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A Look at the Bureaucratic Nature of the Office of the Solicitor General

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The Office of the Solicitor General is internally structured as a bureaucracy, and it also functions as part of the greater bureaucracy of the Department of Justice. Members of the Office of the Solicitor General have one of three designations: solicitor general, deputy solicitor general, or assistant to the solicitor general. The individuals who hold these titles are subject to varying political and bureaucratic pressures. Taking into account this internal variation to the Office of the Solicitor General, I find that different variables predict success for each type of attorney. By examining the marginal effects of each of the variables depending on the type of attorney, I paint a clearer picture of the bureaucratic determinants of success for the attorneys before the Supreme Court.

KEYWORDS: Solicitor General, bureaucracy, Department of Justice

The United States government is a complex system designed to distribute and separate power among three different branches.¹ These branches are each charged with specific duties and responsibilities; naturally, the branches must often interact with each other to remain effective. However, there are few federal government institutions tasked specifically with the responsibility to serve as a nexus between all three of the branches. One of these institutions is the Office of the Solicitor General (“OSG,” or “the Office”). The OSG, which technically operates within the purview of the U.S. Department of Justice (“DOJ”), maintains two physical offices: one inside the DOJ and the other inside the U.S. Supreme Court building. Because of this, the OSG is an institution that effectively functions “between law and politics” (Pacelle 2003). As the federal government’s representative before the Court, the lawyers within the office are tasked with arguing the government’s position but are dependent on favorable decisions by the judiciary for their success.

The Solicitor General of the United States (“SG”) thus occupies a unique position in the federal government, not only as the sole official who is legally required to be “learned in the law” but also by serving as the main legal representative for the United States before the Supreme Court. Beginning with Galanter (1974) and continuing with McGuire (1998), Songer, Sheehan, and Haire (1999), Bailey, Kamoie, and Maltzman (2005), and, most recently, Black and Owens (2012), researchers have shown through the SG’s involvement in a case, either as amici or counsel,

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¹These branches include the legislative, executive, and judicial. For more discussion about the specific responsibilities of each branch, see Federalist No. 47.

that the federal courts are significantly more likely to rule in favor of the side the SG promotes.² However, much of this research treats the Office as a single unit, without noting that the SG herself appears before the Court less frequently than the other attorneys within the Office.

The positions comprising the OSG attorney personnel are structured as any other bureaucracy—the attorneys hold varying ranks and responsibilities. The OSG should be viewed as *the* federal law firm; containing not only a solicitor general but also deputies and assistants, all of whom argue cases before the Supreme Court. The various pressures, both political and bureaucratic, may not be distributed evenly across these different ranks, and as such, may have predictable effects on their success before the U.S. Supreme Court.

Once it is acknowledged that the OSG not only exists within the bureaucracy of the DOJ but is also internally structured as a bureaucracy, the assumption naturally follows that bureaucratic and political pressures should affect its employees. Dating back to Weber's (1978) definition, it has been recognized that bureaucracies consist of a division of labor as well as a hierarchical command structure. Therefore, various bureaucratic and political pressures should not be equally distributed among the attorneys in the Office. Within the OSG, the SG and the assistants are generalists who argue cases over a wide range of legal matters. Conversely, deputies are specialists who argue cases in narrowly defined areas over which they have deep expertise. As well, the SG is the only individual who is a congressionally confirmed political nominee. Furthermore, the SG is the contact point to the presidential administration and may be subjected to political pressures from which the other attorneys in the Office are shielded (Wohlfarth 2009). Because of the varying responsibilities (i.e., generalists versus specialists) and differing employee recruitment practices (i.e., political nomination versus standard hiring) between the attorney positions within the OSG, each position is subject to unique professional pressure.³

Studying and theorizing about the OSG without taking into account the bureaucratic structure may cause us to downplay the level of internal variation that truly exists. Indeed, the Office may contain attorneys with vastly different levels of professional experience, and difficult cases and workload volumes may not be evenly distributed between the OSG attorneys. Three main theories exist in the literature regarding the OSG that do not speak directly to the bureaucratic structure of the Office and how it may affect the attorneys. With the methodological technique of using an interactive model to examine marginal effects, we can examine more accurately the causal factors of the Office's success before the Supreme Court.

THE OFFICE OF THE SOLICITOR GENERAL AS JUDICIAL ACTOR

Encompassed by the idea of the OSG as the “tenth justice” of the Supreme Court, this strand of research argues that while the OSG is housed with the executive branch, it holds strong ties to the judicial branch, primarily the Supreme Court (Black and Owens 2012). Caldeira and Wright (1988) argue that the OSG not only plays a significant gatekeeping role for the Supreme Court in regard to agenda setting at the certiorari stage, but that the Office also gains a significant amount

²For a general overview of the power of the OSG, see Caplan (1987).

³In 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 with each presidential administration.

of its institutional legitimacy from this process. In their view, the OSG as amicus acts as a filter for cases by screening out those the OSG feels to be “uncertworthy.”

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 jobs as screeners quite seriously. Perry, quoting one of the Supreme Court justices, writes of the solicitor general, “[h]e 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” (Perry 1991, 132). Ultimately, this theory attributes the OSG’s success with the Court as a function of the Office’s status as a filter during the certiorari stage. Therefore, while it is a general expectation that the Supreme Court is more likely to support petitioners than respondents, this relationship should be strengthened in cases where the OSG is involved, either as the petitioner or as an amici supporting the petitioner.

THE OFFICE OF THE SOLICITOR GENERAL AS PRESIDENTIAL REPRESENTATIVE

This strand of research claims that the OSG is best conceptualized as the ideological agent of the current presidential administration. Bailey et al. demonstrate that the closer the ideology of the president is to an individual justice, the more likely that justice will favor the OSG’s position on certiorari and, later, on the merits (Bailey et al. 2005). If the OSG acts as the ideological representative of the president, the Office may experience reduced political capital with the Supreme Court. Specifically, if the OSG is seen as the agent of the president, then the Court may not look as favorably on the OSG’s petitions and arguments. Wohlfarth (2009) finds that when the OSG becomes politicized, its success rate before the Court falls.

This area of research illustrates that, at least in part, the OSG’s success is conditional upon the ideological similarities between it and the Supreme Court. Still, the OSG must be careful in pressing the presidential administration’s agenda. If the OSG is seen as too ideological, as it was during the Reagan administration, the OSG attorneys may be penalized by the Court through more unfavorable decisions and an increased denial of their certiorari petitions (Wohlfarth 2009). However, only the SG is appointed by the president and confirmed by Congress.⁴ Thus, it could be the case that the SG is seen as an agent of the presidential administration, but not the OSG assistants or deputies. Generally, solicitors general remain in their position only for a single presidential administration, while assistants and deputies are careerists. This could cause the Supreme Court justices to view assistants and deputies as more politically independent than the SG. As such, I anticipate that ideological distance between the president and the Court increases, only the SG will be less likely to win and the deputies and assistants will be insulated from this political pressure.

⁴The principal deputy solicitor general is chosen by the president, but this is a relatively new development in the history of the OSG with insufficient data points for thorough analysis.

THE OFFICE OF THE SOLICITOR GENERAL AS REPEAT PLAYER

Galanter (1974) formally articulated the natural advantages that repeat players have over individuals who have argued before the Court only once. These repeat players become more familiar with the justices they appear before and gain litigating experience that significantly reduces the transaction costs. Furthermore, it increases the players' propensity for success by allowing them a longer timeline to bring better cases.

Galanter differentiates between lawyers and institutions as repeat players.⁵ Lawyers who argue a large number of cases become repeat players alongside the institutions that employ these lawyers. In addition, the institutions that employ these attorneys 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. Certainly, the OSG has an advantage in terms of appearances before the Court, but the Office attorneys also have access to the assets and resources of the federal government that other litigators lack. Salokar (1992, 31), summarizes this line of argument:

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

McGuire (1998) articulates a different claim concerning how repeat players gain their advantage. 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 wins are not because of the institutional legacy of the OSG but because the individuals are quite frequent repeat players. When controlling for individual litigation experience, McGuire finds that the OSG does not receive any statistical advantage in winning cases before the Court.

BUREAUCRATIC THEORY OF THE OSG

The OSG is an institution defined by both continuity and change. Generally speaking, deputy solicitors general and assistants to the solicitor general often remain in their positions within the OSG regardless of changing presidential administrations. Conversely, the SG normally changes from administration to administration, with some presidents having as many as three during their time in office.⁶ Furthermore, while the SG 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 (Caplan 1987).

⁵While Galanter differentiates between them, both lawyers and institutions can become repeat players before the Court.

⁶The notable outlier to this trend is Erwin Griswold, who served under both Presidents Johnson and Nixon.

The SG clearly leads the Office, as she has the final word on which cases are appealed, which cases the OSG participates in as amicus,⁷ and even which lawyer will argue each case before the Court. Therefore, we must not assume that the variables that determine success for the different ranking attorneys within the Office should be the same. While previous researchers have weighed in on what makes the OSG successful before the Supreme Court, few have looked at the determinants of success for the various levels of attorneys.

The question thus becomes: Do careerists and political appointees operating within the same bureaucracy have different predictors of success? According to David Lewis (2007), the affirmative is likely true. The theory espoused by Lewis follows the ideas of George H. Pendleton, who helped draft the 1883 Civil Service Reform Act limiting the effect of patronage in the civil service by instituting a merit-based system. As applied to the OSG, this literature would expect the SG to have different determinants of success as opposed to either assistants or deputies. These political nominees face significantly more pressures, serving not only as the head of their given office, requiring them to handle the logistics of running a bureaucracy within the federal government, but these individuals also serve as the primary point of contact with the presidential administration.

I hypothesize, following Lewis's lead, that each of the different attorney types will have different variables that predict success before the Supreme Court. While the SG has the power to choose her own cases, she is also the president's main representative before the Court and is therefore subject to the varying pressures of each administration. Conversely, the deputies and assistants are partially shielded from this pressure by the bureaucratic hierarchy of the OSG.

I anticipate two ways in which the solicitor general will be viewed differently than either deputies or assistants. First, the Court may perceive the SG as the political representative of the presidential administration. This perception could cause the Court to be less likely to rule in favor of the solicitor general. The deputies and assistants beneath the SG, many of whom have served across presidential administrations, may not feel such pressure. Second, the bureaucratic hierarchy of the OSG may affect the levels of attorneys differently. The solicitor general gets to choose which cases she argues before the Court. The deputies, to some extent, also have their cases proscribed to them because of their individual specializations. Assistants are thus assigned cases. Therefore, while more cases argued in a given term may not have an effect on SGs or their deputies, assistants may be more likely to lose cases as the number of cases they must prepare increases.

DATA AND METHODS

The data for this analysis includes all cases where the Office of the Solicitor General served as counsel or argued as amicus before the Court from 1969 through 2007. The case list was acquired by searching Lexis for "solicitor general" in the "counsel" field. As previously noted, the SG has a tradition of joining all of the briefs for the OSG, so the search term accurately captures the cases for analysis. I then reviewed each case to determine whether the primary counsel for the government was the SG, a deputy, or an assistant. Because of the method of reporting case

⁷The SG has a tradition of signing every brief that is submitted to the Court to show his or her approval. See Pacelle (2003).

opinions to Lexis prior to 1969, I was unable to distinguish between those attorneys who were either deputies or assistants.⁸

The unit of analysis is the decision of the Court, coded dichotomously as a vote for or against the government position and determined by reading each case and brief to note the Court's decision. This analysis also controls for ideology to assess the impact of the OSG's ideological proclivity. The OSG is considered a direct representative of the president for this analysis. As such, this research employs the Poole Common Space scores (2008) for the president and the Judicial Common Space (Epstein, Martin, Segal, and Westerland 2007) scores for the justices. The measure of ideological distance is the absolute value of the difference of the ideology of the Office of the Solicitor General and the median member of the Court, calculated by term. I hypothesize that as the distance between the two decreases, the SG will be more likely to win. This effect will likely not be significant for deputies and assistants, as they should be seen as political representatives of the current administration. The median member of the Court is used because, as Hammond, Bonneau, and Sheehan (2005) show, the median member of the Court is in nearly every majority. Therefore, in order to win before the Court, the OSG must win the median justice.

In order to assess the repeat player hypothesis, an experience variable measures the number of times an individual lawyer appears before the Court. For the analysis, this variable is logged to account for nonlinearity. I hypothesize that this variable will not have differentiated effects across each of the levels of attorneys. There should be a positive relation between experience and success. Additional controls are utilized as well, in part to assess whether the success of the different types of OSG attorneys are influenced by the same or different variables. The litigant status (petitioner or respondent) of the OSG is also controlled for. Generally, the Supreme Court takes cases where the justices wish to overturn the ruling of the lower court, especially with regard to cases involving the federal government (Caldeira and Wright 1988). As such, the OSG as a whole should experience more success when it appears before the Court as a petitioner than as a respondent. Two controls measuring public sentiment are also included in the model: Stimson's Public Mood Index (2013) per year (Mishler and Sheehan 1993), as well as the Gallup Opinion Poll's approval rate of the president taken at the closest previous date to the day the Court's decision was handed down (Yates 2002). Considering that the SG is seen as the political representative of the presidential administration, the variable may only reach statistical significance in the model estimated for just the SG.

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 that decisions favoring the government's position are generally considered to be conservative rulings, the OSG should be more successful when it argues the conservative position. If the SG is arguing in a liberal direction, he may be perceived to be "carrying water" for the president and will be less likely to win. As with ideological distance, this effect should not radiate to the lower levels of attorneys.

Borrowing from research regarding bureaucracies (Nicholson and Collins 2008), a variable that measures the workload of the individual attorney per term is included into the model under the

⁸It appears that a designation change occurred in the OSG sometime in the mid-1960s, which created the internal structure that now exists. Numerous contacts to the OSG and previous individuals who served within the office have proved unfruitful in determining how the actual structure evolved.

assumption that, similar to other bureaucratic environments, as workload increases, productivity or success decreases. Workload is measured as the number of cases the attorney has argued at the point in the term she is appearing before the Supreme Court, resetting each new term. Because of the way case assignment works within the OSG, this variable may have an effect only on deputies and/or assistants. Building on the assumption that the internal bureaucratic pressures affect success on the merits, a case salience variable is also included in the model (Epstein and Segal 2000). It is assumed that in salient cases, the OSG will be less likely to win; this is because salient cases involve more amici and generally have more experienced opposition attorneys.

A logistic regression is the appropriate statistical technique, as the dependent variable is dichotomous in nature. It would be appropriate to cluster the standard errors on presidential administration in the analysis to allow for variance within different administrations; however, there are more variables than presidential administrations, which creates an issue with the degrees of freedom. I instead utilize bootstrapped standard errors. 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 the axiom that repeated random samples from any given population come closer to the actual population mean than just one sample (Efron and Tibshirani 1986). This model also contains numerous interactions in order to assess the marginal effect of the variables for each level of attorney. Substantively, I am interested in the effect of a variable when another variable takes a certain value. For example, I am interested in the effect of ideological distance on success for each of the three levels of attorneys. By estimating interactions, I can compare the baseline effect and marginal effects for each of the attorneys.

RESULTS

Through a multivariate analysis, the rank level determinants of success are identified and provide a more accurate depiction of success with the OSG. Table 1 presents the interactive model.

If the baseline variable is significant, but neither of the interactions are significant, this means that the effect of the variable does not differentiate across levels of attorney. Two variables meet this standard. First, when attorneys from the OSG appear before the Supreme Court, they are more likely to win as a petitioner than as a respondent. Considering that the OSG has a substantial amount of cases to choose to appeal each year, the attorneys are likely selecting the cases with high probabilities of success. This relationship is depicted in Figure 1. Second, if the case an attorney brings is salient, the OSG is more likely to lose. Salient cases are more likely to garner significant amici participation and are generally more difficult for OSG success than non-salient cases.

Ideological distance has a significant and negative effect when the SG appears before the Court. The political pressures on the SG may be different than on the other attorneys within their office. Similar to the findings of Bailey et al. (2005), the SG is more likely to be successful when her ideology is closer to the ideology of the median justice. However, this model demonstrates that the effect of ideological distance is not uniform across all ranks in the OSG. Indeed, it would appear that the findings of Wohlfarth (2009) more directly correspond with the results here. As seen in Figure 2, as ideological distance increases when assistant SGs are arguing the case, they become *more* likely to win. It may be the case that justices of the Supreme Court view only

TABLE 1
Determinants of Success within the Office of the Solicitor General

	<i>Interactive Model</i>
Experience	-.014 (.011)
Experience	.008 (.011)
*Deputy	
Experience	.009 (.013)
*Assistant	
Ideological Distance	-3.55 (1.82)†
Distance	2.85 (2.07)
*Deputy	
Distance	4.55 (1.93)*
*Assistant	
Public Mood	-.077 (.053)
Public Mood	.063 (.062)
*Deputy	
Public Mood	.056 (.057)
*Assistant	
Gallup	.017 (.014)
Gallup	-.020 (.017)
*Deputy	
Gallup	-.012 (.015)
*Assistant	
Presidential Ideology	.213 (.387)
Pres. Ideology	.026 (.441)
*Deputy	
Pres. Ideology	.001 (.417)
*Assistant	
Directionality	-.854 (332)**
Directionality	.648 (.377)†
*Deputy	
Directionality	.752 (.315)*
*Assistant	
Petitioner	.766 (.316)*
Petitioner	-.007 (.361)
*Deputy	
Petitioner	.376 (.339)
*Assistant	
Workload	.026 (.056)
Workload	-.118 (.400)
*Deputy	
Workload	-.183 (.336)*
*Assistant	
Salience	-.963 (.335)**
Salience	.118 (.401)
*Deputy	
Salience	.457 (.428)
*Assistant	
Deputy	-4.15 (3.98)
Assistant	-5.21 (3.75)
Constant	6.36 (3.48)
Model Information	$N = 2165$ Cox-Snell $R^2 = .075$

* $p \leq 0.05$; ** $p \leq 0.01$; † $p \leq 0.05$ one-tailed.

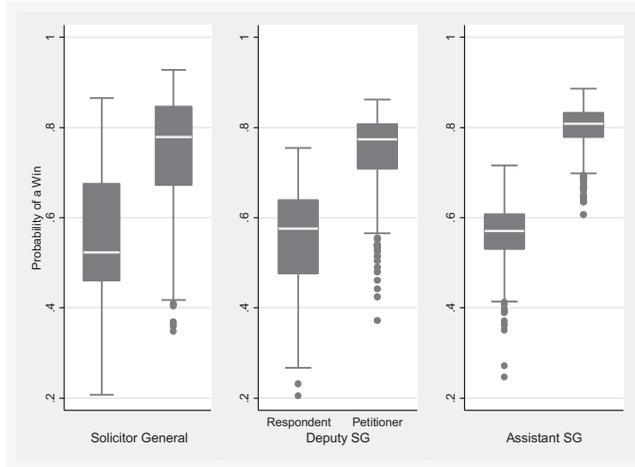


FIGURE 1 Effect of Petitioner Status on Success.

the SG as an agent of the current administration, while viewing the deputies and assistants, who often serve across presidential administrations, as more independent. As such, when the distance increases between the president and the Court, it may be wise to have an assistant argue the case, as they will not be penalized in the same way the solicitor general is.

In a similar vein, when examining the effect that the direction of an argument may have on the outcome before the Court, it appears that there are differentiated effects for each level of attorney. Substantively, this means that even when controlling for ideological distance, the Supreme Court is more likely to support the SG when she argues the conservative position in a case. Looking

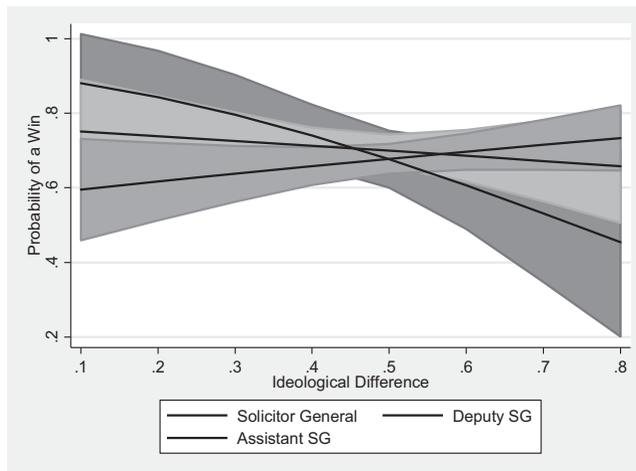


FIGURE 2 Effect of Ideological Distance on Success.

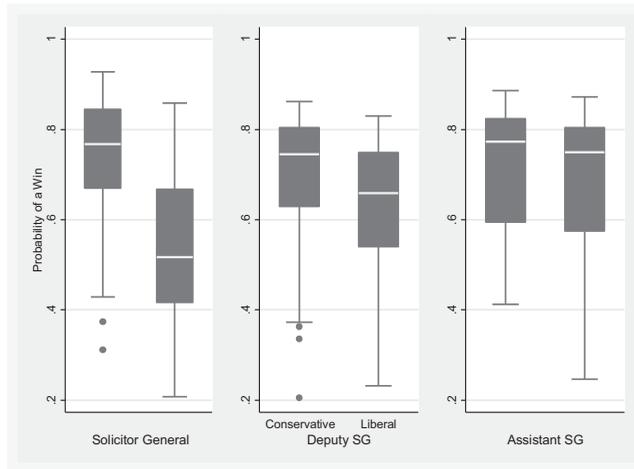


FIGURE 3 Effect of Direction Argued on Success.

at Figure 3, we can see that while the relationship is pronounced for SGs, it is significantly muted for deputies and assistants. Thus, it would seem that political pressures are not distributed universally through the OSG, and that the SG as head of the bureaucracy and the only individual selected by the president is punished or rewarded more explicitly because of ideology than the other attorneys within the Office.

The different effects concerning workload across the model speak more directly to the varied bureaucratic pressures that exist within the OSG, rather than political pressures. Remembering that the SG (with some help from the deputies) assigns cases to the attorneys, the effect of this variable across all three models fits with my theory. These hypothesized effects can be seen in Figure 4. The solicitors general, who get to select their own cases, are not affected when they take on additional cases during the year. However, the assistants, who have their cases assigned to them, experience a decline in success before the Court when they argue more cases. Indeed, each year in which the OSG was led by a SG and not a deputy serving as acting SG, the SG argued more cases than any other attorney in the Office.⁹

Ultimately, it is clear that the predictors for success within the OSG are different across the various attorney ranks. The pressures and expectations on these different types of attorneys are well documented by Caplan (1987), Pacelle (2003), and Salokar (1992). This research confirms the findings from previous research, showing that not only are the political and bureaucratic pressures different on these important legal actors, but so are the causal mechanisms of their success before the Court. To restate simply: solicitors general are different from deputies, and both are different from assistants. This research paints a clearer picture concerning how these unevenly distributed burdens may affect success before the Supreme Court for the OSG.

⁹On average, the SG argues five cases per term. The deputies argue three cases, and the assistants argue two cases.

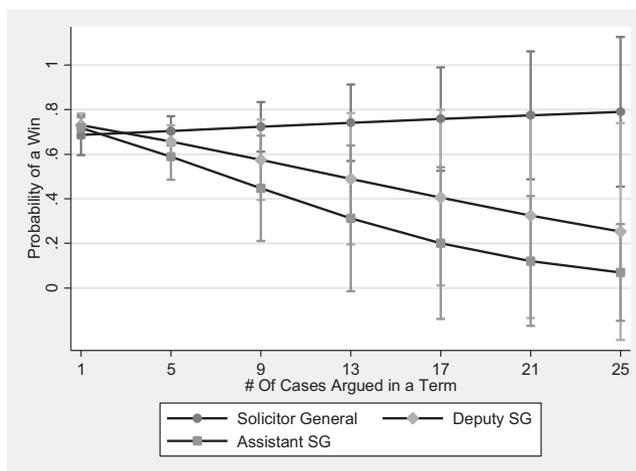


FIGURE 4 Effect of Workload on Success.

CONCLUSION

The OSG is structured as a bureaucracy and is entrenched inside the larger bureaucratic structure of the Department of Justice. Members of the OSG have one of three designations: solicitor general, deputy solicitor general, or assistant to the solicitor general. With these titles come different political and bureaucratic pressures. In the same way that research has demonstrated the difference between repeat players and one-shotters before the Supreme Court (Galanter 1974), this research demonstrates the differences between solicitors general, deputies, and assistants within the OSG.

Examining success on the merits of cases argued before the Supreme Court by the OSG as one homogenous institution may be problematic. The attorneys within the office have different levels of experience and expertise, and the Court may simply treat them differently. More importantly, the bureaucratic and political pressures for each of these types of attorneys vary significantly because of the hierarchical structure that permeates the institution. Clearly, the OSG is successful across issue area and time, but models that do not take into account the differences in rank and personnel within the Office miss a more precise depiction of empirical reality. While there are many plausible explanations for the OSG's success before the Supreme Court, we must remember that each of the attorneys is housed within an agency bureaucracy that is housed within the broader governmental bureaucracy. This hierarchical command structure, coupled with the various bureaucratic and political pressures each attorney faces, ultimately affect the Office's success before the Supreme Court.

REFERENCES

- Bailey, Michael A., Brian Kamoie, and Forrest Maltzman. 2005. "Signals from the Tenth Justice: The Political Role of the Solicitor General in Supreme Court Decision Making." *American Journal of Political Science* 49: 72–85.

- Black, Ryan C., and Ryan J. Owens. 2012. *The Solicitor General and the United States Supreme Court: Executive Branch Influence and Judicial Decisions*. Cambridge: Cambridge University Press.
- Caldeira, Gregory A., and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82: 1109–27.
- Caplan, Lincoln. 1987. *The Tenth Justice*. New York: Knopf.
- Efron, B., and R. Tibshirani. 1986. "Bootstrap Methods for Standard Errors, Confidence Intervals, and Other Measures of Statistical Accuracy." *Statistical Science* 1: 54–75.
- Epstein, Lee, Andrew D. Martin, Jeffery A. Segal, and Chad Westerland. 2007. "The Judicial Common Space." *Journal of Law, Economics, & Organization* 23: 303–25.
- Epstein, Lee, and Jeffery A. Segal. 2000. "Measuring Issue Saliency." *American Journal of Political Science* 44: 66–83.
- Galanter, Marc. 1974. "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9: 95–160.
- Hammond, Thomas H., Chris W. Bonneau, and Reginald S. Sheehan. 2005. *Strategic Behavior and Policy Choice on the U.S. Supreme Court*. Stanford: Stanford University Press.
- Lewis, David E. 2007. "Testing Pendleton's Premise: Do Political Appointees Make Worse Bureaucrats?" *Journal of Politics* 69: 1073–88.
- McGuire, Kevin T. 1998. "Explaining Executive Success in the U.S. Supreme Court." *Political Research Quarterly* 51: 505–26.
- Mishler, William, and Reginald S. Sheehan. 1993. "The Supreme Court as a Countermajoritarian Institution? The Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87: 87–101.
- Nicholson, Chris, and Paul M. Collins, Jr. 2008. "The Solicitor General's Amicus Curiae Strategies in the Supreme Court." *American Politics Research* 36: 382–415.
- Pacelle, Richard L. 2003. *Between Law & Politics: The Solicitor General and the Structuring of Race, Gender, and Reproductive Rights Litigation*. College Station: Texas A&M University Press.
- Perry, H. W., Jr. 1991. *Deciding to Decide: Agenda Setting in the United States Supreme Court*. Cambridge: Harvard University Press.
- Poole, Keith T. 2008. Common Space Scores, Congresses 75–108 (March 9, 2005). <http://voteview.com/basic.htm> (accessed April 10, 2008).
- Salokar, Rebecca Mae. 1992. *The Solicitor General: The Politics of Law*. Philadelphia: Temple University Press.
- Songer, Donald R. and Reginald S. Sheehan. 1992. "Who Wins on Appeals? Uppercuts and Underdogs in the United States Courts of Appeals." *American Journal of Political Science* 36: 235–58.
- Songer, Donald R., Reginald S. Sheehan, and Susan Brodie Haire. 1999. "Do the 'Haves' Come out Ahead over Time? Applying Galanter's Framework to Decisions of the U.S. Courts of Appeals, 1925–1988." *Law & Society Review* 33: 811–32.
- Stimson, James A. 2012. "Policy Mood (February 13, 2012)." http://www.unc.edu/~cogginse/Policy_Mood.html (accessed September 6, 2013).
- Weber, Max. 1978. *Economy and Society*, Edited by Guenther Roth and Claus Wittich. Berkeley and Los Angeles: University of California Press.
- Wohlfarth, Patrick C. 2009. "The Tenth Justice? Consequences to Politicization in the Solicitor General's Office." *Journal of Politics* 71: 224–37.
- Yates, Jeff. 2002. *Popular Justice: Presidential Prestige and Executive Success in the Supreme Court*. Albany: State University of New York Press.