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## **Are Women Benching Themselves From The South Dakota Judiciary?**

Marcus Ireland

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**ARE WOMEN BENCHING THEMSELVES FROM  
THE SOUTH DAKOTA JUDICIARY?**

by

Marcus Ireland

A Thesis Submitted in Partial Fulfillment  
Of the Requirements for the  
University Honors Program

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Department of Political Science  
The University of South Dakota  
May 2019

The members of the Honors Thesis Committee appointed  
to examine the thesis of Marcus Ireland  
find it satisfactory and recommend that it be accepted.

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Ms. Sandy McKeown  
Coordinator of Criminal Justice  
Director of the Committee

---

Dr. Julia Hellwege  
Assistant Professor of Political Science

---

Ms. Wendy Hess  
Associate Professor of Law

## Abstract

### Are Women Benching Themselves From The South Dakota Judiciary?

Marcus Ireland

Director: Sandy McKeown, JD

The judicial branch is the only branch of government which has formal education requirements in South Dakota. Neither South Dakota's executive branch nor legislative branch require any form of advanced education; however, the judiciary does require its judges have a law degree. As more women graduate law school, more women become competitive candidates for judicial positions. However, there exists a "gavel gap", or an underrepresentation of females as judges in South Dakota. Women make up 49 percent of South Dakota's state population and 34 percent of South Dakota's attorney population; however, women only make up 19 percent of South Dakota's state court judges. This paper examines South Dakota's female attorneys and their perspective on their qualifications to determine if women harbor feelings of *imposter syndrome* which keeps South Dakota from seeing more women ascend to the bench. Through research into the differing perspectives of South Dakota's female and male attorneys about how and when each feel qualified to seek judicial office, this paper aims to find a correlation between South Dakota's gavel gap and an *imposter* gap between female attorneys, male attorneys, and their feelings of qualification.

KEYWORDS: South Dakota Judiciary, Women, Political Ambition, Imposter Syndrome

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## CHAPTER ONE

### Introduction

The United States of America, and each state individually, built their political foundations on a system of patriarchy. Traditionally politics was a male-only field. Legislators were all men, judges were all men, and presidents—even to this day—have all been men. Laws and court decisions kept women from seeing formal representation—the legal ability to participate—until the 19<sup>th</sup> Amendment guaranteed women the right to vote. Even then, women still did not necessarily have the right to hold office and were not regularly encouraged to run for office. These patriarchal foundations of the political system of America make it difficult for women to gain the critical mass necessary to descriptively represent women in the three branches of government. Women swim against the current of stereotyping and socialization, making it difficult to win elections. Women’s representation in government is increasing; however, it is still too low compared to their percentage of the population—women make up 51 percent of Americans<sup>1</sup>, but in 2018 only held 21 percent of federal congressional seats<sup>2</sup>, 24 percent of statewide elected executive offices<sup>3</sup>, and 25 percent of statewide congressional offices.<sup>4</sup> This problem sets the stage for the puzzle of the judiciary.

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<sup>1</sup> “U.S. Census Bureau QuickFacts: UNITED STATES,” accessed May 16, 2019, <https://www.census.gov/quickfacts/fact/table/US/SEX255217#SEX255217>.

<sup>2</sup> “Women in Elective Office 2018 | CAWP,” 2018, <https://www.cawp.rutgers.edu/women-elective-office-2018>.

<sup>3</sup> “Women in Elective Office 2018 | CAWP.”

<sup>4</sup> “Women in Elective Office 2018 | CAWP.”

There are various selection methods for state judiciaries. In South Dakota, circuit court judges can ascend through appointment by the governor or by election in a regular election cycle. South Dakota's Supreme Court justices ascend through appointment by the governor and then face regular retention elections. The Chief Justice of the South Dakota Supreme Court selects the presiding judges for each circuit. Circuit judges serve for eight-year terms before running for reelection.<sup>5</sup> Most circuit judges retire during their term, creating a vacancy for the governor to appoint, though some circuit judges retire at the end of their term leaving the vacancy to be filled by election.<sup>6</sup> All circuit judges run for election (or reelection) at the same time, of these 43 circuit court judge positions, approximately one incumbent judge per election cycle loses their race.<sup>7</sup>

South Dakota bifurcates its appointment process; before appointment by the governor, a judicial qualification commission sends out applications to all attorneys and judges in South Dakota. Those interested in the position fill out the application and the commissioners narrow down the list. Then the commission sends a minimum of two candidates to the governor, who picks one and that candidate becomes the governor's nominee. Although South Dakota has the opportunity for judicial elections, the most common method of becoming a judge in South Dakota is by appointment. This method is most utilized since judges often do not retire at election time, creating a vacancy which the governor then must fill. Whoever receives the appointment by the governor then gains

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<sup>5</sup> David Chief Justice Gilbertson and Lori Grode, "Email to Marcus Ireland," 2019.

<sup>6</sup> Chief Justice Gilbertson and Grode.

<sup>7</sup> "SDLRC - Codified Law 16-6-1," accessed May 19, 2019, [http://sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=16-6-1](http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=16-6-1); Chief Justice Gilbertson and Grode, "Email to Marcus Ireland."

the advantageous incumbency effect, allowing them to more likely win their subsequent elections.<sup>8</sup>

Since most South Dakota judges find their way to the bench by appointment—after review by a judicial qualifications commission—rather than by way of election, it arguably puts a heavier reliance on the candidate’s qualifications rather than political party and ideology.<sup>9</sup> The role of the judicial qualifications commission in appointing judges is to nominate to the governor “two or more of the most qualified applicants,”<sup>10</sup> if the commission does not find at least two qualified candidates, then the vacancy remains open until they can nominate another qualified candidate.<sup>11</sup> In using a judicial qualifications commission, South Dakota switches the game to one of qualifications, which can place limits on patriarchal influences in the judicial systems. In a qualifications-based system, women have the chance to compete against men on their merits. With the increase in women graduating law school, women are beginning to flood the pool of available judicial candidates.

Since 2016, women represent fifty percent of law students, nationally;<sup>12</sup> however, at the University of South Dakota School of Law, South Dakota’s only law school,

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<sup>8</sup> Michael Olson and Andrew R Stone, “The Incumbency Advantage in Judicial Elections \*,” 2018, <https://rubenson.org/wp-content/uploads/2018/09/olson-tpbw18.pdf>.

<sup>9</sup> Charles Gardner Geyh, “Why Judicial Elections Stink,” *Ohio State Law Journal* 64 (2003), <https://heinonline.org/HOL/Page?handle=hein.journals/ohslj64&id=59&div=13&collection=journals>.

<sup>10</sup> Unified Judicial System, “Judicial Qualifications Commission,” 2017, <http://sdlegislature.gov/docs/budget/BoardPapers/2017/9 - Judicial Qualifications Commission.pdf>.

<sup>11</sup> “Judicial Qualifications Commission,” accessed December 12, 2018, [https://ujqs.sd.gov/Judicial\\_Qualifications\\_Commission/](https://ujqs.sd.gov/Judicial_Qualifications_Commission/).

<sup>12</sup> “Women Make Up Majority of U.S. Law Students for First Time - The New York Times,” accessed May 19, 2019, <https://www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html>; “Law School Gender Statistics: Female vs. Male Ratio,” accessed May 2, 2018, <https://www.enjuris.com/students/ranking-universities.html>.

women represent only approximately 42 percent of the law school's 2018 student body.<sup>13</sup> With increasing numbers of female attorneys translating into a larger applicant pool for judicial openings, one expects to see an increase in women in the judiciary. The question this paper sets out to answer is why there are only 19 percent women in the South Dakota judiciary (as of 2014)<sup>14</sup> when women make up 34 percent of South Dakota's attorney population.<sup>15</sup> I argue the system of patriarchy embeds a socialization which leads women to undervalue their experience and qualifications,<sup>16</sup> this paper aims to see if this effect carries into the legal profession. Furthermore, the system of patriarchy has socialized women to be less likely to seek higher office.<sup>17</sup> I will analyze South Dakota's female attorneys' ambitions in seeking judicial office as well as their perceptions about the relative value of their experiences.

The implications of having more women in the judiciary revolves around the unique perspective women bring to certain areas of law, both as individuals and part of a collective perspective.<sup>18</sup> Women see things through their different perspectives and that affects their likelihood of siding with certain arguments.<sup>19</sup> Not only does a female judge

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<sup>13</sup> "University of South Dakota - Best Law Schools - US News," accessed December 8, 2018, <https://premium.usnews.com/best-graduate-schools/top-law-schools/university-of-south-dakota-03144>.

<sup>14</sup> Tracey E George and Albert H Yoon, "The Gavel Gap: WHO SITS IN JUDGMENT ON STATE COURTS?," accessed December 6, 2018, <http://gavelgap.org/pdf/gavel-gap-report.pdf>.

<sup>15</sup> Reed Rasmussen and Nicole Ogan, "Email to Marcus Ireland," n.d.

<sup>16</sup> Pamela Paxton and Melanie Hughes, *Women, Politics, and Power* (Los Angeles: SAGE, 2017), 127.

<sup>17</sup> Paxton and Hughes, 126–27.

<sup>18</sup> Bertha Wilson, "Will Women Judges Really Make a Difference," *Osgoode Hall Law Journal* 28 (1990), <https://heinonline.org/HOL/Page?handle=hein.journals/ohlj28&id=513&div=23&collection=journals>; Fred O Smith Jr, "Gendered Justice: Do Male and Female Judges Rule Differently on Questions of Gay Rights?," *Stanford Law Review* 57, no. 6 (2005): 2087–2134, <https://www.jstor.org/stable/40040241>; Jennifer Peresie, "Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts," *The Yale Law Journal* 114, no. 1759 (2005): 1759–90, <http://www.yalelawjournal.org>.

<sup>19</sup> Peresie, "Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts."

have an effect on her individual decision making, more female judges on courts affects the male judges' decision making as well.<sup>20</sup> Furthermore, judges are policymakers. While constrained by precedent and procedural rules, judges create, shift, and interpret policy from the bench. A female judges' willingness to hear certain legal claims can allow new views on policy issues to rise to the forefront of legal conversations—though female judges' willingness to hear certain issues does not correlate with the *outcomes* of individual female judges' rulings.<sup>21</sup> If women are not hindered in ascending to the judiciary by the gender stereotypes pervasive in elections the way they are in the executive and legislative branches, then the judiciary is the branch women stand the best chance at ensuring the representation of women in government.

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<sup>20</sup> Peresie.

<sup>21</sup> Wilson, "Will Women Judges Really Make a Difference?"; Smith Jr, "Gendered Justice: Do Male and Female Judges Rule Differently on Questions of Gay Rights?"; Peresie, "Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts."

## CHAPTER TWO

### Literature

#### Women's Political Ambition

Since little research exists on political ambitions for the judiciary specifically, I draw from literature on the role of gender and political ambition in the executive and legislative branches. Costantini (1990) focuses on the gender differences in political aspirants' political ambitions. He finds the male dominance of politics to be the result of both men and women accepting "gender roles vis-à-vis politics or the belief that the pursuit of political power is an inappropriate endeavor for women".<sup>22</sup> Although some aspects of political ambition have remained unchanged, much of our understanding of political ambition has evolved over the last two decades with newer research.

One way our understanding of political ambition has evolved is that we now know political ambition can be classified into different subcategories. Expressive ambitions relate to whether a candidate chooses to enter specific races.<sup>23</sup> This paper utilizes a second class of political ambition to examine female attorneys in the legal profession. Instead of focusing on the decision to run for a *specific office*, this second class of political ambition—nascent ambition—looks at the likelihood of a person to

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<sup>22</sup> Edmond Costantini, "Political Women and Political Ambition: Closing the Gender Gap," *American Journal of Political Science* 34, no. 3 (1990): 747, <https://www.jstor.org/stable/2111397>.

<sup>23</sup> Jennifer Lawless and Richard Fox, "To Run or Not to Run for Office: Explaining Nascent Political Ambition," *American Journal of Political Science* 49, no. 3 (2005): 644, <https://www.jstor.org/stable/3647737>.

*consider* becoming a candidate at all.<sup>24</sup> One of the factors affecting a person’s nascent political ambition is minority status—including women.<sup>25</sup>

People belonging to marginalized groups may feel like outsiders to the political system because there are few role models from their group elected to positions of political power.<sup>26</sup> This feeling finds its origin from the marginalized groups historical exclusion from the political arena. To examine this phenomenon, Lawless and Fox (2005) look at respondents’ likelihood of considering running for office. When doing this, their female and minority respondents were “significantly less likely ever to have considered running for office”<sup>27</sup> compared to their white male respondents.

Not only does minority status itself impact political ambitions, but representation in the pipeline professions also impacts political ambition. Both Costantini’s (1990)<sup>28</sup> and Lawless and Fox’s (2010)<sup>29</sup> examinations of which professions are likely to feed the political leader candidate pool (law, business, education, and politics), find women absent in the professional pipelines to holding public office. These professions often supply the politically ambitious—those likely to want to be candidates—and without a critical mass of women in these professions, their supply to political elections and appointments will be minimal compared to their male counterparts who are represented in these professions.

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<sup>24</sup> Lawless and Fox, “To Run or Not to Run for Office: Explaining Nascent Political Ambition.”

<sup>25</sup> Lawless and Fox.

<sup>26</sup> Lawless and Fox, 646.

<sup>27</sup> Lawless and Fox, 654.

<sup>28</sup> Costantini, “Political Women and Political Ambition: Closing the Gender Gap.”

<sup>29</sup> Jennifer L Lawless and Richard L Fox, *It Still Takes a Candidate: Why Women Don’t Run for Office*, Cambridge University Press, 2010.

Costantini's (1990) study was limited by the fact that it focused on females who had already "passed the threshold where structural and situational factors are likely to serve as major barriers to political activity"<sup>30</sup> because Costantini's respondents were already involved in politics. By ignoring the structural and situational factors, Costantini's results look at a different tier of ambition than the research of Lawless and Fox (2005). Regardless of this unique perspective, Costantini's results still find strong confirmation of an existing gender gap in political ambition.

Costantini's (1990) research asks multiple questions to understand the effect of political ambition on women's chances of attaining higher office. While women are less likely to be politically ambitious when deciding to run for a political office, Costantini's survey found that this was not necessarily the case for appointed office. While there is still a gender gap in political ambition when it comes to appointed positions, the gap is much narrower than with elected office.<sup>31</sup> Although Costantini's research is over two decades old, the increase in women running for political office<sup>32</sup> demonstrates a narrowing of the gender gap in political ambition of elected office, one would hope that the gender gap for appointed office has either remained constant or also decreased. Another interesting perspective provided by Costantini's research is that Republican women are less politically ambitious than Democratic women. This finding was

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<sup>30</sup> Costantini, "Political Women and Political Ambition: Closing the Gender Gap," 747.

<sup>31</sup> Costantini, 750.

<sup>32</sup> "Record-Breaking Number of Women Run for Office - POLITICO," accessed May 16, 2019, <https://www.politico.com/story/2018/03/08/women-rule-midterms-443267>.

especially true when it came to elective office<sup>33</sup> but this is also the case with appointed office, such as judiciaries.

Women are much less likely to consider running for office than their male counterparts.<sup>34</sup> Lawless and Fox (2005) find a 32 percent gender gap when it came to interest in seeking a high-level position.<sup>35</sup> In their study, they ask their respondents whether they consider themselves to be qualified or very qualified to run for office; 57 percent of men responded as qualified or very qualified compared to only 36 percent of female respondents. It is also important to note that men and women agree on what makes a person qualified for public office.<sup>36</sup> The political system's lack of descriptive representation and strong female role models in office, as well as the strong role of early political socialization,<sup>37</sup> have a negative effect on the nascent political ambitions of women.<sup>38</sup> This impact has a "substantial winnowing"<sup>39</sup> on the overall number of female candidates who even consider choosing to run for office.

Lawless and Fox (2005) add a layer of research by also looking at what occupations had higher odds of running. According to their study, lawyers have a higher likelihood of considering running for political office. Entering the pipeline professions improves women's likelihood of running for political office. This pipeline theory has interesting implications when looking at judicial positions and women's likeliness to seek

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<sup>33</sup> Costantini, "Political Women and Political Ambition: Closing the Gender Gap," 751.

<sup>34</sup> Paxton and Hughes, *Women, Politics, and Power*, 126.

<sup>35</sup> Lawless and Fox, "To Run or Not to Run for Office: Explaining Nascent Political Ambition."

<sup>36</sup> Paxton and Hughes, *Women, Politics, and Power*, 128.

<sup>37</sup> Richard L Fox and Jennifer L Lawless, "Uncovering the Origins of the Gender Gap in Political Ambition," *American Political Science Review* 108, no. 3 (2014): 499–519.

<sup>38</sup> Lawless and Fox, "To Run or Not to Run for Office: Explaining Nascent Political Ambition."

<sup>39</sup> Lawless and Fox, 654.

higher office in the judiciary as all judicial candidates are lawyers—one would expect this to mean female lawyers will demonstrate a consistent higher likeliness to seek this particular higher office.

Although women running for elections fare just as well—in terms of winning elections—as male candidates, there exists a disparity of women in office.<sup>40</sup> In a study by Fox, Lawless, and Feeley (2001), the impact of having established women in occupations which feed the political career—lawyers and business owners or executives<sup>41</sup>—on women’s ambition for higher office . This research analyzed the logic in the “eligibility pool” explanation. The “eligibility pool” explanation states: as women’s presence in the field of law and business increases, so will the number of eligible candidates and therefore elected officials. Since 2001, both education and political careers have been added to the list of pipeline professions feeding political candidates.

The research starts by emphasizing the historical gender-socialized understanding: “politics is a business best left to men”.<sup>42</sup> Although this gender-socialization of politics is rooted in American political history, contemporary acceptance of this socialized norm is declining; however, traditional socialization continues to hold influence in contemporary elections.<sup>43</sup> Previous research found that women view themselves as less confident and perceived themselves to be less qualified than men to run for elected office.<sup>44</sup> A

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<sup>40</sup> Richard L Fox, Jennifer L Lawless, and Courtney Feeley, “Gender and the Decision to Run for Office,” *Legislative Studies Quarterly* 26, no. 3 (2001): 411, <https://www.jstor.org/stable/440330>.

<sup>41</sup> Fox, Lawless, and Feeley, 416.

<sup>42</sup> Fox, Lawless, and Feeley, 413.

<sup>43</sup> Fox, Lawless, and Feeley, 413.

<sup>44</sup> National Women’s Political Caucus, “Why Don’t More Women Run? A Study Prepared by Mellman, Lazarus, and Lake” (Washington D.C., 1994).

reexamination of the topic in 2008 found that women continue to enjoy less comfort and confidence in considering running for office.<sup>45</sup> Understanding women's low level of confidence compared to men in thinking about running for political office helps to guide research and determine whether increasing women in the eligibility pool *per se* will result in an increase in women elected to higher office.

Lawless, Fox, and Feeley's (2001) research looked at the top five professions which feed into the political career pipeline, which included lawyers. However, they recognized that the top professions feeding into the political career pipeline were occupations which are not inclusive of women. In recognizing this fact, they also realized the potentiality that the women in their survey had already broken past traditional gender stereotypes and socialization norms in getting into male-dominated fields. Another important fact they discovered from their survey was that women in these professions were much less likely to be married and have children than the men surveyed. This fact can prove important in limiting the explanation of family life differences between men and women.

If women do not have children or a spouse to be devoting their time to, then the argument that this issue is keeping them from choosing to apply for judicial positions appears less salient. However, the fact that women do not have a spouse or children is likely because they made decisions to prioritize career advancement over starting a family. If this is true, then it would make sense that those women who have demonstrated ambition would not have children. Another issue when looking through the lens of the

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<sup>45</sup> Jennifer L Lawless and Richard L Fox, "Why Are Women Still Not Running for Public Office?," 2008, [www.brookings.edu/governance/igs.aspx](http://www.brookings.edu/governance/igs.aspx).

judiciary, is that most judicial candidates seek later in their careers than political candidates, owing to the increased educational requirements and experience expectations of the judiciary. Seeking a judicial appointment later in life may have a different impact on family considerations than research into political ambition has so far covered. This information on consideration of child rearing when deciding to run for political office is supported by past research and Lawless, Fox, and Feeley (2001) address this issue. Past research had found that both men and women recognize a conflict between running for office and caring for children, but the research found women more restrained than men by this concern.<sup>46</sup> By removing, or limiting, this factor, the results are not conclusive on whether women choose not to run because of children, as women with children were underrepresented in the survey.

One unique aspect of Lawless, Fox, and Feeley's (2001) research is that it investigates the effects of possessing a law degree itself. Recognizing that the field of law is the most common pipeline supplier, they examined the effects of a law degree on the possessor's confidence. This factor is especially important when looking at their results. In examining these effects, the research found that women look heavily toward "substantive credentials and previous political experience"<sup>47</sup> when deciding whether to run for office or not. Even though women are viewing running for office with equal, or at least similar, levels of political ambition and do not shy away from the specific activities of running a campaign, the decision women make in choosing to run is a more dynamic decision than that made by men. Women consider more factors before choosing to run

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<sup>46</sup> Fox, Lawless, and Feeley, "Gender and the Decision to Run for Office," 419.

<sup>47</sup> Fox, Lawless, and Feeley, 424.

than men, such as child-rearing—stemming from socialized conceptions of child rearing responsibilities.<sup>48</sup>

Gender also influences political ambitions in the judiciary find Jensen and Martinek (2009). This examination of political ambition recognizes the impact professions play in decisions to seek higher office.<sup>49</sup> After commenting on this explanation, it looks to the more concerning question of whether women are less ambitious *per se*. This perspective looks to the factors which women consider and their impacts on women's ambitions for office.

Again, the socialized norm of women belonging in the home and kitchen makes an appearance in the examination of women's political ambition. This is an important stereotype for women to overcome because this idea also affects the career paths women take and profession are an indicator of likelihood of seeking higher office. The unique aspect this study provides is that it looks at political ambitions of men and women who are already judges. This other layer of examination provides a perspective of political ambition for seeking higher office within the judiciary, whether men or women judges are more likely to want to be elevated to an appellate court. What Jensen and Martinek found is not in line with what the literature on gender and political ambition would have predicted.

This study found that white, female judges at the age of 55 were more likely to want to seek higher office than white, male judges at the age of 55.<sup>50</sup> The results showed

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<sup>48</sup> Fox, Lawless, and Feeley, "Gender and the Decision to Run for Office."

<sup>49</sup> Jennifer M Jensen and Wendy L Martinek, "The Effects of Race and Gender on the Judicial Ambitions of State Trial Court Judges," *Political Research Quarterly* 62, no. 2 (2009): 379, <https://doi.org/10.1177/1065912908319574>.

<sup>50</sup> Jensen and Martinek, 385.

female judges were over three times more likely than their male counterpart to want to seek higher judicial office. These results supply an important understanding of how political ambition is a dynamic factor in women's ascension to, and within, the judiciary. The fact that this study's conclusions seem to contradict other studies of political ambition is exactly why this paper seeks to determine whether socialized, gendered political ambition seeps into South Dakota's legal profession or not.

While this paper focuses on the internal factors which affect women's political ambitions, it is important to note that there are also external factors which affect political ambition. Access and exposure to political information through peers and media can greatly influence political ambitions.<sup>51</sup> The political information provided by schools, peers, and the media are second only to one's family when it comes to political socialization.<sup>52</sup> A second external factor affecting political ambition is encouragement. "Inadequate recruitment of women candidates" by political parties, political leaders, and role models keep women from holding a higher proportion of political offices.<sup>53</sup> Receiving encouragement is one of the strongest predictors of political ambition.<sup>54</sup>

With most legal professional leaders—such as managing partners of firms, equity partners of firms, general counsels, law school deans, and tenured professors of law—being male, female attorneys lack visual role models of women in positions of power

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<sup>51</sup> Jennifer L Lawless and Richard L Fox, "Girls Just Wanna Not Run," 2013, [https://www.american.edu/spa/wpi/upload/girls-just-wanna-not-run\\_policy-report.pdf](https://www.american.edu/spa/wpi/upload/girls-just-wanna-not-run_policy-report.pdf).

<sup>52</sup> Lori Cox Han and Caroline Heldman, *Women, Power, and Politics* (Oxford University Press, 2018); Lawless and Fox, "Girls Just Wanna Not Run."

<sup>53</sup> Cox Han and Heldman, *Women, Power, and Politics*.

<sup>54</sup> Lawless and Fox, "Girls Just Wanna Not Run."

within the legal community.<sup>55</sup> More specific to the legal profession, a leaky pipeline loses women from the profession causing there to be a decrease in female candidates for judicial openings.<sup>56</sup> Female attorneys are more likely than their male counterparts to “manage their households with a partner who also has a full-time job,”<sup>57</sup> and women are leaving the profession due to hostilities the profession poses to “family and other life demands”.<sup>58</sup> All of these external factors play a role in the political ambitions of female attorneys as well as the supply of female candidates to judicial openings, but are not the focus of this paper.

### **Impact of Women’s Representation within the Judiciary**

This research paper looks to evaluate what is keeping South Dakota’s female attorneys from ascending to South Dakota’s judiciary; and to provide a full view of why this is important, it is necessary to discuss descriptive representation. Much like political ambition has different classes, political representation can be broken into different types as well. While every state in America has formal representation—the legal ability to participate in elections—ever since the 19<sup>th</sup> Amendment to the Constitution of the United States, few states come close to achieving descriptive representation.

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<sup>55</sup> Hannah Brenner and Renee Newman Knake, “Rethinking Gender Equality in the Legal Profession’s Pipeline to Power: A Study on Media Coverage of Supreme Court Nominees,” *Temple Law Review* 84 (2012): 325–84.

<sup>56</sup> Hannah Brenner and Renee Newman Knake, “Gender and the Legal Profession’s Pipeline to Power,” *Michigan State Law Review* 2012 (2012): 1419–31.

<sup>57</sup> Julie C. Suk, “Work-Family Conflict and the Pipeline to Power: Lessons from European Gender Quotas,” *Michigan State Law Review* 2012 (2012): 1797.

<sup>58</sup> Nancy Gertner, “Feminism, Stalled: Thoughts on the Leaky Pipeline,” *Michigan State Law Review* 2012 (2012): 1473–76.

Descriptive representation is the “numeric similarity between”<sup>59</sup> political bodies and the citizens within their jurisdiction. Descriptive representation concerns itself with the representation of race, gender, ethnicity, and other demographic factors in political bodies. In the United States, women struggle to achieve descriptive representation in all branches of government—legislative, executive, and judicial. More women in each branch has an impact on the branch’s output.

Male and female judges rule differently in cases. To examine this phenomenon, Smith used gay rights cases as his lens. Before Sandra Day O’Connor, there had never been a woman on the Supreme Court of the United States. Prior to her ascension, increasing gender equality of the judiciary was a goal of the United States.<sup>60</sup> With more women finding appointment to the judiciary, the impact of these appointments in terms of rulings became examinable. By narrowing the examination to a single type of case, Smith can see the differences in legal reasoning within male and female judges’ rulings.

At the time of Smith’s research, “law schools [had begun] to admit women in meaningful numbers”<sup>61</sup> only thirty years prior. This fact means that women were not able to ascend to the bench prior to being admitted into the pipeline profession. Even with more women being admitted to law schools and then graduating, the judiciary was slow to diversify by adding women to the bench. However, when women did start entering the judiciary, many researchers thought it would bring politics into the decision process—

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<sup>59</sup> Pamela Paxton, Sheri Kunovich, and Melanie M Hughes, “Gender in Politics,” *Annual Review of Sociology* 33 (2007): 265, <https://doi.org/10.1146/annr?Raoc.33.040406.1316S1>.

<sup>60</sup> “Reagan’s Nomination of O’Connor | National Archives,” accessed May 19, 2019, <https://www.archives.gov/legislative/features/oconnor.html>.

<sup>61</sup> Smith Jr, “Gendered Justice: Do Male and Female Judges Rule Differently on Questions of Gay Rights?,” 2089.

with people thinking women would be more liberal—while feminist legal theorists disagreed.<sup>62</sup>

Feminist legal theorists took a unique perspective of how to evaluate women in the judiciary. While sociologists and political scientists compared female and male judges on a political spectrum of conservatism and liberalism, feminist legal theorists understood that not all “issues are gendered”.<sup>63</sup> Using feminist legal theory to examine differences in judicial opinions, women and men disagreed in specific types of cases: sex discrimination cases. Smith found that these differences stem from conceptions of gender roles and that women having gone through law school hold different gender role conceptions than their male counterparts.<sup>64</sup> This finding is consistent with the experience of Madame Justice Bertha Wilson, a supreme court justice of Canada. Justice Wilson found “there are whole areas of law which there is simply no uniquely feminine perspective”<sup>65</sup> which would not be affected by an increased presence of women on the bench. This finding meant that certain areas of law did not have a gendered basis causing different outcomes—though there may be perspectives based on other things such as political ideology which do affect their outcomes. Gendered perspectives *did* permeate family law and criminal law. The ideas behind whether to prioritize a husband or wife as executor of estate, whether women can serve on juries, these find some basis in a gendered perspective. Smith finds that list to have been updated to include sex discrimination and gay rights cases and laws.

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<sup>62</sup> Smith Jr, 2089.

<sup>63</sup> Smith Jr, 2090.

<sup>64</sup> Smith Jr, 2123.

<sup>65</sup> Wilson, “Will Women Judges Really Make a Difference,” 515.

Judicial selection methods affect how minorities and women ascend to the bench as found in an article titled *Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts* by Mark Hurwitz and Drew Lanier. One important consideration this article takes into account is the fact that access to the legal profession has been *formally* restricted “through decisions of the courts, legislatures, law schools, and bar associations”<sup>66</sup> in order to keep women out of the legal profession and therefore the judicial profession as well.

From the time America became its own nation through most of the 1800’s, women did not have a right to practice law or attend law school.<sup>67</sup> Many states barred women’s admission to the legal practice by passing legislation, when the state’s Supreme Court denies admission to the bar, or when denied admission to the state’s legal education institutions.<sup>68</sup> In 1873, the United States Supreme Court, in *Bradwell v. Illinois*, formally declared that the Constitution’s 14<sup>th</sup> Amendment does not protect women’s right to practice a profession, even if men are entitled to practice said profession.<sup>69</sup> Not until *Reed v. Reed* (1971)<sup>70</sup> and *Craig v. Boren* (1976),<sup>71</sup> did the Supreme Court provide protections against sex-based discrimination.

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<sup>66</sup> Mark S Hurwitz and Drew Noble Lanier, “Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts,” *State Politics & Policy Quarterly* 3, no. 4 (2003): 329, <https://www.jstor.org/stable/40421498>.

<sup>67</sup> Robert Stevens, “Market Explodes, The,” in *Law School: Legal Education in America from the 1850s to the 1980s*, vol. 1, 1983, <https://heinonline.org/HOL/Page?handle=hein.beal/uncaabv0001&id=91&div=10&collection=uncpress>.

<sup>68</sup> Hurwitz and Lanier, “Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts.”

<sup>69</sup> United States Supreme Court, *Bradwell v. The State* :: 83 U.S. 130 (1872) (1872).

<sup>70</sup> United States Supreme Court, “*Reed v. Reed* :: 404 U.S. 71 (1971) :: Justia US Supreme Court Center,” accessed May 20, 2019, <https://supreme.justia.com/cases/federal/us/404/71/>.

<sup>71</sup> United States Supreme Court, “*Craig v. Boren* :: 429 U.S. 190 (1976) :: Justia US Supreme Court Center,” accessed May 20, 2019, <https://supreme.justia.com/cases/federal/us/429/190/>.

Although women are starting to get on the bench, their representation is still under their percentage of the population. This prompts the article to investigate why the representation grew: whether it is caused from judicial selection method or changing characteristics of the constituencies. Regardless of how women's representation is increasing, a representative judiciary is important. Even though the judiciary "is not designed as a democratic institution"<sup>72</sup>, the legitimacy of the court "is enhanced when officeholders have similar characteristics"<sup>73</sup> to those in their jurisdiction.

Legitimacy is especially important when looking at a government's judiciary. Courts achieve legitimacy when they "(1) are fair and unbiased, (2) interpret and apply norms consistent what states believe the law is or should be, and (3) are transparent and infused with democratic norms"<sup>74</sup> and female judges help them to achieve more fair and unbiased perceptions.

Research into the effect of gender diversity on international courts by Nienke Grossman considers this effect in an article, *Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts*. This research found that female judges are good for both normative and sociological legitimacy of the courts. Legitimacy is essential for courts because they, in American terms, lack the purse and the sword. This lack is why sociological legitimacy is also essential to the courts. While normative legitimacy is where the state objectively *has* authority, sociological legitimacy is where the people

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<sup>72</sup> Jensen and Martinek, "The Effects of Race and Gender on the Judicial Ambitions of State Trial Court Judges," 379.

<sup>73</sup> Hurwitz and Lanier, "Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts," 331.

<sup>74</sup> Nienke Grossman et al., "Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts?," *Chicago Journal of International Law* 12, no. 9 (2012): 651, <http://chicagounbound.uchicago.edu/cjil/vol12/iss2/9>.

*believe* the state to have authority, subjectively. By improving both normative and sociological legitimacy, increasing female judges has profound impacts on the judiciary and government, overall. The United States' judiciary is strong, owing to the concept of judicial review. Thomas Poole looked at the effect of legitimacy on the courts. As "legitimacy plays a central role"<sup>75</sup> in the public's acceptance of judicial review, women improving the legitimacy of the courts also improves the strength of the courts. Increasing the descriptive representation of women in the judiciary is essential to maintaining trust in the judiciary.

### **Imposter Syndrome**

Imposter syndrome is an experience where people feel incompetent and feel like they have deceived others about their abilities.<sup>76</sup> Imposter syndrome first was seen in women who were successful in college and professions where these women were attributing their success not to talent but to external circumstances. Much of the research into imposter syndrome concludes that imposter syndrome affects both men and women at equal rates. Gaining a better understanding of imposter syndrome will help guide this paper's research to determine the effects of imposter syndrome on the South Dakota judiciary's descriptive representation.

Imposter syndrome is a feeling of incompetence and of having deceived others, and this feeling stems from many factors. Counter to what many had previously thought,

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<sup>75</sup> Thomas Poole, "Legitimacy, Rights and Judicial Review," *Oxford Journal of Legal Studies* 25, no. 4 (2005): 714, <http://www.jstor.org/stable/3600614>.

<sup>76</sup> Joe Langford and Pauline Rose Clance, "THE IMPOSTOR PHENOMENON: RECENT RESEARCH FINDINGS REGARDING DYNAMICS, PERSONALITY AND FAMILY PATTERNS AND THEIR IMPLICATIONS FOR TREATMENT" 30, no. 3 (1993): 495, <http://paulineroseclance.com/pdf/-Langford.pdf>.

one factor that has little correlation with imposter syndrome is self-esteem. It was thought that low self-esteem would correlate with imposter feelings, but research found only 9 percent of imposter feelings were attributable to low self-esteem.<sup>77</sup> Although there was a low correlation between imposter syndrome and self-esteem, there does exist a high correlation between imposter syndrome and anxiety. Recognizing such a high correlation between imposter syndrome and anxiety has corresponded with “many clinical reports that the phenomenon is an anxiety-related experience”.<sup>78</sup> Another set of factors contribute to developing imposter syndrome include perfectionism and family environment.<sup>79</sup> Family environment affects those with imposter syndrome when there is perceived lack of support, communication, and appropriate expression of emotions.<sup>80</sup>

Imposter syndrome is suffered by those who are successful “but unable to internalize their success”.<sup>81</sup> Imposter syndrome has a negative impact on the psychological well-being of the feeler. Self-doubt, anxiety, and a low perception of one’s abilities are all effects of having prominent levels of imposter syndrome. Another impact of imposter syndrome is a discounting of one’s abilities, hard work, and qualifications. This discounting usually takes form in the excuses of effort or luck; success is never the result of “true or real ability”<sup>82</sup> because either the success resulted from over-preparation or after procrastination.

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<sup>77</sup> Langford and Clance, 496.

<sup>78</sup> Langford and Clance, 496.

<sup>79</sup> Jaruwat Sakulku and James Alexander, “The Imposter Phenomenon,” *International Journal of Behavioral Science* 6, no. 1 (2011): 76, <https://www.tci-thaijo.org/index.php/IJBS/article/view/521/pdf>.

<sup>80</sup> Sakulku and Alexander, 83.

<sup>81</sup> Sakulku and Alexander, 77.

<sup>82</sup> Sakulku and Alexander, 79.

With anxiety being a cause and a result of imposter syndrome, a cycle exists.<sup>83</sup> Once a task is assigned or a goal set in place, initial anxiety causes the person to either over prepare or to procrastinate in fear. Since a success resulting after overpreparation or procrastination is not reflective of real ability, the person discounts positive feedback and perceives themselves as a fraud. This perception then increases the person's feeling of self-doubt, depression, and anxiety. Here is where the cycle then repeats and further ingrains itself in the person's perception of self. With each sequential success, the imposter syndrome is reinforced and strengthened instead of weakened.

Imposter syndrome affects perception of ability and therefore how qualified a person might feel based on those abilities. When studying political ambition Lawless's research found that feeling qualified for the office was a factor which women considered when choosing to run or apply. The research on political ambition showed that women consider factors more dynamically—such as child raising, which connected to socialized norms of the female's place in the home<sup>84</sup>—than men and that men were more likely to feel qualified or very qualified than women. These findings highlight an important implication of imposter syndrome on politics. Imposter syndrome affects a perception of qualification *and* perception of qualification affects likelihood of running or applying for office. Imposter syndrome, whether directly or indirectly, is a factor which affects political ambition and the likelihood of potential candidates to become full-fledged candidates.

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<sup>83</sup> Sakulku and Alexander, 78–79.

<sup>84</sup> Fox, Lawless, and Feeley, “Gender and the Decision to Run for Office.”

## CHAPTER THREE

### Theory

This paper argues that the South Dakota’s judiciary lacks descriptive representation in part because women are holding themselves back from applying for judicial openings in South Dakota due to an undervaluing of their own professional experience—caused by imposter syndrome. The undervaluing stems from the socialized norms of a woman’s traditional place being the home and the legal profession being a males-only profession. Due to South Dakota’s judicial selection method, qualifications are the primary focus for selection, giving women a boost in being able to overcome the norm of law being a man’s field. However, if women undervalue their qualifications, and do not apply for the openings, then South Dakota will continue to have a gender gap in the judiciary.

The first woman to become a judge in South Dakota was Hon. Mildred Ramynke. Ramynke became a county judge in 1958 and in 1975, after the abolishment of county judges and the creation of a new Unified Judicial System, became the first female elected to a South Dakota circuit court.<sup>85</sup> The first female appointed to the South Dakota Supreme Court was Judith Meierhenry, a former circuit court judge, in 2002.<sup>86</sup> Both

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<sup>85</sup> “Judge Mildred Ramynke - YouTube,” Judicial Voices Project, 2014, [https://www.youtube.com/watch?v=Qvo\\_mizKCgo](https://www.youtube.com/watch?v=Qvo_mizKCgo).

<sup>86</sup> “Janklow Appoints First Woman to Supreme Court | Local News | Siouxcityjournal.Com,” accessed December 12, 2018, [https://siouxcityjournal.com/news/local/janklow-appoints-first-woman-to-supreme-court/article\\_b42b53a8-b7cf-5bab-8073-31bc0ddb2eb1.html](https://siouxcityjournal.com/news/local/janklow-appoints-first-woman-to-supreme-court/article_b42b53a8-b7cf-5bab-8073-31bc0ddb2eb1.html).

women overcame glass ceilings and societal norms when they sought positions in the judiciary. Both women demonstrated persistence and acknowledgement of their worth.

However, South Dakota's legal profession is 34 percent female,<sup>87</sup> while the state's judiciary as of 2014 was only 19 percent female.<sup>88</sup> Something has kept women from achieving descriptive representation in the judiciary. I hypothesize, using political science theories of female political ambition as a starting place, that: Women's representation on the judiciary of South Dakota suffers from women feeling unqualified compared to men of equal experience. This paper is asking whether women bench themselves before they even get to the judicial qualifications commission.

This theory starts with the context of gendered socialization in America to explain the creation of a system where women have not achieved descriptive representation in the three branches of government. It then asks whether the judiciary lacks descriptive representation because female attorneys view themselves as imposters in the legal community, thereby suffering imposter syndrome. This imposter feeling may result in female attorneys perceiving their legal experience as somehow insufficient for judicial candidacy. If men feel sufficiently qualified sooner than their female counterparts, they enter the judicial candidate pool sooner and with larger numbers over time—assuming those who do not ascend to the judiciary continue to apply. If female attorneys *are* applying, then the problem likely is found in the system of selection, not the pool of applicants.

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<sup>87</sup> Rasmussen and Ogan, "Email to Marcus Ireland."

<sup>88</sup> George and Yoon, "The Gavel Gap: WHO SITS IN JUDGMENT ON STATE COURTS?"

The legal field has long been a male-dominated profession (in terms of number of practitioners). The first woman to receive a law degree in the United States was Ada Kepley in 1870.<sup>89</sup> From this moment on, law schools became the source of the supply of women as attorneys. Prior to this moment, law schools did not increase the supply of female attorneys, who would eventually become part of the pool of judicial candidates. Once women began to graduate from law schools, the pool of judicial candidates began to see female attorneys “with the will and experience to compete against men”<sup>90</sup> for judicial office.

Now that women are entering law school in increasing numbers—climbing toward 50 percent in some schools—it would make sense to see a correlation between this increase and an increasing number of female judges. The federal judiciary is around 30 percent women<sup>91</sup>, so nationally there exists a twenty-point gap in descriptive representation. Early research has promoted an idea that women are not ascending to the bench because they are not as politically ambitious as men. However, this view does not acknowledge the complexity of political ambition, or the reason women may be less politically ambitious.

Imposter syndrome is a feeling of fraud within a profession which causes those feeling it to discount their qualifications.<sup>92</sup> This discounting has crippling effects on the

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<sup>89</sup> Stevens, “Market Explodes, The,” 82.

<sup>90</sup> Paxton and Hughes, *Women, Politics, and Power*, 109.

<sup>91</sup> American Bar Association, “A Current Glance at Women in the Law A Current Glance at Women in the Law Women in the Legal Profession Women in Private Practice,” *Report on Diversity in U.S. Law Firms. National Association for Law Placement*, no. 5 (2016), [www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf](http://www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf).

<sup>92</sup> Langford and Clance, “THE IMPOSTOR PHENOMENON: RECENT RESEARCH FINDINGS REGARDING DYNAMICS, PERSONALITY AND FAMILY PATTERNS AND THEIR IMPLICATIONS FOR TREATMENT,” 495.

political ambitions of women. Women already must consider more factors than their male counterparts when determining whether they should seek higher office. One of the factors women consider more heavily than their male counterparts is overall qualifications. If women suffer from imposter syndrome more than men, especially if society ingrains it in them through socialization, than women are starting the race to the judiciary with their legs tied.

To understand the implications of imposter syndrome on political ambition, this paper looks to bring to light imposter syndrome within South Dakota's attorney population. If South Dakota's female attorneys suffer from imposter syndrome and undermine the value of their legal experience, then they will feel less qualified for judicial positions. Conversely, if men do not suffer from the same imposter syndrome, then they will feel qualified for judicial openings at lower experience levels than when women will feel qualified. The effects of this difference in perceived qualification is that more men will apply for judicial openings and therefore the candidate pool for judges in South Dakota is narrower than simply all attorneys in South Dakota.

When faced with a judicial opening of the circuit or supreme court level, South Dakota's Judicial Qualifications Commission submits a judicial announcement to be published by the State Bar Newsletter.<sup>93</sup> This process already has a narrowing effect on the judicial candidate pool because the only attorneys who are made aware of the opening are those who receive the newsletter or are informed by someone who does receive the newsletter. If interested in applying, the potential candidate must then fill out a

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<sup>93</sup> "Judicial Qualifications Commission."

questionnaire. The questionnaire focuses on the candidate's background and qualifications. When deciding whether one is interested in applying for a judicial opening, and in filling out the questionnaire, imposter syndrome and political ambition have an intertwined effect.

Imposter syndrome makes you feel like you do not belong, and women are still only recently entering the legal profession in large enough numbers to start seeing a critical mass. The legal profession has the added effect of having been a formalized male-only profession which in turn led to society socializing men and women to view the legal field as a man's profession.<sup>94</sup> Although women must first overcome this socialized view to enter the legal profession in the first place, that does not mean they overcome the socialized feeling of otherness and not belonging to the community.

To ascend to the South Dakota judiciary, women not only have to overcome the socialized belief of the legal field being a man's field, but also must overcome the feeling of otherness once they enter the profession. When women overcome this imposter syndrome, they are more likely to apply for judicial openings. If women do not overcome this imposter syndrome, then women's ascension to the judiciary will be a slow journey.

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<sup>94</sup> Hurwitz and Lanier, "Explaining Judicial Diversity: The Differential Ability of Women and Minorities to Attain Seats on State Supreme and Appellate Courts."

## **CHAPTER FOUR**

### **Data and Methods**

An examination of whether imposter syndrome is keeping women off the bench in South Dakota requires this paper to first show that South Dakota's female attorneys are suffering from imposter syndrome. This paper employs a survey experiment to determine whether women in South Dakota's legal profession suffer from imposter syndrome more than their male counterparts. The survey experiment creates a hypothetical judicial opening in the Third Judicial Circuit of South Dakota and asks respondents whether they would be willing to apply for the position. For those responding "no", the survey asks why they choose not to apply; providing options of relocation, not being qualified, family obligations, and other. The following question provides respondents the opportunity to elaborate on their reason in their own words. Then "no"-respondents answer questions meant to garner the years of experience they have in legal careers. Those who respond "yes" to the question of interest move straight to the questions of experience in legal careers.

Judicial openings for South Dakota are announced in the State Bar Association's monthly newsletter. To replicate an actual judicial opening more closely, this survey was distributed in the state bar's April's newsletter. All licensed South Dakota attorneys have access to the State Bar's newsletter, which is accessible on their website. Furthermore, all licensed attorneys are on the state bar's email listserv, unless they choose to opt out. This email listserv also distributes the link to the monthly newsletter. Not every attorney in

South Dakota chooses to subscribe to the listserv, so to increase the number of responses, I sent this survey, by way of a retired professor of law, through an email listserv consisting of graduates and faculty from the University of South Dakota School of Law. The survey was available for all attorneys licensed to practice in the state of South Dakota.

The survey asked respondents a list of experiential questions to gauge the qualifications of the respondents. These questions include experiences in prosecution, public defense, private practice, judicial clerkships, magistrate judgeships, and includes an “other careers” section where respondents can list any specialized legal careers in which they have worked. Respondents answer with the number of years they have worked in that occupation. Not only does the survey ask questions about these specific careers, the survey also asks whether respondents specialize in specific fields of law—such as family, criminal, corporate, administrative, etc. This question is open-ended enabling respondents to go into detail about their specialized legal field. After looking at these specific legal career questions, the survey also asks whether the respondents are married or have children. This question enables an examination of the “family-obligation” reason for not applying for the judicial opening. The survey also asks respondents to self-evaluate their political ideology—responses included very conservative, conservative, moderate, liberal, and very liberal. This question enables a review of whether political ideology plays a role in political ambitions within the judiciary.

Lastly, a gender-determining question—which only allowed for male/female responses—enabled the survey to categorize the respondents by gender, my key

distinguishing factor. Using this distinguishing factor allowed an examination of qualification by gender. Included at the end of the survey is a qualitative question of why the respondent feels qualified, or not. This question helps to distinguish the reasoning behind those respondents who choose not to apply for the judicial opening. This “feels qualified” question, when distinguished by gender, is the main examination for this paper: determining whether males or females “feel qualified” at different rates.

With the responses received from the survey, I then analyze the data with descriptive statistics using t-tests, which assess whether two variables’ differences in means are statistically significant.<sup>95</sup> I look at what percent of respondents were male compared to female, and then look at them based on their reported years of experience—*total years-of-experience* in different legal careers. This examination requires an operationalized idea of experience. In operationalizing experience, I credit each year of experience in a legal profession as one point. From here, each respondent will receive a “total experience” score. Using these scores, this paper will then analyze how women compare to men in terms of qualification (experience) when controlling for their answer as to whether they would apply for the judicial position.

When analyzing this data, this paper looks to see if there are low experience scores in men with high likelihood of applying for the judicial position and high experience scores in women with low likelihood of applying for the judicial position. If men tend to apply with lower experience scores while women usually apply when they

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<sup>95</sup> “Social Research Methods - Knowledge Base - The T-Test,” accessed May 20, 2019, [https://socialresearchmethods.net/kb/stat\\_t.php](https://socialresearchmethods.net/kb/stat_t.php).

have higher experience scores, then this will show whether women feel they need more qualifications than men to apply for the same position.

## CHAPTER FIVE

### Results

The survey sent through the state bar association's monthly newsletter received 126 responses. With a margin of error of 8.45, the results are not the most closely representative of the population.<sup>96</sup> Each respondent was able to answer whatever questions they wanted, and were not required to answer every question. Using the results of those who answered the survey, I performed T-tests to examine the statistical significance of the responses when looking at them through the lens of gender. Gender was my independent variable for each analysis, with the dependent variables including number of years of experience, interest in applying for the judicial opening, considering family as a reason for not applying for the judicial opening, considering relocation as a reason for not applying for the judicial opening, and the respondents' opinions about their qualifications.

One of the most important variables—the independent variable for this analysis—is gender, which enables me to determine gendered differences in the legal profession. South Dakota's legal profession consists of 1,974 active in-state members, 704 active out-of-state members, and 630 inactive members, totaling 3,308 members.<sup>97</sup> Of this total, 65 percent are male, and 34 percent are female.<sup>98</sup> The survey received 42 responses identifying the respondent as male, and 62 responses identifying the respondent as

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<sup>96</sup> Political science research likes to see a 3 point margin of error.

<sup>97</sup> Rasmussen and Ogan, "Email to Marcus Ireland."

<sup>98</sup> Rasmussen and Ogan.

female. Of the respondents to the survey, approximately 41 percent are male, and 59 percent are female.

The second variable of importance was whether the respondent was interested in applying for the judicial opening. 124 respondents answered this question, 58 responded with yes (they were interested) and 66 responded with no (they were not interested). The percentage of yes responses is 47 percent, while the percentage of no responses is 53 percent. When using gender as a lens to this question, 36 percent of the male respondents said they are interested in applying for the judicial opening while 52 percent of female respondents said they are interested in applying (See Table 6). This also means that 64 percent of male respondents and 48 percent of female respondents said they were not interested in applying. These results show more female respondents to the survey are interested in applying for the judicial opening.

In trying to review the effect of imposter syndrome on the legal profession in South Dakota, the survey asked questions about experience and these responses were totaled to determine each respondents' years of experience. Of those respondents stating their interest in applying for the judicial opening, male respondents average almost 16 years of experience, while female respondents average almost 14 years of experience (See Table 5). This result shows that these female attorneys demonstrate interest in judicial positions sooner than male respondents when starting the legal profession at the same time.

However, this paper is concerned with determining whether females are more likely to suffer imposter syndrome in the legal community of South Dakota. The questions from this survey answering this question most specifically is whether

respondents *feel qualified* when comparing those results by gender. When examining these two questions, approximately 66 percent of male respondents identified as feeling qualified while 54 percent of female respondents identified as feeling qualified for the judicial opening.

While males seem more likely to *feel qualified*, these results were not statistically significant (See Table 1) in identifying a difference in *feeling qualified*. In fact, there were no statistically significant findings when looking at female and male respondents' likelihood of listing relocation being a reason for not applying (See Table 2) or considering children as being a reason for not applying (See Table 3). Only a single question of the 21-question survey found a statistically significant difference between male and female respondents.

What was statistically significant was male respondents' likelihood of stating not being qualified as a reason for not being interested in applying for the judicial opening compared to female respondents' likelihood of listing the same. Approximately 17 percent of male respondents listed not being qualified as a reason for not being interested in the judicial opening, compared to the approximately 5 percent of female respondents (See Table 4). These findings are significant because they point to men being more likely to list their lack of qualifications as a reason for not being interested in applying for the judicial opening compared to women. However, just because male respondents were more likely to list lack of qualifications as a reason for not applying does not mean they suffer from worse imposter syndrome; neither women nor men have a statistically significant difference in feelings of qualification overall (See Table 1).

## CHAPTER SIX

### Conclusion

Female attorneys in the state of South Dakota might not be experiencing imposter syndrome more than their male counterparts. In fact, as female attorneys responding to my survey were more likely to say they were interested in the position (See Table 6), were less likely to state a lack of qualifications as the reason for *not* being interested (See Table 4), and—of those who demonstrated interest in the judicial opening—female respondents on average felt qualified with two less years of experience (See Table 5): these results suggest that women may suffer *less* from imposter syndrome than their male counterparts in the legal profession. However, without more respondents to the survey, this conclusion is still out of reach. This study is limited since it did not receive enough survey responses to achieve a representative sample size with a margin of error of 3-points. As such, I can only conclude, at this time, that the respondents to the survey were not hindered by feelings that they were unqualified.

The judicial branch, for states and the federal government, has an institutionalized qualification by way of education. Few people become attorneys without attending law school (though some states allow for apprenticeship instead of law school). The other two branches do not have educational requirements to run and hold office, not in the legislative nor the executive branches. Political science scholarship shows that women have less political ambition compared to men. However, this study of the legal

professionals in South Dakota shows that female attorneys have *more* judicial ambitions than their male counterparts.

By creating a branch of government with quasi-requirements of education, the judiciary's legal education requirements may have helped to eliminate the socialized barriers that women face in seeking public office. The implication of this elimination of social barriers to women seeking public office are that if other public offices—those in the legislative and executive branches—required institutionalized qualifications by way of education, maybe women's political ambitions would also increase like seen in my respondents of South Dakota's legal profession. This implication requires more research into institutionalized requirements of education in legislative and executive branch elected offices.

South Dakota saw its first all-female state Circuit Court in 2019 when Governor Kristi Noem appointed M. Bridget Mayer to the Sixth Circuit.<sup>99</sup> Judge Mayer will be filling the vacancy left by the retirement of Presiding Judge John Brown, with Judge Bobbi Rank taking over as Presiding Judge.<sup>100</sup> With these new developments to the legal profession in South Dakota, along with this paper's findings—though not statistically significant—female attorneys in South Dakota could be reaching a critical mass. According to political science scholars, critical mass describes “when women reach a

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<sup>99</sup> “South Dakota State News Home,” accessed May 10, 2019, <http://news.sd.gov/newsitem.aspx?id=24291>.

<sup>100</sup> “Judge Bobbi Rank Chosen to Lead South Dakota Sixth Circuit,” accessed May 10, 2019, <https://www.keloland.com/news/capitol-news-bureau/judge-bobbi-rank-chosen-to-lead-south-dakota-sixth-circuit/1903013290>.

certain percentage of a legislature, they will be better able to pursue their policy priorities”.<sup>101</sup>

Although this term typically refers to the number of women necessary to influence policy in the legislature,<sup>102</sup> here it can be used to describe the fact that more female attorneys are reaching the number of years-of-experience necessary to feel qualified to apply for judicial openings. Achieving this critical mass might explain why we are starting to see more females in South Dakota’s judiciary; they have reached a proportion of the population necessary to become *likely* candidates, not just qualified candidates. This idea requires more research and time to see if females are achieving representation by “flooding” the pool of qualified candidates for the judiciary, however this idea is supported by a recent 2018 report of South Dakota’s judiciary showing women holding around 30 percent of the state’s judgeships.<sup>103</sup>

Although political science studies have found that gender impacts political ambition, this relationship does not seem to be the case with the judiciary of South Dakota or its legal professionals. South Dakota’s female attorneys who responded to my survey are not less likely to seek higher office; they demonstrate interest in judicial positions, are competitive in terms of experience, and have similar feelings of qualifications as the male attorneys who responded to my survey. With these female and male attorneys sharing similar feelings of qualification, their likelihood of applying for judicial openings are more accurately determined by years of experience rather than by

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<sup>101</sup> Paxton, Kunovich, and Hughes, “Gender in Politics,” 274.

<sup>102</sup> Paxton, Kunovich, and Hughes, 274.

<sup>103</sup> National Association of Women Judges, “2018 US State Court Women Judges | National Association of Women Judges,” 2018, <https://www.nawj.org/statistics/2018-us-state-court-women-judges>.

their gender (See Table 4) which is what South Dakota's judicial qualifications selection system is set up to prioritize.

## **APPENDICES**

## Appendix A

### Tables from Survey Data Analysis

Table 1.

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. *Feel Qualified by Gender*
. ttest FeelQualified, by (female)

Two-sample t test with equal variances
-----+-----
      Group |      Obs      Mean      Std. Err.      Std. Dev.      [95% Conf. Interval]
-----+-----
      male |       38      .6578947      .0779933      .4807829      .4998653      .8159241
      female |       61      .5409836      .0643325      .502453      .4122994      .6696678
-----+-----
combined |       99      .5858586      .0497574      .4950799      .4871166      .6846005
-----+-----
      diff |              .1169111      .1021529              - .0858341      .3196564
-----+-----
      diff = mean(male) - mean(female)              t =      1.1445
Ho: diff = 0              degrees of freedom =      97

      Ha: diff < 0              Ha: diff != 0              Ha: diff > 0
Pr(T < t) = 0.8724              Pr(|T| > |t|) = 0.2552              Pr(T > t) = 0.1276

. logit FeelQualified female YearsLicensed

Iteration 0:  log likelihood = -67.154716
Iteration 1:  log likelihood = -47.971263
Iteration 2:  log likelihood = -46.164227
Iteration 3:  log likelihood = -46.122968
Iteration 4:  log likelihood = -46.12295
Iteration 5:  log likelihood = -46.12295

Logistic regression              Number of obs      =      99
LR chi2(2)              =      42.06
Prob > chi2              =      0.0000
Pseudo R2              =      0.3132

Log likelihood = -46.12295

-----+-----
FeelQualified |      Coef.      Std. Err.      z      P>|z|      [95% Conf. Interval]
-----+-----
      female |     -.4099833      .5295512     -0.77     0.439     -1.447885      .627918
YearsLicensed |     .1795972      .0415716     4.32     0.000     .0981184      .2610761
      _cons |     -1.382354      .550264     -2.51     0.012     -2.460851     -.303856
-----+-----

```

Table 2.

```
. *Women More likely to state relocation as reason for not interested*
. ttest Reason_Relocate, by (female)

Two-sample t test with equal variances
```

Group	Obs	Mean	Std. Err.	Std. Dev.	[95% Conf. Interval]	
male	42	.1904762	.0613258	.3974366	.0666262	.3143262
female	63	.3333333	.0598684	.475191	.213658	.4530086
combined	105	.2761905	.043843	.4492566	.1892482	.3631327
diff		-.1428571	.088819		-.3190086	.0332943

```

diff = mean(male) - mean(female)          t = -1.6084
Ho: diff = 0                             degrees of freedom = 103

Ha: diff < 0          Ha: diff != 0          Ha: diff > 0
Pr(T < t) = 0.0554    Pr(|T| > |t|) = 0.1108    Pr(T > t) = 0.9446

```

Table 3.

```
. *Women More likely to consider children*
. ttest Reason_FamilyObligation, by (female)

Two-sample t test with equal variances
```

Group	Obs	Mean	Std. Err.	Std. Dev.	[95% Conf. Interval]	
male	42	.0238095	.0238095	.1543033	-.0242748	.0718938
female	63	.047619	.0270458	.2146694	-.0064447	.1016828
combined	105	.0380952	.0187709	.1923443	.0008719	.0753186
diff		-.0238095	.0384299		-.1000262	.0524071

```

diff = mean(male) - mean(female)          t = -0.6196
Ho: diff = 0                             degrees of freedom = 103

Ha: diff < 0          Ha: diff != 0          Ha: diff > 0
Pr(T < t) = 0.2685    Pr(|T| > |t|) = 0.5369    Pr(T > t) = 0.7315

```

Table 4.

```

. *Likelihood stating Not Qualified as Reason by Gender and by Gender AND Years
> Licensed*

. ttest Reason_NotQualified, by (female)

Two-sample t test with equal variances
-----+-----
      Group |      Obs      Mean      Std. Err.      Std. Dev.      [95% Conf. Interval]
-----+-----
      male |       42   .1666667   .0582025   .3771955   .0491243   .284209
      female |       63   .047619   .0270458   .2146694  -.0064447   .1016828
-----+-----
combined |      105   .0952381   .0287843   .2949514   .0381577   .1523185
-----+-----
      diff |           .1190476   .0578633           .0042895   .2338057
-----+-----
      diff = mean(male) - mean(female)                                t =      2.0574
Ho: diff = 0                                                         degrees of freedom =      103

      Ha: diff < 0                                Ha: diff != 0                                Ha: diff > 0
Pr(T < t) = 0.9789                                Pr(|T| > |t|) = 0.0422                                Pr(T > t) = 0.0211

. reg Reason_NotQualified female YearsLicensed

      Source |      SS      df      MS      Number of obs =      104
-----+-----
      Model | .680714331      2   .340357166      F(2, 101) =      4.56
      Residual | 7.54043951     101   .074657817      Prob > F =      0.0127
-----+-----
      Total | 8.22115385     103   .079817028      R-squared =      0.0828
      Adj R-squared =      0.0646
      Root MSE =      .27324

-----+-----
Reason_NotQ~d |      Coef.      Std. Err.      t      P>|t|      [95% Conf. Interval]
-----+-----
      female |  -.1147573   .0552243     -2.08   0.040   -.2243075   -.005207
YearsLicensed |  -.0055191   .0022769     -2.42   0.017   -.0100359   -.0010023
      _cons |   .2332339   .0557312     4.18   0.000   .1226783   .3437895
-----+-----

```

Table 5.

```

. *Number of Years Experience by Gender if interested*

. tabstat YearsLicensed if Interested, by (female)

Summary for variables: YearsLicensed
      by categories of: female (What is your gender?)

female |      mean
-----+-----
      male |    15.7439
female |    12.83857
-----+-----
      Total |    13.98394
-----+-----

```

Table 6.

```

. Interested in Judicial Position by Gender
. ttest Interested, by (female)

Two-sample t test with equal variances
-----+-----
      Group |      Obs      Mean      Std. Err.      Std. Dev.      [95% Conf. Interval]
-----+-----
      0. male |         42   .3571429   .0748318   .4849656   .2060169   .5082688
      1. femal |         62   .516129   .0639851   .5038194   .3881829   .6440752
-----+-----
combined |        104   .4519231   .0490382   .5000933   .3546674   .5491788
-----+-----
      diff |           -0.1589862   .0991891           -0.3557273   .037755
-----+-----
      diff = mean(0. male) - mean(1. femal)          t = -1.6029
Ho: diff = 0          degrees of freedom =          102

      Ha: diff < 0          Ha: diff != 0          Ha: diff > 0
Pr(T < t) = 0.0560          Pr(|T| > |t|) = 0.1121          Pr(T > t) = 0.9440

```

## Appendix B

### Survey

#### Judicial Circuit Application

Consent Page

Date: 2/22/2019

Dear Attorneys of South Dakota:

You are invited to participate in a research study. The purpose of the study is to look into the mindset of South Dakota's attorneys and judicial candidate pool, determining what and how an attorney comes to feel qualified to apply for a judicial position.

We are inviting you to be in this study because we want to determine what makes members of the judicial candidate pool feel qualified to apply for judicial openings. As an attorney of South Dakota, you are a member of the judicial candidate pool.

If you agree to participate, we would like you to complete the following survey. This survey asks basic demographic information, years of experience in different careers of law, and judicial ambitions. This survey should take an estimated 8 minutes to complete.

If you do not want to participate in this survey, then you need not do anything to let me know—just ignore the survey. An email may (no more than twice) be sent reminding you of the survey and asking if you would fill it out. This reminder email will be sent out 1 week after the original and then 2 weeks after the second email. You are free to not answer any questions you would prefer not to answer.

We will keep the information you provide anonymous, however federal regulatory agencies and the University of South Dakota Institutional Review Board (a committee that reviews and approves research studies) may inspect and copy records pertaining to this research.

Your responses will be anonymous to ensure that they cannot be linked to you.

If we write a report about this study, we will do so in such a way that you cannot be identified.

There are no known risks from being in this study, and you will not

1

benefit personally. However, we hope that others may benefit in the future from what we learn as a result of this study.

All survey responses that we receive will be treated confidentially and all data collected will be encrypted and password protected. However, given that the surveys can be completed from any computer (e.g., personal, work, school), we are unable to guarantee the security of the computer on which you choose to enter your responses. As a participant in our study, we want you to be aware that certain "key logging" software programs exist that can be used to track or capture data that you enter and/or websites that you visit.

Your participation in this research study is completely voluntary. If you decide not to be in this study, or if you stop participating at any time, you will not be penalized or lose any benefits for which you are otherwise entitled.

If you have any questions, concerns or complaints now or later, you may contact us at the number below. If you have any questions about your rights as a human subject, complaints, concerns or wish to talk to someone who is independent of the research, contact the Office for Human Subjects Protections at 605/677-6184. Thank you for your time.

Dr. Julia Hellwege  
Department of Political Science  
Dakota Hall  
414 E. Clark St.  
Vermillion, SD 57069  
(605) 677-0471

### Judicial Circuit Application

#### Judicial Circuit Application

Thank you for taking the time to fill out this survey and helping with my research of South Dakota's judicial candidate pool.

This survey asks questions about a judicial opening and whether you would like to apply, this position is a hypothetical circuit judge position.

For this hypothetical circuit judge opening, the opening is for the third judicial circuit.

The minimum qualifications to be a circuit judge are that you: (1) be a U.S. citizen, (2) be a resident of South Dakota, (3) be a resident of the judicial circuit, (4) be licensed to practice law in South Dakota, and (5) be under the age of 70.

1. Would you be interested in applying for this judicial opening?

Yes

No

### Judicial Circuit Application

2. I am not interested in applying for this judicial opening because...(please check all that apply)

- Not willing to relocate
- Family obligations
- Do not have necessary job qualifications
- Other

3. Can you further elaborate why you are not interested in applying for this judicial opening?

4. How many years of experience as a prosecutor do you have?

5. How many years of experience as a public defender (or as indigent counsel) do you have?

6. How many years of experience in private practice do you have?

7. How many years of experience as a judicial clerk do you have?

8. How many years of experience as a magistrate judge do you have?

9. How many years of experience as a law school professor do you have?

10. How many years of experience in other positions requiring legal education (JD) and license by the state bar of South Dakota do you have?  
(Please put the job and then the years of experience next to it.)

11. How many years have you been licensed to practice law in South Dakota?

12. Is there a specific area of law you tend to practice in?

- Yes  
 No

### Judicial Circuit Application

13. What specific area of law do you tend to practice in?

14. How do you identify ideologically?

- Very Conservative       Liberal  
 Conservative       Very Liberal  
 Moderate

15. What is your marital status?

- Married       Separated  
 Divorced       Widowed  
 Single

16. Do you have kids?

- Yes  
 No

17. What is your race or ethnicity?

- White or Caucasian       American Indian or Alaska Native  
 Black or African American       Native Hawaiian or other Pacific Islander  
 Hispanic or Latino       Another race  
 Asian or Asian American

18. What law school did you graduate from?

19. What year did you graduate from law school?

20. Do you feel qualified for this judicial position, why or why not?

21. What is your gender?

Male

Female

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