

Galanter Revisited: Institutional Differences Internal to the Office of the Solicitor General

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The United States government is a system vested with a complex separation of powers among the different branches. These branches are charged with specific duties over which they have control; however, naturally, the branches must interact. There are few institutions within the federal government who have as their mission the responsibility to serve as a nexus for all three of the branches. One of these institutions is the Office of the Solicitor General. Maintaining two offices, one inside the Department of Justice and the other inside the Supreme Court building, the OSG is an institution clearly “between law and politics (Pacelle 2003).”

The Solicitor General of the United States occupies a unique position in the federal government, not only as the only member of the government legally required to be “learned in the law,” but also as the main legal representation of the United States. Beginning with Galanter (1974) and continuing with McGuire (1998), Songer, Sheehan, and Haire (1999), and most recently Bailey, Kamoie, and Maltzman (2005), researchers have showed that solely by the Solicitor General’s involvement in a case, either as amici or counsel, the federal courts are significantly more likely to decide in favor of the side the solicitor general favors. A shortcoming of nearly all research on the Office of the Solicitor General is that all members of the office are treated as identical regardless of their institutional position. The Office of the Solicitor General however does not contain simply one individual. The office can be viewed as the federal law firm; containing not only a solicitor general, but also deputies and assistants who all argue cases before the Court. Previous research does not assess quantitatively the effect these institutional differences within the Office of the Solicitor General may have on Supreme Court decision making.

It is theoretically plausible to assume that different attorney types within the OSG may have different levels of success based upon numerous different characteristics. To assume that political nominees and careerists will perform their jobs equally does not take into account that they may have different motivations or even that the Supreme Court may view them differently. None of the three main theories in the literature regarding the OSG addresses these issues. With the basic methodological technique of disaggregating these three distinct institutions within the OSG, we can examine more accurately the causal factors of the office's success.

### **The Office of the Solicitor General as Agent of the Court**

Encompassed by the idea of the OSG as the “tenth justice,” this strand of research argues that while the OSG is housed with the executive branch, they actually have strong ties to the judiciary, primarily, the Supreme Court (Caplan 1987). Caldeira and Wright (1988) argue that the OSG not only plays a significant gatekeeping role for the Supreme Court with regards to agenda setting at the certiorari stage, but that it also gains a significant amount of its institutional legitimacy from this process. In their view, the OSG as amicus acts as a filter for cases, screening out those they feel to be unworthy.

This view is articulated by other scholars as well. In Perry's (1991) groundbreaking work on agenda setting, he argues that attorneys within the OSG take their job as screeners quite seriously. Perry, quoting one of the Supreme Court justices writes of the solicitor general, “He does have a good batting average. This is because he culls things out. There is also a tradition of very fine work. He knows what the business of the Supreme Court should be. It is very rare that I don't read one of his cert. petitions. I don't read all of his, but it is very rare for me not to. (132).” Ultimately, this theory describes the success of the OSG with the Court on the merits as a function of their status as a filter at the cert. stage. Therefore, while it is a general expectation

that the Supreme Court is more likely to support petitioners than respondents, this relationship should be enhanced with cases involving the OSG.

### **The Office of the Solicitor General as an Ideological Signaler**

Yet another strand of research focuses on the role of the OSG acting as an agent of the current presidential administration. This research claims that the OSG is an ideological representative of the president before the Supreme Court. If the solicitor general is an ideological representative of the president, than the OSG may not be as effective playing the role of the “tenth justice.” Bailey, Kamoie, and Maltzman (2005) claim that the closer ideologically the OSG is to an individual justice, the more likely that justice will grant certiorari to the government’s petition or rule in favor of the government on the merits. They find support for their hypothesis employing a bayesian ideal point estimation strategy. In their model, an individual justice is 26% more likely to approve of the government’s petition if their ideological distance from the president is at its minimum.

Ultimately, the findings of Bailey *et al.* tell us that while the OSG does experience a significant amount of success because of their institutional status as an agent of the Court, their institutional propensity to win is conditioned upon the ideological distance from the OSG to any individual justice. A similar view is purposed by Pacelle (2003) when he describes the OSG as forward looking, only appealing cases they feel highly likely to win with regard to the makeup of the Court.

### **The Office of the Solicitor General as Repeat Player**

Galanter (1974) first formally recognized the advantage that repeat players have before the Court. Galanter hypothesizes, that all things being equal, repeat players should win more often before the Court than one-shotters. Galanter believes this because repeat players have

numerous advantages over one-shotters in the long run. Repeat players experience significantly reduced transaction costs because of their familiarity with the game. Furthermore, repeat players are more experienced in the actual process of litigating, thereby becoming more proficient and more likely to win.

Galanter differentiates between lawyers and institutions as repeat players<sup>1</sup>. Lawyers who argue a large number of cases become repeat players, as well as the institutions by which these lawyers are employed. In addition, the institutions these attorneys are employed by may have greater resources at their disposal, further increasing their likelihood of winning before the Court. Because of this, Galanter claims another way to view this dichotomy is between the haves and have nots. This is an important distinction with regard to the OSG. Not only do the individuals with the Office benefit because of their repeated appearance before the Court, but also the institutional resources further increase their propensity to win. In an examination of the United States Courts of Appeals, Songer and Sheehan (1992) find that the Galanter framework explains litigant success well, with the federal government being more successful than any other litigant type. Kritzer (2003) states that the government has additional advantages that are not available to other repeat players. First, the government generally is responsible for making the rules for litigation before the Court. Second, the government has internal structures for filtering out cases in which they have a weak position. Third, the judges to whom the government argues are members to the larger governmental structure. The federal government easily has the most resources available to them as compared to other litigants before the Court. Salokar (1992) summarizes this line of argument;

They [the OSG] enjoy the numerous advantages of the Repeat Player including advance intelligence, access to specialists, a wide range of resources, expertise,

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<sup>1</sup> While Galanter differentiates between them, both lawyers and institutions can become repeat players before the Court.

opportunities to build informal relations with the Supreme Court, and a high degree of credibility before the Court. In addition, the government is more interested in the long-term development of the law and rules than in the immediate success of a particular case (31).

McGuire (1998) focuses on a different aspect of the repeat player theory in his article on executive success. McGuire hypothesizes that the success of the lawyers within the OSG is not a function of their institutional advantage, but merely a function of their individual litigation experience. He argues that individuals within the OSG have the ability to argue a sizable number of cases before the Court, clearly more than other members of the Supreme Court Bar, and their propensity to win is not because of the institutional legacy of the OSG, but because the individuals are quite frequent repeat players. When controlling for litigation experience, McGuire finds that the OSG does not receive any statistical advantage in winning cases before the Court.

I argue that each of these explanations for the success of the OSG have possibly missed an important factor. The OSG is an institution defined by continuity and change. Generally speaking, deputy solicitors general and sometimes assistants to the solicitor general remain across administrations<sup>2</sup>. Quite differently, the solicitor general changes from administration to administration, with some presidents having as many as three during their time in office. Furthermore, while the solicitor general must be nominated by the president and confirmed by the Senate, the deputies and assistants are what Caplan refers to as “careerists,” hired and promoted internally by the OSG and the Department of Justice. The solicitor general clearly is the leader of the office, having the final say on which cases are appealed, in which cases the OSG participates as amicus (the SG has a tradition of signing every brief which is submitted to the Court as a signal of his approval), and even which lawyer will argue each case before the

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<sup>2</sup>In 1983 Reagan created the position within the OSG known as the Principal Deputy. This position is nominated by the President with no Senate confirmation, and changes by presidential administration.

Court. Therefore, to assume that the success of each different institution internal to the OSG is a function of the same covariates is equivalent to stating there is no variation with regards to success across the different levels. Ultimately, if the determinants of each group's success are different, then previous researchers have been guilty of succumbing to the ecological fallacy. This may not be a problem when examining decisions regarding certiorari by the Supreme Court because the writ is drafted with authorship by the Office itself, signed primarily by the Solicitor General, but oral arguments are done by an individual who corresponds to one of the three institutions internal to the office. I argue that only by examining the determinants of each institution's success individually can we overcome the aggregation bias prevalent in previous research.

Considering the solicitor general is representative of the administration, and the head of the OSG, theoretically, when the solicitor general participates as primary counsel in a case, he is sending a cue to the Court that the case is important enough to garner his individualized attention. Interviews done by Perry with the justices' clerks bare this point out. Perry quotes, "It is a flag. When the SG does something then it means more serious attention needs to be given to it (132)." Since the solicitor general is the only individual within the office subject to nomination outside of the Department of Justice and the confirmation of the Senate, he can be seen as formally representing the interests of the government. Simply put, in the aggregate, the participation of the solicitor general as primary counsel should increase the government's likelihood of winning. One possible hypothesis is that in accordance with cue theory (Tanenhaus *et al.* 1963), the Supreme Court will be more likely to decide for the solicitor general in comparison to other attorneys within the office.

If Galanter (1974) is correct, there should be little to no differences among the different types of attorneys within the OSG, when controlling for individual experience, because it is the institution of the OSG that gets an increase of success before the Court, not the individuals themselves. If any individual were to witness an increase of success before the Court, Galanter would predict the solicitor general, as the leader of the institution, able to command the resources and choose his own cases, would be more likely to win. Conversely, a separate branch of literature, focusing on the bureaucracy, argues that those whom are nominated into their position, as opposed to being hired, are less successful in performing their jobs (Lewis 2007). This literature would expect the solicitor general to be less successful before the Supreme Court than the careerists within the office because the solicitor general is the only individual within the office whom is nominated and confirmed.

### **Data and Methods**

The data for this analysis includes all cases in which the Office of the Solicitor General was a counsel for or arguing as amicus before the Court from 1953 – 2000. The case list was acquired by doing a Lexus search for solicitor general in the counsel field. The solicitor general has a tradition of joining all of the briefs for the office so the search term accurately captures the cases for analysis. Each case was then read to determine whether the primary counsel for the government was the solicitor general, a deputy, or an assistant. Because of the method of reporting Lexus employed prior to 1969, I was unable to distinguish between those attorneys who were either deputies or assistants. In the aggregate analysis this does not pose a problem as the Solicitor General variable will be referencing all other attorneys in the office for comparison. At in the internal institutional level the analyses will be completed from 1953 for the Solicitor general and from 1969 for both deputies and assistants.

The unit of analysis is the decision of the Court, coded dichotomously as a vote for or against the government position. This variable was determined by a reading of each case. This analysis will also control for ideology in order to assess the impact of the institutional advantages that the Office of the Solicitor General has. The Office of the Solicitor General will be considered a direct representative of the president for this analysis. As such, this research will employ the Poole Common Space scores (2007) for the president and the Judicial Common Space (2007) scores for the justices. The measure of ideological distance will be the difference of the ideology of the Office of the Solicitor General and the median member of the Court, calculated by term. The median member of the Court was chosen because as Hammond, Bonneau, and Sheehan (2005) show, the median member of the Court will be in nearly every majority. Therefore, in order to win before the Court, the OSG needs to win the median justice.

This measure is a significant improvement over previous measures of ideology used. First, because the Common Space scores are based upon a common metric, so the ideological distance between the OSG and the median justice is meaningful. Second, the work of Bailey, Kamoie, and Maltzman (2005) utilize a similar measure but generate it themselves. The Common Space scores have been used numerous types in congressional, presidential, and judicial literature, and have been tested for validity and reliability. Unfortunately, because of the technique used when generating the Common Space scores, the president's ideology is a constant throughout the entire administration. This does not hold theoretically, as the president's ideology could move because of many different factors, though currently this measure is the most accurate way to measure ideological differences between branches of government.

Addition controls will be utilized as well, in part, to assess if the success of the different institutions internal to the OSG are influence by the same or different variables. The litigant

status (petitioner or respondent) of the OSG will also be controlled for as well. Generally, the Supreme Court takes cases where they wish to overturn the ruling of the lower court. As such, the OSG should experience more success when they appear before the Court as a petitioner than as a respondent. An experience variable, measured consistent with McGuire (1998), will assess if the number of times an individual lawyer appears before the Court affect his/her success. Two controls measuring public sentiment will also being included in the model. Stimson's public mood<sup>3</sup> index will be included in the model per year. In addition, the percent who approved of the job the president was doing in the Gallup Opinion Poll taken at the closest previous date to the day the decision was handed down will be included. The direction in which the lawyer from the OSG argues may influence the decision making of the Court, independent from the ideological composition of the Court. Considering decisions which favor the government position are generally considered to be in a conservative direction, the OSG should be more success when it argues the conservative position. Finally, a variable which measures the workload of the individual attorney per term will be included into the model under the assumption that as other researchers of bureaucratic environments have found (Kosnik 2006), as workload increases, productivity or success decreases.

A descriptive analysis will be accomplished by tracking the percentage won over time for each of the institutions internal to the OSG. This will be accomplished first by simple descriptive statistics. If the SG is more likely to win, then winning percentage of the SG should be generally higher than that of either the deputies or the assistants. Winning percentages will also be examined over time.

Finally, I will estimate a logistic regression to determine if the presence of the solicitor general as primary counsel has a statistically significant effect on Supreme Court decision

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<sup>3</sup> Available at <http://www.unc.edu/~jstimson/Mood5204.xls>

making. A logistic regression is the appropriate statistical technique as my dependent variable is dichotomous in nature. Furthermore, I will estimate three “disaggregated” models for each of the different types of attorneys within the OSG. This will allow me to examine if different factors have an effect on the success of these three different internal institutions and test empirically if previous researchers have unknowingly engaged in aggregation bias when examining the OSG before the Supreme Court.

## **Results**

In the aggregate it appears that over time the SG as compared to other individuals within the office does not experience any benefit based upon their individual advantage.

[Insert Figure 1]

Across time there appear to be no discernable trends simply on the basis of the internal institutional differences in the OSG. While the SG three times in the period wins all of his cases, the SG takes fewer cases in comparison to the other individuals in the office. The SG also experiences much deeper troughs than the other two attorney types. For the period of the analysis, the OSG won 67.1% of the time<sup>4</sup>. Figure 1 clearly shows that the success of the OSG has varied over the time period of the analysis.

Where there appears to be a substantial amount of “noise” in Figure 1, when the numbers are averaged across presidential terms, much of the fluctuation disappears. Across the internal institutions in the OSG the SG’s success rate ranged from a low of 39.54% under Clinton, to a high of 80.95% under Bush Sr. The success rate of the deputy solicitors general range from a low of 58.2% under Clinton to a high under Ford of 78.69%. The assistants to the Solicitor General appear to fare better over time, never dropping below a 60% success rate, with a high

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<sup>4</sup> All analyses were done using the Spaeth Database with `analu=0` and `dec_type=1,2,4-7`)

under the Ford administration of 75.9%. The highest overall winning percentage by a president was Ford, with Reagan and Bush Sr. closely behind.

[Insert Table 1]

Descriptive statistics can only partially tell us the tale of the OSG. Through a multivariate analysis, the success of the OSG can be better explained. Table 2 presents four different models: the aggregated model, and three models for each lawyer type in the OSG (solicitor general, deputies, and assistants). The assumption behind disaggregating the models follows directly from Galanter (1974). If it is the institution which benefits from repeat player status, that the success of each of the different types of attorneys should be successful based on the same causal variables. If there were to be any difference, the solicitor general should be more likely to win as he is the head of the institution, and has ability to control all of the resources of the institution. Furthermore, consistent with Tanenhaus *et al.* (1963), the justices of the Supreme Court could view action from the solicitor general as sending a cue, increasing the government's likelihood to win. If I find, however, that there are differences between the different types of lawyers in the office, the conclusion that the success of the Office is based upon their institutional repeat player status may be incorrect.

These models were estimated with bootstrapped standard errors. Bootstrapping was utilized because a general logistic model assumes independence between the observations, however, because of the type of data being analyzed observations under presidential administrations may be correlated. Generally, the correct way to solve such interdependence is to cluster the standard errors on the quality you know causing the dependence, in this case, the presidential administrations. This is inappropriate in this analysis because when selecting only five administrations for clustering, it reduces your degrees of freedom to three ( $n-2$ ) and it

becomes impossible to use more than three independent variables in the model because the covariance matrix is not positive definite. Bootstrapping also relaxes the assumptions of independence within the model, but instead of accomplishing this by clustering, bootstrapping uses a monte carlo based method of random sampling and repeated estimations. These repeated estimations work from axiom that repeated random samples from any given population will come closer the action population mean than just one sample (Efron and Tibshirani 1986). Therefore, when bootstrapping the standard errors in a model such as this, the reported standard errors are the mean of the chosen number of replications, in the case of this analysis, one-thousand.

[Insert Table 2]

In the aggregate level model we find some evidence for both the theories of Galanter and Lewis. Cue theory appears to apply, but not in the direction Galanter or Tanenhaus *et al.* (1963) would have hypothesized. The presence of a solicitor general arguing the case before the Supreme Court has a negative effect on the likelihood the Court will decide for the government's position. Furthermore, the substantive effect of the presence of a solicitor general decreases the likelihood of a decision in favor of the government by 8%. However, the success of the solicitor general is conditioned by his experience before the Court. The more cases the SG brings before the Court, the more likely he will win. This is show clearly in Figure two where the predicted probability of winning a case is plotted against the experience variable measured as the number of cases argued. Certain control variables in the aggregate model also effect Supreme Court decision-making in cases involving the OSG. Those three variables are presidential ideology, litigant status, and workload.

[Insert Figure 2]

Examining the predicted probability table for the aggregate model, it is clear that that litigant status has the largest substantive effect on the model. This is not surprising, considering the Court is more likely to take cases which it wants to overturn. The variable which has the second largest effect on the model is the presence of the SG. This is counter to the theory of Galanter, which says the individuals which the largest number of resources should be more likely to win. The solicitor general is the head of the OSG, and commands the power of the institution, and maintains control over all of the Office's resources. Galanter would predict that the SG should be more likely to win, however, the finding in the aggregate model seems to confirm the findings of Lewis (2007). Model 1 compares the solicitor general to the other attorneys within the office. Lewis hypothesized that individuals who are politically nominated to their office will perform their job less efficiently than those who are hired based on merit. If an attorney's success rate before the Supreme Court is an accurate way to measure their effectiveness in performing their job, as I argue it is, then the negatively signed coefficient on the solicitor general variable confirms that Lewis' findings on bureaucratic institutions apply to the OSG as well.

[Insert Table 3]

Some may question if the negatively signed coefficient for cases argued by the solicitor general is simply a function of the types of cases he chooses to argue as opposed to the other two institutions within the office. Perhaps the solicitor general may choose to argue cases which are more politically salient, and therefore more difficult. If this were the case, then the finding concerning the solicitor general would be a function of case type. In order to answer this question, I examined the success rates of each of the attorney types in politically salient cases as

measured by media coverage in the New York Times (Esptein and Mershon 1996). Two trends emerge; first, the solicitor general argues more politically salient cases than either deputies or assistants and, second, he wins more often in politically salient cases. This shows that the coefficient estimate for the solicitor general in the aggregate model is not a function of arguing more politically salient cases. Clearly, the solicitor general does argue more of these cases, but he is also more success when doing so than the other two internal institutions to the office.

[Insert Table 4]

Examining the model estimated for just cases argued by the solicitors general, three variables obtain statistical significance: presidential ideology, directionality, and litigant status. In the deputy solicitor general model, three variables, with one important difference, are statistically significant: presidential ideology, litigant status, and workload. In the assistant only model, a different three variables affect the Court's decision-making: the experience of the attorney, litigant status, and workload. What this means is that the success of each different level of attorneys within the OSG are based on different factors. This lends support to the idea that previous research on the OSG has been guilty of an ecological fallacy by aggregating these three different institutions into one.

In the SG only model, the most notable is the effect that the direction the case is argued has likelihood the SG will win; if the SG brings a case in a liberal direction he likelihood of success drops to 56% while when brining a conservative case it rises to 73%. This effect persists when controlling for presidential ideology and the ideological distance from the president to the median justice. With regards to ideology, the difference measure is all three of the disaggregated models fail to reach statistical significance. In the SG only model, as the president gets more conservative, the SG will be more successful before the Court. I feel the effect of

presidential ideology is a statistical artifact of measurement error which I will cover in depth later.

[Insert Table 5]

Other interesting findings include the role that workload has on the success of the OSG. In all models except the SG model, it has a significant negative effect. Theoretically, this makes sense considering it is the SG who assigns cases to those below him, and gets to choose his own cases. If we assume the SG is choosing cases he is more comfortable and knowledgeable about, than a higher number of cases per term would have less of an effect on him than on others within the OSG. The finding regarding the experience variable in the assistant model is interesting and puzzling. Even when controlling for workload effects, the more cases an attorney argues as an assistant, the less likely they are to win. While the variable has a small substantive effect, it remains statistically significant.

Looking to the actual attorneys who served as assistants, an excellent example of this phenomenon is Edwin S. Kneedler. Kneedler argued his first case as an assistant solicitor general in 1979. During Kneedler's first 20 cases as an assistant his success rate was around 68%, his next 20 cases, his success rate dropped to around 45%. Kneedler was promoted to a deputy solicitor general in 1992 and argued an addition 26 cases in this sample. His win and loss record is consistent over time as a deputy. There are two possible explanations for this finding, one lying with the individual, the other lying with the Court.

First, it could be the case that an individual serving as assistant to the solicitor general performs their job more effectively during their first few years. Over time the individuals may begin to become more comfortable in their job and prepare less effectively than they once had, leading to their declining success rate before the Court. The second plausible explanation

focuses on how the justices perceive the assistants. While the assistants are new in the job, the justices could view them, and their arguments, more positively. Over time, the justices may have expectations to which the attorneys are not meeting, be it further job advancement in the department or into private practice.

Ultimately, it is clear that aggregating each institution internal to the OSG generates bias within models trying to explain success. The pressures and expectations on individuals within these three institutions internal to the OSG are documented by Caplan (1987), Pacelle (2003), and Salokar (1992) to be quite different. This research shows that not only are the pressures and expectations between the institutions different, but so are the causal mechanisms of their success. To restate simply, solicitors general are different from deputies, whom are both different from assistants and to model the success of these different institutions as identical introduces bias at a fundamental level.

## **Discussion**

Galanter (1974) describes a situation in which the individuals within the OSG would enjoy both the advantages of being a repeat-player before the Supreme Court, and also in institutional advantages of being employed by the federal government, and therefore, having a substantial amount of resources at their disposal. While Galanter's theory may have strong predictive power when the Supreme Court docket is analyzed in the aggregate, it does not predict the success of the OSG well when the internal institutions to the office are disaggregated. If Galanter's repeat player theory was correct, the experience variable, which accurately measures repeat player status would be statistically significant and positively signed. Only in the SG model is it positively signed, and in the assistant model it is negatively signed and significant, a finding directly in opposition to the repeat player hypothesis. Further, cue theory, read in

conjunction with Galanter, would lead us to the conclusion that the individual with the most resources in the OSG would enjoy the most success. Statistically, this is not the case, with the order of seniority within the office being exactly the opposite of their order of success.

It is Lewis (2007) who comes closer to the empirical reality. Lewis describes a situation in which those who have been nominated to their position perform their jobs less efficiently than those who have been promoted or hired. Internal to the OSG, there are three distinctly different institutions: the solicitor general, the deputy solicitors general, and the assistants to the solicitor general. Each of these three institutions is selected in different ways. The solicitor general is nominated by the president and confirmed by the Senate like other political appointees. The deputy solicitors general are promoted from inside the Department of Justice, even sometimes within the OSG. Assistants to the solicitor general are generally hired from outside of the Dept. of Justice (Salokar 1992). While Lewis tests effectiveness based on the Bush administrations Program Assessment Rating Tool, I feel that using the OSG success rate is a plausible measure of effectiveness for the bureau.

Examining the OSG as one homogenous institution is problematic. Not only are their different levels of attorneys within the Office, but attorneys at these different levels may perceive themselves differently and the Court may treat them differently. Clearly the OSG is successful across issue area and time, but models which do not take into account the differences internal to the OSG may be missing a more precise depiction of empirical reality. The OSG is an institution, “Between Law and Politics (Pacelle 2003),” but researchers need to take care to remember not only is it an executive bureau, but it is also an institution defined by its internal institutions.

### **Further Research**

While the OSG is the most studied law firm which argues before the Supreme Court, research has suffered from the inability to accurately the ideology of the institution. Generally, the ideology of the OSG, as was done in this paper, is measured at the ideal point of the president. Given our current knowledge regarding the OSG and the measures available, this is problematic for two reasons. First, as Pacelle (2003) showed, the OSG may shift its ideology in any given term year away from that of the president. Therefore, measuring the ideology of the OSG at the ideal point of the president may miss a high degree of variance. Second, because of the way the Common Space Scores were generated, presidential ideology remains a constant across each administration. Theoretically this is not only inconsistent with what is known about presidential ideology, but also poses a further problem when the president's ideal point is used as the ideology measure for the OSG, which may explain the results of the current analysis regarding the ideological different and presidential ideology variables. In order to more accurately examine the question of what determines the success of the institutions internal to the OSG, we may first need to develop a measure of ideology which is a more accurate depiction of reality.

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Figures and Tables

Figure 1

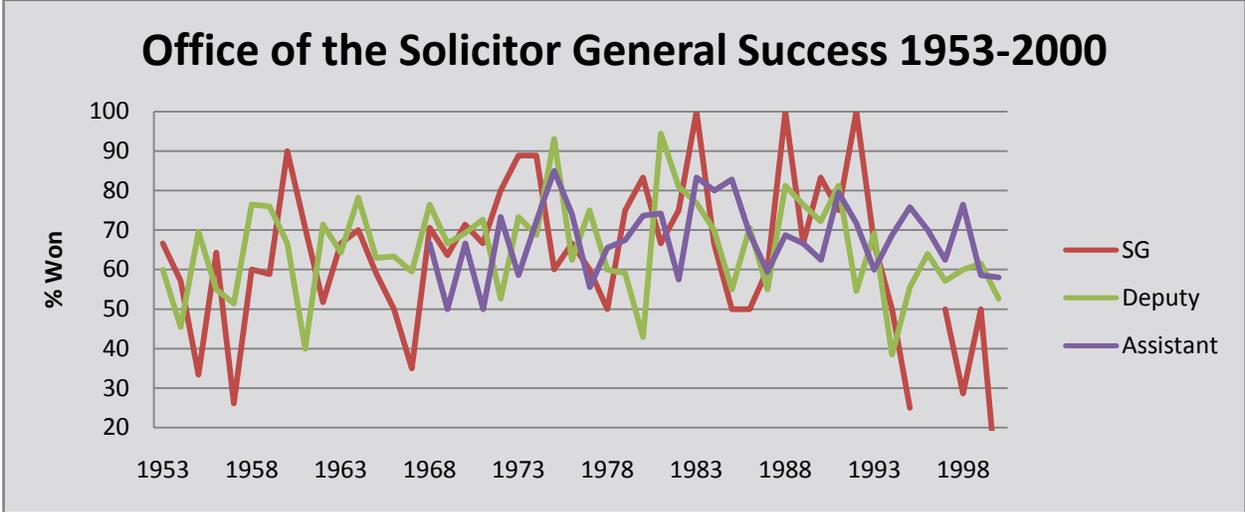


Figure 2

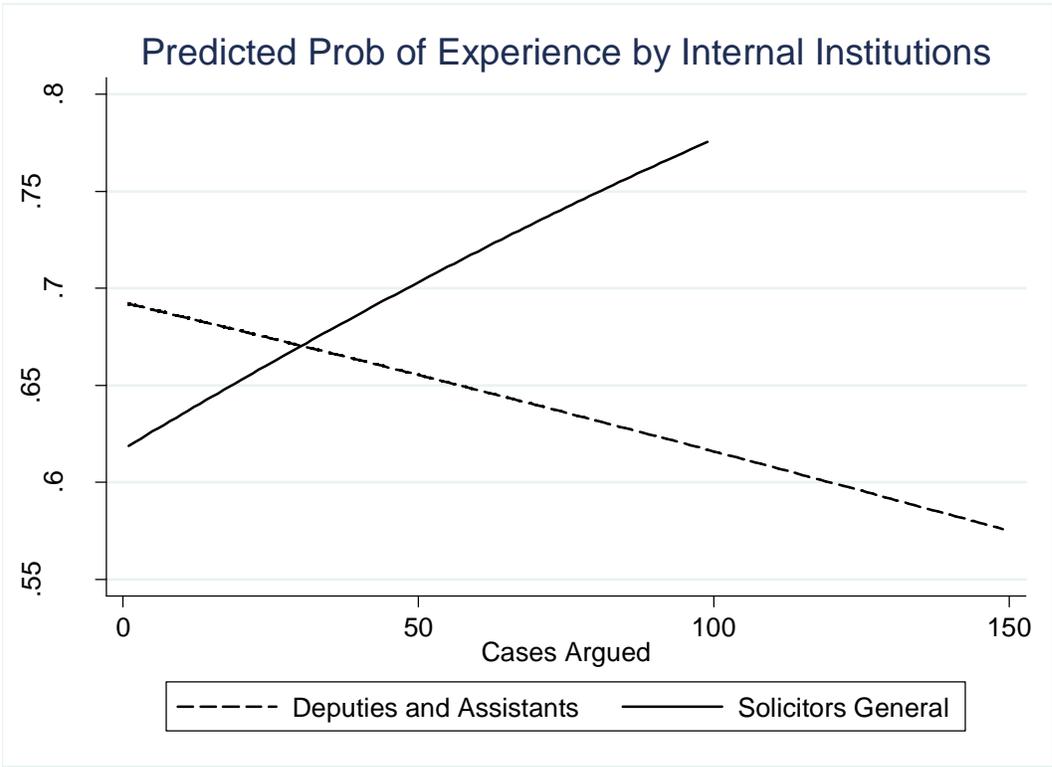


Table 1

Winning Percentage of the OSG by Presidential Term									
	Eisenhower	Kennedy	Johnson	Nixon	Ford	Carter	Reagan	Bush	Clinton
SG	54.55% (88)	58.70 (46)	59.17 (120)	73.33 (60)	70.00 (30)	68.00 (25)	72.55 (51)	80.95 (21)	39.53 (43)
Deputy	61.75% (183)	59.46 (37)	66.05 (162)	68.66 (67)	78.69 (61)	59.70 (67)	72.96 (159)	71.88 (64)	58.20 (122)
Assistant <sup>5</sup>	_____	_____	66.67 (9)	61.90 (105)	75.90 (83)	66.42 (137)	72.22 (324)	70.86 (151)	66.29 (267)
Total	59.41% (271)	59.04 (83)	63.23 (291)	66.81 (232)	75.86 (174)	64.63 (229)	72.47 (534)	72.03 (236)	61.20 (433)

<sup>5</sup> Because of Lexis method of reporting, assistants are only included post-1968, until this point, they are contained within the deputy category.

Table 2

Logit Analysis of the Success of the Office of the Solicitor General before the Supreme Court				
	Model 1 Aggregate Model	Model 2 SG only	Model 3 Deputy only	Model 4 Assistants only
Solicitor General	-.335† (.174)			
Experience	-.003 (.002)	.006 (.004)	-.002 (.002)	-.020* (.008)
SG Exp.	.011* (.005)			
Ideological Diff	.117 (.296)	-.287 (.702)	.036 (.457)	.328 (.791)
Public Mood	-.021 (.014)	-.036 (.032)	-.005 (.021)	-.015 (.026)
Gallup Approval	.003 (.004)	.007 (.010)	-.004 (.007)	.006 (.007)
Pres. Ideo	.326** (.099)	.866** (.284)	.438** (.170)	.135 (.169)
Direction	-.118 (.093)	-.724** (.237)	-.185 (.149)	.163 (.141)
Litigant Status	1.11** (.089)	1.56** (.215)	.891** (.145)	1.04** (.138)
Workload	-.147* (.067)	.045 (.160)	-.166† (.098)	-.232† (.121)
Constant	1.37 (.820)	1.31 (1.88)	1.06 (1.28)	.854 (1.43)

\*  $p \leq 0.05$  \*\*  $p \leq 0.01$  †  $p \leq 0.05$  one tailed

Table 3

Predicted Probabilities of Office of the Solicitor General Success		
	Probability <sup>6</sup>	
	Low	High
Solicitor General	.61	.69
Experience	.67	.65
SG exp	.61	.65
Ideological Dist.	.67	.68
Public Mood	.66	.67
Gallup	.67	.69
Pres. Ideology	.67	.71
Directionality	.66	.69
Litigant Status	.52	.77
Workload	.64	.71
Baseline <sup>7</sup>	.67	

Table 4

Success of the OSG in Salient Cases			
	Solicitors General	Deputy SGs	Assistant SGs
Win	66 (39.5%)	65 (43.9%)	33 (42.3%)
Loss	101 (60.5%)	83 (56.1%)	45 (57.7%)
Total	167	148	78

<sup>6</sup> Probability represents the predicted probability of the Court deciding in favor of the OSG when the variable of interest is set to the value provided. These were calculated by using the baseline probability and then changing the value of the variable of interest. In the case of continuous variables this was accomplished by adding one standard deviation to the mean. Dichotomous variables were changed from 0 to 1.

<sup>7</sup> Baseline probability is calculated by setting all variables to their mean.

Table 5

Predicted Probabilities of Solicitor General Success		
	Probability	
	Low	High
Experience	.64	.67
Ideological Dist.	.63	.64
Public Mood	.60	.64
Gallup	.64	.66
Pres. Ideology	.64	.72
Directionality	.56	.73
Litigant Status	.43	.78
Workload	.62	.64
Baseline	.64	

Predicted Probabilities of the Deputy Solicitors General Success		
	Probability	
	Low	High
Experience	.65	.67
Ideological Dist.	.67	.67
Public Mood	.67	.67
Gallup	.66	.67
Pres. Ideology	.67	.71
Directionality	.65	.69
Litigant Status	.55	.74
Workload	.63	.70
Baseline	.67	

Predicted Probabilities of the Assistant Solicitors General Success		
	Probability	
	Low	High
Experience	.67	.70
Ideological Dist.	.70	.71
Public Mood	.69	.70
Gallup	.70	.72
Pres. Ideology	.70	.72
Directionality	.68	.71
Litigant Status	.56	.78
Workload	.63	.73
Baseline	.70	