdicates that role."[248] She also orally dissented in *Trump v. United States.*[249] In disagreeing with the majority that the President was entitled to immunity for his official acts, Justice Sotomayor spoke for almost 24 minutes and closed with the words "with fear for our democracy, I dissent," notably omitting the word "respectfully" from her dissent. In *SEC v. Jarkesy*[250] she lambasted the Court for failing to "act as a neutral umpire" in overturning decades of precedent.[251] In *United States v. Skrmetti,*[252] she accused the Court of "retreating from meaningful judicial review exactly where it matters most, the Court abandons transgender children and their families to political whims." She closed by dissenting not respectfully but "in

248. Dissenting Opinion of Justice Sotomayor at 07:22, *City of Grants Pass*, 603 U.S. 520 (No. 23-175), https://www.oyez.org/cases/2023/23-175 [https://perma.cc/F5XZ-EVXQ].

249. Dissenting Opinion of Justice Sotomayor, Trump v. United States, 603 U.S. 593 (2024) (No. 23-939), https://www.oyez.org/cases/2023/23-939 [https://perma.cc/LS7L-HNHQ].

250. 603 U.S. 109 (2024). The Court held that the SEC's use of in-house tribunals to determine if civil penalties against a defendant were warranted, violated the Seventh Amendment. *Id.* at 140–41. Such an action must be brought in a court of law where the defendant would be entitled to a jury trial. *Id.*

251. Dissenting Opinion of Justice Sotomayor at 08:34, *Jarkesy*, 603 U.S. 109 (No. 22-859), https://www.oyez.org/cases/2023/22-859 [https://perma.cc/TB6Q-E6HA].

252. 605 U.S. 495 (2025). The Court held in *Skrmetti* that a Tennessee state law banning puberty blockers and hormone therapy for the treatment of gender dysphoria in minors did not violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution. *Id.* at 500, 525–26.

sadness."[253] Sotomayor again orally dissented in *Trump v. CASA*,[254] a case which effectively ended nationwide injunctions. She referred to the majority decision as "a travesty for the rule of law."[255]

Justice Kagan saved her oral dissent for *Loper Bright Enterprises v. Raimondo*.[256] She also spoke for almost thirteen minutes and decried the majority for overturning *Chevron*, noting that "[a] settled precedent at the crux of modern governance thus yields to a bold assertion of judicial power."[257] She later went on to warn, "[i]n every sphere of current or future federal regulation, expect courts, and in particular, this Court, from now on to play a leading role, courts which do not know a lot about these issues and which have no business making the nation's policy choices."[258] It is clear from the language choices of the dissenting Justices that they want the public to pay attention to the role of the Court in a democracy. Oral dissents are one way to get that attention with extensive press coverage and dissemination of the dissenting Justice's words.

---

253. *Id.* at 579 (Sotomayor, J., dissenting); *see* Ryan Grenoble, *In Bitter Dissent, Justice Sotomayor Says Supreme Court 'Abandons' Transgender Kids*, HUFFPOST (June 18, 2025, at 11:29 ET), https://www.huffpost.com/entry/trans-kids-scotus-dissent-sonia-sotomayor_n_6852cd4ae4b0672778c4619e [https://perma.cc/4GQH-5DBN].

254. 606 U.S. 831, 879–921 (2025) (Sotomayor, J., dissenting). In *Trump v. CASA*, the Court determined that lower courts exceed the judiciary power when they grant nationwide injunctions, unless these injunctions are necessary to provide the formal plaintiff with "complete relief." *Id.* at 861–62 (majority opinion). The case involved an appeal over a lower court's granting of a nationwide injunction preventing the Administration's Executive Order ending birthright citizenship for the children of certain immigrants from going into effect. *Id.* at 837–39.

255. *See* Andrew Chung, *Supreme Court in Birthright Case Limits Judges' Power to Block Presidential Policies*, REUTERS (June 27, 2025, at 15:34 MT), https://www.reuters.com/legal/government/us-supreme-court-may-rule-allowing-enforcement-trump-birthright-citizenship-2025-06-27/ [https://perma.cc/MP2C-QDHT].

256. Dissenting Opinion of Justice Kagan, Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) (No. 22-451), https://www.oyez.org/cases/2023/22-451 [https://perma.cc/N9F3-P6Y3].

257. *Id.* at 12:47.

258. *Id.* at 08:29.

Moreover, dissents can have an impact. When Justice Ginsburg dissented from the bench in the *Ledbetter* case, she not only chided the Court for its narrow, cramped reading of Title VII, but she informed Congress that the "ball was in their court"[259] to remedy the statutory construction of Title VII adopted by the Court that resulted in Ledbetter's pay discrimination claim being time barred. Congress rose to the challenge and passed the Lilly Ledbetter Fair Pay Amendment, amending Title VII to conform to Justice Ginsburg's desired interpretation.[260]

CONCLUSION

As Justice Ruth Bader Ginsburg once noted, "Women belong in all places where decisions are being made. . . . It shouldn't be that women are the exception."[261] The sad reality remains that women may no longer be formally barred by law from speaking in public fora, as they were until 1920, but in practice they do not have the same opportunities to speak as men. Fewer opportunities exist for women to argue before the Supreme Court, and even the women who do get to appear are interrupted more often than men, as are the female Justices; even having ascended to such august positions is no guarantee of respect. The situation is self-perpetuating as, if men are treated with more respect in the courtroom, clients want to hire them, they get more experience, their influence grows, and women remain on the periphery.

This situation must change. Having women at the table helps ensure that better decisions are made, which

259. Oral Dissent of Justice Ginsburg at 03:50, Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618 (2007) (No. 05-1074), https://www.oyez.org/cases/2006/05-1074 [https://perma.cc/L2GL-ASYK].

260. The amendment is known as the Lilly Ledbetter Fair Pay Act of 2009. 42 U.S.C. § 2000(a).

261. Justice Ginsburg made this statement in a 2009 interview with USA Today. *See* Bill Mears, *Justice Ginsburg Ready to Welcome Sotomayor*, CNN POLITICS, https://edition.cnn.com/2009/POLITICS/06/16/sotomayor.ginsburg/index.html# [https://perma.cc/PQ4P-RYHM] (last visited Mar. 1, 2026).

is surely the better outcome for the development of our legal system. A study published in *Harvard Business Review* showed that having women on corporate boards diminishes the problem of pluralistic ignorance and makes discussions more nuanced and deeper.[262] Additionally, women may bring different perspectives into consideration. As the Court itself noted in *J.E.B. v. Alabama,* it is more democratic if representatives from all of the community gets to decide a case.[263] We need to hear women's voices without interruption in a Court where policy is being determined and law is being made.

Unless we are more cognizant of continuing bias against women in the highest Court, it will continue to persist. The male Justices need to set an example by not interrupting their female colleagues or disproportionately interrupting female counsel. The Chief Justice needs to ensure that Supreme Court rules and decorum are followed and check counsel if they interrupt the Justices. The Court's own ruling in *Students for Fair Admissions,* as well as anti-DEI initiatives,[264] have made it difficult, if not impossible, to discuss issues like gender-based biases and implicit discrimination. Nevertheless, a conscious effort must be made to ensure that women have equal opportunities to be hired as Supreme Court clerks, retained and promoted at law firms, and hired by the Solicitor General's Office, so that they can follow the trajectory to become stellar Supreme

262. Margarethe Wiersema & Marie Louis Mors, *Research: How Women Improve Decision-Making on Boards*, HARV. BUS. REV. (Nov. 17, 2023), https://hbr.org/2023/11/research-how-women-improve-decision-making-on-boards [https://perma.cc/GY6S-HJGP].

263. 511 U.S. 127, 145–46 (1994).

264. Exec. Order No. 14,151, 90 Fed. Reg. 8339 (Jan. 20, 2025), titled "Ending Radical and Wasteful Government DEI Programs and Preferencing," requires the termination of all "discriminatory programs, including illegal DEI and . . . [DEIA] mandates, policies, programs, preferences and activities in the Federal Government, under whatever name they appear." The third Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025), titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," requires executive departments and agencies to terminate "all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders and requirements."

Court advocates. All that women are seeking is equal opportunity under law, to participate and speak, and not to be interrupted when they are speaking.