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April, 2008

Empirical Legal Research: The Next Big Thing for Law Librarians?

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Empirical Legal Research: The Next Big Thing for Law Librarians?

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“Empirical legal scholarship (ELS) is arguably the next big thing in legal intellectual thought.”¹ Tracey George, Professor Vanderbilt Law School

In preparation of this article I decided to conduct a survey of librarians from MAALL institutions to see what types of empirical research they were involved in. I received few responses. This was understandable given that several MAALL members confessed that they did not have a firm understanding of exactly what empirical legal research entailed. As a result, I determined that the first portion of this article should define empirical legal research and scholarship.

Empirical legal scholarship (ELS) has been described as follows: “ELS as the term is generally used in law schools, refers to a specific type of empirical research: a model-based approach coupled with a quantitative method. The empirical legal scholar offers a positive theory of a law or legal institution and then tests that theory using quantitative techniques developed in the social sciences.”² However, some have argued that this definition is too narrow because it does not include some qualitative research methods. Pauline Kim, a professor from Washington University Law School, has suggested a broader definition. She suggests that empirical legal scholarship is different from traditional research in that it relies on “methods developed in the social sciences to systematically explore facts about the operation of the law and legal institutions.”³ Kim indicates that this type of legal research is necessary because “there are important questions in the law and about legal institutions that can’t be answer” through the traditional textual analysis methods of research.⁴ Kim provides the example of a situation in which a researcher is interested in researching the impact of selecting a particular rule of law on the decision making of individuals and businesses. Textual analysis would not shed light on a topic. However, we can certainly understand how an argument for a judgment accepting a particular rule of law would be strengthened by including evidence on the likely effect on “actors in the real world.”⁵

However necessary or important empirical legal re-

search is, given that it requires use of research methods developed by the social sciences with which many in the legal community are not familiar, there continues to be some reluctance to undertake such research. In addition to systematically collecting data, analysis of the collected data is also required. Because becoming familiar with the accepted procedures for collection or location of data as well as the analysis of the data requires investment of time and money, some in the U.S. legal academy have questioned whether conducting empirical research is really advisable.⁶

Despite the questions raised about empirical study and research, empiricism does appear to have taken hold in the legal community. The Association of American Law Schools 2006 Annual Meeting centered on the theme of Empirical Research.⁷ In July 2006 the Center for Empirical Research in Law (CERL), which not only conducts empirical research but also provides training to those interested in employing empirical research methods, was established at the Washington University Law School.⁸ Cornell University’s Journal of Empirical Legal Studies (JELS) began publishing exclusively empirically-oriented articles on a range of law and law-related topics.⁹ And other law reviews and journals published by law schools have begun to publish articles about or based on empirical research.¹⁰

Law schools are not the only U.S. law organizations interested in empirical research. In 2006 the American Bar Foundation, working with Indiana University School of Law, announced that it was accepting proposals for empirical studies regarding law firms and the legal profession.¹¹ The ABF research program continues study in these areas,¹² and the ABF has recently completed a book containing “the finest, most important articles” resulting from the ABFs empirical and interdisciplinary research over the past two decades.¹³

Law firms and the law librarians that they employ are also interested in empirical research. Susan Lerdal, Chair of the American Association of Law Libraries (AALL) Research Committee, reported that in 2004 law firm librarians reported spending twenty-nine percent of their time researching non-legal information.¹⁴ News, company information, verdict and settlement information and other types of

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empirical data, which serve the "business side" of legal practice¹⁵ and support the legal arguments made by firms, are increasingly important.¹⁶

Because of the growing emphasis on empirical research, it has become a topic of growing interest not only to firm librarians, as mentioned above, but to law librarians in a variety of positions in the United States. Barbara Monroe noted the growing influence of empirical research in academic legal research in the Academic Law Library Special Interest Section's Newsletter.¹⁷ Academic law librarians charged with providing support to faculty are engaging in collective discussion about empirical research support. "Supporting the Interdisciplinary and Empirical Research Needs of Law Faculty" is the title of the online forum discussion, sponsored by the AALL Academic Law Libraries Special Interest Section Faculty Services Committee, that took place on February 26-27, 2008.¹⁸

Law libraries and librarians are not just talking about empirical research. Several academic law libraries are hiring staff specifically to support empirical and interdisciplinary research. The Tarlton Law Library of the University of Texas at Austin recently began to recruit for a position that will provide specific support for interdisciplinary and empirical research.¹⁹ Duke Law Library hired a Ph.D. Candidate in Political Science to help "develop a comprehensive plan for supporting faculty empirical research."²⁰ Duke and other academic law libraries have also begun to recruit librarians with special skills or experience in empirical research to support their programs.²¹

How are law librarians developing their empirical research skills? Some are receiving training as part of their library and information degree programs. Surprisingly, however, it has been reported that twenty of the Library and Information Schools accredited by the American Library Association do not require a research methods course as part of the curricula.²² Some law librarians, with advanced degrees in other disciplines have already acquired the skills.²³ Others are attending training provided by professional organizations, such as the workshop AALL will sponsor during that AALL Annual Meeting. Still others may be utilizing training offered online, in-

cluding short courses like the "mini-class" on coding offered by Duke Law Library.²⁵

Regardless of how law librarians are acquiring the skills, they are using the skills to assist others in conducting empirical research and in locating information. The librarians at Georgetown have developed an Empirical Legal Studies Research Guide²⁶ and the Chicago-Kent College of Law Library staff has prepared an online Empirical Research Tutorial.²⁷ Matt Morrison of the Cornell Law Library along with Jill Fukunaga and June Kim of the University of California Los Angeles Law Library have been identified for their contributions²⁸ to the development of the Empirical Legal Studies Bibliographic Database.²⁹

In addition to producing tutorials and bibliographic databases, librarians must identify sources of data.³⁰ This requires that they become aware of free, consortial, and commercial sources of data such as the United Nations Development Programme,³¹ the Inter-university Consortium for Political and Social Research (ICPSR),³² and LexisNexis Statistical Datasets.³³ They must develop collections that provide access to the information needed by empirical scholars.³⁴ They may even be called on to help prepare literature reviews,³⁵ manipulate data using software application such as Excel, the Statistical Package for the Social Sciences (SPSS) and Stata³⁶, and assist legal researchers identify partners and co-authors who can help them interpret and analyze the statistical data.³⁷

In addition to helping other researchers, librarians may be conducting their own empirical research. At the 2007 Mid-America Association of Law Librarians Annual Meeting in Lincoln Nebraska, Susan Lerdal spoke about empirical research in a presentation entitled, "Sound Research or Seat of Your Pants: Should Law Librarians Conduct Empirical Research."³⁸ In the Winter 2006 issue of *Law Library Journal*, Lerdal also advocated librarian involvement in empirical research as a means of "improving decision making, increasing credibility among library users and funding bodies, and providing more opportunities for collaboration and interdisciplinary research."³⁹ Similarly, it has been noted that "it does appear clear, however, that it will become more and more 'necessary to use the methodology of other dis-

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ciplines – in particular, those of sociology, psychology, economics, linguistics, history – and to employ more generally applicable methodologies' in order to study the many problems facing librarianship today."⁴⁰ However, as one MAALL colleague noted, if librarians are going to engage in empirical research, we need to ensure that we are compliant with the regulatory requirements imposed on institutional research, such as the requirement for review of research proposals involving human subjects by an Institutional Research Board (IRB).⁴¹

Whether we are engaging in research ourselves or assisting lawyers, law faculty, or law students, it seems clear that we must familiarize with the empirical research methods. We must follow the example of our colleagues to support the research needs of our employers and institutions within MAALL.

NOTES AND REFERENCES

¹ Tracy George, *An Empirical Study of Empirical Legal Scholarship: The Top Law Schools*, 81 IND. L.J. 141 (2006).

² Id.

³ Pauline Kim, Do We Have the Numbers? Empirical Research in Law – International Law as a Case Study, Program at the American Association of Law Libraries Annual Meeting (July 10, 2006) (Recording of program available from Mobiltape at <http://www.mobiltape.com/search.asp>, SKU 06AALL/CD-D3).

⁴ Id. A similar position is expressed by others writing about legal research methods. "The merits and relevance of using other disciplines such as sociology, political science, economics, psychology, history and feminism as aids to legal research have been widely recognized ... socio-legal research broadens legal discourse in terms of its theoretical and conceptual framework which guide the direction of the studies and its specific research methodologies are able to generate empirical evidence to answer research questions." RESEARCH METHODS FOR LAW 5 (Mike McConville and Wing Hong Chui, eds., 2007).

⁵ However, in response to the questions about the reliance on questionable empirical data, Pauline Kim points out that legal researchers approach issues with an advocacy perspective where as social scientist

more readily look at research as a truth seeking inquiry.

⁶ Much of the debate regarding the effort to conduct empirical research has centered around law professors. Posting of Lisa Fairfax to Conglomerate Blog http://www.theconglomerate.org/2006/07/should_young_sc.html (July 18, 2006) (on file with author) (Posting is titled Should Young Scholars Engage in Empirical Legal Research). Many of the concerns discussed were also addressed in Peter H. Schuck, *Why Don't Law Professors Do More Empirical Research?* 39 J.LEGAL EDUC. 323 (1989).

⁷ Association of American Law Schools, Association of American Law Schools Annual Meeting – Empirical Scholarship: What Should We Study and How Should We Study It (2006), <http://aals.org/am2006/index.html> (last visited April 3, 2008).

⁸ Washington University Law Center for Empirical Research in the Law, *About the Center* <http://cerl.wustl.edu/about.php> (last visited April 1, 2008).

⁹ Blackwell Publishing, Journal of Empirical Legal Studies (<http://www.blackwellpublishing.com/aims.asp?ref=1740-1453&site=1>) (last visited April 2, 2008).

¹⁰ For example, the University of Illinois published articles presented at its symposium for Empirical and Experimental Methods in Law legal research in its law review. An article on the history and future of empirical research was of particular interest. 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). The topic of Law School efforts in empirical legal research is addressed by Tracey George. George, *supra* note 1. However, some have expressed reservations about whether the lack of peer review in student edited law reviews may result in publication of some research of questionable quality. Kim, *supra* note 3. This topic is also discussed in Gregory Mitchell, *Empirical Legal Scholarship as Scientific Dialogue*, 83, N.C. L. REV. 167 (2004).

¹¹ Posting of Bill Henderson to Empirical Legal Studies Blog http://www.elsblog.org/the_empirical_legal_studi/2006/11/data_available_.html (November 21, 2006, 10:18 AM) (on file with author) (Posting is titled Data Available for Empirical Research on Law Firms and the Legal Profession). Updates on the work is available at Indiana University School of Law, 8 Re-

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- searchers Join Law Firms Working Group* http://www.law.indiana.edu/front/special/20070716_lfwg_henderson.shtml (last visited April 1, 2008) and Indiana University School of Law, *Law Firms Working Group* <http://firms.law.indiana.edu/about/index.shtml> (last visited April 1, 2008).
- ¹² See American Bar Foundation, *Current Research Areas* <http://www.abf-sociolegal.org/curreareas.html> (last visited April 1, 2008).
- ¹³ The American Bar Association will soon release the American Bar Foundation's Analyzing Law's Reach: Empirical Research on Law and Society. A description of the book containing the quoted language is available from American Bar Association, *Analyzing Law's Reach: Empirical Research on Law and Society* <http://www.abanet.org/abastore/index.cfm?sec=tion=main&fm=Product.AddToCart&pid=1620304> (last visited February 28, 2008). See also Barnes and Noble book description at <http://search.barnesandnoble.com/booksearch/isbninquiry.asp?r=1&ean=9781590318966> (last visited April 3, 2008).
- ¹⁴ Susan N. Lerdal, *Evidence-Based Librarianship Opportunity for Law Librarians?*, 98 LAW LIBR. J. 33, 34 (2006).
- ¹⁵ Id.
- ¹⁶ The importance of empirical data that supports the legal arguments has been emphasized in court decisions. "...the U.S. Supreme Court considered and cited to statistical evidence in their opinions in the University of Michigan affirmative action cases. See *Gratz v. Bollinger*, 539 U.S. 244 (2003) and *Grutter v. Bollinger*, 539 U.S. 306 (2003)." Illinois Institute of Technology Chicago-Kent College of Law Downtown Campus Library, *Empirical Research Tutorial* <http://library.kentlaw.edu/tutorials/EmpTutorial/index.htm> (last visited April 3, 2008).
- ¹⁷ Barbara Monroe, *Developments in Legal Education: A Short Note on Empirical Legal Research* (2006) 26(1) ALL-SIS Newsletter http://www.aallnet.org/sis/allsis/newsletter/26_1/DevLegalEd.htm (last visited April 3, 2008).
- ¹⁸ Positing of Toni L. Aiello to Academic Law Libraries SIS Faculty Services Roundtable Forum (all-fsr) at <http://share.aallnet.org/read/messages?id=82208> (March 6, 2008 12:32PM)(Posting summarizes discussion).
- ¹⁹ University of Texas at Austin, Interdisciplinary and empirical research specialist <http://tarlton.law.utexas.edu/archives/specialist.html> (last visited April 3, 2008).
- ²⁰ See Duke University School of Law, *Law Library Faculty Service Empirical Reference Support* <http://www.law.duke.edu/lib/facultyservices/empirical> (last visited April 3, 2008).
- ²¹ Duke University School of Law, *Reference Librarian* <http://www.law.duke.edu/jobs/reflib> (last visited April 3, 2008). Georgetown University Law Center, *Reference Librarian – Georgetown University Law Library* http://www.ll.georgetown.edu/about/documents/ReferenceLibrarian_01-2008.pdf (last visited April 3, 2008).
- ²² Lerdal, *supra* note 14, 38 citing Soyeon Park, *Research Methods as Core Competency*, 44 J. EDUC. FOR LIBR. & INFO. SCII. 17, 18 (2003).
- ²³ Thea Lindquist and Todd Gilman, *Academic/Research Librarians with Subject Doctorates: Data and Trends 1965-2006*, 8(1) Libraries & The Academy 31 (2008) provides some information on Law Librarians holding Doctorates. Maya Norris, *The Accidental Profession: Work Experience, Education Prove Vital in Educating Law Librarians*, 6(6) AALL Spectrum 26, available at http://www.aallnet.org/products/pub_sp0203/pub_sp0203_Accidental.pdf, discusses the usefulness of a Masters in Business Administration degree for nonacademic law librarians. However, masters programs do not necessarily include the in-depth statistical training that doctoral degree programs require. George, *supra* note 1, 150.
- ²⁴ American Association of Law Libraries, *W-3: Conducting Empirical Legal Research*, 101st AALL Annual Meeting and Conference Program Announcement 13, available at http://www.aallnet.org/events/08_Program_announcement.pdf (last visited April 3, 2008).
- ²⁵ Mirya Holman, *Variable Coding: A Short Introduction* Duke University School of Law <http://www.law.duke.edu/lib/downloads/variablecoding.pdf> (last visited April 3, 2008). Additional information regarding training is available at Duke University School of Law, *Law Library Faculty Service Empirical Reference Support Training*, <http://www.law.duke.edu/lib/facultyservices/empirical/training> (last visited April 3, 2008).

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²⁶ Georgetown University Law Center, *Empirical Legal Studies Research Guide*, available at <http://www.ll.georgetown.edu/guides/EmpiricalLegalStudies.cfm> (last visited April 3, 2008).

²⁷ Illinois Institute of Technology Chicago-Kent College of Law Downtown Campus Library, above n 12.

²⁸ University of California Los Angeles School of Law, *ELS Bibliography Database Description* <http://www.law.ucla.edu/home/index.asp?page=2691> (last visited April 3, 2008).

²⁹ The database is available at University of California Los Angeles School of Law, *ELS Bibliography Database* <http://www.law.ucla.edu/home/apps/els/> (last visited April 3, 2008).

³⁰ Kim, *supra* note 3.

³¹ Statistics from the Human Development Report are available at <http://hdr.undp.org/en/statistics/> (last visited April 3, 2008). Joseph Doherty discussed the ease of use of data from the United Nations Development Programme in his comments during the program on empirical research at the American Association of Law Libraries Annual Meeting (July 10, 2006). Joseph Doherty, *Do We Have the Numbers? Empirical Research in Law – International Law as a Case Study*, Program at the American Association of Law Libraries Annual Meeting (July 10, 2006) (Recording of program available from Mobiltape at <http://www.mobiltape.com/search.asp>, SKU 06AALL/CD-D3).

³² Inter-university Consortium for Political and Social Research (ICPSR) home page <http://www.icpsr.umich.edu/ICPSR/index.html> (last visited April 3, 2008).

³³ The press release regarding the launch of the LexisNexis Statistical Datasets product is available at <http://www.lexisnexis.com/media/press-release.aspx?id=1030.asp>. At least one MAALL institution, the University of Oklahoma Law Library, in cooperation with the OU Libraries System, has the LexisNexis Statistical Universe available to its students and faculty. See the listing for the database at <http://libraries.ou.edu/eresources/LORA/LORA.asp?type=index&list=0&value=L> (last visited April 3, 2008).

³⁴ Kim, *supra* note 3, discusses the types of support empirical researchers will need from libraries and librarians. She notes that in addition to data, legal

researchers undertaking empirical research, who are not familiar with data collection or social science research methods, will need access to the literature of the social sciences in order to develop an understanding of the methods.

³⁵ Kim, *supra* note 3.

³⁶ Doherty, *supra* note 32.

³⁷ Kim, *supra* note 3. Kim repeatedly notes that legal researchers may need to partner with individuals trained in the methodologies of the social sciences.

³⁸ Susan N. Lerdal, *Seat of Your Pants or Sound Research* *SPECIAL LIBRARY ASSOCIATION IOWA CHAPTER BULLETIN* 16 (December 2006), available at <http://units.sla.org/chapter/cio/ciobulletin10.pdf> (last visited April 3, 2008) (Includes a short summary of some of the information provided at the MAALL Annual Meeting). Susan N. Lerdal, *Member News*, *Special Library Association Iowa Chapter Bulletin* 4 (December 2007), available at <http://units.sla.org/chapter/cio/documents/ciobulletin12.pdf> (last visited April 3, 2008) documents the presentation. A copy of the slides from Lerdal's presentation is on file with the author.

³⁹ Lerdal, *supra* note 14, 50.

⁴⁰ Ronald R. Powell and Lynn S. Connaway, *BASIC RESEARCH METHODS FOR LIBRARIANS* 9 (4th ed. 2004) citing B.C. Vickery, *Academic Research in Library and Information Studies*, 7 *J. OF LIBRARIANSHIP* 153, 158 (July 1975).

⁴¹ Institutional Review Board may be established in compliance with 42 U.S.C. 289 and 45 CFR 46. Some articles reporting empirical legal research results detail in the methodology the approval of the IRB. See Jeremy B. Bluementhal, *Does Mood Influence Moral Judgment? An Empirical Test with Legal and Policy Implications*, 29 *Law and Psychology Review* 1, 13 (2005).