

# LAWYERS AND THE STRUCTURE OF INFLUENCE IN WASHINGTON

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with

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Despite the widespread perception that lawyers exercise considerable influence over national policy making in the United States, their participation in the process has previously received little systematic empirical analysis. Based on a variety of evidence gathered in interviews with more than eight hundred Washington representatives, including data on their work, careers, contacts with government agencies, networks of acquaintance, and relationships with clients, we argue that lawyers are not as prevalent, active, or influential in national policy making as the popular image suggests. Rather, the findings indicate that lawyers occupy a relatively specialized niche in the system of interest representation, one that allows them to command substantial economic rewards and to maintain a measure of independence and autonomy in their work, but that limits their influence in policy formation.

## I. INTRODUCTION

In 1952, Charles Horsky (1952: 10), a leading partner in the Washington law firm of Covington & Burling, gave a series of lectures in which he asserted that the Washington lawyer

has become an essential part of our present scheme of government. His function, broadly, is that of principal interpreter between government and private person, explaining to each the needs, desires, and demands of the other. His corollary function is that of seeking to adjust the conflicts that inevitably arise. . . . [I]n acting on behalf of his *client*, the lawyer has an important influence on *government*.

Horsky's characterization of Washington lawyers remains impor-

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tant. It reflects one of the canons of American legal and political history—that law and lawyers play a central role in national politics. This perception was rooted in Tocqueville's observation ([1835–40] 1945; see also Bryce, [1891] 1912; Ferguson, 1984) that lawyers constituted the leading political class in the early years of the nation and it has been sustained by numerous more recent accounts of the significance of lawyers as the architects of economic and political development in the late nineteenth and early twentieth centuries (Hurst, 1959; Bloomfield, 1976; Keller, 1977; Skowronek, 1982) and during the rise of the modern regulatory state in the New Deal (Irons, 1982; Auerbach, 1976).

Developments in the three decades since Horsky delivered his lectures suggest that lawyers have now assumed an even more significant role in the American polity. Although their share of congressional seats has diminished somewhat,<sup>1</sup> they continue to dominate Congress, holding 60 percent of the Senate seats and 44 percent of the House seats in 1983 (Congressional Quarterly, 1983). Lawyers are also among the most visible elements of a vast, rapidly growing establishment of private representatives in Washington.<sup>2</sup> The increasing numbers of lawyers working in Washington no doubt reflect the dramatic expansion in the scope and complexity of federal law and regulation since the 1960s and thus are part of a larger phenomenon, often described as a “law explosion,” in which lawyers and courts allegedly play an increasingly influential role in the decision-making processes of American society (see Friedman, 1985: esp. 1–34; Galanter, 1983). Nowhere is the potential political power of lawyers more salient than in Washington itself. Characterizing the city's lawyers as “among the most powerful people in the country today,” Green (1975: 4; see also Goulden, 1972) dubbed them *The Other Government*. Virtually any journalistic listing of the most influential private representatives in Washington from the 1950s to the present includes a group of notable lawyers—Dean Acheson, Thurman Arnold, Abe Fortas, Thomas Austern, Clark Clifford, Leonard Garment, Robert Strauss, and Thomas Boggs, for example (see, e.g., Cassels, 1951; *Business*

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<sup>1</sup> In the 71st through the 75th Congresses (which were in session from 1929 to 1938), from 61 percent to 76 percent of the members of the Senate and from 56 percent to 65 percent of the members of the House of Representatives belonged to the legal profession (Schlesinger, 1957).

<sup>2</sup> As elsewhere in the United States, the number of lawyers in Washington more than doubled between 1970 and 1980, but the city has a ratio of lawyers to population that is ten times higher than that of any other metropolitan area in the nation (Curran, 1985: 583). Moreover, Washington is a locus of activity for numerous nonresident lawyers. Of the 35,000 members of the District of Columbia Bar Association, some 10,000 live outside the Washington area (letter from Director of Finance and Administration, District of Columbia Bar Association, to Michael Powell, March 2, 1981). Between 1965 and 1983, the number of out-of-town law firms maintaining branch offices in Washington grew from 45 to 247 (Martindale-Hubbell, 1965; *Legal Times of Washington*, September 24, 1984: Supplement A1–40).

*Week*, April 23, 1966: 86; Hennessee, 1967; Goulden, 1973; *Time*, March 3, 1986: 26–36). This mass of historical, statistical, and journalistic evidence would seem to provide more than ample support for Horsky's assertion that lawyers play an essential role in national policy making.

Equally significant but far more controversial is the second element of Horsky's analysis—the assertion that Washington lawyers use their influence to adjust the conflicts that arise between government and private interests. In a lecture delivered in the same year as Horsky's, Parsons (1964: 384) presented a strikingly similar model of the influence of lawyers but one that was not limited to the Washington context. Parsons admitted that “the lawyer tends to be both permissive and supportive in his relation with his clients,” but argued that “there is another side to the picture”:

He is after all schooled in the great tradition of the law. As a member of a great profession he accepts responsibility for its integrity, and his whole position in society focuses that responsibility upon him. His function in relation to clients is by no means only to “give them what they want” but often to resist their pressures and get them to realize some of the hard facts of their situations, not only with reference to what they can, even with clever legal help, expect to “get away with” but with reference to what the law will permit them to do. In this sense then, the lawyer stands as a kind of buffer between the illegitimate desires of his clients and the social interest. Here in a sense he “represents” the law rather than the client.

Horsky and Parsons thus see lawyers as deriving considerable power from their expertise, and argue that they use that power as a positive normative influence.

The Horsky/Parsons model of the lawyer-as-mediator may be important to theories of law and politics, for it can be seen as supplying at least a partial solution to one of the central dilemmas confronting capitalist democracy: the problem of maintaining social integration in the face of intense conflict among competing economic actors (Schumpeter, 1950: 131–163). The roots of the thesis that professionals might play a special role in the creation of consensus in the modern polity are traceable to Durkheim ([1908] 1958), who argued that professional associations involved in the administration of the state could act as the source of a new civic morality that would transcend the pursuit of narrow self-interest by emerging industrial organizations. The prospect of an autonomous professional stratum capable of maintaining a normative framework for legal and political discourse continues to excite contemporary analysts. The legal profession's most recent manifesto on professionalism, the report of the American Bar Association's Commission on Professionalism (1986), repeatedly asserts that the autonomy of lawyers from their clients is an essential condition of their ability to serve the public interest. What is clearly normative

in the ABA report is held to be descriptive by some scholars. Hallday's (1987) analysis of the role of the Chicago Bar Association in Illinois politics, for example, argues that the legal profession's collective activities have had a significant positive impact on the development of modern systems of law and government, and Rosen's (1984) analysis of corporate counsel holds out hope that lawyers can induce clients to behave in morally acceptable ways.

There surely are few contexts in which lawyers could have more opportunity for positive influence than in Washington, the dominant center of law and politics in the United States, but neither element of Horsky's conception of the Washington lawyer is unchallenged in the literature. Many of the same commentators who argue that lawyers are influential in Washington have decried their lack of both independence from clients and commitment to the public interest (Green, 1975; Nader, 1970), and much of the recent scholarship on the legal profession challenges the notion that lawyers, especially those working in the corporate sector, are autonomous from their clients (Heinz and Laumann, 1982; Nelson, 1985). Moreover, a series of studies question and qualify the orthodox view that lawyers constitute an especially influential political category. Lawyer-legislators have been found to behave no differently from other politicians (Derge, 1959, 1962; Eulau and Sprague, 1964), raising doubts about the distinctiveness of lawyers' contributions to the political process. A number of historians suggest that lawyers appear to have withdrawn from positions of political power in American society into more narrowly defined professional roles (see, e.g., Bloomfield, 1976; VanderMeer, 1985). This shift is attributed in large part to the "professionalization project" of American legal elites, in which they are characterized as seeking to enhance their professional status within the emerging industrial order by exchanging direct political involvement for the role of "politically neutral" experts (see Keller, 1977: 351-353; Gordon, 1983; 1984). Thus, the model of the modern lawyer is changed from that of a community leader with broad-ranging involvement in political and social affairs—Daniel Webster, if you will (Mills, 1951: 121; Newmyer, 1967; Ferguson, 1984)—to that of a university-trained legal technician, whose claim to influence is based on knowledge about legal strategy—Joseph Flom, if you will. From this perspective, lawyers are seen as deserting the arenas of political choice for the precincts of law firm practice. Even more heretically, some scholars claim that lawyers possess very little real power in American society (Heinz, 1983) and that their major importance is as a source of ideology about the nature of social relations (Gordon, 1983).

Despite the significance of the questions that Horsky's account raises about the influence and autonomy of Washington lawyers, there has been little systematic research on the roles that lawyers play in national policy making. This article intends to supply some

of the missing evidence. Our findings indicate that lawyers are not as pervasive, active, or influential in national policy making as the popular image would suggest. But this probably does not result from an intentional withdrawal from positions of power. Rather, the entire system of private representation in Washington has undergone a structural shift that has transformed the bases of influence in policy making. Lawyers now occupy a relatively specialized niche in this system, one that allows them to reproduce themselves economically and to maintain a sense of independence and autonomy in their work, but that sharply limits the nature of their influence over the formation of policy.

After describing the scope and design of our research, we identify the major work roles of Washington representatives and locate lawyers within that system of work. We then compare the careers of lawyer and nonlawyer representatives to determine whether lawyers follow distinctive career paths. Finally, we analyze the place of lawyers in three broad aspects of the structure of influence in Washington—the contacts between representatives and government agencies, the relationships among elite representatives, and the structure of relationships between representatives and clients.

## II. THE RESEARCH DESIGN: LAWYERS, INTEREST REPRESENTATION, AND THE STRUCTURE OF INFLUENCE

Our analysis is based on a study of private representation in Washington—that is, of the personnel and processes involved in the representation of private interests before the federal government. The data are taken from interviews conducted in 1983–84 with a sample of some eight hundred representatives working in the fields of agriculture, energy, health, and labor policy.<sup>3</sup> The list of representatives was developed through telephone interviews with a sample of 311 “client” organizations found to be active in the respective policy areas.<sup>4</sup> We asked the informants in those or-

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<sup>3</sup> Each of these policy domains was given an operational definition. In the case of energy, for example, we defined the policy domain as follows:

Policies concerned with the production, distribution, and consumption of fuels used for the generation of heat, light, or motive power, whether for ultimate consumption in industrial, commercial, institutional, or residential settings. The fuels include oil, natural gas, manufactured gas (propane), other petroleum byproducts, alcohol, coal, electricity (whether generated by fossil fuel, nuclear fission, water, or other means), synthetic fuels, and stored solar energy.

<sup>4</sup> We used four sources to construct the list of organizations active in each domain: “The Information Bank” of the New York Times Information Service for 1977–82; the abstracts of congressional hearings before relevant committees and subcommittees of the 95th through the 97th Congresses; face-to-face interviews with 20 to 23 government officials in each domain; and *Washington Representatives 1981* (Close and Colgate, 1981), a directory of organizations represented before the federal government. We confined searches of published

ganizations to name up to four “key” representatives inside the organization, such as officers, employees, and directors, and up to four “key” external representatives, such as law firm attorneys, independent consultants, or trade association personnel. The sample of representatives was drawn from these nominations.<sup>5</sup> In addition to the random sample, we systematically identified 72 “notable” representatives (18 from each domain) for special treatment.<sup>6</sup> The final part of the design was a set of interviews with 301 government officials randomly chosen from a list of those named by the representative-respondents as being among the five officials they contacted most often.

Note that we permitted each client organization to nominate only four internal and four external representatives in a given policy field. While this made the task of generating a list of representatives more manageable and tended to produce a sample with roughly comparable relationships with client organizations, it tends to exclude those representatives holding lower-level staff positions inside client organizations or in the law or consulting firms that represent other organizations. Probably for this reason, the sample contains relatively few junior associates in law firms.<sup>7</sup>

Cost dictated the limitation of our research to four policy fields, or domains, but there are also conceptual reasons for the limits and the choices we made. National policy making consists of a daunting array of institutional forums, interest groups, and substantive concerns. To draw any inferences about the roles of representatives, it is necessary to focus on a delimited set of agencies and policy issues. We chose the agriculture, energy, health, and labor areas for intensive examination because they present theoretically interesting differences in the constellation of interest groups, in the level and form of conflict among groups, and in the age or stability of institutional structures. We also thought that the role of lawyers would vary across these policy domains. We expected agriculture and health to be less “lawyered” than energy and labor

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sources to subject matters relevant to the domains being studied. The sampling probabilities were weighted by number of mentions of the client organizations, thus producing a sample that reflects level of activity in a given domain. The response rate for client organizations was 78 percent; 10 percent refused, and 12 percent could not be located, were located overseas, or had ceased to exist. For a full discussion of sampling procedures, see Nelson *et al.*, 1987.

<sup>5</sup> Face-to-face interviews averaging more than an hour were conducted with those representatives in the District of Columbia and several other major cities; some 19 percent were interviewed by phone using an adapted format. The response rate for representatives was 77 percent; 10 percent refused, and we could not find or schedule interviews with 13 percent of the sample. We completed interviews with 776 randomly sampled representatives.

<sup>6</sup> Thirty of the notables had not been selected in the random sample. The response rate of the notables was 93 percent.

<sup>7</sup> For a more extended discussion of the consequences of this sampling approach for our findings, see nn. 9 and 10 below and accompanying text.



because direct bureaucratic negotiation is more prevalent in agriculture and health than are formal adjudicatory, licensing, and rule-making procedures. Substantive experts—including farmers and doctors—might therefore compete more effectively for policy-making positions in government and private organizations in these domains.<sup>8</sup>

Our analysis is based on a conception of the policy-making process that goes well beyond the typical focus on decision making by government bodies. We have attempted to measure several aspects of the system of relationships among public and private actors—what we call the “structure of influence.” To develop a full understanding of the policy-making process and the nature of influence wielded by various participants in the process, it is necessary to examine the social structures in which policy making takes place, including networks of acquaintance among representatives and between representatives and government officials, patterns of substantive and institutional specialization, and political and social ties among various groups of representatives. The structure of these ongoing relationships both reflects and shapes how interest organizations, representatives, and government officials interact in the course of efforts to direct national policy making.

Such a socio-structural approach departs from the previous research on lobbyists and lawyers. Despite the volume of literature on interest groups (see, e.g., Truman, 1951; Olson, 1965; Moe, 1980; Walker, 1983; Schlozman and Tierney, 1986) and occasional references in that literature to the individuals who perform representative functions (see, e.g., Moe, 1980: 97–100; Wilson, 1973: 305–325; Berry, 1977: 79–109), no systematic study of interest representation has examined the relationships among individual representatives, interest organizations, and specific policy-making contexts. The research on lobbyists, as such, is either dated or of limited empirical scope (see Milbrath, 1963; Zeigler and Baier, 1969; DeVries, 1960; Kolasa, 1971; Zeigler and Van Dalen, 1971; Cherington and Gillen, 1962). Studies of Washington lawyers are limited to a few historical works (Irons, 1982; Auerbach, 1976) and largely anecdotal reports (Green, 1975; Goulden, 1972; *George Washington Law Review*, 1970; Horsky, 1952). Although discussions of lawyers, law firms, and reform litigation are now standard entries in contemporary works on interest representation (Berry, 1984: 130–131, 196; Schlozman and Tierney, 1986: 99–100, 358–385), the literature neither explicitly compares lawyers and nonlawyers nor attempts to assess the relative standing or influence of lawyers and other representatives.

Because we examine the activities, attitudes, and relationships of lawyers and other representatives rather than the content of the law they produce, we are open to the charge that we ignore the

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<sup>8</sup> For a full discussion see Nelson *et al.*, 1987; Laumann *et al.*, 1985.

qualitative significance of lawyers' work in the policy-making process and the fact that law or legal consciousness (whether held by lawyers or nonlawyers) is a critical, constitutive element of policy-making institutions. Legal rules may affect how policy options are formulated, debated, and adopted even though lawyers and courts are not directly involved in the process. Moreover, because the law defines the boundaries of institutions and the rights of the parties involved, it forms a fundamental but largely invisible backdrop to events in the political realm (see, e.g., Gordon, 1983). We are aware, therefore, of the need to exercise appropriate caution in interpreting our findings.

Nonetheless, our approach has its virtues. While it is true that we have not attempted to analyze the ideological content of lawyers' work, we do examine the system in which that work is produced and the kinds of relationships that such ideological production entails. At the very least, the behavior we analyze is not unrelated to the ideological or institutional dimensions. Indeed, because both the ideological and instrumental impact of law is heavily dependent on the behavior of lawyers (see, e.g., Gordon, 1984; Macaulay, 1979; Rosenthal, 1974; Galanter, 1974), among the most promising approaches to the study of the role of law in a social system is an examination of the activities and social organization of lawyers within that system. Our analysis should therefore complement qualitative or historical analyses of the roles of lawyers in national policy making (see Trubek, 1984).

### III. LAWYERS AND THE DIVISION OF LABOR IN WASHINGTON REPRESENTATION

#### A. *The Prevalence of Lawyers*

A first step in assessing the role of lawyers in the system of private representation in Washington is to understand the range of types of representatives active in that system as a whole. Table 1, which reports the distribution of organizational positions across the four policy domains, demonstrates that different kinds of organizations predominate. Business and trade association representatives are most prevalent in agriculture and energy; nonprofit organizations, professional associations, and citizen-government groups predominate in health; and labor unions and trade associations are the principal actors in labor. More striking, however, is the fact that organization officers and employees are far more prevalent than are law firm attorneys or freestanding consultants. Such independent representatives make up no more than 21 percent of any one domain and only 18 percent of representatives overall. The largest proportion of representatives hold executive positions in organizations, followed by the government affairs employees of the organizations.

Relatively constant across domains, but also relatively modest



**Table 1.** Organization Position of Representatives by Domain\*

Organization Position	Domain				All %
	Agriculture %	Energy %	Health %	Labor %	
<b>Executives</b>					
Business	4	13	4	2	6
Nonprofit organizations	4	4	8	3	5
Trade associations	37	21	5	13	19
Unions	1	1	1	11	3
Professional associations	1	2	16	1	5
Citizen-gov't groups	5	3	13	6	7
<b>Government affairs</b>					
Business	2	14	3	1	5
Trade associations	12	7	1	8	7
Unions	3	1	1	11	4
Professional associations	0	1	12	1	3
Citizen-gov't groups	2	1	10	2	3
Inside legal counsel	3	8	4	9	6
Research staff	8	11	6	14	10
Law firm attorneys	15	14	11	16	14
Consultants	5	3	4	5	5
<b>Total</b>	<b>102</b>	<b>104</b>	<b>99</b>	<b>103</b>	<b>101</b>
<b>(N)</b>	<b>(192)</b>	<b>(184)</b>	<b>(206)</b>	<b>(194)</b>	<b>(776)</b>

\* Chi-square  $p \leq .01$ .

Note: Percentages may not sum to 100 due to rounding.

in numbers, are those representatives holding "law positions," that is, inside legal counsel and law firm attorneys. Overall, only one in five of the representatives holds a legal position. The highest proportion in any domain is in labor, where almost one in four is in a law position. The percentages increase if we define a "lawyer" as any representative who has a law degree. As Tables 2 and 3 report, 34 percent of the sample hold law degrees. Thus, almost one-third of the representatives educated in law occupy nonlegal positions. The largest number of these are the executives of trade associations. Business and citizen-government organizations also have an above-average proportion of lawyers in nonlaw positions.

Of course, no baseline exists that would inform us about whether these findings show a "lot" of lawyers or a "little." The percentage of lawyers is lower than that among members of Congress, but roughly consonant with the proportions found in other studies of lobbyists. Some 43 percent of Milbrath's (1963: 71) sam-

Table 2. Law Degree and General Work Activities of Representatives by Domain

Domain	% with Law Degree <sup>a</sup>	General Work Activities					N
		% Time on Conventional Law Practice <sup>a</sup>	% Time on Federal Policy <sup>b</sup>	% Time on State Policy <sup>a</sup>	% Time on Organizational Duties	% Time on Other Activities <sup>b</sup>	
Agriculture	27.6	8	42	9	33	8.3	188
Energy	37.0	6	47	10	32	4.9	179
Health	30.1	7	38	11	35	8.5	206
Labor	41.8	11	40	7	33	7.7	193
All domains	34.0	8	42	9	33	7.4	766

<sup>a</sup>  $p \leq .05$ <sup>b</sup>  $p \leq .01$

Table 3. Law Degree and General Work Activities of Representatives by Organization Position

Organization Position	% with Law Degree*	General Work Activities						N
		% Time on		% Time on		% Time on		
		Conventional Law Practice*	Federal Policy*	State Policy*	Organizational Duties*	Other Activities		
Executives								
Business	23.3	1	33	11	47	8.5	43	
Nonprofit organizations	11.4	0.1	32	10	47	10.6	34	
Trade associations	25.7	1	43	9	39	7.3	140	
Unions	12.0	0.4	23	7	66	4.2	24	
Professional associations	15.8	2	30	9	43	15.2	38	
Citizen-government organizations	15.4	4	28	19	44	6.1	50	
Government affairs								
Business	22.9	0.0	57	9	31	2.3	35	
Trade associations	13.0	0.3	56	9	28	6.7	54	
Unions	13.3	0.0	60	6	29	5.5	30	
Professional associations	22.2	1	54	6	34	5.2	27	
Citizen-government organizations	29.6	0.2	55	11	29	4.1	27	
Inside legal counsel	100.0	23	34	12	28	2.9	47	
Research staff	4.0	0.8	42	10	36	11.0	75	
Law firm attorneys	100.0	42	39	5	10	3.9	108	
Consultants	14.3	0.6	46	9	23	21.3	34	
All	34.1	8	42	9	33	7.4	766	

\*  $p \leq .05$

ple of registered lobbyists were legally educated, as were 35 percent of Berry's (1977: 88) sample of public interest group lobbyists. The proportion of lawyers in Zeigler and Baier's (1969: 44) four-state study of state lobbyists ranged from a low of 10 percent in Utah to a high of 42 percent in North Carolina. One might expect, however, that lawyers would be more prevalent among Washington representatives than our findings indicate. The legal profession is, after all, the only one that has the representation of clients as its primary mission. Many of the skills associated with law practice, such as drafting and interpreting rules, using the techniques of advocacy, making oral and written presentations, and negotiating, are presumably useful in federal policy representation. Thus either nonlawyer representatives must have developed the same skills or lawyers must have been unable for some reason to capitalize on their comparative advantage. Moreover, given both the dramatic growth in the number of lawyers in the District of Columbia and the expansion of federal regulation in the 1970s, one might expect the presence of lawyers to have increased, certainly since the 1950s, but even in the last decade. One of the informants interviewed during our preliminary field work in 1982 (a representative who had held a congressional staff position dealing with health policy and was himself a lawyer) suggested that the proportion of lawyers among the lobbyists contacting him had increased from 10 percent in 1971 to 50 percent by 1978. Our data do not support such an assertion for representation as a whole.

We must enter a strong caveat with respect to our findings on the prevalence of lawyers among representatives. Recall that our sample is derived from nominations by persons inside client organizations who were asked to name the organizations' "key" representatives. This approach might lead to a low proportion of lawyer representatives for two reasons. First, by limiting the nominations to individuals playing a role as a "key" representative, we might have excluded those who represent the organization on an intermittent or specialized basis. After the informant had given us the list of nominations, we asked how frequently each representative had represented the organization in the last few years. Some 75 percent of all representatives named were reported to have regularly represented the organization. Of those representatives who were based in law and consulting firms, some 73 percent and 71 percent, respectively, were said to have represented the organization on a regular basis. If we had constructed the conceptual universe of representatives more broadly to include more than "key" representatives, would we have found a greater proportion of lawyers? We do not think so, but we cannot be certain. The second reason is that, even given the limitation to "key" representatives, we might have obtained nominations that were biased toward organizational insiders because the informants were themselves in-

siders and thus more aware of the representational activities of their fellow employees.

There are, however, several indications that our findings on the prevalence of lawyers are not a methodological artifact. The informants in the client organizations appear to have tried to name virtually all individuals who were significant participants in the representation of the organization in the policy domain. Some 40 percent of the organizational informants named the maximum number of internal representatives allowed (four), but only 23 percent could name as many as four external representatives. Thus, if the limit caused any underenumeration, it is more likely to have been an underenumeration of the inside representatives.<sup>9</sup> More-

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<sup>9</sup> To assess the extent to which these limits may have biased the composition of the sample by making it over- or underinclusive of either type, in the summer of 1987 we reinterviewed a sample of the client organizations. Sixty organizations, 15 from each of the 4 policy domains, were randomly selected from those that had reached the limit on one or both of the questions. We were able to obtain responses from 51 of these 60 organizations, for a response rate of 85 percent. (A few of the organizations had ceased to exist in the intervening four years, and some of the persons interviewed originally had moved on. In these latter cases, we were sometimes able to locate another informant who was familiar with the situation in the organization during 1983.) Telephone interviews were again used.

Of the 51 organizations that were reinterviewed, 39 had named the maximum of 4 internal representatives. These organizations were asked whether there were other organizational employees, of comparable importance to their representational work, who would have been named if we had not imposed the limit. Only 7 of the organizations indicated that additional internal representatives would have been named—4 named only 1, 1 named 2, 1 named 3, and 1 named 4. Thus, 13 more internal representatives would have been named by these 39 organizations if we had not imposed the limit. In the 1983 interviews, these organizations had named a total of 156 internal representatives.

Nineteen of the 51 organizations had originally named the maximum of 4 external representatives. These organizations were therefore asked whether they would have listed others if we had not imposed the limit. Only 2 of the 19 organizations responded that they would have done so, and each would have added only 1 external representative.

Thus, for this sample of 51 organizations that had reached the maximum of 4 names in 1 or both of the categories, the new responses indicate that an unlimited solicitation of names might have elicited about 13 more organizational employees, but only 2 more external representatives. We might conclude, therefore, that we have somewhat underenumerated the internal representatives. Had we imposed no limits, the external representatives would thus appear to be an even smaller part of the picture. (Keep in mind that, from the point of view of these organizations, a representative employed by an industry's trade association will be "external" to any of the individual corporations that are members of that association. Thus, by no means will all of these external representatives be found in law firms or consulting firms.)

We should not exaggerate the extent of the bias in the composition of the sample. For the 51 organizations included in our 1987 survey, the difference in the number of nominations between 1983 and 1987 would have been 191 versus 204 internal representatives and 123 versus 125 external representatives. For organizations that did not reach the limit—which was the case for 60 percent of them on the internal representatives question and 77 percent on the external representatives listing—there would of course be no difference. These names would then have been included on the master list, which we subsequently sampled randomly.

In the 1987 telephone survey, we also asked the organizational informants to estimate the percentage of the work of representing the organization that is

over, the pattern seems to reflect a genuine difference in the relative use of internal and external representatives rather than a bias of the informants. Only 31 percent of all organizations surveyed reported that they regularly retained law firms for advice and representation, and one-half (51.4 percent) reported that they never used law firms for such purposes (Laumann and Heinz, 1985: 480). It seems unlikely that the client informants would have failed to nominate lawyers playing a substantial role in the representation of their organization when they were contacted by researchers from the American Bar Foundation in connection with a study of the role of lawyers in national policy making, were questioned directly about their use of external representatives for a long list of tasks (see *ibid.*, pp. 478–479), and were asked to name the law firms they consulted in the domain. And, as we noted above, the estimates of the proportion of lawyers in our sample are not greatly different from the findings of earlier research on lobbyists (Milbrath, 1963; Berry, 1977) or from other contemporary listings of Washington representatives.<sup>10</sup>

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performed inside the organization, by organizational employees, *versus* that being done by representatives located outside that organization, whether in another interest group or a free-standing law firm or consulting firm. The average percentage of their representational work that is performed by employees of the organization is, we were told, 76 percent. We also asked whether this allocation of representational work had changed between the time of the original interview and the summer of 1987. More than 90 percent indicated that it had not.

<sup>10</sup> In the course of developing the research design, we canvassed several alternative listings of representatives and lawyers before concluding that it was necessary to generate a list of nominations from interest organizations. One source considered was *Washington Representatives 1981* (Close and Colgate, 1981), a directory of organizations and representatives that is based on annual questionnaires sent to organizations and representatives and on compilations from lobbying registration lists, congressional hearings, and the dockets of regulatory agencies. We generated from this directory a list of representatives for each domain by first compiling the organizations listed under relevant industry headings for the domain and then referring to the list of representatives for each organization. We next coded representatives as either lawyers or nonlawyers based on organizational title and consultation with Martindale-Hubbell's (1981) directory of lawyers.

This analysis yielded the following proportions of lawyers among representatives: 38 percent in agriculture, 39 percent in energy, 32 percent in health, and 17 percent in labor. For two domains, energy and health, the proportion of lawyers is just two percentage points higher than the proportion of representatives with law degrees in our sample. For agriculture, the estimate from our sample is 10 percent lower than that produced from the directory; in labor, 41.8 percent of the representatives in our sample have law degrees, some 24 percentage points higher than the proportion of lawyers found in the analysis of the directory. The large discrepancy in labor apparently resulted from the directory's underenumeration of business organizations that, while active in labor policy, do not fall in the directory's categories of labor organizations. These organizations employ and retain a substantial number of lawyers, certainly more than the labor unions, which were predominant among the organizations in the directory listings.

Although we ultimately decided to supplement the directory with other sources and to interview interest organizations directly to determine who their representatives were, the comparisons are informative. In only one of the four



The lack of lawyer domination of policy representation becomes even more apparent when one examines the broad categories of work performed by representatives. The percentage of time devoted to different activities by incumbents of different organization positions is reported in Table 3.<sup>11</sup> If we use the percentage of work time devoted to federal policy matters as the measure of participation in policy making, we find that both internal and external lawyers devote less than the average amount of time to such activities. Government affairs personnel and trade association executives spend a significantly larger proportion of their time on federal policy than do representatives in law positions. Since the numbers of government affairs and trade association executives are also greater, it is clear that they do the largest share of the work of policy making.<sup>12</sup>

Conventional law practice is given the lowest percentage of time of any of the specified categories. Naturally enough, it attracts a substantial portion of the time of only the two legal positions. Even representatives who have had a legal education do not become much involved with conventional legal work unless they

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domains did our strategy yield a significantly lower proportion of lawyers, and in one domain our approach yielded a much higher proportion than the directory listings.

<sup>11</sup> We asked respondents to indicate how they had allocated their time among the 5 general work activities listed in Table 3 over the last twelve months by checking whether they had spent 0%, 1 percent–5 percent, 6 percent–25 percent, 26 percent–50 percent, or more than 50 percent of their time in each activity. Respondents were instructed to differentiate between conventional law practice and policy activity as follows: “Please include [under conventional law practice] all time spent on regular legal work, including case by case matters that do not shape policy to a significant extent. Test cases, administrative rulemaking, legislative advice and advocacy—work that shapes policy—should be included under policy activity.” A small number of respondents reported spending no time in policy activity, even though their responses to other questions indicated substantial involvement in various policy issues and with government agencies and officials. These cases were assigned a minimum value of 1 percent–5 percent on federal policy time. (We did not follow the common practice of assigning the sample mean to these cases, choosing instead to make a more conservative and, for these cases, more realistic estimate of policy involvement.)

There may be a response bias against reporting time in conventional law practice if respondents perceived that the study was less interested in this type of representation. Given the sponsorship of the research by an organization identified with lawyers, the high status of respondents, and the degree of variance observed in reports of time spent on law practice, however, we do not think the responses are significantly biased.

<sup>12</sup> In an earlier paper we determined, on the basis of these time allocation data, that there are three role types among representatives, which correspond to the organizational positions they hold: (1) policy specialists, consisting of government affairs positions, trade association executives, and consultants; (2) organizational operatives, consisting of executives (other than trade association executives) and internal staff; and (3) lawyers, consisting of inside counsel and law firm attorneys. The policy specialists are far more actively involved in federal and state policy than other representatives, while organizational operatives devote most of their attention to organizational affairs. Lawyers are the only representatives devoting a significant portion of their time to law practice (see Nelson *et al.*, 1987 173–176).

hold a job that defines them as a lawyer. Of the 108 lawyer-representatives in nonlegal positions, only 11 reported spending more than 5 percent of their time on conventional law practice.

Washington representatives in law positions are distinct not only from other representatives but also from other lawyers nationally. On the average, they spend almost as much time on policy work as on law practice. But this was, after all, a sample of Washington representatives, selected because they had been identified as being active in policy making.

### *B. Task Differentiation*

The representation of private interests before the federal government entails a broad set of tasks, not all of which are performed by the same representatives. These include offering formal advocacy before Congress, federal agencies, or courts, maintaining contacts with other interest groups or with government officials, monitoring proposed changes in rules and regulations, and mobilizing public support. Few of these activities are, as a matter of licensing, the exclusive province of lawyers. Therefore, it is not clear a priori what classes of representatives would perform most of these tasks and, in particular, whether lawyers would perform distinctive functions. To examine these task profiles, we presented respondents with a lengthy inventory of activities and asked them to indicate how important each was in their work as a representative. Table 4 lists the eighteen items, the loading of each on four factors produced from a factor analysis of the items, and the percentage of respondents reporting each to be of "considerable" or "great" importance.<sup>13</sup>

It is clear from Table 4 that there are four readily interpretable factors. The first appears to be a government relations dimension. All items that load highly on this factor concern interactions with the government, including maintaining formal communications (such as drafting legislation or providing written information to officials), maintaining informal contacts with officials, and monitoring changes in public law. The second factor concerns maintaining interactions with and monitoring nongovernment groups

<sup>13</sup> The loadings can be interpreted as the degree to which the items are related to the unobserved factors, whereas the marginal percentages reveal the relative prominence of the items for the representatives. The 4-factor solution, estimated with the unweighted least-squares method, explained 46.2 percent of the total variance, which is the sum of within-task variation for the 18 tasks. As usual, the solution is not unique. The loadings reported in Table 4 were determined through varimax rotation, a technique that spreads out the (squares of) the loadings on each factor as much as possible and allows the identification of groups of large and small coefficients for each factor. Our purpose in applying factor analysis here is to make sense of a complicated set of correlations among the 18 tasks. To that end, we adopted the liberal stand that the 5-point scale of task importance can be treated as a continuous scale and assumed that other standard statistical conditions of a common factor model hold.

**Table 4. Importance Ratings of Representatives' Tasks: Factor Pattern and Percentage Distribution**

Variable Number	Task Description	Factor 1: Government Relations/ Substance	Factor 2: Interest Group Networks	Factor 3: Public Relations	Factor 4: Litigation	% Reported as of Great or Considerable Importance to Their Work
<b>Government relations/substance</b>						
1	Monitoring changes in rules, regulations or laws	.70	.17	.04	.17	62.4
2	Providing written information to officials	.64	.11	.38	.10	51.9
3	Maintaining general relations with officials	.58	.50	.10	-.12	63.9
4	Maintaining informal substantive contacts with officials	.55	.43	.20	-.05	62.4
5	Drafting legislation or rules	.47	.10	.37	.33	27.3
6	Alerting client organization about issues	.42	.29	.17	-.01	83.7
<b>Interest group networks</b>						
7	Mobilizing grass-roots support	.10	.61	.28	-.06	40.7
8	Maintaining contacts with allies	.43	.60	.14	-.03	50.1
9	Monitoring interest groups	.44	.51	.11	.12	28.9
10	Political fundraising (PACs)	.09	.50	-.01	.02	19.0
11	Maintaining contacts with adversaries	.37	.46	.15	.14	17.8
12	Resolving conflicts within organization	.14	.35	.20	.19	23.4
<b>Public relations</b>						
13	Testifying at official proceedings	.10	.15	.73	.16	27.4
14	Preparing official testimony	.41	.00	.71	.16	47.2
15	Commenting for press, publications, or speeches	.07	.31	.43	.05	43.8
16	Developing policy positions or strategies	.33	.24	.35	.03	82.9
<b>Litigation</b>						
17	Litigation aimed at changing policy	.05	.02	.10	.77	17.4
18	Working on and filing amicus briefs	.06	.03	.11	.66	5.2

through actions such as mobilizing grass-roots support and maintaining contacts with allies and adversaries. Factor three consists of public relations activities such as testifying at official proceedings and commenting for the press. The final factor, litigation activity, is clearly distinct. Two items, "working on litigation aimed at changing policy" and "working on and filing amicus briefs," are most clearly associated with this factor. But note that item 5, "drafting legislation or rules," also has a relatively high score on the fourth factor, indicating an affinity between activities characteristically performed by lawyers. Note also that, of the eighteen tasks, the two litigation items are rated of "great" or "considerable" importance by the smallest percentages of the representatives. Thus, this finding adds more support to the hypothesis that distinctive lawyerly tasks are relatively marginal to the policy-making process.

To analyze the distribution of these task clusters across organizational positions and between lawyers and nonlawyers, we report in Table 5 a breakdown of mean factor scores by organization position and by law position.<sup>14</sup> A clear pattern emerges. Government affairs personnel and trade association executives have the highest scores on both the government relations and interest group network functions. The two groups of practicing lawyers place second and third on the government relations factor, suggesting the relative importance of official contacts and communications in their work. But the lawyer positions have low scores on interest group networking. Executives score negatively on all but interest group networks. Their primary role in representation is organizational decision making, which involves contacts with other members of the organization or other groups within the same industry or constituency, but little else. Internal staff score highest on the public relations function. The strongest pattern in the table, however, is seen among the scores of the legal positions on litigation. All other categories score negatively on that factor, while inside counsel and law firm attorneys register positive scores roughly double the highest scores of any other group on any other factor.

As in the time allocation data, lawyers in nonlegal positions are more similar to nonlawyers than to those in lawyer positions. The lower panel of Table 5 shows that on two of the three factors for which there are statistically significant differences among the

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<sup>14</sup> The factor scores are the estimates of the scores of each representative on the 4 unobserved factors. To fix the scale measurement, the standard deviation of each factor has been set equal to 1. A multidimensional scalogram analysis consistently found that trade association executives were more similar in their task profiles to government affairs representatives than to other executives. Therefore, in Table 5 we have grouped trade association executives with government affairs personnel.

**Table 5.** Representatives' Scores on Four Factors of Tasks by Organization Position and Law Position<sup>a</sup>

Position	Factor 1: Government Relations/ Substance	Factor 2: Interest Group Networks	Factor 3: Public Relations	Factor 4: Litigation	<i>N</i>
<b>Organization Position</b>					
Government affairs <sup>b</sup>	.18	.38	.10	-.19	314
Executives	-.26	.01	-.03	-.11	188
Internal staff	-.22	-.40	.22	-.22	75
Inside legal counsel	.12	-.34	-.07	.69	47
Law firm attorneys	.04	-.59	-.22	.76	108
External consultants	-.01	-.33	-.38	-.44	34
All					765
<i>p</i> (F test)	≤.001	≤.001	≤.001	≤.001	
<i>R</i> <sup>2</sup>	.049	.189	.030	.201	
<b>Law position</b>					
Inside legal counsel	.12	-.34	-.07	.69	47
Law firm attorneys	.04	-.59	-.22	.76	108
Law degree in nonlegal position	.10	.27	.15	.02	108
Other	-.04	.10	.02	-.23	503
All					765
<i>p</i> (F test)	.288	≤.001	.011	≤.001	
<i>R</i> <sup>2</sup>	.005	.103	.015	.205	

<sup>a</sup> Factor scores are expressed as deviations from the sample mean, which has been set equal to 0 for each factor.

<sup>b</sup> Includes trade association executives.

categories, the scores of law degree holders are farther from the scores of other lawyers than they are from those of nonlawyers.

These data further weaken the image of lawyers as the dominant actors in Washington representation. The division of labor in the system is determined primarily by organizational position, not by professional education. The distinctive attribute of the representatives in legal positions is their involvement in the most lawyerly of functions—litigation. But, as Table 4 reported, the two tasks dealing with litigation were rated least important. This does not necessarily mean that litigation is unimportant to policy making, an issue that we address below. It does appear, however, to be relatively unimportant to the work of representatives. Practicing lawyers rank relatively high on the government relations factor, which entails such core representative functions as contacting government officials and drafting legislation and rules, but we find that government affairs officers and trade association executives score even more highly on these functions.

### C. *Specialization by Field*

The data on both time allocation and task differentiation suggest that the activities of representatives occupying legal positions fall within the purview of the traditional lawyerly role, namely formal representation and advocacy. As we reported in an earlier paper (Nelson *et al.*, 1987: 176–184), measures of the scope of their work indicate that lawyers are substantively more specialized than are other representatives. Internal counsel and law firm attorneys typically spend time in fewer areas of federal policy and devote a greater proportion of their time to their principal substantive field than do other representatives. They also are more specialized in terms of institutional contacts. Representatives in law positions regularly deal with a smaller number of government agencies than do other representatives. They are much more likely to concentrate exclusively on agencies in the executive branch, while other representatives deal with the legislative branch as well.

These data imply that if lawyers have much influence on policy making, it must be in particular institutional settings or substantive areas. To examine this possibility, we have compared the allocation of lawyers' time across substantive policy fields to the time allocations of the rest of the sample. Table 6 presents these data for a set of subfields within each domain.<sup>15</sup> The findings are reported separately for representatives occupying legal positions—that is, internal counsel and law firm attorneys—and nonlegal positions. The profiles of legally educated representatives in nonlegal positions were again little different from those of nonlawyer representatives, and they are therefore not treated separately.

The three columns to the right in Table 6 aid in the interpretation of the findings. The *p* values indicate whether there are significant differences in the distributions of the groups on the time variable.<sup>16</sup> The next column reports the percentage of law-educated representatives among those who spend more than one-half of their time in the subfield. Thus, this is a way of measuring the proportion of the “specialists” in any given subfield who are lawyers. The column to the far right gives the code that we assigned to each subfield based on a rule of thumb concerning the involvement of lawyers.

The table contains clear patterns in terms of the presence or absence of lawyers. In agriculture, lawyers are overrepresented among specialists in foreign trade, commodities trading, and food safety, but underrepresented in food welfare, land use, and agricultural finance. In energy, they are overrepresented in the nuclear,

<sup>15</sup> We developed the lists of subfields through substantial field work and pretesting to ensure that they were reasonably distinct and comprehensive. Results are based on total time spent within the domain.

<sup>16</sup> The chi-square probabilities reported here are for the cross-tabulation of law position (those in legal positions versus those who are not) by time spent in the subfield.



oil, and coal subfields and absent from the alternative energy sources subfields. In health, lawyers are overrepresented in the food and drug area, a traditional specialty of Washington law firms, and they also tend to predominate in the regulation of both health care providers and the health professions. The largest group of specialists among lawyers is in health care payment and insurance, a specialty that has expanded dramatically since the adoption of Medicare and Medicaid. Lawyers are not alone in this subfield, however; indeed, they make up only 20 percent of its specialists. Lawyers are entirely absent from the areas of public health and manpower training. In labor, lawyers are predominant in labor relations, employment standards, and occupational safety, but are underrepresented in two subfields with major budgetary significance—jobs programs and social security—as well as immigration. Private pensions, one of the growth fields in labor law, contains a significant number of law specialists, but they are complemented by substantial numbers of nonlawyers.

The common thread running through these findings is that lawyers predominate in fields in which the primary institutional actors are the courts or regulatory agencies. Foreign trade, commodities trading, food safety, nuclear energy, food and drug regulation, labor relations, employment standards, and occupational safety are largely controlled by specific regulatory bodies that follow, at least in part, formal adjudicatory procedures. The regulation of health care providers and the health care professions, two areas that one does not usually associate with legal institutions, were, during the period in question, under active consideration by the Federal Trade Commission. The subfields in which lawyers are underrepresented are those in which the principal activity takes place in Congress, such as jobs programs and social security, or in the policy-oriented units of executive branch agencies, such as the public health, manpower training, and alternative energy subfields.

Another pattern worthy of comment is the tendency of lawyers to specialize more narrowly than other representatives. Especially in agriculture and energy, lawyers are more likely than others to spend either no time or a majority of their time in a given subfield. Other representatives devote time to a large array of subfields, monitoring the whole portfolio of their employer's interests, but lawyers tend to concentrate on particular fields. As a result, although fewer in number than other representatives, lawyers are often overrepresented among the specialists in substantive fields.

These findings further refine our knowledge about the place of lawyers in private representation. The source of their influence is neither their pervasiveness among representatives, for they are outnumbered by nonlawyer representatives, nor is it their control of the decision-making processes of interest groups, for executives

Table 6. Time in Subfields by Representatives in Legal Positions versus Nonlegal Positions<sup>a</sup>

Domain	Legal Positions				Nonlegal Positions				p	% Lawyers Among Representatives Spending +50% Time in Subfield		Code for Lawyer Specialty <sup>c</sup>	
	% Time on Subfield		% Time on Subfield		% Time on Subfield		% Time on Subfield			N	+50%		+50%
	0%	1%-5%	6%-50%	+50%	0%	1%-5%	6%-50%	+50%					
Agriculture	32				140								
Price supports	66	9	9	16	44	9	36	11	d	25	Y		
Foreign trade	50	9	19	22	32	19	43	6	e	44	X		
Commodities trading	63	9	9	19	70	21	7	2	e	67	X		
Food safety	63	9	16	13	52	21	22	5		36	X		
Food welfare	94	6	0	0	71	12	14	3	d	0	Z		
Land use	78	3	13	6	44	23	20	13	e	10	Z		
Agricultural finance	72	9	19	0	45	29	24	3	d	0	Z		
Energy	39				130								
Nuclear	49	15	23	13	41	20	35	5		45	X		
Oil	44	18	26	13	35	21	39	6		38	X		
Natural gas	46	15	13	26	27	16	43	14	e	36	Y		
Coal	59	15	18	8	26	22	49	4	f	38	X		
Alternate energy sources	62	23	15	0	30	37	30	3	e	0	Z		
Conservation	56	28	10	5	39	30	26	5		22	Y		
Electric	41	15	31	13	49	19	22	10		28	Y		
Energy taxes	54	21	23	3	34	24	41	2		33	Y		
Health	24				153								
Regulation of providers	33	13	38	17	33	17	44	6		33	X		
Regulation of professions	33	13	42	13	44	25	30	1	e	60	X		
Payment insurance	17	21	33	29	23	51	33	18		20	Y		
Food and drug	50	13	13	25	58	19	16	7		35	X		
Biomedical research	67	13	13	8	43	16	30	11		11	Y		
Public health	83	4	13	0	28	24	37	11	f	0	Z		
Manpower training	79	13	8	0	46	26	24	4	d	0	Z		

Labor	39	129	54	X
Labor relations	39	33	27	X
Employment standards	51	5	39	X
Jobs program	62	0	40	Z
Immigration	87	3	17	Z
Occupational safety	59	15	26	X
Private pensions	44	15	10	Y
Social security	74	10	28	Z
Civil rights—EEO	49	13	24	Y
International trade	67	18	28	Y

<sup>a</sup> As percent of time spent on particular domain. Each row under Legal Positions and Nonlegal Positions adds to 100%, with the number of cases for a given set of rows reported above the appropriate panel.

<sup>b</sup> Lawyers are defined as those occupying legal positions.

<sup>c</sup> X = Lawyers twice as likely to spend +50%; Y = mixed; Z = Lawyers less than one-half as likely to spend +50% on the field.

<sup>d</sup> Chi-square  $p \leq .05$

<sup>e</sup> Chi-square  $p \leq .01$

<sup>f</sup> Chi-square  $p \leq .001$

and government affairs officers are far more actively involved in these dimensions of representation. Rather, their influence stems from specialized knowledge concerning the operation of particular substantive regulations and institutional settings. The power of lawyers in policy making is thus contingent on the strategic importance of the institutions and substantive areas in which they are active. Lawyers will be key actors in policy decisions that utilize or create formal procedures for the resolution of conflicts or the implementation of policies, such as we find in labor relations, employment standards, or nuclear licensing. The institutional structure of these fields places them within the "primary institutional sphere" of the legal profession's cognitive skills (see Halliday, 1987). The National Labor Relations Board, for example, is a body made up of lawyers that adjudicates claims of unfair labor practices with reference to federal labor law and its own prior decisions. Effective representation before it requires a lawyer. Client organizations are likely to consult their own labor lawyers before making tactical decisions concerning labor practices, and proposals to change the labor laws are likely to involve the specialists who apply them. But in other major policy areas that are less concerned with formal procedures, such as legislation on jobs programs, lawyers do little.

This invites questions about the origins of the institutional structures that are controlled by lawyers. One could argue that the finding is circular, and that it is the power of lawyers that leads to the development of the sorts of formalized procedures they dominate, not the reverse. But if lawyers are so powerful, why does their involvement vary so much by subject matter and institutional location? If proceduralization is the result of a conspiracy of lawyers, the conspiracy has not been a universal success. Moreover, the history of the subdomains in which lawyers are more prevalent suggests that proceduralization is a response to other social forces. The food and drug laws, for example, resulted from muckraking exposés and prominent incidents of food and drug poisoning (Friedman, 1985: 46–47). Similarly, the Wagner Act,<sup>17</sup> which created the present institutional apparatus in labor relations, was a response to ongoing conflicts between organized labor and business and the failure of an earlier, simpler regulatory scheme (Irons, 1982: 203–53). While lawyers no doubt played a prominent role in the development of the procedural structures and rules governing these fields, the demand for their services appears to have been independent of any manipulation by lawyers;

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<sup>17</sup> The National Labor Relations Act, ch. 372, 49 Stat. 449 (1935) (current version at 29 U.S.C. §§ 151–168 (1970)) as amended by the Labor Management Relations (Taft-Hartley) Act, ch. 120, 61 Stat. 136 (1947) (current version at 29 U.S.C. §§ 141–187 (1970)), and by the Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959, Pub. L. No. 86–257, 73 Stat. 519 (codified in scattered sections of 29 U.S.C.).

and, as the recent wave of deregulation suggests, the lawyers' apparatus of procedures is not immune to shifts in demand.

#### IV. PATHS TO POLICY INVOLVEMENT: LEGAL EDUCATION AND THE CAREERS OF REPRESENTATIVES

Even within the category of lawyer-representatives, there are at least two quite different types of Washington lawyers, each of whom enter the system of representation through different career routes and perform different functions. One is the legal specialist, who attends a prestigious law school, pursues a career in a major Washington law firm, and devotes a substantial amount of time to conventional law practice. The other is the lawyer-lobbyist, who is far more likely to gain entry to Washington through political activity or a government position and who devotes most of her time to policy work. For the latter, a law degree may have relatively little effect on what she does; for the former, it is crucial.

Much of the literature comparing the political roles of lawyers and nonlawyers focuses on career differences. Eulau and Sprague (1964), for example, advance the thesis that the disproportionate involvement of lawyers in politics results from a convergence between legal and political careers. Not only are the contacts lawyers make in the course of their practice relevant for political office seeking, but many of the risks and costs inherent in seeking and holding political office are also said to be smaller for lawyers than for other occupational groups. Political exposure aids professional practice. Another theory offered to explain the high levels of political involvement by lawyers is that legal education develops cognitive skills or role expectations that are well suited to law making. One of our law students asserted in the course of a class discussion that it is "as natural to find lawyers in legislatures as it is to find chefs in a kitchen. Lawyers make law, after all. That's what they do." Gold (1961) has made much the same argument, suggesting that because lawyers are accustomed to procedurally oriented systems of decision making, they are better able to negotiate and compromise in the legislative process.

These notions, although they deal with the propensity of lawyers to hold public office rather than private positions, suggest that lawyers may "naturally" gravitate toward certain roles within the system of representation. Our primary concern here is to determine how legal education compares with other aspects of career development in affecting the participation of representatives in federal policy making. For both methodological and substantive reasons, we chose time spent on federal policy as the measure of current policy involvement. Self-reports about the amount of time one devotes to an activity can be a relatively objective and comprehensive behavioral measure of involvement (see Szalai *et al.*, 1972). Moreover, time spent on federal policy is significantly and posi-

tively correlated with other measures of the scope and intensity of policy activity, including the number of government agencies contacted in the domain, the number of policy-making events in which a respondent was interested, and the number of acquaintances the respondent claimed among a group of notable representatives. For the sake of parsimony, we have converted time spent on federal policy work into a dichotomous variable, distinguishing respondents who devote more than half of their time to federal policy from those who devote less.<sup>18</sup>

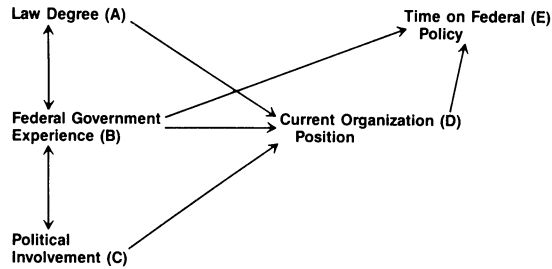
We examined the paths that lead to a high level of involvement in federal policy work through the analysis of three variables that denote particular aspects of career development—obtaining a law degree, working in the federal government, and being involved in electoral politics—and a variable that reflects the status of career development at the time of the interview—current organization position. Past political involvement was measured by whether the respondent had ever been involved in a political campaign on more than a casual basis. We measured federal government experience by whether a representative had ever held a full-time, paid position with the federal government, excluding judicial clerkships and military service. Current organization position is a four-category variable consisting of: (1) executives, (2) government affairs personnel and trade association executives, (3) internal staff, and (4) external representatives. Note that, although none of these positions is explicitly a law position, some 40 percent of the internal staff positions are held by internal legal counsel and 80 percent of the external representative positions are held by law firm attorneys.<sup>19</sup> The full array of the data concerning these relationships is reproduced in the five-way table contained in the Appendix.

<sup>18</sup> The original categories for the variable were 0 percent, 1 percent–5 percent, 6 percent–25 percent, 26 percent–50 percent, and more than 50 percent. Given the number of variables and categories used in the analysis, it was advantageous to dichotomize time spent on federal policy, but we carefully considered the impact of doing so. The results of the model selection procedures reported below were the same when we trichotomized the time variable (0 percent–25 percent, 26 percent–50 percent, and more than 50 percent). Moreover, in the analysis of models that did not include the 4-category organization position variable, we included models using a 4-category time variable. In moving from a 2- to a 4-category variable, we again found no change in results.

<sup>19</sup> In constructing the organization position variable in this fashion we again recognized the similarity in the tasks performed by trade association executives and government affairs representatives (see nn. 12 and 14, above). Also we chose to split that portion of the sample that did not hold an executive or government affairs position into internal staff and external representatives rather than divide them between legal and nonlegal positions. If we had defined some of the categories of the organization position variable according to whether they were legal versus nonlegal positions, it would have created a greater overlap in the information contained in the measures of law degree and organization position. This would have posed technical problems due to the presence of zero cells in the table (because only individuals with law degrees can hold law positions). The approach we have followed allows us to study the effects of both law degree and the employment relationship more ef-



Figure 1. The Determinants of Time Spent on Federal Policy Work.



From the analysis of the relationships among the variables we can determine whether the careers of lawyer-representatives follow a distinctive path and whether their career patterns have consequences for their current organization position and levels of involvement in federal policy. For example, are legally educated representatives more active politically? Are they more likely to have held a government position? How do early career experiences combine to lead to current organization position? Does having a law degree affect the level of policy involvement within the categories of organization position so that, for example, executives with law degrees are likely to be more active in policy work than other executives?

Figure 1 presents a model of the relationships among the five variables, which we derived by testing three sets of log-linear models (see Goodman, 1972, 1973a, 1973b; Fienberg, 1980). The first set of models examined the relationships between law degree, federal government experience, and political activity. The second group of models analyzed the effects of law degree, federal government experience, and political activity on the allocation of individuals into different organization positions. The third set of models tested the direct (that is, net or partial) effects of the prior variables on time spent on federal policy.<sup>20</sup> Tables 7–9 present selected results from the comparison of models in the three stages of the analysis. The arrows in Figure 1 represent statistically significant direct effects among the lettered variables according to the three models selected at each stage.

Table 7 indicates that legally educated representatives are neither more nor less likely to have been actively involved in political campaigns than other representatives. (Some 41 percent of representatives with law degrees have been active in political cam-

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actively than if we used the occupational characteristics of representatives to define organization position.

<sup>20</sup> Some 13 percent of those representatives who held federal jobs and law degrees attended law school after starting federal employment. Similarly, 22% of those who held federal jobs and who had been politically active were first actively involved in a campaign after they started working for the federal government. Therefore, we have made no assumptions about the temporal ordering of these three career experiences.

paigns compared to 43 percent of those without law degrees.) Contrary to what Eulau and Sprague (1964) found for state legislators, it appears that for representatives legal training and political involvement are alternative, not convergent, routes to participation in policy making. Legal education and political activity each are positively associated with federal government experience, which, in turn, has a direct and positive effect on policy involvement. But there is no evidence that legal training leads to political involvement and then to higher levels of policy activity.

All three prior variables significantly affect the allocation of representatives to their current organizational positions, however. Table 8 reveals that dropping any of these variables will result in models that have a poorer fit. But most striking is the explanatory power of organization position on federal policy time. The models in Table 9 that include a term for the effect of organization position on policy time [DE] fit the data well; those models that do not contain this term fail to achieve a good fit. The only other variable that has a direct effect on federal policy time, net of the effect of organization position, is federal government experience. Neither legal education nor political involvement has such direct effects. The three models together thus present a clear pattern of the paths to high levels of policy activity. Although legal education increases the probability of federal government experience and tends to channel individuals into particular organization positions, it has no direct effect on policy involvement. The alternative route to federal government experience, political involvement, also affects the organizational positions representatives attain, but it too has no direct effect on policy involvement.

The pattern of relationships among these five variables may be more readily grasped by examining the direction of the bivariate relationships across the four categories of the organization position variable. Table 10 presents the data in this form. The largest concentration of individuals with law degrees is found among the external representatives, the category that includes law firm attorneys. While almost two-thirds of this group possess federal government experience, only about one-third devote a majority of their time to federal policy. In contrast, of the government affairs representatives and trade association executives, many have held government positions, half have been active politically, and a majority spend more than half of their time on federal policy making. Hence, government affairs representatives are somewhat more likely than external lawyers to convert federal employment into active involvement in policy making.

The nature of government experience also varies by organization position. Some 62 percent of those government affairs officers and trade association executives who held federal government posts had held congressional positions, but only 34 percent of the external representatives with government experience had been

**Table 7.** Chi-Square Values for Some Models Pertaining to Relationships Among Law Degree (A), Federal Government Experience (B), and Political Involvement (C)<sup>a</sup>

Model	Likelihood Ratio Chi-square	Degrees of Freedom	Probability Value
[AB][BC][AC]	2.32	1	.127
[AB][BC] <sup>b</sup>	3.45	2	.178
[BC][A]	20.02	3	.000
[AB][C]	13.76	3	.003

<sup>a</sup> Data for these analyses are presented in the Appendix. For the system of variables, see Figure 1.

<sup>b</sup> Denotes the model selected.

**Table 8.** Chi-Square Values for Some Models Pertaining to Relationships Among Law Degree (A), Federal Government Experience (B), Political Involvement (C), and Organization Position (D)<sup>a</sup>

Model	Likelihood Ratio Chi-square	Degrees of Freedom	Probability Value
[ABC][AD][BD][CD] <sup>b</sup>	14.31	12	.282
[ABC][BD][CD]	177.81	15	.000
[ABC][AD][CD]	31.18	15	.008
[ABC][AD][BD]	28.08	15	.021

<sup>a</sup> Data for these analyses are presented in the Appendix. For the system of variables, see Figure 1.

<sup>b</sup> Denotes the model selected.

**Table 9.** Chi-Square Values for Some Models Pertaining to Relationships Among Law Degree (A), Federal Government Experience (B), Political Involvement (C), Organization Position (D), and Time Spent on Federal Policy Work (E)<sup>a</sup>

Model	Likelihood Ratio Chi-square	Degrees of Freedom	Probability Value
[ABCD][BE][CE][DE]	20.29	26	.725
[ABCD][AE][BE][DE]	20.31	26	.777
[ABCD][BE][DE] <sup>b</sup>	20.58	27	.806
[ABCD][DE]	42.76	28	.037
[ABCD][BE]	87.15	30	.000

<sup>a</sup> Data for these analyses are presented in the Appendix. For the system of variables, see Figure 1.

<sup>b</sup> Denotes the model selected.

**Table 10.** Organization Position by Law Degree, Political Involvement, Federal Government Experience, and Time on Federal Policy

	% With Law Degree <sup>a</sup>	% Political Involvement <sup>b</sup>	% Federal Experience <sup>a</sup>	% Spending +50% Time on Federal Policy <sup>a</sup>	<i>N</i>
Executives	16.2	37.4	38.2	19.8	184
Government affairs <sup>c</sup>	22.2	50.2	45.0	55.7	313
Internal staff	40.7	32.5	35.8	37.7	122
External representatives	78.9	39.7	64.8	34.8	140
All	34.0	42.3	45.5	40.2	759

<sup>a</sup>  $p \leq .001$

<sup>b</sup>  $p \leq .01$

<sup>c</sup> Includes trade association executives.

employed in Congress. An analysis of the titles of government jobs held by representatives suggests that lawyer-representatives typically held explicitly legal positions, while other representatives held posts that were more clearly political in nature or involved substantive policy making. Of the 106 representatives in law positions, 59 (56 percent) held nothing but legal positions. In contrast, of the 158 government affairs officers and trade association executives who had held federal jobs, 118 (75 percent) held politically appointed jobs. While it is clear that different organizational positions are recruited from different types of government experience, it is also true that organization position has an effect on policy involvement that is independent of recruitment patterns. For instance, even though a substantial percentage of executives had government experience, only a relatively small proportion of executives devote a majority of their time to federal policy. Thus, while the organizational functions performed by government affairs representatives and trade association executives reinforce their involvement in policy making, the functions performed by those in other organization positions detract from their participation in policy making.<sup>21</sup>

<sup>21</sup> The model represented in Figure 1, on which we rest our interpretation, might be questioned on three grounds. First, federal policy time might be confounded with organization position as we have defined it so that, because organization position is more temporally proximate to current behavior than are the other background variables, the finding of a strong relationship between the two variables is trivial. Second, given the strong association between federal policy time and organization position, the absence of direct effects between some of the background variables and federal policy time might be a statistical artifact of the system of variables. Third, there might be plausi-

These findings underscore the observation that lawyers do not have a special calling for policy making. The proportion of representatives with law degrees who spend a majority of their time on federal policy is virtually identical to the proportion in the sample overall (41.3 percent versus 40.2 percent, respectively). When one looks at those in law positions, only 32.9 percent devote a majority of their time to policy work. Legal education is primarily important in channeling individuals into federal government employment, typically in executive branch positions, which then leads to private law positions that include some federal policy work. The path that leads to the highest levels of policy activity starts not with law school but with political involvement, followed by federal employment (usually as congressional staff), and then by a position as a government affairs officer or trade association executive. Legal education may be a more generally accessible route to participation in policy making than is the route that depends on political involvement and congressional experience, but it also appears to be a route to a more limited form of participation based on particular technical skills and substantive knowledge. The more "political" careers of government affairs and trade association personnel typically lead to greater levels of involvement in policy

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ble alternative conceptions of the causal ordering among federal policy time, organization position, and the background variables.

With respect to the first of these issues we should note that our definition of organization position does not logically imply given levels of policy activity. Among a sample of key representatives, already a select group, we might expect that prior career experience, more than formal title, would determine the level of time spent on policy work. Indeed, we found substantial variance in federal policy time within each organization position. Hence, even though we knew from the analysis of time allocation patterns that organization position was an important correlate of policy involvement, without a multivariate analysis we did not know whether organization position had an effect independent of other variables.

Second, the strong relationship between organization position and federal policy time does not dictate that other variables in the system will have no direct effect on federal policy time. Government experience has as strong an effect on federal policy time as organization position; each variable explains 22 units of chi-square per degree of freedom. Moreover, there are some 20 units of chi-square left unexplained in the selected model. If either law degree or political experience had explained four units of chi-square, the effect of removing the variables from the model would have been significant at the .05 level. Because the direct effects of these variables on policy time fell far short of this level of explanatory power, they were dropped from the final model.

Third, the causal model set out in Figure 1 is the only model that fits the data. One might pose as alternative causal models that either (1) background variables determine federal policy time, which in turn determines organization position (as a kind of *ex post facto* recognition of an individual's activity), or (2) organization position determines background variables in that individuals of a given set of background experiences are selected into particular organization positions, and that the background variables in turn determine federal policy time. Under either alternative, if organization position were dropped from the analysis, there should be a direct effect between the background variables and policy time. In a set of analyses in which we dropped organization position, however, we replicated the findings reported in Figure 1 namely, that only government experience had a direct effect on federal policy time.

work and quite possibly to more influence over the course of policy deliberations than that exhibited by lawyer-representatives.

## V. LAWYERS AND THE STRUCTURE OF CONTACTS WITH GOVERNMENT INSTITUTIONS

An essential dimension of the structure of influence in Washington representation is access to the government agencies and officials that function as the core of the policy-making system. The reputed power of Washington lawyers rests in large part on the perception that they possess a special ability to be heard in strategically important government institutions (see, e.g., Green, 1975). We sought to test this conventional wisdom behaviorally, that is, by determining which representatives are in contact with government agencies on a regular basis. Again, the data do not support the popular image of the influence of lawyers.

### A. *Overall Patterns*

To analyze the patterns of contacts between representatives and government institutions, we presented the respondents with an extensive listing of government agencies with jurisdiction in their policy domains and asked them to indicate how often they had contacted those agencies during the last year.

Tables 11 and 12 report the number of representatives who contacted selected agencies "several times" or "regularly" and the percentage of each group holding law degrees. Table 11 contains an equivalent set of agencies, comparable across domains, while Table 12 includes an illustrative set of agencies that are unique to the given domains.

The findings are consistent with those on tasks and fields of specialization. Even using the broadest definition of a lawyer—that is, someone possessing a law degree—lawyers predominate only in the courts and in a small number of agencies that have incorporated formalized adversary proceedings, such as the Economic Regulatory Administration in energy (which administered and still adjudicates claims under oil pricing regulations in effect between 1973 and 1981), the Federal Trade Commission in health, and the National Labor Relations Board (NLRB) and Equal Employment Opportunity Commission in labor. At the highest levels of the executive branch—the White House, the Office of Management and Budget, and the secretariats of cabinet departments—lawyers are just slightly more prevalent than they are in the sample overall. In energy and labor, two domains containing relatively high proportions of lawyers, lawyers make up a substantial portion of the representatives with contacts at the top of the executive establishment. But in these domains as well, the profession is just barely overrepresented compared to its presence in the areas. The pattern is more uneven with respect to the secretariats of cabinet



**Table 11. Percent Law Degree Holders Among Representatives Contacting Selected Government Institutions<sup>a</sup>**

	Agriculture		Energy		Health		Labor	
	% with Law Degree	Total with Contacts (N)	% with Law Degree	Total with Contacts (N)	% with Law Degree	Total with Contacts (N)	% with Law Degree	Total with Contacts (N)
White House	28	54	42	57	31	48	45	47
Office of Management and Budget	35	40	46	37	32	62	49	47
Senate Republican leadership	23	75	39	72	23	65	37	65
House Democratic leadership	18	88	40	65	21	76	32	71
Major Senate committee	24	118 <sup>b</sup>	39	114 <sup>c</sup>	30	104 <sup>b</sup>	34	98 <sup>b</sup>
Major House committee	19	112 <sup>c</sup>	44	80 <sup>f</sup>	28	109 <sup>f</sup>	35	92 <sup>a</sup>
Cabinet department—Office of secretary	22	95 <sup>d</sup>	38	77 <sup>e</sup>	33	85 <sup>f</sup>	33	61 <sup>l</sup>
Federal Court of Appeals	70	10	93	28	73	15	87	31
Federal District Courts	73	15	94	18	59	22	80	35
Total in domain with any contacts	27	176	39	165	29	194	44	172

<sup>a</sup> Contact is defined as having had contact "several times" or "regularly" during the last year.

<sup>b</sup> Senate Agriculture Committee

<sup>c</sup> House Agriculture Committee

<sup>d</sup> Department of Agriculture (USDA)

<sup>e</sup> Senate Committee on Energy and Natural Resources

<sup>f</sup> House Committee on Energy and Commerce

<sup>g</sup> Department of Energy (DOE)

<sup>h</sup> Senate Committee on Labor and Human Resources

<sup>i</sup> House Subcommittee on Health

<sup>j</sup> Department of Health and Human Services (HHS)

<sup>k</sup> Senate-House Education and Labor Committee

<sup>l</sup> Department of Labor (DOL)

**Table 12.** Percent Law Degree Holders Among Representatives Contacting Selected Government Institutions Within Policy Domains<sup>a</sup>

	% with Law Degree	Total with Contacts ( <i>N</i> )
Agriculture		
USDA <sup>b</sup> —Food Safety	32	25
USDA—Agriculture Stabilization Service	8	65
Commodities Futures (CFTC) <sup>c</sup>	29	35
HHS <sup>d</sup> —Food and Drug Administration	24	21
Energy		
DOE <sup>e</sup> —Federal Energy Regulatory Commission	45	69
Environmental Protection Agency	40	67
Nuclear Regulatory Commission	37	43
DOE—Economic Regulatory Administration	56	34
Health		
HHS—Food and Drug Administration	44	50
HHS—Health Resources Administration	18	49
HHS—National Institutes of Health	17	58
HHS—Health Care Financing Administration	30	94
Federal Trade Commission	53	30
Labor		
DOL <sup>f</sup> —Labor Management Relations	44	34
DOL—Employment Standards	41	37
DOL—Occupational Safety and Health	31	39
HHS—Social Security Administration	32	19
Equal Employment Opportunity Commission	51	47
National Labor Relations Board	52	50
Pension Benefit Guaranty Corporation	52	31

<sup>a</sup> Contact is defined as having had contact “several times” or “regularly” during the last year.

<sup>b</sup> USDA = Department of Agriculture

<sup>c</sup> CFTC = Commodity Futures Trading Commission

<sup>d</sup> HHS = Department of Health and Human Services

<sup>e</sup> DOE = Department of Energy

<sup>f</sup> DOL = Department of Labor

departments. Lawyers are underrepresented in agriculture and labor and slightly overrepresented in energy and health. They are distinctly less prevalent among representatives who regularly contact congressional leadership or the congressional committees with principal jurisdiction in the domains and notably absent from agencies that deal more directly with substantive policy and agencies that are relatively unencumbered by formal procedures, such as the USDA’s Agricultural Stabilization Service and the Health Resources Administration and the National Institutes of Health of

the Department of Health and Human Services. Indeed, it is somewhat surprising that lawyers are not more prevalent in certain agencies. For example, although the Food and Drug Administration is at the center of a well-established legal specialty and has developed elaborate procedures for licensing and reviewing drugs and medical devices, it is contacted more frequently by nonlawyers than lawyers. Similarly, even though a substantial amount of the NLRB's function is adjudicatory, almost as many nonlawyers as lawyers contact the agency.

It is important to note the limitations of our data. We have not measured the quality of access that different representatives enjoy. Routine contacts for informational purposes may count the same as intense efforts to persuade an official. Research on the regulatory process establishes that in order to have an impact on the disposition of regulatory matters it is important to "break through" routine case processing (Kagan, 1978). Thus, lawyers may have different kinds of relationships with agencies than do nonlawyer representatives. But in the absence of contrary evidence, our measure of the patterns of contacts indicates that lawyers do not enjoy a monopoly of the channels of access to government institutions, except the courts. Lawyers are a significant group in the structure of access to government institutions, but their presence is variable across domains and agencies. Their prevalence before key policy-making agencies in the different domains closely corresponds to the proportion of lawyers in the domains. Within domains, the prevalence of lawyers before particular agencies varies according to the degree of proceduralization of agency functions. As was apparent in the data on tasks and fields of substantive expertise, lawyers are predominant only in the sort of institutional contexts they have traditionally controlled—those governed by formal adversary procedures. Even this monopoly may be eroding. In some regulatory agencies, a large proportion of representatives regularly contacting the agency are nonlawyers.

### *B. Litigation Aimed at Changing Policy*

The analyses of tasks and contacts with government agencies demonstrate that the one activity most clearly dominated by lawyers is litigation. Just more than half of the respondents occupying legal positions reported that they "often" or "regularly" are involved in "contested matters concerning the applicability of existing laws or rules to particular facts or parties." Only 12 percent of the remainder of the sample report that much involvement in contested matters. Representatives in nonlaw positions who have law degrees are only somewhat more active in litigation, with about 22 percent indicating that they often work on contested matters.

What is less clear, however, is the extent to which litigation is

a significant part of the strategies through which representatives attempt to shape national policy. For the sample overall, about one-fifth (21 percent) responded that they engaged in contested matters often or regularly, another fifth (22 percent) did so sometimes, and a majority (57 percent) were never or seldom involved in such matters. We already have noted that more explicitly policy-oriented litigation, that “aimed at changing policy” or involving amicus briefs, also was relatively rare. Only 17 percent of the total sample reported that litigation aimed at changing policy was of “considerable” or “great” importance to their work, and 69 percent dismissed it as of little or no importance. Only 5 percent said that working on amicus briefs was of considerable or great importance.

We asked representatives about their work on a set of specific policy events and, for the five events on which representatives were most active, we asked whether they had taken any of six actions concerning the event, including litigation.<sup>22</sup> Of the 9,492 actions reported, only 1.3 percent involved litigation.<sup>23</sup> The highest rate of participation in litigation occurred on an event in the labor domain that concerned a Supreme Court decision on OSHA’s cotton dust standard. Of the fifty-five representatives who included that event among the five on which they were most involved, 11 percent engaged in litigation on the issue. Many of the events concerned policy decisions located in Congress or in the early deliberations of executive agencies, which were not ripe for litigation; thus the relatively low incidence of litigation on a predetermined menu of policy events is not very probative.

A more telling measure of the extent of policy-oriented litigation by interest organizations would be the frequency with which they go to court to influence policy. While we do not have complete information on the litigation activity of the interest organizations in our sample, we have assembled two types of data that provide some insights into the salience of litigation in the representation of organizations. From Laumann and Knoke’s (1987) work on national policy making, we know how often organizations active in the energy and health domains filed amicus briefs in federal court during 1977–80. The filing of these briefs has grown so significantly in the last two decades that it is now thought to be a common part of the repertoire of representation (O’Connor, 1980; O’Connor and Epstein, 1981; Schlozman and Tierney, 1986: 372 n. 39). Moreover, because an organization need not be a party to litigation to file an amicus brief, organizations may participate in a

<sup>22</sup> The other 5 actions were: (1) identifying the issue as important for a client or employer; (2) contacting congressional officials; (3) contacting agency officials; (4) contacting other representatives; and (5) attempting to shape public opinion about the event.

<sup>23</sup> The proportions for the other actions were, respectively, identifying issues, 22.7 percent, contacting Congress, 21.7 percent; contacting agencies, 17.5 percent; contacting other representatives, 22.7 percent; and working on public opinion, 14.1 percent.

broad range of cases in this fashion. This is not the situation, however, at least in energy and health policy. Of the 164 organizations Laumann and Knoke identified as being active in health policy, only 10 percent had filed an amicus brief during the four-year period they studied. Only five organizations had filed amicus briefs in more than one case, and none had filed more than four. Of the 228 client groups active on energy policy, 15 percent filed an amicus brief. Only 10 filed briefs in more than one case, and none appeared as an amicus in more than four cases. Thus, although the amicus phenomenon may appear politically significant from the viewpoint of a particular institution within the legal system, it seems much less consequential in the context of the policy-making system as a whole.

Interest organizations may also attempt to influence policy as direct parties to lawsuits. A full examination of this activity is beyond the scope of the present analysis, but we can get a glimpse of what such study might disclose by looking at the frequency with which the organizations that are most active in policy making are involved in litigation in the federal courts. Table 13 lists the fifteen most active organizations in each policy domain as measured by the number of mentions received from the published sources and interviews that we used to generate our universe of client organizations.<sup>24</sup> Note that these organizations are not necessarily included in our sample but were those mentioned most often, regardless of whether they were randomly selected for our sample.

**Table 13.** Number of Federal Policy Cases Reported for Leading Organizations in Four Domains in the year 1980\*

Rank by Activity	Organization	Number of Policy Cases
Agriculture		
1.	National Farmers Union	0
2.	American Farm Bureau Federation	2
3.	American Agriculture Movement	0
4.	National Milk Producers Federation	0
5.	National Cattlemen's Association	0
5.	National Farmers Organization	2
7.	National Association of Wheat Growers	0
8.	Associated Milk Producers	3
8.	National Cotton Council	1
10.	American Soybean Association	0
10.	National Association of Conservation Districts	0
12.	Community Nutrition Institute	1
12.	National Grange	0
14.	Women Involved in Farm Economics	0

<sup>24</sup> See n. 4 above.

Rank by Activity	Organization	Number of Policy Cases
15.	Nat. Assoc. of Farmer Elected Committeemen	0
	Total	9
	Energy	
1.	American Petroleum Institute	6
2.	Mobil Oil Company	24
3.	Edison Electric Institute	4
4.	Consolidated Edison	4
5.	Natural Resources Defense Council	8
6.	Union of Concerned Scientists	0
7.	Exxon Corporation	11
8.	Atlantic Richfield Company	12
9.	National Coal Association	0
10.	Standard Oil of California	5
12.	Standard Oil Company of Indiana	4
13.	General Motors Corporation	21
13.	Sierra Club	5
15.	Chrysler Corporation	17
	Total	121
	Health	
1.	American Medical Association	1
2.	Public Citizen's Health Research Group	0
3.	American Iron and Steel Institute	3
3.	Pharmaceutical Manufacturers Association	0
5.	Blue Cross/Blue Shield Associations	0
5.	American Association of Retired Persons	0
6.	Chamber of Commerce of the United States	9
6.	Health Insurance Association of America	0
6.	National Retired Teachers Association	0
6.	Planned Parenthood Federation	1
12.	American Legion	0
12.	Disabled American Veterans	1
12.	National Council of Senior Citizens	0
14.	American Lung Association	0
15.	Association of American Medical Colleges	0
	Total	15
	Labor	
1.	AFL-CIO	11
2.	United Automobile Workers	35
3.	Chamber of Commerce of the United States	9
4.	United Mineworkers of America	0
5.	NAACP	1
5.	United Steelworkers of America	36
7.	American Federation of Government Employees	2
8.	Associated General Contractors of America	3
8.	National Association of Manufacturers	1
10.	Teamsters Union	119
11.	Amal. Clothing and Textile Workers Union	6

Rank by Activity	Organization	Number of Policy Cases
12.	Am. Fed. of State, County, and Mun. Employees	4
13.	International Ladies Garment Workers Union	10
14.	Bituminous Coal Operators Association	0
15.	Business Roundtable	0
	Total	237

\* *Source:* Lexis General Federal Directory. Policy cases include all cases to which the United States, any state, or any agency, department, or officer thereof is a party and to which the named organization is also a party or an amicus. Also included are cases between private parties involving interpretation of a statute, regulation, or other government policy, such as in labor disputes or private antitrust suits. Cases dealing with strictly private disputes between private parties are not included. Summary affirmances, reversals without opinions, and grants or denials of certiorari are not counted.

The list is chiefly composed of what we think of as the large “repeat players” in the four domains, but does include a mixture of business, professional, trade association, and public interest groups. Thus, although this is a preliminary inquiry, the findings merit consideration. Using the Lexis (1986) reference system, we enumerated all of the 1980 federal cases in which the organizations participated and either the government was a party or the case involved the interpretation of a statute, regulation, or government policy. (Cases in which the interest organizations were parties or filed amicus briefs are also included.) Note that the cases were not screened for whether they dealt with policies outside the domain; all cases meeting the definition were included, regardless of substantive content.

Table 13 shows considerable variance among domains, with an almost total absence of federal litigation by leading organizations in agriculture and health but substantial activity by energy and labor organizations. An examination of the cases indicates that much of the litigation in energy revolves around environmental and work-place safety issues, while the majority of the litigation involving labor organizations stems from disputes over union representation. This research was a very limited foray, for it examined only reported cases (as opposed to filings, threats of suit, and the like) in one year and for only a few top organizations, but the results are consistent with our other findings.

The significance of these patterns is not in the absolute levels of litigation. Compared to other individuals and organizations, the litigation rates of leading interest organizations may be quite high. More important is the infrequency of litigation relative to the other actions that interest organizations take to shape policy.



**Table 14.** Ranking of Fifteen Notables with the Most Acquaintances Among a Random Sample of Representatives Across the Four Domains

Rank	Notable	Number of Acquaintances	Law Degree
1	Thomas Hale Boggs, Jr.	220	yes
2	Birch E. Bayh, Jr.	201	yes
3	Evelyn Dubrow	186	no
4	Paul G. Rogers	185	yes
5	Robert A. Georgine	181	no
6	William E. Timmons	177	no
7	Joseph A. Califano, Jr.	176	yes
8	Carl E. Bagge	169	yes
9	Lane Kirkland	166	no
10	Charls E. Walker	164	no
11	Carol T. Foreman	154	no
12	Charles J. Di Bona	150	no
13	Bertram Seidman	131	no
14	Arnold Mayer	118	no
15	Patrick B. Healy	115	no
	Average for all notables	86	

Again, numbers cannot tell the whole story. No doubt lawyers and their client organizations could provide examples of when litigated cases have had a profound impact on federal policy. Nonetheless, from the broader perspective, litigation, the one category of representative activity over which lawyers are clearly dominant, is of highly variable importance. For most interest organizations most of the time, the courts are a forum of marginal significance in efforts to influence the direction of national policy.

## VI. LAWYERS AND NOTABILITY AMONG REPRESENTATIVES

It might be argued that the influence of lawyers on national policy making rests not on the prevalence of lawyers among representatives generally but rather on the power of a smaller number of elite lawyer-representatives who play a central role in the policy-making process. We have, therefore, examined the standing of lawyers among a select group of “notable” representatives. In the course of interviews with the random sample of representatives, we asked the respondents to indicate their acquaintances among a list of seventy-two “notables”—individuals we selected on the basis of their reputations for influence and expertise in the four domains.<sup>25</sup> Forty-five of the seventy-two possessed law degrees,

<sup>25</sup> We selected 18 notables in each of the 4 domains. The selections were based on information received from preliminary interviews with over 100 government officials and private representatives. We attempted to include repre-

making it possible to compare lawyer and nonlawyer notables with respect to “popularity” and structural location.

Connectedness is often used as a measure of the influence of an actor in a social system (see, e.g., Laumann and Pappi, 1976), and it may be especially important in Washington, where personal contacts can be vital for gaining access to government decisionmakers or for achieving a compromise among conflicting groups. If we judge the influence of lawyers by the number of representatives reporting an acquaintance with them, the findings are ambiguous. Table 14 lists the fifteen most widely acquainted notables, the number of their acquaintances, and whether they have a law degree. On the one hand, several of the most popular notables are lawyers, including the two most popular and five of the top ten. But four of those five had established themselves through means other than the practice of law—Bayh, Rogers, and Califano became prominent through government positions, and Boggs is a member of a famous political family who began his career in a congressional staff position. Bagge is a more complex case. Although he once was an attorney for the Santa Fe Railroad, he served as a commissioner on the Federal Power Commission from 1965 to 1971 and has been president of the National Coal Association since leaving that post. His notability arguably rests on his position as the head of a major interest organization, rather than his status as a lawyer. The popularity of these “superstar” lawyers is atypical, however. None of the notables from ranks eleven through fifteen in Table 14 is a lawyer. Only sixteen of the thirty-six notables above the median level of acquaintance are lawyers, while twenty-nine of the thirty-six less widely acquainted are lawyers. Nine of the ten least-chosen notables are lawyers. Overall, therefore, the lawyer notables are less well connected with our sample of representatives than are other notables.

The relatively low rank of most of the lawyers may in part result from bias in the selection of the set of notables. Although our choices were based on a substantial amount of field work, we ultimately made subjective judgments. If we included too many lawyers, reaching farther down in the level of notability to do so, this would cause them to rank low in acquaintance votes, and lawyers are in fact more heavily represented in our list of notables than they are in the random sample. Moreover, because two-thirds of our sample of representatives are not lawyers (by even the most inclusive definition) and 80 percent are in nonlegal jobs, lawyer notables will be likely to be less well known if lawyers tend to associate more often with other lawyers. We evaluated this possibility by calculating the probability of acquaintance both within and

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representatives from the range of subfields and client groups making up the domains, as well as those who were considered leading representatives in the domain generally.

across the lawyer and nonlawyer categories. We found that lawyer representatives show no higher probability of acquaintance with lawyer notables than with nonlawyer notables (12.3 percent versus 13 percent, respectively), but that the probability that nonlawyer representatives will be acquainted with nonlawyer notables is substantially higher than the probability of acquaintance between a nonlawyer representative and a lawyer notable (14 percent versus 8 percent, respectively). This might mean that the nonlawyers prefer to avoid association with lawyers, or it might just be another way of observing that the lawyer notables are less well-known than are the nonlawyer notables. Lawyer representatives are thus somewhat more likely to know a lawyer notable than is the sample as a whole, but this tendency is not sufficient to explain our findings. Even if the proportion of lawyers in the sample were increased to one-half, the overall probability of acquaintance with a lawyer notable would increase only to 10.2 percent, still well below the probability of acquaintance with a nonlawyer notable.

Thus, many lawyers identified as being the leading figures in their fields do not come close to achieving the connectedness of prominent nonlawyer representatives. These results call into question the conventional wisdom concerning the stature of lawyers as a group, but also suggest a likely source of that wisdom. The image of the powerful Washington attorney is fostered by the visibility of a few celebrated lawyers, most of whom acquired their fame in high public office. Other Washington lawyers, even those recognized as established authorities in major substantive areas, do not enjoy a special degree of access in the community of the city's representatives.

#### VII. RELATIONSHIPS BETWEEN LAWYERS AND INTEREST ORGANIZATIONS: THE QUESTION OF PROFESSIONAL AUTONOMY

Our findings suggest that Washington lawyers, far from being the leading group of power brokers, are technical specialists whose influence is based on the dominance of a limited set of functions, institutions, and substantive fields. Although lawyers might not play the most central role in policy making, they might nonetheless conform to Horský's (1952) and Parsons's (1964) assertions that Washington lawyers play a mediating role between clients and government and that, in translating questions of policy into questions of law, they work for policy resolutions that are rational and just rather than merely seeking outcomes that serve the narrow interests of their clients. We should therefore examine the relationships between lawyers and the interest organizations they represent to evaluate the extent to which Washington lawyers possess the professional autonomy suggested by Horský.

Many of the distinctive aspects of Washington law practice might give the city's lawyers greater autonomy from their clients than is generally typical in the relationships between corporate lawyers and their clients. Given their high incidence of government experience and their continuing relationships with government agencies, Washington lawyers may identify with the government's position on policy questions. More than corporate lawyers in other cities, therefore, Washington lawyers might attempt to persuade their clients to accept government rules or decisions. General ideological differences between Washington lawyers and clients may reinforce this tendency. While corporate lawyers typically come from social backgrounds that are similar to those of the business elites they represent (Heinz and Laumann, 1982) and may therefore have social values that are similar as well (Macaulay, 1979; but see Nelson, 1985), Washington lawyers may well be more liberal. Many came to Washington to serve in Democratic administrations and turned to private practice after leaving government. Moreover, due to the absence of a local corporate economic base in Washington, a much greater share of its law practice consists of ad hoc representation in which firms provide representation on only a specific matter or a narrow range of services rather than the general work that characterizes corporate law practice in other cities. The more limited nature of their client relationships might thus weaken the links between lawyer and client. The sheer distance of many clients from Washington may also limit their ability to monitor the activities of their representatives. The combination of these factors should increase the likelihood that Washington lawyers perform the mediating function described by Horsky. To examine the autonomy of Washington lawyers, we will analyze the social values and client relationships of representatives and then consider the role of lawyers in one intensely conflictual context, the labor policy domain.

#### *A. Social Values and Client Relationships*

The social, political, and ideological characteristics of representatives vary with the substance of their work and the character of their clients. The capacity of lawyer representatives to act as an autonomous, mediating stratum in national policy-making systems will, therefore, be affected by their place in that social structure. As Tables 15 and 16 indicate, Republicans are far more numerous in the two domains in which business organizations are most active, agriculture and energy, and, not surprisingly, in business organizations themselves. Democrats are predominant among the representatives of unions and citizen-government groups and in the health and labor domains generally. Although both of these findings may appear unremarkable, in our preliminary field work

Table 15. Political and Social Characteristics of Representatives by Domain<sup>a</sup>

Domain	% Republican	% Democrat	Economic Liberalism Scale	% Jewish	% Type I <sup>c</sup> Protestants	% with Northeast Origins	N <sup>b</sup>
Agriculture	39.0	35.8	2.86	4.2	30.7	19.1	192
Energy	41.3	28.8	2.74	7.1	25.5	28.9	184
Health	24.3	48.5	3.20	12.1	21.8	49.0	206
Labor	24.4	51.3	3.48	18.0	16.0	42.2	194
All domains	32.0	41.4	3.08	10.4	23.5	35.2	776

<sup>a</sup> The domains are significantly different,  $p \leq .01$ , on all variables reported here.

<sup>b</sup> Actual  $N$  for each column ranges from 765 to 772, with no discernible pattern to the missing cases.

<sup>c</sup> Includes persons who indicated affiliations with the following denominations: Congregational, Presbyterian, Episcopalian, and United Church of Christ.

Table 16. Political and Social Characteristics of Representatives by Organization Position<sup>a</sup>

Organization Position	% Republican	% Democrat	Economic		% Jewish	% Type 1 Protestants	% with		N <sup>b</sup>
			Liberalism Scale	Scale			Northeast Origins	Other Origins	
Executives									
Business	51.2	20.9	2.54		4.7	30.2	30.2		43
Nonprofit organizations	23.5	35.3	2.98		11.4	25.7	50.0		35
Trade associations	48.6	23.9	2.67		2.8	24.3	17.3		144
Unions	4.2	83.3	4.30		12.0	0.0	37.5		25
Professional associations	34.2	36.8	3.12		13.2	26.3	50.0		38
Citizen-government organizations	10.0	62.0	3.53		7.7	19.2	35.3		52
Government affairs									
Business	57.1	22.9	2.45		2.9	28.6	37.1		35
Trade associations	42.6	33.3	2.74		3.7	37.0	16.7		54
Unions	0.0	86.7	4.31		20.0	13.3	46.7		30
Professional associations	25.9	33.3	3.23		30.0	14.8	59.3		27
Citizen-government organizations	14.8	66.7	3.70		7.4	25.9	59.3		27
Inside legal counsel	31.9	46.8	3.15		19.2	14.9	31.6		47
Research staff	31.6	40.8	3.27		9.2	19.7	38.3		76
Law firm attorneys	25.0	47.2	3.07		18.5	27.8	41.2		108
Consultants	22.9	45.7	3.18		11.4	22.9	35.2		35
All	32.0	41.4	3.08		10.4	23.5	35.2		776

<sup>a</sup> The organization positions are significantly different,  $p \leq .01$ , on all variables reported here.

<sup>b</sup> Actual N for each column ranges from 765 to 772, with no discernible pattern to the missing cases.

<sup>c</sup> Includes persons who indicated affiliations with the following denominations: Congregational, Presbyterian, Episcopal, and United Church of Christ.

we were told time and again that political affiliation is simply irrelevant to the work of Washington representatives.

The social values of the representatives mirror their political party affiliations. From a set of fixed response questions concerning economic and social issues, we constructed a scale of economic liberalism, on which the scores could vary from 1 (most conservative) to 5 (most liberal).<sup>26</sup> Representatives in health and labor are significantly more liberal than their counterparts in agriculture and energy, and the ideological differences between labor and business representatives are even more dramatic. Moreover, the political and ideological differences are clearly associated with the social background characteristics of representatives. As the table indicates, the more liberal, Democratic categories of representatives contain higher proportions of Jews and persons with origins in the Northeast and lower proportions of high-status Type 1 Protestants.

Internal counsel and law firm attorneys fall roughly in the middle of the distribution on both political and ideological characteristics. True to the conventional wisdom about Washington lawyers, Democrats substantially outnumber Republicans (47 percent to 32 percent for internal counsel and 47 percent to 25 percent for external lawyers, respectively). On the economic liberalism scale, both legal positions fall close to the mean for the sample as a whole. Thus, lawyers would indeed appear to be a group of moderates in the system: They are more liberal than the officers and employees of businesses and trade associations, but not as liberal as the representatives of unions and citizen-government groups. This would seem to support the Horsky/Parsons position, at least to the extent of indicating that the predisposition of lawyer-representatives is to moderate the political claims of their employers and client organizations.

The pattern is deceptive, however. If lawyers are divided into groups according to the types of clients or employers they serve, we find that the social values of the lawyers closely match those of their clients. Lawyers who devote all of their time to business and trade association clients score 2.76 on the liberalism scale, making them more conservative than all but the business and trade association representatives themselves. Those spending some time representing professional associations and nonprofit institutions score 3.08; those representing citizen-government groups score 3.74; and

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<sup>26</sup> The economic liberalism scale uses the same items employed by Heinz and Laumann (1982: 139). The topics dealt with were the role of the federal government versus the market in protecting the interests of consumers, the power of large companies, the power and economic consequences of labor unions, whether interoccupational income differences should be reduced, access to medical care regardless of ability to pay, the role of the government in helping the disadvantaged, and whether economic profits in the United States were justly distributed. The scale achieved an acceptable level of reliability (Alpha = .82).



those devoting some time to representing unions score 4.14, which means that they are more liberal than all but the union representatives themselves. Inspection of the scale values for the employees and officers of these client groups indicates that lawyers typically are more like their clients than they are like other lawyers who serve different client groups. Given the substantial ideological congruity between lawyer and client, it therefore appears less likely that lawyers will conform to the Horsky/Parsons ideal by interpreting the dictates of law or the public interest differently than their clients. Other research on corporate lawyers suggests that even when lawyers are significantly more liberal on general social values than their business clients, the lawyers strongly identify with client interests on issues that arise in their fields of practice (Nelson, 1985).

The ideological affinity between lawyers and clients may in part be the result of relatively recent structural shifts in the organization of Washington law practice. As noted in the introduction to this paper, one of the most striking developments in recent years has been the growth in the number of out-of-town law firms maintaining branch offices in Washington from some 45 in 1965 to 247 by 1983. While much of this increase can be attributed to the entrepreneurial efforts of firms outside Washington to capture business that they previously had to refer to Washington law firms, it also reflects greater pressures by clients on their principal lawyers and perhaps some distrust of the "permanent Washington establishment." One lawyer who had recently relocated from the principal office of an out-of-town firm to the firm's Washington office reported that clients were happy to bring him their Washington business because they worried that the Washington insiders may have been "co-opted by the process." Branch offices provide a mechanism for enhancing trust at a distance.

Our sample reflects the impact of these trends. One-third of the lawyers in legal positions are internal counsel and thus subject to direct control by clients; 45 percent of the law firm attorneys work in the branch offices of out-of-town firms or are themselves based in firms located outside the Washington area. Moreover, the relationships between external lawyers and clients appear to be more stable than the conventional image of Washington law practice suggests. External representatives reported that they had, on the average, represented 61 percent of their clients for three years or more. This stability of client relationships is only slightly less than that found by Heinz and Laumann (1982: 70) among corporate practitioners in Chicago, where lawyers for large corporations reported that they had, on the average, represented 69 percent of their clients for three years or more. When asked how often they worked for these clients, external Washington representatives said that they represented 93 percent of their "main" clients and 72 percent of their "typical" clients on a regular basis.

Table 17. Measures of Autonomy by Organization Position

Organization Position	% Reporting Control over Work Strategies ( <i>N</i> )	% Refusing Assignments Against Personal Values ( <i>N</i> )
<b>Executives</b>		
Business	33 (40)	35 (40)
Nonprofit organizations	21 (33)	27 (33)
Trade associations	17 (133)	21 (130)
Unions	22 (23)	40 (20)
Professional associations	24 (38)	32 (38)
Citizen-government organizations	27 (49)	28 (50)
<b>Government affairs</b>		
Business	18 (34)	21 (33)
Trade associations	23 (52)	17 (52)
Unions	17 (30)	17 (29)
Professional associations	26 (27)	19 (26)
Citizen-government organizations	41 (27)	35 (26)
Inside legal counsel	34 (47)	14 (44)
Research staff	41 (71)	20 (74)
Law firm attorneys	43 (106)	60 (100)
Consultants	53 (34)	62 (34)
Total	30 (744)	31 (729)
Chi-square <i>p</i>	≤.001	≤.001

These data indicate that Washington-based law firms no longer enjoy a monopoly over legal representation in the city. Nor do the relationships between lawyers and clients in Washington appear to be very different from those between corporations and major firms in other cities. The alleged distinctiveness of the Washington lawyer as compared to other corporate practitioners appears to be eroding. Washington lawyers, like corporate lawyers throughout the profession, are under intense competitive pressure to satisfy the demands of clients and thus attract further business. These pressures are likely to encourage representation of a more aggressive, "hired-gun" style rather than the detached, autonomous expert striving to serve the public interest by mediating among conflicting factions.

Despite the evidence suggesting that structural changes in Washington law practice have undermined the independence of Washington lawyers, law firm attorneys appear to be more auto-

mous from their clients than are other representatives. Respondents were asked to locate themselves with respect to two opposite statements characterizing the nature of their control over their work: "Strategies that I pursue are largely of my own design and execution;" and "I work closely with others to design and execute a strategy for representation."

Table 17 reports the findings by organization position. Of the sample as a whole, 30 percent associate themselves with the statement indicating individual control over work, 49 percent place themselves close to the opposite pole, and the remainder, 21 percent, indicate a middle position. Internal counsel are only slightly more likely than the sample as a whole (34 percent versus 30 percent, respectively) to report control over their work, but law firm attorneys and independent consultants report having far more control over work strategies, with 43 percent of the law firm lawyers and 53 percent of external consultants claiming such autonomy.

These findings may in part reflect professional ideology. Control over one's work is a principal element of professionalism, and lawyers and consultants may be eager to project a professional image of their work roles. But the data already reported concerning the work of different categories of representatives may also shed light on these responses. Law firm attorneys and external consultants are more specialized than other representatives in terms of both tasks and substantive fields. It is not surprising that the technical experts perceive that they have control over the execution of their work. Within their areas of expertise, external representatives may enjoy considerable autonomy, but it may only be autonomy to make tactical decisions within a highly circumscribed decision-making environment. The officers and employees of interest organizations, in contrast, as members of the decision-making core of the organization, participate in a broader range of policy deliberations within a much more fluid frame of reference. Organizational insiders may perceive less control over their work in part because it involves group deliberations and in part because there is less closure in the decision-making process. In the division of representational labor, the objectives that organizations seek to advance will be determined by the "less autonomous" officers and employees, while many tactical decisions will be made by the "more autonomous" external representatives. The irony is that, by shaping organizational goals, the "less autonomous" representatives probably have significantly more impact on the direction of policy making than do the "more autonomous" representatives. But note that it is not an independent impact, for the organizational insiders are not likely to constitute a third force that is capable of playing a mediating role.

Another piece of evidence relevant to the autonomy of representatives concerns the propensity of different types of representatives to refuse assignments that are contrary to their personal val-

ues. The refusal to perform an assignment carries considerable theoretical significance. It offers a clear example of the kind of moral conflict that the model of the lawyer-as-mediator contemplates, and it represents a definitive resolution of the conflict. Representatives were asked, "Have you ever had occasion to refuse a potential client or work assignment, not because of a formal conflict of interest, but because of your personal values?" As Table 17 shows, only 31 percent of the sample overall had ever refused work on this basis. Only 14 percent of internal counsel report such an instance, so that identification as a lawyer, in itself, does not appear to enhance autonomy. Law firm attorneys and external consultants, however, are twice as likely as the sample as a whole (60 percent and 62 percent, respectively) to have refused assignments for reasons of personal values. These percentages are much higher than the levels of refusals Nelson (1985) found among lawyers in four large Chicago law firms, where only 16 percent of the lawyers overall and only 22 percent of partners had ever declined work for personal reasons.

These findings must be interpreted cautiously. The measure used is not without its ambiguities. The extent to which morally problematic work is presented to the various types of representatives and thus the varying levels of opportunity for refusal are unknown.<sup>27</sup> Moreover, the question as posed did not instruct the respondents to report only their experience in their current positions, which may create some errors in attributing responses to particular organizational positions.<sup>28</sup> Nonetheless, the findings are credible enough to merit some discussion. Whether the representative is employed by the client organization or is external to it makes a significant difference in the likelihood that assignments will be interpreted as being morally questionable and thus rejected. Law firm attorneys and consultants may be approached by a wide range of client groups seeking to influence policy, some of whom lack knowledge about which representatives do work that is politically or even tactically congruent with their interests. This lack of information may cause the clients to make inappropriate choices of representatives, which then become cases of refused assignments. The potential for such conflict is minimized in the employer-employee relationship, where there is presumably a shared

<sup>27</sup> See Nelson (1985) for an extended discussion of the methodological problems with a similar measure.

<sup>28</sup> We doubt that this is a significant problem. It would only exaggerate the reported incidence of refusals, and less than one-third of the sample report refusals. Given that representatives have been with their current employers for an average of 12 years, a major portion of their exposure to assignments is in the same organization, if not the same job. Finally, given the follow-up probes about the frequency and context of refusals and the location of the question among a series of questions concerning their current work, it is likely that representatives would have noted that the problems arose in a different context. A small number of respondents did so, and these cases were dropped from the analysis.

understanding about the ideological and tactical content of the work involved.

The much higher rate of refusals by law firm attorneys working in Washington than by lawyers in large Chicago firms may be explained by differences between the two sorts of practice and by self-selection of the practitioners. Lawyers who choose to locate in Washington and engage in work concerned with national policy may have a higher degree of political awareness or be more politicized than are their counterparts in Chicago. Thus, Washington lawyers might well be more sensitive to ideological issues or to the political stance of their clients, while Chicago lawyers in traditional corporate practice might be relatively uninterested in and unconcerned with such matters. The substance of the work demands made upon the two groups of lawyers may also be greatly different. Our Washington sample was, after all, designed to select persons who work on national policy making, while the lawyers in the large Chicago firms studied by Nelson (1985) were engaged in the usual range of legal problems of corporate clients. It is probable, therefore, that the Washington lawyers are far more often presented with work requests that pose ideological or political issues in ways that might give rise to questions of conscience.

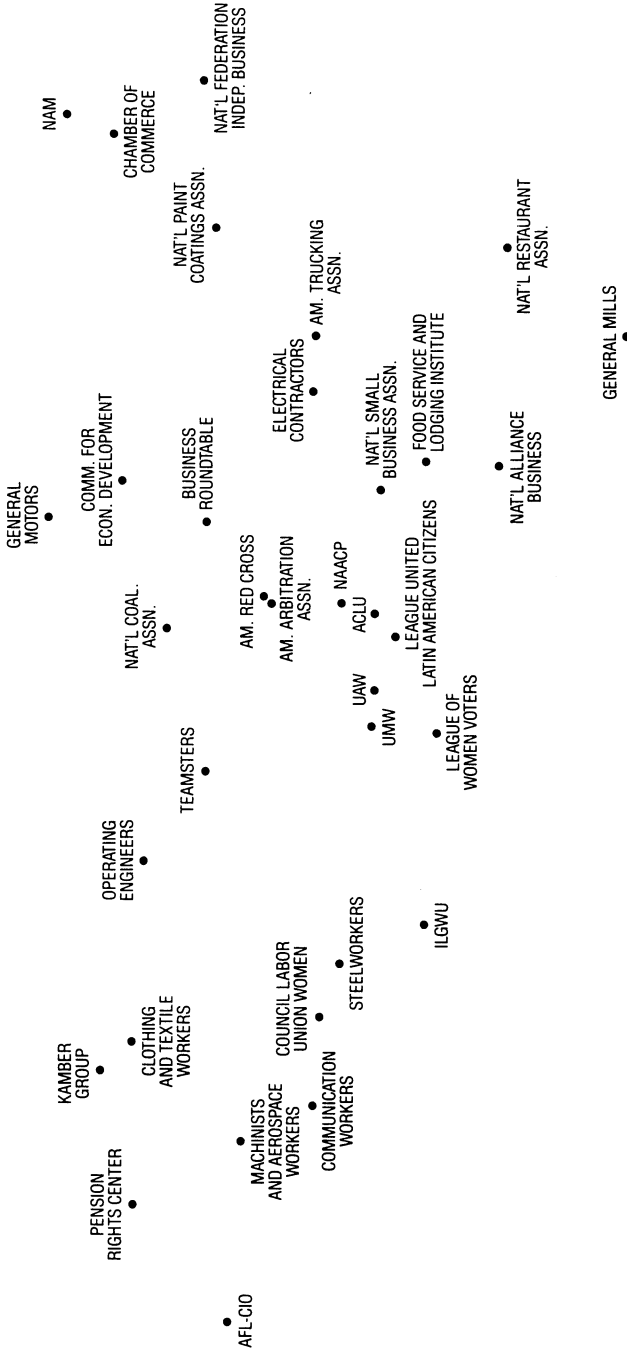
An analysis of the reasons given for refusing assignments supports this interpretation. We coded the reasons into the broad categories shown in Table 18 and separated the responses of representatives in legal positions from other representatives. By far the largest category involved disagreements on substantive policy issues. If we add the more ambiguous category, "difference of political philosophy," which may imply that the refusal was based on the substantive position the representative was asked to take, about half of the reported refusals turn on disagreements over substantive issues. Only one-quarter of the refusals of those in law positions and one-fifth of the refusals of those in nonlaw positions were based on ethical concerns or lack of trust in the client, while Nelson (1985: 534) found that half of the less numerous refusals in Chicago law firms were based on ethical reasons. Quite clearly, Washington representatives confront work assignments that involve personal political choices more often than is the case for corporate lawyers elsewhere. Interestingly, however, differences over substantive issues constituted a greater proportion of the reasons for refusals for representatives in nonlaw positions than is true for representatives in law positions, while ethical concerns and concerns about conflicts of interest figure more prominently in the reasons that the latter group gives for refusing assignments.

Table 18. Reasons for Refusing Assignments by Legal Position

Reason	Representatives in Legal Positions			Representatives Not in Legal Positions			Total		
	Rank by Frequency of Responses	Frequency of Responses	Percent of Responses	Rank by Frequency of Responses	Frequency of Responses	Percent of Responses	Rank by Frequency of Responses	Frequency of Responses	Percent of Responses
Disagreed on substantive issue	1	18	27.3	1	70	47.3	1	88	41.1
Perception that client claim lacked integrity	2	11	16.7	2	12	8.1	2	23	10.7
Difference of political philosophy	4	8	12.1	2	12	8.1	3	20	9.3
Inconsistent with interests of other clients	3	9	13.6	3	8	5.4	4	17	7.9
Did not like/trust client or project	5	6	9.1	4	7	4.7	5	13	6.1
Client wanted to use unethical means	6	5	7.6	3	8	5.4	5	13	6.1
Client wanted to use partisan or personal connections	7	2	3.0	6	5	3.4	6	7	3.3
General ethical concerns	8	1	1.5	5	6	4.1	6	7	3.3
Not in representative's interest/required taking contradictory positions	8	1	1.5	6	5	3.4	7	6	2.8
Client had unrealistic objectives	7	2	3.0	8	3	2.0	8	5	2.3
Not in client's best interest	9	0	0	7	4	2.7	9	4	1.9
Would have required political involvement	9	0	0	7	4	2.7	9	4	1.9
Other		3	4.5		4	2.7		7	3.3
Total		66	99.9*		148	100.0		214	100.0

\* Percentage differs from 100 due to rounding error.

**Figure 2.** Affinity and Antagonism Among Thirty-four Organizations on Selected Issues of National Labor Policy, 1977–82. (Three-dimensional solution; stress = .13;  $R^2 = .924$ . Only the first two dimensions are displayed. The organizations shown here are a subset of 105 organizations contained in the original model. Only selected points are displayed to avoid an unnecessarily cluttered diagram.)





### B. *Lawyers, Conflict, and Mediation in National Labor Policy*

The most severe test of the capacity of lawyers to act as intermediaries between opposing camps is presented by the labor policy domain. We have already seen that the greatest gulf in social values and political characteristics in our sample exists between the representatives of business organizations and trade associations on the one hand and the representatives of labor unions on the other. The antagonism between organized labor and business management creates an oppositional structure of policy making in the domain that is vividly displayed in Figure 2, which is an analysis of the positions taken by the organizations in our sample on twenty policy issues in 1977–82.<sup>29</sup>

Organizations taking similar positions on the issues are in close proximity in the space, while dissimilarity generates distance between points. There is a clear split between the labor organizations, which appear on the left of Figure 2, and the business organizations, which appear on the right. Anchoring the two opposing camps are, at the far left, the AFL-CIO and, on the far upper right, the Chamber of Commerce and the National Association of Manufacturers. Toward the middle of the horizontal dimension are civil rights groups and certain professional-coalition groups. The vertical axis differentiates between the manufacturing and service sectors in the business portion of the space, while the unions are less widely spread, suggesting a greater degree of congruity in their positions.

One way to analyze how lawyers function within such an oppositional context is to examine the role of lawyers in patterns of communication. During our interviews with the notable representatives we had selected, we asked them to indicate which of the other notables they knew well enough to consult briefly without paying a fee. Smallest space analysis of these responses permits us to depict the structure of relationships among the leading representatives in the labor domain, and that analysis is presented in Figure 3.<sup>30</sup> As in the other figures, representatives with similar sets of relationships are closer together in the space.

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<sup>29</sup> By translating the positional information into affinity and antagonism relations between the organizations, we derived proximities between every pair of organizations and generated a square matrix of proximities. The proximity estimator we used was the Pearson's  $r$ , which varies between -1 and 1, corresponding to perfectly negative and positive association. For example, if two organizations took identical positions on identical issues, their proximity would be 1; if they took opposite positions on identical issues, their proximity would be -1. The matrix was then submitted to ALSCAL for nonmetric multidimensional scaling (see SPSS, 1986: 753–776). Figure 2 displays a simplified version of the first two dimensions of a three-dimensional model. The coordinates in the third dimension do not significantly change the configuration of points. Therefore, they are not indicated in this representation. For more complete discussions of the aggregation of positions and the derivation of proximities among organizations, see Laumann *et al* (1986).

<sup>30</sup> The distance measure used to generate Figure 3 is the Yule's  $Y$  (see,

If lawyer-notables served as intermediaries between camps and thus communicated with members of both groups, one would expect to find them in the middle of the space, between the groups. As Figure 3 demonstrates, however, this is not the case. Instead, we find that the communication networks of labor notables reproduce the oppositional structure observed at the organizational level. White, Hale, Tysse, and Post, all of whom were educated in law but hold positions internal to business organizations, are far more likely to communicate among themselves than with the representatives of labor groups. Similarly, Warden, Dubrow, Denison, Mayer, Georgine, Seidman, Kirkland, and Jarvis—the officers and employees of unions—relate more often to each other than to business representatives. But even the law firm attorneys, rather than showing up positioned between the camps, are clearly identified with one side or the other. Nash, Irving, and Pantos, who are partners in law firms serving management clients, are aligned with other business group representatives. Connerton and Bredhoff, the two lawyers in firms that represent unions, are aligned with other labor representatives.<sup>31</sup>

It is interesting and important to note, however, that of the relatively few links across the camps, most are between law firm attorneys. Among the 19 individuals, we found a total of 189 ties. Of those, only 16 went across the two camps, and of those 16 connections, 14 were between notables located in law firms. Thus, while there is precious little communication between the opposing camps in labor, and although lawyers clearly are identified with the client groups they represent, law firm attorneys provide virtually the only link between the two opposing groups.

These findings provide, at best, mixed evidence for the Horsky and Parsons model of the lawyer as mediator. The most impressive piece of supporting evidence is the high proportion of law firm lawyers who have refused client assignments for personal reasons at least once in their careers. While this indicates that many Washington lawyers have the capacity to exercise independent judgment concerning the representation of private interests (a

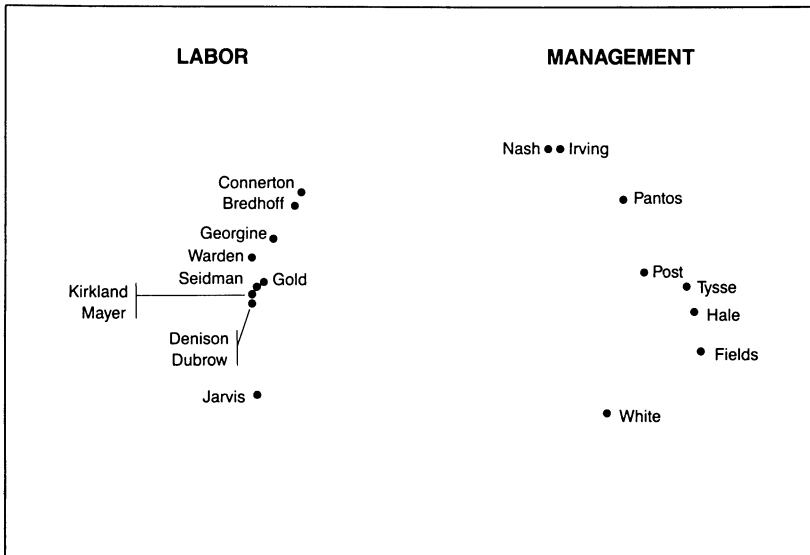
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e.g., Bishop *et al.*, 1975). It is a monotonic function of the odds ratio and varies between -1 and 1, corresponding to perfectly negative and positive association. For example, if two notables were chosen by the same individuals, their proximity would be 1; if they were chosen by two nonoverlapping sets of individuals, their proximity would be -1. Cells along the main diagonal of the matrix (corresponding to individuals' choices of themselves) were set equal to 1. The matrix was then submitted to ALSCAL for nonmetric multidimensional scaling.

Since nonmetric scaling uses only rank-order information from the matrix of proximities, any other monotonic functions of the odds ratio will yield essentially the same spatial solution. Experiments with different proximity measures produced spatial models that varied only slightly from that presented here.

<sup>31</sup> It should be noted that although Connerton and Bredhoff each have their own law firms, they also hold official titles (as Counsel) in unions.

**Figure 3.** Networks of Acquaintance Among Notable Labor Representatives. (Two-dimensional solution: stress = .05;  $R^2 = .99$ .)



The representatives are as follows:

*Labor*

Elliot Bredhoff—Union law firm; Special Counsel, Steelworkers

Robert Connerton—Union law firm; General Counsel, laborers' International

Ray Denison—Legislative Director, AFL-CIO

Evelyn Dubrow—Legislative Director, ILGWU

Robert Georgine—President, Building and Construction Trades

Laurence Gold—Special Counsel, AFL-CIO

John Jarvis—Legislative Representative, UMW

Lane Kirkland—President, AFL-CIO

Arnold Mayer—Vice President, Government Affairs, Food and Commercial Workers

Bertram Seidman—Director, Social Security, AFL-CIO

Richard Warden—Legislative Director, UAW

*Management*

Chuck Fields—Assistant Director, American Farm Bureau Federation

Randolph Hale—Vice President, Industrial Relations, NAM

John Irving—Management law firm; former General Counsel, NLRB

Peter Nash—Management law firm; former General Counsel, NLRB

George Pantos—Management law firm; pension expert

John Post—Executive Director, Business Roundtable

John Tysse—Director of Labor Law, Chamber of Commerce

Donald White—Vice President, American Retail Federation

capacity that is exceeded by that of nonlawyer external consultants), our overall findings suggest that this limited independence will not have much impact on the system of representation as a whole. First, it appears that those lawyers most likely to disagree with client proposals are marginal to the policy-making deliberations of their clients. Second, trends in the social organization of Washington law practice may well be undermining the institutional basis for the autonomy of law firm attorneys. As a greater proportion of Washington law practice is absorbed by the branch offices of out-of-town firms and as competition among firms intensifies, even external lawyers may become more reluctant to decline work that they find morally ambiguous.

We believe that the weight of our findings, therefore, runs counter to the model of the Washington lawyer as a mediating influence. Washington lawyers, like corporate lawyers generally, appear to be predominantly organized around and responsive to client interests. They hold social and political values that are similar to those of their clients; they typically have regular and enduring client relationships; and, when there are sharp conflicts between competing groups, they communicate with their own clients rather than with the lawyers representing the other side.

### VIII. CONCLUSION

Our data do not permit us to assess changes that may have occurred over the last few decades in the roles of lawyers in national policy making. The survey data reported here were all collected within a year, although our field work extended over a somewhat longer period in the early 1980s, and we do not know of any source of historical data that might be used for comparisons. It is possible that Horsky's observations and the still-current conventional wisdom about the influence of lawyers in Washington reflect an earlier reality or, on the contrary, it may be that our data disclose a different reality that has been obscured by myth. The visibility of such lawyers as Dean Acheson, Abe Fortas, and Clark Clifford has fostered an image of the Washington lawyer as a generalist power broker who combines legal expertise with political connections and thus plays a central role in policy making. This image is not an accurate depiction now, and we doubt that it ever was. Although a handful of Washington lawyers are power brokers, for the most part they are legal technicians. Their monopoly of litigation and their specialization in the arcane procedures of particular regulatory agencies give them an important—but not the central—position in the market for Washington representation.

Although we have observed the effects of the process of change in the nature of Washington representation only at one point in time, there can be little doubt that substantial changes have occurred. Considerable evidence exists that there has been a

major transformation in the representational system, which might be characterized as an organizational rationalization of the work (Nelson *et al.*, 1987, Salisbury, 1984; Laumann and Knoke, 1987). In an earlier era, a corporation would more often rely on trade associations for monitoring the Washington scene and retain a Washington law firm for general representation. Today, major corporations maintain a direct Washington presence through a government affairs office. The increasing role of such organizations in Washington representation has meant that the principal work is done not by independent practitioners but by the officers and employees of client organizations. Organizational insiders, chiefly government affairs personnel and trade association executives, have assumed the central role in coordinating policy initiatives and strategies.

In the new division of labor, the organizations select among a broad array of specialized law and consulting firms for representation in formal proceedings, primarily in the courts and in contested cases before regulatory agencies. The dramatic growth in Washington law practice is evidence of the strength of demand for such legal expertise, but our data make it clear that this demand is limited to a relatively narrow range of issues and functions. Lawyers are especially expert in the manipulation of formal rules, both substantive and procedural. Their competitive advantage, compared to other representatives, increases with the level of formality of the decision-making process. If this is so, the importance of the role of lawyers in policy representation is likely to be greater if policy is made through formal procedures and the application of formal rules than if it results from more informal, less rule-bound processes.

How central are formal procedures and rules—and, thus, how central are lawyers—to the Washington policy-making process? The answers to those intertwined questions obviously depend upon one's definition of "policy making." We have used a broadly inclusive conception that is not limited to a discrete, bounded set of government decision-making processes but instead includes the panoply of relationships among interest groups, their representatives, and government officials. Given this open-ended conception of the policy process, one that we believe to be congruent with that of the practitioners themselves,<sup>32</sup> we find that the role of lawyers is relatively marginal, as we have reported above. Most of the policy decisions made in Washington are not dictated by preexisting rules, nor do they even depend upon the interpretation of such rules. Rather, they are explicit choices among available policy options

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<sup>32</sup> To a considerable degree, we allowed the respondents in our sample to define their policy-making activity as they perceived it. We asked them about the work that they undertook with a view toward influencing policy; for the most part, it was left to them to determine what portion of their work was included in that category.

with no pretense of determining the winners and losers according to established legal rights; the decisions are instead asserted to be based on a values preference or on a judgment about the course that is likely to be wise or advantageous. Nor are most of these decisions made through the formal procedures in which lawyers have a special claim to expertise. The formalities of procedural due process are much less the rule than are telephone calls, personal visits to members of Congress and other public officials, give-and-take negotiations with allies and adversaries, and close monitoring of the trade press. In these latter activities, lawyers have no special advantage. Nonlawyer representatives who are experienced in the ways of the federal government will probably be at least equally skilled in these procedures. Moreover, although many lawyers have considerable substantive expertise in the area of their specialization, they certainly have no monopoly (and probably no comparative advantage) with respect to such substantive knowledge. In the policy areas that we studied, knowledge of medicine, agronomy, international trade, geological engineering, or labor relations will often be useful to the representative, and we found many persons with such educational backgrounds in our sample of representatives (Nelson *et al.*, 1987). Despite the claims of legal education, lawyers seem unlikely to match the substantive authority of representatives who have spent their entire careers working in health care or in atomic energy. The increasing dominance of representation by organizational insiders may even in part reflect a demand or need for increased substantive expertise as regulatory issues become more specific and complex.

The direct presence of the employees of client organizations in representation and the increasing competition among law firms for business in Washington have probably strengthened the identification of representatives with client interests. In the 1950s, when Horsky wrote, Washington law firms may have been able to remain relatively detached and objective. They might then have been able to mediate between government and client or between competing private factions. In the increasingly competitive world of representation, however, there is a new urgency for the representative to maintain the posture of zealous advocate for the client. Such a posture is usually inconsistent with the role of lawyer as mediator. Indeed, as our analysis of the patterns of acquaintance with notable representatives in the labor domain suggests, in sharply polarized political environments—where there is the greatest need for mediation—lawyer-representatives are strongly tied to particular client groups. While lawyers provide virtually the only bridge of communication across the opposing camps in labor, their dominant orientation is toward their clients. They thus appear to be more likely to reproduce conflict than to reduce it.

Our findings and these speculations question the pluralist conception of the relationship between law and politics. The lawyers

involved in national policy making do not appear capable of moderating the system of interest representation according to some standard of civic virtue. The data indicate that lawyers do not transcend the social and ideological divisions that exist between other groups of representatives. Their authority in the system rests not on an appeal to values but on their technical skill in representing clients in a limited range of matters before a limited range of government institutions. The fact that sophisticated clients are willing to pay handsomely for the services of lawyers surely indicates that their work has great value to the clients, but the expenditures for lawyers' services are only one of several kinds of expenditures that organizations make as they seek to advance their interests. It is unlikely, therefore, that lawyers provide the basis for a consensus on policies that will more broadly serve the public interest.



**Appendix** Percent of Representatives Spending More than Half Their Time on Federal Policy Work by Organization Position, Government Experience, Political Experience, and Law Degree<sup>a</sup>

Organization Position	Political Experience with a Law Degree		No Political Experience with a Law Degree		Political Experience with no Law Degree		No Political Experience or Law Degree		Total
	Gov't Experience		Gov't Experience		Gov't Experience		Gov't Experience		
	Yes	No	Yes	No	Yes	No	Yes	No	
Executives	42.9 (7)	33.3 (9)	50.0 (8)	14.3 (7)	24.0 (25)	13.8 (29)	30.3 (33)	10.3 (68)	20.4 (186)
Government affairs <sup>b</sup>	68.4 (19)	60.0 (15)	68.4 (19)	47.1 (17)	73.1 (67)	43.6 (55)	51.4 (35)	47.0 (83)	55.8 (310)
Internal staff	40.0 (5)	25.0 (8)	57.1 (14)	26.1 (23)	50.0 (8)	26.3 (19)	52.9 (17)	35.7 (28)	37.7 (122)
External representatives	28.1 (32)	30.8 (13)	37.2 (43)	32.0 (25)	50.0 (6)	60.0 (5)	45.5 (11)	33.3 (6)	35.5 (141)
Total	42.9 (63)	40.0 (45)	48.8 (84)	31.9 (72)	58.5 (106)	33.3 (108)	43.8 (96)	31.4 (185)	40.4 (759)

<sup>a</sup> *N*s are in parentheses.

<sup>b</sup> Includes trade association executives.

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