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## ATTORNEY CHARACTERISTICS AND COURTROOM RESULTS

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A number of sociologists and legal scholars have studied the background characteristics of different types of lawyers.<sup>1</sup> No researcher, however, seems to have yet analyzed the possible relationships between these general characteristics and courtroom results. It is the purpose of this paper to offer some findings relevant to those relationships. The basic theoretical position of this paper is that, in substantial samples of cases, the characteristics of the opposing attorneys are in general relatively trivial predictive or explanatory variables, especially in comparison with the predictive power of the correlations between the outcomes of cases and the factual elements within those cases. The characteristics discussed are those for which there is data in the *Martindale-Hubbell Law Directory* and which, one would suspect, might correlate with legal ability and thereby make a difference in courtroom results.

### I. THE RESEARCH DESIGN

The data shown in Table 1 were compiled by working backward from the 1962 to the 1959 volume of *American Law Reports Annotated, Second Series*, until 100 cases were found in which there was just one attorney listed for each side and both attorneys were listed in the *Martindale-Hubbell Law Directory* for the year in which each case was decided.<sup>2</sup> By using the *American Law*

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<sup>1</sup> See, e.g., CARLIN, *LAWYERS ON THEIR OWN* (1962); Ladinsky, *The Impact of Social Backgrounds of Lawyers on Law Practice and the Law*, 16 J. LEGAL ED. 127 (1963); Lortie, *Laymen to Lawmen: Law School, Careers, and Professional Socialization*, 29 HARV. EDUCATION REV. 352 (1959); Comment, *The Jewish Law Student and New York Jobs—Discriminatory Effects in Law Firm Hiring Practices*, 73 YALE L.J. 625 (1964); Carlin, *Current Research in the Sociology of the Legal Profession*, 1962 (a paper presented at the annual meeting of the American Sociological Association).

<sup>2</sup> 85 A.L.R.2d (1962) through 67 A.L.R.2d (1959). A copy of the appendix to this paper showing the cases, the lawyers, and their characteristics can be obtained from the senior writer.

TABLE 1. HOW LAWYERS OF DIFFERING BACKGROUNDS FARE WHEN THEY OPPOSE EACH OTHER.

Group 1 (Hypothesized to be more likely to win)	Group 2 (Hypothesized to be less likely to win)	Number of Paired Lawyers (½ in each group)	% of Group 1 Lawyers Who Won	% of Group 2 Lawyers Who Won	Difference (= correlation coefficient)	Probability of Positive Diff. Being Due to Chance
<b>AGE</b>						
1. Over 47	47 & under	82	56%	44%	+ .12	.10 to .15
2. 36 through 54	Under 36 or over 54	120	60	40	+ .20	.01 to .02½
<b>EXPERIENCE</b>						
3. Over 20 years	20 yrs. & under	84	55	45	+ .09	.20 to .25
4. 11 through 34	Under 11 or over 34	94	57	43	+ .14	.05 to .10
<b>AGE &amp; EXPERIENCE</b>						
5. Older (both within 5 yrs. on exper.)	Younger	54	48	52	-.04	.35 to .40
6. More Exper. (both within 5 yrs. on age)	Less Exper.	34	53	47	+ .06	.35 to .40
<b>EDUCATION</b>						
7. More than 1 degree	1 degree or none mentioned	84	55	45	+ .10	.15 to .20
8. More than 1 degree	No degrees mentioned	32	62	38	+ .24	.05 to .10
9. Pre-1920 AALS approval	Other law schools	58	45	55	-.10	.20 to .25
<b>ASSOCIATIONS</b>						
10. Member of ABA	Non-member of ABA	88	45	55	-.10	.15 to .20
11. Member of a firm	Non-member of a firm	106	53	47	+ .06	.25 to .35

12. Public office holder	Non-office holder	30	53	47	47	+.06	.35 to .40
EVALUATIONS							
13. High rating	Fair or no rating	90	53	47	47	+.06	.25 to .35
14. Very high recommendation	No recommendation	94	55	45	45	+.10	.15 to .20
15. Worth \$10,000 or more	Under \$10,000 or no listing	22	64	36	36	+.28	.10 to .15
NATIONALITY							
16. British surname	Non-British surname	100	50	50	50	00	no difference

Reports, important cases could be readily obtained from throughout the nation on a wide variety of subjects. Also, the cases annotated in A.L.R. are those which presumably could have gone either way on the law. This quality of relative neutrality helps to minimize a variable which is otherwise very difficult to control and thus in that respect makes A.L.R. cases more sensitive indicators of the ability to win. Given 100 cases, there are thus 200 lawyers in the full sample.<sup>3</sup> Each hypothesis in Table 1, however, is tested only on cases in which there is a group 1 lawyer opposing a group 2 lawyer. Thus, the number of usable cases varies with each hypothesis. This research design necessitates dividing each background characteristic at some point. For instance, age is split into two categories at average age 47. The difference column in Table 1 is equivalent to the correlation coefficient between being in group 1 rather than group 2 and being a winner rather than a loser. These correlation coefficients can range from +1.00 (perfect direct correlation) down to 0 (no correlation) down to -1.00 (perfect inverse correlation).<sup>4</sup> The last column indicates the probability that the difference found is attributable to chance, given the size of the difference and the number of lawyers involved. Differences having chance probabilities greater than .05 are readily attributable to chance.<sup>5</sup>

An alternative research design might involve determining what per cent of their 1963 cases a selected group of 200 lawyers won. However, differences in the victory records of lawyers in such a research design could be readily attributed to the cases they handle, rather than to their background characteristics. For

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<sup>3</sup> The two hundred attorneys seem to comprise a representative national sample of the diverse types who practice in cases important enough to be included in the *American Law Reports*. By making comparisons between types of cases and types of courts within this sample, one can roughly extrapolate to some other types of cases and some other types of courts. See the text material in the paragraph subsequent to note 13 *infra*.

<sup>4</sup> The difference column equals the phi correlation coefficient, since both the independent variable and the dependent variable are divided at the median. This means that exactly half the lawyers used were in each background group and were winners. For further detail on correlation, see GUILFORD, *FUNDAMENTAL STATISTICS IN PSYCHOLOGY AND EDUCATION* 135-38, 311-15 (1956). Table 2 also contains phi correlation coefficients.

<sup>5</sup> Technically speaking, the chance probabilities in Table 1 are one-tailed chi-squares as are (for ease in comparison) the chance probabilities referred to later with regard to Table 2. See *id.* at 228-37; EDWARDS, *STATISTICAL METHODS FOR THE BEHAVIORAL SCIENCES* 258-61 (1954).

example, divorce lawyers tend to win more cases than criminal defense lawyers regardless of background. The research design used in this paper in effect makes comparisons only between lawyers who directly opposed each other. The emphasis is thus on the outcomes of individual cases, not on the victory records of individual lawyers over time. It might also be noted that by using only cases where one lawyer opposes one other lawyer, the effect of their respective backgrounds is brought out more clearly than if the backgrounds of both sides were diluted by injecting the additional variables which would necessarily accompany the introduction of one or more extra individuals.

## II. THE BASIC FINDINGS

### A. AGE AND EXPERIENCE

The average age of the 200 lawyers in the sample was 47. Table 1 indicates that, if a lawyer above age 47 opposes a lawyer 47 years old or younger, the older lawyer is more likely to win. However, if the lawyers are divided into three categories, namely, those who might be considered quite young (35 and under) to be practicing at the appellate court level (which is the court level for nearly all cases reported in the *American Law Reports*), those who might be considered middle-aged (36 through 54), and those who might be considered approaching retirement (55 and over), then the correlation with being a winner becomes stronger and is revealed to be curvilinear. Thus, the middle-aged lawyer seems to fare the best in view of the fact that, in the sample studied, he was generally capable of defeating both the younger, less experienced lawyer and the older, possibly slower lawyer.

As one might suspect, the relation between experience and victory is similar to the relation between age and victory. Thus, the lawyer with more than the average number of years since being admitted to the bar (over 20 years) generally won over the lawyer with less than the average. Likewise, when experience is divided into three categories (10 years or under, 11 through 34 years, and 35 years or over), a strengthened curvilinear relation is revealed. The greater importance of experience over mere age is shown by the figures on lines 5 and 6. Line 5 shows that an older lawyer has little advantage over a younger lawyer (irrespective of the age level or the age gap) and may possibly be at a slight disadvantage, if experience is held constant by only comparing lawyers who are within five years of each other on experience. On the other hand, a more experienced lawyer seems to have some advantage over a less experienced lawyer, where age is similarly held constant. The correlations on lines 5 and 6

are as small as they are, because one of the two variables was controlled within narrow limits on each line. This technique admittedly leaves something to be desired, but it is justified on the ground that no better technique is available. That is, it is difficult to assemble a significant sample of 60-year-old lawyers with only five years of experience or of 25-year-old lawyers with ten years of experience.

## B. EDUCATION

The average lawyer in the sample had one college degree, which was usually a law degree. 55 per cent of the lawyers who had two degrees or more (of any kind) were victorious when faced by opponents who had one degree or who did not mention having a degree. Since this relationship is linear rather than curvilinear (unlike age and experience), the wider the educational gap the greater the likelihood that the more educated lawyer will win. Thus, line 8 shows that, when lawyers with two degrees or more (of any kind) are compared with lawyers who did not mention having a degree (thus eliminating the middle group of lawyers who have one degree), the correlation with victory rises from +.10 to +.24.

On the other hand, the attempt to correlate educational *quality* with victory by determining when each law school was approved by the American Association of Law Schools revealed the correlation to be negative. This negative correlation, however, is small enough and based on few enough cases to be readily attributable to chance, unless further analysis reveals the operation of some meaningful explanatory variables. It should also be pointed out that year of AALS approval is not a perfect measure of law school quality.<sup>6</sup> Another explanation might be that graduates from the less prestigious law schools who are engaged in appellate advocacy tend to rank higher in their classes than their opponents from the more prestigious law schools do. This would

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<sup>6</sup> For a list of the member schools of the AALS and when they were admitted, see AMERICAN ASSOCIATION OF LAW SCHOOLS, PROCEEDINGS 271-73 (1961). This booklet also contains a provocative debate on the meaning of AALS approval. Year of ABA approval is even less meaningful as a measure of quality among approved law schools, since so many of the approved law schools were approved simultaneously in the 1920's. More meaningful results in categorizing the quality of the law schools might be obtained by using the average Law School Admissions Test scores for the entering classes of each law school. This data, however, is only made available for studies sponsored by the Educational Testing Service.

set in motion a selective process which would produce the unexpected result revealed above.

### C. ASSOCIATIONS

American Bar Association membership, held by 63 per cent of the lawyers in the sample, is another characteristic whose correlation with victory did not turn out as hypothesized. If the correlation were positive, however, one would not attribute it to a causal relation, since merely joining the ABA clearly does not make one a better lawyer. Furthermore, as Table 2 reveals, the ABA members in this sample of appellate court lawyers were disproportionately the younger, less experienced lawyers.

Unlike ABA membership, being in a law firm (as an associate or a partner) does have a positive correlation with victory, although the linear correlation would probably be higher, if lawyers from large firms had been compared with both solo practitioners and lawyers from very small firms. Information on firm size was not available, but Jerome Carlin's research supports the large-versus-small-firm hypothesis, since he finds that the characteristics of small firm lawyers are more like those of solo practitioners than those of large firm lawyers.<sup>7</sup>

Those lawyers who were currently holding public office (which usually meant being an attorney for a governmental unit) had a slight tendency to win over their opposition. The higher the governmental unit, the greater this tendency would probably have been. Such an hypothesis would conform to Eloise Snyder's finding that litigants possessing greater governmental and political power tend to win over litigants possessing lesser power.<sup>8</sup> She attributes this finding to the respect such litigants can evoke and to the able legal talent they can hire.

### D. EVALUATIONS

In the *Martindale-Hubbell Law Directory* which was the source for the above characteristics, there are also given certain evaluation scores. One such score refers to "estimate of legal ability."<sup>9</sup> It is based on "age, practical experience, nature and

<sup>7</sup> Carlin, *Current Research in the Sociology of the Legal Profession*, 1962, at 8-16 (a paper presented at the annual meeting of the American Sociological Association).

<sup>8</sup> Snyder, *Political Power and the Ability to Win Supreme Court Decisions*, 39 *SOCIAL FORCES* 36 (1960).

<sup>9</sup> Quotations in this paragraph come from the inside front cover of *MARTINDALE-HUBBELL LAW DIRECTORY* (1960).



length of practice, and other relevant qualifications." It can range from *a* (very high), *b* (high), *c* (fair), to no rating at all (the publishers indicate that the "absence of rating characters must not be construed as derogatory"). More than half of the lawyers in the sample of 200 had *a* (24 per cent) or *b* (29 per cent) ratings, and the rest had *c* ratings (7 per cent) or were unrated (40 per cent). The *a* and *b* lawyers did have a better victory record than the other lawyers, but not enough better to place much weight on these ratings.

*Martindale-Hubbell* also indicates whether recommendations received for the listed lawyers have been "very high," but no distinction is made between derogatory recommendations and no recommendations. 58 per cent of the 200 lawyers received "very high" recommendations and did show some tendency to win (+.10 phi correlation) when opposed by lawyers who did not receive such recognition.

The most potent predictor from *Martindale-Hubbell*, however, was net worth. Although only 20 per cent of the lawyers were given net worth evaluations, when those who were scored \$10,000 and over were compared with the under \$10,000 and unrated lawyers, a correlation of +.28 with being a winner rather than a loser resulted. The difficulty of assigning the proper significance to cause and effect respectively at this point and the possibility that reciprocal causation between wealth and victory is at work here complicates the evaluation of this correlation.

#### E. NATIONALITY

The last line in Table 1 deals with ancestral nationality. To make the comparisons involved, each lawyer's surname and its parts were taken to the *Dictionary of American Family Names*<sup>10</sup> in order to estimate whether a lawyer had a British (i.e., English, Scotch, Welsh) or non-British background. 60 per cent of the surnames were determined to be British, 15 per cent German, 14 per cent Irish, 3 per cent Scandinavian, 2 per cent southern European (Italy, Greece, Spain), 2 per cent eastern European (Polish, Balkan, Russian), 1 per cent French, 1 per cent Dutch,

<sup>10</sup> SMITH, *DICTIONARY OF AMERICAN FAMILY NAMES* (1956) gives the nationality origin and meaning of over 10,000 family names. Where more than one ancestral nationality was given, the first one was used. SMITH, *THE STORY OF OUR NAMES* (1950) also gives, among other things, the national origin of various family name prefixes, roots, and suffixes which can be used to estimate nationalities of names not given in Smith's *Dictionary*.

2 per cent unidentified non-British, and 2 per cent unknown. Lawyers with British surnames defeated lawyers with non-British surnames in exactly half of the cases so paired. A sample selected in this way may contain individual instances in which a lawyer's surname obscures mixed ancestral nationality or does not reflect his ancestral nationality at all, but this possibility probably cannot account for the zero correlation. This result might be contrary to what one would expect, given the relatively disadvantaged backgrounds of non-Anglo-Saxon lawyers reflected in the findings of Jack Ladinsky.<sup>11</sup> The significance of ethnic differences is apparently lessened substantially when other variables, such as type of law practice and level of court practiced before, are held constant.

Related to the ancestral nationality variable are the religious and racial variables. The religious variable is closely correlated with ancestral nationality, since Catholics and Jews are disproportionately non-British. There is no data in *Martindale-Hubbell* on racial characteristics, but even if there were, race would not be a very good predictive variable, since a high proportion of all lawyers are white. In those few cases, however, where a Negro lawyer does oppose a white lawyer, one might suspect that the Negro lawyer would be at a slight disadvantage by virtue of a possible educational handicap, the existence of conscious or unconscious prejudice, and the likelihood that he would be defending in a criminal case.<sup>12</sup>

#### F. OTHER ELEMENTS

Perhaps a comparison of attorneys having different personality characteristics such as extroversion-introversion and dominance-submissiveness might prove significant. It might also be revealing to compare lawyers who differ in preparation techniques, appearance, or oratorical style. But none of these characteristics are described in *Martindale-Hubbell*.<sup>13</sup> Even if they were, however, one might still hypothesize that *Martindale* ratings, experience, and amount of education are probably better *general* predictors of courtroom success, at least at the appellate

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<sup>11</sup> Ladinsky, *Careers of Lawyers, Law Practice, and Legal Institutions*, 28 *AMERICAN SOCIOLOGICAL REV.* 47 (1963).

<sup>12</sup> Hale, *The Career Development of the Negro Lawyer in Chicago, 1949* (unpublished dissertation in University of Chicago Library).

<sup>13</sup> The senior writer is in the process of undertaking a systematic content analysis of the transcripts of the oral arguments and judicial reactions in a sample of cases before the United States Supreme Court.

court level, although these other variables may be important in specific anecdotal instances.

If a table with a format like Table 1 is prepared for just federal courts and another table for just state courts, the two tables do not differ significantly. Likewise, if a table like Table 1 is prepared for northern courts and another table for southern courts, there is also no significant difference between the tables. Finally, if a table is prepared for criminal, tort, family, and labor cases on the one hand, and another table is prepared for business, property, and tax cases, the two tables are still very much alike. Thus, the correlations measured by this study seem to remain fairly constant regardless of appellate court level, region, or type of case. Because several new variables are introduced at the trial level (especially the increased subjectivity of jury decisions), one might expect to find significant differences between these tables and a table prepared for trial court cases. This hypothesis cannot be tested with the present sample, however, since it lacks trial court cases.

One might hypothesize that in general the attorney whose characteristics are most like those of the deciding judge might have a slight edge. One could test this hypothesis by determining for each characteristic in Table 1 whether the tendency of lawyers in group 1 to win over lawyers in group 2 correlates positively with the incidence of group 1 judges. No data, however, was compiled in this study on the characteristics of individual judges.

It might also be noted that the appellees (the winners at the trial court level) won 58 per cent of the 100 cases, while the appellants won 42 per cent. Being an appellee correlated to a significant extent only with amount of education (+.19), holding a public office (+.17), and being a firm member (+.15). One could control for the effect that being an appellee has upon the result shown on line 11 of Table 1 by using a set of cases all of which pitted firm member against solo practitioner and in half of which the firm member was the appellee. Similar controls could be applied to the correlation with amount of education and with holding public office. Such statistical controls would even further reduce the differences shown in Table 1.

### III. INTERRELATIONS AMONG THE CHARACTERISTICS

Table 2 shows how the attorney characteristics correlate with each other. Each cell indicates the correlation coefficient between the variables involved. The number of lawyers involved in each correlation is 200 except where meaningful information was occa-

sionally not available for some lawyers (e.g., as to ancestral nationality, there were three lawyers who were unclassifiable). Given 200 lawyers and the formula for calculating chance probability, any correlation coefficient larger than  $+.11$  or  $-.11$  is not readily attributable to chance.<sup>14</sup> Table 2 might have been more useful for interpreting the findings of Table 1, had only those lawyers been included in a given correlation who had participated in a usable case involving both of the variables to be correlated. Such an attempt to relate Table 2 more closely to Table 1, however, results in unduly small sample sizes for the cells, although the absolute size of the correlation coefficients is almost always substantially larger.

Figure 1 summarizes the relationships in Table 2 that were both statistically significant below the .05 level of chance probability and greater than .11 in phi coefficient size. The only statistically significant relations from Table 2 that were excluded from Figure 1 are the relations between experience and degrees (spurious if age is statistically controlled), between age and rating (spurious if experience is statistically controlled), and between public office and firm membership (a negative tautology in part). Education "quality" was excluded from Figure 1 because of its unexplained correlations. Figure 1 also integrates most of the findings from Table 1 on courtroom victory. The arrows in the figure indicate what seem to be the causal connections on the basis of analyzing the correlations coefficients,<sup>15</sup> the time sequences, and the literature available on the sociology of the legal profession.

Reading from left to right and downward, one sees that there is a very high correlation between age and experience as expected. There is also a less expected high negative correlation between age and quantity of education, which indicates that younger lawyers are obtaining more degrees than older lawyers have obtained. The younger lawyers are also more likely to be associated with a firm, whereas the older lawyers are more likely to be solo and general practitioners.

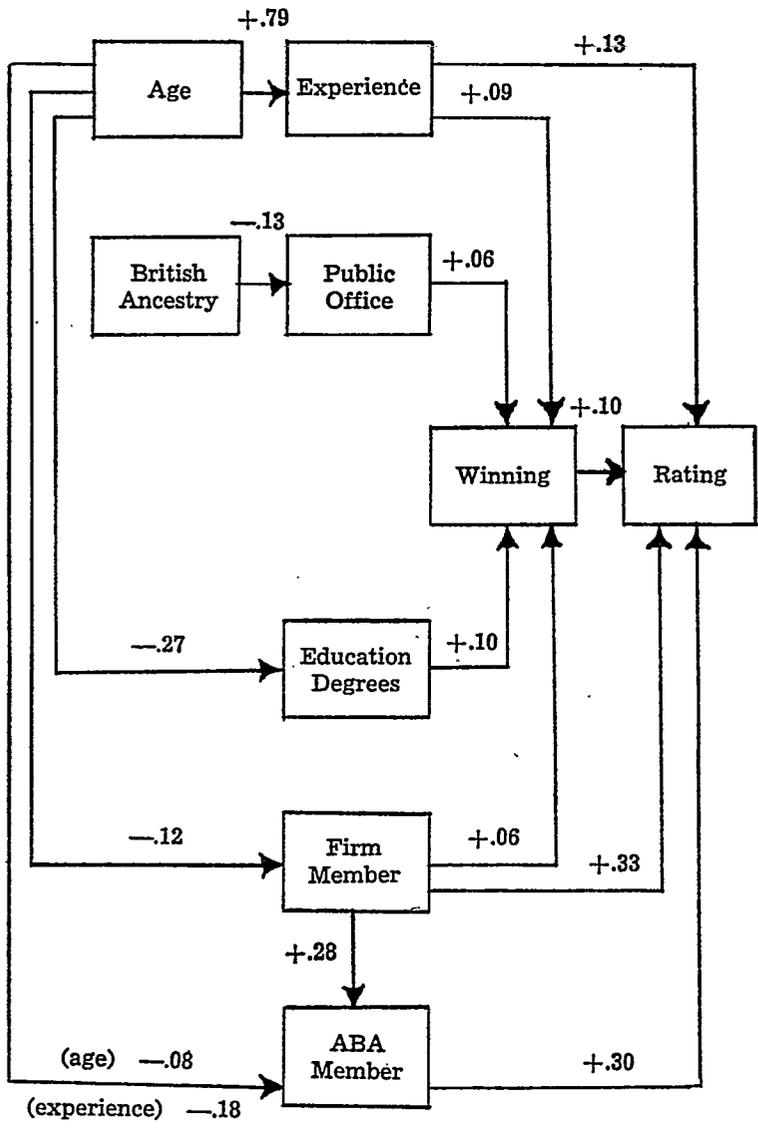
The only variable with which British ancestry correlated significantly was holding public office, and this was a negative cor-

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<sup>14</sup> See notes 4 & 5 *supra* and accompanying text.

<sup>15</sup> The Blalock-Simon method of testing causal models by analyzing correlation coefficients was used, and a high degree of goodness of fit or internal consistency was achieved. See Blalock, *Correlation and Causality: The Multivariate Case*, 39 *SOCIAL FORCES* 246 (1961).

FIGURE 1. THE MOST STATISTICALLY SIGNIFICANT RELATIONS AMONG ATTORNEY CHARACTERISTICS AND COURTROOM RESULTS



relation. 12 per cent of the 77 non-Anglo-Saxon lawyers in the sample were attorneys for a governmental unit, whereas only 5 per cent of the 120 Anglo-Saxon lawyers in the sample held such office. The difference might be explained by the fact that there is less discrimination in governmental hiring than in private hiring and sometimes even active recruitment of minority group representation for government positions.

Experience correlates positively with winning and also with having "very high" recommendations in *Martindale-Hubbell*. On the other hand, a smaller proportion of the older, more experienced lawyers in the sample were members of the American Bar Association (52 per cent) than was true of the younger, less experienced lawyers (70 per cent). If this relation holds in a larger sample of lawyers, it may help to explain why the American Bar Association has become somewhat more liberal in its pressure group activities during the 1950's than it was in the 1930's, although ABA leaders might argue that in both periods the ABA was merely defending the law and the judicial process.

Holding public office correlates positively with winning in court as does quantity of education. Being a firm member correlates positively with winning, with having a very high *Martindale-Hubbell* evaluation, and with being an ABA member. Being an ABA member also correlates positively with the *Martindale-Hubbell* ratings, as does being on the winning side in the cases compiled. The three different *Martindale-Hubbell* evaluations all correlated highly with each other, but the recommendations evaluation was used in Figure 1, because it correlated more highly with the other attorney characteristics.

#### IV. CONCLUSIONS

As is shown in Table 1, there are definite and meaningful relationships between attorney characteristics and courtroom results. The relations in general, however, are smaller than might have been expected, particularly in comparison with the relationships among the characteristics themselves, which are shown in Table 2. Thus, one might conclude by saying that some characteristics of lawyers are reasonably potent for predicting other characteristics of the same lawyers (especially when statistical controls are used), but these same characteristics are in general not very potent for predicting courtroom results. Legal scholars, practicing lawyers, and social scientists interested in decisional outcomes can get much better predictability by analyzing the

factual elements within the cases,<sup>16</sup> the characteristics of the judges or jurors,<sup>17</sup> and the characteristics of the litigants.<sup>18</sup>

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<sup>16</sup> Kort, *Content Analysis of Judicial Opinions and Rules of Law*, in JUDICIAL DECISION-MAKING 133 (Schubert ed. 1963).

<sup>17</sup> Rodell, *For Every Justice, Judicial Deference Is a Sometime Thing*, 50 GEO. L.J. 700 (1962).

<sup>18</sup> Bullock, *Significance of the Racial Factor in the Length of Prison Sentences*, 52 J. CRIM. L., C. & P.S. 411 (1961).