

SHALL WE KILL ALL THE LAWYERS FIRST?:
INSIDER AND OUTSIDER VIEWS OF THE
LEGAL PROFESSION

AMY E. BLACK*
STANLEY ROTHMAN**

I. INTRODUCTION 835

II. DATA SOURCES 837

 A. *The Study of Leadership Characteristics* 837

 B. *National Opinion Polls* 838

III. WHO ARE AMERICAN LAWYERS AND JUDGES? 838

IV. AND WHAT ABOUT POLITICS? 842

 A. *Voting and Partisanship* 842

 B. *Lawyers and Judges on the Issues* 844

 C. *Factor Analysis* 845

 D. *Measures of Political Participation* 847

V. WHAT DO AMERICANS THINK OF
LAWYERS AND JUDGES? 850

VI. WHAT DO THEY THINK OF THEMSELVES? 855

VII. WHAT MAY WE CONCLUDE? 857

 APPENDIX: STUDY OF LEADERSHIP
 CHARACTERISTICS SAMPLE DESIGN 858

I. INTRODUCTION

The title for this Article simply rearranges a statement by Dick the butcher, a populist revolutionary whom Shakespeare introduces in *Henry VI, Part II*. The remarks are seconded by Jake Cade, leader of the rebels:

* Assistant Professor of Government, Franklin and Marshall College.

** Mary Huggins Gamble Professor Emeritus of Government and Director, Center for the Study of Social and Political Change, Smith College. The authors presented some of the data detailed in this Article in a presentation given at the Eleventh Annual Federalist Society National Lawyers Conference, held in Washington, D.C., on October 18, 1997.

Dick: The first thing we do, let's kill all the lawyers.

Cade: Nay, that I mean to do . . .¹

No evidence exists that Shakespeare himself was hostile to lawyers. Indeed, lawyers generally have been respected in England, and, from the nation's Founding, Americans appeared to inherit this characteristic of England's legal culture along with her common-law system. On his journey to America, Alexis de Tocqueville observed heightened esteem for lawyers, describing them as the equivalent of an American aristocracy.² By one reading of Tocqueville's account, lawyers' natural conservatism ensures that they seek checks against simple majoritarian rule, and hence preserve the essential elements of a liberal state within the framework of a democratic milieu.³

Since Tocqueville's time, however, many changes have transformed both American society and the legal profession. There are signs of transformation both in the way the legal profession views itself and the world around it, and in the manner with which the world views the legal profession.⁴ Changing demographics and attitudes of members of the legal profession provide the most marked evidence of these societal shifts.

In this Article, we explore some of the evolving perspectives on the legal profession from within and without. After introducing the primary dataset used in our analysis in Part II, the first analytic section, "Who Are American Lawyers and Judges?" (Part III), compares the demographic characteristics of elite lawyers and federal judges over time. Part IV asks, "And What About Politics?," exploring the political behavior of lawyers and judges and their opinions on various social issues. In Part V, we analyze surveys of national samples of adult Americans to determine, "What Do Americans Think of Lawyers and Judges?"

1. WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY VI* act 4, sc. 2, at lines 73-74 (Andrew S. Cairncross ed., Harvard University Press, 1957) (1623).

2. See 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 279 (Phillips Bradley ed., Alfred A. Knopf 1945) ("As the lawyers form the only enlightened class whom the people do not mistrust, they are naturally called upon to occupy most of the public stations.")

3. See *id.* at 258.

4. These changes are perhaps most dramatic in law schools, where powerful forces are attempting to shift the manner in which law is conceptualized and taught. For a rather strong polemical attack upon some of the newer approaches to the teaching of law, see Daniel A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997).

After probing lawyers' and judges' responses to a few questions from our recent survey of the legal elite in "What Do They Think of Themselves?" (Part VI), we summarize our results in Part VII, drawing some brief conclusions from the findings discussed in the analytic sections.

II. DATA SOURCES

Before analyzing Americans' attitudes towards lawyers and the legal profession, we first examine the demographic characteristics and political opinions of America's legal elite. Data from samples of corporate lawyers and federal judges surveyed provide a wealth of information about the attitudes and beliefs of legal professionals.

A. *The Study of Leadership Characteristics*

In 1995, we designed and supervised a nationwide computer-assisted telephone survey called the Study of Leadership Characteristics, which surveyed almost 2,000 elites in the United States representing seven distinctive leadership sectors, such as business entrepreneurs, elite journalists, and high-ranking bureaucrats.⁵ For purposes of this Article, we focus on data from two of the seven leadership groups: partners in America's leading law firms, and federal judges. When appropriate to the analysis, however, we compare the responses of lawyers and judges to elites in some of the other groups included in the broader study.

The legal elite sample consists of 234 men and women surveyed from a random distribution of partners in the 100 most prestigious law firms in the United States, as rated by *American Lawyer* magazine.⁶ Federal judges comprise the other sample of primary interest in this discussion. The judicial sample includes data from interviews with 210 judges, selected at random from

5. A team at the National Opinion Research Center (NORC), University of Chicago, administered the survey between June and October of 1995. We provided the survey team with random samples of approximately 500 elites from each leadership sector. These individuals were contacted by advance letter and interviewed over the telephone in twenty-five-minute sessions.

6. See THE AM LAW 100: A SUPPLEMENT TO THE AMERICAN LAWYER, July-Aug. 1995, at 7-8, 10.

the members of the U.S. District Courts, the U.S. Courts of Appeals, and the U.S. Supreme Court serving as of March 1995.⁷

In addition to the traditional battery of demographic questions, our twenty-five-minute survey asked respondents a series of questions concerning their opinions on significant policy and social matters, their level of participation in the political process, and their perspectives on race and gender issues.

Interviewers asked this general set of questions to all respondents in the study, although elite lawyers were asked three additional questions specifically targeted to the legal profession.

B. *National Opinion Polls*

Supplementing the data collected in our survey of American elites, this paper also analyzes data from several national opinion polls that measure public perceptions of lawyers, judges, and members of other professions. These surveys, conducted by Louis Harris and Associates, the Gallup Poll, and other respected national opinion research firms, provide data from random samples of the national adult population.⁸

III. WHO ARE AMERICAN LAWYERS AND JUDGES?

In this Part, we analyze data from the Study of Leadership Characteristics to create demographic profiles of elite lawyers and federal judges. The survey provides insightful information about the socio-economic status, religion, race, and gender of some of the most prestigious members of the legal profession.

Comparisons of basic demographic data reveal interesting differences between the judges and lawyers sampled. First, the data demonstrate that corporate lawyers in America are unusually affluent. More than 85 percent of lawyers in the 1995 survey reported a total household income of \$200,000 or more per year. Of the seven leadership groups in the study, only

7. For a description of the sample and discussion of sampling techniques, see *infra* Appendix: Study of Leadership Characteristics Sample Design.

8. We located the national opinion data through searches of the Public Opinion Location Library (POLL) database of public-opinion data archived at the Roper Center for Public Opinion Research located at the University of Connecticut in Storrs, Connecticut. The authors gratefully acknowledge Don Feree for his assistance in locating relevant polling data.

business leaders had a larger percentage of respondents (88 percent) reporting incomes in the highest bracket. Although the average income of federal judges is considerably below this level, it is also substantial. Only three percent of the judicial respondents reported household incomes of less than \$125,000 per year, but 27 percent reported incomes of over \$200,000 per year.⁹

Elite lawyers appear also to have enjoyed comfortable upbringings. Using paternal education as a measure (admittedly imperfect) of family social status, most lawyers surveyed came from relatively affluent backgrounds. A majority of the fathers of corporate lawyers (56 percent) had at least a college degree, compared to slightly over 30 percent who had received no more than a high school education. The educational background of fathers of elite lawyers and those of journalists is almost identical; fathers of members of these two groups had significantly higher levels of education than any of the other elites sampled. In contrast, only about 35 percent of the fathers of businessmen had at least completed college; 29 percent was the comparable figure for fathers of religious leaders.¹⁰

A larger percentage of judges apparently came from humble social-class backgrounds. Approximately 41 percent of the sampled judges' fathers had at least completed college—nearly 15 percentage points fewer than lawyers' fathers. Even more striking, compared to the lawyers' fathers, more than three times as many fathers of judges had only a high-school degree or less schooling. Similarly, many more lawyers than judges benefited from education at elite schools. About 33 percent of leading corporate lawyers graduated from Ivy League law schools. By contrast, slightly less than half as many judges (18 percent) are Ivy League graduates.

Lawyers and judges appear to have grown up in a different mix of localities as well. Whereas almost 40 percent of lawyers lived in suburbs of large cities during childhood, only 12 percent

9. Traditionally, survey researchers have encountered more problems with non-response and inaccuracy of self-reported income than with almost any other question included in standard surveys. Clearly, some respondents in our sample are under-reporting their household incomes. In 1995, judges in U.S. District Courts earned annual salaries of \$133,600, and judges on the U.S. Courts of Appeals earned \$141,700. See *THE WORLD ALMANAC AND BOOK OF FACTS: 1996*, at 93 (Robert Famighetti ed., 1995).

10. The pattern of maternal education is quite similar, although much less important as a measure of socio-economic status a generation ago.

of judges grew up in suburban areas. Conversely, 32 percent of judges, compared to 24 percent of lawyers, grew up in large cities. Additionally, three times as many judges as elite attorneys lived in rural areas during childhood.

As of 1995, elite lawyers remained overwhelmingly male (88 percent) and white (97 percent) (see Table 1). Comparing our data with a similar study conducted in 1980, however, suggests that the percentages of women and minority elite lawyers are increasing. Slightly more than one percent of the 1995 lawyer sample were of Asian-American or of African-American descent, up from zero respondents in a comparable 1980 elite study.¹¹ The percentage of women lawyers has increased six-fold in the intervening fifteen years, from two percent of law partners in 1980 to 12 percent today. We expect these increases to continue, as members of the younger-age cohorts (which include more women and minority attorneys) reach partnership age.

TABLE 1: SELECTED DEMOGRAPHIC CHARACTERISTICS OF SURVEY SAMPLES OF LAWYERS AND JUDGES

	% Women	Mean Age	Religion				
			% Prot.	% Cath.	% Jewish	% None	% Other
Judges	11%	64 years	55.5%	20.1%	10.0%	9.1%	5.3%
Lawyers	12%	47 years	38.1%	23.8%	21.6%	14.7%	1.7%

Source: Study of Leadership Characteristics, 1995.

In 1995, judges also were overwhelmingly male (89 percent) and white (92 percent), although minorities are clearly more represented in the judiciary than among partners at prestigious law firms. Because the judges in our sample were quite a bit older than the corporate lawyers, with an average age of 64 years compared to the lawyers' mean age of 47, there were fewer women and minority candidates available for top judicial positions than for corporate law partnerships. Because both groups began to enroll in major law schools in large numbers only in the 1970s, the larger representation of minority groups

11. The 1980 elite study was conducted between 1979 and 1984 by Stanley Rothman and several collaborators. A summary of the study has been published in ROBERT LERNER ET AL., *AMERICAN ELITES passim* (1996).

in the federal judiciary is especially notable. The data suggest that appointment to the federal judiciary is at least somewhat influenced by a concern for demographic representation.

Data on religious backgrounds also reveal interesting changes in the composition of the legal profession over time. As late as the 1960s, elite law firms included relatively few Americans of Jewish background.¹² Today, although Jews constitute little more than two percent of the population, 22 percent of partners in major law firms are Jewish. Thirty-eight percent of law partners classify themselves as Protestants, and about 24 percent identify as Catholics. Measures of religious salience suggest that a majority of the lawyers in the sample are not especially religious: Although 84 percent of lawyers identify themselves as Catholics, Protestants, or Jews, 57 percent never or only rarely attend religious services. Nevertheless, about 26 percent attend services once or twice a month, and 17 percent attend religious services every week.

Judges also differ somewhat from lawyers in their religious backgrounds and patterns of attendance at religious services. A majority of federal judges (56 percent) identify themselves as Protestant, 20 percent as Catholic, and 10 percent as Jewish. Compared to the elite lawyers in our sample, then, judges are more likely to be Protestant, less likely to be Catholic, and much less likely to be Jewish, perhaps lending support to the above hypothesis that federal judicial appointments are at least somewhat influenced by concern for demographic representation. Furthermore, judges are less likely to identify themselves as non-religious (9 percent of judges versus 15 percent of lawyers), are considerably less likely than lawyers never to attend religious services (19 percent of judges versus 29 percent of lawyers), and are almost twice as likely to attend religious services every week (33 percent of judges versus 17 percent of lawyers).

Responses to two additional questions offer interesting juxtapositions of the personal qualities of members of the two legal samples. Lawyers and judges are about equally likely to believe that most people can be trusted (81 percent versus 84 percent)—more than ten percentage points higher than the

12. See generally Note, *The Jewish Law Student and New York Jobs—Discriminatory Effects in Law Firm Hiring Practices*, 73 *YALE L.J.* 625 (1964).

response rate of journalists, for example. Yet, when asked if they were satisfied with their lives, 78 percent of judges but only 51 percent of lawyers indicated a high level of satisfaction.

IV. AND WHAT ABOUT POLITICS?

Having compared and contrasted various demographic and background characteristics of lawyers and judges, we now examine the political behavior and attitudes of these two groups. After comparing lawyers' and judges' voting behavior and partisanship, this Part analyzes the respondents' views on a wide variety of political and social issues.

A. *Voting and Partisanship*

Political data from our survey demonstrate that judges and lawyers differ in a number of respects.¹³ As a group, judges generally tend to be more conservative than lawyers, although this outcome is likely a function of the fact that many respondents were appointees of Presidents Reagan and Bush.¹⁴

Data on partisanship and voting behavior show that lawyers are most likely to identify as Democratic partisans, but often vary in their presidential voting behavior (see Table 2). A plurality of elite lawyers (42 percent) are Democrats, a third (33 percent) claim Republican partisanship, and almost one-fourth (24 percent) identify as Independents.

Voting data from the 1988 and 1992 elections suggest that some attorneys in our sample were willing to cross party lines to vote for their preferred presidential candidate. George Bush won a slim majority of lawyers' votes in the 1988 election (51 percent), with Michael Dukakis receiving 41 percent of that vote. By contrast, George Bush received only 39 percent of lawyers' votes in 1992; fifty-nine percent of the attorneys sampled opted for Bill Clinton.

13. Although the judges in our sample are lawyers as well, for ease of discussion, we will distinguish between the two samples as judges (referring to the sample of federal judges) and lawyers (referring to the sample of partners in major law firms).

14. At the end of 1995, the year we sampled federal judges, 56.8 percent of the members of the federal judiciary were either Reagan or Bush appointees. See ALLIANCE FOR JUSTICE, JUDICIAL SELECTION PROJECT ANNUAL REPORT 1 (1995). This profile of federal judges is subject to change, and indeed looked quite different in Professor Rothman's earlier elite survey. Data from this 1980 study revealed a sharp difference between judges appointed by Democrats and those appointed by Republicans. See Althea K. Nagai et al., *The Verdict on Federal Judges*, 10 PUB. OPINION 4 (1987).

In the aggregate, judges appear to be significantly more conservative than lawyers. A majority of the federal judges in our sample (52 percent) identify with the Republican party, approximately one-third (32 percent) are Democrats, and another 14 percent describe themselves as Independents.

TABLE 2: VOTING BEHAVIOR IN 1988 AND 1992

	1988		1992		
	<i>Dem.</i>	<i>GOP</i>	<i>Dem.</i>	<i>GOP</i>	<i>Ind.</i>
<i>Judges</i>	31.8	68.2	42.1	56.7	1.2
<i>Lawyers</i>	40.9	50.6	58.6	39.2	2.3

Source: Study of Leadership Characteristics, 1995.

Measures of presidential voting behavior in the last two elections reveal that federal judges in the sample favored Republican presidential candidates. More than two-thirds of judges (68 percent) voted for George Bush in 1988, and a strong majority (57 percent) continued to support President Bush in his unsuccessful bid for re-election in 1992.

Compared to data collected on other elite groups surveyed in the Study of Leadership Characteristics, the data on lawyers' voting behavior and partisanship illustrate that lawyers are a relatively moderate group. Although more liberal than judges, business leaders, and religious leaders, the legal elite are more conservative than journalists, high-ranking bureaucrats, and makers of television and film. Interestingly, judges are among the most conservative groups in the sample, with only business leaders consistently reporting views farther to the political right. Nonetheless, judges' parents were more likely than not to have voted Democratic, and only 18 percent of judges describe themselves as conservative.¹⁵

15. The question of how lawyers' opinions and political beliefs compare with those of their clients surfaced several times during both our presentation and other panels at the Eleventh Annual Federalist Society National Lawyers Conference on October 18, 1997. Our data reveal interesting differences in the perspectives of elite lawyers and members of a large client group, business executives.

The larger elite study includes a sample of top business leaders, defined to include chairmen, chief executive officers, presidents, and executive vice-presidents of Fortune 1000 companies. A comparison between the survey responses of leading corporate

B. *Lawyers and Judges on the Issues*

The Survey of Leadership Characteristics included approximately forty questions to gauge elite attitudes about various public-policy matters. In general, corporate lawyers express moderate views on most questions. When asked to rate the level of their agreement or disagreement with a variety of issue statements, most lawyers respond that they either "somewhat agree" or "somewhat disagree," and responses to most questions are distributed quite evenly between agreement and disagreement. As a group, the judges in our sample are more likely to strongly agree or strongly disagree with various statements, and express relatively more conservative policy views.

Lawyers do not express moderate views on all issues, however. For example, lawyers are even more conservative than their judicial counterparts on the issue of capital-gains tax reductions. About 79 percent of attorneys in our sample support reducing the capital-gains tax, compared to 74 percent of judges. Similar percentages of judges and elite lawyers (71 percent and 72 percent, respectively) agree that "less government regulation of business would be good for the country."

Legal elites have a different perspective on social issues, though, with large majorities favoring more "liberal" social policies. On abortion, for example, most lawyers and judges are strongly pro-choice. Eighty-three percent of lawyers and 79 percent of judges in our sample agree that women have a right to choose an abortion, and more than 60 percent of lawyers and a majority of judges express *strong* agreement. Similarly, 81 percent of lawyers and 75 percent of judges support Medicaid funding for abortion services. Lawyers and, to a lesser extent, judges also express strong opinions in favor of allowing gays to

lawyers and the responses from the sample of influential business executives provides preliminary support for the hypothesis that lawyers have different political views than their clients.

For example, lawyers were more than three times as likely as business leaders to vote in 1992 for Bill Clinton, who received 59 percent of the lawyers' votes compared to only 17 percent of business leaders' votes. Business leaders were overwhelmingly supportive of George Bush's re-election effort (76 percent reporting voting for Bush), compared to less than two in five lawyers (39 percent) voting Republican in 1992.

Comparisons of lawyers and their business clients on economic issues also reveal significant differences. A majority (56 percent) of lawyers agree that the government should work to ensure that everyone has a job, whereas only one in three business leaders (34 percent) share similar views. Almost twice as many corporate lawyers as business executives (44 percent and 24 percent, respectively) believe the government should work to reduce the income gap between the rich and poor.

serve openly in the military; 72 percent of elite attorneys and 61 percent of federal judges surveyed agree with such a policy.

Both lawyers and judges reject many gender stereotypes. Approximately 72 percent of attorneys in our sample and 82 percent of judges disagree with the statement, "Women tend to be less committed to their careers than are men," and 93 percent of those lawyers sampled and 85 percent of judges support the idea of a father caring for the home and children while his wife works.

The degree of support for several other social issues reveals both divergence and convergence between lawyers and judges. Whereas 84 percent of attorneys agree that pre-marital cohabitation is acceptable, only 56 percent of judges express similar sentiments. In addition, 51 percent of lawyers agree with the statement, "Homosexuality is as acceptable a lifestyle as heterosexuality," but only 34 percent of federal judges concur in that judgment. On the other hand, 87 percent of lawyers and judges alike believe that adultery is wrong.

Both lawyers and judges in our survey express cynicism towards government. Approximately 79 percent of lawyers and 62 percent of federal judges agree that "elected officials in Washington quickly lose touch with the people." About 79 percent of lawyers and 58 percent of judges also say that they do not trust government to do what is right. Furthermore, 80 percent of the legal elite and 67 percent of judges agree that "the structure of our society causes many people to feel alienated."

With respect to criminal policy, lawyers and judges indicate both parallel and contrasting opinions. Seventy-one percent of federal judges, compared to 62 percent of the sampled lawyers, oppose the legalization of marijuana. On mandatory life sentences for thrice-convicted felons, however, 67 percent of judges *disagree* with the "three strikes and you're out" rule, but 53 percent of attorneys *agree* with such sentencing.

C. *Factor Analysis*

We can summarize the underlying similarities and differences between lawyers and judges through a statistical technique known as "factor analysis." Factor analysis helps to measure the extent to which groups of responses "cluster" together in a

coherent fashion, and to explain correlations among variables. For example, results of a factor analysis of over forty questions asked in the Study of Leadership Characteristics produced two strong factors, that is, two specific groups of questions that appear to share one underlying dimension.¹⁶ We labeled these two clusters of responses (or factors) "liberal collectivism," borrowing a theoretical construct from John Dewey,¹⁷ and "expressive individualism," borrowing a concept from Robert Bellah.¹⁸

The first dimension places laissez-faire individualism, derived from America's Calvinist heritage, on one end of a continuum with collectivist liberalism on the other. Louis Hartz, Seymour Martin Lipset, and Max Weber have all observed that America's uniqueness lies in her religious-cultural ethos.¹⁹ According to these theories, the Protestant ethic gave rise to a previously unknown degree of personal autonomy and a remarkable discipline of the passions that enabled the individual to achieve self actualization. This ethic also fostered the psychological autonomy and self-restraint that provide the underpinnings for modern American liberalism and capitalism.²⁰

Collectivist (or welfare state) liberalism, which rests on the belief that the central government should ameliorate the economic inequalities of the capitalist system, emerged most forcefully from the Depression Era.²¹ Often seen as the bedrock of contemporary American liberal ideology,²² it stands in opposition to the traditional rugged individualist perspective. Questions concerning government intervention to redistribute wealth and guarantee employment load highly on this factor.

16. For more detailed discussions of factor analysis, see generally RAYMOND B. CATTELL, *THE SCIENTIFIC USE OF FACTOR ANALYSIS IN BEHAVIORAL AND LIFE SCIENCES* (1978); RICHARD L. GORSUCH, *FACTOR ANALYSIS* (2nd ed. 1983).

17. JOHN DEWEY, *INDIVIDUALISM OLD AND NEW* 74-100 (1930).

18. ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 27 (1985).

19. See generally LOUIS HARTZ, *THE LIBERAL TRADITION IN AMERICA* (1955); SEYMOUR MARTIN LIPSET, *AMERICAN EXCEPTIONALISM: A DOUBLE EDGED SWORD* (1996); MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 48-50 (Talcott Parsons trans., Charles Scribner's Sons 1958) (1904-05).

20. For a more extended treatment of the evolution of the American ethos, see generally LERNER ET AL., *supra* note 7, at 71-99.

21. See, e.g., EDWARD SHILS, *THE CALLING OF SOCIOLOGY AND OTHER ESSAYS ON THE PURSUIT OF LEARNING* 339-47 (1980).

22. See, e.g., SIDNEY VERBA & GARY R. ORREN, *EQUALITY IN AMERICA: THE VIEW FROM THE TOP* 124-26 (1985).

We derive the name for the second factor, “expressive individualism,” from discourse on the shift in meaning of the individual from a “being” to a “self.” The culture of expressive individualism centers around exploration of experience and sensation—unfettered, impulsive, and non-rational. In the arts, humanities, and letters, it rejects traditional standards in favor of the avant-garde; it envisions unique individuals realizing themselves through freely chosen experiences, without having any fixed nature to define them.

Traditional bourgeois culture and expressive individualism are thus conceived as polar extremes. The Protestant ethic stressed sobriety over playfulness, restraint over expression, and reflection over emotion.²³ Expressive individualism reverses that emphasis. Questions concerning homosexuality, abortion, and cohabitation helped to assess this factor.

To facilitate comparison of our results, we standardized the factor scores for each group to have a mean of 100 and a standard deviation of 10. Scores above the mean of 100 indicate responses toward the more liberal end of the factor dimension; scores less than 100 indicate conservatism. Judges and lawyers are quite close on liberal collectivism (scores of 98 and 97, respectively). Lawyers, however, are far more liberal on issues of expressive individualism, outscoring judges by almost six points (103 to 97). In short, we find that lawyers are moderately conservative on economic questions but relatively liberal on social issues when compared to judicial and other elites.²⁴

D. *Measures of Political Participation*

In addition to a wide range of questions about social and political issues, the survey included questions designed to measure the scope and frequency of elite political participation. First, we asked respondents whether they knew people in influential positions who they would feel free to contact. We also asked respondents about the frequency with which they engage in various forms of political activity.

23. In classical, Catholic, and even Calvinist thought, all human beings possess a common nature related to their humanity and their place in the cosmos. These things tie them to, even as they separate them from, other species.

24. These results may, of course, simply reflect the age of the respondents. Many judges were raised in a different era than the average lawyer.

The data reveal that, in general, the lawyers in our sample are a well-connected group (see Table 3). When asked if they knew people they would feel free to contact concerning an important political issue, 52 percent of the elite attorneys sampled said they knew a current member of Congress; 59 percent knew a current member of their state legislature; and 51 percent knew a member of the national news media. In addition, 70 percent reported knowing a member of the local news media, and 13 percent said they would feel comfortable contacting a member of the president's Cabinet.

As one might expect, given their positions as presidential appointees, even larger percentages of federal judges have connections to people in positions of power. Almost all of the judges sampled (95 percent) claimed to know a member of Congress they could contact about a political issue. Similarly, 89 percent of judges were acquainted with a state legislator; 74 percent said they knew a congressional staff member; 55 percent cited connections to members of the national news media; and 92 percent talked of ties to the local media. More than 25 percent of the judges sampled were personally acquainted with a member of the presidential Cabinet.

TABLE 3: JUDGES' AND LAWYERS' POLITICAL CONNECTIONS

	<i>Member of Congress</i>	<i>Staff for Congress Member</i>	<i>Cabinet Member</i>	<i>State Legislator</i>	<i>National Media</i>	<i>Local Media</i>
<i>Judges</i>	95.1%	74.4%	27.6%	89.2%	55.2%	91.8%
<i>Lawyers</i>	51.9%	44.4%	13.2%	58.7%	50.6%	70.2%

Source: Study of Leadership Characteristics, 1995.

On average, the attorneys surveyed say they speak with state or local elected officials almost eight times a year (see Table 4). Interestingly, lawyers in our sample are more likely to speak directly with members of Congress than to write them—attorneys wrote an average of 1.1 letters to Congress annually but reported speaking with a member of Congress an average of 2.4 times per year. In addition, these lawyers deliver an average

of four to five speeches a year at public meetings and contribute a mean of 1.4 articles to newspapers or magazines.

Like the attorneys in our sample, federal judges are more likely to talk with a member of Congress than to write a letter. On average, judges talk with members of Congress almost eight times a year and write them about three times annually. Judges speak with state and local officials even more frequently, averaging more than fourteen such conversations a year. Judges also deliver about six public speeches per year, but rarely appear on broadcast programs or contribute articles to the print media.

TABLE 4: ANNUAL POLITICAL PARTICIPATION

<i>Frequency per year</i>	<i>Judges</i>	<i>Lawyers</i>
<i>No. of TV or Radio Appearances</i>	.95	.49
<i>No. of Articles in Magazines</i>	.87	1.42
<i>No. of Speeches Given</i>	6.24	4.55
<i>No. of Letters to Members of Congress</i>	3.03	1.10
<i>No. of Talks with Members of Congress</i>	7.80	2.43
<i>No. of Talks with State and Local Officials</i>	14.27	7.75

Source: Study of Leadership Characteristics, 1995.

Members of the legal elite are also active in philanthropy. Lawyers in our sample contributed an average of \$14,485 to non-profit organizations in 1994. They donate an average of almost fifteen hours a month to community service. Judges donate an average of \$10,487 annually to charitable causes and volunteer about seven-and-a-half hours per month. Because the income of judges is, on average, substantially less than that of partners in prestigious law firms, these philanthropic disparities are less meaningful than they might appear.²⁵

25. Our survey asked respondents to report their incomes within a range. Because we did not solicit exact annual incomes, we cannot calculate an average household income, nor can we calculate annual charitable donations as a percentage of income.

V. WHAT DO AMERICANS THINK OF LAWYERS AND JUDGES?

Having compared lawyers' and judges' demographic characteristics, political and social views, and levels of political participation, we now examine public perceptions of the legal elite. Do national opinion studies support the conventional wisdom that Americans have little esteem for lawyers? Do Americans respect members of the judiciary? How do public perceptions of lawyers and judges compare and contrast?

Data from national public-opinion polls over the past few decades confirm the conventional wisdom that respect for the legal profession has declined over the past twenty years. Indeed, when comparing ratings for occupational prestige, honesty and ethical standards, and role model suitability, the data reveal a clear and consistent pattern: Americans no longer respect the legal profession. As the convenors of the Eleventh Annual Federalist Society National Lawyers Conference noted in 1997, the legal profession is indeed in a state of crisis—a crisis of public opinion.

First, consider ratings of occupational prestige. Polls conducted by Louis Harris and Associates, for example, reveal a decline in public perception of the prestige of the legal profession.²⁶ For decades, pollsters at the Harris organization have asked random samples of adult Americans to rate the prestige of a variety of occupations. Each profession is slotted as having "very great prestige," "considerable prestige," "some prestige," or "hardly any prestige at all." In 1977, almost 75 percent of respondents believed the legal profession had either very great or considerable prestige (see Table 5).²⁷ Twenty years later, public opinion has changed dramatically. A near majority (47 percent) of respondents to the same question in an April 1997 survey ranked the legal profession as having either some or hardly any prestige at all.²⁸

The prestige of lawyers relative to the other professions also has declined significantly. In 1977, lawyers ranked fourth out of

26. See Louis Harris and Associates Poll, Mar. 26-Apr. 1, 1997 [hereinafter 1997 Harris Poll] (telephone poll of 1006 national adults); Louis Harris and Associates Poll, Apr. 22-27, 1992 [hereinafter 1992 Harris Poll] (telephone poll of 1251 national adults); Louis Harris and Associates Poll, Oct. 8-16, 1977 [hereinafter 1977 Harris Poll] (telephone poll of 1533 national adults).

27. See 1977 Harris Poll, *supra* note 26.

28. See 1997 Harris Poll, *supra* note 26.

fifteen professions listed in the survey, placing their prestige precisely on par with that of clergy members.²⁹ By 1992, however, the legal profession fell to eighth in the rankings.³⁰ In the 1997 Harris poll, the prestige of lawyers dropped even further to tenth out of seventeen groups listed, falling behind businessmen and members of Congress.³¹

TABLE 5: RANKINGS OF THE OCCUPATIONAL PRESTIGE OF LAWYERS

	1977	1997
<i>Very Great</i>	36%	19%
<i>Considerable</i>	37%	33%
<i>Some</i>	20%	28%
<i>Hardly Any at All</i>	5%	19%
<i>Overall Rank Among Professions Listed</i>	4th of 15	10th of 17

Sources: Louis Harris and Associates Poll, March 26-April 1, 1997 (1006 national adults); Louis Harris and Associates Poll, October 8-16, 1977 (1533 national adults).

Other national surveys confirm this trend. According to Gallup polls, majorities of Americans consistently give pharmacists, members of the clergy, dentists, and doctors high ratings for honesty and ethics, yet no more than 27 percent of Americans surveyed since 1976 rate lawyers as highly ethical (see Table 6).³² Although a quarter of respondents in Gallup polls between 1976 and 1985 gave lawyers favorable ratings, only 16 percent of respondents to a 1995 Gallup national survey believe the honesty and ethical standards of lawyers are "very high" or "high."³³

29. See 1977 Harris Poll, *supra* note 26.

30. See 1992 Harris Poll, *supra* note 26.

31. See 1997 Harris Poll, *supra* note 26.

32. See Leslie McAneny, *Racial Divisions Evident in Ratings of Police, Lawyers*, GALLUP POLL MONTHLY, Nov. 1995, at 28, 31.

33. See *id.*

In a 1995 sample, lawyers ranked in a tie for seventeenth out of twenty-six occupations included in the Gallup survey, falling from a tie for fifteenth the previous year.³⁴ Although respondents rank lawyers above car salesmen and politicians in terms of honesty and ethics, they rank them below funeral directors, building contractors, reporters, and even public-opinion pollsters.³⁵

TABLE 6: RATINGS OF LAWYERS' HONESTY AND ETHICAL STANDARDS FROM 1976 TO 1996

	1976	1983	1988	1992	1994	1995	1996
<i>Rated High or Very High</i>	25%	24%	18%	18%	17%	16%	18%
<i>Overall Rank Among Listed Professions</i>	5th of 11	13th of 25	15th of 25	14th of 25 (tie)	15th of 26 (tie)	17th of 26 (tie)	15th of 26

Gallup Poll Question: Please tell me how you would rate the honesty and ethical standards of people in these different fields: very high, high, average, low, or very low?

Source: Gallup/CNN/USA Today Poll, December 9-11, 1996 (813 national adults).

A 1996 Gallup Poll reveals a two-percent increase in the combined percentages of respondents ranking lawyers as having high or very high levels of honesty and ethical standards.³⁶ In addition to the slight percentage increase, the overall ranking of lawyers rose from eighteenth to fifteenth out of the twenty-six professions named in the questionnaire (see Table 7).³⁷

Although the data show only slight differences in how men and women rate lawyers' ethical standards, the differences by race and educational background are both pronounced and provocative. More than twice as many blacks as whites (30 percent versus 14 percent) give lawyers high marks for honesty,

34. *See id.*

35. *See id.*

36. *See* The Gallup Poll, Gallup/CNN/USA Today Poll, Dec. 9-11, 1996 [hereinafter 1996 Gallup Poll] (telephone survey of 813 national adults).

37. *See id.*

and two-and-a-half times as many Hispanics as non-Hispanic whites (35 percent versus 14 percent) rate lawyers highly.³⁸

TABLE 7: RATINGS OF THE MOST HONEST AND ETHICAL PROFESSIONS (GALLUP POLL, DECEMBER 1996)

1. Pharmacists	64%
2. Clergy	56%
3. College Teachers	55%
3. Medical Doctors	55%
5. Dentists	54%
6. Engineers	49%
7. Police	48%
8. Funeral Directors	35%
9. Bankers	26%
10. Public-Opinion Pollsters	24%
11. Journalists	23%
11. TV Reporters	23%
11. Building Contractors	23%
14. Local Officeholders	19%
15. Lawyers	18%
16. Newspaper Reporters	17%
16. Business Executives	17%
18. Labor Union Leaders	16%
18. Real Estate Agents	16%
18. Stockbrokers	16%
21. Congressmen	15%
21. Senators	15%
23. State Officeholders	12%
24. Insurance Salesmen	11%
24. Advertising Practitioners	11%
26. Car Salesmen	8%

Source: Gallup/CNN/USA Today Poll, Dec. 9-11, 1996 (813 national adults).

Similarly, in 1995, white respondents ranked lawyers' honesty and ethics nineteenth out of the twenty-six listed occupations, with 14 percent giving lawyers high or very high rankings and approximately 48 percent ranking lawyers' ethics as low or very

38. *See id.*

low.³⁹ By contrast, African-Americans rated lawyers seventh out of twenty-six on the ethical scale.⁴⁰ About 35 percent of blacks characterized lawyers as highly or very highly ethical, although 27 percent of blacks gave lawyers low or very low ratings.⁴¹ Even when controlling for education, racial and ethnic differences appear to persist. In the 1996 Gallup Poll, for example, larger percentages of African Americans than whites at all educational levels gave lawyers high or very high ratings for honesty and ethical standards.⁴²

Generally speaking, however, belief in the honesty of lawyers is inversely proportional to years of education. Whereas only 11 percent of college-educated respondents gave lawyers high or very high ethical ratings, 30 percent of respondents with less than a high-school education ranked lawyers highly.⁴³

In August 1995, a survey by Michaels Opinion Research found that few people believe lawyers are good role models.⁴⁴ Only two percent of respondents considered lawyers excellent role models, but 78 percent of those surveyed classified lawyers as fair or poor role models.⁴⁵ Moreover, lawyers ranked eleventh out of fifteen comparison groups included in the survey, receiving lower ratings than athletes, journalists, and radio announcers. Only politicians, the music industry, the movie industry, and the television industry were deemed to provide poorer role models than lawyers.⁴⁶

Judges may fare better in the court of public opinion. Although respect for judges may have declined slightly over the past decade, many Americans still hold judges in high regard. When asked in a 1987 Yankelovich Clancy Shulman survey for *Time* to rank the ethical standards of various professionals as either high, low, or neither, more than half (55 percent) of respondents gave judges high rankings, compared to only 35 percent of respondents who said that lawyers have high ethical

39. See McAneny, *supra* note 32, at 32.

40. *See id.*

41. *See id.*

42. See 1996 Gallup Poll, *supra* note 36.

43. See 1996 Gallup Poll, *supra* note 36.

44. See Michaels Opinion Research, American Family Values Survey 1995, Aug. 9-26, 1995 (telephone poll of 1000 national adults conducted on behalf of the Massachusetts Mutual Life Insurance Company).

45. *See id.*

46. *See id.*

standards.⁴⁷ Judges ranked third out of the fifteen professions included in the questionnaire, lagging behind only members of the clergy (69 percent high rankings) and teachers (64 percent high rankings).⁴⁸

Similarly, in a 1995 poll conducted by Hart and Teeter Research Companies for NCS News and *The Wall Street Journal*, 48 percent of the respondents ranked judges' ethical standards as very high or high, and only 11 percent gave judges low or very low ratings (see Table 8).⁴⁹ In stark contrast, 18 percent of respondents gave lawyers high or very high rankings, and 41 percent said lawyers have low or very low ethical standards.⁵⁰

TABLE 8: COMPARISON OF RANKINGS OF HONESTY AND ETHICAL STANDARDS OF LAWYERS AND JUDGES

	<i>Lawyers</i>	<i>Judges</i>
<i>Very High</i>	3%	12%
<i>High</i>	11%	36%
<i>Average</i>	42%	40%
<i>Low</i>	24%	7%
<i>Very Low</i>	18%	4%
<i>Overall Rank</i>	5 of 5	2 of 5

Question: How would you rate the honesty and ethical standards of people in the following occupations: very high, high, average, low, or very low?

Source: NBC News/*Wall Street Journal* Poll, October 27-31, 1995 (1465 national adults).

VI. WHAT DO THEY THINK OF THEMSELVES?

As the previous Part indicates, trends in national opinion polls over the past couple decades suggest that the legal profession is losing the respect of the public but judges remain in fairly high regard. A final question remains: what do lawyers and judges think about their own professions? Do they share the public's sentiments? The Study of Leadership Characteristics provide

47. See Yankelovich Clancy Shulman, *Time*/Yankelovich Clancy Shulman Poll, Jan. 19-21, 1987 (telephone poll of 1014 national adults).

48. See *id.*

49. See Hart and Teeter Research Companies, NBC News/*Wall Street Journal* Poll, Oct. 27-31, 1995 (telephone poll of 1465 national adults).

50. See *id.*

some preliminary answers to these and other questions about insiders' views of the legal profession.

We asked each elite group in the survey an open-ended question to determine what members of each sample group perceive as the most important problem facing their profession. References to litigiousness marked the most common responses volunteered by lawyers (14 percent) (see Table 9). Concerns about the public image of lawyers ranked second (12 percent), followed by concerns about costs (9 percent).⁵¹ These answers demonstrate that public perception is among the chief concerns of legal practitioners.

TABLE 9: JUDGES AND LAWYERS' RANKINGS OF THE MOST IMPORTANT PROBLEM FACING THEIR PROFESSIONS

	<i>Judges</i>	<i>Lawyers</i>
<i>Case Load</i>	18%	
<i>Public Image</i>	12%	12%
<i>Congress</i>	11%	
<i>High Costs</i>		9%
<i>Litigiousness</i>	9%	14%

Source: Study of Leadership Characteristics, 1995.

Judges mentioned many of the same or similar problems as plaguing the American judicial system. The most common concern was an over-burdened case load (18 percent of judges), followed by adverse public perception (12 percent). The third most cited concern was congressional interference with the judicial process (11 percent), and nine percent of judges named litigiousness as the most important problem.

The survey also included three questions about the legal profession asked only of the elite lawyer sample (see Table 10). Like many of the statements analyzed earlier, respondents replied to this series of questions by saying if they "strongly agree," "somewhat agree," "somewhat disagree," or "strongly disagree." A majority of lawyers (54 percent) agreed with the

51. Sixty percent of lawyers agreed that the legal profession has become more proficient in serving clients, although only about 12 percent expressed strong agreement with the statement. In addition, 69 percent of lawyers surveyed said that fear of punitive damages often leads corporate clients to settle unmeritorious cases.

statement: "The current litigation explosion is undermining the economic and social well-being of the United States." Sixty percent of lawyers agreed that the legal profession has become more proficient in serving its clients, although one in three lawyers (32 percent) expressed strong agreement with that statement. In addition, 69 percent of lawyers surveyed say that the fear of punitive damages often leads clients to settle unmeritorious cases.

TABLE 10: LAWYERS' VIEWS OF THE LEGAL PROFESSION

	<i>Strongly Agree</i>	<i>Somewhat Agree</i>	<i>Strongly Disagree</i>	<i>Somewhat Disagree</i>
<i>The current litigation explosion is undermining the economic and social well-being of the United States.</i>	21.6%	31.9%	25.9%	20.7%
<i>The legal profession has become more proficient and effective in serving its clients.</i>	11.6%	48.7%	32.3%	7.3%
<i>The fear of punitive damage awards leads many corporate clients to settle unmeritorious cases or agree to excessive settlement payments.</i>	37.3%	32.0%	18.4%	12.3%

Source: Study of Leadership Characteristics, 1995.

VI. WHAT MAY WE CONCLUDE?

We find that federal judges and lawyers at the most prestigious national law firms are predominantly white, male, and affluent. Analysis of political variables demonstrates that judges are, as a group, conservative on most issues, and lawyers are political moderates. Judges and lawyers are both concerned about the impact of the exponential growth of litigation on society and about public perceptions of the legal profession. Although members of the American public maintain high regard for judges, the trend of public perceptions of lawyers reveals rapid and relatively consistent decline. Many Americans

now seriously question the ethical standards of lawyers, and few rank the legal profession as one of high prestige.

As noted in the Introduction, Alexis de Tocqueville regarded the legal profession in the United States (and he was quite aware of the tendency of Americans even then to turn political questions into legal questions) as a major source of stability.⁵² In a democratic nation, lawyers served an aristocratic function: They represented a significant element in the society, helping to keep populist forces in check and facilitating the stable integration of the liberal and democratic traditions. Tocqueville is obviously still partly right. Elite lawyers are, as of now, not a particularly radical lot. On the other hand, our data suggest that they are far more liberal than they were 30 years ago.

At the same time that public perceptions of lawyers have been declining, the role of lawyers and the legal profession has undergone dramatic changes. As the society becomes ever more litigious, law firms have jumped at the opportunities to increase the range of their activities and the compensation that such activities demand. The legal profession in this country (aided and abetted by various court decisions that changed its professional parameters) seems, to many, to have lost its moral bearings. Our data suggest that lawyers realize this trend and are ambivalent about it, even as they correctly recognize that their public prestige has declined substantially. The collapse of the old Protestant elite legal establishment opened many doors to reform and the reduction of inequities. Loss of the self restraint and dignity that once characterized the profession has transformed all too many lawyers into the kind of hustlers that the bar once strongly condemned.⁵³ Americans may not want to kill all the lawyers, but present trends do not bode well for the legal profession, or indeed, for the legal system itself.

52. See *supra* note 3 and accompanying text.

53. For examinations of changes in the American legal profession, see generally DIGBY E. BALTZEL, *THE PROTESTANT ESTABLISHMENT: ARISTOCRACY AND CASTE IN AMERICA* (1966); PHILIP K. HOWARD, *THE DEATH OF COMMON SENSE: HOW LAW IS SUFFOCATING AMERICA* (1994); PETER W. HUBER, *LIABILITY: THE LEGAL REVOLUTION AND ITS CONSEQUENCES* (1988); MARTIN MAYER, *THE LAWYERS* (1967); WALTER K. OLSON, *THE EXCUSE FACTORY: HOW TODAY'S EMPLOYMENT LAWS PROMOTE MEDIOCRITY IN THE WORKPLACE* (1997).

APPENDIX: STUDY OF LEADERSHIP CHARACTERISTICS
SAMPLE DESIGN

Bureaucrats: A random sample of members of the Senior Executive Service—high-ranking career civil servants—from Cabinet-level agencies and the Executive Office of the President, as listed in *Carroll's Federal Directory* and the *Federal Yellow Book*. The final sample size is 286.

Business Leaders: The original business sample was a random sample of the chief executive officers, presidents, and executive vice-presidents of Fortune 1000 companies. Midway through the interviewing process, we added a stratified random sample selecting the chief executive officer, the president, and an executive vice-president from companies selected in the first wave of the sampling. Sources included the *Financial Yellow Book* and *Corporate Yellow Book*. The final sample size is 168.

Federal Judges: A random sample of all members of the federal District Courts, the U.S. Courts of Appeals, and the U.S. Supreme Court as of March 1995, as listed in the *Federal Yellow Book* and *Carroll's Federal Directory*. The final sample size is 210.

Lawyers: A random sample of partners in *American Lawyer* top-100 law firms, as listed in the *Martindale-Hubbell Law Directory*. The final sample size is 235.

Media: A random sample of journalists and editors from the largest news organizations in various media outlets, as listed in the *Media Yellow Book*. The media outlets included major newspapers (*The New York Times*, *The Washington Post*, *The Wall Street Journal*, *USA Today*, and *The Los Angeles Times*); major newsweeklies (*Newsweek*, *Time*, and *U.S. News and World Report*); news organizations of the largest television networks (ABC, CBS, CNN, NBC, and PBS); and a major national wire service. The final sample size is 242.

Religious Leaders: A random sample of leaders of religious denominations, editors of leading religious publications, presidents of seminaries and schools of theology, and individuals in leadership positions at national religious organizations. The final sample size is 269.

TV and Movie Makers: A random sample from a list of directors, producers, and writers-creators of the top-20 grossing

films and top-20 ranked television series of the past seven years. The final sample size is 119.