From the Editor

When I was an undergraduate at Oberlin College, an English professor, one of two "great" teachers I encountered there, gave a talk entitled "On Giving Attention." The point of this talk, as I recall it, was that in our listening and reading we commonly "pay" attention rather than "give" attention; that is, even when we are attentive to what others have to say, we are too often passive recipients of information. Giving attention requires more than simply attending to another's words; it requires active engagement with another's ideas. Without active engagement we may both miss the full import of what others have said and be unduly accepting of what we are told.

With this issue, the last of Volume 19, my term as editor of the *Review* is over. As I reflect on the three years I served as editor, what stands out most is the experience of giving attention. The most intellectually challenging aspect of editing the *Review* was the need both to understand unfamiliar perspectives and methodologies and to appreciate their potential contributions to the growth of law and social science. The most personally satisfying aspect of my experience as editor was the opportunity it provided for exchanges with authors about the import of their ideas and data and about how best to present their work to the *Review*'s readers. I have in the process made some new friends and friendly acquaintances, and I have a long list of people I would like to meet.

I have also observed the costs of not giving attention. For example, patterns of citation mean that some studies come to stand not for the richness of the results presented but for a few simple propositions that obscure underlying complexities. Even worse, works with serious and obvious flaws are cited as if they were authoritative so long as their findings, however poorly grounded, support a point an author wishes to make. A related failing, common in papers that are not accepted for publication, is that authors are often so intent on developing an argument that they either ignore serious shortcomings in their methodology and data, or write as if acknowledging serious shortcomings were tantamount to dealing with them. Almost comical are the convoluted justifications that some authors give for questionable choices of variables or methods when the fact

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is that their data were not collected with the current problem in mind and so do not contain the best possible measures, or that the most appropriate analytic procedure is not included in a familiar, easily accessible statistical package. Authors also hesitate to tell an editor that their work on a project has been sufficiently exhaustive (and exhausting) so that the small possibility of a marginal improvement through suggested further research is not worth the additional effort it will entail. Often such responses would be more welcome and persuasive than attempts to explain in detail why a matter the editor or a reviewer wants addressed is not really a problem.

It is also "giving attention" that has led me to write my introductory *From the Editor* comments in each issue. I had not thought seriously about regularly writing prefatory remarks until Marc Galanter urged me to return to that earlier *Review* tradition. I soon found out that the effort forced me to think not just about the merits of each article but also about the shape of each issue and the implications of what I was publishing for the growth of law and social science. Because I thought that such forced reflection was valuable discipline for an editor, I continued the practice of writing introductory essays through my three years, and I commend it to my successor. I hope readers have also found the practice worthwhile.

Editing the *Review*, as I said once before, has been a team project. A broad base of outside reviewers is necessary to maintain quality and aid in article selection. I have benefited during my tenure as editor from a superb editorial board as well as from the high quality work of those serving as Law and Society Association trustees and officers. In addition, I called from time to time on numerous others. A list of those who served as referees for the *Review* from January 1 through June 30, 1985, appears at the end of this issue.

After three years of reading referees' reports, I was curious about the overall pattern of evaluations, so I asked my secretary to prepare a simple table correlating reviewer assessments. The results are reported in Table 1. The table presents data on 251 papers that were sent out for review during my tenure and evaluated by at least two referees.[1] The evaluations are based on summary judgments prepared for the editor and not forwarded to authors. The "Publish as Is" column combines the responses of those reviewers who checked

[1] Where more than two outside evaluations were received, two were selected at random for comparison.

spaces denoting papers publishable more or less as submitted that were either "major contributions" or "sound, solid contributions." "Publish with Revisions" includes papers that reviewers regard as similarly significant but in need of revision. "Perhaps Publish" characterizes papers rated "sufficiently sound to publish if space is plentiful," whether or not the recommendation was conditioned on revision. "Don't Publish" reflects recommendations against publishing based either on quality judgments or on judgments that the paper's subject matter or approach is not suitable for the *Law & Society Review*. Table 1 always shows the more favorable reviewer in cases where ratings differed as Reviewer One. Hence, there are no cases above the main diagonal.

Table 1. Agreement among *Law & Society Review* Referees

Reviewer Two	Reviewer One			
	Publish as Is	Publish with Revisions	Perhaps Publish	Don't Publish
Publish as Is	0			
Publish with Revisions	9	8		
Perhaps Publish	10	24	2	
Don't Publish	11	46	38	103

The figures confirm my impression, conveyed in an earlier *From the Editor*, that the value of outside reviews lies more in their contribution to the revision process than in their utility as a selection device. Interreviewer reliability is surprisingly low. In only 36 percent of the 148 cases where one reviewer recommended publication did the other reviewer agree, and in only 10 cases, or 7 percent of the 148 cases in which at least one reviewer recommended publication, was there full agreement on the category into which the case fell. Somewhat surprisingly, there was no paper that both reviewers recommended for publication as submitted, and there was only one paper that both reviewers called a "major contribution," either as submitted or with revision. Seventeen papers were

rated by one reviewer as major contributions, but all but two of these ratings were conditioned on successful revision.

From a different perspective, of the 198 papers regarded by at least one reviewer as not publishable in the *Law & Society Review*, there was agreement on 103 of them, or 52 percent. This higher rate of agreement reflects the predominance of unpublishable work among papers submitted and correctly suggests that reviews offer more aid in ruling out papers quickly than they do in deciding which papers to accept. The bulk of papers regarded as unpublishable by both reviewers were so judged on quality grounds. Eighty of the 103 papers in this category reflect similar judgments of quality, and only three papers reflect agreement that the paper, although perhaps of publishable quality, should be submitted to some other journal.[2] The remaining 20 cases are instances where one reviewer thought the paper was not of sufficient quality to be published and the other thought it was inappropriate for the *Law & Society Review*. It is especially surprising that 7 of the 18 papers that one reviewer saw as representing a major contribution were rated by the other reviewer as not publishable on quality grounds. Clearly there is diversity in our discipline!

To some extent these differences of opinion may reflect instances where one reviewer, for example a member of the editorial board, had a generalized interest in a subject matter and the other reviewer a specialist's knowledge. But this is at best a small part of the story, for I generally tried to secure two reviewers who were both familiar with the problem studied and respectful of the approach chosen. To a greater extent these data reflect a calibration problem. The substance of the written reviews was often more similar than these data indicate, but a similarly evaluated paper that in one reviewer's summary judgment was a sound and solid contribution was in another reviewer's eyes publishable only if space were plentiful, or a flaw that one reviewer saw as remediable the other reviewer regarded as fatal. Finally, some portion of the disagreement reflects differences in giving attention. Reviewers may have received the same paper, but they weren't responding to the same stimuli because one reviewer read the paper more closely than the other. Where one reviewer recommended publication and the other did not, it was usually the more negative

[2] I tried to filter out papers I thought unsuitable for the *Review* without outside review. If I had not done so, this category would be substantially larger.

reviewer who appeared most engaged with the paper and who wrote the more detailed and thoughtful review. This may be because people feel more responsibility when they recommend against publication than when they suggest it. I read papers that had received such conflicting judgments closely and usually, but by no means always, decided against publication.

Outside reviewers are, of course, just one group that contributes to the production of a professional journal. Intensive efforts from a small cluster of individuals are also required. I could not have performed my duties without a group of capable associates. Colin Loftin, the *Review*'s associate editor, had special responsibility with respect to issues of statistical methodology. His comments and counsel were helpful throughout my three-year term both in reaching publication decisions and in advising authors how to improve their work. Margaret Lourie, the *Review*'s production editor, did her job with such intelligence, sensitivity, and skill that I had no worries and few responsibilities once finished manuscripts were sent to her to be prepared for the printer. Joyce Reese, who served as the *Review*'s executive secretary, did everything that did not fit into anyone else's job description as well as many things that did. Most importantly, she coordinated all the *Review*'s dealings with referees, paper writers, and the publisher. In addition, she contributed immeasurably to my good spirit and sanity. My views of Joyce's contributions were echoed by some authors she corresponded with who went out of their way to sing her praises. When Joyce left after work on the *Review* had diminished to the point where a half-time secretary was no longer needed, Gail Ristow, my regular law school secretary, filled in ably.

I also could not have served effectively as editor without substantial institutional support. The University of Michigan Law School, through its Cook funds, generously freed me from half my teaching responsibilities for three years and helped the *Review* with a variety of incidental expenses as well. Almost as important is the intangible support and respect that I received from my dean, Terence Sandalow, and my colleagues while editing the *Review*. I have never in all my years at the University of Michigan Law School felt marginal because my interests focus on social science rather than doctrinal analysis, and I felt that my work as editor of the *Review* was as valued as the work of colleagues turning out more traditional legal scholarship. But this is not surprising given the intellectual

atmosphere at the University of Michigan Law School and the remarkable breadth of those who teach here.

When I became editor of the *Review*, I said I would select articles with an eye toward two goals: quality and diversity. While it is not for me to judge the success of my editorship, I am satisfied on both counts, although I wish that the diversity in the subject matter and approaches of articles that have appeared in the *Review* reflected a somewhat greater diversity in the backgrounds of the authors of the articles. While I have been delighted to publish work in the anthropological, economic, historical, and psychological traditions, a good portion of this work was written by authors who are not anthropologists, economists, historians, or psychologists by training. Of course, people trained in fields like law, sociology, and political science can be expected to draw on other disciplinary perspectives to understand legal action if law and social science is itself an emerging discipline.

In many ways this issue, in the diversity and quality of the articles published, is a microcosm of what I hoped to achieve in my editorship. The issue opens with the Presidential Address, "The Legal Malaise; Or, Justice Observed," that Marc Galanter gave in Boston in 1984 at the meetings that marked the twentieth anniversary of the founding of the Law and Society Association. Galanter tells us that research in law and social science, which has burgeoned since the founding of the Association, is a second kind of learning about the law and legal institutions. In treating the relationship between law and society as empirically problematic, contextual, and dynamic, this second kind of learning does not just compete with the traditional lawyer view that sees law as a set of more or less autonomous rules that regulate society according to professional understandings and routines; it tends to undermine traditional understandings. Thus, research in law and social science is potentially an important change agent even when it eschews prescription. Galanter's essay documents the richness of law and social science in this respect and suggests that an evaluation of the impact of law and social science research on the law is itself an interesting area for inquiry.

The next article, "Judicial Reform and Prisoner Control: The Impact of *Ruiz v. Estelle* on a Texas Penitentiary" by James W. Marquart and Ben M. Crouch, is a legal impact study of a sort. Marquart and Crouch examine the effects of *Ruiz v. Estelle*, a case that ordered sweeping changes in the Texas prison system. They are not, however, concerned with gaps

between what was ordered and what was done, for the reforms ordered by *Ruiz* were eventually fully implemented. Rather, they are interested in the effects of full implementation on the social order of a maximum security penitentiary. Their research reveals a different kind of gap, a gap between the social order that the court sought to achieve by its reforms and the situation that actually developed. Put simply, there was a lot less violence under the old order when the prisoners were allowed to run the penitentiary, but whether the earlier situation was preferable is more problematic. The strength of Marquart and Crouch's analysis lies, however, not in these results but in their ability to offer good organizational reasons for what occurred.

Michael Radelet and Glenn Pierce, in their article "Race and Prosecutorial Discretion in Homicide Cases," offer further documentation for the proposition that the death penalty is visited disproportionately on those who slay white victims. While their data simply add to a body of research reporting this result, from the point of view of law and social science their work is a significant advance over much of what has gone before. This is because they shed light on the processes by which killers of whites come disproportionately to be selected for the death penalty. What they find will be familiar to those who study the processing of more mundane cases: evidence is malleable. Prosecutors can make cases appear more or less serious depending on what they choose to emphasize. By contrasting police descriptions of crimes with prosecutorial characterizations, Radelet and Pierce are able to show that the racial configuration of the defendant and victim relates to the tendency of prosecutors to make cases appear, in one important respect, more serious than they appeared following the police investigation. This selective "upgrading" is in turn strongly related to the imposition of the death penalty in cases that are not plea bargained.

The last two articles in this issue both have anthropologists as coauthors and deal with issues of law and language. Yet their methodologies and concerns could hardly be more different. "Rule-Centrism versus Legal Creativity: The Skewing of Legal Ideology through Language" by Bernard Weissbourd and Elizabeth Mertz combines semiotics, anthropology, and legal and linguistic philosophy. "Litigant Satisfaction versus Legal Adequacy in Small Claims Court Narratives" by William O'Barr and John Conley contrasts the kinds of stories litigants are permitted to tell in ordinary and in

small claims courts. The article by Weissbourd and Mertz examines legal and linguistic philosophy in an attempt to show that H.L.A. Hart's view of law is distorted by linguistic biases rooted in the structure of the language he used. The article by O'Barr and Conley examines speech segments in ordinary and small claims courts and argues that the speech allowed witnesses in ordinary courts is unnatural—biased by legal conventions—but geared to providing grist for the legal mill in a way that ordinary speech does not. Taken together, these two articles suggest that the structure of our language shapes our conception of law, but our conception of law shapes what is legally effective language. O'Barr and Conley's work is a first step in looking at the relationship between ordinary language and language mediated by a conception of what the law requires. If Weissbourd and Mertz are correct, this relationship may also tell us something about what biases rooted in the structure of ordinary language entail, for the mediating force is itself the product of a culturally specific language system.

Long before the appearance of this issue, I turned over the active management of the *Review* to my successor, Robert Kidder. It is with special pleasure that I did so. The pleasure is rooted only in part in the fact that I feel like the wrinkled, bearded man with scythe who signifies the end of an outgoing year and sees his successor as a cherubic newborn. More important is the fact that Bob and I were classmates at Oberlin and we, like five or six other members of the Association, owe our interest in law and social science to the second "great" teacher I encountered there: Kiyoshi Ikeda, now a professor of sociology at the University of Hawaii. If editors had the prerogative of dedicating their work to individuals, my work on the *Review* would have been dedicated to him.

Richard Lempert
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