

Just the Facts, Your Honor: Finding Judicial Statistics

Teachable Moments for Students ... is designed to provide information that can be used for quick and accessible answers to the basic questions that are frequently asked of librarians and those involved in teaching legal research and writing. These questions present a “teachable moment,” a brief window of opportunity when—because he or she has a specific need to know right now—the student or lawyer asking the question may actually remember the answer you provide. The material presented in this column is not meant to be an in-depth review of the topic, but rather a summary of the main points that everyone should know. It is a companion to the Teachable Moments for Teachers column that gives teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. Readers are invited to submit their own “teachable moments for students” to the editor of the column: Barbara Bintliff, University of Colorado Law Library, Campus Box 402, Boulder, CO 80309, phone: (303) 492-1233, fax: (303) 492-2707.

By Julie Jones

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“For the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics. ...”

—Oliver Wendell Holmes (1897)¹

Requests for judicial statistics are common at the reference desk. Indeed, with the renewed interest in the operation of the federal judiciary with a rule governing the citation of

unpublished opinions,² as well as the growing popularity of empirical legal scholarship,³ it appears that statistical and fact-based questions will increase at the reference desk.

However, legal research courses in both law and library schools typically omit this topic from discussion, focusing instead on the product of courts, rather than the process of courts. Similarly, it is the rare law school class that discusses the administrative workings of our judicial system. While it is true that the primary output of our courts is opinions (and hopefully, justice), there exists a large and largely hidden bureaucracy behind the benches keeping track of just about everything passing through the courthouse doors.⁴

Most legal research textbooks don't mention the subject at all, and those that do, limit their

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² Fed. R. App. Proc. 32.1 provides:

(a) Citation Permitted. A court may not prohibit or restrict the citation of federal judicial opinions, orders, judgments, or other written dispositions that have been:

(i) designated as “unpublished,” “not for publication,” “non-precedential,” “not precedent,” or the like; and
(ii) issued on or after January 1, 2007.

For a recent discussion on the citation of unpublished opinions, the de facto dual litigation track now in operation, and the use of judicial clerks in this process, see Symposium, *Have We Ceased to Be a Common Law Country?*, 62 Wash. & Lee L. Rev. 1429 (2005).

³ See Michael Heise, *The Past, Present, and Future of Empirical Legal Scholarship: Judicial Decision Making and the New Empiricism*, 2002 U. Ill. L. Rev. 819 (2002); see also Symposium, *Empirical and Experimental Methods in Law*, 2002 U. Ill. L. Rev. 791 (2002).

⁴ Of course, this data doesn't account for the recently reported secret dockets, or the decisions of increasingly popular private judges, both of which raise questions about the egalitarianism of our justice system. See Julie Kay, *Federal Judges Slammed for Secret Docketing*, Nat'l L.J., November 21, 2005, at 21; Jean Guccione, *System Offers Justice Outside the Spotlight, If You Can Pay*, L.A. Times, May 7, 2006, § California Metro, at 1.

¹ Oliver Wendell Holmes Jr., *The Path of the Law*, 10 Harv. L. Rev. 457, 468–69 (1987).

discussion to a few pages.⁵ Students conducting research or cite checking the work of others will need assistance finding these sources. Questions of this nature present a ripe opportunity to teach the student both about the administration of our courts as well as alternate sources of information beyond Westlaw[®] and LexisNexis[®].

Federal Court Statistics

Congress created the Judicial Conference of the United States by statute in 1922, designed to be the federal courts' national policy-making entity and the public face of the entire judicial branch. Presided over by the Chief Justice of the United States, the Judicial Conference performs its duties through committees composed primarily of federal

judges, organized by subject matter to recommend national policies and legislation concerning judicial administration. Topics addressed by these committees include the judicial budget, rules of practice and procedure, criminal law, case management and court administration, judges' pay and benefits, computers and technology, security, and facilities.⁶

The conference supervises and directs the Administrative Office of the United States Courts (AO), created by Congress in 1939. Congress assigns many duties to the AO, including preparing and implementing the conference budget, managing the judiciary's payroll and human resources programs, and collecting and analyzing statistics to monitor the business of the courts, i.e., the adjudication of cases that come before it.⁷

Sources for Federal Judicial Statistics and Policy Studies

Administrative Office of the United States Courts (AOUSC) <www.uscourts.gov/adminoff.html>

Statistical Reports <www.uscourts.gov/library/statisticalreports.html>

Includes PDFs of the annual print publications available in most law libraries:

Federal Judicial Caseload Statistics (previously *Federal Judicial Workload Statistics*)

Federal Court Management Statistics (previously *Management Statistics for United States Courts*)

Wiretap Reports

Bankruptcy Statistics

Judicial Facts and Figures <www.uscourts.gov/judicialfactsfigures/contents.html>

U.S. Courts Library <www.uscourts.gov/library/publications.html>

Judicial Business of the United States Courts <www.uscourts.gov/judbususc/judbus.html>

Includes PDFs of the *Annual Report of the Director*, available in most law libraries.

Federal Court Management Statistics <www.uscourts.gov/fcmstat/index.html>

Federal Judicial Center <www.fjc.gov>

⁵ Kent Olson seems to be the exception to this rule. See, e.g., Kent C. Olson, *Legal Information: How to Find It, How to Use It*, 110, 184–85 (1999); Morris L. Cohen & Kent C. Olson, *Legal Research in a Nutshell*, 291–293 (7th ed. 2000).

⁶ The biannual *Report of the Proceedings of the Judicial Conference of the United States* is available in print and online at <www.uscourts.gov/judconfindex.html> for those interested, but it includes no statistics.

⁷ On a macro scale, these statistics quickly reveal the growing nature of the federal judiciary, both in terms of number of cases filed and number of judges needed to handle the caseload, which has caused considerable angst among some. See, e.g., Jon O. Newman, *1,000 Judges—The Limit for an Effective Federal Judiciary*, 76 *Judicature* 187 (1993). The same is true of some state judiciaries. See, e.g., *Crisis in the Courts*, Fresno Bee, June 3, 2006, § Local News, at B10.

The AO dutifully records these facts and figures and publishes them both online and in print on an annual basis. Typical statistics include number of civil and criminal cases at the district, appellate, and supreme court levels; types of cases; pro se cases; and judicial workloads. The AO is also charged with studying and reviewing judicial operations, which can provide some interesting information. Most of these statistics are available both in print (all available years) and online (mid 1990s–present) from the U.S. Courts Web site at <www.uscourts.gov>.

Congress established the Federal Judicial Center in 1967 to further improve the administration of the courts. It is responsible for researching the judiciary processes, court management, and other issues affecting the business of administering justice. This research is a rich source of information not commonly included in the routine statistics kept by the AO. The Federal Judicial Center can be found online at <www.fjc.gov>.

The clerks of individual federal courts, charged as the primary administrative manager for their court, are often called upon to compile statistics for their courthouse as well. These may be available online or in a published report. Software applications implemented nationwide are facilitating the collection of federal judicial statistics and helping courts manage their caseloads. These may soon provide additional data not previously available.

Beyond these government reports, numerous other publications monitor the federal justice system, such as the annual Supreme Court issue by the *Harvard Law Review* each November (best viewed in print or PDF for the statistical tables), and monographs like *The Supreme Court Compendium*, currently in its third edition, edited by Lee Epstein, et al. These sources are great for statistical information specific to individual justices, as well as case types heard before the Court.

State Court Statistics

Individual state court administrations are organized similarly to the federal model. For example, in New York the Office of Court

Administration functions under the state's chief administrative judge, who acts on behalf of the chief judge, to manage the New York state judicial system. In California, the Administrative Office of the Courts (you see the trend in department names) is the staff agency of the Judicial Council, which has policy-making authority over the state court system, as led by the state's chief justice.

These state court administrative branches perform comparable functions and keep statistics similar to their federal counterparts, which are typically found in the annual reports published by the state court's administrative office. Today, these reports may be available in print, online, or both, depending on the state. Additionally, state statistical yearbooks and abstracts uniformly include chapters on crime and the judiciary. Most states also have a Statistical Analysis Center (SAC) agency that collects, analyzes, and disseminates justice data.

There are a number of national judicial groups that provide excellent sources for compiled state-based statistics. Probably the most well known, the National Center for State Courts (NCSC) is a prodigious corporate author of which any academic law library will certainly hold a number of titles on a variety of subjects. Its online publishing includes the Court Statistics Project (available in print as an annual publication, *State Court Caseload Statistics*), CourtTopics database, and *Survey of Judicial Salaries* (also available in print), all of which are easily accessible at <www.ncsconline.org>. For those looking to do extensive data mining, try the Inter-University Consortium for Political and Social Research (ICPSR) at <www.icpsr.umich.edu>. The Conference of State Court Administrators (COSCA), organized in 1953, is devoted to improving state court administrative systems and provides some informative white papers on its Web site at <cosca.ncsc.dni.us>. Other useful organizations include:

- American Judges Association (AJA)
<aja.ncsc.dni.us>
- Justice Research and Statistics Association
<www.jrsa.org>

- National Association for Court Management (NACM) <www.nacmnet.org>
- SEARCH: The National Consortium for Justice Information and Statistics <www.search.org>
- American Judicature Society <www.ajs.org>

Subject-Based Statistics

Law review articles are often a good source of statistics on a wide range of topics, particularly from empirical legal scholars and journals such as the *Journal of Empirical Legal Studies* (JELS).⁸ Fortunately for those interested in the cold, hard facts, this type of scholarship is gaining in popularity in our nation's law schools. Of course, social scientists have been conducting empirical research on our justice system for quite some time. Searching the primary academic sociological databases (such as Sociological Abstracts and Social Sciences Citation Index) can be fruitful and turn up information not produced by the government or legal scholars. Finally, not-for-profit organizations may collate litigation statistics based on their particular interests.

Foreign and International Statistics

Like the United States, many foreign governments annually publish statistical abstracts (though their individual titles vary), which include criminal and judicial information. The depth of information found in these sources varies by country, and the researcher will need to wear her or his “thesaurus hat” at times in trying to discern how judicial statistics may be classified in another country's lexicon (remember, judges are public servants). Keep in mind, though, that not all countries publish this information.

International criminal statistics are easier to come by on the Internet, and there are a number of good Web sites that collate these. The American Society of International Law (ASIL) guide to international criminal law, available at <www.asil.org/resource/crim1.htm#Statistical%20Sources>, includes a section on statistics that provides a number of valuable links. Additionally, the U.S. Department of Justice, Bureau of Justice Statistics, supplies numerous international justice statistics available both in print and online at <www.ojp.usdoj.gov/bjs/ijs.htm>.

A Final Note

Finding just the right statistics is not always easy, and sometimes the numbers simply haven't been recorded. This can be frustrating for students who think that all information is available and it's all online. While we are certainly moving toward more content being available on the Internet, the fact remains that government bureaucracy is recording this data. If it doesn't consider an element worthy of notation, it does not note it. Perhaps in the future, with the increasing use of online case management systems by the judiciary, the public will have unfiltered access to the wealth of information currently resting latent in a string of zeros and ones. Until then, to paraphrase words from a galaxy far, far away: Patience, my young apprentice.⁹

⁸ Because empirical legal scholarship can be difficult to search for in the traditional legal journal databases and indices, JELS is in the process of developing for its Web site a searchable index of empirical legal articles.

⁹ *Star Wars: Episode II—Attack of the Clones* (Lucasfilm Ltd. 2002).

Other Good Sources for Statistics

Bureau of Justice Statistics <www.ojp.usdoj.gov/bjs>

Various publications available in print and PDF.

U.S. Department of Justice Office of Justice Programs <www.ojp.usdoj.gov>

Various publications available in print and PDF.

United States Sentencing Commission Annual Reports and Statistical Sourcebooks <www.ussc.gov/annrpts.htm>

Also available in print.

National Center for Juvenile Justice <ncjj.servehttp.com/NCJJWebsite/main.htm>

Various publications available in print and PDF.

U.S. Census Bureau, Statistical Abstract of the United States <www.census.gov/compendia/statab>

Also available in print.

LexisNexis Statistical

Subscription database.

Transactional Records Access Clearinghouse <trac.syr.edu>

Statistics reports on federal agencies' enforcement actions.

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Another Perspective

“The contours of any given case emerge through a prism of many decisions and decision-makers. If we want to explain the impact of culture on criminal case outcomes, then, we should look at the potential effect of cultural claims at all of these various decision points. Moreover, we should approach the question from multiple perspectives, using a variety of research methods and data sets, in order to create the fullest and most textured portrait of the relationship between culture and culpability.”

—Kay L. Levine, *The Law Is Not the Case: Incorporating Empirical Methods into the Culture of Case Analysis*, 17 U. Fla. J.L. & Pub. Pol’y 283, 287 (2006).