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The Growing Threat to Middle Class Families*

*Elizabeth Warren**

I. INTRODUCTION

Over the past generation, the number of American families in serious financial trouble has grown shockingly large. In a world in which our neighbors seem to be doing fine and the families on television never worry about money, it is hard to grasp the breadth or depth of financial distress sweeping through ordinary suburbs, small towns, and nice city neighborhoods. The data show that a growing number of typical Americans who are doing their best to make a good life for themselves and their children – working hard, paying their bills, and playing by the rules – are in complete financial ruin. One visible sign of their distress is bankruptcy. Each year, more than a million and a half families declare themselves broke through the bankruptcy system, and millions more are tottering on the edge of complete collapse.

In 2001, a team of researchers that included two sociologists, two physicians, a former Assistant Secretary of Housing and Urban Development, the director of an urban planning institute, four law professors, two law-professors-to-be, and a computer systems analyst undertook a study of some

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* Leo Gottlieb Professor of Law, Harvard Law School. Many of the ideas and research for this paper are drawn from ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP: WHY MIDDLE CLASS MOTHERS AND FATHERS ARE GOING BROKE* (Basic 2003). I am grateful to my co-author for her work on the book and for her generous permission to borrow from that work for the Edward M. Sparer Lecture. Thanks are also due for Basic Books for their permission to reprint portions of the book. I also extend my appreciation to Elizabeth Schneider for her encouragement and constructive comments as I prepared this lecture and to Brooklyn Law School for hosting a conference that offered both constructive comments and stimulating ideas. This Article is part of the Edward V. Sparer Public Interest Law Symposium, *The New Economy and the Unraveling Social Safety Net*.

of the families who have declared themselves in financial meltdown – the families who have filed for bankruptcy.¹ Our research eventually unearthed one stunning fact. The families in the worst financial trouble are not the usual suspects. They are not the very young, tempted by the freedom of their first credit cards. They are not the elderly, trapped by failing bodies and declining savings accounts. And they are not a random assortment of Americans who lack the self-control to keep their spending in check. Rather, the people who consistently rank in the worst financial trouble are united by one surprising characteristic: They are parents with children at home. Having a child is now the single best predictor that a household will end up in financial collapse.²

Our study showed that married couples with children are more than twice as likely to file for bankruptcy as their childless counterparts. A divorced woman raising a youngster is nearly three times more likely to file for bankruptcy than her single friend who has no children.³

¹ The 2001 Consumer Bankruptcy Project was made possible through funding from the Ford Foundation, as well as grants from Harvard Law School and New York University Law School. The enthusiastic support and assistance of many bankruptcy judges, bankruptcy clerks, chapter 7 and chapter 13 trustees, and attorneys also contributed significantly to this work. The principal investigators express our sincere gratitude to the organizations that provided financial support and to each of the judges, clerks, trustees, and lawyers who made this research possible.

No project of this kind could be put together without the contribution of a number of people. Consumer Bankruptcy Project I, in 1981, and Consumer Bankruptcy Project II, in 1991, were the work of Professors Teresa A. Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, all of whom have continued their work in Consumer Bankruptcy Project III, 2001. In addition, Professors David Himmelstein, Robert Lawless, Bruce Markell, Michael Schill, Susan Wachter, and Steffie Woolhandler have shared in the design and development of the 2001 study. Ms. Katherine Porter, Professor John Pottow, and Professor Deborah Thorne served as Project Director at different times, participating in the design of the study and managing much of the data collection. Alexander Warren designed and managed all the coding databases. We are collectively grateful for the contributions of each person.

The results of this project are hereinafter referred to as “2001 Consumer Bankruptcy Project, Research Results.” A more detailed description of the study design, sample, and analysis is published in ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP: WHY MIDDLE CLASS MOTHERS AND FATHERS ARE GOING BROKE* 181-88 apps. (2003).

² WARREN & TYAGI, *supra* note 1, at 6.

³ 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1. In 2001, the filing rate for couples with children was 14.7 per 1,000, compared with 7.3 for couples without children. *Id.* For unmarried women with children, the filing rate was 21.3 per 1,000, compared with 7.2 for childless unmarried women and 6.1 for childless unmarried men. *Id.* The troubles we describe here may also afflict unmarried fathers who have primary care of their children, but the small number of unmarried men with children makes it difficult to compile a reliable estimate of the rate per thousand.

Over the past generation, the signs of middle-class distress have continued to grow, in good times and in bad, in recession and in boom.⁴ If those trends persist, more than five million families with children will file for bankruptcy by the end of this decade. That would mean that across the country nearly *one of every seven families with children* would have declared itself flat broke, losers in the great American economic game.⁵

Bankruptcy has become deeply entrenched in American life. In 2003, more people will end up bankrupt than will suffer a heart attack. More adults will file for bankruptcy than will be diagnosed with cancer. More men and women will file for bankruptcy than will graduate from college. And, in an era when traditionalists decry the demise of the institution of marriage, Americans will file more petitions for bankruptcy than for divorce.⁶ Heart attacks. Cancer. College graduations.

⁴ The bankruptcy rolls increased rapidly during the late 1980s and again in the late 1990s, both of which were expansionary periods. Administrative Office of the U.S. Courts, Table 5.2: U.S. Bankruptcy Courts – Business and Non-business Bankruptcy Cases Filed by Chapter of the Bankruptcy Code, *available at* <http://www.uscourts.gov/judicialfactsfigures/table5.2.htm> (last visited Jan. 7, 2004).

⁵ 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1. This projection is based on a linear regression of personal bankruptcies in the United States between 1980 and 2002. *Id.* The R-squared value was 0.937. *Id.* This calculation assumes that the proportion of bankrupt families with children remained constant throughout this period. Based on these assumptions, 5.1 million families with children, or 13.5% of all households with children, will file for bankruptcy between 2003 and 2010.

⁶ In 2002, 2 million people filed for bankruptcy (including both husbands and wives who filed jointly). Administrative Office of the U.S. Courts, Table F-2: Business and Nonbusiness Bankruptcy Cases Commenced, By Chapter of the Bankruptcy Code, During the 12-month Period December 31, 2002 (2002) (table reflecting joint filers on file with author).

By comparison, 1.1 million Americans had a first or a recurrent coronary attack. AMERICAN HEART ASSOCIATION, TARGETING THE FACTS: OUR QUICK GUIDE TO HEART DISEASE, STROKE AND RISKS 4 (2002), *available at* <http://www.americanheart.org/downloadable/heart/1014993119046target-fact.pdf>.

Approximately 1,284,900 new cancer cases were diagnosed. AMERICAN CANCER SOCIETY, CANCER FACTS AND FIGURES 2002, *available at* <http://www.cancer.org/downloads/STI/CancerFacts&Figures2002TM.pdf> (last visited Jan. 7, 2004).

In 2001, American universities and colleges awarded 1.2 million bachelor's degrees. U.S. Department of Education, National Center for Education Statistics, Table 247: Earned Degrees Conferred by Degree-Granting Institutions, *available at* <http://nces.ed.gov/programs/digest/d01/tables/PDF/table247.pdf> (last visited Jan. 7, 2004).

In 2001, there were 1.1 million divorces in the United States, compared with 1.5 million bankruptcy filings. *See Births, Marriages, Divorces, and Deaths: Provisional Data for 2001*, in CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL VITAL STATISTIC REPORTS, tbl.1 (Sept. 11, 2002), *available at* http://www.cdc.gov/nchs/data/nvsr/nvsr50/nvsr50_14.pdf; Administrative Office of the

Divorce. These are markers in the lives of most American families. And yet, we will soon have more friends and coworkers who have gone through bankruptcy than any one of these other life events.

The growing lines at the bankruptcy courts are not the only signs of financial distress. A family with children is now seventy-five percent more likely to be late on credit card payments than a family with no children.⁷ The number of car repossessions has doubled in just five years.⁸ Home mortgage foreclosures have more than tripled in less than twenty-five years. Families with children are now more likely than anyone else to lose the roof over their heads.⁹ Economists estimate that for every family that officially declares bankruptcy, there are seven more whose debt loads suggest that they *should* file for bankruptcy – if only they were more savvy about financial matters.¹⁰ Families with children are more likely to be worried about whether they can survive economically¹¹ – evidently for good reason.

U.S. Courts, Table F: U.S. Bankruptcy Courts – Bankruptcy Cases Commenced, Terminated and Pending During the 12-Months Periods Ending December 31, 2000 and 2001, *available at* <http://www.uscourts.gov/judiciary2001/dectables/f00dec01.pdf> (last visited Jan. 31, 2004).

⁷ CardWeb.com, Inc., *Late Payers*, Oct. 22, 2002, *available at* <http://www.cardweb.com/cardtrak/news/2002/october/22a.html>.

⁸ Harvey Altes, the CEO of Time Finance Adjusters Inc., a trade association of accredited repossessioners, “estimated that between 1998 and 2002 the number of cars repossessed nationally doubled from 1.2 million to around 2.5 million.” Adam Fifield, *For the Repo Man, These Are Good Times: The Sluggish Economy Makes for Busy Nights in a Ticklish Job*, PHILA. INQUIRER, Dec. 29, 2002, at A1.

⁹ The proportion of mortgages in foreclosure proceedings at the end of each quarter increased from 0.31% in 1979 to 1.1% in 2002, an increase of 255%. U.S. Mortgage Bankers of America, *Foreclosure at End of Quarter (2002)* (unpublished data, on file with author). For homeowners who were initially backed by the Federal Housing Administration (FHA) single-family mortgage insurance between 1982 and 2000, married couples with children were, on average, 39% more likely to undergo foreclosure by 2002 than married couples without children. Single parents were 28% more likely than single individuals without children. U.S. Department of Housing and Urban Development (HUD), *FHA Single-Family Mortgage Insurance Cumulative Number and Percent of Foreclosures, 1982-2002* (unpublished data, on file with author).

¹⁰ Michelle J. White, *Why It Pays to File for Bankruptcy: A Critical Look at the Incentives Under U.S. Personal Bankruptcy Law and a Proposal for Change*, 65 U. CHI. L. REV. 685, 685-732 (1988).

¹¹ Families with children in the household are twice as likely as households with no children to report that they do not have enough money to meet current expenses, and they are consistently more worried about the adequacy of their income, the adequacy of their savings, and whether they have too much consumer debt. Consumer Federation of America, *Results of Opinion Survey* (Apr. 24, 2003) (unpublished data, on file with author).

It is particularly startling that so many families are failing at a time when more mothers are in the workplace. Now, as never before, families with children are likely to bring home two paychecks, and single mothers are more likely to hold down paying jobs. Moreover, women's paychecks have risen over the past thirty years, even as men's incomes have remained flat.¹² Women rearing children alone are better equipped for financial independence than at any time in our history. And yet, families with children are failing in greater numbers than ever before.

The reasons for their failure offer critical insights into how structural changes in the economy and families' efforts to cope with those changes have left millions of middle class households at risk for financial collapse. Families have tried to build their own safety nets, sending all adults into the workforce, but, as these data show, they have not succeeded in outrunning the growing risks of job loss, medical problems, and divorce. Their financial failures illustrate how today's social safety net offers inadequate protection to many hard-working, middle-class families. Identifying the problem is a necessary first step in any discussion about how to improve the system.

II. THE FAMILIES WHO FAIL

Who makes up the families in so much trouble? Most are ordinary, middle-class people united by their determination to provide a decent life for their children. Many have been felled by a layoff or a business failure; someone who glanced at this year's tax return might label them as poor. But very few are chronically poor. For most, poverty is only a temporary setback in an otherwise solidly middle-class life. When membership in the middle class is defined by enduring criteria that don't disappear when a pink slip arrives, then about 94.2 percent of the parents who filed for bankruptcy would qualify as middle class.¹³ By every measure except their balance sheets,

¹² Median earnings, which are the best measure of middle-class wages, have risen less than 1% for men since the early 1970s, while women's earnings have increased by more than one-third. U.S. Census Bureau, Table P-36: Full-Time, Year-Round Workers (All Races) by Median Income and Sex: 1955 to 2000, available at <http://www.census.gov/hhes/income/histinc/p36.html> (last visited Jan. 7, 2004).

¹³ For a more detailed discussion of the middle class attributes of all filers in bankruptcy, see Elizabeth Warren, *Financial Collapse and Class Status: Who Goes Bankrupt?*, 41 OSGOODE HALL L.J. 115 (2003).

the families in our study are about as solidly middle class as any in the country.

If those who attend college are more likely to be counted as middle class, then the families in bankruptcy qualify in greater numbers than the general population. In 2001, about 50.3 percent of all adult Americans had attended college, while about 57.8 percent of those parents in bankruptcy had done so.¹⁴ And as befits a decently educated subset of Americans, the occupations of those in bankruptcy are a rough cross-section of those among middle-class families generally. To be sure, there are fewer neurosurgeons and rocket scientists than in the general population, but there are more bankrupt debtors concentrated in the middle as teachers and nurses.¹⁵ If an occupational prestige score in the upper eighty percent of all families would qualify someone as solidly middle class, then 76.4 percent of the families with children that file for bankruptcy qualify.¹⁶ And if homeownership is the emblem of achieving middle class respectability, then two-thirds qualify as middle class.¹⁷ Figure 1 illustrates the breakdowns and overall totals.¹⁸

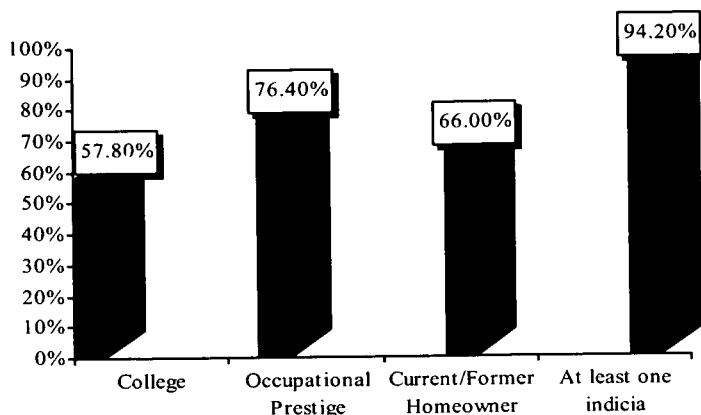
¹⁴ U.S. Census Bureau, Table 1: Educational Attainment of the Population 15 Years and Over, by Age, Sex, Race and Hispanic Origin (Table Containing Data on All Races and Both Sexes) (March 2000), *available at* <http://www.census.gov/population/socdemo/education/p20-536/tab01.txt> (last visited Jan. 4, 2004); 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1.

¹⁵ 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1. For example, 58% of all single mothers in bankruptcy are concentrated in the middle 40% of all occupational prestige scores for women generally. *Id.*

¹⁶ 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1. For a more detailed description of occupational prestige scores and their use, see Robert W. Hodge, Paul M. Siegel & Peter H. Rossi, *Occupational Prestige in the United States, 1925-1963*, 70 AM. J. OF SOC. 286 (1964). For those unfamiliar with occupational prestige scores, it is possible to glean some understanding of the enterprise by scanning through the long lists of codes developed by the National Organization for Research at the University of Chicago. Food counter workers are near the bottom at 15, along with construction workers and peddlers at 17, maids at 18 and produce packers at 19. In the middle range, a retail sales clerk is 29, a cashier is 31, an air traffic controller is 43, and a billing clerk is 45. Near the top of the ladder, architects and aeronautical engineers are up at 71, outstripped by lawyers at 76, college professors at 78, and physicians at 84. Families in bankruptcy are less likely to have a low occupational prestige rating than workers as a whole. In the U.S. in 2000, 80% of all workers had an occupational prestige score of 56 or lower, while only 70.3% of the families in bankruptcy had an occupational prestige score of 56 or lower.

¹⁷ 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1. This number is not comparable with national homeownership figures, which do not include those who have recently lost a home. Nationally, 66.2% of households were living in their own homes in 2000. U.S. CENSUS BUREAU, HOUSING CHARACTERISTICS: 2000, at 2 tbl.1, *available at* <http://www.census.gov/prod/2001pubs/c2kbr01-13.pdf> (last visited Jan. 7, 2004). Homeownership among married couples with children is even higher. In 2000, 78.3% of married couples with children were homeowners. U.S. Department of

**Figure 1: Middle Class Attributes,
Bankrupt Families with Children, 2001**



Source: 2001 Consumer Bankruptcy Project

Another common thread unites the families in bankruptcy. Among the married couples, most of these families sent two parents into the workforce. In other words, the families in bankruptcy are working harder than ever, but they are failing in greater numbers. Fully seventy-nine percent of married women who file for bankruptcy are in the labor force, compared with sixty-two percent of married women in the general population.¹⁹ Two-income couples are about twenty-seven percentage points more likely to file for bankruptcy than one-income couples.

What about single-parent families, the group that has no choice about getting by on one income? Not surprisingly, they are in even worse shape than their married counterparts.

Housing and Urban Development, U.S. Housing Market Conditions, Table 30: Homeownership Rates by Household Type: 1983-Present (2002), *available at* <http://www.huduser.org/periodicals/ushmc/winter02/histdat30.htm>. Although the data are not reported for subgroups, presumably this rate was lower for low-income families, and even higher for middle- and upper-income families. In the general population, middle-income households are 34% more likely than low-income households to own a home. See JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, STATE OF THE NATION'S HOUSING (2002), at 36 tbl.9, *available at* <http://www.jchs.harvard.edu/publications/markets/Son2002.pdf>.

¹⁸ About 72.3% of the filers met two or more criteria, and 33.6% met all three. 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1.

¹⁹ 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1; U.S. Census Bureau, Table F-7: Type of Family (All Races) by Median and Mean Income: 1947 to 2001, *available at* <http://www.census.gov/hhes/income/histinc/f07.html> (last visited Jan. 7, 2004).

The magnitude of the problem for single-mother families is shocking. For unmarried women with children, the filing rate was 21.3 per one thousand, compared with 7.2 for childless unmarried women and 6.1 for childless unmarried men.²⁰ In other words, for every bankrupt single person without children, there are three unmarried women with children declaring themselves bankrupt. The data are relentless: Married or single, families with children are in crisis.

III. HIGHER FAMILY INCOMES IN THE NEW ECONOMY

Any economic report card on the family today should be studded with good news. Different political camps might debate whether children are better off with both parents working full-time or whether women are happier when they work, but everyone has assumed that two paychecks make families richer. Over the past three decades, millions of households have added a second worker – and second paycheck – to their economic mix. Mothers are working outside the home as never before. As recently as 1976, a married mother was more than twice as likely to stay home with her children as to work full-time. By 2000, those figures had almost reversed: The modern married mother is now nearly twice as likely to have a full-time job as to stay home.²¹

The transformation can be felt in other ways. In 1965, only 13.7 percent of women who worked before they had children were back at their jobs within six months of giving birth to their first child. Three decades later, that figure was higher than fifty-two percent.²² Similarly, a modern mother with a three-month-old infant is more likely to be working outside the home than a 1960s woman with a five-year-old child.

²⁰ 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1.

²¹ In 1976, 4.9 million worked full-time, and 10.9 million stayed home. In 2000, 11 million married mothers worked full-time, and 6.9 million stayed home. The number of married mothers working part-time stayed roughly the same: 9.1 million in 1976, and 8.5 million in 2000. U.S. Census Bureau, Table F-14: Work Experience of Husband and Wife – All Married-Couple Families, by Presence of Children Under 18 Years Old and Median and Mean Income: 1976 to 2001, *available at* <http://www.census.gov/hhes/income/histinc/fl14.html> (last visited Jan. 7, 2004).

²² KRISTIN SMITH, BARBARA DOWNS & MARTIN O'CONNELL, U.S. CENSUS BUREAU, HOUSEHOLD ECONOMIC STUDIES: MATERNITY LEAVE AND EMPLOYMENT PATTERNS: 1961 TO 1995, at 15 tbl.I, *available at* <http://www.census.gov/prod/2001pubs/p70-79.pdf> (last visited Jan. 7, 2004).

Even these statistics understate the magnitude of change among middle-class mothers. Before the 1970s, large numbers of older women, lower-income women, and childless women were in the workforce.²³ But middle-class mothers were far more likely to stay behind, holding onto the more traditional role of full-time homemaker long after many of their sisters had given it up. Over the past generation, middle-class mothers flooded into offices, shops, and factories, experiencing a greater increase in workforce participation than either their poor or well-to-do sisters.²⁴ It is those middle-class mothers, heading into the workplace, who have largely driven the change in the proportion of working mothers.

Women's entry into the workforce has most profoundly affected the finances of middle-class families in yet another way. Poorer, less educated women have seen small gains in real wages over the past generation. Wealthy women have enjoyed considerable increases, but those gains were complemented by similar increases in their husbands' rapidly rising incomes.²⁵ Among the middle class, however, women's growing paychecks have made all the difference, compensating for the painful fact that their husbands' and ex-husbands' earnings have stagnated over the past generation and that an increasing number of mothers are making it on their own.²⁶ With more mothers in the workforce and working mothers earning more, families should be doing well.

Even one-parent families should see important gains. Increased job opportunities and more workforce experience should have helped out single mothers as well. With higher median incomes for mothers in the full-time workforce, these

²³ STEPHANIE COONTZ, *THE WAY WE NEVER WERE: AMERICAN FAMILIES AND THE NOSTALGIA TRAP* 162-63 (1992).

²⁴ Between 1979 and 2000, married mothers at all income levels increased their hours in the workforce. However, women whose husbands were in the bottom quintile added 334 hours per year, and those in the top quintile added just 315 hours per year, compared with an average increase of 428 hours per year for women in the middle three quintiles. See LAWRENCE MISHEL, JARED BERNSTEIN & HEATHER BOUSHEY, *ECONOMIC POLICY INSTITUTE, THE STATE OF WORKING AMERICA 2002-2003*, at 109 tbl.1.32 (2003).

²⁵ Both women and men who did not finish high school saw declines in real wages over the past twenty years. U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, *HIGHLIGHTS OF WOMEN'S EARNINGS* in 2000 (Report No. 952), at 28-29 tbl.15 (August 2001), available at <http://www.bls.gov/cps/cpswom2000.pdf>. By contrast, among college graduates, women's earnings increased 30% since 1979, while men's earnings increased by 17%. *Id.*

²⁶ See *supra* note 12.

women should be better positioned than ever to survive after a divorce and to take on the burden of raising children.

Unmarried mothers have enjoyed other gains as well. After years of lobbying, child support enforcement has increased dramatically.²⁷ A single mother's life may be hard without a second parent and second wage earner in the household – and these women may make a legitimate claim for even more support enforcement or better workplace opportunities – but their growing incomes should mean that their lives should be less difficult than they were a generation ago. They may not be on par with men or with two-parent families, but the gap should be narrowing.

Today's middle-class mothers – single and married – have better educations and more workforce experience than any mothers in history. And they are putting those qualifications to work, remaining in the workforce even as they rear their children. Yet, for all these gains, couples and women with children face a much greater likelihood of financial

²⁷ For a discussion of child support enforcement reforms, see ELAINE SORESENSEN & ARIEL HALPERN, CHILD SUPPORT ENFORCEMENT: HOW WELL IS IT DOING? 6-11 (Urban Institute, New Assessing the New Federalism Project, No. 99-11, Dec. 1999), available at <http://www.urban.org/UploadedPDF/discussion99-11.pdf>, and ELAINE SORESENSEN & ARIEL HALPERN, CHILD SUPPORT ENFORCEMENT IS WORKING BETTER THAN WE THINK 2-4 (Urban Institute, New Federalism, Issues and Options for States Series No. A-31, March 1999), available at <http://www.urban.org/UploadedPDF/Anf31.pdf>.

In 1975, Congress passed Title IV-D of the Social Security Act, which expanded child support enforcement by states. See 42 U.S.C. § 666 (2000). The 1984 Child Support Enforcement Amendments require states to withhold wages from noncustodial parents who fall behind in their child support payments. *Id.* In 1988, Congress enacted immediate wage withholding, which went into effect in January 1994 for all new child support orders. *Id.* Congress also ordered uniform support guidelines in 1984; until then, each woman was at the mercy of whatever whims and prejudices influenced the judge who decided her particular case. *Id.* at 667. The penalties for nonpayment have also been stiffened. In some states a man who falls behind on his child support payments stands to lose his driver's license or his work permit (such as a contractor's license). He may even be thrown in jail. See, e.g., Amy F. Bailey, *Bills Target Deadbeat Parents: Legislation Would Help Collect Overdue Support, Increase the Penalties*, DETROIT NEWS, Feb. 19, 2004, available at <http://www.detnews.com/2004/politics/0402/19/d06w-68310.htm>; Press Release, New York State Governor's Office, Governor Signs Law to Continue Pressure on Deadbeat Parents (July 20, 1998), available at http://www.state.ny.us/governor/press/july20_98.htm.

Today, federal and state governments spend more than \$3 billion on child support enforcement each year, compared with less than \$400 million (inflation adjusted) in the mid-1970s. See SORENSON & HALPERN, CHILD SUPPORT ENFORCEMENT IS WORKING BETTER THAN WE THINK, *supra*, at 4. The system is still far from perfect, but these improvements have helped millions of women. Since 1976, the number of women receiving child support has increased from 36% to 42% for divorced mothers and from 5% to 18% for never-married mothers. See SORENSON & HALPERN, CHILD SUPPORT ENFORCEMENT: HOW WELL IS IT DOING?, *supra*, at 4.

collapse than their counterparts a generation ago. As an explanation of this phenomenon, these data point to structural changes that have made economic survival even more difficult for families with children.

IV. FAMILIES EXPLAIN WHAT WENT WRONG

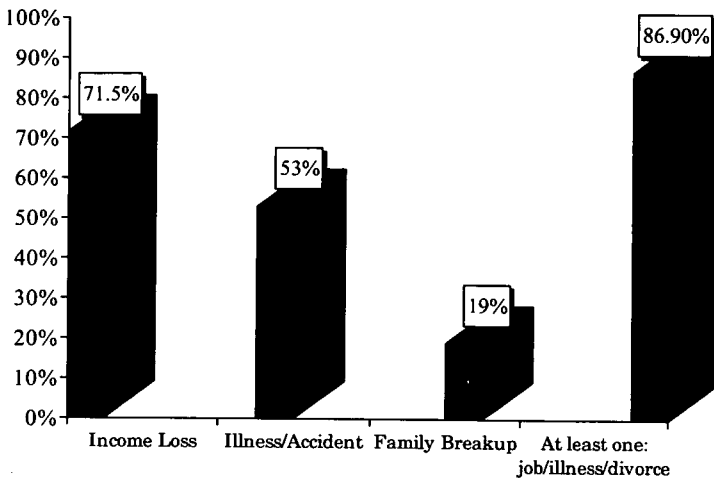
Why are so many families in financial trouble? With a million and a half families declaring bankruptcy each year, one might expect innumerable explanations for all that financial mayhem. During our interviews we heard a wide variety of reasons. Some were victims of crime, some had made bad investments, some had problems with alcohol or gambling, and some had lost their homes in a flood or an earthquake. A few interviewees had bought too many goodies with their credit cards. Perhaps the stand-out story was the man who filed for bankruptcy after he was shot while trying to foil a robbery at a nearby hardware store, and the resulting hospital bills and time off from work financially destroyed his family.

While many of the stories are memorable for their odd details, the statistics reveal a much simpler picture. The overwhelming majority of financial failures are surprising not for their uniqueness, but for their sameness. As Figure 2 illustrates, more than eight out of ten families with children cite just three reasons for their bankruptcies: job loss, family breakup, and medical problems.²⁸ All the other reasons combined – acts of God, calls to active duty for military reservists, car wrecks, personal profligacy, and so on – account for just thirteen percent of families in bankruptcy.²⁹

²⁸ 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1. Among bankrupt families with children, 71.5% report a job loss, a reduction of income, or other job-related problem as a reason for filing. *Id.* Fifty-three percent report a medical problem, which includes all filers who reported \$1,000 or more in unpaid medical bills, who had at least two weeks of unpaid leave from work because of an illness or disability, or who explained that they filed for bankruptcy because of a medical problem. *Id.* Family breakup, cited by 18.7% of families with children, includes those who reported “divorce or family breakup” as a cause of bankruptcy. Families with children cite at least one of these problems in 86.9% of all cases. *Id.* The remaining 13.1% give either a different reason or no reason at all. *Id.*

²⁹ *Id.*

Figure 2: Reasons Families with Children File Bankruptcy, 2001



Source: 2001 Consumer Bankruptcy Project

V. STRUCTURAL CHANGE – WITHIN AND WITHOUT

If families were failing because of day trading or the collapse of their technology stocks, it would be easy to conclude they were having a difficult time adjusting to the new economy. But there is nothing new or exotic about the problems facing American families today. Jobs have come and gone, couples have broken up, and illnesses and injuries have been facts of life since the first caveman kissed the first cavewoman goodbye and headed off to the hunt. So why are so many more families in trouble today?

Today's families may face the same kinds of risks that they have faced for generations, but the likelihood of something going wrong has changed. The odds of job loss, the economic fallout from medical problems, and the risk of divorce have all increased. That means that today's families face a greater likelihood of suffering one of these devastating financial hits. In addition, the risks families face are compounded for the two-income family. Families in the new economy, with its emphasis on all adults – both mom and dad – in the workforce, face much greater risks than their earlier one-paycheck counterparts. Families' efforts to protect themselves by sending all adults

into the workforce have increased incomes, but have also doubled their total risk exposure.

A. *Jobs*

Anyone who watches the nightly news or reads the newspapers knows that job volatility is up. The likelihood of job loss is difficult to measure, in part because employment definitions continue to change as more people become independent consultants (voluntarily or otherwise), and job furloughs may be part of a fire-and-hire cycle as companies attempt to keep labor costs to a minimum. By virtually any measure, however, in the past twenty-five years the chances that a worker will be laid off, downsized, or restructured out of a paycheck have substantially increased. One team of academic researchers calculated that the odds that a worker would suffer an involuntary job loss have increased by twenty-eight percent since the 1970s.³⁰

³⁰ See Johanne Boisjoly, Greg J. Duncan & Timothy Smeeding, *The Shifting Incidence of Involuntary Job Losses from 1968 to 1992*, 37 INDUS. REL. 207, 218 fig.4 (1998) (finding a 28% increase in the incidence of involuntary job loss between the 1968-1979 period and the 1980-1992 period). See also Daniel Polsky, *Changing Consequences of Job Separation in the United States*, 52 INDUS. & LABOR REL. REV. 565 (1999). Both studies found evidence that workers were more likely to lose their jobs in the 1980s and 1990s than they were in the 1970s. There is some evidence that the job loss rate improved during the expansion of the late 1990s. See HENRY S. FARBER, *JOB LOSS IN THE UNITED STATES, 1981-1999* (Princeton University, Industrial Relations Section, Working Paper No. 453, 2001). That trend, however, may have reversed during the 2001-2002 recession, when mass layoffs were 40-50% higher than in the 1996-1999 period. Archived News Releases for Extended Mass Layoffs, U.S. Department of Labor, Bureau of Labor Statistics, available at http://www.bls.gov/schedule/archives/mslo_nr.htm (last visited Feb. 5, 2004). There are no published studies that compare involuntary terminations during the 1970s with the early 2000s, so we have chosen, for simplicity's sake, to document the increase between the 1970s and the early 1990s, and then to assume that the 2000s rate is comparable to that of the 1980s and early 1990s. We note, however, that sociologists and labor economists have not come to a consensus about the incidence of job loss over the past generation. Their empirical findings differ, depending on the data sets they use, the specific variables on which they focus, and the populations they examine. Several studies using the Panel Study of Income Dynamics (PSID) data detected a rise in involuntary job losses in the 1980s and 1990s compared with the 1970s. Researchers relying on Current Population Survey (CPS) data have found little increase in job instability overall, although they have noted a rising instability for certain subgroups. For a review of the literature, see, for example, JOHN M. FITZGERALD, *JOB INSTABILITY AND EARNINGS AND INCOME CONSEQUENCES: EVIDENCE FROM SIPP, 1983-1995* (Northwestern University/University of Chicago Joint Ctr. for Poverty Res., Working Paper No. 99, 1999), available at <http://www.jcpr.org/wpfiles/fitzgerald.pdf> (last visited Sept. 1, 2003). We also note that we have not accounted for differences in age or skill among workers. Younger parents may actually be more likely to suffer a job loss, because of a relative lack of work experience. See Boisjoly et al., *supra*, at 228.

That increase in the likelihood of losing a job hit all families hard, but the two-parent family experienced a significant restructuring of its internal economic dynamics. When a two-parent family sent both workers into the workplace, and built its budget around both incomes, it lost its backup earner and caregiver, making it more vulnerable to any economic shock. Without a second earner, the family's risk profile increased; that is, the likelihood that they would fail financially if something went wrong increased substantially. They once could have weathered a modest blow – a couple of months out of work, for example – back when they had a reserve earner at home who could go into the workforce temporarily to help make up their lost income. With no backup, however, their vulnerability increased, and smaller setbacks have become enough to plunge the two-income, fully-committed family into ruin.

But the two-income family didn't lose just its reserve worker. By sending both adults into the labor force, these families actually *increased* the chances that they would suffer a devastating financial blow. In fact, they doubled the risk. With two adults in the workforce, the dual-income family has *double* the odds that someone could get laid off, downsized, or otherwise left without a paycheck. Mom *or* dad could suddenly lose a job, and the family would be in jeopardy.

The basic math may seem obvious, but the cumulative effects are surprising. Statistically speaking, in the one-income household of the early 1970s, a father faced a 2.5 percent chance of losing his job in any given year.³¹ A two-income couple back then would have had about a 4.9 percent chance of a major drop in income³² – almost double the chances of a single-income family.³³ The odds aren't doubled to exactly 5.0 (2.5 +

³¹ Boisjoly et al., *supra* note 30, at 218 fig.4. From 1968 to 1979, the average annual rate of job loss because of layoffs or company closing among men aged twenty-five to fifty-nine was 2.5%. *Id.*

³² This calculation assumes that husbands and wives face roughly the same risk of getting laid off in a single year. *See, e.g.*, PETER GOTTSCHALK & ROBERT MOFFITT, JOB INSTABILITY AND INSECURITY FOR MALES AND FEMALES IN THE 1980S AND 1990S 9 (Boston College, Dept. of Econ., Working Paper No. 408, 1999) (finding that men and women had similar rates of job exits during the period 1981-1991).

³³ For simplicity's sake, this calculation assumes no correlation in the risk of job loss between husbands and wives. In fact, it may be the case that the likelihood that a husband and a wife will both lose their jobs is weakly correlated. Husbands and wives tend to work in the same geographical area, for example, so both may face increased chances of layoff at the same time; also, they sometimes work for the same employer, who may cut back many jobs at once. As a result, the estimate in the text may slightly overstate the portion of couples in which one spouse loses a job. At the

2.5) because in some of the families both the husband *and* the wife will be laid off, so the total number of families who experience a single layoff is slightly less than 5.0 percent. (Of course, that also means some families get hit with two layoffs, a double catastrophe.) No matter how the odds are calculated, the principle is straightforward: two workers, two chances to lose a job.

This statistical analysis runs contrary to most families' assessment of the risks they face. With two incomes, most parents believe that they have built in some self-insurance against layoffs or medical problems, but they are wrong. Two-income families are *more* likely to file for bankruptcy than their one-income counterparts.³⁴ Moreover, dual-income families who have filed for bankruptcy are also *more* likely to cite job loss or injury as the reason for their financial collapse.³⁵ The risks add up: This year, more than one million families will file for bankruptcy in the wake of a job loss, business failure, disability, or other form of income interruption.³⁶

Growing job insecurity has been hard on single-income families, who now face a twenty-eight percent higher chance that the breadwinner will lose his job, but for today's dual-income family, the numbers are doubly grim because each spouse faces a higher likelihood of a job layoff. In a single year, roughly 6.3 percent of dual-income families – one out of every sixteen – will receive a pink slip.³⁷ That means that a family

same time, however, it necessarily underestimates the proportion of couples experiencing a job loss for both spouses in a single year.

³⁴ Fully 79% of married women who file for bankruptcy are in the labor force, compared with 62% of married women in the general population. 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1; U.S. Census Bureau, Table F-7: Type of Family (All Races) by Median and Mean Income: 1947 to 2001, *available at* <http://www.census.gov/hhes/income/histinc/f07.html> (last visited Jan. 7, 2004).

³⁵ Among two-income families filing for bankruptcy, about 83.3% identified a job problem as leading to their bankruptcy. 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1. Among married couples with only one income, the percentage identifying a job problem was 74.6%. *Id.* Among single filers, that is, men and women who filed for bankruptcy without a spouse, the proportion identifying a job problem is even lower: 63.6%. *Id.*

³⁶ Among all respondents, 68.0% identify a job problem in the two-year period before they filed for bankruptcy. *Id.* In 2001, this amounted to an estimated 1,047,000 households in bankruptcy in the aftermath of a job problem. *Id.*

³⁷ Although most studies focus exclusively on men, we assume that husbands and wives, both working full-time, face an equal chance of job loss. This places the odds that one spouse would lose a job at 3.2% from 1980 to 1992. See Boisjoly et al., *supra* note 30, at 218 fig.4. We assume once again that there is no correlation between the chances of job loss between husbands and wives. See *supra* note 33. We have not accounted for possible changes in the odds of job loss after 1992.

today with both husband and wife in the workforce is approximately *two and a half times* more likely to face a job loss than a single-income family of a generation ago.

B. Medical Problems

Layoffs aren't the only way a family can lose a paycheck. Illness, accident, or disability can have the same effect. Once again, the dual-income family has doubled its risk. Two workers, two chances for a heart attack, a bad fall, or any other medical calamity that can leave a family without income.

Today, families are not only more vulnerable to job losses, they are also more financially vulnerable to health crises. The ranks of the uninsured are swelling, and the problem has seeped into the middle class. In 2001, 1.4 million Americans lost their health insurance. Of the newly uninsured, eight hundred thousand earned more than \$75,000 per year.³⁸ Experts calculate that an individual is now forty-nine percent more likely to be without health insurance than a generation ago.³⁹ Medical costs are escalating, and not surprisingly, a growing number of families are filing for bankruptcy in the wake of a catastrophic medical bill. Over the past twenty years, the number of families declaring bankruptcy in the wake of a serious illness has multiplied more than twenty-fold, or 2,000 percent.⁴⁰

³⁸ John M. Broder, *Problem of Lost Health Benefits Is Reaching into the Middle Class*, N.Y. TIMES, Nov. 25, 2002, at A1.

³⁹ The core data are developed in Olveen Carrasquillo, David. U. Himmelstein, Steffie Woolhandler & David H. Bor, *Trends in Health Insurance Coverage, 1989-1997*, 29 INT'L J. HEALTH SERVICES 467 (1999). The data are extended into earlier and later years by Dr. Himmelstein. See Letter from Dr. Himmelstein to Elizabeth Warren (on file with the author).

⁴⁰ Comparisons between bankruptcy filers in the early 1980s and today are difficult, because no one collected precisely the same data then as now. The best comparative estimate can be made from a 1981 survey that the San Antonio courts required of all families who filed for bankruptcy, which shows that about 8% of the filers cited a medical reason for filing. TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *AS WE FORGIVE OUR DEBTORS* 175 n.1 (1989). Extrapolating that sample to all filers in 1980 would suggest that about 23,000 families filed for bankruptcy in the wake of a medical problem. Other reports from about the same time estimate a lower number of medical-related bankruptcies, but they rely exclusively on court records to identify medical debt still outstanding at the time of filing and do not ask the debtors directly what had happened. For example, a 1978 study in Albany, New York, found that medical bills constituted less than 2% of scheduled debts, but the study was based entirely on identifying medical bills in court records. Barry A. Gold & Elizabeth A. Donahue, *Health Care and Personal Bankruptcy*, 7 J. HEALTH POL. & L. 734, 734, 736 (1982). For comparability to the 1981 data, the 2001 calculation includes only families who specifically identified a medical reason, thus excluding those who

Many families have discovered that the exclusions, copayments, and caps on health insurance mean that they are on the hook for far more than they anticipated, while others have learned that much-needed services such as physical therapy or mental health treatment are scarcely covered at all. Health insurance is no guarantee that a catastrophic illness won't send a family into a financial tailspin. Approximately 240,000 families *with* continuous medical insurance file for bankruptcy every year at least in part because of outstanding medical bills.⁴¹

While families struggle to pay their medical bills, hospitals and insurance companies conspire to cut costs by dismissing patients "quicker and sicker."⁴² Today, one in three individuals require at-home care after being discharged from the hospital. That means that roughly twelve million families must step in to take care of a sick relative every year.⁴³ Providing or paying for caretaking services can crush both single-parent households and two-worker households alike. If all the adults in the family are already committed to the workplace, well, that's just too bad – the hospital sends the patient home anyway. Once again, the bankruptcy statistics confirm the story: Dual-earner couples are nearly twice as likely as a couple with one parent in the workplace and one parent at home to file for bankruptcy because of work lost as a result of an illness in the family.⁴⁴

While the gaps in health insurance coverage are widely known, there are other holes in the social safety net that

identified lost time at work because of medical problems. 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1. That subset would suggest that about 424,500 families in 2002 filed because of an identified medical reason – more than a twentyfold increase. For more information on current filings for medical reasons, see David U. Himmelstein, Deborah Thorne, Elizabeth Warren & Steffie Woolhandler, *Illness and Injury as a Cause of Bankruptcy in the United States* (forthcoming 2004).

⁴¹ Among those in bankruptcy with out-of-pocket medical expenses of more than \$1,000, 62.0%, or about 243,000 families, had continuous medical insurance coverage. Calculated from Himmelstein et al., *supra* note 40.

⁴² WARREN & TYAGI, *supra* note 1, at 84.

⁴³ In 2000, there were 36 million hospital discharges in the United States. Centers for Medicare and Medicaid Services, Table 1: Selected Community Hospital Statistics, 1999-2002, *available at* <http://www.cms.hhs.gov/statistics/health-indicators/t1.asp> (last visited Jan. 7, 2004).

⁴⁴ In 2001, approximately 27,500 single-income couples, or 0.13% of all single-income couples in the United States, filed for bankruptcy after missing two or more weeks of work without pay because of the illness of one of the couple or of another family member. 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1. By comparison, 82,800 two-income couples, or 0.25% of the total, filed for bankruptcy after missing work because of illness. *Id.*

receive less attention – but they devastate families nonetheless. An illness or accident can have a double effect on a family: high medical bills *and* an extended period with no income. Private disability insurance can be all that stands between these families and financial ruin. Unfortunately, a majority of workers do not have any private long-term disability insurance, and only a handful of states provide coverage for their residents.⁴⁵ Unemployment insurance offers no relief, since most states require that an individual be “able” to work in order to qualify for benefits.⁴⁶

Virtually every worker in America has long-term disability coverage through the Social Security Disability Insurance (SSDI) program. The problem is that the holes in the SSDI safety net are large enough to drive a truck through – or for millions of families to fall through. SSDI disability benefits are available only to those whose condition is expected to result in death or to last at least twelve months. In addition, there is a five-month waiting period after the onset of permanent illness. This means that anyone who is seriously ill but is expected to recover within a year is out of luck. In addition, under the current SSDI guidelines, the disability must be so severe that the individual must be unable to perform *any* job anywhere in the entire country, not just the job for which the worker is trained and has spent a lifetime building skills and qualifications. Someone who had worked for decades as an electrician or as a surgeon, but who developed a disability that prevented him from performing those duties, would not receive a single dime if he were deemed well enough to work as a telemarketer or a toll collector.

The consequences of a threadbare safety net show up in the bankruptcy court. Based on the data collected in the 2001 Consumer Bankruptcy Project, an estimated three hundred thousand families file for bankruptcy *every year* – with

⁴⁵ Only 43% of workers have long-term disability coverage, and only 19% have at least six months of short-term coverage. Helen Levy, *Private Employer Sponsored Disability Insurance: Where Are the Gaps in Coverage?* (July 2002) (unpublished, on file with author).

⁴⁶ In Texas, for example, an individual “must be physically and mentally able to perform full time work” in order to qualify for unemployment benefits. See TEX. LAB. CODE ANN. § 207.021(a)(3) (2003); Texas Workforce Commission, *What is Unemployment Insurance*, at <http://www.twc.state.tx.us/ui/bnfts/claimant1.html> (last visited Jan. 7, 2004); Texas Workforce Commission, *Unemployment Insurance Benefits, Frequently Asked Questions*, at <http://m06hostp.twc.state.tx.us/CLAIMS/common/help.html#faqs> (last visited Jan. 7, 2004).

hundreds of thousands more on the brink of collapse⁴⁷ – because they lack comprehensive disability coverage.

Demographics also pinched the family, as the number of Americans aged eighty-five and older (those most likely to need daily assistance) grew at a rate more than *six times* faster than that of the population under sixty-five.⁴⁸ A declining birth rate and a higher divorce rate compounded the problem. Today's elderly have fewer children to share the burden, and more are alone after a divorce. As a result, families with minor children are now almost twice as likely to provide assistance to elderly parents than to receive it.⁴⁹ Today, fewer than ten percent of the nation's elderly have purchased private insurance to protect themselves against the risk that they will someday need long-term care, and even fewer working-age adults have done so.⁵⁰ Families are left on their own to provide for their elderly relatives, but most families remain vulnerable themselves.

The cumulative vulnerability is truly staggering: shrinking health insurance coverage for those lucky enough to have insurance, rising numbers of families with no health insurance, increased pressure on families to provide care for ill or injured family members, no disability insurance, and elderly relatives who need help – financial or otherwise – in caring for their own needs. Trapped in a precarious financial structure, millions of middle class families are just one serious illness or accident away from financial collapse.

⁴⁷ The proportion of families reporting that the debtor or spouse lost two or more weeks without pay because of illness or injury was 21.3%. 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1.

⁴⁸ FRANK B. HOBBS & BONNIE L. DAMON, U.S. CENSUS BUREAU, 65+ IN THE UNITED STATES, at 2-3 tbl.2-1 (1996), available at <http://www.census.gov/prod/1/pop/p23-190/p23-190.pdf>.

⁴⁹ Twenty-two percent of working parents report receiving at least one hour of unpaid assistance from their own parents each month, compared with 38% of working parents who report providing at least one hour of unpaid assistance to their own parents each month. JODY HEYMANN, THE WIDENING GAP: WHY AMERICAN'S WORKING FAMILIES ARE IN JEOPARDY AND WHAT CAN BE DONE ABOUT IT 103-04 (2000).

⁵⁰ U.S. OFFICE OF PERSONNEL MGMT., LONG TERM CARE INSURANCE BACKGROUND (citing U.S. General Accounting Office, Testimony on Long Term Care, Baby Boom Generation Increases Challenge of Financing Needed Services, Mar. 27, 2001), available at <http://www.opm.gov/insure/ltc/ltcbackground.pdf> (last visited Jan. 7, 2004).

C. *Family Breakup*

Divorce is another financial calamity. The high proportion of unmarried mothers in bankruptcy attests to the financial pressure that accompanies a family dissolution. The reasons are easy to understand. Families that were barely making it in one house with one mortgage payment and one set of utility payments will find it almost impossible to survive when they must bear the costs of providing for two separate households.

The risk of divorce has also risen over the past generation. Pretty much everyone knows that newlyweds now face a high chance of splitting up (although the risk is slightly less than the fifty-fifty number that circulates as conventional wisdom).⁵¹ But there is a wrinkle to the statistics that hasn't made the news reports: The vulnerability of two-worker families has risen faster than those who have only one adult in the workforce.

Many commentators have held out the hope that the divorce explosion will prove temporary and that marriages may actually become more stable as the sexes stride toward equality. *He Works/She Works* offers this bit of optimism:

The era of the two-earner couple may in fact create more closeness in families, not less Divorces may decline as marriages become once again economic partnerships more like the ones they were before the industrial revolution [F]ewer people will be able to waltz easily out of marriage, as they might have in the days when a thriving economy made good jobs easy to come by.⁵²

This theory *sounds* good, but the data show otherwise. During the 1970s, a single-earner couple had about the same chances of splitting up as a dual-income couple. By the 1990s, however, a working wife was forty percent more likely to divorce than her stay-at-home counterpart.⁵³ No one really

⁵¹ Approximately 43% of marriages end in divorce. Margaret F. Brinig & Steven L. Nock, *Marry Me, Bill: Should Cohabitation Be the Default Option?* (Emory Series on Marriage and Religion, March 2003) (unpublished, on file with author) (citing data from National Center for Health Statistics).

⁵² ROSALIND C. BARNETT & CARYL RIVERS, *SHE WORKS/HE WORKS: HOW TWO-INCOME FAMILIES ARE HEALTHIER, HAPPIER AND BETTER-OFF* 22 (1996).

⁵³ See Scott J. South, *Time-Dependent Effects of Wives' Employment on Marital Dissolution*, 66 AM. SOC. REV. 226, 240 (2001). See also Steven L. Nock, *When Married Spouses Are Equal*, 9 VA. J. SOC. POL'Y & L. 48 (2001) (finding that marriages between equally dependent spouses, defined as marriages in which each spouse earns at least 40% of the total family income, are 57% more likely than other marriages to end in divorce).

knows why the difference has emerged, although sociologists have offered a number of competing theories. Perhaps the combination of working and bringing up the kids makes for a more stressful home life and leaves the two-earner couple with less time for each other. Or it may be that today's stay-at-home wives embrace more traditional gender roles, which can make for a smoother relationship. Feminist scholars offer their own explanation, arguing that working wives see themselves as less dependent on their husbands for financial support and are therefore freer to leave a bad relationship.⁵⁴ Whatever the reason, the grim economic fact remains: The modern two-income family faces a greater likelihood of divorce than the one-income family from a generation ago.

There is yet another wrinkle to the family-breakup statistics that often escapes attention – the couples who never marry. A quick glance at the census figures tells the story: Over the past twenty-five years the number of children whose mothers have never married increased more than fivefold.⁵⁵ Many of these women are not really single, as the “never married” box on the census form might imply. Instead, they live for many years with a male partner. Since the 1970s the number of unmarried couples rearing children has increased *eightfold*. Today, cohabiting men and women represent more than six percent of all couples raising children, compared with less than one percent a generation ago.⁵⁶ Although six percent may sound like a modest proportion, the odds that a child will live with a cohabiting parent add up over time. According to one estimate, approximately forty percent of all children will

⁵⁴ For a discussion of contributors to changing divorce rates among working and nonworking women, see South, *supra* note 53.

⁵⁵ U.S. Census Bureau, Table CH-5: Children Under 18 Years Living With Mother Only, by Marital Status of Mother, 1960 to Present (June 2003), available at <http://www.census.gov/population/socdemo/hh-fam/tabCH-5.pdf>.

⁵⁶ The number of unmarried, opposite-sex-couple households with children under age fifteen increased from 204,000 in 1977 to 1.7 million in 2000. U.S. Census Bureau, Table UC-1: Unmarried-Couple Households, by Presence of Children, 1960 to Present (June 2003), available at <http://www.census.gov/population/socdemo/hh-fam/tabUC-1.pdf>. In 2000 there were 27.1 million married couples with children under eighteen. U.S. Census Bureau, Historical Income Tables-Families, Table F-14: Work Experience of Husband and Wife – All Married-Couple Families, by Presence of Children Under 18 Years Old and Median and Mean Income: 1976 to 2001, available at <http://www.census.gov/hhes/income/histinc/fl14.html> (last visited Jan. 7, 2004).

spend some time in a cohabiting family before they turn sixteen.⁵⁷

What does this have to do with the rising divorce rate? Cohabiting relationships share many of the financial characteristics of marriage. There are two adults to share the expenses and responsibilities of running a single household. When a cohabiting couple breaks up, the consequences are much like those when a married couple divorces. Someone has to find separate housing, and any joint obligations, such as a lease or a mortgage they both signed, must be resolved. If both partners are the children's biological parents, custody decisions must be settled, and arrangements for visitation and child support must be worked out. But here's the twist: The logistical consequences of splitting up may be the same, but the odds of breaking up are not. Cohabiting couples with children are more than twice as likely to split up as their married counterparts.⁵⁸ Once again, the frailty of families with children comes to the fore. As these unmarried parents go their separate ways, the number of families left without a second adult to share the burden continues to multiply.

And so the two-parent households morph into one-parent households. The financial pressures on the two-parent households carry over to their one-parent successors, and the rates of financial failure continue to climb.

VI. COMPOUNDING RISKS

The list of ills – job loss, family breakup, and medical problems – is brutal, but it may also appear a bit eclectic and disjointed. After all, the divorce rate has nothing much to do with health insurance coverage; a job loss has no effect on the number of elderly folks who need help from their families.

When a family disaster makes the evening news, only one problem is in the spotlight at any given time. The *New York Times* carries a column about the terrible problems of the

⁵⁷ Larry Bumpass & Hsien-Hen Lu, *Trends in Cohabitation and Implications for Children's Family Contexts in the United States*, 54 POPULATION STUD. 29, 35 (2000).

⁵⁸ WENDY D. MANNING, PAMELA J. SMOCK & DEBARUN MAJUMDAR, THE RELATIVE STABILITY OF COHABITING AND MARITAL UNIONS FOR CHILDREN (Center for Family and Demographic Research, Working Paper Series No. 02-18, 2002), available at http://www.bgsu.edu/organizations/cfdr/research/pdf/2002/2002_18.pdf. See also Larry L. Bumpass & James A. Sweet, *National Estimates of Cohabitation*, 26 DEMOGRAPHY 615, 621 (1989) (finding that 29% of cohabiting unions end within the first two years, compared with only 9% of marriages).

uninsured, or *60 Minutes* runs a story on divorce trends. Academics and other experts tend to reinforce this approach: Most of them have one highly focused area of expertise, and they usually write articles and hold forth on the talk shows about one specific category of calamity.

But families don't experience risks in neatly segmented boxes. Whether they give it much thought or not, they live under the shadow of multiple dangers. A woman could lose her job, she could be struck with a devastating illness, her marriage could turn sour, *and* her parents could grow too feeble to care for themselves – and it could all happen at the same time. There is no law requiring that these disasters be polite enough to wait until the previous one is resolved before a new one wreaks additional havoc.

Moreover, one disaster often triggers another. A layoff may leave a family without health insurance, increasing the exposure to an exorbitant medical bill. Similarly, a job loss may actually lead to divorce; sociologists have shown that as finances deteriorate, couples tend to fight more, increasing the chances that they will split up.⁵⁹ Among families in bankruptcy, nearly half report two of three problems – job loss, medical problems, or a family breakup – and about one in thirteen were hit by all three.⁶⁰ We have no statistical proof of the old wives' tale that bad things happen in threes, but there is ample evidence in the bankruptcy data that disasters really do follow disasters.

VII. CONCLUSION

The risks facing typical, middle-class families with children have compounded over the past generation. Today's families are working harder than ever. Mothers of young children, both married and single, have flooded the workplace, putting in long hours both at the office and at home. But even as they work harder, more of them are collapsing financially.

Families are caught in a trap. For a generation they have tried to build their own private safety nets by sending

⁵⁹ See, e.g., W. Jean Yeung & Sandra L. Hofferth, *Family Adaptations to Income and Job Loss in the U.S.*, 19 J. FAM. & ECON. ISSUES 255 (1998).

⁶⁰ Among families with children, 38.7% gave only one of these three reasons (job loss, medical problems, or a family breakup), 40.4% gave two reasons, and 7.8% identified all three reasons. 2001 Consumer Bankruptcy Project, Research Results, *supra* note 1.

every adult into the workforce. But the risks have outrun them, and the rates at which they are failing financially continue to climb. These data show that the effects of a weakening safety net are no longer confined to the poorest families, to those with little education or little hope for the future; instead, the effects are now felt by a growing proportion of middle-class America. Each year, more families need – and fewer families find – any safety net at all.