
Washington University in St. Louis
School of Law

Law 551B. Social Scientific Research for Lawyers

Fall 2008 Semester

Instructor

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Office Hours: Wed 1:30-3:00 and
by appointment

Class Schedule

Tuesday/Thursday 3:00-4:30 PM
Seigle 109

Teaching Assistant

Ryan Black (rcblack@wustl.edu)
Office: Seigle 212
Office Hours: Wed 10:00-11:30

Course Description

The purpose of this course is to provide law students with the ability to conduct and evaluate empirical legal research. By empirical legal research I mean scholarship “based on, concerned with, or verifiable by observation rather than theory or pure logic” (*New Oxford American Dictionary*, 2005). At Washington University, the Center for Empirical Research in the Law (CERL) is the institutional home of this genre of research. While purely doctrinal and theoretical work plays an important role in legal and social science research, so, too, does the collection and analysis of relevant *data* of all varieties. Indeed, the use of data allows us to understand how things work, and ultimately to make prescriptions for how to make things work better, in the legal system.

Knowing how to perform and assess empirical legal research is important for lawyers. Social scientific research is widely used in litigation, and the ability to present and analyze data of all varieties is an important communication skill. The training offered in this course will thus help make students better advocates. Students will also learn what questions to ask (and not to ask) of experts testifying about their social scientific research.

The course will proceed through three distinct modules. The first module will focus on **Research Design**. We will cover the basics of designing and conducting an empirical study. The second module will cover **Data Analysis**, covering the basics of descriptive and inferential statistics and the graphical presentation of data. The final module will consider **Applications** of social science research in various areas of the law. In this module we will systematically read case law to see how social science is used in the legal system.

Requirements and Evaluation

Class meetings will be conducted as a lecture-based workshop. Sometimes I will lecture on salient topics and answer student questions. Other times we will discuss the readings as in a seminar. When we read cases, I intend to use the Socratic method of instruction, and I expect students to come to class with the cases fully briefed. Students are expected to attend all classes and come fully prepared to critically discuss the assigned readings. This means reading all of the assigned material ahead of time and thinking about how the various pieces might fit together. *The bulk of the learning in the course will take place outside of the classroom through reading, thinking, and working on the weekly assignments and practicing using statistical software.*

To that end, Ryan Black (a political science doctoral student) will serve as a teaching assistant for the course. Ryan will be available for office hours to help students with their written assignments. I am also readily available for scheduled office hours and by appointment. Except for purely objective items, I am solely responsible for student evaluation. Please contact me if you have any questions or concerns about assessment.

I will base student evaluation on two components:

- **Written Assignments.** Throughout the semester I will make six written homework assignment. Assignments will typically be distributed on Thursdays and will be due the following Thursday in class. Some of these will require writing short essays. Others will involved conducting some analyses and presenting results. Each weekly written assignment will be graded on a 10 point scale. The written assignments will count for 85% of the final course grade. I will drop the one lowest scores for each student before computing his or her final assignment total. Late assignments will not be accepted. Please note that assignments will not be graded anonymously.
- **Class Participation.** I will assign each student a class participation score at the end of the semester. These scores will count for 15% of the final grade.

Grades will be assigned using the mandatory mean required by the law school. I expect to use a symmetric distribution of grades around the mandatory mean (based on student GPAs) with a standard deviation of five unless I think a different standard deviation or allowing a skew better reflects aggregate performance in the course. (If you do not understand this now, you will when we finish Module 2.) I will give no incompletes in the course.

Readings

I have assigned one textbook for this course:

David Freedman, Robert Pisani, and Roger Purves. 2007. *Statistics*, Fourth Edition. W. W. Norton.

Freedman, Pisani, and Purves (hereinafter FPP) is an excellent introduction to statistics and is widely used in undergraduate and graduate courses in applied statistics and the social sciences. It should serve you well as a reference after this course.

In addition to these textbooks, I will assign a number of articles and book chapters from various books, academic journals, and law reviews. I will either provide encrypted PDFs of each reading on the course website or provide a photocopy for each student. The course website is located at:

<http://adm.wustl.edu/courses/socscilaw.php>

I intend to distribute readings, datasets, and documentation on this site. I will also regularly use email to communicate with students in the course. Please check the course website and your email regularly. I will not be using the MyLaw site.

Statistical Software

For the **Data Analysis** module of the course, you will be required to use statistical software to analyze data. For a variety of reasons, I have chosen *not* to use an expensive commercial package like SAS, SPSS, or Stata for this course. We will also not use Microsoft Excel, as it is insufficient for most data analytic purposes and encourages bad social science practices. We will use the statistical programming language called R, which is free and available for Windows, Macintosh, Linux, and Unix operating systems from <http://www.r-project.org>. R is the best package for graphical and exploratory data analysis, and is a powerful statistical programming language. There is plenty of documentation available about R on the web, and we will distribute materials specifically tailored for this course.

Course Topics and Schedule

8/28. Introduction

Organizational Meeting

9/2. Motivation

Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).

Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993).

Daubert v. Merrell Dow Pharmaceuticals, 43 F.3d 1311 (9th Cir. 1995).

FED. R. EVID. 702.

David E. Bernstein, *Quackpertise*, WALL ST. J., Sept. 30, 2006, at A9.

Module 1. Research Design

9/4 and 9/9. Design Basics

Earl Babbie. 2004. *The Practice of Social Research*. Wadsworth Publishing, 10th Edition. Chapter 4.

David L. Faigman, D. H. Kaye, Michael J. Saks, and Joseph Sanders. 2002. *Science in the Law: Standards, Statistics and Research Issues*. West. §4-1.0.

Cass R. Sunstein, David Schkade, and Lisa Michelle Ellman. 2004. "Ideological Voting on Federal Courts of Appeals." *Virginia Law Review*. 90: 301-354.

FPP. Chapters 1-2.

Jeffrey A. Segal. 1984. "Predicting Supreme Court Cases Probabilistically: The Search and Seizure Cases, 1962-1981." *American Political Science Review*. 78:891-900.

9/11. Sampling, Measurement and Analysis

Earl Babbie. 2004. *The Practice of Social Research*. Wadsworth Publishing, 10th Edition. Chapter 5.

David L. Faigman, D. H. Kaye, Michael J. Saks, and Joseph Sanders. 2002. *Science in the Law: Standards, Statistics and Research Issues*. West. §4-2.0–4-3.0.

Lee Epstein and Gary King. 2002. "The Rules of Inference." *University of Chicago Law Review*. 69: 1-133.

John O. McGinnis. 2006. "The Age of the Empirical." *Policy Review*. 136.
(<http://www.hoover.org/publications/policyreview/3402126.html>)

Theodore Eisenberg. 2004. "Why Do Empirical Legal Scholarship." *San Diego Law Review*. 41: 1741-1746.

Assignment 1 Due [9/11]

Module 2. Data Analysis

9/16 and 9/18. Descriptive Statistics

FPP Chapters 3-5.

9/19. Make-Up Class I

R Lab [3:00-4:30 PM, Seigle 109]

9/23 and 9/25. Probability

FPP Chapters 13-15.

Assignment 2 Due [9/25]

9/30. Sampling I

FPP Chapters 16-18.

[No class on 10/2. Vice Presidential Debate]

10/3. Make-Up Class II

R Lab [3:00-4:30 PM, Seigle 301]

10/7 and 10/9. Sampling II

FPP 19-20

Assignment 3 Due [10/9]

10/14 and 10/21. Statistical Inference I

FPP Chapters 21, 23.

[No class on 10/16. Fall Break]

10/23. Hypothesis Testing

FPP Chapter 26.

Assignment 4 Due [10/23]

10/28, 10/30, and 11/4. Linear Regressions

FPP Chapters 8-12.

Franklin M. Fisher. 1980. "Multiple Regression in Legal Proceedings." *Columbia Law Review*. 80: 702-736.

[No class on 11/6]

11/11 and 11/13. Other Models

FPP Chapters 27-29.

Assignment 5 Due [11/13]

Module 3. Applications

11/18. Trademarks

Elgin National Watch Co. v. Elgin Clock Co., 26 F.2d 376 (D. Del. 1928).

Zippo Manufacturing Co. v. Rogers Imports, Inc., 216 F. Supp. 670 (S.D.N.Y.1963).

Amstar Corporation v. Domino's Pizza, 615 F.2d 252 (5th Cir. 1980).

Exxon Corp. v. Texas Motor Exchange of Houston, 628 F.2d 500 (5th Cir. 1980).

Bacardi v. New York Lighter, 54 U.S.P.Q.2d 1335 (E.D.N.Y. 2000).

11/20 and 12/2. Discrimination

Castaneda v. Partida, 430 U.S. 482 (1977).

Hazelwood School District v. United States, 433 U.S. 299 (1977).

Connecticut v. Teal, 457 U.S. 440 (1982).

Bazemore v. Friday, 478 U.S. 385 (1986).

Paul Meier, Jerome Sacks, and Sandy L. Zabell. 1984. "What Happened in Hazelwood: Statistics, Employment Discrimination, and the 80% Rule." *American Bar Foundation Research Journal*. 9: 139-186.

[No class on 11/25]

Assignment 6 Due [12/2]