

Law & Social Inquiry

Journal of the American Bar Foundation
Volume 23, Number 4, Fall 1998

The University of Chicago Press

Law & Social Inquiry

Journal of the American Bar Foundation

Published by The University of Chicago Press

<i>Editors</i>	Carol A. Heimer Elizabeth Mertz Victoria Saker Woeste
<i>Review Editor</i>	Howard S. Erlanger
<i>Associate Editors</i>	John L. Comaroff Austan Goolsbee Karyl A. Kinsey
<i>Editorial Coordinator</i>	Vikki Webster
<i>Manuscript Editors</i>	Susan F. Messer Sandy L. Pittman

Editorial Board

Richard L. Abel, Professor of Law, University of California, Los Angeles
Ian Ayres, Professor of Law, Yale University
Donald Black, Professor of Sociology, University of Virginia
Erhard Blankenburg, Professor of Sociology of Law, Free University of Amsterdam
John Braithwaite, Professor of Law and Sociology, The Australian National University
Jane F. Collier, Professor of Anthropology, Stanford University
Phoebe C. Ellsworth, Professor of Law and Psychology, University of Michigan
Eliot L. Freidson, Professor of Sociology, New York University
Lawrence M. Friedman, Professor of Law, Stanford University
Hazel Genn, Professor of Law, Queen Mary and Westfield College, University of London
Carol J. Greenhouse, Professor of Anthropology, Indiana University
Valerie P. Hans, Professor of Criminal Justice, University of Delaware
Earl Johnson, Jr., Associate Justice, California State Court of Appeal
Doreen McBarnet, Senior Research Fellow, Centre for Socio-Legal Studies, Wolfson College, Oxford
Carrie J. Menkel-Meadow, Professor of Law, University of California, Los Angeles
Laura Nader, Professor of Anthropology, University of California-Berkeley
Judith Resnik, Professor of Law, Yale University
Daniel Rubinfeld, Professor of Economics, University of California-Berkeley
Dietrich Rueschemeyer, Professor of Sociology, Brown University
Martin M. Shapiro, Professor of Law, University of California-Berkeley
Peter Siegelman, Ph.D., Economist
Susan S. Silbey, Professor of Sociology, Wellesley College
David Sugarman, School of Law, Lancaster University
David M. Trubek, Professor of Law, University of Wisconsin
Barbara Yngvesson, Professor of Anthropology, Hampshire College
Michael Zander, Professor of Law, Department of Law, London School of Economics

Law & Social Inquiry

Volume 23, Number 4, Fall 1998

SYMPOSIUM: Special Issue in Honor of Herbert Jacob

- Symposium Editors: Lynn Mather and Elizabeth Mertz
- LSI Editor's Preface: In Honor of Herb Jacob** 743
Elizabeth Mertz
- Prologue: Remembering Herbert Jacob** 745
Jonathan D. Casper
- Symposium Introduction: Herb Jacob's Legacy to Sociolegal Research** 749
Lynn Mather and Roy B. Flemming
- Closing the Gaps: Plaintiffs in Pivotal Sexual Harassment Cases** 761
Anna-Maria Marshall
- Contingent-Fee Lawyers and Their Clients: Settlement Expectations, Settlement Realities, and Issues of Control in the Lawyer-Client Relationship** 795
Herbert M. Kritzer
- Too Many Black Men: The Sentencing Judge's Dilemma** 823
Doris Marie Provine
- Constructing the New Political Criminology: Power, Authority, and the Post-Liberal State** 857
Stuart A. Scheingold
- Theorizing about Trial Courts: Lawyers, Policymaking, and Tobacco Litigation** 897
Lynn Mather
- Contested Terrains and Regime Politics: Thinking about America's Trial Courts and Institutional Change** 941
Roy B. Flemming

REVIEW SECTION SYMPOSIUM

- Habermas and Sociolegal Theory**
- Habermas's Constitution: A History, Guide, and Critique** 969
William E. Forbath
- Patroklos's Funeral and Habermas's Sentence** 1017
Elías José Palti

BOOK NOTES 1045

INDEX TO VOLUME 23 1059

Publication Policy

The American Bar Foundation is an independent research institute committed to sociological research. Consistent with its mandate to create and disseminate knowledge about law, the legal profession, and legal institutions, *Law and Social Inquiry: Journal of the American Bar Foundation* invites the submission of articles that make original contributions to understanding of sociological processes. *Law and Social Inquiry* publishes both empirical and theoretical studies from a variety of disciplinary perspectives. The analyses, conclusions, and opinions are those of the authors alone.

Manuscript Evaluation: *Law and Social Inquiry* is a refereed journal. Manuscripts that the Editors deem appropriate for the journal are evaluated by two or more reviewers with expertise in the relevant subject matter and methodology. Manuscripts produced by ABF research fellows are evaluated by the same process as outside manuscripts and are not accorded priority in publication.

Submission of Manuscripts: *Law and Social Inquiry* uses the author/date citation system, as described in *The Chicago Manual of Style, 14th Edition*. You may obtain our style guidelines via surface mail by writing to us at: Editorial Coordinator, Law and Social Inquiry, American Bar Foundation, 750 N. Lake Shore Drive, Chicago, Illinois 60611; or from our Web site at: <http://www.journals.uchicago.edu/LSI/>. Manuscripts submitted to *Law and Social Inquiry* should be typed double-spaced and be accompanied by an abstract of not more than 150 words. The review process is anonymous; all identifying information should appear only on a separate cover sheet and not in the body of the manuscript.

Law and Social Inquiry does not accept multiply submitted articles. The Editors endeavor to make decisions promptly, usually about two months after submission.

Editing of Manuscripts: All manuscripts accepted for publication are edited for style by professional copy editors in consultation with the author. Copy editors do not check citations. Authors see edited manuscripts and/or proofs.

Off-Prints to Authors: Without charge, we provide authors with 25 off-prints of their articles, essays, or exchanges (but not symposia) that appear in *Law and Social Inquiry*. Additional off-prints may be ordered at the author's expense. Authors receive 1 copy of the issue in which their contributions appear.

Republication Rights: The Foundation normally permits authors to republish their manuscripts in books or use their manuscripts after publication, but *Law and Social Inquiry* has the right to first publication of edited manuscripts. The journal retains the right to republish manuscripts as reprints or as part of any reproduction of the issue or volume in which they appear, by any means, including without limit electronic means or microfilm.

Copying Beyond Fair Use: The code on the first page of a contribution in this journal indicates the copyright owner's consent that copies of the contribution may be made beyond those permitted by Sections 107 or 108 of the U.S. Copyright Law provided that copies are made only for personal or internal use, or for the personal or internal use of specific clients and provided that the copier pay the stated per-copy fee through the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923. To request permission for other kinds of copying, such as copying for classroom use without charge, copying for general distribution, for advertising or promotional purposes, for creating new collective works, or for resale, kindly write to the Permissions Department, University of Chicago Press, 5801 S. Ellis Avenue, Chicago, IL 60637.

Comments and Responses: Comments on or responses to articles or review essays in the form of brief, scholarly statements will be published at the discretion of the Editors or Review Section Editor.

Send article manuscripts to:

The Editors

Law & Social Inquiry
American Bar Foundation
750 N. Lake Shore Drive
Chicago, IL 60611
(312) 988-6500

Send inquiries regarding
review essays to:

Howard S. Erlanger
Review Editor
Law & Social Inquiry
Institute for Legal Studies
Law School
University of Wisconsin
Madison, WI 53706
(608) 263-7405

For further information via the Internet—

Web site: <http://www.journals.uchicago.edu/LSI/>

E-mail: lsi-abf@abfn.org

Law & Social Inquiry is available for full-text search on the LEXIS™/
NEXIS™ and WESTLAW™ on-line services.

Annual U.S. subscription rates:

	1 yr.	2 yr.	3 yr.
Individuals	\$36	\$66.25	\$91.80
Academic	\$29	\$53.35	\$73.95
Institutions	\$59	\$108.55	\$150.45

Outside U.S. please add a postage charge of \$6.00 per year to the U.S. rates. **Canadians please add** 7% GST tax to above rates as follows: One-year rates: Individuals \$2.52; Academic \$2.03; Institutions \$4.13. Two-year rates: Individuals \$4.64; Academic \$3.73; Institutions \$7.60. Three-year rates: Individuals \$6.43; Academic \$5.18; Institutions \$10.53.

Single copies: \$14.75 for institutions, \$9.00 for individuals. Checks should be made payable to *Law & Social Inquiry*, University of Chicago Press, Journals Division, P.O. Box 37005, Chicago, Illinois 60637. (Fax: 773-753-0811; E-mail: subscriptions@journals.uchicago.edu) Volumes 1-12 available from Fred B. Rothman & Company, 10368 West Centennial Road, Littleton, Colorado 80127. (303) 979-5657

Volumes available in microfilm from University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

© 1998 American Bar Foundation. All rights reserved.

Law & Social Inquiry: Journal of the American Bar Foundation (ISSN: 0897-6546) is published quarterly—winter, spring, summer, and fall—by The University of Chicago Press, 5720 South Woodlawn Ave., Chicago, Illinois 60637. Subscription agent for Japan: Kinokuniya Company, Ltd. Periodicals postage paid at Chicago, Illinois and at additional mailing office.

POSTMASTER: Send address changes to: *Law & Social Inquiry*, P.O. Box 37005, Chicago, IL 60637.

Law and Social Inquiry **Graduate Student Paper Competition**

The editors of *Law and Social Inquiry* are pleased to announce a competition for the best journal-length paper in the field of sociolegal studies written by a graduate student. The winning paper will be published in *Law and Social Inquiry* and the author will receive a cash prize of \$500. Submissions will be judged by the editorial board, and the winning submission will be internally reviewed for publication. The author must be a graduate student or law student at the time of submission. Entries should be received by March 1, 1999. The winner will be selected by May 1, and the prize will be awarded at the annual meeting of the Law and Society Association.

Law and Social Inquiry publishes both empirical and theoretical studies of sociolegal processes from a variety of disciplinary perspectives.

Please send your best work to:

The Editors, *Law and Social Inquiry*, American Bar Foundation,
750 N. Lake Shore Drive, Chicago, IL 60611. For further information send e-mail to lsi-abf@abfn.org, or call (312) 988-6517.