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# Introduction: The New Economy and the Unraveling Social Safety Net

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EDWARD V. SPARER PUBLIC  
INTEREST LAW PROGRAM  
SYMPOSIUM:  
THE NEW ECONOMY AND THE  
UNRAVELING SOCIAL SAFETY NET

Introduction<sup>\*</sup>

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On April 11, 2003, the Edward V. Sparer Public Interest Law Fellowship Program at Brooklyn Law School held the symposium “The New Economy and the Unraveling Social Safety Net.” This symposium, co-sponsored with The Center for Health Law and Policy, explored the effects of economic shifts that have eroded traditional workplace protections that have historically provided a social safety net. These shifts have exacerbated what has been called “middle-class poverty.” Increasingly, job loss, illness, or divorce can send debt-laden families into financial crisis and even bankruptcy.<sup>1</sup> This

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<sup>†</sup> Rose L. Hoffer Professor of Law and Director, Edward V. Sparer Public Interest Law Fellowship Program, Brooklyn Law School. Special thanks to Stacy Caplow, Mary Jo Eyster, Nan Hunter, Ted Janger, Charles Krause and Sue Susman for their wonderful work in planning the Sparer Symposium, “The New Economy and the Unraveling Social Safety Net,” to all the speakers for their participation and superb presentations, to Amity Boye, John Rizio-Hamilton, and Rebekah Rollo for dedicated work on this symposium issue, to Ashley Van Valkenburgh for outstanding research assistance, and to the Brooklyn Law School Faculty Research Program for support.

<sup>1</sup> See, e.g., ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE* (2003); Jean Chatzky, *Let's Pay it Down Today*, MONEY, Mar. 2004, at 156; Christopher Whalen, *Economic Boom in US Bankruptcies*, INSIGHT ON THE NEWS, Mar. 2, 2004, at 40;

important subject of the new “working poor” has been the focus of much recent national attention.<sup>2</sup>

Until his death in 1983, Edward Sparer, BLS '59, was a pioneer in the fields of poverty and health law, and a nationally recognized teacher, scholar, and activist. He was a founder of both the first neighborhood legal services program, Mobilization for Youth Legal Services, and the first national support center for legal services work, the Columbia Center on Social Welfare Policy and Law. Ed was “the intellectual architect of the legal strategy of the welfare rights movement”<sup>3</sup> and *Goldberg v. Kelly*.<sup>4</sup> He was also an influential scholar and advocate for health care reform, and a founder of the Health Law Project at the University of Pennsylvania Law School as well as other important health care reform organizations. At the time of his death, Ed was Professor of Law and Social Welfare at the University of Pennsylvania Law School.<sup>5</sup> In 1999, *The American Lawyer* cited him as one of this century’s most influential lawyers.<sup>6</sup>

The Sparer Program, one of the first public interest law fellowship programs in the country, was founded in 1985 to assist Brooklyn Law School students in advancing Ed Sparer’s

Lenore Skenazy, *Life on the Edge Cost Crunch is Killing the Middle Class*, DAILY NEWS (New York), Dec. 7, 2003, at 41; Stephanie Strom, *For Middle Class, Health Insurance Becomes a Luxury*, N.Y. TIMES, Nov. 16, 2003, § 1, at 33; Daniel McGinn, *Housebound*, NEWSWEEK, Sept. 15, 2003, at 60; James Surowiecki, *Leave No Parent Behind*, NEW YORKER, Aug. 18, 2003, at 48.

<sup>2</sup> See, e.g., DAVID K. SHIPLER, *THE WORKING POOR: INVISIBLE IN AMERICA* (2004); WARREN & TYAGI, *supra* note 1; Ron Suskind, *Can't Win for Losing*, N.Y. TIMES, Feb. 15, 2004, § 7, at 7 (book review) (reviewing SHIPLER, *supra*); Clem Richardson, *A Healthy Plan Group Aids N.Y.'s Uninsured Workers*, DAILY NEWS (New York), Aug. 4, 2003, at 26; Elizabeth Warren & Amelia Warren Tyagi, *Why You Feel Like You're Headed for the Poorhouse*, CHI. TRIB., Oct. 17, 2003, at C29; Abby Ellin, *Preludes: Gambling on Good Health*, N.Y. TIMES, Sept. 21, 2003, § 3, at 8. See also BARBARA EHRENREICH, *NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA* (2001).

<sup>3</sup> Sylvia A. Law, *Some Reflections on Goldberg v. Kelly at Twenty Years*, 56 BROOK. L. REV. 805, 819 (1990). For discussion of Ed Sparer’s important work in the welfare rights movement, see also MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973* (1993).

<sup>4</sup> 397 U.S. 254 (1970). In 1990, the Sparer Program honored this dimension of Ed’s work in a symposium on the Twentieth Anniversary of *Goldberg v. Kelly*. See generally Symposium, *The Legacy of Goldberg v. Kelly: A Twenty Year Perspective*, 56 BROOK. L. REV. 729 (1990).

<sup>5</sup> In 1994, the Sparer Program commemorated the tenth anniversary of Ed’s death with a symposium on health care. See generally Symposium, *Ensuring (E)qual(ity) Health Care for Poor Americans*, 60 BROOK. L. REV. 1 (1994).

<sup>6</sup> See Sylvia A. Law, *The Lawyers of the Century: The Father of Poverty Law*, AM. LAW., Dec. 1999.

legacy concerning law and social change.<sup>7</sup> The Program awards fellowships for Brooklyn Law School students to work on public interest law in the summer, holds lunches, fora, and symposia on issues of public concern, and assists students in developing public interest legal careers.<sup>8</sup> As of 2004, more than 300 Brooklyn Law School students have been Sparer Fellows.

For those of us planning this symposium, the subject of the new “working poor” was a logical outgrowth of Ed Sparer’s concerns with poverty, economic and social security, health law, and social change. At the symposium, legal scholars, lawyers, social scientists, and activists from around the country spoke about the demographics of financial distress, the changing and increasingly insecure workplace, gaps in health insurance and the impact of illness, accident, and disability on debt, problems of consumer credit, and directions for reform.<sup>9</sup> Speakers emphasized the interrelationship of these issues and the need for activist efforts and policy changes to focus on these

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<sup>7</sup> For general information on the Sparer Program, see Brooklyn Law School, Sparer Public Interest Law, at <http://www.brooklaw.edu/centers/sparer> (last visited Mar. 25, 2004).

<sup>8</sup> Fellows have spent summers working in a variety of legal organizations covering a broad range of legal issues, including civil rights, women’s rights, gay and lesbian rights, international human rights, and Native American rights. During the school year, they help plan and attend luncheons and annual fora and symposia. Past symposia have included *The Legacy of Goldberg v. Kelly: A Twenty Year Perspective*, 56 BROOK L. REV. 729 (1990), *Ensuring (E)qual(ity) Health Care for Poor Americans*, 60 BROOK L. REV. 1 (1994), and *The Universal Declaration of Human Rights at Fifty and the Challenge of Global Markets*, 25 BROOK. J. INT’L L. 1 (1999).

<sup>9</sup> The symposium was structured to focus first on demographics, then workplace problems, health care problems, and finally consumer credit problems. Elizabeth Warren, Leo E. Gottlieb Professor at Harvard Law School, gave the Keynote Address. This was followed by Panel I: The Changing Workplace, which included participants Sameer Ashar, then Clinical Professor, University of Maryland Law School, currently Assistant Professor, CUNY Law School; Jennifer Gordon, writer and consultant, former Executive Director, The Workplace Project, and currently Associate Professor, Fordham Law School; Sara Horowitz, Executive Director and Founder, Working Today; and Jim Williams, then Executive Director, National Employment Law Project, New York. Speakers on Panel II: Gaps in Health Care, were Melissa B. Jacoby, Assistant Professor, Temple Law School; Marianne L. Engelman Lado, General Counsel, New York Lawyers for the Public Interest; Wendy Mariner, Professor, Boston University Law School and School of Public Health; and Mark Scherzer, Legislative Counsel, New Yorkers for Accessible Health Coverage. Panel III: Easy Consumer Credit: Blessing or Curse?, included speakers Regina Austin, William A. Schnader Professor, University of Pennsylvania Law School; Susan Block-Lieb, Professor, Fordham Law School; Howard Rosenthal, Roger Williams Straus Professor of Social Sciences and Professor of Politics, Princeton University; and Henry J. Sommer, Supervising Attorney, Philadelphia Consumer Bankruptcy Assistance Project. The symposium closed with a roundtable discussion on Directions for Reform, facilitated by Frank Munger, Professor, New York Law School, with panelists Regina Austin, Jennifer Gordon, Wendy Mariner and Elizabeth Warren.

interrelationships. This symposium issue includes a set of important articles from a number of speakers who addressed these pressing issues.

The symposium begins with Elizabeth Warren's article, *The Growing Threat to Middle-Class Families*. In this article Professor Warren, one of the leading bankruptcy scholars in the country, draws on her pathbreaking empirical work on families who filed for bankruptcy, which was documented in her recent book that has garnered national attention, *The Two-Income Trap: Why Middle-Class Mothers and Fathers Are Going Broke*.<sup>10</sup> She provides crucial data concerning how today's social safety net offers inadequate protection to many hard-working middle-class families. She argues that expectations concerning two-income families have made them more economically vulnerable. Having a child is the single most significant predictor of whether a household will end up in financial collapse; single mothers are likely to go bankrupt or live in poverty. Two-income families are vulnerable because most are living from paycheck to paycheck. If there is a loss of income – whether due to job loss, divorce, illness, accident, or disability – these families have nowhere to turn.

The focus on bankruptcy as a lens continues with Susan Block-Lieb's article, *Mandatory Protections as Veiled Punishments: Debtor Education in H.R. 975, The Bankruptcy Abuse and Consumer Protection Act of 2003*. Block-Lieb argues that this Act, which conditions discharge in bankruptcy on completion of mandatory debtor education, fails to assist debtors, converts consumer protection into a punitive measure, serves questionable educational goals, and undercuts the message that financial literacy can empower consumer debtors. Melissa Jacoby's article, *The Debtor-Patient: In Search of Non-Debt-Based Alternatives*, moves to the intersection of debt and health care in analyzing how bankruptcy law has failed to deal with the problems of medical-related debtors. Wendy Mariner further explores the interrelationship of health care policy and debt in her article *Can Consumer-Choice Plans Satisfy Patients? Problems with Theory and Practice in Health Insurance Contracts*. Mariner examines the role of health insurance contracts, particularly employment-based group

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<sup>10</sup> WARREN & TYAGI, *supra* note 1. Professor Warren describes the work of the 2001 Consumer Bankruptcy Project and its predecessors beginning in 1981, which laid the basis for the empirical analysis. Elizabeth Warren, *The Growing Threat to Middle Class Families*, 69 BROOK. L. REV. 401 (2004).

health benefit plans, in defining and enforcing access to medical care, and the failure of the consumer-choice approach to confront or solve a fundamental problem contributing to the rise in health care costs today – disputes over benefit coverage.

Frank Munger closes the issue with a wide-ranging analysis of both the theoretical and practical dimensions of the problems the symposium addressed. In his article, *Afterword: How Can We Save the Safety Net?*, he puts the problems of the safety net in a larger political and social context. He assesses a range of law reform and activist strategies for reversing safety net erosion that emphasizes local politics and local markets: collective self-help in the private labor market; extending the state through privatization; and creating a local, more egalitarian welfare state. Munger's article draws on and highlights the important mix of law and activism that distinguished Ed Sparer's work.

The symposium addressed urgent national problems with seriousness, depth, and insight. It was a stimulating, provocative, and energizing event that generated important proposals for reform. Ed Sparer would have loved to be there, and was, in spirit. I am delighted that the intellectual energy and excitement of the symposium continue in these pages.

