

# AN INTRODUCTION TO THE *JOURNAL OF LEGAL METRICS*

*When the numbers acquire the significance of language . . . they acquire the power to do all the things which language can do: to become fiction and drama and poetry. . . . And it is not just baseball that these numbers, through a fractured mirror, describe. It is character. It is psychology, it is history, it is power, it is grace, glory, consistency, sacrifice, courage, it is success and failure, it is frustration and bad luck, it is ambition, it is overreaching, it is discipline. And it is victory and defeat, which is all that the idiot subconscious really understands.*

— Bill James<sup>1</sup>

*Adam Aft, Alex B. Mitchell & Craig D. Rust*<sup>†</sup>

For the second time in the past ten years, *Moneyball* is taking the world by storm. Michael Lewis's book first appeared in print in 2003, chronicling the attempt by Billy Beane and the Oakland Athletics to compete for a World Series title on a shoestring budget by finding hidden value in the market for baseball players. Within the past year, Brad Pitt and a host of others brought Lewis's tale to life in the form of a blockbuster movie.

How did Beane and *Moneyball*'s protagonists set out to find this value? As Lewis explains, they embraced the use of statistical analysis in ways that other Major League Baseball franchises did not. Rather than relying on a scout's evaluation of a player's physical characteristics and the industry's prevailing view of what a player with those characteristics could achieve in the game, Beane and company focused their energies on how that player actually performed. This

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<sup>1</sup> MICHAEL M. LEWIS, *MONEYBALL* 67 (2003) (second omission in original).

<sup>†</sup> Co-Editors-in-Chief of the *Journal of Legal Metrics*.

included areas of the game such as defense, which conventional baseball statistics had largely ignored for most of the sport's first century in existence. In the book, John Henry, currently the owner of the Boston Red Sox, compared the financial markets on Wall Street with the market for baseball players:

People in both fields operate with beliefs and biases. To the extent you can eliminate both and replace them with data, you gain a clear advantage. . . . Many people think they are smarter than others in baseball and that the game on the field is simply what they think it is through their set of images/beliefs. Actual data from the market means more than individual perception/belief. The same is true in baseball.<sup>2</sup>

Similarly, the legal field is not immune to the subjective biases and beliefs of its observers and practitioners. Numbers, data, statistical analysis – these tools can help us objectively evaluate the accuracy of subjectively formed opinions. Notwithstanding the oft-cited “I know it when I see it” jurisprudence of Justice Potter Stewart,<sup>3</sup> we believe that some aspects of the legal world lend themselves to a form of scientific analysis.

In this vein, we humbly introduce the inaugural issue of the *Journal of Legal Metrics*. Our aim is to solicit and publish the efforts of scholars whose work demonstrates the explanatory power of numbers and statistics in the legal context. For example, the journal has partnered with the *Supreme Court Sluggers* project<sup>4</sup> and will serve as the primary forum in which the personal opinion authorship and citation statistics of individual U.S. Supreme Court justices gathered by their researchers will be disseminated. To that end, this issue includes articles introducing the latest trading cards and their associated statistics, featuring Justices Scalia, Goldberg, and Fortas, as well as essays on the Justices Stevens and Scalia cards. The journal also joins forces with *FantasyLaw*,<sup>5</sup> a project devoted to collecting

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<sup>2</sup> *Id.* 90-91.

<sup>3</sup> *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

<sup>4</sup> Supreme Court Sluggers Home, [www.greenbag.org/sluggers/sluggers\\_home.html](http://www.greenbag.org/sluggers/sluggers_home.html).

<sup>5</sup> FantasyLaw Home, [www.fantasylaw.org](http://www.fantasylaw.org).

data on voting and legislative patterns of senators and representatives of the United States Congress. In this issue, *FantasyLaw* features an article that analyzes the Tea Party's voting behavior in the House of Representatives, as well as a study on politicians who vote with the opposing party and the frequency with which they do so. In addition to voting behavior there is also an essay on the most searched bills in THOMAS.<sup>6</sup> We are also pleased to publish three sets of statistical rankings: Roger Skalbeck's law school website rankings, now in their third year, federal appellate court rankings evaluating which circuits "win" circuit splits most often, compiled by Tom Cummins and Adam Aft, and in its fourth year, Ross Davies's law review circulation numbers.

Data challenges the status quo, requiring reconciliation of subjective beliefs with objective measures, and encouraging re-examination of former truths and assumptions. Whether it is quantifying the impact of Justice Stevens's career on the Court, discerning the impact of the Tea Party on national politics,<sup>7</sup> or reconsidering the way we think about law school statistics,<sup>8</sup> numbers can provide a much-needed alternative prospective. We hope not necessarily to answer the question: "What does the data say?" but rather: "Where is the data in the first place?" Too often commentary surrounding the law is based in opinion, rhetoric, and subjectivity; the foundation of scholarship here is that of numbers and statistics. As once observed by Holmes (Sherlock, not Oliver Wendell), "[i]t is a capital mistake to theorize before you have all the evidence."<sup>9</sup>

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<sup>6</sup> THOMAS is "the legislative forum from the Library of Congress," [thomas.loc.gov/home/thomas.php](http://thomas.loc.gov/home/thomas.php).

<sup>7</sup> Ian Gallagher and Brian Rock, *Reading The Tea Leaves – An Analysis of Tea Party Behavior Inside and Outside of the House*, 2 J.L. (1 J. LEGAL METRICS) 87 (2012).

<sup>8</sup> See, e.g., Debra Cassens Weiss, *University of Illinois Releases the Real Stats for Its Incoming Law Class*, ABA JOURNAL, Sept. 20, 2011, available at [www.abajournal.com/news/article/university\\_of\\_illinois\\_releases\\_the\\_real\\_stats\\_for\\_its\\_incoming\\_law\\_class](http://www.abajournal.com/news/article/university_of_illinois_releases_the_real_stats_for_its_incoming_law_class).

<sup>9</sup> ARTHUR CONAN DOYLE, SR., *A STUDY IN SCARLET: AND, THE SIGN OF FOUR* 20 (Wordsworth Editions 2000) (1887).