"Excuse me –" Race and Intersectionality of Interruptions at the U.S. Supreme Court *

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Abstract

Racial and gender bias pervade American political institutions, and the Supreme Court is no exception. Women lawyers and justices are interrupted more and allowed to speak for less time than their male colleagues. We expect that stereotypes will also lead to biased treatment of attorneys of color, and will have the greatest impact on women attorneys of color due to their intersectional identity. In doing so, we introduce a refined measure of interruptions that more precisely captures oral argument dynamics. Using a database of the race of members of the Supreme Court bar and transcripts of all oral arguments held from October Terms 2009 – 2018, we find that women attorneys of color receive harsher treatment by the justices during oral arguments than their peers. We also find that when the case involves racial issues, attorneys of color are interrupted less than their white counterparts. Because oral arguments significantly shape justices' decision making, unequal treatment of attorneys has important implications for the law and policy created by the Supreme Court.

Keywords: Supreme Court, race and ethnicity politics, oral arguments, interruptions, judicial politics

Word Count: 10492

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Racial bias pervades American institutions, and no where is this more evident than in the legal system. Reports of people of color being treated unfairly fills news reports regularly, ranging from disproportionate police arrests to judges' more punitive criminal sentences. One aspect of this racial bias that is often overlooked but still has significant consequences on the treatment of people of color within the court system is racial biases exhibited against attorneys of color. The racial biases built into the legal profession make it difficult for attorneys of color to do their jobs and move up within their profession (Collins, Dumas and Moyer 2017*a*,*b*, Garth and Sterling 2018, Rider, Sterling and Tan 2016, Woodson 2014). Clients exhibit discrimination when selecting who they want to represent them (Goodman 2017, Nelson et al. 2019*a*), and biases among jurors make it more difficult for attorneys of color to win cases (Bowers, Steiner and Sandys 2001, Salerno and Phalen 2019, Sommers 2007). And, all of these challengers are exacerbated when the attorney of color is also a woman (Melaku 2019). While these barriers have been recognized by many in legal and scholarly communities, one area that has received scant attention is how judicial racial bias influences the treatment of these attorneys in court *during* the representation of their clients.

In this article, we examine racial and gender bias in the legal profession and the implications this has for legal representation. We pair a unique dataset developed by Lane and Schoenherr (NP) of the race and gender of all Supreme Court oral advocates who argued between 2009-2018 with original data collected from Supreme Court oral argument transcripts on attorney interruptions to determine whether attorneys of color experience unequal treatment during oral arguments. Whether conscious or unconscious, justice bias in questioning and interruptions of attorneys is a significant predictor of case outcomes and success (Black, Johnson and Wedeking 2012, Epstein, Landes and Posner 2010, Johnson et al. 2009). Existing literature shows that women oral advocates, and even women justices, are interrupted at a disproportional rate compared to their colleagues who are men (Feldman and Gill 2019, Jacobi and Schweers 2017, Patton and Smith 2017, 2020), and are therefore disadvantaged in many cases argued before the Court. We extend this important work and

build on the critical scholarship on racial bias in the legal profession by exploring whether attorneys of color face similar difficulties when arguing at the Supreme Court.

We make three significant contributions to the study of the roles and treatment of people in political institutions based on their identities, as well as the judicial politics literature. First, our systematic analysis of oral argument is one of the first to examine whether judges exhibit bias in their treatment of attorneys from minoritized ethno-racial groups and women of color in particular. Women attorneys face a number of challenges in the courtroom (Gleason 2020, Patton and Smith 2017, 2020), but so far researchers have not been able to analyze *which women* are most likely to experience this bias. Data on attorney race is difficult to obtain, which had previously made it nearly impossible to examine racial and intersectional bias in judicial politics in this way. Collins, Dumas and Moyer (2018) utilize a novel survey to understand attorneys perceived treatment by courtroom work groups, including judges, and find that bias is reported at a significantly higher level by non-white male attorneys. Widner, Thurman and Buehring (NP) hand coded attorney race for the 2019 and 2020 term of the Court to examine how the COVID-19 oral argument rule changes influenced judicial behavior and find that the protocols reduced the overall number of interruptions. We work to build on these findings related to gender and race to determine if this female attorneys of color have similar or even worse experiences in the courtroom compared to their white female colleagues and if attorneys' perceived bias in the courtroom can be systematically and empirically measured through judicial interruptions over a decade.

Second, our study assesses bias at the highest level of American's judicial system, the U.S. Supreme Court. By considering minoritized attorneys' inclusion and treatment in this critical venue and their potential impact on outcomes we contribute to the vast literature on their important role in American political institutions more broadly. Research shows that institutions produce fairer and more representative and legitimate outcomes when they are run by a gender and racially diverse body (Armstrong et al. 2021, Bowen and Clark 2014, Hayes and Hibbing 2017, Rhode 2017), particularly the judiciary (Boyd 2016, Kastellec 2013,

Scherer and Curry 2010, Sen 2015). Institutions, even those whose members are un-elected like the Supreme Court, are also more likely to be supported when individuals see people who look like them in positions of power (Armaly, Krewson and Lane NP, Badas and Stauffer 2018, Evans et al. 2017, Kaslovsky, Rogowski and Stone 2019, Ostfeld and Mutz 2021), because they often believe they are more likely to represent their interests (Bonneau and Rice 2009, Clayton, O'Brien and Piscopo 2019). By focusing our analysis specifically on attorneys who argue at the Supreme Court we provide insight into the extent of minoritzed attorneys' opportunities to use their unique lived experiences in their approach to law to influence major national policy (Collins, Corley and Hamner 2015, Corley 2008). This experience may be particularly valuable in cases involving racial issues. If racial bias increases interruptions and reduces these attorneys' opportunities to share new information and make their argument, similar in nature to gender biases (Jacobi and Schweers 2017, Patton and Smith 2017), it is problematic for several reasons (Johnson 2004*a*, Johnson, Wahlbeck and Spriggs 2006). First, if their likelihood of influence at the highest court in the land, and thus national policy, is significantly lower than other attorneys', this creates another impediment to people of color's advancement in the legal profession. Next, if interruptions hinder their ability to shape the Court's outcomes, the presence of attorneys of color and their diversity is simply descriptive. That is, they are unable to *substantively* shape policy. What is more, the Supreme Court is the self-designated federal institution to protect minority rights against the will of the majority, but this is difficult if people of color are unable to even get a word in.[1]

Our third contribution is a more refined approach to measuring attorneys' treatment during oral argument. Spirited back and forth is a time honored tradition at the Supreme Court. There is a fine line between justices demonstrating interest in an attorney's position versus barely allowing them to speak. That is, not all interruptions should be treated the same (Collins Jr, Ringhand and Boyd 2023). We introduce a refined measure of net inter-

[1]See footnote 4 in *United States v. Carolene Products Company*, 304 U.S. 144 (1938) written by Justice Harlan Fiske Stone.

ruptions that allows us to better distinguish between respectful and disrespectful treatment. We also examine the overall impact of justices speaking on attorneys' ability to make their cases.

This paper proceeds as follows. We begin by reviewing the literature on gender racial bias in the legal profession and lay out our expectations for how it might be exhibited during oral arguments at the Supreme Court. Next, we describe our data collection and the measures we will use to test those expectations. We then present our analysis and findings. In line with our expectations, we find that women of color face the harshest treatment by the justices, both in terms of our interruptions measure and their opportunity to speak. However, we also find that when hearing cases focusing on race-related issues, the justices interrupt attorneys of color significantly less than they do white attorneys. Contrary to our expectations, as a proportion of total words spoken during oral arguments, male attorneys of color speak most overall.

Bias in the Courts

Racial bias impacts decision making at all levels of the US Court system. Despite the fact that most Americans have no legal training, they are expected to participate in the criminal justice process as jurors. A wide-ranging group of people are tasked with the duty to reach a collective and unanimous decision that has serious implications for the defendant. While diversity is important in this deliberative process (Phillips et al. 2014), it does not prevent juror bias from impacting decision making. Perceptions of the defendant influence case outcomes and sentencing recommendations (Everett and Wojtkiewicz 2002, Exum 2019, Kovera 2019, Spohn 2013), but bias even extends to impressions of attorneys. When describing a defense attorney in a capital trial one juror said, "When I first saw the defense attorney I thought he was the defendant. The defense attorney looked like the thug of the world" (Trahan and Stewart 2011, 97). And when examined systematically, similar perceptions have significant negative consequences on trial outcomes for women attorneys,

attorneys of color, and their clients (Cohen and Peterson 1981, Hahn and Clayton 1996, King, Johnson and McGeever 2010, Sommers 2007).

While legal education encourages lawyers and attorneys to focus on law and legal reasoning, they are also people with biases that do not turn off simply because they were trained to use the law (Epstein and Knight 1998, Segal and Spaeth 2002). As in other professional and public settings, people of color face barriers to entry and adversity once at the counsel's table (Rhode 2013). Women and people of color are often stereotyped and perceived as less competent (Brown and Campbell 1997, Collins, Dumas and Moyer 2017*b*), despite often having even more qualifications than their male and white colleagues (Moyer, Harris and Solberg 2022). Social capital theory illuminates other ways that attorneys from traditionally underrepresented groups are disadvantaged (Garth and Sterling 2018). white men follow typical career paths: they attend top law schools, get judicial clerkships, and then get jobs with brand name firms or high profile public interest firms. This pathway strongly favors white men who fit better in these elite legal careers because they are the types of people who have always been in them. Conversely, women and people of color often must find alternative routes where diversity, innovation, and the high quality work of women and ethno-racial minoritized groups is valued and accepted, regardless of social capital.

Disadvantage is often compounded the longer attorneys stay in the profession because of cultural homophily, the tendency to develop relationships with similar people. Put simply, birds of a feather flock together (Woodson 2014). Supervisors develop relationships with certain associates and are more likely to give them important assignments, which build expertise, experience, and competence (Diaz and Dunican Jr. 2011). Because many attorneys of color have less in common with their supervisors, and therefore have less contact with them, this allows white male attorneys to move up in their careers while the careers of people of color remain more stagnant (Carbado and Gulati 2002, Rider, Sterling and Tan 2016). This particular difficulty is heightened for women of color because they face a double bind of "otherness" (Melaku 2019). That is, attorneys of color that are men have

shared gender traits with many of their supervisors, as a result they are asked to participate in extracurricular networking opportunities like golf and other sporting activities, after work drinks, etc. (Melaku 2019). Similarly, women have shared racial identity with their supervisors and therefore receive some of the privileges of in-group status because people are more comfortable interacting with people that look like them (Collins Jr, Ringhand and Boyd 2023, Melaku 2019). Clients exhibit similar bias towards white male cultural norms, often requesting white male lawyers even if a woman or person of color is more qualified or specializes in the requested area (Goodman 2017, Nelson et al. 2019*a*), because of in-group trust (Brewer 1999).

Part of this bias exhibited by clients, peers, and supervisors, (and judges as we will discuss in the next section) in the legal profession has been attributed to role schemas, particularly in relation to female attorneys (Gleason 2020, Gleason and Ivy 2021, Gleason and Smart 2022, Patton and Smith 2017, 2020). Schemas are shortcuts individuals use to process large amounts of stimuli (Neisser 2014, Patton and Smith 2017). New information mixes with existing stereotypes to influence an individual's expectations about others (Lemons and Parzinger 2007). At the Supreme Court, as in other political arenas, White men are stereotyped as more credible, authoritative, and rational, whereas women are assumed to be emotional, gentle, and cautious (Huddy and Terkildsen 1993, Patton and Smith 2017, Szmer, Sarver and Kaheny 2010).

We expect similar stereotypes to extend to attorneys of color. People of color have faced stereotypes of laziness, lack of motivation, and less credibility (Huddy and Feldman 2009, Peffley and Shields 1996). In professional settings, out-group members like women or people of color may be presumed to be incompetent (Cuddy, Fiske and Glick 2008, Nelson et al. 2019*b*). In policymaking forums, they also face stereotypes about their presumed expertise. Women are expected to know and care most about "women's issues" and people of color are presumed to care most about crime and welfare policy (Peffley, Hurwitz and

Sniderman 1997).[2] Elites are not immune to these stereotypes. In-fact, in-group members (i.e., white judges and attorneys, particularly men), with power may be even more likely to rely on stereotypes as shortcuts (Collins Jr, Ringhand and Boyd 2023).

We expect that women of color are significantly more disadvantaged than any other group because they face stereotypes related to the intersection of both their race and gender. Intersectionality is the idea that different forms of marginalization interact in ways that lead to unique – not merely additive – forms of discrimination and oppression (see, e.g. Hancock 2007, Nash 2018, Reingold, Haynie and Widner 2021). Stated differently, the unique experience of otherness by women of color make them more likely to experience discrimination and marginalization in political spaces than any other group including men of color and white women (Hawkesworth 2003). And while Black women candidates have been able to establish a unique political identity and mobilize voters (Brown and Lemi 2020), the same is not true in the legal profession — a landscape dominated by by white men. For example, Black women in the legal profession face difficult choices about whether to try to conform to standards of "professional" appearance that are centered on white women's body and hair types or risk possible damage to their careers (Pratt 2012). Even when they rise to high positions like judgeships, Black women report being treated with disrespect by attorneys and litigants (Jacobi and Schweers 2017, Means 2022). Thus, we expect that not only racial and gender identity but also race-gender identity will affect treatment of attorneys appearing in the Supreme Court.

[2]We recognize that these stereotypes have largely been studied in relation to Black and Brown people, while stereotypes related to Asian Americans (Visalvanich 2017), which are sometimes referred to as a "model minority" can be more positive. Nevertheless, Asian Americans commonly face negative racial bias (Chou and Feagin 2015, Ruiz, Im and Tian 2023). Many of the Asian Americans attorneys at the Supreme Court are South Asian with darker skin tones, which is related to negative perceptions and treatment similar to those with Black and Brown skin, regardless of their status as Asian American (Levchak and Levchak 2020).

Supreme Court Oral Arguments and Interruptions

Given that many of the most well-trained legal experts fail to put aside their in-group favoritism and out-group biases and stereotypes, we may expect judges and justices to do the same. One way such bias may manifest is through less respectful treatment. In the Supreme Court context, this may mean that an attorney appearing before the Court may be interrupted more frequently or have a larger amount of their speaking time hijacked by the justices (Patton and Smith 2017). In the past, judicial scholars may have thought this was inconsequential because oral arguments were simply "a dog and pony show" (Phillips and Carter 2010) – that is, proceedings that took place despite the fact that the justices had already made up their minds. However, a large body of work by Timothy Johnson and others has revealed that this 60 minute segment in the life of each case is incredibly consequential. First, the advocate who performs better is significantly more likely to succeed on the merits (Johnson, Wahlbeck and Spriggs 2006). Predictably, the attorneys who perform better are those who are part of the elite Supreme Court Bar (Lazarus 2007, Roberts Jr 2005), because the justices know what they want from oral arguments and experienced oral advocates know how to give it to them (Sullivan and Canty 2015). Repeat-player attorneys that have argued before the Court multiple times are significantly more likely to succeed (McGuire 1995, Nelson and Epstein 2022). Similarly, the Office of the Solicitor General, which has a unique relationship with the Court and is even referred to as "The Tenth Justice," also has an incredibly high level of success (Black and Owens 2012, 2013, Schoenherr and Waterbury 2022). While the performance and argument made by these skilled attorneys is important, it is likely because of the way they handle the questions the justices ask. The justices use oral arguments to learn new information (Johnson 2001, 2004*a*). This information can be persuasive enough to alter justices' votes (Ringsmuth, Bryan and Johnson 2013), and can even be included in the final written opinion (Benoit 1989, Cohen 1978).

Attorneys can and do leave impressions on the justices during oral arguments, but

these arguments are also an opportunity for the justices to persuade one another based on their preferences (Black, Johnson and Wedeking 2012, Kimmel, Stewart and Schreckhise 2012). Theodore Olson, who has appeared at the Court nearly 70 times described oral arguments as, "highly stylized Japanese theater" (Johnson et al. 2009, 246), because of the way justices use oral arguments to persuade and even block other justices from speaking by interrupting one another (Black, Schutte and Johnson 2013, Jacobi and Rozema 2018) (but see Knox and Lucas (2021) for an alternative theory). What is more, the justices' behavior during these proceedings typically show their hand (Johnson et al. 2009). In reviewing her notes from oral arguments, Court reporter Linda Greenhouse revealed that she was able to predict case outcomes based on the justices' behavior (Black et al. 2011, Greenhouse 2004). With more data and sophisticated methods, political scientists have done the same. Dietrich, Enos and Sen (2019) show that justices provide insight with the tone of their voice. Others find that the number of words or the number of questions directed toward a particular attorney results in a lower winning percentage (Epstein, Landes and Posner 2010, Jacobi and Sag 2019, Johnson 2001, Johnson, Black and Wedeking 2009). Often the way justices speak more is by interrupting the attorneys, and therefore increased interruptions correlate with a lower likelihood of success.

We are among the first to systematically examine judicial racial and race-gender bias directed towards attorneys, particularly at the Supreme Court, but research on judicial gender bias is well documented. Justices are significantly more likely to interrupt colleagues and attorneys who are women (Feldman and Gill 2019, Jacobi and Schweers 2017, Lindom, Gregory and Johnson 2017, Patton and Smith 2017, 2020). Even when women oral advocates win at the Supreme Court, they do not receive the benefit of having to answer fewer questions (Jacobi and Schweers 2017). These interruptions theorized to come from either conscious or unconscious bias as a result of negative gender stereotypes or from role schemas that situate white men as the ideal of what an attorney should be (Patton and Smith 2017). This creates in an uphill battle for woman advocating before the Court (Hack and Jenkins 2021),

especially when they fail to adhere to traditional gender norms (Gleason 2020, Gleason and Ivy 2021, Gleason and Smart 2022). Consistent with existing literautre, we expect:

- **Hypothesis 1:** Interruptions will be higher among women attorneys.
- **Hypothesis 2:** Words spoken will be lower among woman attorneys.

We expect attorneys of color to face similar challenges as women. Justices were trained in the same predominately white settings where attorneys of color first begin to experience discrimination, and therefore we do not expect this to stop simply because they transitioned from attorney to judge. Even if justices are not consciously biased against non-white attorneys, they will rely on schemas and stereotypes – as they do with gender – to draw conclusions about attorneys, particularly those they are unfamiliar with (Sidanius et al. 2004, Winter 2008). While stereotypes are typically negative for the person being labeled (Carr and Steele 2010, Shapiro, Williams and Hambarchyan 2013, Steele 1998), even when they are not, recent research still shows that they work to benefit those who are members of the majority's group (Portmann 2022). This means even if a justice is not racially biased, he or she is likely to still show favoritism towards their own identity group. We believe this will manifest itself through the disrespect for normal conversational turn taking at oral arguments due to the bias most justices will show towards attorneys of color (Collins Jr, Ringhand and Boyd 2023). Accordingly, we expect:

- **Hypothesis 3:** Interruptions will be higher among attorneys of color.
- **Hypothesis 4:** Words spoken will be lower among attorneys of color.

Given the existing research on the "otherness" most women of color face in the legal profession we expect interruptions to be the most pervasive when they argue a case compared to all other attorneys. This is because they face the same negative stereotypes related to their gender that white women encounter; and they also face stereotypes related to their race. Even in spaces where women of color can succeed, they are punished and negatively perceived when they are assertive (Hicks 2017, Lemi and Brown 2022), a necessary trait for oral advocates. Additionally, interruptions are often the result of one person taking control

of the conversation and demonstrating their power by interrupting another (Anderson and Leaper 1998). Judges already have more power and status over attorneys as the decision makers. When women of color argue, societal stereotypes that rely on gender and race to define power dynamics create an even greater power differential between the attorney and the majority white and majority male bench. As such, we expect the most bias to manifest itself through interruptions and words spoken for women of color:

- **Hypothesis 5:** Interruptions will be highest among female attorneys of color.
- **Hypothesis 6:** Words spoken will be lowest among female attorneys of color.

Data and Measures

Our data for this project combines novel data on justice-attorney interruptions with data on attorney identity (Lane and Schoenherr NP). The oral argument data comes from 10 years of transcripts downloaded from the Supreme Court's website.[3] Specifically, we collected the transcripts for all orally argued cases from the October 2009 term through the October 2018 term. We begin our data collection in the first year that the Supreme Court had more than one justice of color – the year Justice Sonia Sotomayor was confirmed. We stop our data collection at the 2018 term because the 2019 term was impacted by the Covid-19 pandemic and the mode of oral arguments switched from in-person to teleconference.[4] These transcripts were converted into text data and summarized in `R`.

We operationalize negative treatment during arguments in two ways. First, to capture disrespect, we consider mid-sentence interruptions. Back and forth exchanges are a normal part of oral argument, but justices can wait for a natural pause in conversation to interject with a question or they can cut the attorney off mid-sentence. Such mid-sentence interruptions are abrupt and break conversational rules of turn taking, thus throwing an attorney off balance (Collins Jr, Ringhand and Boyd 2023, Smith-Lovin and Brody 1989).

[3] `https://www.supremecourt.gov/oral_arguments/argument_transcript/2021`.

[4] For more information on this, see Houston, Johnson and Ringsmuth (2023).

Supreme Court transcripts indicate a mid-sentence interruptions with dashes at the end of speaker's line of text. Sometimes, however, the attorney does not immediately recognize that they have been interrupted and keeps talking. This cross-talk shows up in the transcript as a series of mutual interruptions. For example, the oral argument *Department of Commerce v. New York* (2020), the case about whether the Trump administration could include a citizenship question in the 2020 census, included the following exchange between Justice Sonia Sotomayor and Solicitor General Noel Francisco:

> **Francisco:** Your Honor, in 1960, it didn't appear in anything, and it was moved on to the American Community Survey.
>
> **Sotomayor:** But – but why –
>
> **Francisco:** That was part of an overall movement of most of the demographic – I'm sorry, onto the long-form census, not the American Community Survey. And that was part of a larger process that moved a large number of demographic questions off of the short form and onto the long form. We no longer have a long form, so then the question is do you reinstate the long form or do you, in fact, move it back onto the short-form census.
>
> **Sotomayor:** But didn't – didn't –
>
> **Francisco** It was eminently –
>
> **Sotomayor** – didn't the Census Bureau give a reason why it was dropped?

Without accounting for mutual interruption, this exchange would be coded as an interruption – and a sign of disrespect – to Solicitor General Francisco. However, in context the interruption does not seem rude. Sotomayor started to insert a question respectfully at the end of a point, and was merely trying to finish her question. Francisco's mid-sentence "sorry" suggests that he did not immediately recognize that she was talking. If anything, his decision to keep talking at that point suggests that he is the one who is being less respectful in this exchange. A close look at the transcripts reveals that most of the mutual interruptions follow this pattern – attorneys who are interrupting the justices who are questioning or

interrupting them are either doing it accidentally or are pushing through to make a point before the new question is completed. This creates a heightened chance that the justice will further interrupt. Moreover, a justice may feel less inclined to resist interrupting someone who frequently interrupts them. In such a case, measuring interruptions by the justice only does not adequately capture the dynamic of the argument.

To account for this, the first measure we use is *Net Interruptions* – the difference between the total number of times an attorney was interrupted by the justices in a case and the total number of times an attorney interrupted the justices. This measure is an improvement over the raw counts of interruptions used in previous studies because incidents of cross-talk can lead to spurious results. If racial bias is operating, we expect *Net Interruptions* of lawyers of color to be higher than for White lawyers and the highest for female attorneys of color.

Another way our measure offers an improvement over previous studies is in recognizing that not all mid-sentence interruptions are equally rude. Sometimes the justices interrupt politely, saying things like, "excuse me," "pardon me," or "I'm sorry." Additionally, sometimes interruptions are affirming – the justices interject to express agreement, saying things like "yes," "right," or "uh-huh," but do not pose a new question, allowing the attorney to continue speaking. The positive or polite nature of these interruptions makes them different from interruptions where the a new speaker takes over the conversation (Collins Jr, Ringhand and Boyd 2023). That being said, they may arise due to the same social-dynamics of the interrupter viewing the speaker as needing assistance or encouragement because of their lower status. For this reason, we coded for whether an interruption was polite or affirming, based on whether the interruption began with these and other similar words and phrases.[5] Approximately 9% of all interruptions of attorneys in our period of study were categorized

[5]Specifically, an interruption is coded as "polite" if it begins with any of the following words or phrases: excuse, pardon, sorry, I'm sorry, if I may, yes, yeah, right, that's right, sure, okay, I see, and uh-huh. This list was developed by examining interruptions in a random sample of transcripts.

as polite. In our main analysis, *Net Interruptions* excludes these polite interruptions.[6] To capture some of the dynamics of different attorney's interactions with specific justices, the *Net Interruptions* variable is coded at the attorney-case-justice level. In other words, each attorney in each case has multiple observations – one for each justice who spoke during the case – and each observation is the *Net Interruptions* by that justice. Justices who do not speak at all during the case, either because they were absent or because they chose not to participate in discussion, are excluded from the analysis for that case.

The second way justices' negative treatment of an attorney may manifest is by talking more during that attorney's allotted time, giving the attorney less opportunity to develop arguments or respond to justices' concerns. Our second dependent variable, *Proportion of Words Spoken*, is intended to capture this. It is calculated as the number of words an attorney spoke during their oral argument divided by the total number of words spoken by anyone during the period of their argument.[7] If racial bias is operating, we would expect the *Proportion of Words Spoken* to be lower for lawyers of color than for white lawyers, and lowest overall for women lawyers of color. This variable is calculated at the attorney-case level, rather than justice by justice. This allows us to examine the overall effect of interruptions and domination on an attorneys' presentation of their cases.

Table 1 shows the mean, standard deviation, minimum and maximum for both dependent variables. Note that there is a small number of attorneys (6 in total) who interrupt justices more than they are interrupted, so their *Net Interruptions* score is negative. There are also a small number of attorneys who delivered arguments as amicus curiae and received no interruptions and very few questions, resulting in them speaking almost all of the words during their arguments.

We merge our transcript data with attorney racial identity data from Lane and

[6]As a robustness check, an analysis using all interruptions, with the number of times the attorney interrupted the justice and the polite interruptions included as controls, is included in the Appendix.

[7]We use proportion of words spoken rather than proportion of time because what is important is the attorneys 'ability to get their points across, and word-based measures better capture this opportunity.

Variable	Mean	Std. Dev.	Minimum	Maximum
Net Interruptions	1.827	2.505	-6	27
Proportion Words	0.6287	0.1012	0.3251	0.9874

Table 1: Averages and range of outcome variables of interest

Schoenherr (NP). Inspired by Shah and Davis's (2017) work on legislator identity, these data utilize a combination of crowd-source coding based on attorney photos and names, naive bayesian analysis based on attorney names, hybrid facial recognition and attribute analysis, and expert coding to determine if a Supreme Court oral advocate falls into one of two groups: White or non-White. Instead of relying on one method to identify which group these attorneys belong to, Lane and Schoenherr (NP) rely on all four to identify the strengths and weaknesses of each. Our data includes all attorneys for which a photo was able to be located from the 2009 - 2018 terms of the Court, which includes 718 attorneys.[8]

The attorney racial identity data are used to create our primary independent variable of interest, *Person of Color*. The vast majority of non-White attorneys are of Asian descent. Unfortunately, there are too few attorneys in other ethno-racial categories to disaggregate race. Therefore, we use a dichotomous indicator based on Lane and Schoenherr's (NP) White and non-White coding of attorneys. If an attorney falls into the non-White category they are coded as a 1 for this variable and if they are in the White category they receive a 0. Similarly, *Woman* is a dichotomous indicator of an attorney's gender, which is coded as 1 if the attorney is referred to in the transcript as "Ms." or as "General Kagan,"[9] and 0 otherwise.[10] Previous research on gender schemas and interruptions shows that women are

[8]Although Lane and Schoenherr's (NP) work dates back to 2006, we start our analysis in 2009, the first year there were two justices of color. Of those, they were only unable to locate photos for nine of the attorneys who appeared during this period.

[9]Solicitors General are referred to as General rather than as Mr. or Ms. in the transcripts. In the time frame of our study, Elena Kagan was the only female solicitor general referred to in this manner.

[10]To our knowledge, there is yet to be an oral advocate at the Supreme Court to identify as they/them /their, and therefore we believe a simple dichotomous indicator of attorney gender is suitable for this study. For these same reasons, we are unaware of an oral advocate who identifies as a trans-man or women so we we also use woman (man) and female (male) interchangeably.

disproportionately interrupted at the Court, regardless of their position (Feldman and Gill 2019, Jacobi and Schweers 2017, Lindom, Gregory and Johnson 2017, Patton and Smith 2017, 2020). However, because data on the race of attorneys had not previously been available, these studies did not look at the intersectional effects of race and gender together on interruptions. To account for the intersectional disadvantages facing women of color and test hypotheses 5 and 6, we interact the *Person of Color* and *Women* variables.

We are primarily interested in racial and intersectional effects, so because Patton and Smith (2017) found that the usual patterns of gendered interruptions are reversed when a women's issue is at the center of the case, we used the Supreme Court Database (SCDB) issue codes to create a binary variable for whether the case involved a racial issue (Spaeth et al. 2020).[11] The racial issue variable is interacted with the Person of Color variable. Unfortunately, only one woman of color in our data argued a case involving a racial issue, so we are unable to test the intersectional effects of racial issues.

Following the other interruptions and oral argument literature (Johnson 2004*b*, Patton and Smith 2017, Widner, Thurman and Buehring NP), we control for a number of other attorney and case level variables. First, research suggests that attorneys who have a special relationship with the Court may be treated differently. We control for three different types of special relationships. First, because justices may be more familiar with attorneys who were former clerks, they may rely less heavily on stereotypes and more on knowledge of that individual. Therefore, we control for former clerk status (Black and Owens 2021). We measure this in two ways. First, we have a dichotomous variable indicating whether the attorney has ever clerked at the Supreme Court. This measure is used in the case-level analysis for *Proportion Words*. Second, because former clerks will have the closest relationship with the particular justice for whom they clerked, in the *Net Interruptions* analysis, we use a variable that indicates whether the attorney clerked for the interrupting

[11]Specifically, a case is coded as a racial issue if it falls under a racial discrimination code or relates to immigration. The issue codes used to create this variable are 20040, 20050, 20060, 20070, 20075, 20080, 20120, 20260, 20270, 20280, 20290, 20300, and 20310.

justice.

Second, familiarity may come from having interacted with the same attorneys before in other arguments. Prior research has found that previous oral argument experience significantly increases the likelihood of success at the Court (Johnson 2004*b*, McGuire 1995, Nelson and Epstein 2022), so we control for the attorney's prior experience in oral argument. Following previous studies, this variable is coded as the log of previous appearances, in recognition of the fact that there is diminishing impact from repeated interactions once an attorney is well known by the Court. Third, the Supreme Court has a special relationship with the Office of the Solicitor General, and attorneys representing that office have particular influence and prestige (Black and Owens 2012, Black et al. 2020, Pacelle Jr et al. 2017). We expect all of these relationship variables to decrease *Net Interruptions* and increase the *Proportion of Words Spoken*.

From the SCDB, we also collected information on the cases and the ideological direction of the arguments. Justices have ideological preferences that influence how they approach particular cases (Segal and Spaeth 2002), and thus we expect they will show greater deference to the attorney with whose argument they are ideologically aligned. In the *Net Interruptions* analysis, we capture ideological compatibility similarly to past justice-attorney level analyses such as Johnson, Wahlbeck and Spriggs (2006). Using the SCDB we determine if the lower court made a liberal or conservative decision. If the lower court made a liberal (conservative) decision, this implies that the petitioner (respondent) at the Supreme Court is making a conservative (liberal) argument. We then use Martin and Quinn (2002) dynamic ideal point estimates (MQ Scores) each term to determine a justice's ideological preference. Larger values on MQ Scores represent justices with more conservative preferences and lower values (more negative) represent more liberal preferences. If an attorney is arguing the liberal position at the Supreme Court, we code ideological compatibility as the negative value of the MQ Score; and if they are arguing the conservative position we use the each justice's unaltered MQ Score.

Since the *Proportion Words* analysis is at the case level, instead of justice-level ideological compatibility we use a dummy variable for whether the lawyer's side was ideologically aligned with the majority of the justices. This is coded as 1 if the lawyer took a conservative position and 0 otherwise.[12] We include issue area fixed effects in all of our models to account for the fact that the subject matter of the case may affect the intensity or character of justices' interactions with attorneys.

We also control for whether the lawyer was arguing on behalf of the petitioner. The justices often grant certiorari because they wish to reverse the decision below, so the petitioner is more likely to win the case (Collins 2004). Additionally, petitioners are given the opportunity to present a rebuttal, and rebuttals are generally interrupted less frequently that an attorney's main argument. In the *Net Interruptions* models, we also control for the total number of words spoken by anyone during the attorney's argument, because arguments that go on longer have more opportunity to be interrupted.[13] Finally, we include term fixed effects to account for the particular political conditions surrounding a given term. Table 2 displays the mean values of each of our independent and control variables.

Table 2: Summary Statistics

Variable	N	Mean	Std. Dev.	Min	Max
Person of Color	989	0.101	0.302	0	1
Woman	989	0.137	0.343	0	1
Former Clerk	989	0.464	0.499	0	1
Prior Appearances	989	17.361	25.482	0	126
Solicitor General	989	0.514	0.5	0	1
Ideological Compatibility	989	0.242	0.428	0	1
Racial Issue	989	0.035	0.185	0	1
Petitioner	989	0.495	0.5	0	1
Argument Words	989	4409.608	1199.31	996	8131

While we have full demographic and argument data on all attorneys who argued

[12]The Court had a conservative majority for the entire period of our study.

[13]This control is not included in the *Proportion of Words Spoken* models because it is already a component of the calculated variable.

before the Court from the October term 2009 through the October term 2018, we only have the full set of control variables for the cases in which only one attorney argued for each side. Approximately 10% of the arguments in those cases were made by attorneys of color, and 13.7% were made by women. Women of Color presented less than 1% of these oral arguments. Less than 4% of arguments involved racial issues, and, as mentioned previously, only one of these was delivered by a women of color.

Results

We begin by examining the effect of race and gender on *Net Interruptions*. Table 3 presents results of three models: the first focuses on the *Person of Color* variable alone, the second includes the interaction between being a *Person of Color* and a *Woman*, and the third examines the interaction between the *Person of Color* and *Racial Issue* variables. All models are estimated using OLS with issue area and term fixed effects.[14] The models do not support hypothesis three. There is no significant effect of attorney race on *Net Interruptions* in the first or second models, and the coefficient is in the opposite direction of what we expected.

However, the models with interactions provide some interesting nuance. Model 2 suggests that White women may actually be interrupted less during our period of study than White men. The interaction between *Person of Color* and *Woman* is significant and provides evidence that, consistent with hypothesis five, it is actually women of color who are interrupted most frequently. Figure 1 illustrates the relationship between race, gender, and

[14]Although this is a count variable of limited range, because we have some negative values on our dependent variable, we are not able to run a negative binomial regression. As an alternate specification, we estimated negative binomial models using the total (rather than net) number of interruptions as the dependent variable and the number of times the lawyer interrupted the justice and the number of polite interruptions as control variables. These models are presented in Table A1 in the appendix. The results are largely consistent. The *Person of Color* variable does change direction in the first model but is still not significant. Moreover, the "As Interrupter" and "Polite Interruption" control variables are highly significant. The fact that these variables, which are not really independent of the outcome variable in those models, seem to matter supports our decision to fold them into the *Net Interruptions* measure in our primary analyses.

	Dependent variable:		
	Net Interruptions		
	(1)	(2)	(3)
Person of Color	0.012	−0.048	0.096***
	(0.034)	(0.036)	(0.035)
Woman		−0.171***	
		(0.032)	
Racial Issue			0.169**
			(0.067)
POC * Woman		0.559***	
		(0.115)	
POC * Racial Issue			−1.847***
			(0.160)
Clerked For	−0.376***	−0.380***	−0.376***
	(0.060)	(0.060)	(0.060)
Petitioner	−0.145***	−0.150***	−0.142***
	(0.020)	(0.020)	(0.020)
Log Prior Appearances	−0.057***	−0.061***	−0.054***
	(0.009)	(0.009)	(0.009)
Solicitor General	0.134***	0.135***	0.122***
	(0.029)	(0.029)	(0.029)
Ideological Compatibility	−0.226***	−0.226***	−0.225***
	(0.006)	(0.006)	(0.005)
Argument Words	0.001***	0.0005***	0.0005***
	(0.00001)	(0.00001)	(0.00001)
Constant	0.343***	0.403***	0.365***
	(0.058)	(0.059)	(0.058)
Observations	61,707	61,707	61,707
R^2	0.091	0.091	0.093
Adjusted R^2	0.090	0.091	0.092
Residual Std. Error	2.511 (df = 61680)	2.510 (df = 61678)	2.508 (df = 61678)
F Statistic	237.156*** (df = 26; 61680)	221.829*** (df = 28; 61678)	225.523*** (df = 28; 61678)
Note:			*p<0.1; **p<0.05; ***p<0.01

Table 3: Effect of attorney race on net interruptions, calculated with issue area and term fixed effects

Net Interruptions. We see that the estimated interruptions are very similar for white men, white women, and men of color, while the estimated value for women of color is about 10% higher than that for all other attorneys.

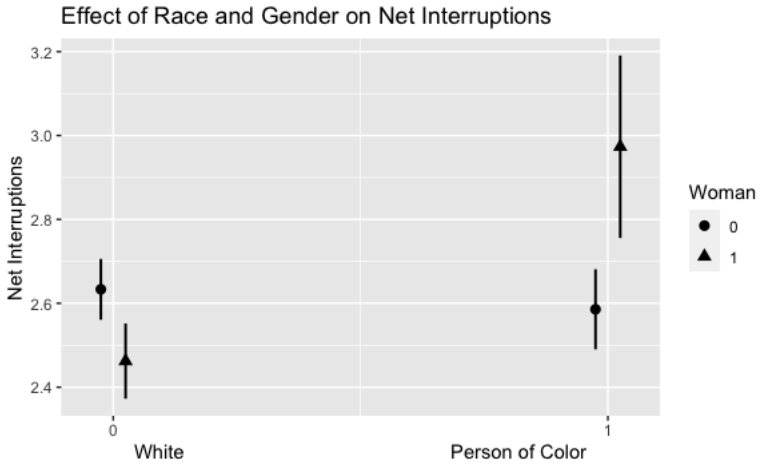

Figure 1

The results in model 3 are consistent with our expectations. This model suggests that attorneys of color are actually interrupted more except when they are arguing in a case involving racial issues. Racial issues increase the interruption of white attorneys but significantly decrease interruptions of attorneys of color. Figure 2 illustrates this relationship. It shows small increases interruptions for attorneys of color in non-racial-issue cases, which are slightly exceeded by those experienced by White attorneys in racial-issue cases. It also shows a dramatic drop for interruptions of attorneys of color in racial-issue cases – they receive approximately 60% fewer interruptions when the case involves a racial issues than when it does not.

Most of the control variables behave as expected with one interesting exception. While other variables controlling for relationships with the justices – being a former clerk for the justice and having more prior appearances at oral arguments – appear to reduce interruptions as expected, arguments presented by attorneys from the Office of the Solicitor General are actually interrupted more. One reason for this may be that the conservative Court during our period of study only faced a Solicitor General led by the liberal-Obama

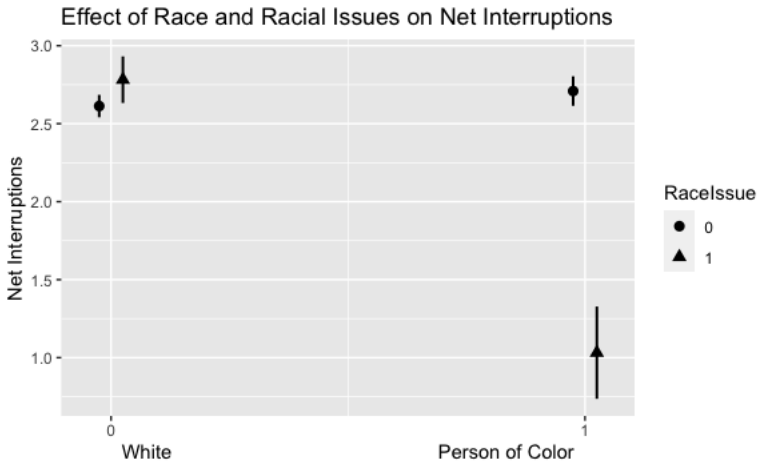

Figure 2

administration. Additionally, the Office of the Solicitor General in modern history has been a place where women and attorneys of color are afforded opportunities to work on Supreme Court appellate litigation, and therefore likely represents a more diverse group of individuals before the Court (Bhatia 2012, Cushman 2001, Feldman 2017, Mika 2017, Robinson and Rubin 2019).

We turn now to examine the relationship between attorney race and gender and the *Proportion of Words Spoken* by these attorneys during their arguments. These results are presented in Table 4. The results for the *Person of Color* variable in these analyses are surprising. Remember that our expectation was that racial bias would result in the justices talking over attorneys of color and women more than they talk over white male attorneys. Instead we see the opposite – attorneys of color are actually permitted to speak a larger proportion of words during their arguments than white attorneys – about 2% more – and the effect is significant across all three models. Women are also not generally talked over more; the coefficient for *Woman* in model 2 is small and not significant. However, as our intersectional hypothesis suggested, not all people of color and women are treated equally. The interaction between *Person of Color* and *Woman* is negative and significant, suggesting that women of color are talked over more than other attorneys. Figure 3 illustrates this relationship. It shows that women of color are permitted to speak about 8% less than their

male colleagues of color, and 5-6% less than their white colleagues.

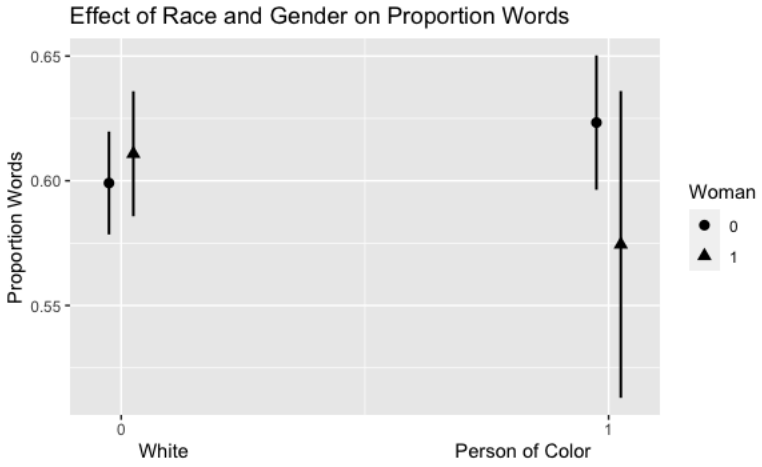

Figure 3

Unlike with the *Net Interruptions* model, racial issues do not appear to have much effect of the *Proportion of Words Spoken* by the attorney during their argument. Although the direction of the coefficients are consistent with our expectations, neither the *Racial Issue* variable nor its interaction with *Person of Color* is significant in Table 4, model 3. The estimated values in Figure 4 suggest the expected relationship – that attorneys of color would be permitted to speak more during arguments related to racial issues.

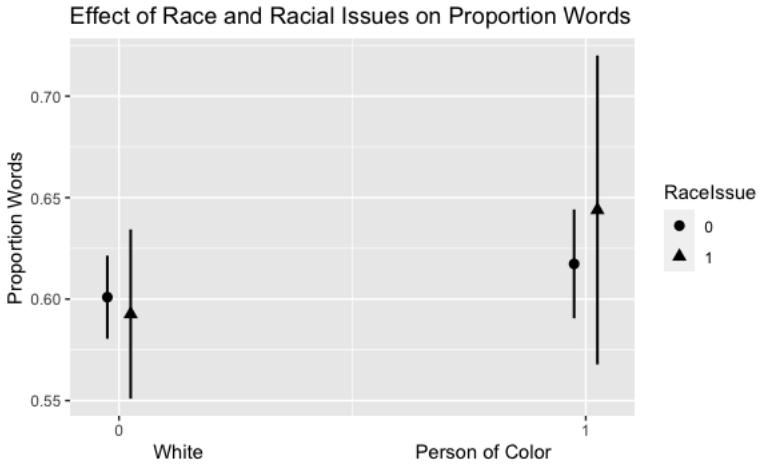

Figure 4

	Dependent variable:		
	Proportion Words		
	(1)	(2)	(3)
Person of Color	0.018*	0.024**	0.016*
	(0.009)	(0.010)	(0.010)
Woman		0.012	
		(0.009)	
Racial Issue			−0.008
			(0.019)
POC * Woman		−0.061*	
		(0.032)	
POC * Racial Issue			0.035
			(0.041)
Former Clerk	0.017***	0.018***	0.018***
	(0.007)	(0.007)	(0.007)
Petitioner	0.018***	0.019***	0.018***
	(0.006)	(0.006)	(0.006)
Log Prior Appearances	0.011***	0.011***	0.011***
	(0.003)	(0.003)	(0.003)
Solicitor General	0.005	0.004	0.005
	(0.008)	(0.008)	(0.008)
Ideological Alignment	0.017**	0.017**	0.017**
	(0.007)	(0.007)	(0.007)
Constant	0.556***	0.553***	0.556***
	(0.011)	(0.011)	(0.011)
Observations	989	989	989
R^2	0.195	0.199	0.196
Adjusted R^2	0.174	0.176	0.173
Residual Std. Error	0.089 (df = 963)	0.088 (df = 961)	0.089 (df = 961)
Note:			*p<0.1; **p<0.05; ***p<0.01

Table 4: Effect of attorney race on the proportion of words during an argument spoken by the attorney, calculated with issue area and term fixed effects

Discussion and Conclusion

Racial bias is an unfortunate aspect of public life. This paper examines how it might manifest in one particular setting: oral argument before the US Supreme Court. We expected to find that this bias would lead attorneys of color to be interrupted more and permitted to speak fewer words during their arguments. This general expectation was not strongly supported by our analyses. Instead, our results suggest a conditional relationship between race and treatment at oral argument. Intersectionality and the subject matter of the case shape the way attorneys of color are treated relative to their peers.

Specifically, we find strong evidence that it is actually women of color, rather than people of color or women generally, who bear the greatest weight of bias at the Court. Women of color are interrupted more and allowed to speak fewer words than their peers. In line with our expectations, we also find evidence that the justices are more deferential to attorneys of color when the subject matter of the case relates to racial discrimination or immigration matters, at least in terms of interruptions. Attorneys of color are interrupted more when race is not at issue. In contrast, white attorneys are interrupted more when race *is* at issue, while attorneys of color are interrupted substantially less. This suggests that the justices – perhaps unconsciously – expect that attorneys of color have special expertise to bring to bear on these issues.

Our analysis also provides some interesting findings that warrant future investigation. First, we did not find that white women were disadvantaged in oral argument during our period of study – a finding that stands in contrast to previous research (Lindom, Gregory and Johnson 2017, Patton and Smith 2017). There are a few possible explanations for this. First, it may be that treatment of women attorneys by the Court has changed over time. Today's justices see women more frequently in the profession generally, and at oral argument specifically, and continued exposure may have reduced the impact of gender role schemas on attorney treatment. Recent work by Hack and Jenkins (2022) finds similar improvement in

women attorneys' likelihood of winning cases. This explanation is also consistent with the fact that the group of attorneys that appears least frequently – women of color – is the group that seems to be treated most differently. However, if this explanation is correct, there may be reason to hope that as women of color appear more frequently before the Court, these disparities may be reduced.

Second, the difference between our findings and previous studies may be that evidence that the conceptualization of bias is sensitive to its operationalization or the particular measures used. It is possible that if our innovations in measurement – for example using net, rather than raw, counts of interruptions and accounting for the difference between polite and impolite interruptions – were applied to previous time frames, the findings may have been different. This warrants further examination. Third, our study does not include some of the variables that have been found to matter in studies of gendered interruptions, such as whether the case involved women's issues and whether the justice is conservative.[15] It's possible that models more tailored to gender hypotheses would yield different results.

Our second interesting finding is that, by our measures, attorneys from the Solicitor General's Office are interrupted more than other attorneys. This finding does seem to be sensitive to measurement – our appendix model using raw counts of interruptions, rather than net, shows no significant effect of being a Solicitor General. Further, we find that Solicitors General speak a greater proportion of words than other attorneys. This suggests that further research into the unique dynamics of Solicitor General's Office interactions with the Court during argument could be fruitful. Given their familiarity with one another, the rapport with attorneys from the OSG may simply be different.

Overall, our findings show less racial bias – at least against men of color – in oral argument than expected, which is a normative good. Still, given the general level of racial bias still evident in society, we suspect that bias may still be operative in ways not being

[15]We account for justice ideology with respect to their receptivity to the argument the attorney is presenting, but not with respect to general bias.

detected in our analysis. The differences between the alternative measures and models in our own analyses and between our results previous findings reaffirms that the way bias is operationalized and how empirical tests are modeled matter. Moreover, race and gender dynamics on the Court are not static, opening many future avenues of research. We chose the time frame for this study because it includes of two justices of color on the bench. However during our period of analysis Justice Clarence Thomas was notoriously mostly silent during oral arguments. Major personnel changes, including the addition of two women justices and the first Black woman on the Court may alter these results. Additionally, after COVID-19, oral argument rules mutated to a hybrid of the pre-pandemic rules and the teleconference rules, which, as a result, have increased Justice Thomas's interactions with oral advocates. Continued examination is needed to understand how diversity in the legal profession generally, and the Supreme Court bar in particular, has the potential to influence national policy.

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	Dependent variable:		
	Interruption Count		
	(1)	(2)	(3)
Person of Color	−0.005	−0.016	0.025**
	(0.012)	(0.013)	(0.012)
Woman		−0.102***	
		(0.012)	
Racial Issue			0.067***
			(0.023)
POC * Woman		0.081*	
		(0.043)	
POC * Racial Issue			−0.900***
			(0.065)
As Interrupter	0.293***	0.292***	0.293***
	(0.002)	(0.002)	(0.002)
Polite Interruptions	0.405***	0.408***	0.406***
	(0.005)	(0.005)	(0.005)
Clerked For	−0.138***	−0.140***	−0.140***
	(0.023)	(0.023)	(0.023)
Petitioner	−0.037***	−0.040***	−0.036***
	(0.007)	(0.007)	(0.007)
Log Prior Appearances	−0.035***	−0.038***	−0.034***
	(0.003)	(0.003)	(0.003)
Solicitor General	0.013	0.018*	0.011
	(0.010)	(0.010)	(0.010)
Ideological Compatibility	−0.073***	−0.073***	−0.073***
	(0.002)	(0.002)	(0.002)
Argument Words	0.0002***	0.0002***	0.0002***
	(0.00000)	(0.00000)	(0.00000)
Constant	−0.052**	−0.015	−0.047**
	(0.021)	(0.022)	(0.021)
Observations	61,707	61,707	61,707
Log Likelihood	−124,293.400	−124,255.300	−124,205.100
Note:			*p<0.1; **p<0.05; ***p<0.01

Table A1: Negative binomial models estimating the effect of attorney race on raw counts of interruptions, calculated with issue area and term fixed effects