

'Are You Ready to Listen?'

Susan Silbey

Massachusetts Institute of Technology

When I left residence in graduate school at the University of Chicago and came to live in Boston in 1966, I was welcomed into a community of sociologists at Brandeis University to whom I have been ever grateful. Egon Bittner sat at the centre of this world, bequeathing to me whatever intellectual accomplishment or sense there exists in my work over these years. This acknowledgement is insufficient, however, to convey what our relationship became or what Egon made of me. Certainly, I would never have switched fields and identity (a word I do not deploy easily because it obscures more than it conveys) to become a sociologist, without his mentoring and guidance. Ever since I appeared in one of his classes, invited by his student Claire Lang whom I had just met and with whom I bonded in love of Egon, he became my teacher, my friend, an inspiration, and eventually a colleague. Above all else, he showed me a way of understanding; he opened my eyes and mind to the tacit features of social action, about which I had an inkling when I was dissatisfied with the training I was receiving in political science but which I did not know how to access or conceptualise until he took me under his wing. I have been immersed in this activity ever since. It has been a very good life and I owe much of the passion for the work to him.

I never formally registered for classes at Brandeis, I simply poached from the pool of exciting sociology and provocative students that were there in the late Sixties and Seventies. I attended classes and seminars, reading the materials for Egon's courses on ethnomethodology, the sociology of law, social theory, crime and policing, as well as Irv Zola's classes on deviance and medical sociology. I gathered in as much as I could. I would go to Egon's office, hounding him with questions. He was so generous and so kind, yet often abstruse. It was challenging. I was often lost but thought of little else than our conversations. It would take me weeks to decipher a comment, and I know that I missed most of the implications. But, it occupied and transformed me completely.

At the end of the first year, I wrote a dissertation proposal for a project on the legal enforcement of morals and went off with it to the University of Chicago, where I was still formally ABD, to seek advice from my committee members in the Political Science Department and the Law School. I had never actually been

trained in social science research methods, at Chicago or elsewhere, and wanted them not only to approve my proposal but more importantly to tell me how to design and conduct an empirical project on the relationship between law and morality. Egon was not very enthusiastic about this proposal but it did encapsulate much of what I had learned from him, or at least I thought so at the time. After a week of anxiety, several degradation ceremonies, and abundant tears, my committee announced that I had clearly mastered the obvious foundations of the sociology of law but that I should go back to Boston, work some more, and come back in six months. I wanted them to show me how to do empirical research; they told me to read more. I was five months pregnant with our first daughter, certain that all this fretting was bad for the baby, which only added to the anguish. The pregnancy turned out to be relevant to what ultimately became my dissertation research.

I returned to Boston and reported to Egon. His comment was perfect and so typical. 'Are you ready to listen now?' Apparently, in all my class attendance, copious reading and writing, I had clearly not heard him very well, or perhaps not at all. 'If you want to know how the law works,' he said, 'then you have to look at its boundaries, where it is changing. Down on the ground. Go to the Attorney General's office, study the new consumer protection law. It is revolutionising civil law enforcement. The people have been given a public lawyer for market failures.' I was stunned. Stopped in my tracks. I wanted to write about justice, liberty, equality – I believed all that stuff carved in the pediments of court houses and law schools. I wanted to write a great treatise on why sexual behaviour was no one's business. I had volunteered to work on projects to legalise abortion, to promote civil rights and defend civil disobedients. What did I care about leaky roofs, engines that failed, sewing machines selling at prices higher than advertised?

Egon had been engaging me for a year. I thought I was learning but clearly I had missed the big messages. 'Now,' he said, 'are you ready to listen?' How patient he was. He let me learn the lesson of pursuing a topic as a consumer until I was ready to become a producer of knowledge. I had been a student absorbing as much as I could of what I had read but I had neither deduced nor induced from all my reading a researchable project. I had not figured out how to take the next step. I had no site, no action or organisation that would provide evidence in social action of these grand arguments I wanted to explore. Although he was not going to hand it to me, he did turn me around and point me in a different direction. He told me to look elsewhere than on the pediments of courthouses or law schools. He showed me a vantage that became the foundation of my work, occupying me these forty plus years. Rather than beginning with abstract or normative commitments, ideals carved in stone, he taught me to look at the mundane, at the activities and actors that enacted and constituted law day by day, transaction by

transaction. I learned, and hope that I have demonstrated in my research over these decades, that law is not only abstract principles and general rules, but is produced, realised, transformed, and resisted in the ways we manage traffic that is orderly, roofs that do not leak after repair, or sewing machines that actually sell at their advertised price.

I relayed Egon's advice to study the Attorney General's office to my husband who offered equally sage counsel. 'If you want to be a scholar, you need a mentor. Chicago will let you diddle and eventually hang yourself; Egon wants to talk with you.' And, my husband was quite right. Egon talked with me, teaching me how to observe, how to take notes, how to find patterns in the observations, how to connect what I observed to what had been written by others, how to make a theory of the observations. It was not quick, nor easy. I still had no idea how you did fieldwork; all I knew was what I had read in his fieldnotes. Like many of his generation, and some still, he simply sent me out and I learned week by week, incrementally through the feedback he provided to my observations and queries. I tried to mimic his fieldnotes. When I reported back to him what I was doing, what I had seen that week, he would question me, ask why I was looking at one thing rather than another, how many other things like that I had seen, where did I see variations and so on. He would read my field notes and write marginal comments. He would ask if this observation is related to an analysis we had read in a particular text. This went on for over a year. At the end, he said, perhaps you should try to write up what you have found. I wrote a sixty-page, single-spaced paper. 'You have a dissertation,' he said, 'now turn it into chapters.' That took a second baby, a house, a garden and seven more years to complete.

I often tell a version of this story to my graduate students as a lesson I am not sure they appreciate. Sometimes the moral – it varies – is to take your professor's advice, especially if he wants to work with you. I had made the same mistake earlier in my graduate career at Chicago when the professor I wanted to work with offered me a research opportunity but not on the specific part of his work that had seduced me. He had moved on, I had not. When Egon showed me a different, and it turns out much more important, venue than grand abstractions about justice for understanding how law works, with my husband's advice this time, I was ready to listen. Sometimes I emphasise another moral to the students: It is not necessary to research your passion; it is necessary, however, to have a passion about research itself. Commitments to the topic may be less important than commitments to doing excellent social science, putting in the daily labor, and in this case, it meant developing a more nuanced, phenomenological and empirically grounded rather than idealistic understanding of the subject about which I was passionate, the law.

I also tell my students what happened next, how being then more than six months pregnant, I obtained access to study the Attorney General's office. I made my way to the Massachusetts State House, a magnificent gold-domed Bullfinch building sitting atop Beacon Hill in Boston – perhaps in its way symbolising my latent commitments but that is not the important part of the story. The important part, I have been convinced all these years, was being visibly pregnant, vulnerable, weak. I went from one Assistant AG to another, dressed self-consciously in a puritan costume of black with white collar and cuffs, asking if I could observe their work. Letters were sent from Chicago and from Brandeis promising that supervision would be provided, confidentiality assured (which in the end was unnecessary because they wanted publicity even though public notice of my dissertation was not likely), and that this would be a work of basic social science not policy evaluation. When permissions were finally secured after several months' negotiations, I thanked them and said I would be back in three months. When I returned in July 1970 – two months after the baby was born – to begin my fieldwork in the Attorney General's office, the atmosphere had cooled considerably, all the negotiations and permissions and enthusiasm for the work forgotten. No longer a tender, defenceless soon to be mother, I confronted walls of silence, exclusion, secrecy. I had to work hard to develop real, rather than formal access, in the process enacting exactly that difference between formalities and practices (law on the books and law in action) that would be my research subject.

As the years went on – and this dissertation had an unusually long gestation not solely a consequence of the various biological gestations along the way – I would bring to Egon's office or home one after another chapter draft for him to read. He would write comments on the pages and sometimes would type up a note in summary form. I would rewrite and send him the revised chapter. He would write comments on the revision. At some point, perhaps mid to late 1970s, I asked him when I would be done. He said, 'That is for you to decide. It is your job to write and my role to comment.' Again, I was stopped short. I often was by these little aphorisms. What did he mean that it was for me to decide when the work was done? This prompted more conversation during which he suggested that I might think about the cases in the Attorney General's office in a similar manner. How did they decide when a case was done? How did any professional know that they had done as much as they could? Or, even if they could do more, whether what was done was sufficient in the circumstances. It had been staring me in the face all this time. I had observed that the Attorney General who had been empowered by this nearly revolutionary statute to litigate on behalf of consumers who had been victims of market misrepresentation but had never actually sued anyone! Yet, the AG was raking in millions of dollars in refunds for consumers in the Commonwealth. If the AG negotiated settlements but never

litigated, how did they know a case was ready to close? What if they did not get a refund? What if they could have gotten a larger refund? When did they decide that a case was finished when there were no criteria – such as a judicial decision – that the case was closed? How would I decide that the dissertation was sufficiently done, if there is always more that could be researched or analysed, more that is not yet completely understood. This exchange led to another chapter in the dissertation, eventually to one of my first publications, and to a life lesson, which I also try to give, in Egon's honour, to my students. You do not get from here to there – whether it is a spatial or a temporal path, whether it is a life plan or an outline of a text, he told me that day, by moving through a straight line. Things happen along the way from here to there and the path and decisions are situationally structured, if not determined. The engineers model action by assuming, like too many economists, a straight and efficient path. We do not live in or by straight efficient lines.

When looking through my files to visit with Egon a bit more intimately as I began to write this, I found a short note, typewritten on that old manual typewriter he used, with lots of type-over corrections and uneven shading in the typeface. Unfortunately, it had no date; I suspect it was written about the time we were working on the one paper we wrote together about which I will speak below, but I cannot be sure. I refer to this note at this point in this remembrance because Egon's comments in the note extend the discussion of situational rationality that became an important part of my dissertation and that informed so much of his work. (It is hard to use the word rationality these days without fearing a barrage of contestation.) In the note, Egon begins by thanking me for a very nice evening – I cannot remember what this evening was but it must have been a dinner at home with some visiting salesmen, as we used to refer to the seminar speakers. He concludes with two short paragraphs, one rebutting a criticism to my work from a friend whom Egon thought misunderstood the dynamics of intake procedures in an enforcement agency and who would never be satisfied. The last paragraph referred to Al Reiss' then emerging work on compliance rather than sanctions as enforcement strategies. I want to quote in full the central paragraph, leaving the exegesis for the reader because it seems quintessentially Egon.

I went over the pages you propose the paper for Macmillan to build on [I am not sure to what Macmillan refers here]. You say everything just as it should be said. People undertake to do something; then they wonder why it doesn't get done as they imagined. Well, it is because people think that to get something done one only needs to do it – as if they had never, themselves, done anything and didn't know that the doing of something must first be put in its place, which has its own demands, etc. I think those who do not understand this do not understand because

their minds are choked with too much social science. Your obligation to put the idea in the form of an article is a fine example of what you are trying to explain. This is the way the saying of what needs to be said is itself put into its proper place, etc.

We ended up writing a paper ‘The Availability of Law’ (Silbey and Bittner 1982) out of some of the data and one chapter from my dissertation. He was reluctant to do the paper and I had to keep pestering him, probably harassing him until he agreed to sign on to keep me quiet. The basic theory of the chapter was his, I thought, and believed that he needed to have his name on this idea. It was what he had been teaching me about the law: that law is a multi-service – available – tool whose uses cannot be entirely predicted. Of course, we understood that it was not simply an instrument external to social relations but part of the constitution of social relations. Nonetheless, we wanted to illustrate specifically, with data from the Attorney General’s office, that there is a vast reservoir of unenforced law, what we called a surplus of enforcement capacity. Law enforcement agents are able to accomplish mandated objectives, we argued, *only* because they develop practical skills unearthing, interpreting and invoking possible violations within the reservoir of imperfectly enforced laws. We suggested that imperfect enforcement, a reservoir of unenforced law, and the practical skills of agents were essential components of any account of the way law works, of the law as a social institution. When we submitted the paper for review to *Social Problems*, Egon was about to serve his term as President of the Society for the Social Study of Social Problems (1982), for which the journal was the official scholarly publication. The paper was rejected. The editor agreed with the reviewers that it lacked data for its conclusions; the case reports and arguments we provided were unsupported because we did not report how many consumer protection cases were resolved by invoking and threatening to enforce some other law against the offending business. Egon refused to allow me to do the counting to fill in the numbers. It was published in *Law and Policy*.

I have two more stories with which I want to end this celebration of Egon. My husband and I were dining with a visiting Polish scientist in a Chinese restaurant on Main Street in Waltham. We saw Egon sitting with members of the Sociology Department, entertaining their own visitor; seeing us, he came to our table to say hello. Upon being introduced to my husband’s Polish colleague, Egon began a conversation with this visiting scientist in Polish. It went on for some time and after Egon returned to his colleagues, our visitor said, ‘That man was speaking the most erudite Polish I have perhaps ever heard.’ Polish was only one among Egon’s many languages.

At our last visit, we sat and chatted in Jean and Egon's living room in Pleasant Hill. We talked about what our children were doing, the research projects in progress, my husband's work as Dean – Egon was fascinated that Bob had agreed to take on such an onerous role – and my general malaise and dissatisfaction with the state of the world, especially my fears concerning escalating inequality and environmental degradation. I was afraid of the future. Egon offered one of his off-hand observations that we have repeated often to pacify our own and others' worries and lighten the mood. Egon was clearly trying to calm my fears, but there was something unsettling and provocative in his observation. 'Imagine what would happen,' he said, 'if the wealth of all these billionaires was more equally distributed. Think what the environment would be like then.'

A memorial should be about the person being remembered, celebrated for who he was and what he did, not about oneself. Yet, Egon would be the first one to mention that we only know the other person through our interactions and so we remember him through the conversations, the problems we brought to him, by putting him in his place in our lives. We should remember the moments he offered his wisdom, his encyclopaedic knowledge, his unflappable demeanour, his generosity and limitless empathy. This extraordinary man bestowed his gifts not by preaching or pronouncing but, as I have tried to convey with this account of how I became his student, by teaching one on one, by guiding week by week and year by year. He never sought to reproduce himself, as too many academics do. Indeed, it is my sense that among all of Egon's students, very few, perhaps only two or maybe three – I am not sure – ended up being scholars of law or the police. This is perhaps one of Egon's more remarkable and distinctive accomplishments. He taught us how to think through the web of associations that constituted just about any social field, whether it was parenting, popular novels, family dynamics, race relations, mental health, bureaucratic processes, or law enforcement. Wherever his students worked, he urged us to disassemble the web so as to identify the links, the logic that organised the action, in his word, by putting the 'doing of something ... first in its place' to be able to find 'its own demands'.

A few years ago, I realised that I had not heard from Egon in a while and wanted to write to see how he was and to tell him I was coming to San Francisco. I was looking on the Web to find Tom or Debora's address to contact them before I intruded on Jean and Egon, just in case one or the other was not well. As it turned out, I found Tom who told me that Egon was not well but would love to hear from me and so I wrote. In my searching, however, I found the Egon Bittner Award, annually presented by the Committee on Accreditation for Law Enforcement to exemplary police chiefs in recognition of distinguished service. It seemed glorious to me, although I wonder what Egon would have thought. His empathetic analyses of the practical skills of law enforcement were embraced, honoured

and celebrated by the actors he studied. It seemed to be a perfect example of putting something first in its place.

Not many days go by that I do not think of Egon. His advice, words, counsel are always before me. Egon used to say that to speak clearly is a radical act, a form of liberation. He was a liberating teacher because he did not try to nor did he clone himself. He insisted on no particular subject, no particular method, no politics, nor paradigm. He empowered his students by inviting them into a rigorous engagement, the craft of intellectual inquiry that depended on empathetic understanding of others, especially others whose circumstances we might not share. His was not an easy world to live in. Nonetheless, I try to be for my students the kind of mentor that he was for me. I will not succeed but maybe one of my students will.

REFERENCE

Silbey, Susan S. and Egon Bittner. 1982. The availability of law. *Law and Policy Quarterly* 4(4): 399-434.