*This is an Accepted Manuscript of an article published by Taylor & Francis in Congress & the Presidency on 30 October 2020, available at: https://doi.org/10.1080/07343469.2020.1799262. Citation: Miller, Banks, Brett Curry, and Joshua Kennedy. 2021. "The Role of Advisory Committees in Bureaucratic Oversight: The Case of AGAC." Congress & the Presidency 48(2): 195–218.*

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# The Role of Advisory Committees in Bureaucratic Oversight: The Case of AGAC

**Keywords:** Advisory Committees; bureaucratic oversight; Department of Justice; U.S. Attorneys

## Abstract

The inner workings of advisory commissions are opaque, which has frustrated inquiries about them. However, relying on data obtained via a Freedom of Information Act request from the Department of Justice, we focus on one readily observable aspect of the Attorney General's Advisory Committee of U.S. Attorneys (AGAC)—its composition. Unique to studies of executive commissions, we know the population from which AGAC membership is drawn. This allows us to definitively characterize the ideological distribution of the population of potential appointees, a significant advance in the empirical study of executive appointments. While the analysis cannot speak to AGAC's operations directly, our findings indicate that AGAC is characterized by asymmetrical political polarization. Democratic administrations are likely to politicize AGACs ideologically but Republicans are not, and we consider possible explanations for this result. In addition to its contribution toward understanding one aspect of informational commissions as an important source of policy development, the study provides the first empirical analysis of one route by which administrations interface with the nation's prosecutorial corps.

Advice is indispensable to the policymaking process (Swank and Dur 2001, 74). That is certainly true in the executive branch, where presidents and their political lieutenants rely on bureaucratic expertise to predict policy consequences and better inform decision making. Although policy advice can come from many places and in many forms, advisory committees represent an underexplored mechanism by which policymakers may acquire advice. This is largely because the internal dynamics of how those committees operate tend to frustrate inquiry. In this paper we leverage unique insight about the composition of an advisory committee in the Department of Justice (DOJ)—the Attorney General's Advisory Committee of United States Attorneys (AGAC)—and consider whether and how that composition might be consistent with notions of politicization, or presidential attempts to enhance their control of an agency through the strategic use of appointments. Beyond being an interesting case study, the fact that the population of potential candidates who may serve on the committee is known and finite makes it an ideal venue for enhancing the study of executive appointments and examining intuitions about how administrations may attempt to staff them to undertake oversight and obtain policy advice. As noted above, the inner workings of advisory committees constitute something of a black box. However, even absent detailed knowledge about their internal dynamics, we contend the examination of something about AGAC that *is* readily observable and uniquely testable—its composition—can speak to important questions. First, insight into AGAC provides us with a better understanding of the advisory process within one important agency that constitutes part of

the president's inner cabinet, the Department of Justice, and how that process might vary across different kinds of administrations. Second, there may be broader lessons available about advisory commissions given their frequent use as a tool of policy generation and bureaucratic control (e.g. Mayer 2001).

We begin this assessment—to our knowledge the first to describe, much less test, AGAC and its membership—by explaining pertinent aspects of the DOJ, the mechanics surrounding the selection and work of U.S. Attorneys (USAs), and the relationship of these political appointees to the civil servants they supervise. We then pivot to theoretical issues, reviewing aspects of bureaucratic oversight as well as scholarship pertaining to advisory committees. There we discuss AGAC and offer examples of the work it has been engaged with in recent administrations. After describing our research design and the unique data at our disposal, we convey our results and consider their implications for the DOJ, informational commissions, and politicization efforts in the executive branch.

**United States Attorneys and the Department of Justice**

The DOJ's establishment in 1870 "cemented the President's authority not only to superintend but to control the legal work of the federal government" (Spaulding 2011, 438). Prior to that time the nation's corps of federal prosecutors, known today as United States Attorneys (USAs), were subject to virtually no executive oversight. Congress made this decision consciously, opting to free USAs to pursue the local priorities they thought most pressing. Not surprisingly, the executive branch's desire for some control over federal prosecutors came early on—the nation's first Attorney General, Edmund Randolph, asked Congress to provide him with this power (as did his successors)—but Congress refused to do so (Krent 1989, 287). It was not until Reconstruction that Congress afforded the attorney general complete supervision over

federal prosecutions (Seymour 1975, 22) and, even since then, USAs have retained significant operational discretion (Lochner 2002; Whitford 2002; Perry 1998). As Daniel Richman (2009, 2090) summarizes it, "Federal criminal law…has long been characterized by extraordinarily broad substantive statutes and enforced by a relatively small bureaucracy that can pick and choose among possible targets."

The president's most prominent formal power over the management of federal prosecutions rests in his responsibility to select USAs. These 93 USAs, each stationed in a federal judicial district,[1] are political appointees who require Senate confirmation. USAs are important and, subject to the constraints of senatorial courtesy, should be expected to advocate on behalf of the administration's law enforcement priorities. A president's selection of USAs has been called "the greatest influence on how U.S. Attorneys perform their duties" and, unsurprisingly, avoiding adverse selection is critical to maximizing political control over the offices they head (Nelson and Ostrander 2016, 211). Importantly, USAs from prior administrations only continue on if the new president wants them to do so—holdover USAs generally submit their resignations as a matter of course, and the few who do not are routinely fired by the incoming administration. The president also has plenary authority to fire USAs who have fallen out of favor with the administration. However, as is true of the confirmation process itself, norms of senatorial courtesy can severely restrict the president's practical ability to do so (Miller and Curry 2018).

The offices USAs lead (USAOs) vary dramatically in size—the U.S. Attorney for the Southern District of New York supervises an office of approximately 220 Assistant U.S.

[1] There are 94 federal judicial districts, but Guam and the Northern Mariana Islands share a U.S. Attorney (Scott 2007).

Attorneys (AUSAs),[2] whereas 45 AUSAs serve in the District of Utah.[3] These assistants have a form of civil service protection today and, once Congress provided that, AUSAs became very difficult to fire. The longevity of AUSAs has increased as a result, making it easier for career prosecutors to obstruct efforts by USAs to set new enforcement priorities (Lochner 2002). The executive branch's ability to oversee USAOs via the appointment of USAs thus faces important potential obstacles, with the risk that AUSAs—front-line prosecutors who, as civil servants, are exceedingly hard to remove (see Suthers 2008, 112)—are prone to see USAs as "tourists" whose priorities are ephemeral (Eisinger 2017, 164-165). This suggests that monitoring AUSA compliance with administration priorities might also be an important function of AGAC.

**Advisory Commissions, Agency Loss, and the Executive Branch**

The growth of the executive branch has involved concomitant attempts by presidents of both parties to increase their influence over it and, where possible, to use it for their benefit. Moe (1989, 279) clearly outlines the incentives for so doing: "presidents, regardless of party, are expected to govern effectively and are held responsible for taking action on virtually the full range of problems facing society." While both Republican and Democratic presidents have pursued policy oversight (e.g. Rudalevige 2002) and sought to enhance their control of agencies through politicization (e.g. Lewis 2008), scholars still do not have a firm empirical understanding of how these efforts—specifically, the ways administrations may act to compile bureaucratic advice—may vary based on partisanship.

[2] https://www.justice.gov/usao-sdny/meet-us-attorney

[3] https://www.justice.gov/usao-ut/about

Coordination within the executive branch has been an evolving process—one that was strengthened considerably by the advent of the institutional presidency during Franklin D. Roosevelt's administration and which has been modified in various ways by his successors in both parties (Dickinson and Lebo 2007; Ragsdale and Theis 1997; Rudalevige 2002; West 2005). This is not surprising since, at its basic level, the need to manage bureaucratic agents is inherent to classical principal-agent dilemmas (Fiorina 1981; Miller 2005; Moe 1985; Spence and Zeckhauser 1971; Weingast and Moran 1983). And those relationships introduce problems that will vex political actors regardless of party.

As nominal head of the executive branch, the president would prefer to have perfect oversight of the bureaucracy, both in order to ensure that his agenda is being faithfully implemented and to instill confidence that career bureaucrats are operating diligently to communicate policy advice. Since perfect oversight inevitably proves elusive, presidents have engaged in a number of practices designed to minimize agency loss, including reliance on executive orders (Howell 2003; Mayer 2001), the design of particular agencies (Lewis 2003), and the utilization of organizations such as the Office of Information and Regulatory Affairs (OIRA) to oversee and potentially halt regulatory actions that are out of line with presidential preferences (Acs and Cameron 2013; West 2005). Likewise, using commissions created within the executive branch to facilitate oversight and generate policy-related advice (e.g., Mayer 2001; Rudalevige 2002; Zegart 2004) can help maximize executive oversight. It is this last possibility that is the focus of our attention.

Understanding these commissions necessitates an explanation of their general functions and distinguishing between their different types. To begin, commissions function in an advisory capacity—they lack actual implementation power, instead serving mostly as sources of advice

for their political overseers (Balla and Wright 2001; Mayer 2001; Zegart 2004).[4] However, the "advisory" appellation should not be taken to imply that these organizations are powerless; indeed, they have proven to be popular and impactful tools for presidents (Mayer 2001; Rudalevige 2002; Zegart 2004). Zegart (2004, 374-376) has provided a useful taxonomy of these commissions. "Agenda Commissions" are large in size, populated by well-known public figures and have the mass public as their target audience. "Political Constellation Commissions" are designed to serve as coordination mechanisms for varied interests within a broader issue area, involve public and private members, and speak to the organized interests represented by commission members. Finally, and most relevant for our study, "Informational Commissions" tend to be comparatively smaller and comprised of people already serving in government who are dedicated to the generation of information and actionable policies. The audience for informational commissions also consists of government officials. These characteristics of informational commissions aptly describe AGAC.

Regardless of the type of commission at issue, all serve some kind of coordinative function. The need for coordination has been a staple of scholarship related to the president's legislative agenda (e.g., Bond and Fleisher 1990; Edwards 1989; Light 1999), but having a robust understanding of the coordination that occurs *within* the broader executive branch is also important (e.g. Skowronek 1982; Carpenter 2001) We know, for example, that unilateral powers—executive orders, memoranda, and the like—once treated as tools of singularly presidential control, are themselves frequently the result of long, intense bargaining processes

[4] Congress passed the Federal Advisory Committee Act (FACA) in 1972 (Mayer 2001), but AGAC is not subject to its requirements. By its terms, FACA exempts bodies composed of full-time federal employees from its reach. As we discuss, it is precisely this factor that allows us to know the population of potential committee members.

like ones we might expect to see in a legislative setting (Kennedy 2018; Rudalevige 2012; 2015). It is worth noting that many executive orders are generated in commission settings in the first place (Rudalevige 2015) and, as such, those commissions and their potential roles in bureaucratic oversight and transmitting policy-related advice ought to be carefully examined. The nature of advisory commissions makes it all but impossible to unearth meaningful conclusions about their inner dynamics. However, a focus on their composition—specifically their ideological complexion—facilitates some speculation about how they might be utilized.

**The Attorney General's Advisory Committee of U.S. Attorneys**

Here, we focus on the Attorney General's Advisory Committee of U.S. Attorneys (AGAC). As a body comprised exclusively of government officials—U.S. Attorneys—with an objective of "improving policymaking…by providing new ideas, new facts, and new analysis," AGAC solidly fits the definition of an informational commission (Zegart 2004, 375). President Richard Nixon's attorney general, Elliot Richardson, announced AGAC's creation in 1973. Three years later Richardson's successor, Edward Levi, clarified the Committee's functions, which are now codified in 28 CFR 0.10. AGAC was initially composed of 17 members, but no specific numerical or distributional requirements govern the Attorney General's selections to the committee, effectively making their selections unconstrained. AGs are simply tasked with appointing "an appropriate number of United States Attorneys" and, though they are encouraged to be mindful of considerations related to geographic diversity and office size, this is not formally required. Members of AGAC serve at the Attorney General's pleasure, but for practical purposes the president's input is straightforward (the attorney general, after all, serves at the pleasure of the president). Beyond that, "there is a rather striking substantive similarity between presidential commissions created by unilateral presidential action and those created by other

executive officials…[and they] look, sound, and work just like presidential commissions" (Zegart 2004, 370-371). Further, AGAC's own documentation (Highlights 2000) highlights presidential influence quite directly: "Together with the Attorney General, the Committee works to further the goals as set by the President of the United States."

That being said, numerous principal-agent relationships are relevant to AGAC—just as they are to all USAs (Miller and Curry 2019). Formally speaking, USAs are politically-appointed agents of the presidents they serve. Operationally, USAs are subservient to a host of actors in the DOJ, including the Attorney General, the Deputy Attorney General, and the Director of the Executive Office for U.S. Attorneys (e.g, Whitford 2002; Perry 1998). Relevant members of Congress are also principals of USAs (Richman 2009). These multiple principals can introduce a complex decisional calculus for USAs (e.g. Perry 1998). If that were not enough, USAs are simultaneously principals of the AUSAs they oversee. The notion that these civil servants will share the political priorities of the USA or the broader administration, much less work to facilitate them, is hardly guaranteed. Although AUSAs historically spent a short period of time in their positions, in recent decades—the period we examine here—the longevity of AUSAs has increased significantly (e.g., Lochner 2002). This has only intensified the supervisory challenges for political actors that oversee them, most directly USAs (Suthers 2008).

Rather than recite further technicalities from the Code of Federal Regulations, we think it more illuminating to give an overview of the policy-related topics AGACs in neighboring administrations of different parties have pursued. During the latter years of the Clinton administration, for example, AGAC was responsible for assessing the victim-witness guidelines used by the DOJ, adjusted policies related to the appropriate locations for storing high-risk evidence, and oversaw the placement of forensic computer labs around the country to maximize

the government's response to cybercrimes. It worked in concert with others in the DOJ to revise a civil asset forfeiture reform bill making its way through Congress, resulting in compromise legislation that was enacted into law. AGACs during the early years of the George W. Bush administration remained involved in similar types of matters. Under Attorney General John Ashcroft, AGAC gave advice related to developing revised white-collar crime penalties and contributed to initiatives designed to bring greater uniformity to environmental prosecutions. In the aftermath of the September 11th attacks, AGAC contributed to discussions on the placement of anti-terrorism task forces in each judicial district and worked to improve relationships with the FBI on terrorism cases (Highlights 2003).[5]

During the W. Bush and Obama administrations, AGAC routinely met with the FBI Director, the Director of the Bureau of Alcohol, Tobacco, and Firearms, the Attorney General, Deputy, Associate, and Assistant Attorneys General, and other personnel from within the Executive Office for United States Attorneys (EOUSA).[6] The group continued its engagement with legislative initiatives during these years; AGAC advised the DOJ on matters ranging from immigration reform proposals to the New Tribal Law Enforcement Act and the Hatch Act Modernization Act, with the latter two efforts producing legislative enactments in 2010 and 2012 respectively. The group also suggested changes to prohibitions on firearm possession by those convicted of misdemeanor crimes of violence. Working groups within W. Bush- and Obama-era AGACs tackled topics including asset forfeiture, environmental crimes, and marijuana policy;

[5] Because minutes are not taken at AGAC meetings and only broad redacted summaries are released, our ability to probe the topics mentioned here more deeply is limited.

[6] Unless otherwise indicated, we have distilled the material here from our examination of AGAC agendas obtained from the Senate Judiciary Committee's website (see, e.g., https://www.judiciary.senate.gov/imo/media/doc/AGAC%20(12-19-2014)_Part3.pdf)

subcommittees within AGAC devoted to Indian affairs issues, health care fraud prevention, white collar crime, and intellectual property crime also convened during those years.

In addition to these working groups and initiatives, an examination of AGAC's meeting agendas during the W. Bush-Obama years is replete with presentations related to community outreach (especially Muslim outreach in conjunction with terrorism and national security issues), along with updates regarding changing DOJ protocols for death penalty cases and issues at the southwestern border surrounding so-called "Fast Track" immigration prosecutions and the ATF's "Operation Fast and Furious" program. These examples accentuate the advisory nature of the committee, as recently captured by a publication from the major association of former U.S. Attorneys: "The AGAC represents the voice of the U.S. Attorneys and provides advice and counsel to the Attorney General on policy, management, and operational issues impacting U.S. Attorneys' Offices" ("AG Barr" 2019).

AGAC affords the opportunity to test how presidential administrations make decisions about who to appoint to informational commissions. Why is AGAC a good candidate for investigation? The requirement that AGAC members must be appointed from the ranks of the U.S. Attorneys allows us to know the population from which potential AGAC members might be drawn. Such investigations of other informational commissions are generally not possible, because their membership is not limited to a discrete population of actors. To take an example, in 2017 then-Secretary of Defense James Mattis's Defense Policy Board Advisory Committee's (DPBAC) included former Secretaries of State, academics, a former U.S. Senator, and representatives from a financial services company and defense contractor.[7] In contrast, because

[7] https://www.defense.gov/Newsroom/Releases/Release/Article/1384846/dod-announces-new-defense-policy-board-members/

we have useful data on the ideological composition of the U.S. Attorneys who are available for service on AGAC at any given time, here we can test differences across presidencies in an effort to shed light on the potential politicization of informational commissions.

Figure 1 provides an overview of the basic relationship between the DOJ, politically-appointed U.S. Attorneys, and the careerist Assistant U.S. Attorneys those USAs oversee. As noted, Figure 1 captures several of the principal-agent relationships that involve federal prosecutors. AGAC's position as an offshoot to the vertical line connecting the Attorney General with USAs is intended to represent the advisory role it plays in this hierarchy. As the caption to Figure 1 describes, the clear boxes denote politically-appointed actors. The shaded boxes, representing Assistant U.S. Attorneys, represent career officials housed within U.S. Attorneys' Offices across the country. This reflects the fact that USAs are simultaneously agents to the actors above them and principals to those line-prosecutors known as AUSAs who sit below them.

[Figure 1 about here]

**Expectations for AGAC Composition**

As an informational commission, AGAC's primary function is to provide information and make policy recommendations to principals in the Department of Justice. An informational commission composed of advisers with preferences close to those of the policymaker will tend to maximize the policy congruence in its recommendations (Dur and Swank 2005), and maximizing policy congruence has long been thought to be primary motivation underlying presidential control of agents (Moe 1985; Hart 1995). These attempts are broadly classified as "politicization" (Lewis 2009) and we expect, all else equal, that presidents will have an interest in politicizing an informational commission like AGAC to maximize the value of the policy

recommendations it makes. For us, given that we know the ideological distribution from which membership on the informational committee must be drawn, the observable implication is that administrations will select a council of USAs that is ideologically closer to them than random assignment from the available pool of appointees would otherwise suggest.[8] Therefore:

> Hypothesis 1: Administrations will seek to appoint USAs to the AGAC so that the AGAC is closer to the administration ideologically than a random draw from the available population of USAs would suggest.

In the next section we describe our data and present an initial descriptive analysis of hypothesis 1. The descriptive section also provides more detail on AGAC itself given that this is the first time, to our knowledge, this particular body has been described in the scholarly literature. We then perform simulations to investigate this data more systematically. After presenting the results of our simulation analysis, we use multivariate regression to confirm the robustness of our results and to explore additional potential explanations for the appointment patterns we observe.

**Data and Variables**

We have gathered data on a number of variables for all USAs who serve between 1986 and 2015. For each USA we initially coded ideology using scores generated by Bonica (2016) from campaign contributions—known as CFscores, with higher values indicating more ideologically conservative individuals. These measures are advantageous to our purposes for several reasons. First, because they are drawn from millions of contribution records, they capture the actors we consider and place them on a common ideological scale—USAs and presidents

[8] Administrations might find such polarization an attractive option because, in contrast to the constraint (and some measure of agency loss) induced by the Senate's role in confirming USA, the selection of AGAC is unchecked by the need for confirmation.

(and, in the appendix, their attorneys general). In essence, these records create "an army of bridge observations that can be used to identify the scaling across institutions and levels of politics (Bonica 2014, 368). Bonica (2019) has shown the measure to be a valid predictor of individual policy preferences, and also robust to the possibility of strategic giving (Bonica 2014, 373-376). He and several colleagues have tapped the ideological proclivities of professionals from physicians and attorneys (e.g., Bonica, Rosenthal, and Rothman 2015; Bonica, Chilton, and Sen 2016) to judges and bureaucrats (e.g., Bonica and Sen 2017; Bonica, Chen, and Johnson 2015) and concluded that those uses of the measure are also valid. In contrast to a leading alternative (Giles, Hettinger, and Peppers 2001), CFscores are not confounded with presidential ideology. This is a particularly important consideration given our research question. In general, attorneys are active contributors—more than 43% of American attorneys are estimated to be contributors (Bonica, Chilton, and Sen 2016). That number is substantially higher for USAs (in our data 91% of USAs have a record in the Bonica data). For the small number of USAs who did not have contribution records (as either a donor or a recipient) in the dataset we imputed their scores based on a regression of observed variables on the CFscores of those who did have records in the data. More detail on this process is available in the appendix. Note, none of the results we present below are sensitive to the inclusion of the imputed scores. We determined membership on AGAC through FOIA requests to the Department of Justice.

Unique for studies of presidential commissions, we have data on the population from which committee members must be appointed and can compare that population to the ideological profile of the administration. This allows us to approach the data as have numerous scholars of committee formation in legislatures (e.g., Prince and Overby 2005; Krehbiel 1991). The best way to approach understanding whether AGAC differs in substantial ways from the pool of USAs is

to use Monte Carlo simulations (Prince and Overby 2005; Battista 2004). Indeed, as noted by McElroy (2006), simple difference of means t-tests require an assumption that the data is normally distributed, whereas Monte Carlo techniques allow for the identification of outlying committees without reliance on strong distributional assumptions. In order to test Hypothesis 1, we created an **Ideological Distance** variable to capture the absolute value of the difference in ideology scores between the broader USA population and the president on the one hand and the membership of AGAC and the president on the other. To the extent these differences are narrower between AGAC and the president than is true of the broader population, this would support Hypothesis 1.

The size of the AGAC varies year-to-year from a high of 26 members in FY1995 to a low of 12 in FY1986.[9] On average, AGAC has 17 members but it is considerably smaller in years reflecting transitions in the partisanship of the presidency—1993, 2001, and 2009. In the description and modeling that follows we exclude these transitional years since there are comparably few USAs to choose from as new administrations move nominees through the confirmation process. Table 1 below presents detailed descriptive statistics for the ideological composition of the AGAC as well as a comparison to the available pool of USAs in a given year. The positive means and medians during years of Republican control of the presidency indicate Republican USAs are ideologically conservative, while negative figures at other times capture the more liberal ideological leanings of USAs in Democratic administrations. This is hardly a surprise. However, as indicated, our interest is not in discerning ideological differences between the regular pool of Republican and Democratic USAs but in comparing ideologically the pool of

[9] We identify the potential pool of those might serve on AGAC as those USAs who have been confirmed by the Senate and have served a majority of a given year as a USA.

all Republican USAs and Republican AGACs to their principals and comparing these same groups to Democratic presidents ideologically. In other words, our interest is in discerning whether there are differences between these populations of USAs and the AGACs in terms of their ideological closeness to the administration.

[Table 1 here]

From the description in Table 1, we can generally glean that the average ideology for AGACs in Republican administrations appears to be more moderate than the broader population of Republican USAs, while in Democratic administrations AGACs tend to be more liberal than the overall population of Democratic USAs. Focusing on the median ideology scores rather than the mean, the median AGAC in a Republican administration is 0.03 from the median of all USAs in a Republican administration, whereas for Democratic administration the difference in medians is 0.135. This too is suggestive evidence for asymmetric politicization of AGAC. Further, there are only small differences in the number of USAs appointed to AGAC across the partisanship of an administration, as Democrats have an average AGAC with 17.8 members and Republican administrations have an average AGAC with 16.9 members.

To investigate our data more systematically, we created Monte Carlo simulations of the ideology of USAs, AGAC members, and their relationships to administrative ideology. For each member of AGAC we simulated 1,000 draws from the population of USAs available in a given year. For instance, in 1999 there were 18 members of AGAC so we made 18,000 draws from the population to 1,000 simulated committees. For each simulated committee a USA could be selected only once. We then compared the ideological difference between these simulated committees and the relevant president to the difference between the president and those AGACs that were actually formed. Overall, this process resulted in 469,000 simulated draws from the

population of USAs over our period of study and 1,000 simulated AGACs for each year of the data.

**Results**

The top portion of table 2 offers evidence partially consistent with hypothesis 1—Democrats tend to appoint AGACs that are more ideologically proximate than random, but Republicans do not. In table 2, we present the average ideological distance score for members of AGAC and for the simulated committees. We test whether the simulated distribution of scores differs from the actual distribution using the Mann-Whitney U Test, which is non-parametric and allows us to discern whether the two distributions are statistically different from one another. To fix the position of the administration ideologically, we use estimates of the CFscore for relevant president (see Bonica, Chen, and Johnson 2015; Bonica 2016). On average, the score for Republican presidents is 0.91 and for Democratic presidents it is -0.97. The most important point here is that for both Republicans and Democrats these scores are more extreme ideologically than any of the aggregate measures in Table 1. Instances where the actual AGAC ideology score is more negative than the simulated mean are consistent with the politicization of AGAC, because they signify closer ideological affinity than random selection suggests. Thus, the evidence in Table 2 indicates support for hypothesis 1, but only amongst Democratic administrations—Democratic Attorneys General select AGACs that are significantly closer ideologically than what a simulated random draw from the population would produce.[10]

[10] As displayed in Table A.1 of the Appendix, these differences between Republican and Democratic administrations hold across different Attorneys General, with one caveat. AGAC's ideological mean *never* differs significantly from the pool of USAs under any Republican Attorney General, but AGAC is more liberal than the broader pool under every Democratic Attorney General. Under the long tenure of Janet Reno, however, the differences between the pool of those available to serve on AGAC and those selected to serve on AGAC are not

Conversely, there is no evidence that Republican administrations select AGACs that are closer to them ideologically. Using the ideological distance measure, Democratic Presidents tend to select AGAC members who are 0.097 ideologically closer to them than a random draw from the population suggests, while Republican Presidents actually choose AGAC members who are slightly more *distant* (0.029) than a random draw suggests. Put differently, AGACs in Democratic administrations are about four times closer to the President than they are in GOP administrations. To illustrate the substantive magnitude of this finding, the difference of 0.097 *within* the distribution of Democratic ideology scores is about four times the difference in ideology between Democratic Attorneys General Janet Reno, whose record is often viewed as rather conservative, and Eric Holder, whose tenure is typically seen as being more progressive (compare, e.g., Poveda 1994 and Davis 2014).

[Table 2 here]

The story is consistent on the basis of partisanship. In none of the Republican presidencies is the difference between the actual AGAC and the simulated, randomly drawn mean significantly closer than chance would dictate—each AGAC is actually more distant ideologically than would be expected if it were drawn randomly (or at least it is statistically indistinguishable). A more succinct way of describing this result is to say that Republican AGACs are not politicized vis-à-vis the broader pool of USA from which they are drawn. Conversely, under Democratic administrations, AGAC is ideologically closer than a random

statistically significant ($p = 0.325$). They are, however, significant in a traditional regression. We return to this point below.

selection from the pool of available USAs would generate.[11] This is additional evidence in partial support of our hypothesis.[12]

Simply put, and in contrast to Democratic administrations, no Republican presidency in the data populates AGAC in a manner that is consistent with politicization. This difference is explored further in the following section. Finally, we test the robustness of our results to our choice to use the Mann-Whitney test. Results in the final column of Table 2 present the Kolmogorov-Smirnov distributional test (K-S Test) which is less precise but requires fewer assumptions. These results confirm those presented using the Mann-Whitney test.

A second objection to the approach reflected in Table 2 is that the Mann-Whitney test is relatively under-powered (and that it assumes that the distributions are symmetrical). As a check on the intuition that the selection criteria vary across partisanship we plot the full distribution of simulated AGACs for Republicans and Democrats, noting in ideological space the location of the actual average AGAC by partisanship. This is a slightly different way of approaching the data

[11] Given that the simulation results only approach statistical significance in the Clinton administration, we wished to check that our inferences were not driven simply by results from the Obama administration. To do so, we estimated a regression, similar to those in the "Robustness Checks" section below, limited only to Clinton's presidency. The results of this exercise are displayed in Table A.2: ideological distance is a significant and correctly signed predictor of selection to serve on the AGAC in the Clinton administration. Therefore, we are confident that our results are not simply an artifact of the Obama administration.

[12] As an additional check on our results, we counted the number of simulations in which the Mann-Whitney U statistic was below the $p<0.05$ threshold for each of the 27,000 total simulations. Tests are one-tailed to reflect the logic of Hypothesis 1. By chance we would expect that 5% of tests would be significant, so deviations from that expectation would support the results presented in Table 2. Using this approach, we found that 8% of the simulations tested indicated a difference significant at $p<0.05$ in Democratic administrations, while just 0.04% of tests were below the threshold in Republican administrations. This approach, therefore, tends to support the results in Table 2. There about 60% more significant tests in Democratic administrations than chance suggests should occur, while there are 99% fewer significant results in GOP administrations than chance suggests should occur.

because we using raw ideology scores and the ideology of Attorneys General, rather than ideological distance and presidential ideology. To provide context, we note where the average Republican and Democratic Attorneys General are located in ideological space and also include a dashed vertical line indicating the zero point on the conservatism scale. Figure 2 displays the results of this exercise. Note that the average Republican AGAC is about three times as far from the average Republican Attorney General as is the average Democratic AGAC from the average Democratic Attorney General. Higher scores indicate greater ideological conservatism.

[Figure 2]

**Robustness Checks**

To further understand the role of ideology in the selection of USAs to AGAC, we estimated a set of regressions, displayed in Table 3 below. The dependent variable in these analyses is whether a USA becomes a member of AGAC. Given the dichotomous nature of the dependent variable we estimate logit regressions. Here, we use actual—not simulated—data. We estimate a separate regression for Democratic and Republican administrations where, again, our key explanatory variable is the **ideological distance** measure described earlier. A number of control variables are introduced to control for district characteristics. First, we include a measure of the population of a judicial district (measured in millions), called **district population**. Next, we include a count of the **court workhours** accrued in each district in thousands. This measure is used as a proxy for the number of AUSAs in a district, which is not reported by the DOJ after 2005.[13] To control for possible implications stemming from the overwhelming concentration of immigration cases in them (e.g., Miller and Curry 2019), we also include a dummy variable to

[13] For the years in which DOJ reported number of AUSAs (1986 through 2002) the correlation between number of AUSAs and court workhours is 0.86.

indicate whether a district is on the U.S. border with Mexico called **border** (1 if yes, 0 otherwise). Finally, to control for potential time-dependent effects we include a counter of the years elapsed since our data begin in FY1986 called **elapsed time**. Descriptive statistics for these variables can be found in the appendix.

[Table 3 here]

The results in Table 3 confirm those from simulations reported in Table 2. Namely, the smaller the ideological distance between a USA and her principal, the more likely he or she is to be appointed to the AGAC in Democratic administrations. And, by extension, the more politicized the AGAC will be. This relationship is plotted across the range of ideology scores for USAs in Democratic administrations in our data in Figure 3 below.[14] A USA at the 1st percentile of ideological distance 0.00) has a 24% likelihood of appointment to AGAC, while one at the average ideological distance (0.516) has a 17% likelihood of appointment—the difference between these two probabilities is statistically significant. As evidenced in the simulations, the regressions confirm that ideology is not an important predictor of ascension to AGAC in Republican administrations.[15]

[Figure 3 here]

[14] To generate this plot we set the district population and court workhours at their means in the data. We set border equal to zero and elapsed time to 25, meaning fiscal year 2011.

[15] We also estimated regressions including a potential measure of USA expertise: whether the USA had previously served as an AUSA. As Table A.3 of the Appendix shows, in neither regression was this measure of expertise a significant predictor of the likelihood of being elevated to the AGAC; indeed, a likelihood-ratio test indicated that in neither Republican ($p=0.73$) nor Democratic administrations ($p=0.18$) did the addition of this variable significantly alter the explanatory value of the regressions. We suspect this variable's lack of statistical significance is chiefly a result of the measure's bluntness rather than a per-se lack of concern for expertise. Unfortunately, we do not have the ability to code for USA expertise in specific areas of law.

Confirmation of the asymmetrical nature of AGAC's politicization begs for an explanation. One possible explanation for the partisan differences we uncover stems from the idea that the Department of Justice is recognized as being one of the more conservative federal agencies: Clinton and Lewis's survey of experts placed the Department of Justice in the top 20% of conservatism among 82 executive agencies (2008, 6). Such conservatism may free Republican administrations from the need to politicize this particular informational commission because, as Lewis (2009) notes, presidents tend to politicize when their preferences diverge from those of the agency. Further, being freer from this concern may allow Republican administrations to use the AGAC in another way. One possibility, hinted at in the regression results, is the use of AGAC for monitoring compliance with and enforcement of administration policies. Indeed, there is anecdotal evidence from the W. Bush administration's firing of USAs in 2005 that such monitoring was a central concern of that GOP administration (Miller and Curry 2018).

Although we cannot know that monitoring is occurring given the opaqueness of AGAC's operation, one observable implication of the use of AGAC for monitoring would be if Republican administrations were to pick USAs from districts with larger numbers of AUSAs, since it is AUSAs who are the "on the ground" bureaucrats implementing policy. The regressions present evidence for just this kind of divergence. In Republican administrations our proxy for number of AUSAs—court workhours—is a statistically significant predictor of becoming a member of AGAC, while it has no explanatory power in the regression for Democratic administrations.[16] Moving from the 10$^{th}$ percentile of court workhours (and relatively few AUSAs) to the 90$^{th}$ percentile increases the chances of being a member of AGAC in Republican

[16] Recall that reliance on this proxy is necessary because the DOJ did not report the number of AUSAs in each district after 2002.

administrations by six percentage points—from approximately a 16% likelihood to a 22% likelihood. Our proxy for the number of AUSAs has no effect in Democratic administrations. Of course, this evidence is only suggestive and more internal knowledge of the functioning of AGAC would be needed before any firm conclusions about monitoring could be made. The positive, significant relationship between the number of AUSAs supervised and selection for AGAC on the Republican side is one possible explanation for the asymmetrical politicization we see.

**Discussion and Conclusion**

In this paper, we have leveraged information about the pool of officials eligible for inclusion on an informational commission within the executive branch—the Attorney General's Advisory Committee of U.S. Attorneys—in order to enhance what we know about the composition of advisory commissions and how administrations utilize them. We advance that understanding by leveraging knowledge about the pool from which AGAC members are selected. As the first to consider AGAC and its relationship to both the DOJ and line prosecutors in the USAOs, we also add a new dimension to the growing literature on USAs (e.g., Perry 1998; Whitford 2002; Whitford and Yates 2009; Lochner 2002; Miller and Curry 2018), a group of presidential appointees that may not garner the visibility of judges or cabinet officials, but nevertheless represent a key informational mechanism of political influence over career federal prosecutors and an important resource for the administrations they serve.

The results of our analysis demonstrate that Republican and Democratic AGACs are populated with different degrees of ideological fidelity in mind. We observed this asymmetrical politicization could, in part, be explained by differences related to AUSA oversight. However, what might the existence of that partisan difference mean from a more practical standpoint?

Since we cannot pierce the veil of AGAC deliberations in any detailed or systematic way, we can only speculate. The empirical distinctions uncovered here are arguably consistent with some reinforcing ideas. The notion that Democrats tend to engage in politicization while Republican administrations do not could suggest that Republican DOJs are typically more naturally aligned with the policy preferences of Republican administrations. A Republican tendency to use AGAC as a monitor of implementation—as hinted it in our regression results—may simply stem from being freed of needing to garner policy recommendations from AGAC. Recent history contains some circumstantial evidence of Republican concerns over implementation (e.g., Miller and Curry 2018; OIG 2008; Kmiec 1992). This might also suggest that, when it comes to generating ideas about vision and what policy should look like, the relationships represented in Figure 1 are comparatively more decentralized and organic during Democratic administrations.

There are, naturally, limitations to the study. First, we lack comparable data for other kinds of commissions, which would be enormously useful in drawing distinctions between the different kinds of committees that Zegart (2004) outlines. We have argued that AGAC is an informational commission, but what of "agenda commissions" or "political constellation commissions?" There are reasons to suspect that, because these commissions are oriented for broadly different purposes, presidents may populate them in strategically different ways than they would an organization like AGAC. Second, AGAC is a commission with somewhat more restricted membership than others and deals with issues of unique import across administrations. It would therefore be useful to have different kinds of information commissions with which to draw points of comparison. The purchase that we gain here from knowledge of the population from which AGACs are drawn limits the generalizability of our results, but this strikes us as being a worthwhile tradeoff. As with a traditional experiment, relationships – like the existence

of asymmetrical politicization on an informational commission – must be known to exist before they can be probed or replicated in other contexts (McDermott 2011). And, while we cannot confidently assert that AGAC is the prototypical informational commission, there seems no obvious reason why it should inevitably be exceptional.

Finally, future research might wish to consider whether administrations use commissions like AGAC as a "training ground" for future appointments. There is some evidence of this in our data, but it is limited to Republican AGACs. From a descriptive standpoint, Republican administrations are significantly more likely to nominate AGAC members to federal judicial positions and to higher positions within the executive branch (e.g., Deputy Attorney General) than USAs not on AGAC. By contrast, Democratic administrations are no more or less likely to nominate AGAC members to these positions than they are USAs generally. It could be that Republican administrations are more adept at dispensing AGAC positions strategically in order to position select personnel for subsequent opportunities. And it would be worthwhile to know if these trends hold in other kinds of commissions—it may be the case, for example, that Democrats also use these bodies to vet potential appointees, but in different commission types.

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**Table 1: AGAC Descriptive Statistics**

| FY | USAs on AGAC | | | | USAs not on AGAC | | |
|---|---|---|---|---|---|---|---|
| | Membership | Ideological Mean | Ideological Median | Ideological S.D. | Ideological Mean | Ideological Median | Ideological S.D. |
| 1986 | 12 | 0.545 | 0.605 | 0.424 | 0.619 | 0.683 | 0.414 |
| 1987 | 18 | 0.582 | 0.671 | 0.453 | 0.677 | 0.722 | 0.397 |
| 1988 | 18 | 0.689 | 0.714 | 0.494 | 0.648 | 0.705 | 0.438 |
| 1989 | 19 | 0.715 | 0.770 | 0.487 | 0.640 | 0.705 | 0.473 |
| 1990 | 19 | 0.613 | 0.770 | 0.542 | 0.672 | 0.732 | 0.437 |
| 1991 | 19 | 0.616 | 0.825 | 0.543 | 0.681 | 0.808 | 0.431 |
| 1992 | 20 | 0.562 | 0.645 | 0.504 | 0.699 | 0.819 | 0.423 |
| 1994 | 18 | -0.771 | -0.799 | 0.270 | -0.477 | -0.602 | 0.574 |
| 1995 | 26 | -0.759 | -0.765 | 0.252 | -0.604 | -0.701 | 0.469 |
| 1996 | 16 | -0.728 | -0.744 | 0.461 | -0.636 | -0.701 | 0.418 |
| 1997 | 17 | -0.764 | -0.840 | 0.469 | -0.639 | -0.697 | 0.386 |
| 1998 | 19 | -0.748 | -0.684 | 0.344 | -0.646 | -0.718 | 0.361 |
| 1999 | 18 | -0.682 | -0.664 | 0.335 | -0.669 | -0.719 | 0.378 |
| 2000 | 17 | -0.718 | -0.670 | 0.223 | -0.641 | -0.732 | 0.438 |
| 2002 | 14 | 0.788 | 0.938 | 0.284 | 0.680 | 0.834 | 0.514 |
| 2003 | 16 | 0.878 | 0.939 | 0.291 | 0.732 | 0.873 | 0.443 |
| 2004 | 17 | 0.783 | 0.863 | 0.366 | 0.767 | 0.898 | 0.411 |
| 2005 | 21 | 0.777 | 0.820 | 0.363 | 0.718 | 0.885 | 0.499 |
| 2006 | 16 | 0.706 | 0.741 | 0.367 | 0.754 | 0.892 | 0.468 |
| 2007 | 14 | 0.629 | 0.860 | 0.521 | 0.805 | 0.883 | 0.341 |
| 2008 | 14 | 0.554 | 0.517 | 0.516 | 0.772 | 0.857 | 0.366 |
| 2010 | 15 | -0.508 | -0.724 | 0.606 | -0.373 | -0.396 | 0.695 |
| 2011 | 18 | -0.587 | -0.775 | 0.591 | -0.609 | -0.782 | 0.590 |
| 2012 | 16 | -0.894 | -0.984 | 0.342 | -0.604 | -0.656 | 0.487 |
| 2013 | 19 | -0.815 | -0.983 | 0.411 | -0.643 | -0.669 | 0.425 |
| 2014 | 16 | -0.864 | -0.963 | 0.391 | -0.655 | -0.682 | 0.426 |
| 2015 | 17 | -0.873 | -0.959 | 0.302 | -0.564 | -0.559 | 0.467 |

**Table 2: Simulation Results**

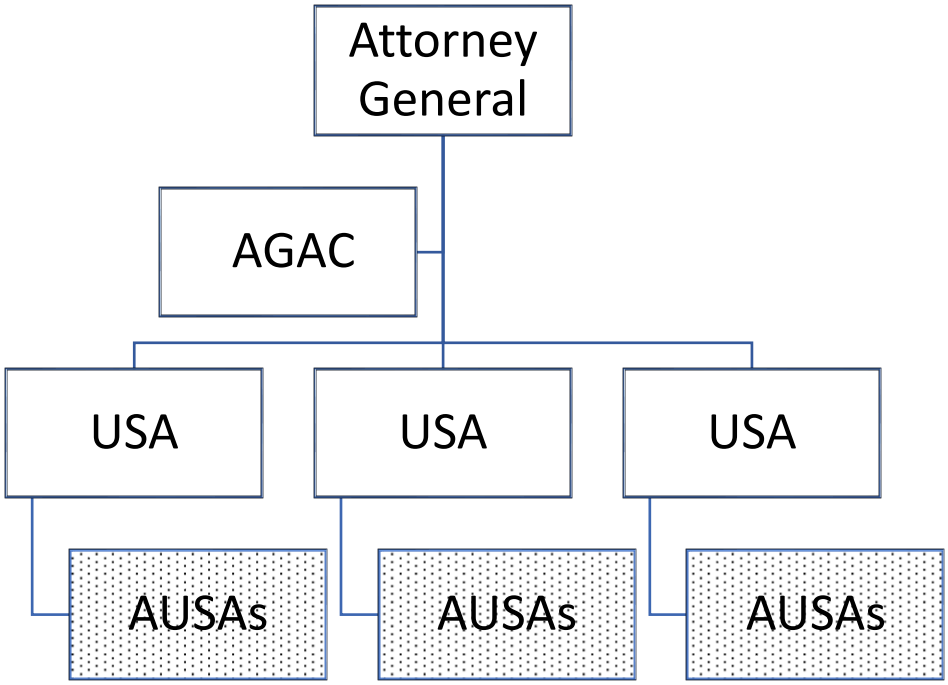
| Ideo. Distance | AGAC Mean | Sim Mean | Difference | Mann-Whitney | K-S Test |
|---|---|---|---|---|---|
| GOP | 0.346 | 0.317 | 0.029 | 1.68 (0.092) | 0.078 (0.114) |
| Dem. | 0.311 | 0.408 | -0.097 | -3.63 (0.001) | 0.138 (0.000) |
| Reagan | 0.423 | 0.397 | 0.026 | 0.377 (0.736) | 0.082 (0.907) |
| H.W. Bush | 0.334 | 0.296 | 0.038 | 0.756 (0.450) | 0.132 (0.135) |
| Clinton | 0.247 | 0.305 | -0.058 | -0.985 (0.325) | 0.094 (0.194) |
| W. Bush | 0.321 | 0.298 | 0.023 | 1.542 (0.123) | 0.114 (0.108) |
| Obama | 0.395 | 0.542 | -0.147 | -3.63 (0.000) | 0.212 (0.000) |

**Table 3: Regression Results**

| | Democratic President | | Republican President | |
|---|---|---|---|---|
| | Coeff. | Robust S.E. | Coeff. | Robust S.E. |
| *USA Characteristics* | | | | |
| Ideological Distance | -0.76** | 0.24 | 0.07 | 0.17 |
| *District Characteristics* | | | | |
| Dist. Population (millions) | 0.11* | 0.04 | 0.09** | 0.03 |
| Ct. Workhours (thousands) | 0.01 | 0.01 | 0.02** | 0.01 |
| Border District | 0.08 | 0.31 | -0.03 | 0.31 |
| *Control* | | | | |
| Elapsed Time | -0.00 | 0.01 | -0.01 | 0.01 |
| Constant | 1.55 | 0.233 | -1.90 | 0.17 |
| N of Districts | 89 | | 89 | |
| N | 1157 | | 1246 | |
| Wald | 39.18 (0.00) | | 41.11 (0.00) | |

** is significant at $p < 0.01$ (two-tailed); * is significant at $p < 0.05$ (two-tailed)

**Figure 1: Relationship between Attorney General, AGAC, USAs, and AUSAs**




Clear boxes represent politically-appointed actors; shaded boxes represent career employees.

**Figure 2: Distribution of Simulated AGAC Ideology, by Partisanship of the President**

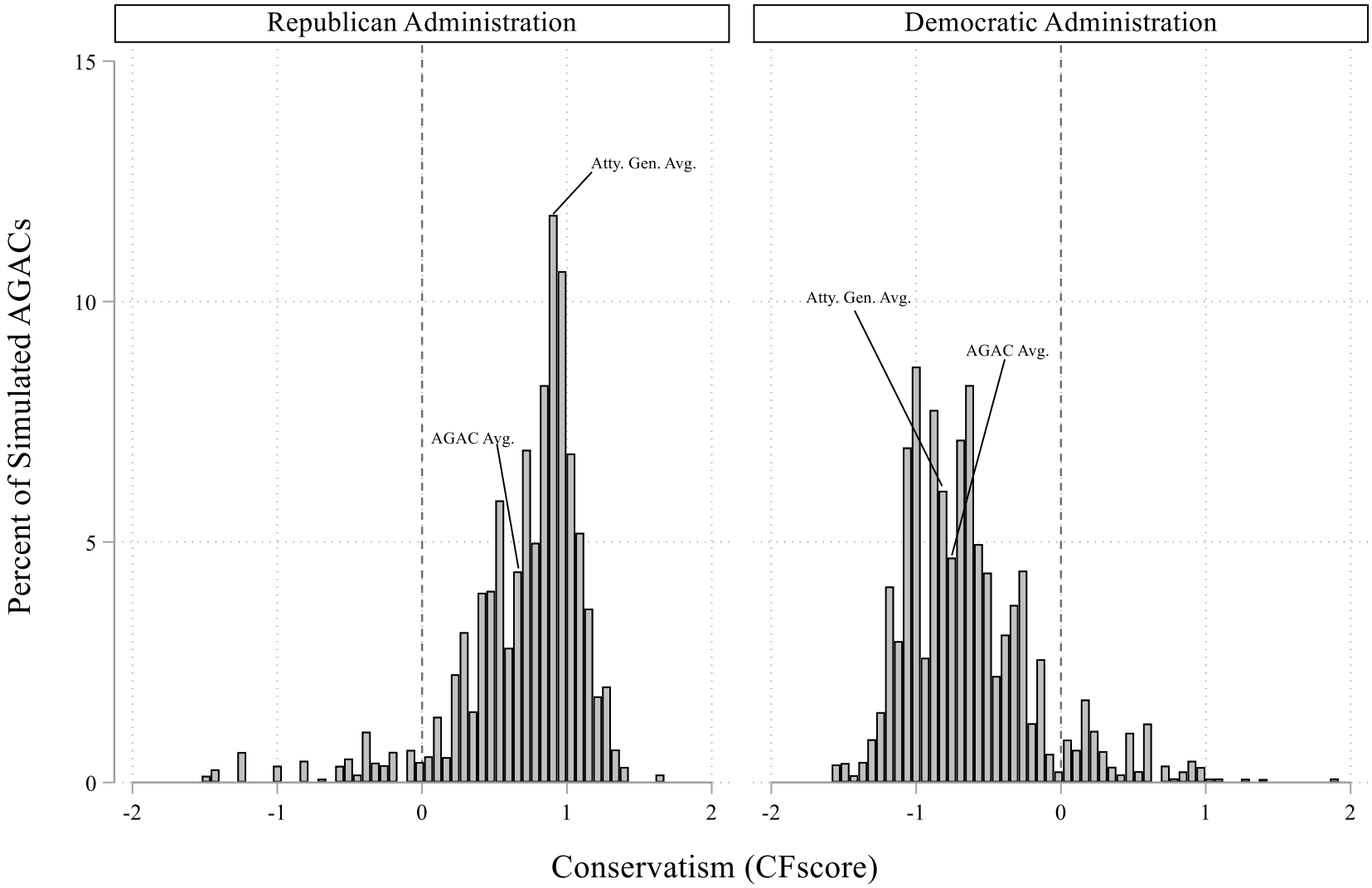
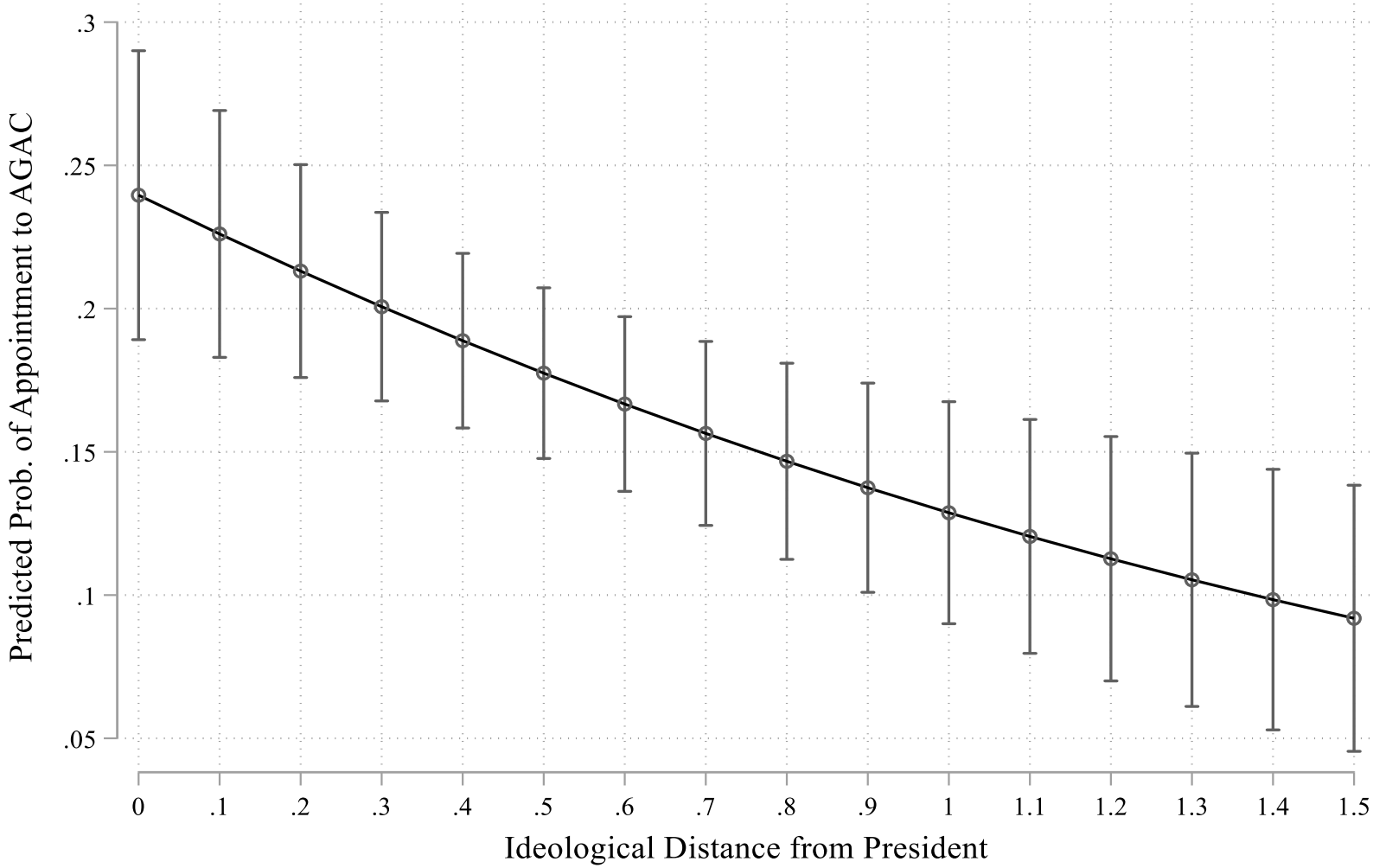


**Figure 3: USA Ideological Distance & AGAC Appointment, Democratic Administrations**



**Appendix**

To impute CFscores for USAs who did not have records in the database, we regressed observable characteristics (e.g. percentage of Democratic vote in a presidential election in a judicial district) on those USAs with known scores. The resulting equation for imputing scores to USAs is: CFscore = (Democratic vote *-0.014457) + (Presidential Ideology (DW Nominate)*0.8957) + (Woman*-0.238) + (Black*-.05279) + (Latino*-.218) + (Asian*.275) + (Fiscal Year*-.0088) + 18.25. As noted in the text, the use of these imputed scores makes no difference for our inferences.

Table A.1 below reports the results of our simulations using Attorneys General as the defining unit. As noted in the paper, these results further confirm those using the president as the unit of analysis. All of the Democratic AGs appoint AGACs that are closer ideologically than a random draw would suggest (although Reno does not reach statistical significance). On the other hand, only one of the six Republican AGs (Ashcroft) appoint AGACs closer to the administration than chance suggests. Table A.2 below reports on the robustness of our regression results to using only the Clinton administration USAs. There we find that ideological distance remains a potent predictor of the likelihood of service on the AGAC. Table A.3 reports a test of whether a measure of policy expertise—having served as an AUSA prior to becoming a USA—is predictive of being selected to serve on AGAC. We do not find prior expertise measured in this way to be predictive of elevation to AGAC.

[Table A.1 here]

[Table A.2 here]

[Table A.3 here]

**Table A.1: Attorney General-specific Simulation Results**

| Attorney General (N of Years) | AGAC Mean | Sim Mean | Difference | Mann-Whitney |
|---|---|---|---|---|
| Meese (3) | 0.423 | 0.397 | 0.026 | 0.337 (0.764) |
| Thornburgh (3) | 0.336 | 0.299 | 0.037 | 0.729 (0.466) |
| Barr (1) | 0.327 | 0.283 | 0.044 | 0.257 (0.797) |
| Reno (7) | 0.247 | 0.305 | -0.058 | -0.985 (0.325) |
| Ashcroft (3) | 0.236 | 0.297 | -0.061 | -0.815 (0.415) |
| Gonzales (3) | 0.351 | 0.296 | 0.055 | 2.219 (0.027) |
| Mukasey (1) | 0.493 | 0.307 | 0.186 | 1.636 (0.101) |
| Holder (6) | 0.428 | 0.511 | -0.083 | -2.007 (0.045) |
| Lynch (1) | 0.285 | 0.527 | -0.242 | -2.521 (0.012) |

**Table A.2: Clinton-only Regressions**

| | Coeff. | Robust S.E. |
|---|---|---|
| *USA Characteristics* | | |
| Ideological Distance | -0.632* | 0.329 |
| *District Characteristics* | | |
| Dist. Population (millions) | 0.108* | 0.057 |
| Ct. Workhours (thousands) | 0.001 | 0.012 |
| Border District | 0.291 | 0.408 |
| *Control* | | |
| Elapsed Time | -0.047 | 0.050 |
| | | |
| Constant | -1.041 | 0.631 |
| N of Districts | 89 | |
| N | 623 | |
| Wald | 20.95 (0.00) | |

* is significant at p <0.05 (one-tailed)

**Table A.3: Regression Results with Measure of Expertise**

| | Democratic President | | Republican President | |
|---|---|---|---|---|
| | Coeff. | Robust S.E. | Coeff. | Robust S.E. |
| *USA Characteristics* | | | | |
| Ideological Distance | -0.76** | 0.24 | 0.08 | 0.17 |
| Former AUSA | 0.23 | 0.16 | -0.05 | 0.15 |
| *District Characteristics* | | | | |
| Dist. Population (millions) | 0.10** | 0.04 | 0.09** | 0.03 |
| Ct. Workhours (thousands) | 0.01 | 0.01 | 0.02** | 0.01 |
| Border District | 0.04 | 0.32 | -0.02 | 0.31 |
| *Control* | | | | |
| Elapsed Time | -0.01 | 0.01 | -0.01 | 0.01 |
| Constant | -1.55 | 0.23 | -1.88 | 0.17 |
| N of Districts | 89 | | 89 | |
| N | 1157 | | 1246 | |
| Wald | 42.13 (0.00) | | 41.19 (0.00) | |

** is significant at $p < 0.01$ (two-tailed); * is significant at $p < 0.05$ (two-tailed)