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# Learning to Speak Up: Acclimation Effects and Supreme Court Oral Argument

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## ABSTRACT

A long line of literature examines acclimation effects for newly confirmed U.S. Supreme Court justices. However, most of these analyses focus only on how new justices vote or write opinions. Here, we examine how they act during the one public aspect of the Court's decision-making process—its oral arguments on the merits. In so doing, we seek to determine whether new justices speak, and interrupt their colleagues, less often than do their more senior colleagues. Using data on justices' speaking turns and interruptions during all orally argued cases from the 1955 to 2018 terms, we find an acclimation effect exists whereby new justices are significantly less inclined to speak and interrupt their more senior colleagues. Our models also suggest gender and judicial ideology influence the extent to which new justices exhibit such effects during oral argument proceedings.



## KEYWORDS

Supreme Court oral argument; acclimation effects; decision making

## Introduction

While acclimating to her new role as an Associate Justice of the U.S. Supreme Court, Justice Elena Kagan felt like she was “drinking out of a firehose” despite her prior experience clerking for Justice Thurgood Marshall and serving as the 45th Solicitor General of the U.S. (Totenberg 2010). Even for her—a justice who had experience in the Court's chambers and who had even argued before the Court—the learning curve was “extremely steep ... sometimes it seem[ed] vertical” (Totenberg 2010). Yet Justice Kagan is not the only newly confirmed justice who experienced this firehose effect while acclimating to the nation's highest court. For any justice who joins the bench, “adjustment is inescapable, no matter how experienced the lawyer, no matter how diligent the judge” (Howard 1985, 138).

This means new justices must learn the norms, procedures, practices, and responsibilities of the Supreme Court because, even if they served on a state or lower federal appellate bench, the High Court is unique. The learning curve includes how to effectively use a new cadre of law clerks, how to decide which cases to place on the docket as the court of last resort, how to draft opinions that set precedent for the entire nation, how to take notes during conference discussions with eight of the country's best legal minds, how norms of behavior work as they interact with their colleagues (some of whom have been on the bench for decades), and how to participate in, perhaps, the most intense oral argument sessions in the world (see e.g., Hagle 1993; Johnson 2004; Black, Johnson, and Wedeking 2012).

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Here, we focus on how justices acclimate to this final responsibility including how often to speak (i.e., ask questions or make comments) and whether (if ever) they choose to interrupt when one of their more senior colleagues is already speaking during oral argument. Examining these behaviors is important because they both clearly affect how the Court makes decisions (Johnson 2004; Johnson, Black, and Wedeking 2009; Black et al. 2011; Ringsmuth, Bryan, and Johnson 2013) on some of the nation's most pressing legal issues. What is not clear from these studies is how, if at all, such argument strategies systematically differ when justices are still acclimating to their new position on the bench.

Drawing from literature that analyzes people's perceptions of power in workplace relationships (Georges and Harris 2000; Dunbar 2004), Hagle's (1993) work on Supreme Court acclimation effects, and the justice's own thoughts about acclimating to the Court, we argue that new justices—who Hagle (1993) calls freshmen—speak and interrupt their colleagues less often during oral arguments than do their longer-tenured colleagues. To build this argument, we proceed as follows. First, we form our theoretical account of why new justices may act differently during these proceedings. From there, we explain the data we use to test our hypotheses and present the results of the analysis. We conclude with a brief discussion of our findings and the broader implications of this research for how justices interact with one another.

## Workplace acclimation effects

Whenever a person enters into a new job—whether at a new company or at their current place of employment—it can be a challenging adjustment. The individual has to consider her new job duties and how she is going to interact with her colleagues within the scope of her new position. Because different positions have varying levels of authority, these new interactions may include new or different power dynamics—real or *perceived*. We are interested in the latter instance, meaning when someone new to a position initially feels or believes she has less authority or power than her more senior colleagues.<sup>1</sup>

Cross-disciplinary research in psychology, communication studies, and sociology addresses perceptions of power dynamics, and their effects, in the workplace. In particular, the Dyadic Power Theory (DPT) examines how perceptions of power in a relationship affects communication behavior (Rollins and Bahr 1976, Dunbar 2004). While the DPT has been used primarily to study power in interpersonal romantic relationships, more recently it has been applied to communication in relationships between parents and children, teachers, and students, and bosses and employees (Dunbar and Adams 2017).

Broadly, the DPT asserts that power—defined as the ability to influence the behavior of another person—is an integral part of any interpersonal relationship (Bachrach and Lawler 1981; Berger 1994). Power determines how people relate to one another and how decisions are made. It is a dynamic and multidimensional construct that includes the perspectives and perceptions of both individuals in the relationship. In terms of a person's specific perceptions about power dynamics, the DPT focuses on factors that cause individuals to feel more or less powerful in relation to others, the communication processes that result from their perception of power, and the implications for the individuals within the relationship.

Consider what happens when a person enters into a new job that includes interpersonal relationships with a group of new colleagues. For each colleague with whom this new person interacts a different power dynamic exists. To determine each dynamic, people rely on their perceptions of (1) their legitimate authority to make decisions and of (2) their control over a variety of resources (Dunbar 2004). An individual's perception of her power in each interpersonal

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<sup>1</sup>Certainly, justices are all equal in power and stature (even the chief who is considered first among equals). However, what we focus on is a person's (or, in this case, a justice's) perceptions of his or her power status in a professional setting.

relationship, in turn, determines how she will verbally or nonverbally interact with others in the group.

The point is that people who perceive that they possess less power in a relationship often experience greater inhibition because they feel greater anxiety and self-consciousness (Keltner, Gruenfeld, and Anderson 2000; Gonzaga, Keltner, and Ward 2008). They also tend to feel less smart and dominant (Georgesesen and Harris 2000).<sup>2</sup> Ultimately, for our purposes, people who perceive themselves to have less power often feel a chilling effect in the relationship and assume they have less to contribute to a conversation than their more powerful colleagues (Roloff, Cloven, and Cahn 1990; Cloven and Roloff 1993; Anderson and Berdahl 2002; Dunbar and Abra 2010).<sup>3</sup>

## Supreme Court acclimation effects

The question is how (if at all) does the perceptual aspect of the DPT apply to acclimation effects for U.S. Supreme Court justices? The answer is relatively clear from existing literature. First, scholars suggest new justices often feel overwhelmed or even bewildered by their new responsibilities on the nation's highest court. The bewilderment hypothesis asserts newly appointed justices come to the Court with feelings of uncertainty about their new position (Hagle 1993), that they change their self-identity to fit their new role (Alpert, Atkins, and Ziller 1978), and that they must adjust to "the unfamiliar world of constitutional adjudication at the highest levels" (Heck and Hall 1981, 853).

Because analyzing these behaviors is difficult to study systematically, the evidence for it often emerges from the justices' anecdotes. For example, Justice Felix Frankfurter wrote that new justices, even those with prior lower court experience, come to the Court oblivious about what to expect from the job (Frankfurter 1957). Decades later Justice Bryon White held conversations with new justices about the adjustment process. When Justice Clarence Thomas arrived at the Court, White told him, "Well, Clarence, in your first five years, you wonder how you got here. After that, you wonder how your colleagues got here."<sup>4</sup> Other justices worried privately about their ascension to the bench. According to Greenhouse, Justice Harry A. Blackmun was "overwhelmed when he joined the Supreme Court and gathered for the first time with his colleagues to don their robes before going on the bench." In fact, according to Greenhouse, he asked himself, "What am I doing here?"<sup>5</sup> The uncertainty of being on the nation's highest court, and how to act as a justice, speaks to why scholars should expect new justices to behave differently than their more senior colleagues at oral argument.

Tying these anecdotes to the DPT, as new justices determine their power in relation to the other associates and the chief, they rely on their perceptions of their legitimate authority to make decisions as well as their control over a variety of resources (Dunbar 2004). For those new to the bench there are accepted norms that may undermine their perceived authority to make decisions. In other words, these norms may make new justices perceive themselves to be in a lower power position than their more senior colleagues. For instance, when the justices meet privately to discuss cases, they always speak last because discussion is conducted in order of seniority. Conventionally, this means they are least likely to persuade their colleagues (see e.g., Black and Johnson 2019 for limited evidence on this point) because most arguments are on the table by the

<sup>2</sup>Georgesesen and Harris (2000) ran an experiment where participants were assigned to either be a boss or an employee. They find those who were told that they were a boss felt smarter/more dominant and rated themselves more positively compared to those who were told that they were an employee.

<sup>3</sup>Interestingly, individuals who perceive themselves to have lower power tend to tolerate conflict more because they do not want to risk disrupting the relationship by pursuing the conflict (Leung 1988).

<sup>4</sup><https://www.businessinsider.com/ap-cases-but-also-cafeteria-duty-await-gorsuch-at-high-court-2017-4>

<sup>5</sup><https://www.nytimes.com/1994/04/07/us/supreme-court-legacy-justice-blackmun-s-journey-moderate-liberal.html>. Interestingly, the first time Blackmun writes such a question in his oral argument notes was in the 1973 term (a year outside of what we define as the acclimation years). Indeed, on March 18, 1974 he wrote "What am I doing here on the USSCT!"

time they have their turn to speak.<sup>6</sup> Additionally, during conference, the most junior (newest) justice must answer the door if someone knocks. This may seem like an innocuous inconvenience but consider Justice Kagan’s view of this requirement: “Literally, if I’m like in the middle of a sentence ... and there’s a knock on the door, everyone will just stare at me, waiting for me to open the door. It’s like a form of hazing” (Barnes 2017).

Other norms may also undermine new justices’ perceived authority (or power). For instance, the newest justice is assigned to cafeteria duty, a traditional sort of hazing ritual. Justice Kagan said such an assignment is meant to humble new justices: “You think you’re kind of hot stuff. You’re an important person. You’ve just been confirmed to the United States Supreme Court. And now you are going to monthly cafeteria committee meetings where literally the agenda is what happened to the *good* recipe for the chocolate chip cookies” (Barnes 2017). During lunch on oral argument days, when the justices eat together, the new justice also has to field complaints from the more senior justices about the menu, including when the soup is “very salty” (Barnes 2017).

Finally, evidence suggests newer justices have less authority when it comes to opinion-writing. They are assigned fewer opinion writing responsibilities (Slotnick 1979, Melone 1990) and are often assigned to write less salient opinions than expected by chance (Brenner 2001). Collectively, these norms on the nation’s highest court could make new justices feel they have less authority (or power) compared to their more senior colleagues.

### Oral argument acclimation effects

In our phenomenon of interest—oral arguments—justices follow formal and informal procedures about which new justices may not yet be accustomed. As such, new justices may specifically encounter an adjustment period before they feel comfortable participating during these proceedings. At least anecdotally justices confirm that acclimation effects exist during oral arguments, including their reticence to speak or interrupt colleagues. In terms of speaking, Justice Sandra Day O’Connor was initially hesitant about when she should do so. Indeed, during her first argument sessions, the other justices began firing questions at the lawyer standing at the lectern. As they did, she wonders, “Shall I ask my first question?”<sup>7</sup> Justice O’Connor also mused that many justices “are former law professors ... and all they do is ask questions. So, you have to ask in a hurry or you’re never going to get a question in.”<sup>8</sup> If the norm of rapid-fire questioning is not initially clear to new justices, as it was not for Justice O’Connor, they may have a hard time speaking as their colleagues dominate the time. This relates specifically to the DPT as she may have, at least initially, perceived she did not have enough power to jump in and speak.

As for interrupting one another, Justice Samuel Alito admitted he behaved differently during his early days on the Court and was hesitant about when to interrupt. As he put it, “I started out by thinking I should try to wait until the lawyer sort of finished the paragraph and that was a disaster strategy. Then I went to the end of a sentence and that was not particularly successful either.”<sup>9</sup> In terms of the DPT, he may very well have perceived that, despite his powerful position as a Supreme Court Justice, he still did not have the ability (or power) to interrupt.

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<sup>6</sup>This order of seniority procedure was also used when the Court heard oral arguments via telephone during arguments in May 2020.

<sup>7</sup><https://www.smithsonianmag.com/history/behind-scenes-sandra-day-oconnor-first-days-supreme-court-180971441/>.

<sup>8</sup>This may be the reason O’Connor often asked the first question in a case. As Jacobs wrote, “Advocates before the Court were guaranteed that O’Connor would ask the first question ...” <http://mentalfloss.com/article/75545/how-sandra-day-oconnor-beat-odds-ruled-court-and-became-most-powerful-woman-america>

<sup>9</sup><https://www.law360.com/articles/915355>. Justices also must learn more trivial procedures that can cause problems for them. On several occasions during her first argument session Justice Sonia Sotomayor forgot to turn on her microphone before speaking and had to repeat her questions. <https://nypost.com/2009/10/05/supreme-court-opens-term-with-sotomayor-on-bench/>

Our point is that, while existing work on Supreme Court acclimation effects focuses on behind-the-scenes adjustments, oral arguments provide a particularly good avenue analyzing how new justices make the transition to the high court because these proceedings begin the justices' coalition formation process as they speak and as they jockey for position by (sometimes) interrupting other colleagues' speaking turns (see e.g., Black, Johnson, and Wedeking 2012). As such, these proceedings offer a unique opportunity to assess whether new justices exhibit different behaviors than their senior colleagues as they seek to elicit information from counsel and interact with their colleagues through the lens of their newly acquired power, or lack thereof.

## Hypotheses

Combined, these literatures suggest that, perhaps, justices new to the Court may act differently at oral arguments than their more senior colleagues because (1) they perceive themselves to be in a position of lower power and (2) they are overwhelmed by their new responsibilities at the high court. More specifically, we expect to observe two key differences in their public behavior compared to how their more senior colleagues act. First, we hypothesize new justices should be less verbose than their senior colleagues:

***Hypothesis 1:** Justices new to the bench, compared to their senior colleagues, will take fewer turns to speak during oral arguments.*

***Hypothesis 2:** Justices new to the bench, compared to their senior colleagues, will speak fewer words during oral arguments.*

In addition to verbosity, we expect new justices' perceptions of their lower power status and their feelings of bewilderment to affect the extent to which they interrupt their more senior colleagues during oral arguments. Thus, we hypothesize:

***Hypothesis 3:** Justices new to the bench, compared to their senior colleagues, will interrupt other speaking justices less often.*

## Data and methods

To test these hypotheses, we utilize data that include all orally argued cases from the 1955 to 2018 terms. These data include all but the first two terms of the Warren Court (as recording began in 1955), the entire Burger and Rehnquist Courts, and the Roberts Court through the 2018 term. This means we have data on the first two terms of service for all justices from Justice John Harlan II (appointed in 1955) to Neil Gorsuch (appointed in 2017).<sup>10</sup> For each case we downloaded the voice-identified transcripts from the Oyez Project and used a computer script to count the number of times each justice spoke during oral arguments, the total number of words each justice spoke, and the number of times each justice interrupted another speaking justice. We then merged these data with the Supreme Court Database (SCDB) and included other relevant control variables (Spaeth et al. 2018).<sup>11</sup>

To test Hypothesis 1, we employ the variable, *Utterances*, which we define as the total numbers of times a justice speaks in a case. To test Hypothesis 2, we employ the variable, *Word Count*, which we measure as the total number of words a justice speaks during an argument session.<sup>12</sup>

<sup>10</sup>The data also include the first term for Justice Brett Kavanaugh.

<sup>11</sup>When we merged our oral argument data with the SCDB, we dropped the observations where justices' votes are coded as missing because the 0s in these justices' utterances and interruptions in that oral argument session indicate their absence from that argument. We do this so that our data only contain justices who were present at each oral argument.

<sup>12</sup>We follow Black et al. (2011) by defining each turn a justice speaks as an utterance regardless of whether the justice asks a question or makes a comment. That is, a turn is each block of text with a unique time stamp indicated on Oyez.com.

The mean number of utterances across the entire time span is 17.94 with a standard deviation of 22.34. The mean number of words spoken by a justice in the sample is 252.04, with a standard deviation of 323.80. To test Hypothesis 3, we invoke *Interruptions* as the dependent variable.<sup>13</sup> This variable counts the number of times a justice interrupts another speaking justice during oral argument. It has a mean of 0.24 and a standard deviation of 0.72. All three dependent variables are counts that are skewed and over dispersed. Therefore, we estimate negative binomial regression models with robust standard errors clustered around cases.<sup>14</sup>

To test our hypotheses about differences between new and senior justices, we utilize a variety of independent variables. Our main variable of interest is simply a dichotomous variable that identifies whether a justice is in his or her acclimation terms. Indeed, we recognize that “the depth and duration of... learning depends on each individual’s background and personality” so that “the process [of transitioning from a new justice to a senior justice] is largely ad hoc and unstructured” (Wasby 1989, 10–11). However, in line with Hagle (1993), Brenner (2001), Maltzman, Spriggs, and Wahlbeck (2000), and Hettinger, Lindquist, and Martinek (2003), we operationalize *New Justice* as the first two terms of a justice’s tenure on the Supreme Court.<sup>15</sup> This is an appropriate compromise given that some justices began hearing cases in the middle of their first term. Additionally, we note that if acclimation effects exist during the first two terms rather than just the first term, this is a stronger indication that such an impact exists because it may take more than one nine-month sitting to become accustomed to Court norms.

We also control for two additional groups of variables: those relating to individual justices and those relating to specific cases. For all our individual justice controls, we interact them with the *New Justice* dummy variable to determine whether the effects differ for justices who are acclimating to the bench.

First, we are interested in whether female justices generally behave differently from their male colleagues during oral argument and whether being a new female justice exacerbates such differences. This intuition is based on literature that analyzes the effects of gender on judging (Boyd, Epstein, and Martin 2010; Dietrich, Enos, and Sen 2017; Jacobi and Schweers 2017). More specifically, Feldman and Gill (2019) and Jacobi and Schweers (2017) find that women tend to be interrupted more often than their male colleagues.<sup>16</sup> Including a control for gender allows us to determine whether female justices are more or less verbose and whether they interrupt their colleagues at a different rate than their male counterparts. We code *Female* as 1 if a justice is female and 0 if they are male. We then interact *Female* with our *New Justice* to determine whether new female justices and new male justices differ in how they acclimate to the Court.

Second, the role of the median justice is, with little dispute, important to final case outcomes (e.g., Spiller 2000; Bonneau et al. 2007). Further, literature demonstrates ideologically extreme justices behave differently than the median (Bryan and Kromphardt 2016). As such, we control for the *Ideological Extremity* of each justice. We measure this variable by calculating the absolute value of the difference between the Martin–Quinn scores of individual justices and the median justice of a given term (Martin and Quinn 2002). For the median justice, this variable takes on the value of 0. We then interact *Ideological Extremity* with the *New Justice* dummy variable

Finally, given the unique institutional prerogative of chief justices and their leadership in oral argument (Johnson and Gregory 2016), we include a dummy variable, *Chief Justice*, which identifies whether the speaking justice is the chief. We do so because we are aware that being a new

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<sup>13</sup>In line with Johnson, Black, and Wedeking (2009), we recorded interruptions as an utterance by a justice who immediately follows another speaking justice.

<sup>14</sup>The alpha likelihood ratio tests for all three dependent variables suggest they are statistically different from 0 ( $p < .000$ ), indicating negative binomial regression models are more appropriate than Poisson regression models.

<sup>15</sup>We do not code William Rehnquist’s first two terms as the chief justice (1986 and 1987 terms) as acclimation terms given he had already been on the Court since 1972.

<sup>16</sup>This finding is consistent with a long line of research on speech and gender (Kollock, Blumstein, and Schwartz 1985; Mulac 1989; Tannen 1994; Kendall and Tannen 1997; Goldshmidt and Weller 2000).

**Table 1.** Descriptive statistics.

Statistic	Mean	St. Dev.	Min	Max
Utterances	17.94	22.34	0	344
Word counts	252.04	323.80	0	4,499
Interruptions	0.24	0.72	0	18
New justice	0.09	0.29	0	1
Female justice	0.09	0.28	0	1
Chief justice	0.11	0.32	0	1
Ideological extremity	1.70	1.63	0.00	8.63
Political salience	0.01	0.63	-1.06	3.64
Case complexity	0.04	0.89	-0.92	19.86
Ideological heterogeneity	0.26	0.06	0.13	0.33

chief justice might be different than being a new associate justice. Hence, we interact the *New Justice* dummy with the *Chief Justice* dummy to detect different acclimation effects between new chief justices and new associate justices.

Case level variables may also affect justices' behavior during oral argument. First, many studies find that justices' behavior changes when they decide more politically salient cases (Casillas, Enns, and Wohlfarth 2011; Collins and Cooper 2012). We measure political salience using Clark, Lax, and Rice's (2015) early salience estimate because it is not endogenous to the Court's final decisions.

Second, we control for the *Complexity* of a case as scholars have shown that how complicated a case is may affect justices' behavior (Maltzman, Spriggs, and Wahlbeck 2000; Bailey, Kamoie, and Maltzman 2005; Corley, Steigerwalt, and Ward 2013). We measure this variable by conducting a factor analysis using the values of three measures: the number of legal provisions in a case, the number of issues involved, and the number of opinions released, according to the SCDB (Spaeth et al. 2018). The factor analysis yields a single score with an eigenvalue greater than 1. We use this score as the measure of *Complexity* of the case.

Finally, we include a variable for the *Ideological Heterogeneity* of the Court. Johnson (2004) argues that justices use oral arguments to gain information about their colleagues' preferences. We suspect that justices on a more ideologically heterogeneous Court will be more active so as to gain more information about their colleagues' preferences about how they will vote in the present case. Thus, we measure ideological heterogeneity using the standard deviation of the Martin–Quinn scores of all sitting justices of the Court for each term.<sup>17</sup>

To better understand these data, Table 1 provides summary statistics of all variables. Further, Table 2 depicts the mean for how many times each justice spoke during his or her acclimation terms, how many times their colleagues spoke during the same terms, the mean for each justice's career, and the mean for their entire careers without their acclimation terms included. While outliers exist in terms of verbosity (e.g., Justices Antonin Scalia, Abe Fortas, Roberts, and Ruth Bader Ginsburg), most new justices spoke less often than did their more senior colleagues. For instance, Thomas—who is known for not speaking much at oral arguments—made 0.28 utterances during his acclimation terms compared to his colleagues who made, on average, 18.88 utterances during the same time frame. New justices also tend to have a higher mean for how many times they spoke during their career compared to how many times they spoke during their acclimation terms. Justice Stephen Breyer, for example, spoke an average of 28.79 during his first two terms on the bench but now has an average of 46.52. Similarly, Table 3 presents similar findings for the mean number of words each justice spoke during his or her acclimation terms in comparison to his or her entire career.

<sup>17</sup>For the 1956 and 2005 terms where the Court experienced compositional changes, we take average of the ideological standard deviations of the two parts of the term.



**Table 2.** Term mean utterances of new justices and their concurrently serving colleagues (1955–2018 terms).

Justice	Mean new justice term utterances	Mean term utterances for all court w/o new justice	Mean utterances for entire career of justice	Mean utterances for entire career of justice w/o first 2 years
Alito, Samuel	9.48	30.41	16.62	18.15
Blackmun, Harry	4.23	12.43	2.96	2.84
Brennan, William	20.03	20.88	9.50	8.90
Breyer, Stephen	28.79	22.45	46.52	48.26
Burger, Warren	29.74	12.60	22.27	21.43
Fortas, Abe	27.39	19.82	30.03	32.82
Ginsburg, Ruth Bader	26.77	20.28	26.27	26.22
Goldberg, Arthur	18.65	12.66	17.61	15.20
Gorsuch, Neil	22.58	21.86	22.58	N/A
Harlan II, John	0.62	19.82	2.07	2.24
Kagan, Elena	22.51	29.46	27.75	29.64
Kavanaugh, Brett	19.50	N/A	19.50	N/A
Kennedy, Anthony	9.45	15.27	15.88	16.62
Marshall, Thurgood	18.40	16.64	11.36	10.96
O'Connor, Sandra Day	4.88	8.98	11.51	12.35
Powell Jr., Lewis	1.55	12.58	3.18	3.47
Rehnquist, William	11.79	12.58	22.53	23.44
Roberts, John	42.28	30.87	39.62	39.09
Scalia, Antonin	37.12	10.56	42.12	42.75
Sotomayor, Sonia	33.61	29.39	34.21	34.43
Souter, David	7.36	18.02	23.09	25.51
Stevens, John Paul	12.66	22.91	19.91	20.39
Stewart, Potter	12.86	20.80	18.13	18.60
Thomas, Clarence	0.28	18.88	0.16	0.14
White, Bryon	22.81	12.66	21.51	21.44
Whittaker, Charles	9.86	20.62	12.73	14.85

**Table 3.** Term mean word count of new justices and their concurrently serving colleagues (1955–2018 terms).

Justice	Mean new justice word count	Mean term word count for all court w/o new justice	Mean word count for entire career of justice	Mean word count for entire career of justice w/o first 2 years
Alito, Samuel	170.17	442.58	321.85	349.31
Blackmun, Harry	58.95	165.44	36.71	34.49
Brennan, William	270.73	282.04	119.00	110.39
Breyer, Stephen	497.53	338.81	689.86	707.40
Burger, Warren	392.32	158.78	273.68	259.85
Fortas, Abe	466.14	256.08	526.17	589.61
Ginsburg, Ruth Bader	492.67	302.67	431.58	426.01
Goldberg, Arthur	80.28	151.18	99.06	142.39
Gorsuch, Neil	414.13	431.12	414.13	N/A
Harlan II, John	8.00	256.08	25.17	27.23
Kagan, Elena	410.30	423.33	551.96	589.45
Kavanaugh, Brett	338.11	N/A	338.11	N/A
Kennedy, Anthony	138.40	195.19	241.40	253.12
Marshall, Thurgood	197.37	228.68	109.38	104.26
O'Connor, Sandra Day	80.20	111.99	168.13	179.29
Powell Jr., Lewis	25.30	160.78	44.57	47.72
Rehnquist, William	241.75	160.78	325.30	332.30
Roberts, John	527.37	417.41	508.03	504.73
Scalia, Antonin	543.44	163.25	568.97	572.19
Sotomayor, Sonia	514.18	418.96	539.98	547.44
Souter, David	141.02	241.40	427.55	471.72
Stevens, John Paul	221.42	165.59	297.61	302.48
Stewart, Potter	172.08	270.73	241.98	248.25
Thomas, Clarence	3.85	263.15	2.19	2.02
White, Bryon	245.98	151.18	276.36	278.41
Whittaker, Charles	95.36	281.93	146.74	184.73

**Table 4.** Term mean interruptions of new justices and their concurrently serving colleagues (1955–2018 terms).

Justice	Mean new justice interruptions	Mean term interruptions for all court w/o new justice	Mean interruptions for entire career of justice	Mean interruptions for entire career of justice w/o first 2 years
Alito, Samuel	.09	.50	.30	.34
Blackmun, Harry	.08	.16	.03	.02
Brennan, William	.28	.35	.14	.13
Breyer, Stephen	.01	.02	.45	.50
Burger, Warren	.33	.17	.23	.22
Fortas, Abe	.32	.34	.30	.27
Ginsburg, Ruth Bader	.006	.01	.33	.36
Goldberg, Arthur	.16	.19	.17	.20
Gorsuch, Neil	.74	1.04	.74	N/A
Harlan II, John	.03	.34	.04	.04
Kagan, Elena	.43	.56	.60	.66
Kavanaugh, Brett	.69	N/A	.69	N/A
Kennedy, Anthony	0	.005	.33	.36
Marshall, Thurgood	.21	.24	.09	.09
O'Connor, Sandra Day	.007	.01	.06	.07
Powell Jr., Lewis	.04	.17	.04	.03
Rehnquist, William	.14	.17	.12	.11
Roberts, John	1.01	.68	.83	.79
Scalia, Antonin	.01	.008	.51	.58
Sotomayor, Sonia	.38	.54	.49	.53
Souter, David	0	.005	.21	.24
Stevens, John Paul	.07	.11	.15	.16
Stewart, Potter	.23	.48	.30	.31
Thomas, Clarence	0	.007	.001	.001
White, Bryon	.42	.19	.18	.17
Whittaker, Charles	.22	.35	.34	.43

Finally, [Table 4](#) offers summaries for the interruptions data. While there are several outliers, including Justice Bryon White and Chief Justice Roberts, a majority of new justices interrupted colleagues less often compared to their more senior colleagues during their first two terms on the bench. As the new justices became more acclimated to the Court, however, they tended to interrupt more often as well. For example, Justice Scalia interrupted an average of 0.01 during his first two terms but, by the end of his tenure on the bench, he interrupted an average of 0.51 times including his first two terms and 0.58 times when we remove his first two terms.

## Results

We present preliminary results in [Table 5](#) where it is immediately apparent that the difference in behavior between new and more senior justices is statistically significant. That is, justices in their first two terms are less verbose (number of speaking turns and number of words used) and interrupt their colleagues significantly less often during oral argument.

Because these results may not be robust when we control for other factors that affect justices' oral argument behavior, we estimate three models that account for potential confounding factors. These models also allow us to better understand whether acclimation effects vary between new justices of different genders and ideological predispositions.<sup>18</sup> [Table 6](#) provides a good deal of support for the acclimation effect theory first tested by Hagle (1993). As we expect, in their first

<sup>18</sup>The downside of estimating multiple regression models is the reduced sample size due to limited availability of other covariates, particularly the salience measure of Clark, Lax, and Rice (2015) which is only available through 2008. Instead of having Gorsuch as our most recent new justice, the model's most recent new justice is Alito. But we are willing to make this trade-off in order to fully test our hypotheses. Given the findings in [Table 4](#) we are confident these results support them as well. Note also, that we re-ran the models by dropping the salience variable. The results for all of our variables of interest remain unchanged (results from authors available upon request).

**Table 5.** Bivariate regression model of utterances, word counts and interruptions with main independent variable (1955–2018 terms).

	Dependent variables:		
	Utterances	Word counts	Interruptions
New justice	-.099*** (.016)	-.068*** (.017)	-.262*** (.044)
Constant	2.895*** (.008)	5.536*** (.008)	-1.397*** (.022)
Observations	55,844	55,844	55,844

Robust standard errors clustered around case citations are included in the parentheses.

\* $p < .1$ ; \*\* $p < .05$ ; \*\*\* $p < .01$ , two-tailed tests.

**Table 6.** Negative binomial regressions of justices' utterances, word counts, and interruptions during oral arguments (1955–2008 terms).

	Dependent variables:		
	Utterances	Word counts	Interruptions
New justice	-.294*** (.029)	-.345*** (.030)	-.441*** (.084)
Female justice	-.033* (.018)	.075*** (.017)	-.413*** (.061)
Chief justice	.423*** (.011)	.266*** (.012)	.380*** (.033)
Ideological extremity	-.192*** (.003)	-.124*** (.003)	-.097*** (.010)
Political salience	.059*** (.013)	.066*** (.013)	.072* (.038)
Case complexity	.046*** (.010)	.046*** (.012)	.076*** (.023)
Ideological heterogeneity	1.638*** (.138)	1.530*** (.141)	3.165*** (.412)
New justice $\times$ female justice	-.034 (.067)	-.004 (.069)	-2.686*** (.582)
New justice $\times$ Chief justice	.566*** (.036)	.537*** (.040)	1.095*** (.120)
New justice $\times$ ideological extremity	.049** (.020)	.163*** (.020)	.043 (.065)
Constant	2.650*** (.036)	5.206*** (.037)	-2.311*** (.109)
Observations	50,064	50,064	50,064

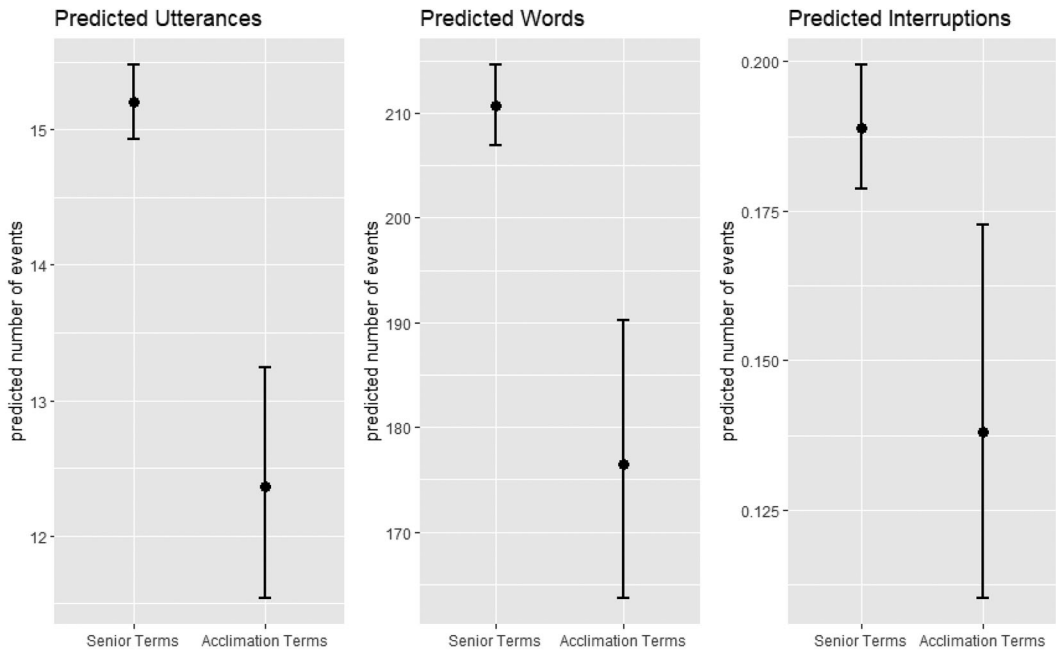
Note: Robust standard errors clustered around case citations are included in the parentheses.

\* $p < .1$ ; \*\* $p < .05$ ; \*\*\* $p < .01$ , two-tailed tests.

two terms on the Court, justices exhibit substantially different behavior than their more senior colleagues who have presumably become acclimated to the status of being on nation's highest court and the Court's norms and procedures.

Most important for our argument, holding all covariates at their mean or modal values, new justices speak, on average, 12.65 times during an argument session while their senior colleagues speak 15.61 times. With respect to the number of words spoken, new justices speak 204.64 words per oral argument session, while their more senior colleagues utter an average of 219.41 words per session. In terms of interrupting other speaking justices, new justices, on average, interrupt colleagues 0.13 times per argument while senior colleagues do so an average 0.19 times. All three differences are statistically, and substantively, significant.

However, because it is difficult to interpret the effects of the coefficients in negative binomial regressions, we turn to a series of figures that illuminate predicted counts for different types of new justices. Consider first, the general comparison of new justices with those who have been on the bench for more than two years. Figure 1 demonstrates that new justices take fewer turns to speak, speak fewer words, and interrupt other speaking justices less often. The takeaway is that



Note: Predicted numbers of utterances, words, and interruptions, are calculated based on the estimates of multiple negative binomial regression models reported in Table 5. All other covariates are held at their mean or modal values. The whiskers represent 95% confidence intervals calculated using the robust standard errors clustered around case citations.

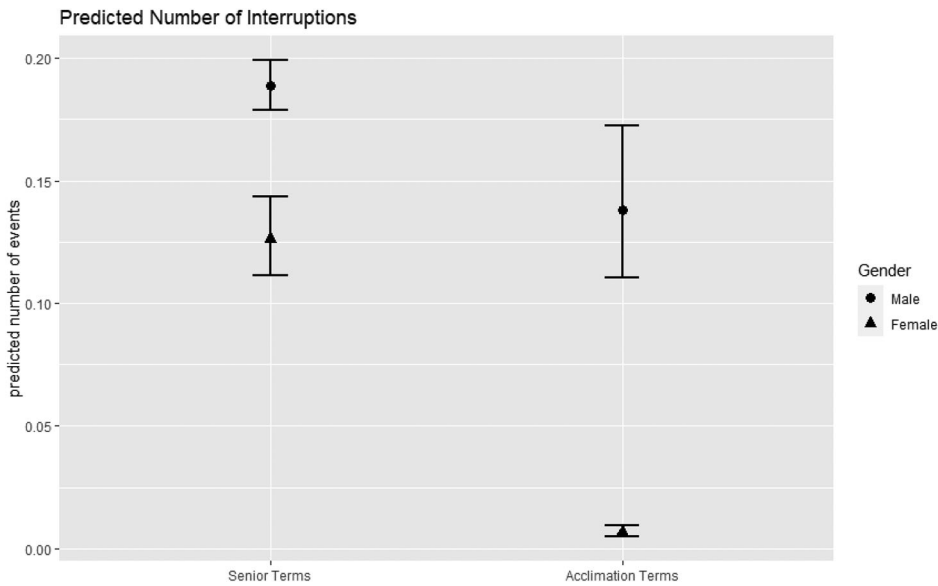
**Figure 1.** Predicted numbers of utterances and interruptions of new and senior justices. Note: Predicted numbers of utterances, words, and interruptions, are calculated based on the estimates of multiple negative binomial regression models reported in Table 5. All other covariates are held at their mean or modal values. The whiskers represent 95% confidence intervals calculated using the robust standard errors clustered around case citations.

new justices act differently when the Court is in the public sphere, which is consistent with existing findings about acclimation effects.

Our models also provide some additional insights about how new justices act during oral arguments. Existing literature demonstrates female justices act differently than their male counterparts at various points of the Court's decision-making process (Dietrich, Enos, and Sen 2017; Jacobi and Schweers 2017; Feldman and Gill 2019) but it does not provide a clear understanding of whether these differences are more pronounced during justices' early terms on the bench. Our model estimates suggest that, for new justices, female and male justices do not exhibit statistically significantly different verbosity, either in terms of utterances or words spoken. Yet male and female new justices behave very differently when it comes to interruptions. As Figure 2 suggests, female new justices interrupt substantially less often than male new justices. While we acknowledge that there have only been four female justices ever serving on the Court, our finding has clear implications for how different genders acclimate to the Court.<sup>19</sup> It is also the most comprehensive evidence we have for a gender acclimation effect because of the data set we use to test this relationship.<sup>20</sup>

<sup>19</sup>It will be interesting to determine whether new female justices will continue to act in the same way or whether they will act as new male justices currently do at oral argument once more female justices join the bench (and perhaps make up a majority of the Court).

<sup>20</sup>Feldman and Gill (2019) use 12 justices who served on the bench starting from Justice John Paul Stevens in 1975 and ending with Elena Kagan who took her seat on the bench in 2010. Jacobi and Schweers (2017) use the 1990, 2002, and 2015 terms. Dietrich, Enos, and Sen (2017) examine oral argument transcripts from 1982 to 2014.



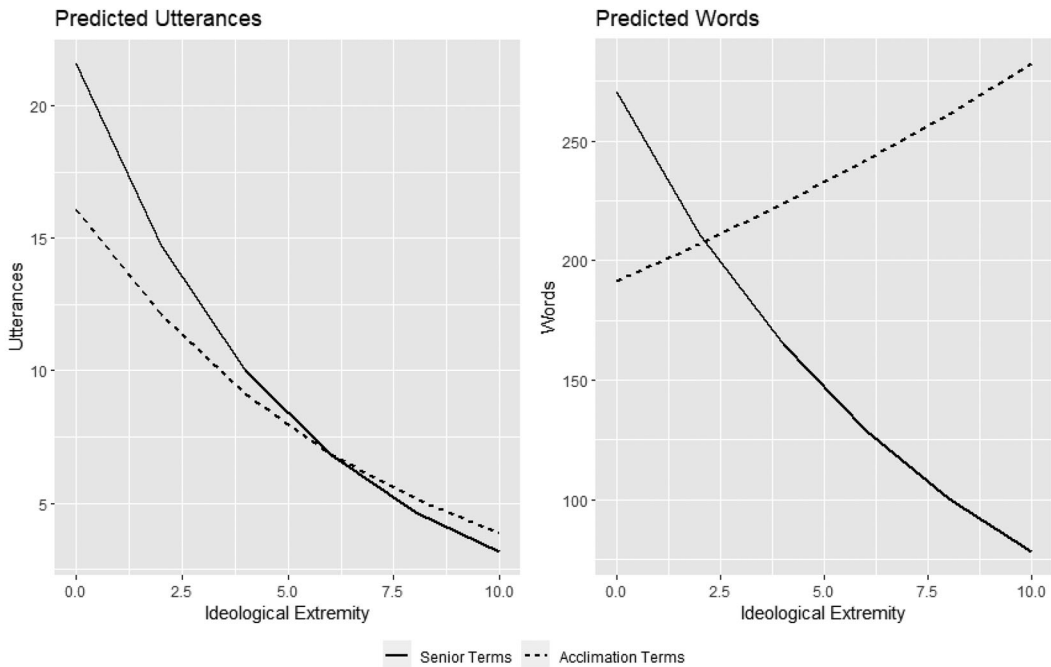
Note: Predicted numbers of utterances are calculated based on the estimates of multiple negative binomial regression models reported in Table 5. All other covariates are held at their mean or modal values. The whiskers represent 95% confidence intervals calculated using the robust standard errors clustered around case citations.

**Figure 2.** Predicted number of interruptions of female and male justices conditioned on their new and senior justice status. Note: Predicted numbers of utterances are calculated based on the estimates of multiple negative binomial regression models reported in Table 5. All other covariates are held at their mean or modal values. The whiskers represent 95% confidence intervals calculated using the robust standard errors clustered around case citations.

Beyond gender differences, Figure 3 depicts predicted number of utterances and words spoken for new and senior justices conditioned on their ideological extremity. Interestingly, the overall relationship between ideological extremity and utterances is a negative one. However, for new justices, the magnitude of the correlation is smaller than that of senior justices. The same holds for words spoken by senior justices, as they enunciate fewer words as they become more ideologically extreme. The relationship is the reverse with respect to new justices – new justices with more extreme ideological leanings tend to speak more words.<sup>21</sup>

Finally, several control variables are associated with a justice's inclination to speak or interrupt. First, new chief justices experience a different kind of acclimation effect than do their new associate justice colleagues. All models show that new chiefs are significantly more verbose and likely to interrupt their colleagues. This may be due to their willingness to establish authority and leadership as they fill their new leadership role. Second, justices are more likely to speak and to interrupt in highly salient cases and complex cases. And, finally, greater ideological heterogeneity among justices is significantly associated with a propensity to speak and to interrupt each other. Many of these findings are consistent with current literature on Supreme Court oral argument and decision making more generally.

<sup>21</sup>There is no statistically significant interactive relationship between *Ideological Extremity* and *New Justice*, ( $p = .16$ , two-tailed Wald Test.)



Note: Predicted numbers of utterances and interruptions are calculated based on the estimates of multiple negative binomial regression models reported in Table 5. The dotted line refers to justices in their acclimation terms and the solid line refers to those in their more senior terms. All other covariates are held at their observed values.

**Figure 3.** Predicted number of interruptions of new and senior justices conditioned on their ideological extremity. Note: Predicted numbers of utterances and interruptions are calculated based on the estimates of multiple negative binomial regression models reported in Table 5. The dotted line refers to justices in their acclimation terms and the solid line refers to those in their more senior terms. All other covariates are held at their observed values.

## Discussion and conclusion

In this article, we provide evidence that justices new to the U.S. Supreme Court differ from their more senior colleagues in terms of how often they speak and interrupt at oral arguments. This analysis makes notable contributions to the acclimation effects and oral argument literatures in several distinct and important ways. First, we extend the literature on acclimation effects by offering a novel and unique approach for understanding how new justices are more likely to dip their toe into the pond rather than cannonballing!

Second, this effect does not seem to be time-bound since we observe these effects in all new justices from 1955 to 2018 (Rubin and Melone 1988). Third, and most importantly, our findings extend the oral argument literature by showing that the behaviors justices exhibit during these proceedings can be partly attributed to how long they have been on the bench. Scholars studying oral argument behavior and its effects on decision making should consider the distinction between new justices and more senior justices, as we find that there are clear differences in their behavior at oral arguments, which in turn, may affect their decision making.

Finally, our study provides an avenue for future research endeavors. We did not explicitly test whether new justices' oral argument behavior predicts case outcomes that are different from their behavior as more senior justices. Moreover, while we tested new justices' behavior against their more senior colleagues, we did not analyze their behavior independently of others (Hagle 1993). That said, new justices simply, and generally, behave differently than their senior colleagues when

they participate at oral argument. This is a finding that must, therefore, be considered when discussing how and why these proceedings affect the decisions justices' make.

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