

Look Who's Talking: Differences in Rates of Interruption and Proportion of Time Used by Male and Female U.S. Courts of Appeals Judges

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Introduction

During oral arguments, attorneys are given the chance to elaborate on their written briefs and answer questions from the judges deciding the case. Studying oral arguments can be a window into the power dynamics between judges and attorneys, and can shed light onto how factors like gender may affect judicial decision-making. While a growing body of research has examined gender dynamics in oral arguments in the United States Supreme Court^{1 2}, no existing studies have examined whether these findings hold up in the U.S. Court of Appeals—the second highest courts in the country. We collected data on two years of oral arguments from the 4th Circuit in order to test theories about gender and speech patterns, including interruptions and verbosity.

Methodology & Results

The oral argument data were drawn from a sample of published decisions from the 4th Circuit in 2009 and 2016. From the textual transcriptions, we were able to identify substantive interruptions in oral argument. In most cases, judges interrupted attorneys; however, there were some instances of attorneys breaking decorum and interrupting judges.

We identified a “substantive interruption” whenever the transcription reflected that a speaker was not able to finish their thought or sentence. When this occurred, the following speech would be considered an interruption. For our purposes, interjections of one word or unidentifiable speech were not counted as substantive interruption. Our team also obtained data on the amount of time each judge spoke to test whether male judges monopolized more time than their female colleagues in oral argument.

We evaluated how the power dynamics around gender in the courtroom would play out in three different ways. First, we recorded how much time each judge spent talking during oral argument, with the expectation that male judges would monopolize more of the attorneys' time than female judges (on panels where there was a mix of men and women judges). Second, we tracked how often judges interrupted attorneys, and then how often attorneys interrupted judges (i.e., violating the norm of decorum). We expected male judges to do more interrupting of counsel than their female colleagues, and attorneys to interrupt women judges more often than male judges.

¹ Jacobi, T., & Schweers, D. (2017). Justice, interrupted: The effect of gender, ideology, and seniority at supreme court oral arguments. *Virginia Law Review*, 103(7), 1379-1496.

² Feldman, Adam and Gill, Rebecca D., Echoes from a Gendered Court: Examining the Justices' Interactions During Supreme Court Oral Arguments (January 31, 2017). <http://dx.doi.org/10.2139/ssrn.2906136>

We found that male judges do, in fact, use significantly more time in oral argument than female justices on the 4th circuit in mixed gender panels of judges over the years studied. Further, we found evidence that male judges interrupt attorneys at higher rates than their female colleagues on the 4th circuit over the years studied. Though we anticipated attorneys would interrupt female judges more often than their male counterparts, our analysis found no statistically significant evidence for this hypothesis.

Conclusions & Discussion

Our work contributes to the growing body of literature detailing the experiences of women in the political arena. We find statistically significant evidence of inequalities in the courtroom, which impact both female judges and attorneys. The gender-based evidence supporting our findings regarding use of time in oral argument and interruptions in the courtroom is striking; however, it is important to note that these findings could change with the inclusion of additional circuits and more years of data. Further research should expand on this evidence of power imbalances in the courtroom to examine how these dynamics impact the decisions made by mixed gender panels of judges. Our methods can be expanded to study other circuits at the appellate level, as well as judiciaries at the local and state level.

This work is additionally meaningful to our team as a group of four undergraduates and one professional woman in the field of political science. This project sheds light on the experiences many of us may face as we enter the workforce as women in various areas of the political arena. By better understanding the power differentials and persistent inequalities on the basis of sex, young professionals can be better prepared for the identity-based challenges they may face in their careers. The first step to addressing such inequality is acknowledging its existence, which is what we have strived to do through this project.¹

¹ Acknowledgements: Thank you to Dr. Laura Moyer of the Department of Political Science for her direction.