

**KIE
Faculty Fellowship
2019-2020
Statement of Intent**

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The Different Voice Debate

When asked in 2012 when there would be enough women on the Supreme Court, Justice Ruth Bader Ginsburg replied, “When there are nine” (CBS DC 2012). This response captures the importance of female jurists, as some argue that when women are more represented on the bench, the court system not only reflects the nation’s diverse population, but that female judges understand the consequences of rulings that uniquely impact women. Though there has been appreciable growth in the number of women attending law school, with 2016 marking the first-year female law students outnumbered their male counterparts (51.27% compared to 48.69%), women only represent about one-third of all judicial officers in the United States (Van Gelderen 2018; Zaretsky 2018). For women of color, these numbers are even lower, with less than 10% serving as judges across the state and federal levels (National Women’s Law Center Fact Sheet 2016). These numbers relate to the issue of female representation on the bench and whether female judges adjudicate differently than their male counterparts.

The question of whether female judges rule differently than male judges is related to what Carol Gilligan (1982) called the “different voice debate,” rooted in the idea that women speak from an “ethics of care” and men from an “ethics of justice.” An ethics of care stems from prioritizing relationships and societal connections. An ethics of justice focuses on individual autonomy, choice, and competing rights (Botes 2000). Applying this debate to court cases is centered on the idea that women bring a different ethical perspective to legal opinions. In 1991,

Sandra Day O'Connor, the first female justice of the U.S. Supreme Court, argued this debate was “dangerous and unanswerable,” because it further dichotomized feminine and male virtues. However, little work has been done on surveying male and female judges on this debate, let alone the ethics of care and ethics of justice. Therefore, I am applying to the KIE Faculty Fellowship (summer stipend) to assist with constructing a survey that examines this debate and fielding it to judicial officers across California.

This project is the next step in my research on the different voice debate. Thus far, I have examined these elements via a computer assisted text analysis of U.S. Supreme Court opinions relating to gender, LGBTQ+ issues, religious liberty, and health care, from 1981 to 2018, finding that female justices are actually more likely to employ language associated with an ethics of justice, challenging Gilligan's (1982) argument. I now look to examine state judicial officers. The state court is particularly important to analyze because over 90% of all cases are heard at this level and California comprises the largest and most diverse system in the country (California Courts 2018).

Deliverables

Survey Overview:

Survey questions will capture demographic data and feature excerpts from rulings on gender salient issues/cases, with follow up questions to assess whether a subject can determine if the opinion is authored by a male or female jurist. Questions will also gauge whether respondents feel the judge is speaking from an “ethics of care” or “ethics of justice.” Questions will further assess how male and female judges manage their courtrooms, as some argue that female judges show more empathy for witnesses, victims, jurors, and female attorneys (Kenney 2013). The survey will contain approximately 15 to 20 questions, taking an estimated 25 minutes to

complete. I've received permission from the California Judges Association (CJA) to advertise and post a link to the survey in their organization's magazine. To ensure a wide response rate and as recommended by the CJA, I will also mail out the survey to judges serving on the 58 state trial courts, 6 appeal courts, and state Supreme Court. Respondents will be asked if they have previously taken the survey and duplicates will be omitted.

Programming:

I plan to present findings through the 2019-2020 academic year at campus forums, such as the Kegley Institute of Ethics Colloquia Series, and panels for CSUB's Pre-Law Program. I have given community presentations from my first study on the different voice debate to the Skeptics Society (August 2018) and the Women Lawyers Section (October 2018), and both groups have invited me back for a follow-up lecture.

Instruction:

I plan to incorporate the findings from this survey into my *Judicial Politics* course in the unit on gender and justice and also in my *Legal Reasoning* class, when discussing elements of legal reasoning. I also hope to guest lecture on this topic in other classes on campus.

Publications and Presentations:

I am finishing a book chapter for a judicial politics reader with Oregon State University Press, discussing the first part of my examination of the different voice debate at the U.S. Supreme Court. With the survey project discussed here, I plan to build on this research and am submitting proposals to present the study at several research conferences. I have been approached by Palgrave and Lexington to submit a book prospectus on this work, which would encompass the survey. I am currently deciding whether I will pursue a book or turn the survey

project into several articles to submit to *Current Legal Problems*, *Feminist Legal Studies*, *Legal Ethics*, and/or the *Journal of Law and Courts*.

Timeline:

- Complete design and IRB Protocol: November 2018 – January 2019
- Submit IRB Protocol: February 2, 2019
- Advertise survey with the CJA: March 2019 – April 2019
- Mail out surveys: May 2019 – June 2019
- Analysis: July 2019 – September 2019
- Presentations: Fall 2019-Spring 2020
- Publications: Fall 2019-Spring 2020

Conclusion

As women and people of color look to ascend to the bench in greater numbers, it is important to assess if they bring a different ethical perspective to their role as a judge. By examining the different voice debate, via the “ethics of care” and “ethics of justice,” I am able to assess this and its societal impact. This research will continue the KIE’s mission of inspiring the community to recognize the importance of thinking about ethics, with particular attention to the judiciary, highlighting the importance of diversity on the bench and cultivating trust in democratic institutions of government.

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