From the Editor

As I begin this second volume as editor of the *Review*, I want to note with appreciation the crucial role played by reviewers of manuscripts for the *Law & Society Review*. I have been delighted to find that reviewers generally provide detailed and instructive evaluations of content and analysis. Even when a reviewer finds a manuscript unsuitable for publication, the evaluation almost always provides useful advice on how the author can approach the research question in future work. (There are exceptions: a reviewer whose only response was "too simplistic.") As a result of the expertise and impressive investment of time contributed by these anonymous reviewers, nearly every submission published in the *Review* is improved by the review process.

My experience with the review process suggests several observations that authors may find useful. Reviewers sometimes identify what they view as a fundamental weakness in the manuscript they are reviewing. A retrospective survey that depends on the recall of respondents may raise questions about whether participants can accurately reconstruct, or ever were aware of, the events they have been asked about. Similarly, historical research that depends on archival data cannot offer skeptical readers assurances that methods used over time to record events recorded them accurately, or even consistently. To the extent that researchers can provide theory or a second form of data, from their own study or other work in the field, such criticisms can be addressed head on. But such convergent evidence is not always available. Reviewers in such situations often refer to their own disciplinary paradigms in judging whether the reported research contributes enough to warrant publication. But the most thoughtful reviewers take the author on his or her own terms and ask whether, in light of the question being addressed, the author's approach deepens or extends our knowledge about law and society.

Some manuscripts leave reviewers with questions because authors limit their data analysis and discussion to outcome measures (e.g., a change in law was or was not accompanied by a change in conviction rates) and neglect questions of process. When that happens, reviewers are skeptical about the explanation for observed outcomes (for an example of a classic outcome study in which process data were carefully collected and exploited, see Ross, 1973). At other times, investigators may provide only minimal descriptions of their methodology. Reviewers always want to know more, and I on occasion ask to see questionnaires in an attempt to clarify what was actually done.

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Some authors avoid theoretical and methodological disputes by studying the familiar. While normal science is of course crucial for building knowledge, the danger of focusing on the familiar is that we look for our keys under the lamppost because that is where the light is. Reviewers are generally more enthusiastic in their evaluations when the insights are innovative, if risky (for an example, see Markovits, 1989). Editors are, too.

Turning to the current issue, we begin with last year's Presidential Address. Presidential addresses pose formidable challenges and unusual opportunities. The occasion calls for taking stock, being both encouraging and provocative, looking to the future (hopefully with insights from the past), showing connections and distinctions, speaking to both newcomers and oldtimers, and being specific enough to provide clarity and bite and still general enough to encompass the scope of the broader enterprise. The success of the address also depends on the ability of the president to cover these topics while maintaining a sense of humor, particularly when, as for the Law and Society Association, the president's address follows a meal at the annual meeting.

In her Presidential Address to the Law and Society Association published in this issue of the *Review*, Felice Levine covers every base. For the benefit of old and new researchers alike, she traces the twenty-five year history of the Law and Society Association. She argues that the center of gravity for research on law lies in the interdisciplinary intersection of the social sciences that includes law, and not exclusively or even primarily in legal scholarship and the law school world. Observing that questions about values and policy implications have always concerned and will continue to worry researchers who study law and society, she welcomes the debate these questions engender, and their potential for energizing the field. Most importantly, Levine demonstrates her vision of the law and society enterprise as "the attempt to build fundamental knowledge about law-related processes" (1990: 23) by citing examples of the field's accomplishments and describing promising work in its early stages; her enthusiasm and optimism are infectious. So, while Lily Tomlin's Trudy provides a humorous framework in which Levine can express her worries about the future of law and society research, Trudy also signals that goosebumps, if not already present, are on the horizon.

As if to validate Levine's quest for fundamental knowledge about law-related processes, Bob Kagan asks the most basic question of all: How much does law matter? Kagan's concern is with the tension between the regulatory protections provided by law and the efficiencies encouraged by competitive forces. Comparing the development of mechanized cargo handling in Rotterdam and U.S. ports, Kagan finds that U.S. dockworkers, unlike their Dutch counterparts, have been able to use the legal protections granted to unions to negotiate generous labor conditions and wages. Kagan

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suggests that nonlegal economic factors may be even more important in explaining the success of U.S. dockworkers. Faced with competition from other nations with alternative ports, the Dutch have responded with reduced benefits and lower wages; the West Coast dockworkers of the United States, in contrast, have been able to resist such efforts to reduce benefits and wages because they monopolize the docks that supply the western United States. As we look forward to 1992 and the EEC, and to the growth of global markets generally, will national regulatory protections of the law fall to the demands of competitive efficiency?

In his article on appellate courts in England and the United States, Burt Atkins too asks whether the U.S. legal system prompts behavior unique to the U.S. setting. England and the United States differ substantially in the extent to which courts are viewed as political institutions and judicial outcomes as political allocations, factors that might be expected to affect levels of court activity. Yet Atkins's data reveal few systematic differences either in the extent to which U.S. and English intermediate courts exercise their authority to modify or reverse decisions made by lower courts, or in the extent to which decisions by the intermediate courts are final. Without more detailed analyses of the nature of these decisions, it is difficult to assess whether these similarities conceal important differences, but Atkins's work poses the interesting hypothesis that judicial activities within the common law tradition may be shaped more by shared than by distinctive forces.

The three remaining articles in this issue all investigate conditions that encourage or derail potential legal action. Marlynn May and Daniel Stengel interviewed patients who said they had experienced unsatisfactory medical care. Applying Felstiner, Abel, and Sarat's (1980–81) conceptualization of the disputing process, they found few predictors for lumping, claiming and exiting. The decision to sue, however, was associated with several indicators, including the doctor's perceived competence and concern about the personal effects of care on the patient. Surprisingly, some process attributes stressed in current medical advice (e.g., involving the patient as a partner, not rushing, informing the patient about what the doctor was doing and why) were not associated with the decision whether or not to sue. This innovative study is one of the first to go beyond filed and closed malpractice suits to examine the processes that may or may not lead patients to take formal action. It brings us one important step closer to the formidable, but crucial, longitudinal panel study that contemporaneously measures patients' perceptions of medical treatment, advice seeking, and the steps that precede a decision to sue.

Individual aggrieved parties may attempt to mobilize the law, but successful mobilization depends in most cases not only on the will of the aggrieved party but also on the availability of legal assistance and a receptive judicial forum. Mark Kessler suggests

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that legal changes to aid the politically disadvantaged are often discouraged by agenda-setting mechanisms that prevent certain interests and issues from receiving judicial attention. Drawing from his research on the Legal Services Corporation, he illustrates how attorney time was channeled into individual client assistance and away from class action lawsuits and test cases which potentially pose a threat to powerful interests.

In an attempt to bring together studies of variations in litigation levels with an individual decisionmaking approach to legal mobilization, Charles Epp examines employment civil rights litigation. He shows the influence of legal demand, characterized in terms of indices of pay and position equity for females and blacks, and legal supply, measured in terms of female and minority lawyer availability, on rates of employment civil rights litigation. This attention to both structural and individual-level explanations for legal mobilization provides a model for future research in other areas as well.

The *Law & Society Review* has put on weight with this issue (a 25 percent gain). Volume 24 inaugurates a new feature for regular issues of the *Review*: a special section of review essays edited by Joseph Sanders of the University of Houston. Three years ago, Kermit Hall became the editor of a separate fifth issue of the *Review* composed exclusively of review essays. Kermit and his colleagues at the University of Florida produced three stimulating annual collections of essays covering topics from law and economics to Japanese law. Beginning with the current issue, the Board of Trustees of the Association decided to spread this valuable feature throughout the year, expanding each regular issue of the *Review* by adding several review essays. By distributing the publication of the review essays, we can cut the delay between submission of an essay and its appearance in print. The first three review essays are written by John Hagan, Jim Short, and Mark Tushnet.

Shari S. Diamond
April 1990

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