Riddled with Exclusivity: The Homogeneity of the Supreme Court Bar in the Roberts Court

by
Austin Carsh

A THESIS

submitted to

Oregon State University

Honors College

in partial fulfillment of
the requirements for the
degree of

Honors Baccalaureate of Science in Political Science
(Honors Scholar)

Presented April 29, 2019
Commencement June 2019

AN ABSTRACT OF THE THESIS OF

Austin Carsh for the degree of Honors Baccalaureate of Science in Political Science presented on April 29, 2019. Title: Riddled with Exclusivity: The Homogeneity of the Supreme Court Bar in the Roberts Court.

Abstract approved:_____

Rorie Solberg

The Supreme Court Bar-the lawyers who argue before the US Supreme Court-has historically been an elite and exclusive group. This investigation examines the demographic make-up of the Supreme Court Bar in the Roberts Court and compares it to previous iterations of the Supreme Court Bar, as well as the national bar and general United States population. Although the Supreme Court Bar remains exclusive, particularly in educational and career backgrounds, there is a slight movement towards increased demographic diversity. However, compared to both the national bar and the US population, the Supreme Court Bar remains very homogeneous. The traditional pathway to the Supreme Court Bar includes several barriers to entry that make it difficult for historically marginalized individuals, including law schools and legal employment. This thesis also explores potential impacts of the homogenization. A lack of diversity results in lower levels of descriptive representation which has implications to institutional legitimacy. In addition, the specialization in appellate/Supreme Court advocates has the potential to substantively influence the docket and decisions of the Supreme Court.

Key Words: Diversity, Law School, Representation, Supreme Court

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I understand that my project will become part of the permanent collection of Oregon State University, Honors College. My signature below authorizes release of my project to any reader upon request.

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Austin Carsh, Author

Section 1: Introduction

As the American public is becoming increasingly diverse (Keating and Karklis 2016) and aware of systemic discrimination, diversity is becoming a centerpiece of nearly every political discussion. On the heels of the 2018 midterm elections, the US Congress is the most diverse congress ever (Cordes 2019). However, even in the historically diverse 116th Congress, women only make up 25% of the Senate and 23% of the House, compared to 51% of the general population and people of color comprise 22% of Congress, compared to over 40% of the general population (Hansen 2019).[1]

Likewise, the federal judiciary also has a lack of diversity (Solberg and Diascro 2018), and this overall characterization is equally accurate at the highest level-the Supreme Court. The demographics of the Supreme Court have been quite consistent over the course of history. There have only been six justices who have not been White men in the history of the Court (Campisi and Griggs 2018). All six of them have served since 1967 when Thurgood Marshall, the first African-American male, was appointed. Although the current Court is the most diverse Court in history, it is still demographically homogeneous, with 67% male justices and 78% White justices. In addition to gender and race, the Supreme Court has historically been educationally homogeneous. Of the 50 justices who have received a law degree, 32% graduated from Harvard and 14% graduated from Yale (Dhillon 2014[2]). The current Supreme Court is very similar in

[1] For the purposes of this study, identities are treated distinctly. While I recognize the validity of intersectionality and how individuals belonging to multiple marginalized groups (such as women of color) experience oppression greater than the sum of their parts, the data in this study does not allow for an intersectional analysis. Only 12 of the 876 lawyers in the Supreme Court Bar are women of color, which makes rigorous statistical analysis of intersectional identities next to impossible within the confines of this study.

[2] The article was written in 2014, and thus does not account for the placement of Justices Gorsuch and Kavanaugh to the Court, who graduated from Harvard Law School and Yale Law School respectively. The percentages have been adjusted for these two additions

terms of education, with all nine of the justices attending either Harvard Law School or Yale Law School (Strauss 2018).[3]

While there is an ongoing discussion over the diversity (or lack thereof) of the Court, there is almost no discussion about the diversity of the advocates who appear before the Court.[4] Oral argument is open to the public and is the most visible aspect of the Court. Thus, oral argument provides the best opportunity to examine the diversity of those that are influential to the Court's functioning. Since today's advocates are often tomorrow's judges and justices, it is important that these individuals are included in the diversity discussion as well.

In order to practice before the Supreme Court, an attorney must first be admitted into the formal Supreme Court Bar. The barrier to entry is not high and many lawyers will use it as a career marker even if they never intend to practice before the Court. Thus, the formal Supreme Court Bar has many members. However, within the broader formal Bar, a much smaller subsection exists: the lawyers who argue before the Court. These lawyers wield immense amounts of power and act as gatekeepers of the Court. These elite attorneys have the experience and relationships which allow them the influence to shape the docket of the Supreme Court (McGuire 1995). Knowing the backgrounds and demographics of these elite lawyers is vital to understanding how they represent the overall populous, as well as how the Supreme Court itself serves as a body of government. In order to get a complete understanding of how the Supreme Court works as a government institution, we need to know about the justices and advocates.

[3] Justice Ginsburg attended Harvard Law School for two years before transferring to Columbia Law School for her final year.

[4] There is also work done on the rest of the federal judiciary and state High Courts. See Solberg and Diascro 2018, Federal Judiciary Center 2018, and American Constitution Society 2017

Research Questions

There are three questions this investigation seeks to answer:

1) *How homogeneous is the Supreme Court Bar?* In order to assess this question, the Supreme Court Bar will be analyzed in terms of the following six characteristics: gender, race, law school attended, undergraduate institution attended, employment category, and Supreme Court clerkship status.
2) *Has the Supreme Court Bar changed since 1990?* Comparisons between the current data and those from McGuire 1993 will be explored to look for any differences.
3) *How representative is the Supreme Court Bar?* The demographics of the Supreme Court Bar will be compared to the national bar and to the US population as a whole to evaluate the representativeness of the body.

Section 2: Literature Review

Before delving into the data, it is important to understand the historical background that contextualizes this analysis. There are four frames which must be examined. First, the concept of representation will be explored to establish the judiciary and the lawyers who argue before them as a representative institution. At the same time, I explore the impacts of descriptive representation both broadly and within the judiciary. Second, a history of the legal education system will explore the barriers to entry in the legal profession which continue to affect the makeup of the Supreme Court bench as well as the Supreme Court Bar. Third, the history of diversity within the legal profession will further explore barriers to entry and advancement in the field. Finally, the history of the Supreme Court Bar itself will be examined, including results of previous investigations into the homogeneity of the institution. Together, these four frames

provide the context necessary to discuss homogeneity within the Supreme Court Bar and the resulting impacts.

Section 2.1 Representation

Before evaluating the question: "How representative is the Supreme Court Bar," it is critical to understand the functions and implications of representation. Hanna Pitkin's 1967 book *The Concept of Representation* is often the foundation for thinking about political representation. Pitkin lays out four different views of representation: formalistic, symbolic, descriptive, and substantive. Formalistic representation is simply talking about the actual power granted from one entity to the representative. Symbolic representation and descriptive representation both center around the demographics of the representative body; how accurately do they mirror the public demographically and what the effects of that mirroring are. Substantive representation is concerned with how closely the representative mirrors the public in terms of their policy preferences and overall political ideology.

Pitkin limits political representation to elected positions, such as legislative bodies and to some extent, the executive branch. This definition necessarily excludes judicial branch and non-government lawyers as a whole. However, this distinction does not serve well in systems that employ common-law and where judges set precedent and make law through their interpretations. In these systems, judges act on behalf of the state and their actions can be ascribed to the state as a whole, which is how Hobbes viewed formalized representation (Pitkin 1967). Even lawyers in the private sector have a role in government. Alexis de Tocqueville viewed lawyers writ-large as essential to a functioning democracy. Lawyers are the arbiters between the people and the government. Lawyers serve both the people and the government. Lawyers help the government

ensure justice when citizens violate the law. Conversely, lawyers also serve as a check on the government to ensure civil liberties are being maintained and that government is obeying their processes (Diascro and Ivers 2006). In this sense, while not electorally representative, lawyers often act as representatives of the people and can therefore be evaluated in terms of its descriptive representation (Kenney 2013).

While lawyers may be representative, and Pitkin shows how we can evaluate representatives in terms of diversity, the bigger question is why should we? The effects of diversity are numerous. First, diversity is critical to the legitimacy and functioning of an institution. Second, descriptive representatives can serve as role models that show that institutions are accessible to people of their demographic group. Third, while not interchangeable, descriptive representation can often translate into substantive description through shared lived experiences.

Kenney 2013 argues that high levels of demographic diversity are essential for an institution in the same way that representation across geographic jurisdictions is essential. Using the example of the European Court of Justice, Kenney contends that the requirement to have one judge from every member country is a form of descriptive representation. In a hypothetical case in which one country is hurt by a ruling without a judge from that country weighing in on the decisions, people within that country might be inclined to view the ruling, and the body as whole, as illegitimate (Kenney 2013). In that same vein, Kenney asks, why would qualities like gender and race be any different? In the United States, women and people of color are routinely affected by judicial rulings stemming from largely White and male benches. Thus, it would follow that their perceptions of the judiciary as a whole would be injured in a similar way (Kenney 2013).

Empirical data backs up Kenney's argument. Descriptive representation does increase positive sentiment towards the governing body (Tate 2003). When looking specifically within the judicial branch, Scherer and Curry (2010) found that there is a direct causal link between the amount of perceived representation of African-Americans in the federal judiciary and the perceived legitimacy of the judiciary among African-Americans. White people were less likely to support the judiciary if they perceived either Black people to be overrepresented or White people to be underrepresented on the judiciary (Scherer and Curry 2010). When an institution looks like you belong there, you grant it greater legitimacy and authority. Thus, descriptive representation is extremely important to the legitimacy of the judiciary.

Another effect of descriptive representation is that is can provide a role model effect. Having increased diversity within an institution signals to the citizens that the institution is not only for the dominant groups, but rather it is for the marginalized communities as well (Sapiro 1981; Mansbridge 2003). This impacts both the legitimacy of an institution as discussed above as well as breaking down barriers to entry for marginalized communities (Sapiro 1981). When people in marginalized communities see their own identities reflected in government institutions, they are more likely to see that position as an option for them in the future, and are thus encouraged to pursue positions within the institution.

A third impact of diversity is that it has the potential to translate into substantive representation. It is certainly the case that descriptive representation does not automatically lead to substantive representation. After all, demographic groups are not monolithic and individuals belonging to demographic groups can vary widely in their ideologies and values. Simply because there is a representative that is Black does not mean that the representative will represent the ideologies of all Black people. For example, Supreme Court Justice Clarence Thomas is the only

Black Justice currently serving on the Court, but he varies greatly from what the majority of Black Americans believe in terms of ideology (Clawson and Waltenburg 2009). There are instances in which Justice Thomas does draw upon his identity in rulings, but they are few and far between.[5] However, his presence on the Court still improves the legitimacy of the Court via descriptive representation.

There is mixed evidence as to the relationship between diversity and substantive judicial impacts. Kritzer and Uhlman (1977) indicate that male and female judges did not differ on overall sentencing behavior. Walker and Barrow (1985) confirm the lack of connection by finding that there were no significant differences between male and female judges on how they view rights of the accused or on issues specifically designated as women's issues. However, Spohn et al (1985) found that female judges were twice as likely to incarcerate defendants.

It could be the case that although judges belonging to a certain demographic group do not always explicitly provide substantive representation for those groups, they do have a consciousness of the issues surrounding the identities and can act as validators of issues the group faces. Female judges tend to notice examples of gender bias and are more likely to agree with feminist propositions (Martin et al, 2002). Thus, they are better able to identify and evaluate claims of bias against women. The same may be true of other identities.

Since oral argument is such a visible aspect of Supreme Court litigation, it stands to reason that the same three effects of descriptive representation listed above also apply to the advocates that appear before the Court. The attorneys act as representatives and as such, examining how their identities may influence the legitimacy, accessibility, and substance of their work is important context for this investigation.

[5] Justice Thomas's concurrence in *Capitol Square and Advisory Board v Pinette* 15 US 753 (1995), he gives a great deal of historical background into the Ku Klux Klan's tradition of burning flags, informed in part from his lived experience as a Black man from the South.

Section 2.2: Law School

In order to evaluate the homogeneity of the Supreme Court Bar, it is important to understand the pathway to the Bar, beginning with law schools. Since law schools act as a gatekeeper to the legal profession, demographics in law school shape the demographics of the legal profession.

The legal profession has undergone several key changes since the country's inception that have transformed the field. One of these changes is the relatively recent development and subsequent importance of a formalized legal education known as law school. For most of the existence of the legal profession, people entered the field via apprenticeships with practicing attorneys. Although the legal academy was created in 1793 at the College of William and Mary (Moline 2003), it wouldn't be until decades later when formalized legal education became the standard for entry into the profession. The early legal academy differed greatly in many aspects from the modern law school. First, the early legal academy was on the same level as an undergraduate degree. Upon formation in 1900, the American Association of Law Schools required that entrants needed only a high school diploma to enroll (Kirkwood and Owens 1961). Graduates of law programs would earn a bachelor of laws (LL.B) degree, rather than the now common Juris Doctorate (J.D.) (Moline 2003). Second, early legal education programs differed in their focus. For most of the history of law schools, they were more focused on producing legal scholarship rather than being producing practicing lawyers. The education was more theoretical in nature, and involved reading philosophical and religious texts (Moline 2003).

In the early 19th century, future Supreme Court Justice Joseph Story reorganized Harvard Law School to be more focused on teaching practical skills and treating law as a science rather than a craft (Moline 2003). By the 1870s, several other law schools followed suit. This would

mark the beginning of the new approach to a legal education. Beginning in the early 20th century, the legal academy took on the burden of training the next generation of practicing lawyers (Moline 2003). However, it would take decades for this change to permeate all throughout the field and for legal education to become standard for all lawyers to receive prior to entering the workforce. The upper echelons of the legal profession, such as the Supreme Court, were slow to incorporate a legal education. It wasn't until 1957 with the appointment of Justice Charles Whitaker that every member of the Supreme Court received formal legal education (Lat and Hill 2010).

In modern times, law school is a virtual necessity for any potential lawyer. While there are still some jurisdictions where a law degree is not a requirement for licensure, most require it (Farrell 2014). Even in those jurisdictions that don't require it, test-takers coming out of apprenticeships are few and far between. In 2013, only 60 of the almost 84,000 (0.07%) of bar examinees didn't have a law degree. Only 28% of apprenticed lawyers passed a bar exam, compared to 78% of people who went to an ABA-accredited law school (Farrell 2014). Today, law schools serve as the gatekeepers of the legal field and therefore the demographics of law school have a large role in shaping the demographics of the legal field.

Law schools have historically been dominated by White males. Upon opening, many law schools explicitly excluded women. Ada Kepley was the first woman to graduate from law school in 1870 from what would eventually become Northwestern Law (Northwestern Law 2017). However, several prestigious law schools continued their female exclusion policy well into the 20th century. For instance, Harvard Law School didn't begin admitting women until 1950 (Massari 2003). Once they began to be admitted, women remained a minority for decades. It wasn't until the 1985-1986 school year that women made up 40% of law school enrollees

(American Bar Association 2013), and women didn't become the majority in law schools until the 2016-2017 school year, even though they make up 51% of the US population (Olson 2016).

People of color have also been systematically excluded from law school in the past. Historically, there was no real option for Blacks to get a legal education prior to the opening of Howard University in 1867 (Corbett 2008). However, enrollment was extremely limited and it took nearly 70 years before other Historically Black Colleges and Universities (HBCU) would open law schools (Corbett 2008). It wasn't until 1950 that law school became desegregated by order of the US Supreme Court in *Sweatt v Painter* 339 US 629 (1950). In *Sweatt*, the Court ruled that there was no equivalence between a hastily established Texas law school for Blacks and the well-established White-only University of Texas, and thus UT may not discriminate based on race (Corbett 2008). The ruling in *Sweatt* desegregated law schools on paper.

However, the legal desegregation of law schools did not remove all barriers to entry for people of color. The admissions process into most law schools greatly emphasizes the Law School Admission Test (Randall 2006; Corbett 2008). The LSAT has been shown to be biased towards against minority groups, and has been used as a reason to reject applicants of color (Randall 2006).

Affirmative action programs implemented in the 1950s and 1960s did help to increase minority enrollment, however there has been a stagnation of minority enrollment in the 21st century (Corbett 2008).[6] Minority enrollment lagged behind the general population for many years, and in 2016, just 32% of all entering law students were ethnic minorities, compared to 40% of the whole US population (Corbett 2008; American Bar Association 2018).

[6] There has been a backlash to affirmative action programs and court rulings stopping some programs which may be contributing to the stagnation.

Law schools have been making other efforts to increase the diversity of their student body in recent years. The designator of "Under-Represented Minority" (URM) has been created to try to counteract some of the implicit bias present in the utilization of the LSAT. Being a URM does increase the chances at admittance in law schools, and the advantage is higher in the higher tiers (Plainview 2017). However, those URM advantages don't always correlate to an increase in proportions. In fact, law schools with high LSAT medians (which tend to correlate with high rankings) were more likely to see a drop in the percentage of students of color between 2010 and 2013 (Taylor 2015). In that same time frame, bottom tier schools have seen sharp increases in the proportion of students of color attending (Taylor 2015).

While in the aggregate law schools are becoming diverse, that will not necessarily translate up into the upper echelons of the legal profession due to the stratification of law schools into different tiers, and the implications for employment after graduating. While the most famous and widely-cited rankings are the US News and World Report (USNWR) annual law school rankings, several other rankings exist, such as the Above the Law top 50, Academic Ranking of World Universities, Times High Education World University rankings, among others. Each one of these rankings has a different methodology, yet they all tell a similar story: there are tiers of law schools. The highest tier of law schools will rank highly in all of the rankings-such law schools include the Ivy League[7], Stanford, and the University of Chicago. While the exact cut-off between tier one and tier two schools is difficult to ascertain, it is clear that these schools have a distinct advantage in placing their graduates into legal jobs both in terms of quantity and quality. The 2018 ABA employment reports indicate that the top 20 law schools (according to USNWR) placed, on average, 87% of students into jobs that require passage of the bar, compared to 64.7% on average for schools outside the top 20. Additionally, top 20 schools

[7] The Ivy League has five law schools: Yale, Harvard, Columbia, University of Pennsylvania, and Cornell

placed 44% of their graduates into firms with over 500 people, compared to 4% of graduates from schools outside of the top 20. Firms with over 500 people tend to be the most prestigious and well-paid firms in the country. Eighty-eight percent of the Vault 50 and 79% of the Vault 100 most prestigious firms in the US have more than 500 lawyers, and the average number of lawyers at a Vault 100 firm is 1176 (Vault 2018). With this in mind, it is clear that "elite" law schools have an outsized role in the legal profession. Thus, an understanding of the diversity of these law schools is critical in order to understand the diversity of the upper tiers of legal employment.

When just focusing in on the USNWR Top 20, the numbers shift slightly from the overall percentages. The proportion of women is slightly lower in the top 20 (50%) than in the rest of the schools (51.51%). There is a much greater disparity when looking at students of color. Students of color only make up 29% of the students in the top 20, while they make up 32.7% of students in the rest of the schools (American Bar Association 2018). So, while law schools appear to be on face value representing students proportionally, women and minority students are more likely to go to lower-ranked schools, which can affect bar passage chances as well as employment prospects. Lower ranked schools do not provide the same chances to get into the upper echelons of the legal profession such as clerkships and appearing in front of the Supreme Court.

Section 2.3: Legal Profession

The legal profession, much like law schools, is a historically exclusive industry. Both women and people of color face several hurdles, explicit and implicit, in trying to enter the legal profession. While progress has been made, significant obstacles still exist.

Women were explicitly banned from practicing law for many years. Belle Babb Mansfield became the first woman admitted to a state bar when in 1869 Iowa admitted her (Morello 1986). At the time, Iowa was the only state bar that admitted women. In 1872, the Supreme Court heard *Bradwell v Illinois* 83 US 130 (1872), in which Myra Bradwell appealed a decision by the Illinois Supreme Court which had prevented her from being admitted to the Illinois state bar. The Supreme Court ruled in favor of Illinois, thus causing a major setback for women. The Court ruled that practicing law was not a right guaranteed by the Privileges and Immunities clause of the Fourteenth Amendment, and thus Bradwell did not have a right to be admitted to the Illinois State Bar (*Bradwell v Illinois*). Simultaneously as her case was moving up to the Supreme Court, Bradwell and other feminist activists successfully pushed for a law in the Illinois State Legislature that made gender-based discrimination in employment illegal (Willis 2017). Thus, Bradwell, and women at-large, were allowed into the Illinois state bar in 1872.

However, the simple removal of explicit barriers to enter bar admissions did not guarantee gender equality in the profession. In addition to the law school discrimination discussed above, women face implicit bias in the legal field. Even into the 21st century, the stereotype that women belong in the home more than the office continues to persist. This stereotype negatively affects women's ability to enter and move up in the legal field especially (Negowetti 2015).

Currently, women still only make up around 36% of the national bar (American Bar Association 2017). While this is an improvement from ten years ago when women were only 32%, women still constitute a sizeable minority of lawyers, especially considering they now make up a majority of law school classes. With the recent arc towards parity in law school

entrants and graduates, the barriers for entry into the field may be eroding. However, the barriers to advancement in the field remain sharply in place.

Many prestigious positions within the legal field remain heavily male-dominated. In private practice, men only make up 55% of associates, yet constitute 82% of managing partners, 82% of equity partners, and 78% of partners (American Bar Association 2017). In 2016, only 35% of lawyers who were promoted to partner were female (Minority Corporate Counsel Association 2017). In-house counsels for major corporations are also male-dominated: 75.2% of Fortune 500 in-house counsels are male (American Bar Association 2017). Additionally, the wage gap is present in the legal field, with female lawyers making less than 90% of the wages of male lawyers.

The public sector sees much the same disparity that the private sector sees. While women made up 51% of total clerkships in 2009, they made up just 45% of the most sought-after federal clerkships (National Association of Law Placement 2010). In 2015, women made up just 38% of assistant US attorneys (Mukamal and Sklansky 2015). The pattern holds in the judiciary as well, with women underrepresented in judgeships. In 2016, women made up 33% of the Supreme Court, 35.9% of the federal courts of appeal, and 33% of the federal district courts (American Bar Association 2017). State courts reflect a similar pattern, with 30% of state judgeships being occupied by women (American Constitution Society 2017). [8]

People of color have also had a difficult time breaking through in the legal field. Although there hasn't been the explicit discrimination by state bar associations that women

[8] The stereotypes affecting women's careers are not limited to the legal field. Women also see similar discrimination in Science, Technology, Engineering, and Math (STEM) jobs (Sekaquaptewa 2011), corporate jobs, and politics. Only 5% of Fortune 500 companies have a female CEO (Zarya 2018). Only 20% of the US Congress is women (Manning 2018), and there has never been a female President or Vice President of the United States. On the state level, 12% of governors (Center on the American Governor 2018) and 25.4% of state legislators are women (Center for American Women and Politics 2018).

faced, racist attitudes have long made it challenging for people of color from succeeding in the legal profession.[9] The first lawyer of color was Macon B Allen, who was admitted to practice in Maine in 1844 (Conway 2017). However, Allen was not joined by many other Black lawyers. For instance, in Virginia, there were only 54 Black attorneys in 1900, despite there being more than 660,000 Black residents in Virginia at the time (Marshall 2003, US Census Bureau 1901).

Similar to women, people of color face significant implicit bias in professional life. People of color in law firms face discrimination in the hiring process and lawyer evaluations. It has long been established that there is severe discrimination in job interviews, with people of color often receiving less interview time and eye contact than White applicants (Word, Zanna, and Cooper 1974). Traditionally White-sounding names will get more callbacks than traditionally Black or Hispanic names (Bertrand and Mullainathan 2003). These forms of discrimination are seen in the legal field, as the ideal law candidate tends to be described as having traits associated with White male professionals (Negowatti 2015).

Even after an attorney of color has been hired, they still face implicit bias in the workplace. In firms, associates of color will often receive lower-profile cases than similarly situated White associates (Negowetti 2015). The effect of this is two-fold. First, it often disadvantages associates of color when it comes to partner promotions (Negowatti 2015). Roughly 25% of law firm associates are minorities, but only 10% of equity partners are (Minority Corporate Counsel Association 2017). Second, it negatively affects the ability of attorneys of color to make connections in the law firm, which causes high attrition rates (Negowetti 2015). Attorneys of color make up 27% of leaving attorneys, despite only being 16% of law firm attorneys (Minority Corporate Counsel Association 2017).

[9] Since people of color were systematically excluded from a large number of law schools, there was no need for bar associations to explicitly prohibit people of color.

The ills of implicit bias in legal employment are not limited to law firms. In 2010, 16% of all clerkships and 14% of federal clerkships were held by people of color (National Association of Law Placement 2010). Judgeships are also hard to come by, as only 21% of federal level judges (Federal Judicial Center 2017) and 20% of state level judges are minorities (American Constitution Society 2017).[10]

While the once immense barriers to entry are being broken by women and people of color in the legal profession, they are still wildly underrepresented in prestigious positions.

Section 2.4: Supreme Court Bar

There are more than 300,000 lawyers admitted to the official Bar of the United States Supreme Court (Robinson 2016). Admittance is often viewed as a symbolic recognition of accomplishment in the legal field. In order to be admitted, a lawyer must 1) be admitted into and in good standing with the highest court in their state for three years, and 2) be sponsored by two members of the Supreme Court Bar (Supreme Court). As a result of the high rates of entry, as well as the lack of purging of the Bar, the Official Supreme Court bar is massive. However, most of those individuals will never engage directly in litigation before the Supreme Court. Given the cumbersome and inaccurate nature of this official listing, most research into the Supreme Court Bar focuses on those who are actively engaged in Supreme Court litigation. McGuire (1993)

[10] Difficulties in employment for people of color due to implicit bias are hardly contained to the legal field. People of color often experience similar difficulties in the business world, where 27% of senior executives at Fortune 500 companies are people of color (Jones 2017). While that appears proportional at first glance, when broken down further into racial categories, a wide disparity is observed. 21% of senior executives are Asian, 3% are Latino, and 2% are Black (Jones 2017). A similar pattern occurs in high-profile public sector jobs. Congress currently consists of 21.6% people of color, with 9.4% Black, 8.5% Latino, 3.3% Asian/Pacific Islander, and 0.36% American Indian (Manning 2018). There has only been one President of Color, and no Vice Presidents of Color. In 2015, people of color only made up 18.1% of state legislators (National Conference of State Legislators 2015). 6% of governors are minorities, with 2 Latino governors and one Asian (Center on the American Governor).

defined the active Supreme Court Bar as those engaged in any stage of Supreme Court litigation, encompassing the certiorari phase, merits briefing, and the most visible stage: oral argument.

While McGuire's definition does capture every aspect of Supreme Court litigation, when looking specifically at representation, I argue it should be limited to the most visible aspect of litigation: oral argument. Oral arguments are consistently displayed to the public in mainstream newspapers, blogs, and online (examples include: Liptak 2018, Gray 2018). Since representation requires the body being represented (in this case, the people) to be aware of the representation, the focus on oral argument and the personalities involved make it the best arena for assessing representation.[11]

In addition, advocates who appear in front of the court multiple times act as gatekeepers who have disproportionate influence over the docket of the Court. Due to their reputations and experience litigating matters before the Court, these "Repeat Players" are often more successful and influential than "One-Shotters" (McGuire 1995, Galanter 1974). Thus, for the purposes of this paper, Supreme Court Bar will be defined as those advocates who appear in front of the Court in oral argument.

The biggest group of the Repeat Players is the Office of the Solicitor General. Tasked as the official representation of the US Government before the Court, this office is involved in most Supreme Court cases. The Office of the Solicitor General has a great deal of influence during all stages of litigation. A brief from the Office of the Solicitor General supporting a petition for certiorari can dramatically increase the odds of that petition being granted (Teger and Kosinski 1980, Caldiera and Wright 1988). Attorneys in the Solicitor General's office are quite experienced in appellate litigation (DeSousa and Meyer 2013). Like the rest of the profession,

[11]Outside of opinion announcement, oral argument is really the only visible aspect of the Court's functioning. Oral Argument also serves as the only direct interaction between the justices and the attorneys.

the Office of the Solicitor General is heavily male dominated. Until the appointment of future Supreme Court Justice Elena Kagan in 2009, there had not been a permanent female Solicitor General (Sarver 2008).[12]

In the private sector, the legal field has been specializing rapidly to the point where there are litigators who almost exclusively practice appellate litigation (Marvel 1978). It isn't uncommon for a case to change hands from one lawyer to another as it moves up in the appeals process (Marvell 1978). Many of the most frequent Supreme Court advocates, such as Carter G. Phillips and Paul Clement, are specialists and have experience in the Solicitor General's office. Firms will often hire people out of the SG's office to bolster their appellate litigation divisions (Alder 2018).

One way the Supreme Court Bar has been quite limited historically is by geography. Since the Court is in DC, lawyers in close proximity to DC had a "practical monopoly" for many years (Warren 1911). Although transportation is more readily available in modern times, the clustering of legal markets has caused this to be repeated in more modern times (McGuire 1993). In 1990, Washington DC, New York, and Chicago were all overrepresented in the Court when compared to the percentage they make up of the national bar (McGuire 1993). The concentration of litigators is likely due to the types of cases that make it to the Supreme Court. The large firms located in these markets are more likely to have clients that will be subject to Supreme Court litigation (such as major corporations), and thus those firms are more likely to appear than smaller firms (McGuire 1993).

The Supreme Court Bar has also been historically limited in other demographics. Given the history described earlier, it is not surprising that male litigators far exceed female litigators in

[12] Barbara Underwood briefly served as acting Solicitor General at the beginning of the George W Bush Administration (Groll and Yiang 2009)

all aspects of the Supreme Court Bar (McGuire 1993). Men tend to dominate most of the traditional paths to Supreme Court litigation-federal clerkships and working in the Office of the Solicitor General are stepping stones to the world of high-level appellate advocacy (Sarver 2008). This has translated to a domination of Supreme Court litigation as well.

In 1990, women only made up 7.3% of the Supreme Court Bar, despite making up 13% of the national bar (McGuire 1993). From 1993-2001, 98.38% of oral arguments had at least one male advocate, however only 23.27% of oral arguments had at least one woman advocate (Sarver 2008). Through the first half of October Term 2018, women constituted only 15% of Supreme Court advocates (Robinson and Rubin 2019).

In addition to gender, the Supreme Court Bar has been historically homogeneous in terms of race. McGuire 1993 found that the Supreme Court bar was 98% White. Part of this was due to low numbers of lawyers of color in the national bar (particularly among Hispanics). However, even when national bar proportions are taken into consideration, ethnic minorities were still underrepresented.

The Supreme Court Bar also tends to be elite in its education. Lawyers from "Distinguished" and "Strong" law schools have been overrepresented in the Supreme Court Bar (McGuire 1993). Harvard, University of Michigan, and the University of Texas at Austin were the top three represented schools (McGuire 1993). All three of these schools are in the USNWR Top 20. Educational homogeneity was even more pronounced when just looking at the "inner circle of the Bar," defined as those who participated in more than one merits case before the Supreme Court from 1977 to 1982 (McGuire 1993). Within that group, 53.3% of lawyers went to "Distinguished" schools, and 18.8% from "Strong" schools (McGuire 1993). Harvard, Yale, Columbia and the University of Chicago are the top four schools represented in this "inner

circle", collectively making up 32.2% (McGuire 1993). These four schools are all within the top five of the USNWR rankings.

Section 2.5 Conclusion

These four concepts combine to give important context to this investigation and its importance. With those frames in mind, I will now go into the methods that will govern this investigation.

Section 3: Data and Methods

All analyses employ population data of attorneys participating in oral argument before the Supreme Court between October Term 2005 through October Term 2016.[13] Six different characteristics were collected for each lawyer: gender, race, employment at the time of the argument, law school attended, undergraduate institution attended, and whether or not they had a Supreme Court clerkship. For law schools, the schools were grouped into tiers via the US News and World Report rankings: Tier 1 (1-20), Tier 2 (21-50), Tier 3 (All remaining law schools). Undergraduate institutions were categorized as either public or private.

Throughout my analysis, I employ two different ways of measuring the membership of the Supreme Court Bar. The first measure is the total amount of appearances at oral argument (n=2173). Since there are some advocates who appear before the Court multiple times in the period under study, the number of oral argument "slots" allows for accurate measuring for who the Court and the public see most often. The second measure is the individual lawyers (n=876), which is simply just treating every lawyer, regardless of number of times they have appeared, as one. For example, Paul D Clement, who has 58 appearances before the Court accounts for 58 slots but only one individual lawyer.

[13] At the time of data collection, these were the only years of the Roberts Court.

Slots measure the frequency of who the Court and the public see, so this measurement is more useful when evaluating representation. In order to determine if a group is under- or over-represented it is necessary to know not just that the group is being represented, but also the extent to which they are being represented. All three impacts of representation discussed in the previous section depend on visibility, which is determined by frequency of appearance.

However, looking at the individual level is still useful when it comes to assessing the level of access a group has to the institution, even if their representation does not reflect that access. McGuire 1993 uses individual-level data, so all comparisons to that data use individual-level data as well.

Demographic information came from legal directories such as Martindale-Hubbell, official firm websites, or sites managed by the lawyers themselves (such as LinkedIn), with Oyez and C-Span providing some pictures that were used to determine ostensible gender and race. The characteristics are analyzed separately, while the three research questions will be analyzed within them according to the explanations below.

1) *How homogeneous is the Supreme Court Bar?* In order to assess this question, the Supreme Court Bar will be analyzed in terms of the following six characteristics: gender, race, law school attended, undergraduate institution attended, employment category, and Supreme Court clerkship status. Both slot-level and individual data are compared.
2) *Has the Supreme Court Bar changed since 1990?* The demographics of the individuals who argued in front of the Court during the Roberts Court will be compared to those from McGuire 1993 in terms of gender, race and law school attended.

3) *How representative is the Supreme Court Bar?* The demographics of the Supreme Court Bar will be compared to the national bar and to the US population as a whole to evaluate the representativeness of the body in terms of racial and gendered makeup.

P-values represent the probability that the observed difference is caused by chance. This study uses a 95% confidence level, so any p-value less than 0.05 is considered statistically significant. All p-values in the tables are derived from difference in proportions test.

It is worth noting that the comparisons between this data and McGuire (1993) are imperfect due to the slight difference in the operational definitions of the Supreme Court Bar. However, due to the factors explained above, I believe that it is very likely that those who made it to the oral argument stage in 1990 were less diverse than the population of those participating in general. Thus, if there is any effect on the conclusions of this investigation from these differences, they only serve to make the conclusions stronger due to the fact that any increases in diversity seen would likely have been even bigger increase if the two definitions were identical.

Section 4: Results and Discussion

Section 4.1 Gender

The Supreme Court Bar is still extremely male-dominated (see Tables 4.1.1 and 4.1.2). Despite the more than two-fold increase in women's proportion of the Supreme Court Bar from 1990 to the Roberts Court, women still only make up about 16% of the Supreme Court Bar. There are a couple possible explanations for this minor incremental change.

Table 4.1.1: Members of the Supreme Court Bar in the Roberts Court by Gender

	Toal Argument Slots	Individual Attorneys	Difference (Slot-Indiv)	p-value
Male	1804 (83.02%)	724 (82.65%)	0.36	0.81
Female	362 (16.66%)	145 (16.55%)	0.1	0.95
Unknown	7 (0.32%)	7 (0.80%)	-0.48	0.07
Total	2173	876		

Table 4.1.2: Comparison between Supreme Court Bar in McGuire (1993) to Supreme Court Bar in the Roberts Court (excepting Solicitor General) by Gender

	Non-SG Individuals (n=831)	McGuire (n=325)	Difference	P-Value
Male	83.27	92.62	-9.35	P<0.0001*
Female	15.89	7.38	8.51	P=0.0002*

Table 4.1.3 Proportion of Oral Argument Slots by Gender in the Roberts Court compared to the national bar

	Oral Argument Slots	National Bar	difference	p-value
Male	83.02%	64%	19.02%	p<0.0001*
Female	16.66%	36%	-19.34%	p<0.0001*

Table 4.1.4 Proportion of Oral Argument Slots by Gender in the Roberts Court compared to the general population

	Oral Argument Slots	National Population	Difference	p-value
Male	83.02%	49.2	-33.82	p<0.0001*
Female	16.66%	50.8	-34.14	p<0.0001*

The first possible explanation is that while the change is small, it is commiserate with the shifts elsewhere in the legal profession ladder. Back in 1986, the national bar was about 13.1% women compared to 36% in 2017 (Curran et al 1986 qtd in McGuire 1993, American Bar

Association 2017). Women's representation is increasing at a similar rate in both in the national bar and the Supreme Court Bar. In the national bar, women make up 2.7 times the proportion they made in 1986, compared to women making up 2.3 times as much in the Supreme Court Bar. Additionally, there was no significant difference in the proportion of slots and bar membership and men and women had no differences in the average amount of cases per person, suggesting that women and men participate at equal rates once they have made it to the Supreme Court Bar. If that is the case, then perhaps the increase is just a "trickle up" effect from women making up a larger share of the national bar and law schools. Under this theory, women's representation in the Supreme Court Bar would be likely to continue increasing, as women now make up the majority of law students (Olson 2016). Additionally, if this were the case, parity would not be likely to happen anytime soon given the sheer size of the legal industry and the embeddedness of gender norms in the profession.

While it seems plausible, there is one major flaw in this explanation: in terms of frequency of appearances, men dominate both the top and bottom. The top 10 most frequent attorneys before the Court were all men, with an average of 39 appearances. The most frequent female attorney was the 12th most frequent overall with 12 appearances. The top 10 women were ranked 12th, 19th, 20th, 23rd, 29th, 33rd, 35th, 36th, 37th, and 45th and had an average of 15 appearances. At the other end of the spectrum, there were 653 attorneys who only argued one case, and 542 of them were men, which dramatically drags the average for male attorneys down. So even though appearances in oral argument is proportional to the overall membership of the informal Supreme Court Bar, a deeper dive into the data suggests that male attorneys make up the elite of the elite.

A second potential explanation lies in the Office of the Solicitor General. The Solicitor General's office makes up a full 30% of oral argument appearances. As part of the executive branch, the OSG is shaped by the President. This investigation spans the last half of the George W Bush Administration and the entirety of the Barack Obama Administration. President Obama has had a demonstrated commitment to increasing diversity in the government as a whole, but especially in the judicial branch (Solberg and Diascro 2018). President Obama's desire for diversity carried over into the Office of the Solicitor General. Not only did he name the first female Solicitor General in Elena Kagan (Oyez 2019), but his hires in the OSG were considerably more diverse than the prior OSG and the Supreme Court Bar overall. There were 266 oral argument slots that were argued by attorneys hired by the Obama administration. Of those 266, 107 (40.2%) were by women. For comparison, 23.76% of all OSG arguments and 16.66% of all oral arguments were performed by women. Female members of the Obama OSG argued nearly 30% of all oral arguments by women. If all Obama OSG hires are removed, women's share of oral argument slots decreases from 16.66% to 13.42%, which is a significant decrease (p-value=0.0397). So, President Obama's appointments did make a difference in the representation of women in the Supreme Court Bar.

Section 4.2 Race

Table 4.2.1: Members of the Supreme Court Bar in the Roberts Court by Race

	Total Argument Slots	Individual Attorney	Difference (Slot-Indiv)	p-value
White	1869 (86.01%)	728 (83.11)	2.9	0.042
Black	24 (1.10%)	11 (1.26%)	-0.16	0.71
Latinx	28 (1.29%)	15 (1.71%)	-0.42	0.37
Asian	123 (5.66%)	18 (2.05%)	3.81	<0.0001
Other/Unknown	129 (5.94%)	104 (11.87%)	-5.93	<0.0001
Total	2173	876		

Table 4.2.2: Comparison between Supreme Court Bar in McGuire (1993) to Supreme Court Bar in the Roberts Court (excepting Solicitor General) by Race

	Non-SG Individuals (n=831)	McGuire (n=325)	Difference	P-Value
White	83.39%	98.15%	-14.76	P<0.00001*
Black	1.20%	0.923%	-0.277	P=0.9235
Latinx	1.56%	0.923%	0.637	P=0.5761
Asian	1.93%	0%	1.93	P=0.02516*

Similar to gender, the Supreme Court Bar is still dominated by White lawyers, with 86% of oral argument slots and 83% of all lawyers (see Table 4.2.1) At first glance, it appears that the Supreme Court Bar has been diversifying though, with White attorney's share decreasing from 98% in 1990. (See table 4.2.2) However, there's some reason to be skeptical of this assessment. Eleven percent of all lawyers in the Supreme Court Bar were not able to be identified with a certain race. Meanwhile, Asians were the only minority group to see any significant increase. Excluding lawyers whose race is unknown, White attorneys constitute 91.4% of oral argument slots and 94% of individual lawyers. So, while there has been some progress in representation, the racial makeup of the Supreme Court Bar has not shifted nearly as much as it has in the case of gender.

The one group that has made significant progress is Asians. In 1990, there were no Asians in the Supreme Court Bar, but from 2005-2016 they made up 5.9% of oral argument slots and 2% of total lawyers. Asian lawyers are vastly overrepresented in oral argument given their total Supreme Court Bar membership. This is likely caused by the prevalence of Asian lawyers in the OSG. The top five Asian lawyers by frequency all had significant OSG experience, and

were among the lawyers who appeared in front of the Court the most.[14] Those five made up 85% of all oral arguments performed by Asians, as well as 60% of all oral arguments performed by attorneys of color.

Black and Latinx representation has remained pretty stagnant, with no significant differences in their percentages from 1990 to the Roberts Court. There has been one Black attorney with 12 appearances (from the OSG) and two Latinx attorneys with 7 appearances each (one from OSG, one solely from the private sector). Every single other Black and Latinx attorney had three or less appearances. Given the advances Black and Latinx people have made in the upper echelons of the professional world, this would seem to indicate that there are additional barriers in the legal field that prevent these two groups from increasing their representation.

Another interesting thing is the intersection between race and employment. Minority attorneys are more likely to represent interest groups. Appearances on behalf of interest groups only made up 3.3% of all oral arguments, yet make up a significant portion of minority representation. Attorneys appearing as part of an interest group were more diverse than the bar as a whole, with 75.3% of them being White, 6.8% being Black, 4.1% being Latinx, and 6.85% being Asian. The trend becomes clearer when looking at the percentage of a racial group that interest group lawyers make up (see table 4.2.3)

Table 4.2.3: Interest Group Lawyers by Race

Race	Interest Group Lawyers	% of IG lawyers	% of Racial Group that are IG lawyers
White	55	75.3%	2.9%
Black	5	6.8%	20.8%
Latinx	3	4.1%	10.7%
Asian	5	6.8%	4.1%
Unknown	5	6.8%	3.9%

[14] It is worth noting that all five of these Asian lawyers (Neal Katyal, Anthony Yang, Sri Srinivasan, Kannon Shanmugam, and Pratik Shah) are all men.

Only 2.9% of appearances by White lawyers are from interest groups, compared to 20.8% of appearances by Blacks, 10.4% of appearances by Latinx attorneys, and 4.1% of appearances by Asians. So not only are interest group lawyers more diverse than the rest of the Supreme Court Bar, but they also constitute a significant percentage of minority appearances.

In the gender section, a theory was explored suggesting that President Obama's commitment to diversity throughout his administration made a difference in the number of women appearing before the Supreme Court. In addition to gender diversity, President Obama was also dedicated to racial diversity. Did this translate into a racial diversification of the Supreme Court Bar through the OSG? Yes, although less so than for gender. During the Obama administration, several attorneys of color were hired and oral argument appearances were more diverse than the Supreme Court Bar on average. Seventy-four percent of appearances in this category were White, 4.1% were Black, 3% were Latinx, and 9.4% were Asian. Obama hires to the OSG constituted a major percentage of appearances before the Court for minorities, with 45.8% of Black appearances, 28.6% of Latinx appearances, and 20.3% of Asian appearances. Overall, Obama administration hires made up 25% of all appearances by attorneys of color.

Table 4.2.4 Proportion of Oral Argument Slots by Race in the Roberts Court compared to the national bar

	Total Argument Slots	National Bar	Difference	p-value
White	86.01%	85%	1.01	P=0.1979
Black	1.10%	5%	-3.90	p<0.0001*
Latinx	1.29%	5%	-3.71	P<0.0001*
Asian	5.66%	3%	2.66	P<0.0001*
Other/Unknown	5.94%	2%	3.94	P<0.0001*

Table 4.2.5 Proportion of Oral Argument Slots by Race in the Roberts Court compared to the national population

	Total Argument Slots	National Population	Difference	p-value
White	86.01%	60.7	25.31	P<0.0001*
Black	1.10%	13.4	-12.3	p<0.0001*
Latinx	1.29%	18.1	-16.81	P<0.0001*
Asian	5.66%	5.8	-0.14	P<0.8161
Other/Unknown	5.94%	4.2	1.74	P<0.0001*

Compared to the national bar and the national population, minorities are immensely underrepresented. White lawyers are actually at parity representation when compared to the national bar, but are vastly overrepresented when it comes to the overall United States population. Asian attorneys are overrepresented based on their proportion of the national bar, but at parity representation with respect to their share of the US population. Both Black and Latinx lawyers are underrepresented compared to both the national bar and the US population.

Section 4.3 Law School

Table 4.3.1: Members of the Supreme Court Bar in the Roberts Court by Law School Tier Attended

	Argument Slots	Individual Attorney	Difference (Slot-Indiv)	p-value
Tier 1	1628 (74.92%)	484 (55.25%)	19.67	<0.0001
Tier 2	218 (10.03%)	126 (14.38%)	-4.35	0.0007
Tier 3	265 (12.20%)	224 (25.57%)	-13.37	<0.0001
Unknown	62 (2.85%)	42 (4.79)	-1.94	0.0104
Total	2173	876		

There is clear stratification amongst the different tiers of law schools. Those attending Tier One Schools, defined as the Top 20 in the US News and World Report Rankings, made up

just over half of the Bar (55%), but about 3/4ths of the oral argument (75%), making them vastly overrepresented in oral argument ($p<0.0001$). Meanwhile, Tier Two (USNWR 21-50) and Tier Three (all other schools) are both significantly underrepresented in oral argument. Attorneys from Tier 1 schools argued, on average, 3.36 times before the Court, compared to 1.73 times for attendees of Tier 2 and 1.17 times for Tier 3 schools. The Top 10 most frequent advocates all went to Tier 1 schools, averaging 39 oral arguments. The most frequent advocate from a Tier 2 school argued 30 times and the most frequent advocate from a Tier 3 school argued 24 times. However, both of them were from the OSG. All of this suggests that while people are able to argue before the Court from all tiers of law schools, in order to be a repeat player, it is a virtual necessity to go to a highly ranked school.

Breaking down the tiers more, the data points to even more concentration at the top. USNWR Top Three schools (Yale, Stanford, and Harvard) are vastly overrepresented, with graduates making up 24% of the bar, but 37% of the oral arguments (p-value<0.0001). The USNWR Top Six (Top Three plus Chicago, Columbia, and NYU) are also overrepresented, with 35% of the Supreme Court Bar and nearly half (49%) of oral arguments (p-value<0.0001). Overall, there are three times as many appearances from graduates of Tier One schools than of all other schools combined.

Of the top ten most frequent advocates, nine of them are from USNWR top ten schools. Five of them are from the USNWR top ten schools, and three of them are from Yale, which has been number one every single year the rankings have existed.

Table 4.3.2: Comparison between Supreme Court Bar in McGuire (1993) to Supreme Court Bar in the Roberts Court (excepting Solicitor General) by Law School Attended

	Non-SG Individuals (n=831)	McGuire (n=324)	Difference	P-Value
Harvard	12.76	8.64	4.12	P=0.06303
Michigan	2.65	5.25	-2.63	P=0.0438*
UTA	3.01	3.39	-0.38	P=0.8798
Alabama	0.12	2.47	-2.35	P<0.00001*
George Washington	1.08	2.16	-1.08	P=0.2596
UVA	2.29	2.16	0.13	P=1
NYU	3.37	1.85	1.52	P=0.2392
Berkley	2.17	1.85	0.32	P=0.915
Florida	0.84	1.54	-0.7	P=0.464
Illinois	0.48	1.54	-1.06	P=0.1412
Notre Dame	1.08	1.54	-0.46	P=7317
Penn	0.84	1.54	-0.7	P=0.464
St Louis	0 .48	1.54	-1.06	P<0.1412
Yale	8.18	1.54	6.64	P<0.00001*

On an individual level, the Supreme Court Bar seems to be even more top heavy than it was in 1990 when it comes to individuals unaffiliated with the OSG (see Table 4.3.2). Three different law schools experience statistically significant changes between 1990 and 2005-2016. The University of Michigan law school's share of the Supreme Court Bar was nearly cut in half from 5.3% to 2.7% (p-value=0.0438). The University of Alabama's law school dropped from 2.5% to 0.12%, only having one lawyer argue in the first 12 years of the Roberts Court (p-value<0.0001). The only school that had a significant increase was Yale Law School who increased more than five-fold from 1.5% to more than 8% (p-value<0.0001). Harvard Law School's increase is squinting towards significance (p-value=0.06303). Of the statistically insignificant changes from 1990, only three of them are increases, and all three of those schools are in the USNWR top 10.

Intuitively, it does make sense that an institution in the upper echelons of a field would require top-notch credentials, and thus have proportionally more lawyers from the top-ranked law schools. However, when there is such a concentration of power at the very top as there is in the Supreme Court Bar, then those top law schools effectively act as intellectual bottlenecks, and the schools themselves can have an outsized influence on the institution.

With that in mind, it would also follow that an office as prestigious as the OSG would be filled with people with high credentials-in this case, degrees from top law schools. The data bears this expectation out, with over 90% of oral argument slots and 82% of individual lawyers from the OSG coming out of Tier 1 law schools. While slots from Obama hires to the OSG were only 86% from tier 1 law schools, it is still more than the overall Supreme Court Bar average, so President Obama didn't significantly change the office in that regard.

Section 4.4 Undergraduate Institution

Table 4.4.1: Members of the Supreme Court Bar in the Roberts Court by Type of Undergraduate Institution Attended

	Total Argument Slots	Individual Attorneys	Difference (Slot-Indiv)	p-value
Private	1445 (66.50%)	499 (56.96%)	9.54	<0.0001
Public	627 (28.85%)	302 (34.47%)	-5.62	0.0023
Unknown	101 (4.65%)	75 (8.56%)	-3.91	<0.0001
	2173	876		

Undergraduate schools are polarized in the Supreme Court Bar, albeit to a lesser extent than law schools. Unlike law school, there is no predominant rankings system for undergraduates, especially given the diversity of majors available. Thus, this investigation is solely focused on public vs private undergraduate institutions. While not a perfect proxy, private

institutions are commonly considered to be more prestigious than public universities are (Wong 2018). Private undergraduate institutions are overrepresented in oral argument relative to their individual representation in the Supreme Court Bar, with 66.5% of the argument slots and only 57% of the individual lawyers. Likewise, public undergraduate institutions are underrepresented in oral argument.

Undergraduate institutions in and of themselves probably are not a great predictor of arguing in front of the Court. After all, there are 13.3 million college students in the United States, with around 3.4 million of them attending private universities (NCES 2018; NAICU 2018). With the many different types of undergraduate majors and programs available, simply going to a private school does not dramatically increase those chances. However, going to an elite school can often shape the opportunities one has after attending (Wong 2018). In that sense, it is important to see if elite undergraduate colleges translate to a more elite law school placement.

In the Supreme Court Bar, there is an association between tier of law school and type of undergraduate institution. Sixty-Nine percent of those from private undergraduate schools went to Tier 1 schools, compared to just 41% from public undergraduate schools. Additionally, of those from Tier 1 law schools, 71% of them went to private institutions and 25% went to public institutions. For Tier 2 law schools, the proportions are exactly the same, with 48.4% of them coming from private institutions and 48.4% coming from public institutions. In Tier 3 law schools, only 41% come from private and 51% come from public schools. This would suggest that the path to the Supreme Court Bar starts even before matriculating into law school.

Section 4.5 Employment Category

Table 4.5.1: Members of the Supreme Court Bar in the Roberts Court by Employment Category

	Total Argument Slots
Federal Government	684 (31.48%)
State and Local Government	233 (10.72%)
Interest	73 (3.36%)
Vault 100 Firm	620 (28.53%)
Other Firm	316 (14.54%)
Solo	39 (1.79%)
Academic	61 (2.81%)
Public Defenders	77 (3.54%)
In-House counsel	5 (0.23%)
Unknown	65 (2.99%)
Total	2173

As has been noted previously, the Office of the Solicitor General dominates oral argument slots, having 31.5% of the oral argument slots. The impact of the OSG is not limited to their direct representation though-several of the top private Supreme Court litigators had experience in the OSG. The next biggest group is Vault 100 firms, who made up 28.53% of the slots. Of the 26 lawyers who argued 10 or more cases, 23 of them spent at least some of their slots representing the OSG. The other three also had OSG experience, including one SG; they just did not spend time there during the Roberts Court. Attorneys such as former SG Paul Clement, former SG Theodore Olson, and former Acting SG Neal Katyal have all left the office of the solicitor general to lucrative practices in Vault 100 firms, which are the second most represented employment category.

Table 4.5.2: Comparison between Supreme Court Bar in McGuire (1993) to Supreme Court Bar in the Roberts Court (excepting Solicitor General) by Employment Category

	Non-SG individuals (n=831)	McGuire (n=325)	Difference	P-Value
Private	52.71	75.08	-22.37	P<0.0001*
State and Local	19.45	16.61	2.84	P=0.296
Organized Interests	6.74	2.46	4.28	P=0.0066*
Academic	5.30	1.85	3.45	P=0.01508*
Legal Aid	8.424	1.54	6.88	P<0.0001*
Corporate	0.241	1.23	-0.99	P=0.09877

Once the OSG is removed, the attorneys from both Vault 100 and non-Vault 100 firms make up a majority of the Supreme Court Bar. However, the share of private practice attorneys has actually decreased by 31% since 1990. With the exception of In-House corporate lawyers, every other category saw an increase, with all but one being statistically significant. Legal-Aid and public defenders saw the biggest increase, jumping from 1.54% to 8.42%. Some of this increase could be due to the changing nature of the Supreme Court docket. From 1978-1997, cases about criminal procedure represented 23.98% of all cases, while from 1998-2017, they represented 27.75%, which is a significant increase (two sided p-value=0.004) (Spaeth et al 2018). Since public defenders and legal-aid clinics focus on criminal cases, an increase in the proportion of the docket would naturally result in an increase in the amount of slots that they would occupy. Coupled with the fact that most public defenders will only appear once (five of the 70 public defenders that appeared before the Court had multiple arguments and two of those five were solely due to a second oral argument in the same case), a significant increase in the proportion of criminal procedure cases is very likely to have contributed to the rise in proportion of public defenders.

The next largest increase was organized interests, such as the ACLU or the Judicial Crisis Network. Interest groups are nothing new to the Court, with groups such as the NAACP Legal Defense Fund consistently turning to the courts to advance their causes (Collins 2008). Additionally, interest groups such as the Federalist Society and the Heritage Foundation have massive power in the nomination process of not only the Supreme Court, but also the rest of the federal judiciary (Baum and Devins 2017, Kelly 2018). The American public is looking towards the Court (rather than Congress) to resolve certain issues, such as abortion or gerrymandering (Tavernise 2018; Daley 2018). The Supreme Court has even become a campaign issue, with candidates in both the Democratic and Republican Parties creating litmus tests for judges they would nominate (Debenedetti 2016; Wolf 2018). The increasing view of the Supreme Court as a political institution, combined with the lack of productivity in Congress, might be driving the movement towards using the judiciary to enact policy, which would explain the increase in interest groups.

Academic representation has also increased significantly, from 1.85% in 1990 to 5.30% in 2018, which is driven by the rise in clinical education. Passed in 2016, ABA standard 303(b) requires law schools to offer substantial opportunities to participate in clinical work (Stark and Hunt 2018). Clinical education offers law students the opportunity to get experiential training in legal work by participating in real legal cases (Stark and Hunt 2018). Clinics often focus on a type of practice, such as housing law or family law. Appellate clinics have become quite popular, and have taken cases to the Supreme Court (Fisher 2013). Both Stanford Law School and the University Of Virginia School of Law have had multiple arguments in front of the Roberts Court, with Stanford's clinic boasting 7 different appearances.

Section 4.6 Clerkship status

Table 4.6.1: Members of the Supreme Court Bar in the Roberts Court by Supreme Court Clerkship

	Total Argument Slots	Individual Attorneys	Difference (Slot-Indiv)	p-value
Yes	945 (43.49%)	169 (19.29%)	24.2	<0.0001
No	1228 (56.51%)	707 (80.71%)	-24.2	<0.0001
Total	2173	876		

Relative to their share of individual lawyers in the Supreme Court Bar, attorneys with a Supreme Clerk clerkship are overrepresented with 43.5% of the oral arguments and only 19.3% of individual lawyers. A Supreme Court clerkship is one of the most sought-after and prestigious law positions in the country. With only 35-40 clerkships annually,[15] these positions are extremely competitive and will all but guarantee a long and thriving legal career for those who get one (Lat 2018). Given its prestige and its relation to the Supreme Court, it is no surprise that former clerks enjoy success as a Supreme Court litigator. Seven of the top 10 most frequent advocates had a clerkship.

As they are so prestigious, clerks in the Supreme Court tend to come from elite law schools and move to elite positions afterwards. 88.7% of those who argued with a clerkship came from a Tier 1 school. However, Table 4.6.2 below demonstrates that even when accounting for law school, a clerkship is associated with far more appearances.

[15] Each active justice gets four clerks, so 9*4=36 clerks. Each retired justice gets up to 1 one clerk per term. The number of retired Justices changes periodically, but there are currently four. So in total there are about 40 Supreme Court clerkships annually.

Table 4.6.2 Number of Appearances by Law School Tier attended and Clerkship Status

Law School Attended	Average # of appearances with clerkship	Average # of appearances without clerkship
Tier 1	5.69	2.20
Tier 2	7.75	1.32
Tier 3	5.67	1.16

It appears the two most significant predictors of arguing in front of the Court are working at the OSG and having done a Supreme Court clerkship. However, these are not necessarily independent events. Since the OSG is exclusively about Supreme Court litigation, it stands to reason that experience as a Supreme Court clerk would be strongly desired. The numbers bear this out to a certain extent. Attorneys with a Supreme Court clerkship make up 60% of the appearances and 51% of all individuals from the OSG. So while someone from the OSG is more likely to have a Supreme Court clerkship than an individual representing a different litigant, it is far from a necessity to have a Supreme Court clerkship to enter the OSG.

Section 5: Conclusion

The first research question this investigation seeks to answer is: How homogeneous is the Supreme Court Bar? Very. Of the six qualities investigated, a clear majority of the Bar shared the same characteristic on all but the completion of a judicial clerkship. The Supreme Court Bar is dominated by White men who attended private undergraduate schools and top law schools employed by Vault 100 firms. Even though only 19.3% of attorneys within the Bar have a Supreme Court clerkship, 43% of oral arguments were performed by a former clerk, so there is still a concentration of power.

The second research question is: Has the Supreme Court Bar changed since 1990? Although the Supreme Court Bar has become more diverse than it was in 1990, it is still

extremely homogeneous. It remains a White, male-dominated, and elite institution and is certainly not representative of the people. Not only are there barriers of entry to joining the Supreme Court Bar, but even within in the Supreme Court Bar, historically dominant and elite groups have huge advantages in appearing in front of the Court.

The third research question is: How representative is the Supreme Court Bar? Compared to both the national bar and the population at-large, the Supreme Court Bar is not very representative.

The path to becoming a Supreme Court litigation specialist begins early in life, going back at least as far back as the beginning of undergraduate studies. There is a small and narrow path that favors members of historically privileged communities greatly, flowing through elite law schools and clerkships, both of which are less diverse than average (American Bar Association 2018; National Association of Law Placement 2010).

The pipeline to the Supreme Court Bar is one riddled with exclusivity. Every step along the way, from attending an undergraduate institution to practicing as an attorney, acts as a barrier to entry that works against women and people of color. Each new step compounds the difficulty for historically marginalized communities to move on to the next step.

The Office of the Solicitor General does offer hope that the tides will be changing soon. Given that the OSG often acts as a springboard for lucrative appellate practices, with the more diverse set of lawyers hired by Obama, it would be expected that some will go on and continue to practice after leaving the OSG. For example, five women that have recently left the OSG have gone into private appellate practice (Alder 2018). These women, along with the attorneys of color, will be able to use the advantages of being a former member of the OSG and continue arguing at high rates, which would be expected to further diversify the Supreme Court Bar.

The impacts of the homogeneity of the Supreme Court Bar go beyond just symbolic representation and lack of role models. Supreme Court specialists are significantly more likely to win their cases than non-specialists (Lazarus 2008). Since descriptive representation can translate into substantive representation, the demographics of the Supreme Court Bar could easily translate into the substance of the types of cases they argue.

For example, female judges are more likely to recognize types of gender bias than male judges (Martin et al 2002). Using that same logic, perhaps male Supreme Court specialists will be less likely to believe the merits of a gender discrimination claim. Since men are the majority of Supreme Court specialists, that claim has a greater chance of being brought by a non-specialist (and therefore having less of a chance of succeeding, regardless of merit) if it gets brought at all. Thus, substantive areas of law can be greatly affected by the diversity reflected within the Supreme Court Bar.

Additionally, the direction of the Supreme Court's docket can be influenced by a small number of people, many of who have strong ideological leanings. For example, Paul Clement, who appeared the most of anyone in the study period, is very public about his conservative ideology and is an active member of the Federalist Society. There is a plethora of discourse, both public and academic, about how the Court has been steadily shifting to the right.[16] These pieces usually focus around the ideology of the Justices-especially after the relatively moderate Justice Kennedy was replaced with the very conservative Justice Kavanaugh. However, because of how familiar conservative advocates like Paul Clement or Theodore Olsen (38 appearances) are, they are able to get more of their cases docketed. The Supreme Court gets around 8,000 petitions each year and grants around 80 of them (Supreme Court 2019). So, people like Clement and Olsen

[16] Examples of public discourse include Bazelon (2018) and Sherman (2018). An academic example of such discourse is Perkins et al (2007).

who get multiple cases docketed each year have the ability to actively shape the agenda of the Court. Further research should examine the ideologies of all of the advocates before the Court to look for possible effects.

Further research could also look into the litigants and how they influence the demographics of the bar. This analysis focuses heavily on the "supply" side of the Bar; i.e. factors that influence an individual's ability to gain entrance. But the supply-side is not the whole picture; the demand-side could also contain key insight into how people get into the Supreme Court Bar. Since everyone in the Supreme Court Bar is hired by a client, the criteria for entry are determined by a market. For example, research could look into whether or not certain types of litigants prefer certain types of attorneys, and how that might influence who is desirable in the market. If clients' demand about who they want to represent them in the Supreme Court skews towards people with the traditionally-sought after elite credentials (Top-tier law school, Supreme Court Clerkship, etc.), it would help clarify the path to the Bar and strategies to diversify the Bar moving forward.

Section 6: Cited Works

American Bar Association. *Enrollment and Degrees Awarded*. 2013, www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf.

American Bar Association. *A Current Glance At Women in the Law*. Jan. 2017, www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_january2017.authcheckdam.pdf.

American Bar Association. "2017 1L JD Applicant/First Year Class Data." 2018, www.americanbar.org/groups/legal_education/resources/statistics.html.

American Constitution Society. "The Gavel Gap." *The Gavel Gap*, 2017, gavelgap.org/.

Alder, Madison. "Forged at the Supreme Court: SG Alumnae Form Lasting Bond." *Big Law Business*, 10 Jan. 2018, biglawbusiness.com/forged-at-the-supreme-court-sg-alumnae-form-lasting-bond/.

Baum, Lawrence, and Neal Devins. "How the Federalist Society Became the De Facto Selector of Republican Supreme Court Justices." *Slate Magazine*, Slate, 31 Jan. 2017, slate.com/news-and-politics/2017/01/how-the-federalist-society-became-the-de-facto-selector-of-republican-supreme-court-justices.html.

Bazelon, Emily. "When the Supreme Court Lurches Right." *The New York Times*, The New York Times, 22 Aug. 2018, www.nytimes.com/2018/08/22/magazine/when-the-supreme-court-lurches-right.html.

Bertrand, Marianne, and Sendhil Mullainathan. “Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination.” *NBER*, University of Chicago Press, July 2003, www.nber.org/papers/w9873.

Bradwell v Illinois, 83 US (16 Wall.) 130 (1872)

Caldiera, Gregory, and John Wright. “Organized Interests and Agenda Setting in the U.S. Supreme Court.” The American Political Science Review, vol. 82, no. 4, 1988, p. 1109.

Campisi, Jessica, and Brandon Griggs. “Of the 113 Supreme Court Justices in US History, All but 6 Have Been White Men.” *CNN*, Cable News Network, 5 Sept. 2018, www.cnn.com/2018/07/09/politics/supreme-court-justice-minorities-trnd/index.html.

Center for American Women and Politics. “Women in State Legislatures 2018.” *Facts | CAWP*, 2018, www.cawp.rutgers.edu/women-state-legislature-2018.

Center on the American Governor. *Rutgers University*, Jan. 2018, governors.rutgers.edu/on-governors/us-governors/fast-facts-about-american-governors/.

Clawson, Rosalee A., and Waltenburg, Eric N. Legacy and Legitimacy : Black Americans and the Supreme Court. Temple University Press, 2009.

Collins, Paul M. Friends of the Supreme Court : Interest Groups and Judicial Decision Making. Oxford University Press, 2008.

Conway, Danielle M. “Maine Was First in the Nation to Admit an African American to the Bar in 1844 - University of Maine School of Law.” *MaineLaw*, 2 June 2017, mainelaw.maine.edu/faculty/maine-first-nation-admit-african-american-bar-1844/

Corbett, Don. “Stunted Growth: Assessing the Stagnation of African-American Students at the Nation's Law Schools.” *Temple Political & Civil Rights Law Review*, 2008, pp. 177–211.

Cordes, Nancy. “116th Congress Takes Office as the Most Diverse in U.S. History.” *CBS News.* 2019. https://www.cbsnews.com/news/116th-congress-takes-office-as-the-most-diverse-in-us-history/.

Daley, David. “Supreme Court to Rule Soon on Partisan Gerrymander Cases: Last, Best Chance for Fair Elections?” *Salon*, Salon.com, 29 May 2018, www.salon.com/2018/05/28/supreme-court-to-rule-soon-on-partisan-gerrymander-cases-last-best-chance-for-fair-elections/.

Debenedetti, Gabriel, et al. “Clinton, Sanders Blaze Different Trails on Supreme Court Nomination.” *POLITICO*, POLITICO, 17 Feb. 2016, www.politico.com/story/2016/02/hillary-clinton-bernie-sanders-supreme-court-nomination-219351.

DeSousa, Jeffrey Paul, and Meyer, Melissa. “Equilibrium in High Court Representation for Criminal Defendants: How the Supreme Court Bar Can Champion Civil Liberties.(Current Developments 2012-2013).” *Georgetown Journal of Legal Ethics*, vol. 26, no. 4, 2013, pp. 911–943.

Diascro, Jennifer Segal and Gregg Ivers. *Inside the Judicial Process: a Contemporary Reader in Law, Politics, and the Courts*. Houghton Mifflin, 2006.

Dhillon, Kiran. “Law Schools Most Likely to Produce a Supreme Court Justice.” *Time*, Time, 8 May 2014, time.com/91646/the-most-popular-law-schools-of-supreme-court-justices/.

Farrell, Sean Patrick. “The Lawyer's Apprentice.” *The New York Times*, The New York Times, 30 July 2014, www.nytimes.com/2014/08/03/education/edlife/how-to-learn-the-law-without-law-school.html?_r=0.

Federal Judicial Center. “Federal Judicial Center.” *Jurisdiction of the Federal Courts | Federal Judicial Center*, 2017, www.fjc.gov/history/exhibits/graphs-and-maps/race-and-ethnicity.

Fisher, Jeffrey L. “A Supreme Court Clinics Place in the Supreme Court Bar.” *Stanford Law Review*, vol. 65, Jan. 2013, pp. 137–202., www.stanfordlawreview.org/wp-content/uploads/sites/3/2013/01/Fisher-65-Stan-L-Rev-137.pdf.

Galanter, Marc. “Why the ‘Haves’ Come out Ahead: Speculations on the Limits of Legal Change.” *Law & Society Review*, vol. 9, no. 1, 1974, pp. 95–160. *JSTOR*, www.jstor.org/stable/3053023.

Gray, Sarah. “Supreme Court Hears Arguments in Challenge to Trump's Travel Ban.” *Fortune*, Fortune, 25 Apr. 2018, fortune.com/2018/04/25/supreme-court-arguments-trump-travel-ban/.

Groll, Elias J, and Athena Y Jiang. “The Harvard Crimson.” *The Harvard Crimson*, 5 Jan. 2009, www.thecrimson.com/article/2009/1/5/obama-names-law-school-dean-solicitor/.

Hansen, Claire. “116th Congress by Party, Race, Gender, and Religion.” U.S. News & World Report, U.S. News & World Report, 3 Jan. 2019, www.usnews.com/news/politics/slideshows/116th-congress-by-party-race-gender-and-religion?onepage.

Jones, Stacy. “White Men Account for 72% of Corporate Leadership at 16 of the Fortune 500 Companies.” *Fortune*, Fortune, 9 June 2017, fortune.com/2017/06/09/White-men-senior-executives-fortune-500-companies-diversity-data/.

Keating, Dan, and Laris Karklis. *The Increasingly Diverse United States of America*. Washington Post, 25 Nov. 2016, www.washingtonpost.com/graphics/national/how-diverse-is-america/.

Kenney, Sally Jane. Gender and Justice : Why Women in the Judiciary Really Matter. Routledge, 2013.

Kirkwood, Marion R, and William B Owens. *A Brief History of Stanford Law School, 1893-1946*. Stanford Law School, Mar. 1961, web.archive.org/web/20120407053200/http://www.law.stanford.edu/school/history/historysls.pdf.

Kritzer, Herbert, and Thomas Uhlman. "Sisterhood in the Courtroom: Sex of Judge and Defendant in Criminal Case Disposition." The Social Science Journal, vol. 14, no. 2, 1977, pp. 77–88.

Lat, David, and Kashmir Hill. "You Don't Need No Stinkin' Law Degree to Be on the Supreme Court." *Above the Law,* Above the Law, 14 May 2010, abovethelaw.com/2010/05/you-dont-need-no-stinkin-law-degree-to-be-on-the-supreme-court/.

Lat, David. "Supreme Court Clerk Hiring Watch: The Complete Clerk Roster For October Term 2018." *Above the Law*, Above the Law, 2 Aug. 2018, abovethelaw.com/2018/08/supreme-court-clerk-hiring-watch-the-complete-clerk-roster-for-october-term-2018/?rf=1.

Lazarus, Richard J. "Advocacy Matters Before and Within the Supreme Court: Transforming the Court by Transforming the Bar." *Georgetown Law Journal*, vol. 96, 2008, pp. 1487–1564.

Liptak, Adam. "Key Voice Is Silent in Supreme Court Case on Unions." *The New York Times,* The New York Times, 26 Feb. 2018, www.nytimes.com/2018/02/26/us/politics/supreme-court-unions-gorsuch.html.

Mansbridge, Jane. “Rethinking Representation.” American Political Science Review, vol. 97, no. 4, 2003, pp. 515–528.

Marshall, Michael. *Jim Crow Constitution Stifled Virginia's Black Lawyers*. University of Virginia School of Law, 13 Oct. 2003, www.law.virginia.edu/news/2003_fall/hylton.htm.

Martin, Patricia Yancey, John R Reynolds, and Shelley Keith. “Gender Bias and Feminist Consciousness among Judges and Attorneys: A Standpoint Theory Analysis.” Signs, vol. 27, no. 3, 2002, pp. 665–701.

Marvell, Thomas B. *Appellate Courts and Lawyers : Information Gathering in the Adversary System*. Greenwood Press, 1978.

Massari, Paul. “HLS Fetes 50 Years of Women Graduates:” *Harvard Gazette*, Harvard Gazette, 8 May 2003, news.harvard.edu/gazette/story/2003/05/hls-fetes-50-years-of-women-graduates/.

McGuire, Kevin T. *The Supreme Court Bar : Legal Elites in the Washington Community*. University Press of Virginia, 1993

McGuire, Kevin T. “Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success.” *The Journal of Politics*, vol. 57, no. 1, 1995, pp. 187–196. *JSTOR*, www.jstor.org/stable/296027

Minority Corporate Counsel Association. *2017 Law Firm Diversity Survey Report*. 2017, www.mcca.com/wp-content/uploads/2017/10/Women-Leaders-in-the-Law.pdf.

Moline, Brian J. “Early American Legal Education.(Centennial Issue).” *Washburn Law Journal*, vol. 42, no. 4, 2003, pp. 775–802.

Morello, Karen B. *The Invisible Bar: The Woman Lawyer in America 1638 to the Present.* Random House, 1986

Mukamal, Debbie, and David Alan Sklansky. “A Study of California Prosecutors Finds a Lack of Diversity.” *Los Angeles Times*, Los Angeles Times, 29 July 2015, www.latimes.com/opinion/op-ed/la-oe-0729-sklanskymukamal-diversity-prosecutors-california-20150729-story.html.

NAICU. “Quick Facts About Private Colleges.” *NAICU*, 2018, member.naicu.edu/about/page/quick-facts-about-private-colleges.

National Association of Law Placement. “A Demographic Profile of Judicial Clerks — Patterns of Disproportionality.” *NALP - National Association for Law Placement | Private Sector Salaries*, Nov. 2010, www.nalp.org/nov2010_demog_clerkships.

National Conference of State Legislators. *State Legislators Race and Ethnicity 2015*. 2015,www.ncsl.org/Portals/1/Documents/About_State_Legislatures/Raceethnicity_Rev2.pdf.

NCES. “The NCES Fast Facts Tool Provides Quick Answers to Many Education Questions (National Center for Education Statistics).” *National Center for Education Statistics (NCES) Home Page, a Part of the U.S. Department of Education*, National Center for Education Statistics, 2018, nces.ed.gov/fastfacts/display.asp?id=372.

Negowetti, Nicole E. (2015). Implicit bias and the legal profession's "diversity crisis": A call for self-reflection. *Nevada Law Journal, 15*(2),

Northwestern Law . “History.” *Northwestern Pritzker Law*, School of Law, 2017, www.law.northwestern.edu/about/history/.

Olson, Elizabeth. “Women Make Up Majority of U.S. Law Students for First Time.” The New York Times, The New York Times, 16 Dec. 2016, www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html.

Oyez. "Elena Kagan." *Oyez*, 10 Feb. 2019, www.oyez.org/justices/elena_kagan.

Perkins, Jane, et al. “The Supreme Court's 2006-2007 Term: the Shift to the Right Takes Shape.” Clearinghouse Review, vol. 41, no. 7 8, 2007, pp. 442–459.

Pitkin, Hanna Fenichel. The Concept of Representation. University of California Press, 1967.

Plainview, Daniel. *Do Underrepresented Minority (URM) Applicants Have a Law School Admissions Advantage?* Powerscore, 7 Mar. 2017, blog.powerscore.com/lsat/do-underrepresented-minority-urm-applicants-have-a-law-school-admissions-advantage.

Randall, Vernellia. “The Misuse Of The Lsat: Discrimination Against Blacks And Other Minorities In Law School Admissions.” *St. John's Law Review*, vol. 80, no. 1, 2006, pp. 107–143,145–151.

Robinson, Kimberly. “Supreme Court Bar Admission Has Its Perks.” *Big Law Business*, 16 May 2016, biglawbusiness.com/supreme-court-bar-admission-has-its-perks/.

Robinson, Kimberly Strawbridge, and Jordan S. Rubin. “Women Argue Only a Fraction of Supreme Court Cases (3).” *Bloomberg BNA News*, 30 Jan. 2019, news.bloomberglaw.com/us-law-week/women-argue-only-a-fraction-of-supreme-court-cases?fbclid=IwAR3PBu5vUTYx9VTi4g5HOdEVed2A5AMsCCQaDlOaWF8gBk72WltLGIXY3Hc.

Sapiro, Virginia. “Research Frontier Essay: “When Are Interests Interesting? The Problem of Political Representation of Women” The American Political Science Review (1927), vol. 75, no. 3, 1981, p. 701.

Sarver, Tammy, et al. “The ATTORNEY GENDER GAP in U.S. Supreme Court Litigation.” *Judicature*, vol. 91, no. 5, 2008, pp. 238–250.

Scherer, Nancy, and Brett Curry. “Does Descriptive Race Representation Enhance Institutional Legitimacy? The Case of the U.S. Courts.” The Journal of Politics, vol. 72, no. 1, 2010, pp. 90–104.

Sekaquaptewa, Denise. “Discounting Their Own Success: A Case for the Role of Implicit Stereotypic Attribution Bias in Women's STEM Outcomes.” Psychological Inquiry, vol. 22, no. 4, 2011, pp. 291–295.

Sherman, Mark. “Supreme Court Moves Right, but How Far, How Fast?” *Chicago Tribune*, Chicago Tribune, 7 Oct. 2018, www.chicagotribune.com/news/nationworld/politics/ct-supreme-court-future-20181007-story.html.

Spaeth, Howard J., Lee Epstein, Andrew D. Martin, Jeffrey A. Segal, Theodore J. Ruger, and Sara C. Benesh. 2018 Supreme Court Database, Version 2018 Release 01. http://Supremecourtdatabase.org

Spohn, Cassia, et al. “Women Defendants in Court: The Interaction between Sex and Race in Convicting and Sentencing.” Social Science Quarterly, vol. 66, no. 1, 1985, pp. 178–185.

Solberg, Rorie Spill, and Jennifer Segal Diascro. “A Retrospective on Obama’s Judges: Diversity, Intersectionality, and Symbolic Representation.” *Politics, Groups, and Identities*, 28 May 2018, pp. 1–17., doi:10.1080/21565503.2018.1478736.

Stark, Debra Pogrund and Hunt, Christine, 'Re-Imagining Law School Clinics: Leveraging Resources to Do More, for More, Under a Hybrid Model' (April 18, 2018). Oklahoma City University Law Review, Forthcoming. Available at SSRN: https://ssrn.com/abstract=3164957

Strauss, Valerie. “The 'Cloistered' Harvard-Yale Law Monopoly on the Supreme Court.” *The Washington Post*, WP Company, 10 July 2018, www.washingtonpost.com/news/answer-sheet/wp/2018/07/10/the-cloistered-harvard-yale-law-monopoly-on-the-supreme-court/?utm_term=.68f43b49d262.

Supreme Court. *INSTRUCTIONS FOR ADMISSION TO THE BAR*. www.supremecourt.gov/bar/barinstructions.pdf.

Supreme Court . “The Justices' Caseload.” *Home - Supreme Court of the United States*, 2019, www.supremecourt.gov/about/justicecaseload.aspx.

Tate, Katherine. Black Faces in the Mirror : African Americans and Their Representatives in the U.S. Congress. Princeton University Press, 2003.

Tavernise, Sabrina. “The Future of Abortion Under a New Supreme Court? Look to Arkansas.” *The New York Times*, The New York Times, 7 Sept. 2018, www.nytimes.com/2018/09/07/us/abortion-supreme-court-arkansas.html.

Taylor, Aaron N. “Diversity as a Law School Survival Strategy.” *Saint Louis University Law Journal*, vol. 59, no. 2, 2015, pp. 321–383.

Teger, Stuart H., and Douglas Kosinski. “The Cue Theory of Supreme Court Certiorari Jurisdiction: A Reconsideration.” *The Journal of Politics*, vol. 42, no. 3, 1980, pp. 834–846. *JSTOR*, JSTOR, www.jstor.org/stable/2130555.

US Census Bureau. *1901 Census Report*. 1901, www2.census.gov/prod2/statcomp/documents/1901-02.pdf.

Vault. "100 Most Prestigious Law Firms." *Vault*, Vault, 2018, www.vault.com/company-rankings/law/vault-law-100.

Walker, Thomas G., and Deborah J. Barrow. "The Diversification of the Federal Bench: Policy and Process Ramifications." The Journal of Politics, vol. 47, no. 2, 1985, pp. 596–617.

Warren, Charles. *A History of the American Bar*. Cambridge University Press, 1911.

Willis, Leonard. *Myra Bradwell: The First Woman Admitted to the Illinois Bar*. American Bar Association, 31 Oct. 2017, www.americanbar.org/groups/litigation/committees/minority-trial-lawyer/practice/2017/myra-bradwell-first-woman-admitted-to-illinois-bar.html.

Wolf, Richard. "Trump's 21 Potential Court Nominees Are Overwhelmingly White, Male and from Red States." *USA Today*, Gannett Satellite Information Network, 2 Dec. 2016, www.usatoday.com/story/news/politics/elections/2016/12/01/donald-trump-supreme-court-21-nominees-list-nomination/93964888/.

Wong, Alia. "At Private Colleges, Students Pay for Prestige." *The Atlantic*, Atlantic Media Company, 21 Sept. 2018, www.theatlantic.com/education/archive/2018/09/america-private-college-tuition/569812/.

Word, Zanna, & Cooper. (1974). The nonverbal mediation of self-fulfilling prophecies in interracial interaction. *Journal of Experimental Social Psychology*, *10*(2), 109-120.

Zarya, Valentina. "The Share of Female CEOs in the Fortune 500 Dropped by 25% in 2018." *Fortune*, Fortune, 21 May 2018, fortune.com/2018/05/21/women-fortune-500-2018/.