Statistical Evidence In Law

by Ron Biface

The previous article ("Unqualified Officers") questioned the lawful qualification of several officers to prosecute traffic tickets in the Lewisville, Texas municipal court. By itself, the "unqualified officer" argument is interesting, but what relevance does it have for folks outside Lewisville?

Although particulars will vary from state to state, the judges and government lawyers' immunities, arrogance, and contempt for the law are so commonplace that we can assume the unqualified officer problem is probably common across the USA. Certainly, the "unqualified officer" problem is endemic in Texas.

In November, 1995, a precise survey of 745 Texas municipal courts was devised and carried out by the Texas Justice Council (429 Meadows Bldg., Dallas Texas 75206; 972-245-0050). Each Texas municipal court was contacted individually to derive an accurate database of all "judges" and "prosecutors" currently acting in those cities. Based on this survey, it was learned that a majority of bar-licensed attorneys meting out "justice" in Texas Municipal Courts as "judges" and "prosecutors" are themselves wholesale violators of the law.

The Texas Secretary of State's Statutory Documents Section is charged by law with the duty of recording the "Statement(s) of Officer" mandated by Article XVI Section 1 of the Texas Constitution. All municipal court judges and all prosecuting attorneys who try cases in the name of the State of Texas are "officers" required to file such Statements and then take necessary oaths of office before exercising the powers of office.

A comparison of database of mandated Statements actually filed with the Secretary of State to the survey results of the Texas Justice Council's compilation of acting municipal judges and prosecutors revealed a shocking personal disregard for the law by the "Guardians of Justice".

Of 1091 acting Municipal "judges" surveyed (who are mostly attorneys), 577 or 52.9% refused or otherwise failed to file the mandated Statement with the Texas Secretary of State. Thus, by implication and by law, over half of the sitting municipal judges are not properly qualified to pass judgement on anyone. I.e., they have no lawful authority to exercise any judicial or administrative powers of the State.

A survey of 795 municipal "prosecutors" (who are all attorneys) revealed that 708 or 89% were unqualified to hold and exercise the power of public office by refusing or otherwise failing to file the mandatory Statement of Officer with the Texas Secretary of State!

Other examples of apparent Municipal Court lawlessness were discovered throughout the Municipal System, and include: Mayors (executive branch officers) simultaneously holding municipal judgeships (judicial branch offices); husband and wife prosecutor/judge teams; and scores of 'judges" and "prosecutors" illegally receiving paychecks from several cities simultaneously in direct violation of the Constitution (Art XVI, Secs. 40, & 33) and Attorney General Opinion JM-333.

Even if we only consider those judges and prosecutors who've failed to file their State-

ment of Officer, of a total of 1886 "judges" and "prosecutors" surveyed, 68% earn a living while legally unqualified to hold public office. Given that the court cannot lawfully prosecute cases unless both judge and prosecutor are lawfully qualified. Given that only 47.1% of the judges (100% - 52.9% unqualified) and 11% of the "prosecutors" (100% - 89% unqualified) appear qualified, the odds that any particular Texas municipal court is lawfully qualified to prosecute and judge anyone is 47.1% x 11% -- about 5%. Therefore, as of November, 1995, only one Texas municipal court in twenty was statistically likely to be lawfully qualified to prosecute traffic tickets.

OK, now we have statistical evidence of what we've known all along: municipal courts are unlawfully processing traffic tickets. So what?

Well, it turns out that statistical "evidence" (actually inferences) have legal application in court, and properly presented, can compel judges to authorize or initiate investigations.

This article is based on a 1989 statistical study of lawyer grievance procedures in Florida. It's numerical data is too dated to be precisely relevant today. Likewise, it's legal cites and legal foundation are also seven years old and therefore should not be relied on without additional research to confirm the law is still essentially unchanged. Nevertheless, the statistical methods and legal applications that were valid in 1989 remain at least instructive, and should still be generally valid. Moreover, the Florida lawyers contempt for justice in 1989 and the Texas lawyers contempt for the law in 1995 is simply more evidence that our judicial branch of government routinely operates in ways that are unlawful or corrupt.

On statistics generally

For most of us, our problems are fairly obvious and so we generally occupy our time seeking solutions rather than trying to identify the problems themselves. However, there are occasions when it is unclear whether a problem really exists. Therefore, before we can seek a solution, we must first prove to ourselves that our possible "problem" is real rather than imaginary.

Rational, logical debate and discussion by reasonable men sometimes still produces inconclusive results. That is when statistical studies can prove most useful. The discipline of statistics (using mathematical formulae and approved methodology) has developed a technique for getting reasonable men to agree as to whether or not a problem exists. This technique involves the comparison of the numerical occurrences of actual events with the probability that such events could have occurred by chance.

An example will serve to clarify the concept. Supposing an individual, whom we shall call Mr. Complay, is handed a black bag holding two marbles. One white, one black but otherwise identical. He is told he must place his hand in the bag and pick one marble, identify it's color and replace it in the bag, then repeat the process a total of five times; If he gets three white marbles or more out of five picks, he wins. If he gets less than three he loses. Mr. Complay goes through the process and picks five black marbles! Convinced that both marbles are black and that the procedure is dishonest, he demands to verify the contents of the bag. This demand is refused and Mr. Complay is advised that there is nothing wrong with the procedure even though he happened to be "unlucky" enough to pick five black marbles. Debate and discussion lead nowhere. So Mr. Complay goes to court, has the bag sealed and brings in a statistician to do a study.

The statistician's job is to show that picking five black marbles in a row constitutes such an unlikely happening that the probability that it occurred by chance alone, is remote enough to cause the Judge to agree that there is a "problem". In this case, this determination will cause the Judge to order the sealed bag opened to determine if its contents really include a black and a white marble. (Of course there might still be a black and white marble in the bag notwithstanding the remoteness of the probability that called for the verification in the first place). But the Judge will *not* order the bag opened unless a certain statistical "threshold" has been reached that satisfies him that a "problem" may exist as to the contents of the bag.

To establish this threshold, the statistician calculates the following probabilities:

1. Chances of initially drawing a black marble: 1 in 2 or 50%
2. Chances of drawing a second consecutive black marble: 1 in 4 or 25%
3. Chances of drawing a third black consecutive marble: 1 in 8 or 12.5%
4. Chances of drawing a fourth consecutive black marble: 1 in 16 or 6.25%
5. Chances of drawing a fifth consecutive black marble: 1 in 32 or 3.125%

The Federal Civil Rights Statutes[1] have defined an event that does occur but has a probability of occurring by chance of 1 in 20 times (5%) or less as "statistically significant". Or, in laymen's words, the Federal law is saying - OK, if this event happened (drawing five consecutive black marbles), but it shouldn't happen by chance more than 5% of the time, there may be a problem, so let's look

inside the bag.

In the example, we can see that four draws in a row of a black marble, could occur 1 in 16 times. That probability is insufficient to get the Judge to act. But the fifth black marble, drawn in a row, does the trick by exceeding the 1 in 20 (5%) "legal threshold" probability with 1 in 32 (3.125%).

The lower the probability of an event occurring by chance, the greater the probability that there is a "problem". For example, instead of five black marbles in a row, the probability of Mr. Complay drawing ten black marbles in a row by chance would be 1 in 1,024. Further probabilities are: 20 in a row - 1 in 1,048,576; 25 in a row - 1 in 33,554,432, and so on.

Statistical Evidence In Law

The U.S. Supreme Court opened the door to statistical proof in 1971 in, *Griggs v. Duke Power Company* 401 US 424, 432 (1971). It has since been used in civil rights cases, price fixing conspiracy cases and administration law and procedure cases. At present there is virtually no area in which it cannot be used.[2]

The essence of the statistical analysis is the evaluation of differences between expected (in an ideal world) and observed frequencies of particular events and the quantification of the likelihood that such differences would be found (again in an ideal world) purely as a matter of chance. These determinations may constitute circumstantial evidence from which inferences can be drawn about such things as the magnitude of legally material discrepancies.

Statistical Significance is a term applied to figures that reflect events that could not have occurred by chance more often than a predetermined level such as 1 in 20. (The actual level may vary with the matter being considered).

Practical Significance is the magnitude of disparity that will be persuasive to a decision maker.

Thus, a statistically significant result may fall short of practical significance if it fails to persuade a decision maker to act.

Legal Significance is that magnitude of discrepancy that will be accepted by a Court of Law as probative evidence. While legal significance has no precise statistical definition, some Courts have attached legal significance to particular levels of statistical significance. Generally, the Court's determination will depend on its ad hoc assessment of such factors as adequacy of data, thoroughness of analysis and credibility of expert witnesses.

"A strong statistical relationship between two events tempts the logical mind to infer a causal connection between these events. By eliminating chance as an alternative causal explanation and by showing there is either a

weak or no relationship between the events and the outcome of interest, statistics may support the inference of an inculpatory explanation."[3] It is normally the burden of the opposing party to show that there are innocent reasons for the relationship observed or that the circumstantial evidence is otherwise unpersuasive.

Florida Bar's grievance procedures

Much has been said and written about the injustice of our legal system. One method of verification, accepted by reasonable men and courts of law as to whether there is "a problem" in any system, is a statistical analysis of that system.

The Florida Department of Professional Regulation, an agency of the State Government, regulates over one million professionals in the state. Rules that govern the Department of Professional Regulation are established by the legislature under Florida statutes and no profession governs itself under those rules.

The Florida Bar, on the other hand, is an arm of the Supreme Court and is run by a Board of Governors elected by the very attorneys they are supposed to discipline. The Supreme Court has responsibility for determining rules of discipline and disciplining lawyers and delegates those responsibilities (subject to it's "supervision") to the Florida Bar. Any adjudication by the Florida Bar that results in dismissal of a complaint does not require Supreme Court Approval. In practice and historically, rule changes in the disciplining of lawyers recommended by the Florida Bar get approved with no input or opposition from non-lawyers. So, unlike the rest of the Florida professions, lawyers effectively govern themselves.

Complaints are filed with the Department of Professional Regulation and the Florida Bar. A proportion of these complaints are determined on a preliminary basis to be justified in what is called a "finding of probable cause".

It is reasonable to suppose that these "findings of probable cause", as a percentage of total complaints, will not vary too greatly in any one profession from the average of all professions, if in fact, the process for determining this probable cause is equally fair in all professions. To make this determination, a statistical study was commissioned. The statistical study was done by Mr. James Slitor, Instructor of Statistics at Florida Atlantic University in Boca Raton.

In 1986/87, the findings of probable cause as a percentage of complaints filed averaged 28.6% for the Department of Professional Revenue. The comparable figure for the Florida Bar was 3.68%. The probability that such a difference could have occurred by chance alone was determined to be less than one in one trillion trillion or 1 in 1,000,000,000,000,000,000 or 1 in 10^{-18}. The number was too small for even a main frame computer to determine and would require the U.S. Defense Department's super computer for a final determination.

Compared to even the lowest level of probable cause for any Florida profession (11% for dentists) the corresponding number for the Bar on a comparative basis, would still give a probability that the Bar's results could occur by chance of less than 1 in 33,000,000,000 (1 in 33 billion).

Since the probabilities of occurrences that are less than 1:20 are viewed as "statistically significant", the validity and seriousness of the problem is presumed.

The statistical analysis requested, has produced results bearing such astronomical values' that they stagger the imagination and soar beyond "legal significance" to some yet undefined stratospheric level of "immediate conscience shocking persuasiveness". In our case, such results are merely the icing on the cake. Although the results obtained are so dramatic that alone and unsupported, they certainly appear enough to persuade the Court to reach the same legal conclusion.

[1] Code of Federal Regulations – Judicial Administration Section 50.14 -28 CFR chapter 1 (7-1-88 Edition) Department of Justice.

[2] *Statistical Evidence in Litigation* – ISBN 0-316-08148-5 Barnes & Conley - 1986

[3] See *Castenada v. Partida*, 430 US 482, 496, n17 (1976); *Contreras v. City of Los Angeles*, 656 F. 2d 1267, 1273 (9th Cir 1981); *NAACP v. Siebels*, 616 F. 2d 812, 817 n13 (5th Cir 1980); *Johnson v. Shrevesport Garment Co.*, 422 F. Supp. 526, 539-540. (W.D. La 1977) aff'd, 577 F. 2d 1132 (5th Cir 1978).

AFFIDAVIT

Date: June 26 1989

I, the undersigned, James Slitor of Delray Beach, Florida hereby confirm the following:

1. That I am an Instructor of Statistics at the Florida Atlantic University, Boca Raton, Florida and my qualifications are Bachelor and Master Degrees in Mathematics and Political Science.

2. That prior to undertaking the statistical analyses requested by American For Justice, Inc., I had never met Mr. Ronald Bibace nor heard of American's For Justice, Inc.

3. That I was asked to do a statistical analyses to determine the probability that the percentage of probable cause decisions to complaints filed in the area of lawyer discipline could have occurred by chance when compared with the same data in all other professions in Florida.

4. That I was asked to use all generally accepted statistical methods to make that determination.

5. That I did so and that the extremely low level of the results obtained necessitated the use of a main frame computer.

6. That the computer used which produces results that extend to eighteen zeros or one trillion trillion was inadequate to the task.

7. That therefore, while it can be said with certainty that the probability of the results obtained by the Florida Bar occurring by chance are less than one in one trillion trillion (1: 1,000,000,000,000,000,000) or 10^{-18}, I can not say how much less.

8. That even taking the lowest probable cause level of any profession as opposed to the average of all professions the Bar results could have occurred by chance only one in thirty three billion (33,000,000,000) times.

9. That due to the astronomically low level of the results the figures have been re-verified more times than would be standard procedure and that they are accurate.

10. That I was advised that the source of the data received was the Department of Professional Regulation and the Florida Bar. That the data was more than adequate for the conclusions drawn.

11. That my work was paid for at an hourly rate based on the number of hours worked and was unrelated to the results obtained.

S/ James (Jim) Lewis Slitor, B.A., M.A.

On this 26th day of June, 1989, personally appeared before me James Lewis Slitor, and acknowledge that he executed the foregoing Affidavit.

S/ (signature illegible)

Notary Public, State of Florida, My Commission Exp. May 23, 1993, Bonded thru PICHARD Ins. Agency

How much evidence is laying around in the files of the legal reform and patriot community that -- if logically assembled -- could provide a statistical foundation to challenge or sue various entities or procedures of our government? How much similar evidence is already assembled in government files that can be readily accessed over the internet or through Freedom of Information Act requests? Since statistical arguments can be lawfully used in court, here in the "information age", we'd be foolish not to start gathering and analyzing that information.

Author Ron Bibace can be reached at Americans for Justice, Inc., 4720 N.W. 2nd Ave. Ste. D-10, Boca Raton,Fla. 33431.