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The Influence of Gender on Interruptions in the U.S. Courts of Appeals

By

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and
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Abstract

Law has historically been a male-dominated profession. The number of women earning law degrees is now close to parity with men (Moyer and Haire 2015). So, does this mean that women no longer face disadvantages in the legal profession? Unfortunately, systemic disadvantage persists. For instance, previous work on the United States Supreme Court shows that female judges and attorneys are more likely to be interrupted than men—a finding consistent with research on interruption in other contexts, like legislative bodies. This frequency of interruption can have lasting consequences on the ways in which women speak and present questions, as well as more generally how women are able to communicate and express their perspectives. My research examines the gender dynamics of interruptions in a new institutional context: oral arguments in the United States Courts of Appeals. I look at whether female judges are interrupted more frequently by attorneys than their male counterparts, and whether male or female judges are more likely to interrupt attorneys. The results reveal that male judges are much more likely to interrupt attorneys, consistent with existing research, which suggests that male judges dominate more of the conversation during oral argument, potentially limiting the influence of female judges. Further, the results reveal that there is not a statistically significant difference between the interruption of female and male judges by attorneys, in contrast to existing research, and suggests that attorneys are not more likely to interrupt female judges on the U.S. Courts of Appeals.

The Influence of Gender on Interruptions in the U.S. Courts of Appeals

“To be a woman is to be interrupted.” *The Boston Globe* made this declaration after then Senator Kamala Harris was repeatedly interrupted by her male colleagues when questioning Attorney General Jeff Sessions. Now Vice President Kamala Harris is unfortunately the rule rather than the exception. Women in the highest echelons of their careers experience consistent interruption and forms of disrespect. This has also been found to be true in the United States Supreme Court, as will be discussed below.

This research looks at the interruption patterns and power dynamics in the form of oral argument before the United States Courts of Appeals. This study is important because it takes the limited research conducted on the Supreme Court a step further to see if gender inequities are consistent in the lower federal court system. This is relevant in order to understand the disadvantages women face in the legal profession and how that may affect the shaping of policy. Female judges, while limited in number, have the opportunity to shape the trajectory of the American legal system. If the already disadvantaged position of women in the legal system and the world is further perpetuated by disproportionate interruption, it is important to expand on this research in order to combat it.

First, I will highlight the current body of research on gender dynamics and interruption: looking first more generally at instances of male interruption of females in normal conversation and day-to-day interactions. Then, I consider how the insights from this work have been tested in a variety of political institutions, including legislative bodies both in the United States and abroad, as well as the United States Supreme Court and federal courts in other countries. However, no existing research has assessed whether these findings translate to the lower federal courts. Drawing from the existing literature, I posit two hypotheses, which I test using an original

dataset. I argue that the existing research may apply to the U.S. Courts of Appeals system, and test whether female judges are interrupted more frequently by attorneys and whether male judges interrupt attorneys more frequently than female judges do. Finally, I discuss what the findings can tell us about future research on this topic and the overall landscape of the American legal system. While my findings do not establish a disproportionate pattern of interruption of female judges by attorneys in the 4th Circuit of the U.S. Courts of Appeals, they do support the idea that male judges are markedly more likely to interrupt attorneys during oral argument, thus speaking more, and potentially having a greater impact on the decision reached. I believe this topic provides the opportunity for greater analysis and understanding of the way women are treated in the judiciary.

The Foundations of Gendered Interruption Patterns

Women have historically been, and continue to be, disadvantaged in the workplace, and in the legal profession specifically. Considering that a relatively recent example like the late United States Supreme Court Justice Ruth Bader Ginsburg was not able to find legal work after graduating from an elite law school (West 2018), one can easily see the lasting influences gender discrimination and bias has on modern women. Women are often dismissed and looked over if they are not bold enough, but consistently ridiculed and labeled as aggressive if they stand their ground. This is representative of a concept in feminist philosophy known as the double bind: “situations in which options are reduced to a very few and all of them expose one to penalty, censure, or deprivation” (Frye 1983). In this theory of double bind, for example, if women accept their traditional gender stereotype of agreeability and docility, they miss out on opportunities to contribute, but if women go against gender norms by exhibiting strong opinions and thoughts,

they are perceived as angry, bitter, or aggressive. This places women in a “lose-lose” situation, in which the double bind perpetuates disadvantage. As Frye describes, “one can only choose to risk one’s preferred form and rate of annihilation.” Balancing this challenging dynamic may hurt female attorney success and damage their credibility.

One federal taskforce concluded, “women attorneys face credibility problems not found by their male counterparts. This is a cause for concern, because credibility is directly related to one’s ability to influence others” (Nelson 1993–1994:733). This struggle for balancing credibility with approval places women within strict boundaries for behavior which men do not face. Further, in the legal profession specifically, women face an additional barrier to success. Because of widely held associations between masculine-associated traits and law, female attorneys are disadvantaged when people perceive “feminine” behavior as deviating from the stereotypical lawyer role (Pierce 1995; Rhode 2002).

These challenges contribute to the power dynamics between men and women, both within the legal sphere and outside of it. Interruptions are a relevant aspect of studying these dynamics because they constitute a way to assert authority in conversation. Where a dominant party may speak over or interrupt the other person, this creates a dynamic of power within conversation. This dynamic can contribute to the way in which the conversation goes, and how decisions are made from it. This is especially true within the legal sector, and notably in oral arguments. When a woman judge is interrupted, her authority is challenged, her thought interrupted, and the potential for her to influence the decision being made is contested. An example of interruption in the government sector is when, on October 7, 2020, Vice Presidential Candidate Kamala Harris was interrupted by current Vice President Mike Pence during a debate.

Harris interjected “Mr. Vice President, I’m speaking” and received major media coverage¹. The research below elaborates on different power dynamics in conversation, both within social and professional contexts.

First, one body of work finds evidence of women experiencing interruptions in conversation with male counterparts. These are general studies of men and women in the workplace, but they help build the foundation to support the assertion that women Supreme Court justices are more often interrupted by men. For instance, Zimmerman and West (1996), observe that “...there are definite and patterned ways in which the power and dominance enjoyed by men in other contexts are exercised in their conversational interaction with women.” This specific study found that of conversations between two women, two men, and a man and a woman, the male/female groups had a disproportionate number of interruptions as compared to the same sex groups, and nearly all of the interruptions were made by men. These findings are consistent with insights from feminist philosophy from Solnit (2014), who writes about the power dynamics and presumption of superiority in her article, “Men Explain Things to Me.” As Solnit describes, an underlying assumption often exists in conversation between men and women. This presumption is that men are more credible, knowledgeable, or capable; thus, “men explain things to me, and other women, whether or not they know what they’re talking about” (Solnit 2014). She goes on that “it is this presumption that makes it hard, at times, for any woman in any field; that keeps women from speaking up and from being heard when they dare;

¹ Harris received substantial support, especially among women, following her retort to the Vice President’s interruption. A potential explanation of this support is relatability, as women may empathize based on their own experiences being interrupted. Further, according to a CBS News tally of this same debate, Pence interrupted Harris twice as many times (O’Kane 2020).

that crushes young women into silence by indicating, the way harassment on the street does, that this is not their world” (Solnit 2014).

We see the challenges discussed by Solnit in various settings. Zimmerman and West’s findings are supported by numerous other studies of interruptions in conversations between men and women in groups and social contexts (Karakowsky 2004; Hancock and Rubin 2014) and in professional settings like legislative bodies (Kathlene 1994). Each of these studies supports the idea that there is an unequal power dynamic between men and women in conversation, as well as in the workplace.

Moreover, there is research to support interruption of women, even in the highest echelon of their careers. Several sources analyze legislative bodies and the gender dynamics in speech within these institutions². For instance, one study found that when presenting female and male witnesses in legislative hearings, women are given proportionally less time to speak than male witnesses and the effectiveness of women's testimony is undermined by senators' responses (Mattei 1998). The research of a previously mentioned study of legislative bodies suggests that as the proportion of women increases in a legislative body, men become more verbally aggressive and controlling of the hearing (Kathlene 1994). Further, in studying the U.S. Supreme Court confirmation process, strong evidence indicated that female nominees receive more judicial philosophy-related questions from male senators, and that, overall, female

² This is a concern also identified in feminist philosophy, as described by Dotson (2011). Dotson explains this with the concept of epistemic violence, or the violence exerted against or through knowledge. Dotson describes epistemic violence as a way of marking the silence of marginalized groups. Applying this theory to my study, epistemic violence is an interesting consideration for understanding how unequal treatment of women in their careers perpetuates future unequal treatment. Perhaps, since women have vastly different experiences in their careers than men, these challenges could “silence” women, as epistemic violence asserts, by creating fear and keeping more women from participating in these career opportunities.

nominees undergo a substantively different confirmation process than male nominees (Collins, Ringhand, and Boyd 2018). Studies have also been conducted on the topic of interruption and gender dynamics in other countries: one in the German legislative body analyzed the problem of ‘maninterrupting’ regarding parliamentary debates in Germany by investigating the nature and extent of male interruptions during parliamentary debates. These instances demonstrate that disadvantages persist for women in their careers. Further, if women are continuing to face inequities in their careers, one wonders how the imbalances are perpetuated by the unequal system in place. In sum, there is substantial evidence for the level of interruption of women within legislative bodies, as well as the power dynamics which exist within these institutions. The dynamics present within the legislative branch of government could very naturally translate to the judicial branch.

These studies all demonstrate the frequency of males interrupting females in conversation and professional settings and support the premise that this could be applicable to oral arguments in front of the United States Courts of Appeals. One could argue that women at the pinnacle of their career in the highest court in the nation could not possibly be affected by this. However, I believe there is an argument for how the societal norm of interrupting women could be translated to any line of work or institution.

Gendered Interactions on Courts

In addition to work on interruptions in conversation and legislative bodies, other research examines interruptions in judicial proceedings, both in the United States and in other nations. Research about gender and interruptions in the judicial context can be organized into four

categories: interruptions between judges and attorneys, interruptions between justices, gender differences in speech strategies, and other explanations for interruption patterns.

Interruptions between judges and attorneys

First, several studies substantiate the hypothesis that female judges are disproportionately interrupted by advocates before the Court compared to their male counterparts (Loughland 2019; Jacobi and Schweers 2019). Even despite rules of oral argument prohibiting the interruption of justices, research has demonstrated that advocates before the Court do interrupt justices, and interrupt female justices significantly more often. One study (Loughland 2019) conducted on behavior during oral argument in the High Court of Australia considers factors like amount of time spent speaking and seniority. Ultimately, it finds that female judges were far more likely to be interrupted than their male colleagues. While this research applies to the Australian High Court, it supports the idea that this could be true for the United States Supreme Court.³

There has also been research conducted on the treatment and frequency of judges interrupting female attorneys (Gleason 2019; Patton and Smith 2017; Patton and Smith 2020). This research has looked at how gender schemas and the expectations and norms associated with gender both influence the power dynamics within oral argument and the ways that this relates to interruption. For instance, Patton and Smith (2017) find that female lawyers are interrupted earlier, allowed to speak for less time between interruptions, and subjected to more and longer

³ There are some institutional differences between the Australian and United States Supreme Courts. The Australian High Court is made up of seven justices rather than nine, it requires a mandatory retirement by age seventy as compared to a lifetime appointment, and it has both original and appellate jurisdiction over cases (West 2018). But for the purposes of this paper, the findings can be generalized. These differences do not affect the point at issue.

speeches by the justices compared to their male counterparts. Further, Gleason (2019) finds that female attorneys are more successful when adhering to the gender norm of emotional language, where male attorneys are rewarded for using less emotional language. These studies support the idea that gender norms and stereotypes are reinforced in oral argument, and that this can influence who speaks, for how long they speak, and how they are treated while speaking. Whether the study looks at the interruption of judges by attorneys or attorneys by judges, the body of research is consistent in that female judges and attorneys are consistently interrupted more frequently and treated differently in oral argument than their male counterparts.

Interruptions between justices

Research on the rates of interruption between Supreme Court justices demonstrate another perspective of power dynamics within oral argument. Not only are female justices more likely to be interrupted by attorneys before the Court, but they are also far more likely to be interrupted by male justices, and gender is the most significant factor affecting interruptive behavior (Feldman and Gill 2019; Jacobi and Schweers 2017; Loughland 2019). According to the Feldman and Gill (2019) study, “this inequity is compounded by the fact that interruptions of female justices by male justices are associated with lower word counts for the interrupted female justices in ways that interruptions by other women are not.” This knowledge is important because it demonstrates the disparity in balance of authority on the Supreme Court and how gender impacts which members of the Court influence oral argument. Further, this dynamic is interesting because interruption is not changed when it is a high-stakes situation such as oral argument or between colleagues in a professional setting such as the Supreme Court. Moreover, it has been found that this pattern of interruption is not changed with the addition of more female

justices (Jacobi and Schweers 2017). While the United States Supreme Court has had a limited pool of female justices to study, it is interesting to note that as time elapses and more women have been nominated to the Court, power dynamics and interruption patterns have remained consistent. Additionally, the Australian High Court did not see a change in the pattern even with a female chief justice (Loughland 2019).

Beyond interruptions

Furthermore, many scholars have looked at the differences between speech patterns of men and women (Gleason 2020; Jacobi and Schweers 2017; Ainsworth 1993). These speech strategies are important because they play a role in the power dynamics present in oral argument. Jacobi and Schweers (2017) found female justices to use what linguists and psychologists call the “female register,” which is a style of speaking in which women frequently use questions or overly polite language to modify a statement. This style relies on the use of indirect phrases such as ‘sorry,’ ‘could I ask,’ or the use of an advocate’s name by female judges at the beginning of a question. Other work has found fundamental differences between women’s and men’s speech, finding hyper-politeness tendencies in women, and over-assertiveness in men (Ainsworth 1993). An example of this is that women were found to be more likely to use indirect language such as ‘sort of,’ ‘probably,’ and ‘kind of,’ in addition to declarative statements with rising intonation as opposed to direct questions.

Research has not determined whether this is because the female speaking style is easier to interrupt or because women adopt this style as a result of being interrupted frequently. This is relevant to my study because it potentially demonstrates one way that women accommodate interruptions. The female register may allow for more frequent interruption by nature of the use

of passive language, such as using “pardon me, excuse me, may I ask” before asking a question. Moreover, the Gleason article (2020) demonstrated attorneys are more successful when their oral arguments are more consistent with gender norms. Specifically, male attorneys are rewarded for using less emotional language whereas female attorneys are successful when using more emotional language. This further depicts the influence of gender norms and expectations on power dynamics, even in the highest levels of our judiciary. The way in which women speak, and are expected to speak, has a demonstrated effect on the way they are treated, even in a context like the federal court system.

Other explanations for interruption patterns

Finally, several studies have analyzed other explanations than gender that might explain frequency of interruption (Jacobi and Schweers 2017; Loughland 2019; Patton and Smith 2020). Factors other than gender, such as ideology and seniority, have been offered as potential explanations for rates of interruption (Johnson, Black, and Wedeking 2009; Epstein, Landes, and Posner 2010). The analysis of these factors on the Supreme Court is somewhat challenging because there have only ever been four female Supreme Court justices, and the appointment of Justice Amy Coney Barrett is too recent to gather sufficient data. Another difficulty in studying ideology is that Justice Sandra Day O’Connor is the only conservative justice of the four females. Further, Justices O’Connor and Ginsburg were the only two female justices considered to be senior at this point. These factors limit the study of ideology and seniority as potential explanations, but they can still offer some insight into the interaction of these factors. The Jacobi and Schweers (2017) study discusses the influence of both ideology and seniority on the likelihood of justices being interrupted. While they found that liberal justices are more likely to

be interrupted, a conservative female justice like Justice O'Connor was still disproportionately likely to be interrupted. Seniority was found to not explain the gender pattern. Moreover, the same study found the pattern did not change with the addition of more female justices. Loughland (2019) found that a gendered pattern of interruption on the High Court in Australia did not change with the presence of a female chief justice. Additionally, another study investigated the specific effects of ideology and gender in verbal interactions during Supreme Court oral arguments. Patton and Smith (2020) theorized that all justices—just like all people—have unconscious gender schemas, or an organized set of gender-related beliefs that influence behavior, that lead them to speak more during presentations by women but that liberal and female justices likely have conscious egalitarian values that diminish the manifestation of gender schemas. They found that conservative justices speak more when female lawyers are arguing but that liberal justices show no such effect. While several studies have undertaken studying the influence of factors like ideology and seniority, none have been able to demonstrate a complete explanation replacing the influence of gender.

In summary, there is limited research on this subject, in large part because there were no women on the United States Supreme Court before 1981. Even now, there are only three women sitting on the nine-person bench. Despite the limited research on this subject, this idea is supported by earlier research on general interruptions and treatment of women. Further, studies on this topic in other countries can contribute and support these ideas. Overall, a history of inequity for women supports the hypothesis that gender influences the likelihood that someone would be interrupted. Research on this topic at the Courts of Appeals would further contribute to the studies above, and could have a major impact on our understanding of the judicial system and how women are treated within it.

Institutional Differences Between the U.S. Supreme Court and Courts of Appeals

Another important consideration when applying this research question to the United States Courts of Appeals is the many differences between the appellate courts and the U.S. Supreme Court. It is important to note these differences and consider how they might impact the findings of this study. The appeals courts are divided into thirteen total circuits: there are eleven geographical circuits that comprise all the federal districts within a contiguous group of from three to nine states, plus the districts in various U.S. territories. A twelfth circuit hears appeals from the district court of the District of Columbia and from a number of federal administrative agencies. A final circuit, the Federal Circuit, sits in the District of Columbia and has a specialized jurisdiction, which includes customs and patent appeals (Bowie, Songer, and Szmer 2014). Notably, the U.S. Courts of Appeals have a significantly larger case load, lack a discretionary docket, have a random, rotating three-member panel as compared to the nine-member Supreme Court, and there are differences between the circuits as to what percentage of cases are decided with oral argument. Research conducted on the appellate courts by Bowie, Songer, and Szmer (2014) elaborate on these differences as follows. These structural differences between the U.S. Courts of Appeals and the Supreme Court are important in understanding differences in my findings. Because the court systems operate differently, there are considerations for how this might influence the findings of interruption on the Courts of Appeals, as compared to the Supreme Court.

First, the U.S. Courts of Appeals, as the intermediary between federal trial courts and the Supreme Court, hear a significantly larger number of cases each year compared to the Supreme Court. According to Bowie et. al (2014), “for most of the past decade the courts of appeals have been deciding more than 60,000 cases per year, while Supreme Court review of U.S. Courts of

Appeals decisions has dropped to less than 150 cases per year.” Further, Bowie et. al state “But as the number of appeals has increased dramatically in recent decades, while the number of cases heard by the Supreme Court has remained the same, the courts of appeals have increasingly become in practice the courts of last resort for the vast majority of litigants.” In fact, in 2019-2020, the Supreme Court heard only fifty-six cases, which was the smallest number since the Civil War era (Feldman 2020). In the view of these authors, the appellate courts have become even more important in recent years because of this discrepancy. This could, perhaps, be an interesting component in the research conducted: giving more female Courts of Appeals judges the opportunity to be interrupted, as well as their interruptions potentially having more impact on the breadth of decisions made.

Second, unlike the United States Supreme Court, the U.S. Courts of Appeals do not have a discretionary docket. This means that appellate courts are unable to be selective of which cases they choose to hear; instead, they must hear all appeals by nature of their position as an intermediary court. The Supreme Court, on the other hand, is able to select which cases it will hear each year because these cases have already received the “review of an adverse decision reached at trial” required by common law (Bowie, Songer, and Szmer 2014). The U.S. Courts of Appeals function to provide a review of lower court proceedings and are required to hear appeals, where the Supreme Court may or may not choose to do so. This is an important distinction in the function of each court system. One potential implication of this difference is that the cases before the U.S. Courts of Appeals are not as ideologically salient or high stakes as the cases before the Supreme Court. It could be possible that, given the lower stakes, the pressure to interrupt might be lower. However, this would likely not have an impact on the gendered patterns of interruption mentioned above.

Next, the structure of the U.S. Courts of Appeals and Supreme Court are different: The Supreme Court has a standing body of nine justices, whereas in the US Courts of Appeals, “Each circuit is presided over by between six and twenty-nine full-time appeals court judges, who typically sit in panels of three judges to decide their appeals” (Bowie, Songer, and Szmer 2014). Where the Supreme Court utilizes the entire pool of judges in each case and oral argument, each circuit in the Courts of Appeals uses a random panel of three judges per case. Depending on the size of the circuit, these judges may have never met or worked together previously. This could potentially influence the conclusions above. Oral argument is influenced by the power dynamics present within relationships between attorneys and judges: the familiarity and acquaintance of the panel of judges in the U.S. Courts of Appeals could influence the way conversation, and decision-making, transpires.

Finally, there are substantial differences across the circuits of the U.S. Courts of Appeals as to what percentage of cases is decided with oral argument. Each circuit has discretion in deciding certain procedures, and one of these discretionary decisions is how often cases will be decided with oral argument. Bowie et. al (2014) analyzed the frequency of oral argument within each circuit: as low as 15.3% in the Fourth Circuit and as high as 58.8% in the Seventh Circuit. The average frequency of oral argument was approximately 32.53%, making the Fourth Circuit significantly below the average. The data in this project is taken from the Fourth Circuit. Thus, this variation matters, specifically for this research question, because the rate of interruption studied here is taken from oral argument. Consequently, circuits which utilize oral argument more frequently may demonstrate increased instances of interruption. It is also interesting to wonder how interruption and power dynamics may influence the conclusions reached in oral argument, and whether the frequency of oral argument has any impact on this.

In summary, the U.S. Courts of Appeals are a distinct court system and its distinction from the Supreme Court may be relevant to the study aforementioned. It is important to take the systematic differences into consideration when analyzing potential influences on the results found.

Theory and Hypotheses

Previous research on gender and interruption points to several key ideas that have implications for this study. First, men interrupt women more frequently in social settings and day-to-day interaction. This provides a baseline level of support not only that women are interrupted more frequently, but also that men do more of the interrupting. Second, women are interrupted more frequently in professional settings. This supports the idea that the disadvantages women face permeate into a woman's career. Next, women are more frequently interrupted in positions of authority. This is demonstrated by the example of the Vice-Presidential debate with Kamala Harris: even in the highest echelon of her career, Harris faced frequent interruption. More than this, Harris was interrupted twice as often as she interrupted her opponent: supporting the theory that men also interrupt more frequently than women. This further supports the contention that a woman who is a federal judge could still face these disadvantages. Finally, work on the Supreme Court confirms that female Supreme Court justices are interrupted more frequently than their male colleagues. This final piece of the puzzle offers support for the theory that female judges for the United States Courts of Appeals could face disproportionate levels of interruption, as compared to their male counterparts. This leads to the hypotheses tested in this research:

H1: Male judges will interrupt attorneys more than female judges.

H2: Female judges will be interrupted by attorneys more than their male counterparts.

Data and Variables

To test these hypotheses, I first obtained oral argument data from a stratified random sample of sixty published decisions (thirty from each circuit-year) made by the 4th Circuit of the United States Courts of Appeals in 2009 and 2016⁴. These decisions were drawn from previously collected data. Of these cases, twenty-nine were orally argued on panels with a mix of male and female judges. Audio files for each case were downloaded from the Fourth Circuit website, segmented for automated transcription, and then edited by human transcriptionists. Lastly, each speaker was identified and coded for their role (attorney or judge) and gender, based on information from court filings. From the textual transcriptions of oral argument proceedings, substantive interruptions in oral argument were identified. A “substantive interruption” is indicated when the transcript reflects a speaker not being able to finish their thought or sentence due to another speaker initiating spoken words. When this occurred, the following speech would be considered an interruption. In this study, interjections of one word or unidentifiable speech were not counted as substantive interruption. For instance, in *EEOC v. Central Wholesalers* (573 F.3d 167, 2009), this exchange was coded as a judge interrupting an attorney:

⁴ Data for this project were collected with support from the National Science Foundation (NSF-SES #1655159, 1654614, 1654559, 1654697). Any opinions, findings, and conclusions or recommendations expressed are those of the authors and do not necessarily reflect the views of the National Science Foundation.

Attorney: *“We argued the case Your Honor and I think it'd be fair to look at them separately because. Certainly in this case the evidence we think establishes or at least a reasonable jury could find that there was both a race based. If you just look at the evidence—”*

Judge: *“I understand that. But let's just say we don't agree with you on that and we don't agree that you win on either one independent then you lose.”*

Then, in *Ojo v. Lynch* (813 F.3d 533, 2016) an exchange was coded as an attorney interrupting a judge:

Judge: *“They ... had a broad rule in effect and that's what they applied. Cariaga or whatever they want to call it, right. They said we don't abide by nunc pro tunc orders in adoption cases. Which means we don't care what any of the 50 states do. We aren't going to record out--”*

Attorney: *“Which is the argument. That's why they overstepped.”*

Because this data is preliminary, we do not have the ability to control for attorney gender at this point⁵. However, this leaves open possibility for future research. Additionally, future research will examine interruption behavior on all-male and all-female panels as well.

⁵ However, the vast majority of attorneys at oral argument are men. In the 4th Circuit in 2009, there were fifteen women out of sixty-six attorneys (22.7%). In 2016, there were fourteen women out of sixty-five attorneys (21.5%). These numbers represent attorneys who were on the brief, and not necessarily the individuals who argued behind the podium. This is notable, as over the seven years in the data, there is virtually no change in the number of female attorneys.

Results

Next, we look to the details of the data used and my findings in this study. Table 1 shows the summary statistics for each variable. The cases in my study covered a variety of legal subjects, but the cases were primarily about civil rights (37.93%), criminal law (20.69%), and economic activity and regulation (20.69%). In addition, of the sixty cases, three-quarters of them came from panels where both Democratic and Republican judges sat together. This is a relevant consideration as we recall previous studies on the influence of ideology on interruption.

[Table 1 here]

First, I examine the distribution of interruptions descriptively by creating box plots. As demonstrated by Figure 1, the gender differences in judge interruptions of attorneys are substantial. This is demonstrated by the difference in height of the box plots representing each gender. While the minimum number of interruptions for both male and female judges was zero, the maximums are notably different: the maximum for male judges was thirty-one, whereas the maximum for female judges was nineteen. Further, the medians of the two groups (nine for males and five for females), as indicated by the line inside the box, were different. This suggests that my hypothesized expectation is on target: I predicted men would be more active in interruption, which is what their higher median indicates. The median is an indicator of what is “typical” and is not affected by outliers.

[Figure 1 here]

Male judges exhibited greater variation in interruption of attorneys than women, as shown by the interquartile range (25th – 75th percentile), and when the standard deviation is calculated; the standard deviation for men was 7.9, but only 4.8 for women.

Next, I look at the box plot of attorneys interrupting judges (by judge gender), as demonstrated in Figure 2. This type of interruption occurs less frequently than the judge-to-attorney interruption demonstrated in Figure 1. Both of the maximum values and medians indicate that this occurs less frequently. This also makes sense, given the power dynamics in an attorney-judge relationship (attorneys are expected to be deferential to judges). While Figure 2 shows male judges have greater variation than female judges in being interrupted, the medians are the same, which suggests that this hypothesis may not be supported by the t-test. However, while the gender of the attorney is not captured in this coding, a vast majority of attorneys who appear in federal court are males, which reflects interruptions by mainly male attorneys.

[Figure 2 here]

While descriptive analyses are informative, they are not sufficient to test my hypotheses, which is why I use t-tests. T-tests compare the means of two groups and often tell us whether two groups are statistically different from one another. This type of test demonstrates if the means of two groups are statistically significant. This is a good tool for testing my hypothesis about gender and interruption because I am comparing two groups (men and women) to tell whether they are different regarding frequency of interrupting. Using a t-test allows me to see whether the difference in interruptions is statistically significant.

In the t-test I conducted regarding judge gender, male judges interrupted attorneys more frequently ($M=10.4$, $SD=7.9$) than female judges did ($M=5.4$, $SD=4.8$), $t(28) = 2.7782$, $p=0.0096$. With this information, I can reject the null hypothesis of no difference. The results for H1 support my hypothesis that male judges will interrupt attorneys more than female judges. There is a large difference between the means of the two groups, as demonstrated by Figure 3, with male judges interrupting attorneys about twice as much as female judges.

[Figure 3 here]

Furthermore, as previously mentioned, the ideology of judges can also influence interruption patterns, based on Supreme Court research (Jacobi and Schweers 2017; Patton and Smith 2020; Epstein, Landes, and Posner 2010). To assess this alternate explanation for gender differences in judge interruptions, I conducted another t-test to see if there is a gender difference in judge interruptions when comparing mixed Republican and Democratic panels with politically homogenous (all Republican or all Democratic) panels. The t-test showed that while male judges interrupted attorneys more frequently than women in both mixed and homogeneous panels, the difference on homogeneous panels was not statistically significant. In panels with judges from the same party, male judges interrupted more frequently ($M=8.33$, $SD=7.42$) than female judges ($M=4.66$, $SD=3.08$), $t(1.2875)$, $p=0.2543$. Because the p-value is greater than 0.05, this finding is not statistically significant. However, when looking at the interruptions of mixed party panels, the findings did achieve significance. Male judges not only interrupted more frequently ($M=10.33$, $SD=7.48$) than female judges ($M=5.52$, $SD=5.17$), $t(2.3289)$, $p=0.0305$, but because the p-value is less than 0.05, the results are statistically significant. This suggests that the results of H1 are not being driven by ideological factors, though a larger sample would be needed to verify this.

As shown in Figure 4, I also conducted a t-test to evaluate the second hypothesis: whether female judges will be interrupted by attorneys more than their male counterparts. In this test, the results were not statistically significant: attorneys actually interrupted male judges slightly more ($M=2.41$, $SD=3.27$) than female judges ($M=2$, $SD=2.22$), $t(28) = 0.5666$, $p=0.5755$. With this information, I cannot reject the null hypothesis of no difference for H2. The p-value equating to greater than 0.05 translates to the means not having a great enough difference to be relevant.

[Figure 4 here]

As I did with the first hypothesis, I examined whether gender differences were evident when the panels were broken down by party composition. This t-test showed that in one-party panels, attorneys interrupt male judges ($M=4.17$, $SD=5.67$) much more than female judges ($M=2.67$, $SD=2.42$), $t(0.6237)$, $p=0.5601$. However, these results were not statistically significant. In mixed party panels, attorneys interrupt female judges ($M=2$, $SD=2.21$) slightly more than male judges ($M=1.81$, $SD=2.06$), $t(-0.2752)$, $p=0.7860$, but again these findings are not statistically significant.

In the final section, I discuss what these findings tell us and point to directions for future research on these questions.

Conclusion

My research examined the gender dynamics of interruptions in the institutional context of oral arguments in the United States Courts of Appeals. I looked at whether female judges are interrupted more frequently by attorneys than their male counterparts, and whether male or female judges are more likely to interrupt attorneys. This research is important and relevant to the future of women in the American legal system. My work also connects to a broader literature in feminist theory about patriarchal systems, the double bind, and mansplaining (Solnit 2014; Dotson 2011; Frye 1983). Better understanding gendered power dynamics, and how they influence important professional settings like the federal court system, will allow our society to better comprehend how systematic gender inequality persists in spheres like the legal system.

While my findings do not establish a disproportionate pattern of interruption of female judges by attorneys in the 4th Circuit of the U.S. Courts of Appeals, they do support the idea that

male judges are markedly more likely to interrupt attorneys during oral argument, thus speaking more, and potentially having a greater impact on the decision reached. Further, my research did not find the influence of ideology on interruption to be statistically significant. This is consistent with previous literature which indicates ideology is a somewhat weaker predictor of judicial outcomes at the U.S. Courts of Appeals level than at the Supreme Court level (Zorn and Bowie 2010).

As Jacobi and Schweers (2019) note in their findings: “It is essential that women have an equal opportunity to question advocates, for many reasons...As others have noted, the discussions at oral arguments serve many purposes, including: focusing the Justices’ minds, helping them gather information to reach decisions as close as possible to their desired outcomes, helping them make informed decisions, and providing an opportunity to communicate and persuade their colleagues.” The interactions that occur between judges and attorneys in oral argument are critical to the results of the proceedings and the shaping of policy. Perhaps the reason that I found male judges to interrupt attorneys more, but that the reverse was not true with attorneys interrupting female judges more, is because male judges dominate the conversation so much that attorneys are rebutting in an attempt to respond to the interruption by male judges. It would make sense that attorneys before the Court, in an attempt to answer judges’ questions and make their argument, are responding to the interruption by male judges with interruptive statements. By nature of interruption, there must be some overlap of statements when attorneys are being frequently interrupted. This theory has the potential to explain why attorneys interrupt male judges slightly more. Overall, this poses an interesting question: whether male judges dominate the conversation in oral argument so much that female judges are less able to impact it. My findings demonstrate that male judges interrupt attorneys nearly twice as much as female

judges do. If male judges interrupt substantively more, they are more likely to control the conversation occurring in oral argument. This domination by male judges has the potential to determine the course of the argument, thereby influencing the decision reached and the policy imposed.

Moreover, my research is just a small snapshot into the vast potential for study that are the United States Courts of Appeals. I had the opportunity to conduct this study on the 4th Circuit of the U.S. Courts of Appeals in two years: 2009 and 2016. Notably, these two years bookend the Obama era, in which the composition of the 4th Circuit dramatically shifted with a record number of female appointees. Which, according to experts, has initiated an ideological shift on the 4th Circuit: “What was, a few short years ago, the most stridently conservative Court of Appeals in the country, has become—since 2010—a moderate, if not slightly liberal, court” (Clarke 2015). The shift in ideology on the 4th Circuit is highly relevant for the study of gendered interactions and interruption patterns.

Not only is there opportunity for growth in this study within other years of the 4th Circuit, but this research could be expanded to the other twelve circuits not yet studied. One of the main attractions of this study is that expanding theories of interruption and gender dynamics to the Courts of Appeals provides a much broader pool of study than the Supreme Court. According to the Federal Judicial Center, in 2020, 27% of federal appellate judges are female (388 out of 1,046). Three hundred and eighty-eight female judges to study offer a much wider breadth than the four female judges on the Supreme Court who have served long enough to provide data on their tenure. Expanding this research to other circuits and years will broaden the scope of the findings and paint a broader picture of the challenges that federal female judges face. The power dynamics between male and female judges and attorneys very well may be different between

circuits, and even years. A limitation of my study is the small number of cases examined within only the 4th Circuit. Perhaps, with more cases and more variation across circuits and years, this research could be expanded, and potentially find different results with regard to the level of interruption of female judges.

Further, this research could be expanded upon by factoring in the gender of the attorneys in these interactions. As previously mentioned, we know that the large majority of the attorneys in my study were male. Future research knowing the gender of the attorney and analyzing it, in addition to the gender of the judge, could provide further insight into gender dynamic and interruption theories. This would offer an important contribution to understand what it is like to be a woman attorney coming before a federal court. Previous research indicates that female attorneys are rewarded for subscribing to a traditional female gender schema, indicating their presentation before federal courts is not treated equally to male attorneys (Gleason 2019; Patton and Smith 2017; Patton and Smith 2020). Future studies expanding on the gendered interactions of attorneys with the gendered interactions of judges would further contribute to what is known about gendered power dynamics.

While some research has been conducted on this topic in other institutions, like legislative bodies, there is great potential to expand on analysis of interruption and gender dynamics in state legislatures and local government institutions, as well as court systems. This research could be broken down into legislative committees and specific hearings, as well as looking at the relationships and dynamics in these institutions. Often, legislative hearings entail the questioning of a witness, which offers a different view of power dynamics. The institutions in which interruption occurs demonstrate varying findings. This is made clear by my research: we do not see the same pattern of interruption of female judges as we do on the United States

Supreme Court. Perhaps, this is an indicator of the institutional differences we see between these court systems: the Supreme Court is potentially hearing cases of greater ideological salience with a greater impact on public policy. Additionally, the composition of the Supreme Court (a consistent bench of nine) is different than the random, rotating three-member panels on the U.S. Courts of Appeals. This may influence the relationships between the judges and their interactions with each other. It is not as much a norm on the appellate courts for judges to interrupt one another, which could also factor into the dynamic in oral argument; it is more common for judge-to-judge interruption to occur on the Supreme Court. The same could be true in legislative institutions, as the stakes and relationships in a partisan hearing might be different than a normal debate on the floor of a legislature. Future research could delve into the impact these factors have on interruption.

In summary, this project is just a stepping stone in the much greater goal of improving disproportionate interruption of women and unbalanced gender power dynamics. Understanding the way women are treated in the highest echelons of their careers offers potential to improve and solve issues of gender inequality, both in the legal profession and beyond. Depending on future research that is conducted, this could shape the common practices and approaches to oral argument, as well as day-to-day interactions between the genders. Expanding this research has the potential to understand these issues and provide tangible policy solutions: whether that be through training in law schools or ongoing legal education requirements. For instance, if future research shows that male judges are disproportionately speaking during oral argument and dominating the conversation, rules could be implemented in order to balance the allotment of speaking time given to each party. On the Supreme Court, Chief Justice John Roberts effected the “two-minute rule,” where attorneys are supposed to have the first two minutes of oral

argument uninterrupted. Policies such as these could be applied in order to resolve the inequities we see between the genders in the legal sphere.

In conclusion, while my findings are interesting and helpful in understanding the relationship between interruption and power dynamics during oral argument in the U.S. Courts of Appeals, they are far from complete. This topic provides an opportunity for expansive research: looking at various circuits and time periods, or even applying these findings to another institution. The goal of gender equality, both in the workplace and day-to-day, is far from accomplished, but can be helped by understanding how interruption and dynamics play a role in this inequality.

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Table 1

Variable Name	Measurement of Variable	Minimum and Maximum	Mean and Standard Deviation
Male judge interrupts attorney	Number of times a male judge interrupts an attorney	Minimum=0 Maximum=31	M=10.38 SD=7.9
Female judge interrupts attorney	Number of times a female judge interrupts an attorney	Minimum=0 Maximum=19	M=5.38 SD=4.77
Attorney interrupts male judge	Number of times an attorney interrupts a male judge	Minimum=0 Maximum=14	M=2.41 SD=3.27
Attorney interrupts female judge	Number of times an attorney interrupts a female judge	Minimum=0 Maximum=7	M=2 SD=2.22
Mixed party panel	<p>Whether an oral argument panel has all judges of the same party or mixed.</p> <p>Indicated as a dummy variable (either 0 or 1)</p> <p>Judges on panel appointed by presidents of both parties (1) Judges on panel appointed by presidents of one party (0)</p>	Minimum=0 Maximum=1	M=0.78 SD=0.42

Figure 1

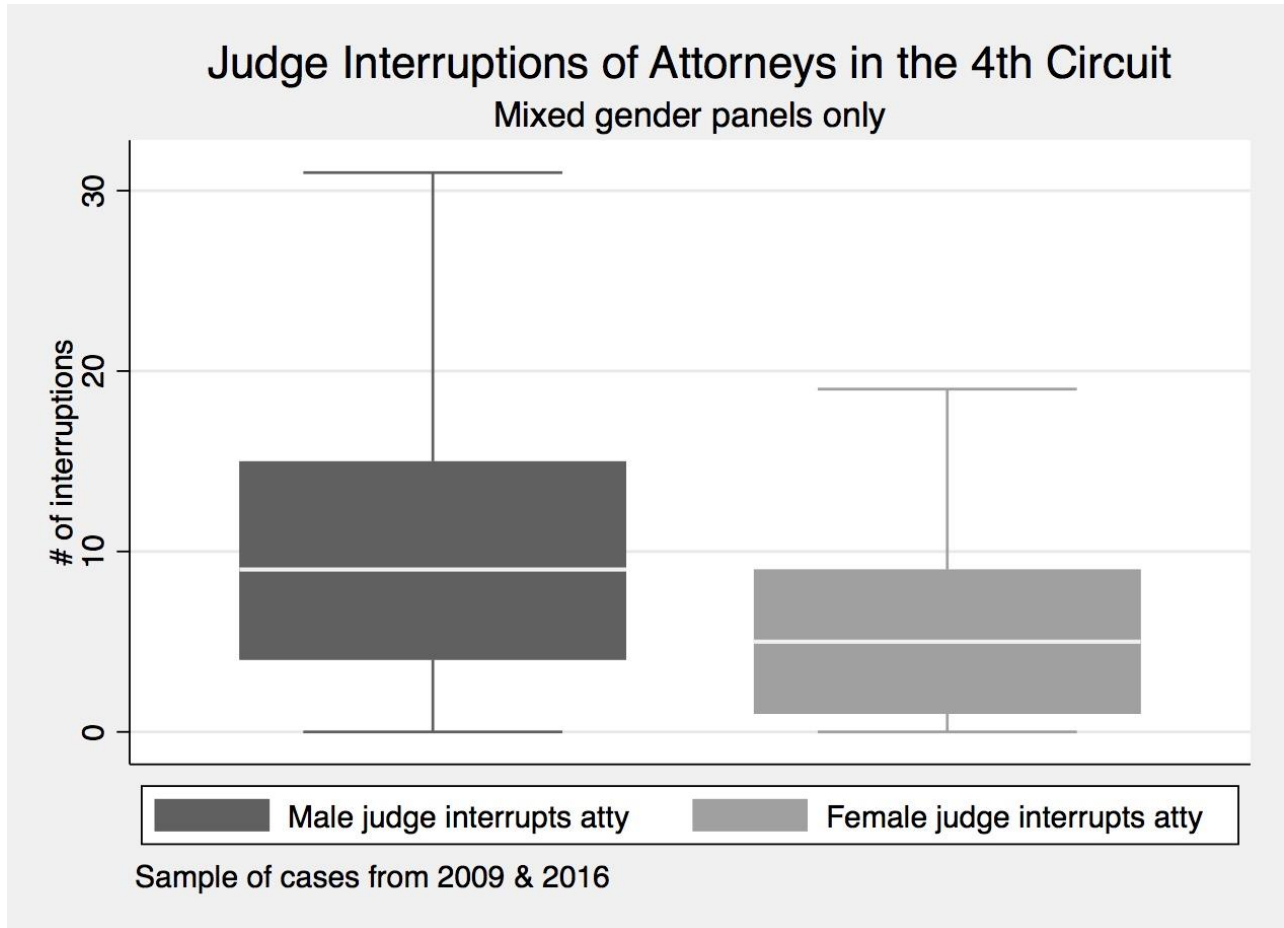
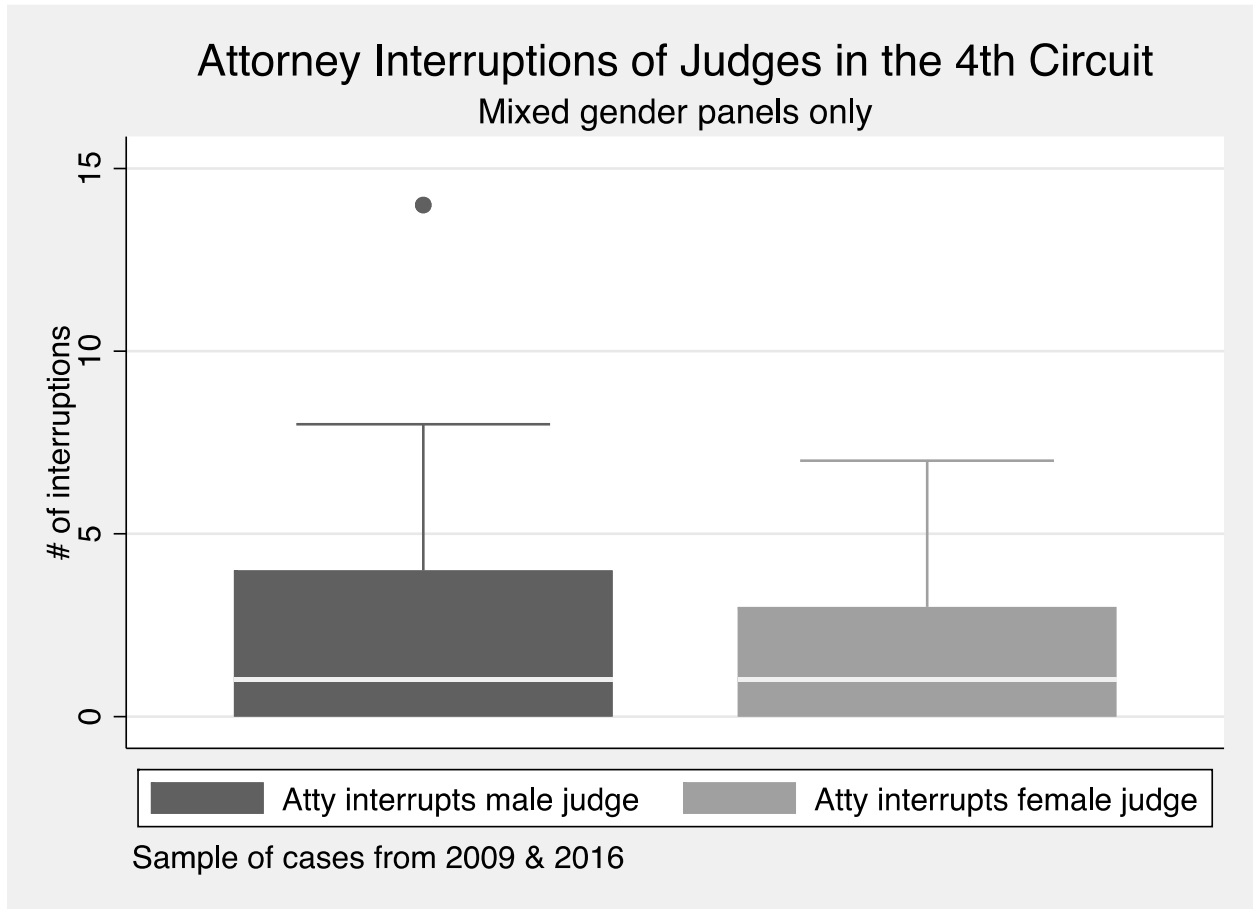
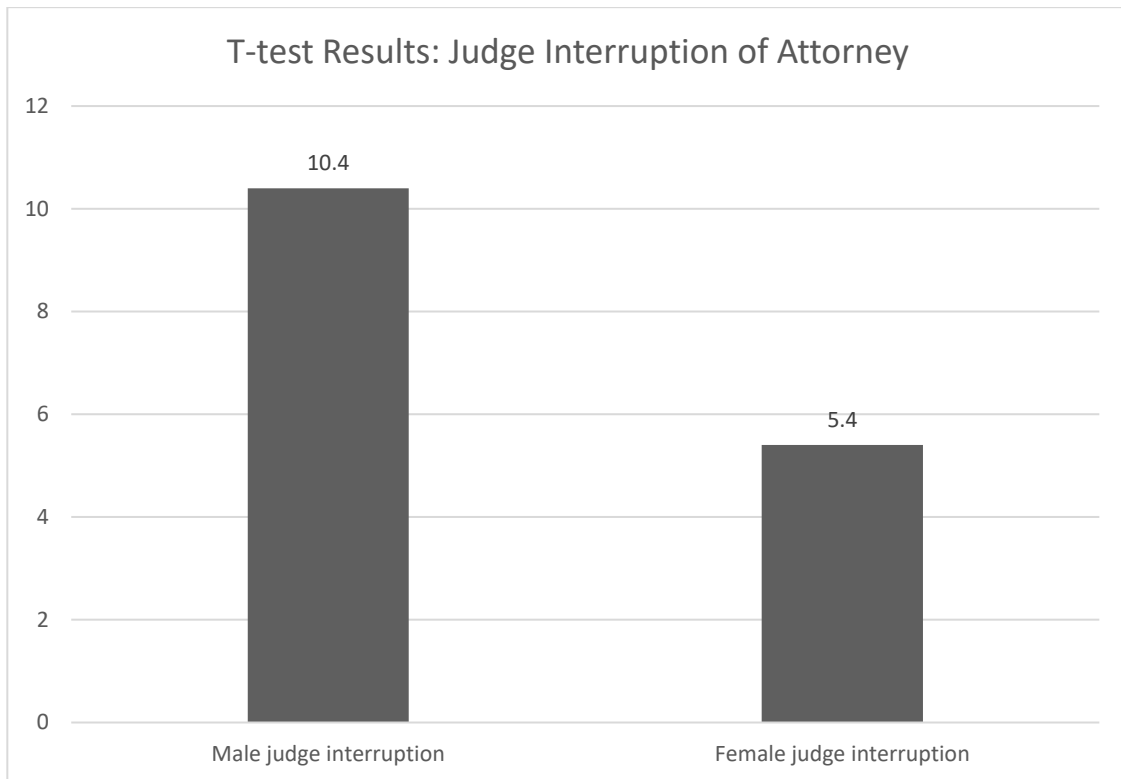


Figure 2



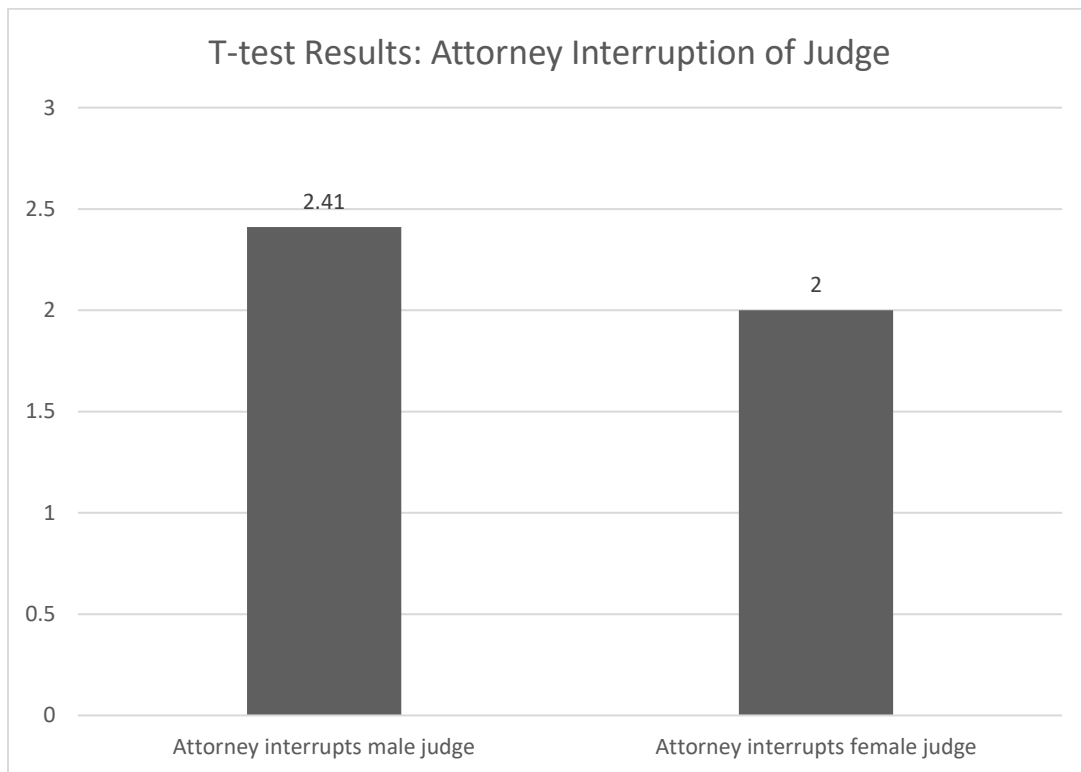
Note: The dark gray dot on the upper left side of the box plot represents an outlier in the attorney interruptions of male judges.

Figure 3



Note: The 95% confidence interval for male judge interruptions (7.37, 13.39) and 95% confidence interval for female judge interruptions (3.57, 7.19) not shown.

Figure 4



Note: The 95% confidence interval for attorney interruptions of a male judge (1.17, 3.66) and 95% confidence interval for attorney interruptions of a female judge (1.16, 2.84) not shown.