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TRIBUTE

Retirement of Sheldon L. Messinger

Jerome H. Skolnick†

The Center for the Study of Law and Society was launched in a small set of rented offices on Telegraph Avenue on July 1, 1961. Philip Selznick served as Chairman and Sheldon Messinger as Vice Chairman. (I came on board in January 1962.) Along with Phil, Shelly set a tone that combined intellectual challenge with easy informality. Students and colleagues sought out Shelly more than anyone to discuss inchoate theories, half-baked ideas, and plans for research. Time and again, like a magnificent editor who sees in a manuscript what the author really wants to say, Shelly would cut to the essence of the author's thesis or project, clarify the underlying argument, and show how to conceive of the idea as representing a higher theoretical concept or issue. After some years of this, Shelly became something of a legend around the Center as a supportive wizard of reconceptualization to whom several generations of students and colleagues became intellectually indebted.

Such qualities led to Shelly's appointment as Professor and Dean of the School of Criminology from 1970 to 1977. By the time this appointment occurred, Shelly had also written significant articles on the transformation of social movements;¹ the dramaturgical interpretation of social life;² the social life of prison inmates;³ and had coauthored several

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noteworthy articles and studies including a major study of schizophrenic women\(^4\) and an unusually influential article (later to be a book) on civil justice and the poor.\(^5\)

I was Shelly's colleague at the Criminology School and admired his calm and fortitude in an especially difficult time. Being a Dean has rarely been a trouble-free business, especially on the Berkeley campus in the 1960s and 1970s, but a combination of circumstances made the Deanship particularly vexing in the Criminology School. As a "professional school" supporting an ambiguous profession—policing and corrections—the Criminology School's mandate had never been entirely clear. Neither had the goal of training such professionals ever achieved a wholly comfortable fit with the scholarly aspirations of the larger Berkeley campus. By 1970, although by no means of one mind on these matters, the School of Criminology's faculty and students had mostly rejected the assignment of training professional police and corrections officials. Instead, they (we) concentrated on studying the etiology of crime; police, courts, and corrections; and criminal-justice policy.

Crime and criminal-justice policies draw powerful resonances from across the political spectrum. This is especially true in a time of political conflict, protest, and sometimes violent confrontation—a time like the 1960s and early 1970s. By the early 1970s a substantial and visible group of Criminology School students and faculty had become active participants in local radical activities, while outside law-enforcement agencies were being called to Berkeley and the campus to quell civil disturbances. Understandably, local and state law-enforcement officials who once had supported the School felt they had been betrayed.

Consequently, as Dean, Shelly often found himself perched precariously between a rock and a hard place. The radical faculty and students were his faculty and students, and, like an understanding father, he tried to protect them. At the same time, he was, after all, an administrator appointed by a University administration that did not look fondly on this patch of radicalism. It says something about Shelly's human qualities and moral character that throughout this difficult period he lost no friends and even picked up a few. He was fair to all points of view within and outside the school and maintained an equanimity that eluded most of his faculty. He tried to save the School, but sooner or later the School seemed destined to fall. It did and was phased out in the mid-1970s.

What was to be done with the dozen faculty positions held by the former School of Criminology? Committees were formed, meetings were

\(^4\) HAROLD SAMPSON ET AL., SCHIZOPHRENIC WOMEN: STUDIES IN MARITAL CRISIS (1964).

held, votes were taken. Instead of distributing the faculty positions to schools and departments across the campus, a wise Vice Chancellor Mike Heyman, aided and abetted by Dean Sandy Kadish and Phil Selz-nick, guided the discussion toward the development of the Jurisprudence and Social Policy program. The program began in 1976, with Phil as chair. Shelly assumed the Chairmanship from 1980 to 1982, and then again from 1984 to 1987. After the retirement of Caleb Foote, with whom he had worked closely, Shelly was designated Elizabeth J. Boalt Professor in the School of Law, a position formerly held by Caleb.

During the 1980s, and until the present, Shelly’s scholarly interests have resolved more centrally toward the sociology and history of punishment and punitive institutions. And, as has been his style, much of his writing is collaborative, including an article on determinate sentencing with Phil Johnson6 and a major and continuing study of the history and consequences of parole in California, with a variety of collaborators, especially Richard A. Berk and John E. Berecochea.7 Shelly’s contributions to criminal-justice research were recognized in 1992 by the American Justice Institute, which awarded him the Richard A. McGee prize for his outstanding contributions.

Shelly has had a number of collaborators over the years for the very good reason that people enjoy his company, his conversation, his wit, his humor, and his selflessness. Like his favorite singer, Frank Sinatra, he makes it all look like, well, not work. Shelly promised at his retirement dinner that he would really retire, read novels, travel, do nothing. But despite his promise to fully retire, he has come practically every day to the JSP Center building, where he sits at his computer, talks to students and colleagues, and quietly has begun auspicious research on the social and legal consequences of the Oakland firestorm. What is one to do with a guy who breaks his promise? Me? I’m smiling.

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Shelly Messinger has been an active and unfailingly contributing member of the Editorial Board of Crime and Justice: A Review of Research since its inception. That journal, which we started in 1977 and which one of us continues to edit, aims to be interdisciplinary, a worthy aim often expressed but rarely achieved. Shelly gave confidence to the rest of us on the Board that this is not an illusory purpose, that the scholarly marksman’s quiver can include arrows of multidisciplinary understanding.

Too often what poses as multidisciplinary scholarship, certainly from the perspective of the law schools, is lawyers, with a smattering of understanding of neighboring disciplines, dabbling dilettantishly in other realms of knowledge, their reach far outdistancing their grasp, jargon substituting for analysis. Hence one finds more than a few courses in law schools entitled “Law and ——,” in which the blank is indeed intellectually blank. Recently, one of us submitted a proposal to the curriculum committee for a seminar on “Law and the Horse” in which the final topic was “Law and the Horse’s Ass.” After due deliberation, this seminar proposal was rejected, but not on grounds of the incompetence of the teacher—competence being an assumption never challenged by curriculum committees. Shelly is the living proof that things need not be so, that one can be a genuine interdisciplinary scholar.

The benighted politics that ended Berkeley’s School of Criminology had the salubrious benefit for the Law School of setting Shelly in its midst as “professor of law.” Once there he demonstrated that one can blend the lawyer’s penchant for precise analysis with the social theorist’s understanding of social change at large and the humanist’s preoccupation with the effects of change on the lives of individuals. Add the seasoning of a vigorous and vehemently vocal social conscience, and the model was complete.

In the deliberations of the Board of Crime and Justice, Shelly constantly strives for the larger picture, the more comprehensive view of the issue. He is somewhat impatient of the obvious and has no hesitation whatsoever in taking a minority position—in other words, he is a sometimes prickly, particularly valuable, colleague. But all of that seems to disappear with those many younger scholars whose careers he has generously and vigorously sponsored. Let us risk an ad hominem example. In

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1977 or thereabouts, Shelly came to the board full of enthusiasm for the work of a younger English researcher, David Farrington of the Cambridge Institute of Criminology. We listened, we acted, David wrote a superb article on longitudinal research\(^2\) and as a result vastly increased his frequent-flyer transatlantic mileage and became the English criminological researcher probably the best known in the United States. Sometimes we thought Shelly carried his support of younger scholars to a fault, but his generosity to them was balanced by the cool eye with which he surveyed the work of allegedly established scholars. It is an admirable balance.

Shelly has long had a reputation as a gifted critic, a colleague whose breadth of knowledge and closeness of argument have helped countless others improve their own works and enhance their own reputations. Shelly’s own work, always subtle, has become steadily richer. In the 1960s, he wrote insightfully about the social organization of the prison.\(^3\) In the 1970s he and Phillip Johnson offered a case study of a state’s shift from indeterminate to determinate sentencing that is a classic, the model against which all other similar efforts are compared.\(^4\) Then with Richard Sparks and Andrew von Hirsch, he directed the largest and most ambitious evaluation of sentencing changes ever conducted.\(^5\) In the 1980s he shifted his focus to historical trends in the exercise of the state’s carceral powers and began an examination in intellectual and social history.\(^6\) The question he addressed here was whether the American movement since the 1970s from rehabilitation-justified indeterminate sentencing toward “just desserts”-justified determinate sentencing is a paradigmatic shift—

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one comparable to the nineteenth-century adoption of indeterminate sentencing, and with it the prison, the reformatory, parole, probation, and the juvenile court.

As the sociologist of the sixties added the insights of the political scientist of the seventies and those of the intellectual and social historian of the eighties, Shelly has always been several years ahead of most people who investigate such things. By himself, at least as far as criminal law, criminal justice, and criminal punishment are concerned, Shelly became a one-man multidisciplinary faculty.

Shelly has had another effect on the behavior of those of us who serve on the board of Crime and Justice. He not only stretches our minds to try to comprehend effects of the larger “paradigm shifts” on social attitudes but also affects our sartorial behavior. We used to attend Board meetings stiff-shirted and tied, coated and creased; his appearance as a black-clad welterweight fighter heading for the gym—most unacademically garbed—brought sense to us and we too relaxed.

Egon Bittner†

In the mid-sixties, Lyndon Johnson decided to put an end to crime in the United States, and he did what one normally does when undertaking a project of this sort: he appointed a commission to advise him on how to get it done. The commissioners, as was their wont, recruited a very large staff of experts to advise them. The foot soldiers on the staff were the so-called field representatives, for the most part academics who had done research on crime and crime control. Shelly was asked to join the task force on “professional crime” as one of its field representatives and he offered me the opportunity to join him, which I eagerly accepted. Both of us were students of Donald Cressey, the academic heir of Edwin Sutherland, who conceived the idea of the “professional criminal.”

Now, filial succession carries with it certain obligations, and we set out to find and investigate the activities of the mythical rogue. He was expected to be male, engaged in the practice of larceny—probably specializing in one of its several forms—with the sort of resolute methodicalness one typically associates with professional vocations. I should mention here that at that time the bona fide professions were held in somewhat higher esteem than they are today so that Sutherland’s concept of a professional criminal carried paradoxical, rather than ironic, connotations.

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As it turned out, we found no professional criminals anywhere outside the tales that make up the folklore of crime. But for me the search was a memorable introduction to the realities of the world of crime and crime control under the guidance of someone who had not only a rich knowledge of its particulars, but also a strong and clear conviction about the right response to those realities—a conviction at once idealistic and practical.

Here is what Shelly made me see and understand: The vastly preponderant majority of persons who rely mainly on larceny for their livelihoods are a sorry lot of humanity, who stumble opportunistically from one hit to another. Even if they manage to stay out of prison for some time, they sooner or later all fall. The clever and well-planned scam is the rare exception that ordinarily supplements its perpetrator’s income from legitimate sources, rather than replaces it. That is, these culprits tend to be professional accountants, brokers, lawyers, etc., who stray into crime episodically, rather than “professional criminals,” in Sutherland’s sense.

I also came to see that while the academic study of crime deserves support for its own sake, one should not pretend that we must wait for its results to formulate and implement civilized ways of coping with crime. Foremost among the things we know is that we should refrain from increasing the vigor of crime-control activities with the means and methods we now employ. The point deserves emphasis because of our obsessive preoccupation with the “crime problem.” The spontaneous retributive impulse is, among ourselves, augmented by opportunistic campaign oratory of candidates for elective office, stimulating activities that have side effects worse than the disease. Explicit forbearance is probably too much to expect, but the combination of popular frustration and political ambition is likely to produce lasting damage if those who know better remain on the sidelines.

More important than any of the above was the realization I gained in my conversations with Shelly that our present practices of penal sanctioning present a far more difficult problem than penologists generally acknowledge. The problem is this: the only sanction available to us for serious crime—imprisonment—causes far more harm than good for the society as a whole. But no one has yet proposed a practicable alternative to it. The shattering realization that the only thing we can and must do multiplies the problem it is designed to remedy gives one a slant on the

2. For a full exposition of conclusions presented to the Commission, see Florence Heller Graduate Sch., Brandeis Univ., Crime as a Profession: A Report on Professional Criminals in Four American Cities (Final Report to the Office of Law Enforcement Assistance, U.S. Dep’t of Justice and the President’s Comm’n on Law Enforcement and Admin. of Justice, 1966).
crime problem quite different from that which one gets by listening to both the soft- and the tough-minded reformers of penal practice.

More than a quarter century has passed since Shelly and I interviewed police detectives and district attorneys in the Bay Area and inmates serving long-term sentences in San Quentin, and we have since that time worked on other projects together. But the lesson I learned in our work for the Commission on Law Enforcement and Administration of Justice remained my lasting debt to Shelly. Nor was it merely a lesson about criminals and criminal sanctions. It goes to an underlying attitude toward the study of human life, and of society, that is reflected in all of Shelly's research and teaching. It contains the recognition of the importance of the past traditions of this field of study and of the more technical aspects of social-science inquiry, namely, its methodologies and theories. These aspects are very helpful in making certain that researchers will properly recognize, identify, and otherwise take note of all the trees in the forest. The attitude even allows that out of this procedure the image of the forest could possibly emerge inferentially.

At the same time, it was part of the lesson that recognizing the importance of the scientific discipline in social science does not inhibit the intuitive grasp of the forest. But the intellectual power to achieve a critically examined, synthetic view of any human concern rarely speaks with a loud voice. The sense of certainty that accompanies the intuition of something essential is balanced by the scruples of skepticism. Moreover, the intuited truth is often not very helpful as seen from the perspective of cooperative research efforts in which loosely organized collectivities of scholars inch forward in collecting certified information and in formulating defensible conclusions from them.

I recall a case that illustrates this predicament. A long time ago Shelly and I attended a conference organized by the NAACP Legal Defense Fund in its efforts on behalf of persons sentenced to die and its campaign to abolish the death penalty. We discussed all that was known about the effects of executing persons, the biased sentence determinations, the vagaries of the appellate process, and every other possible consideration that might be useful in an argument. When it seemed that all that could be said was said and the group fell silent, Shelly said, as I remember, "Suppose the penalty was administered in a totally unbiased manner, and suppose it could be shown incontrovertibly that it has a strong deterrent effect, wouldn't we still have to decide if we want to keep killing people in the name of justice, and isn't this really the problem we should be facing?" As I see it, in this formulation the intuited essence is the moral core of the death-penalty problem. A firmly committed conscience, opposed to killing, will never reach the controversial questions about the death penalty; it simply will not let us do what we
condemn. It is important to see it and to say it, even if it does not help in the writing of the next brief.

Retirement is admittedly an occasion for expressions that are a bit more solemn than a pat on the back. But this tone really does not fit the ways Shelly and I have talked to one another over the years. I suppose it is the influence of his good humor and warmth that kept me from becoming more solemn than I did.

Franklin E. Zimring†

I first joined the Sheldon Messinger Fan Club in 1977, a year before I met him and six years prior to my migration to Berkeley. The article that captured my imagination then was a study of California’s shift to determinate sentencing in the 1970s, coauthored by Professor Messinger and Boalt law professor Phillip E. Johnson.¹ Learned, temperate, and well-informed about law and the political and social contexts in which legislation is determined, California’s Determinate Sentence Statute: History and Issues is an encouraging demonstration of the valuable scholarship that can be produced by collaboration between legal academics and social scientists. Such collaborative scholarship is always in scarce supply and always welcome. Published in the first year of Berkeley’s Jurisprudence and Social Policy experiment, this study had special importance as an example of the positive value of interdisciplinary collaborations and as a preview of coming attractions. With that study, and not for the last time in our relationship, Shelly Messinger had provided leadership by example.

When I arrived on the Berkeley campus in August 1983, I found that a collegial short-range relationship with Professor Messinger was both more rewarding and more strenuous than admiration from afar. Since the founding of the JSP program, Messinger has taken it upon himself to administer a tutorial seminar on the real world for law professors interested in the reform of criminal justice. In my case, this tutorial involved eight years of service on the Attorney General’s Advisory Committee on Criminal Justice in California, participation in the Guggenheim Criminal Justice Policy Seminar, organization of a series of conferences in California that brought academics and policy actors together on a sustained basis, and a number of other excursions that

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Shelly thought would benefit my development. On at least one occasion, Shelly's own work on the historical fluctuations in rates of imprisonment in the State of California became an inspiration for a major research undertaking in the Earl Warren Legal Institute.²

No great friend of early morning highway commutes from Berkeley to Sacramento, I will not insist that Professor Messinger's interventions in my life were always a source of unmitigated delight. But all of the major elements of the Messinger tutorial have been to my great benefit. Shelly Messinger knows things. His perspective encompasses both broad-scale social theory and the nitty-gritty of daily operations in social and political systems. The kinds of things this man has taught are of significant value to the development of a balanced program of research in law and social science in the United States. And the kind of leadership by example that he has provided to students and colleagues is particularly important to the prospects of interdisciplinary programs such as the Jurisprudence and Social Policy experiment.

One of the advantages of an academic career is that the modern university can function as a career-long continuing-education program. In this connection, Professor Messinger has brought to the education of his colleagues the deep knowledge, strong values, and breadth of perspective that we expect from senior figures in our intellectual life. That these qualities are mixed with enthusiasm, flexibility, and a youthful sense of humor makes for the larger pleasure of his company. Those of us who continue to attend Professor Messinger's seminars on the real world do not always live up to his high standards. Shelly Messinger continues to meet our standards as an exemplar of the interdisciplinary ethic in law-related studies.