EDWARD V. SPARER: SOME THOUGHTS ABOUT HIS WORK AND LIFE

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Ed Sparer was my friend. Anyone who knew Ed will tell you that this was not always an easy relationship: Ed expected a lot from his friends. He expected a degree of intensity, commitment, and introspection that was not always easy to muster. And yet Ed had many friends—more than anyone else I know, I think—because if he was a demanding friend, he was also an unbelievably generous one. He gave freely of himself, including what was for him his most precious commodity, his time.

Few who knew Ed or knew of his work would doubt that he was a great leader. Indeed, so vast were his talents and so great was his energy that he had a profound effect upon all who came into contact with him. Legal services, the University of Pennsylvania Law School and the university itself, the health care community, the nation's welfare system and, most important, the poor and oppressed of America were all the beneficiaries of Ed's efforts and genius.

That so much remains to be done is not evidence of failure, but of the immensity of the problems that remain to be addressed. Make no mistake: addressing those problems is not an easy task. One thing I am sure Ed would say, however, is that, although it is difficult, it can be rewarding; it can even be fun.

I would like to talk briefly in this article about some of the qualities that made Ed so special. In particular, I would like to give you some idea of Ed's thinking, his courage, and his dedication to teaching; most of all, I would like to give you some idea of his commitment to justice. For all who knew Ed—as friend, colleague, student—our loss is great. How much greater it would have been had we never known him.

The last thing Ed wrote was an article about the critical legal studies (CLS) movement, Fundamental Human Rights, Legal Entitlements, and the Social Struggle: A Friendly Critique of the Critical Legal Studies Movement. The article was by no means meant as a culmination or grande finale to his theoretical career—in fact, he was very


excited about the new possibilities offered by critical legal studies and planned to continue writing on CLS themes. Ed was already planning to use his overdue sabbatical to write about why bureaucracies are so undemocratic and how they can be changed, resting in part on the analysis developed by the critical legal studies movement. Nevertheless, the Stanford article does provide a very clear and often very personal summary of Ed’s life and politics.

In the article, which I urge you to read, Ed talked with considerable admiration about the writings of a group of progressive law professors who are attempting to bring a left-wing perspective to the teaching of law. Ed welcomed such a movement, tentative though it might be, for he had been fighting for just such a perspective throughout his academic career. However, as with his personal friends, his ideological friends were not spared the intensity and candor that marked all of his relationships. When he wrote about CLS, Ed did what he was accustomed to do: he talked honestly about where he agreed and where he disagreed with CLS analysis.

Although he praised much of critical thought, Ed was troubled by the CLS movement’s tendency to criticize traditional liberal rights theory. He decided that, in order to make his misgivings clear, he had to reveal something about himself. In the Stanford article he addressed the notion of rights, and why he was so sure that it made sense to speak of freedom of speech as an inalienable right. Instead of using the cool, dispassionate terms one expects in a law review article, Ed stated that he was sure because he had allowed his own speech to be curtailed during the years he was a member of the Communist Party. He observed that he knew first-hand the folly of such conduct, even in the cause of justice.

Ed’s revelation took a lot of courage. He had never before publicly acknowledged his Communist Party membership, although he had talked about it with his friends. In fact, a number of his friends, including me, tried to convince him not to discuss his political past. We were afraid for Ed and the possibility of retaliation against him and his family.

Ed and his family decided against this safer course—not because blacklisting and other red-baiting were no longer possibilities, but in spite of those risks. Ed felt that this disclosure was vital to the understanding of his position and therefore had to be included. He understood the risk, but decided to go ahead because he thought it was important. I have never met anyone more dedicated to the notion of free discourse. He was almost totally lacking in cynicism when it came to trying to persuade. Thus, if the situation called for it, he was willing to
sacrifice, to expose himself to ridicule, censure, and political censorship. When Ed and I were discussing the Stanford article, he said that it was not a question of courage; it was a question of what he saw as right. The commitment to what he saw as right, which I think was terribly courageous, was what made Ed so special.

This commitment was at the heart of Ed's interest in welfare law. Ed was interested, not because he saw the opportunity to do "law reform" work, but because he sought better treatment for the people affected by the programs. He saw, too, the opportunity to work with and foster a vibrant movement of people in a way that would open up even more possibilities, bringing out society closer to economic justice and democracy. I don't think Ed thought much about theory in a vacuum. Read this discussion of *Goldberg v. Kelly*, a decision for which Ed could take much of the credit:

The decision to pursue litigation and other efforts on behalf of a constitutional right of welfare recipients to a "prior hearing" . . . was part and parcel of the organizing strategy of the welfare rights movement, designed to amplify the organized forces—particularly the organized welfare recipient forces—of the movement.

The experience leading to the prior hearing litigation effort was stark: a welfare recipient, in one way or another encouraged by the organization, would talk back to a welfare case agent; the agent would terminate or suspend the grant; months later, if then, the recipient would "win" and her grant would be restored. But what would happen in the meantime? She and her children would go hungry. Recipients knew that, and therefore the ability to resist and talk back was limited. With a prior hearing, recipients could talk back and resist and still have some protection.3

This blend of theoretical innovation and practical application is particularly evident in *Welfare Reform: Which Way is Forward?*4 and in *Gordian Knots: The Situation of Health Care Advocacy for the Poor Today*,5 two articles of considerable scholarly merit that he chose to publish in trade journals. Both of these articles are rich in theory and analysis, but were written for practitioners, so that their work would be productive and enduring. In *Welfare Reform*, Ed lays out his theory of

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3 Sparer, *supra* note 1 (emphasis in original).
welfare law, and the conflicting elements that shape it, in order to evaluate President Carter's "Better Jobs and Income Program." In *Gordian Knots*, Ed identifies four binds that limit the usefulness of traditional health law advocacy. (Unfortunately, the latter was meant to be a prelude to another article that would advocate the creation of popularly controlled health care institutions.) Both of these articles show Ed at his best: blending theory and practice in a way that was exciting and fresh, taking time to analyze the complexities of the subject instead of sweeping them away with rhetorical flourishes or generalizations.

Ed knew about practical problems first-hand, for he was always immersed in one battle or another. He did not win all of these battles either. Even with the tremendous energies and skill that Ed Sparer brought to the fight, he and his allies—community activists and dedicated health professionals—could not prevent the closing of Philadelphia General Hospital (PGH). PGH was the only public hospital in this city of almost two million people. I can still remember Ed's eloquence as he argued against the closing of PGH in court; I can still see him at endless, late-night community meetings, working hard to get people to fight for a hospital that had been allowed to deteriorate beyond belief. We can all read his words and admire his courage when he published a report laying at least part of the blame for PGH's closing on his employer, the University of Pennsylvania:

The crux of the problem is this: the income of major individual groupings within the medical school faculty (clinical departments) and of the other key institutions within the medical center (The Hospital of the University of Pennsylvania), is generated through entrepreneurial efforts in medical care. The stability and success of those entrepreneurial efforts are no longer in natural harmony with a viable, first-rate and nearby public hospital. On the contrary, without outside intervention of some strength—and effective mechanisms of accountability, disclosure of information, and leadership on the public side—the entrepreneurial and financial concerns of the medical school faculty and center will lead to the gradual dismantling and collapse of the public hospital.

The process is already well under way in the PGH-University of Pennsylvania Medical School relationship. It includes referral and transfer of patients from the public

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hospital to the wholly-owned University Hospital, and—on the part of some school-affiliated staff—gross misuse of public monies under the school-public hospital-city contracts for non-public hospital purposes.8

For a while after the closing of PGH, some of us may have been too sanguine. After all, PGH was the hospital equivalent of a slum—a place to put poor people and forget them. It seemed that other hospitals would serve their neighborhoods better, that the Medicaid and Hill-Burton programs would serve the poor and working class. Now, almost a decade later, we see what a false hope that was, just as Ed predicted.

But as the Gordian Knots article shows, Ed was not the sort to give up. The PGH fight did not make him cynical—it made him look for new ways to approach the problems of health care. Ed drew on the PGH experience and others, and synthesized them into a remarkable article that both praised the efforts of those who had pursued predominantly litigation-oriented strategies and urged the development of strategies to create new institutions that would avoid overreliance on unreceptive courts. One of these institutions was to be a birthing center, here in West Philadelphia, that would make giving birth a more joyous and healthy event for women of all classes. Using the idea of a birthing center, Ed hoped to bring together, on the one hand, feminists and the nurse-midwife movement that grew out of recent feminist activity and, on the other, childbearing women who get less-than-adequate care at hospitals preoccupied with teaching and technology. Not only did Ed write about these ideas (someday soon I hope the Gordian Knots sequel will be finished and published); he lived them. Up until his death he worked tirelessly to establish a birthing center near the University and the law school, in a neighborhood whose infant mortality rate rivals that of third world countries. It was never enough for Ed to generate "interesting" ideas; he had to see them made real. If that meant frustration, endless meetings, and proposal writings, Ed assumed that it was his job to do just that.

As his students would attest, Ed loved to teach, to expose people to new possibilities. He made learning a joy. What few might know is that he could instill this same joy in almost any audience that heard him speak or read his work. Take a few moments to read a 1976 after-dinner speech he made to legal services lawyers, neighborhood or-

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8 E. Sparer, Medical School Accountability in the Public Hospital: The University of Pennsylvania Medical School and The Philadelphia General Hospital 4 (1974).
ganizers, and community group leaders. Few people would have had the nerve to attempt a serious, hour-long speech, especially one that started with a quote from Yeats' *The Second Coming*:

> Things fall apart; the center will not hold; . . .
> Everywhere the ceremony of innocence is drowned.
> The best lack all conviction,
> While the worst are full of passionate intensity.

Not only did Ed get away with such an opening; he kept a diverse, tired, and initially restless audience spellbound for at least an hour. (I don't think Ed ever spoke for a few minutes at any public gathering.)

Ed was such a wonderful speaker because he never lacked conviction, and could communicate his passion better than almost anyone I have ever heard. He offered you his insights as if they were presents, and he made you want to know more; he made you feel that intelligence and passion and decency could make all the difference.

Probably the best speech I ever heard Ed give was a more recent, unpublished talk to another gathering of legal services lawyers. This time he was speaking not against complacency and philosophical disarray but to staff attorneys buffeted by the first wave of the current attack on legal services. He started by quoting a populist organizer, Sockless Jerry Simpson, who had despaired in the face of oppression:

> I know that for the man who sees the evils of the time—the want, ignorance, and misery caused by unjust laws—who sets himself so far as he has strength to right them, there is nothing in store but ridicule and abuse. The bitterest thought, and the hardest to bear, is the hopelessness of the struggle, "the futility of the sacrifice." 

As usual, Ed had captured the feelings of many listeners with his quote from Sockless Jerry. But Ed wanted to do more than express sympathy; soon he switched gears, and began to chip away at his audience's despair by talking about the hymn *Amazing Grace*.

I'm sure many known this lovely song, with its firm melody and moving words. Ed did not just take the words of the song and deliver a homily, however; he told about the man who wrote it. *Amazing Grace*, Ed told us, had been written by Andrew Newton, who had once been the captain of a slave ship. Ed went on to tell us about how Newton

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10 *Quoted in* L. Goodwyn, *Democratic Promise: The Populist Movement in America* 60 (1980).
had suddenly realized the horror of his trade while crossing the Atlantic with a ship full of captured Africans, soon to be sold into slavery. In mid-passage he turned the ship around, brought the captives back to Africa, and became an outspoken religious abolitionist. Now this is fine, if somewhat standard, inspirational stuff. But Ed was never a standard speaker—or thinker, for that matter. He asked us to consider how Captain Newton would have accomplished his feat. How does one turn around a ship crewed by a bunch of hardened, brutal sailors? How does one tell them that there will be no profits from this trip and that they might not even have enough food to get them back to Africa and to cross the Atlantic yet again? What fears of mutiny gnawed at Newton as he planned his moves? These are the kinds of questions Ed posed—not just what the right choice was, but how to implement that choice.

Ed's lesson was clear: that progress against oppression was possible, but difficult; that victories required risk-taking and careful thought. And the example Ed chose was apt because it was, after all, grace that Ed meant to instill in his listeners that night, and in many others whose lives he touched. My dictionary defines "grace" as a force or influence that operates to regenerate and sanctify, to inspire virtuous conduct, and to impart strength.

'Twas grace that taught my heart to fear,  
And grace my fears relieved;  
How precious did that grace appear  
The hour I first believed.

I don't know when Ed first believed, but I do know that he had grace in abundance and that he imparted it to others. He feared evil, especially the evils of injustice, hunger, and oppression. He was so full of virtuous impulses and strength that it is difficult to accept the fact that he is gone. His gifts were great and he shared them with many.

I think that, if Ed were to leave us with a testament, it would be that we work together to overcome injustice. Practically everything he wrote stressed the need to bring people together. He constantly spoke of the need to find issues and approaches that would unite different elements of the progressive community. It was not enough that lawyers win cases; Ed urged that they fit themselves into the larger struggle, that they work on issues which would empower people and open doors to still more progress. I would like to close by quoting at length from an article Ed wrote for a newsletter called *Just Economics* (I don't know exactly when). In the article, Ed was talking about the need for a "wide coalition of poor and working class, of minorities and lower mid-
dle class that America so needs.” With typical humility he wrote:

Who is it that can issue a call? Nothing entitles this writer to do so. . . . Whoever it is that can issue a call, surely nobody has to listen. Surely much of the experience in organizing, at least in the initial period, will be that of rebuff: the turned face, the annoyed or frightened or angry look, the police or other official interference. Who is entitled to tell a community organizer, building a local group, that income and jobs are the issues to focus upon, that rebuff should again be experienced, when a measured success on other issues may already be his or hers? Who is entitled to tell the trade union activist, the welfare rights chapter head, the legal service lawyer, the discouraged dropout of the sixties, the unemployed worker him or herself—go organize the unemployed? Would that George Wiley and other heroes of the sixties were not dead—they could issue a call. [George Wiley was the founder of the National Welfare Rights Organization. Ed was one of his most trusted lawyers and advisors.]

But new heroes and heroines are waiting to be found. There are a thousand George Wileys waiting to be found. So in their name—

To the trade union activist rank and file: Go into the unemployment insurance offices, the welfare centers, the food stamp lines. The worker without a job needs a union, too. Organize unemployed workers’ committees.

To the brave women, still working away in the few functioning welfare rights chapters: Go back into welfare centers. There are men and women there, applying for the first time, who need your help, your welfare rights manuals, your courage, and your understanding of human rights. Organize unemployed workers’ committees.

To the out-of-work, dropout organizers: Go back to work. There are millions of folks who need your skills.

To the lawyers, law students, social workers of both liberal and radical heart, the various other professionals with talents of special kinds: Support the unemployed workers’ committees—encourage their creation, use your talent, lend your money and your minds to help nurture them. There are endless law cases to study, legal handles to develop, unemployment rights manuals to be written, bills to be drafted.

To all of us who love America, and therefore to see so-
cial justice, income redistribution, and meaningful human work done—we should get to work ourselves.

Round Two can be the worst American disaster in forty years. Or it can be the time when we build a movement which unites the poor, the working class, and the lower middle class for the first time in forty years—a movement we can win.

Ed, you had the right to make that call. Through your efforts, there will be others to carry on.