Negotiating Bankruptcy Legislation through the News Media

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During the last cycle of major bankruptcy legislation, federal lawmakers have not permitted most bankruptcy lawyers, judges, or academics to be directly involved with the legislation or even to correct drafting errors. Instead, advocates of the omnibus bankruptcy bill have been dismissive of so-called “bankruptcy establishment” concerns and input. While the bankruptcy establishment generally has found the bill misguided and poorly drafted, lawmakers overwhelmingly have supported this bill widely touted as bipartisan and commonsense.

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3 Proponents of the bankruptcy bill used this term to refer to most bankruptcy lawyers (including those who represent various types of creditors), trustees, judges, and academics who expressed opposition to the legislation. I adopt this term but to not intend the proponents’ pejorative connotation.

4 *See, e.g.*, Rep. Bill McCollum, *Bankruptcy Reform: A Return to Responsibility*, THE HILL (May 20, 1998) (describing a “campaign of false information being disseminated by bankruptcy attorneys, bankruptcy ‘experts,’ and other people maligning the legislation to further their agendas. However, after subjecting the multitude of half-truths and false statements disseminated by the critics . . . to the light of day, they just don’t stand up.”); Tom Hamburger, *Auto Firms See Profit in Bankruptcy-Reform Bill Provision*, WALL ST. J., March 13, 2001, at A28 (industry lobbyist saying bankruptcy establishment likes bankruptcy system how it has been running it); Jacob M. Schlesinger, *Card Games: As Bankruptcies Surge, Creditors Lobby Hard To Get Tougher Laws*, WALL ST. J., June 17, 1998, at A1 (bankruptcy establishment simply prefers status quo).

5 *See, e.g.*, Katherine Q. Seelye, *First Lady in a Messy Fight On the Eve of Her Campaign*, N.Y. TIMES, June 27, 1999, at sec. 1 p. 1 (MasterCard representative saying it is "fair to say there is strong bipartisan support for bankruptcy reform."); Michelle Schroeder & Jacob M. Schlesinger, *Financial-Services Bills Appear Dead, For Now*, WALL ST. J., October 12, 1998, at A4 (American Bankers Association lobbyist saying that given “clear bipartisan majorities, we believe we can start early next year and have them enacted fairly quickly”); Kathleen Day, *House Passes Bankruptcy Limits; Measure Would Make It Harder for Consumers to Wipe Out All Debts*, WASH. POST, March 2, 2001, at A1 (Senator Grassley saying “[t]here's broad, bipartisan support for updating the nation’s...
Even though the bankruptcy establishment was almost completely barred from the bargaining table, its concerns affected the bill’s development and the future of bankruptcy legislation. In this article, I argue that the “fourth branch” – the news media\(^6\) – helped the bankruptcy establishment by re-framing the debates about bankruptcy law and legislation in accurate but stylized ways.\(^7\) Once predominantly justified by debtor irresponsibility and a runaway bankruptcy system,\(^8\) the bankruptcy bill became a story of credit industry power,

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\(^6\)See, e.g., D OUGLASS C ATER , T HE F OURTH B RANCH OF G OVERNMENT (1959)(news media as fourth branch).


\(^8\)For lawmakers’ views along these lines, see e.g., House Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, Hearing on Bankruptcy Reform, March 10, 1998 (Statement of Rep. McCollum) (“people see bankruptcy as a financial planning tool, spurred on by advertisements . . . social stigma associated with filing for bankruptcy has eroded. Bankruptcy was never meant to be used as a financial planning tool or for mere convenience . . . bankruptcies of convenience are a clear misuse of the bankruptcy system, as bankruptcy becomes a first stop rather than a last resort.”); Senate Banking Committee, Hearing on Bankruptcy Reform and Financial Services Issues, March 25, 1999 (Statement of Rep. Boucher) (“Bankruptcies of convenience are driving this increase”); 145 Cong. Rec. H2646 (daily ed. May 5, 1999) (Statement of Rep. Pryce) (“when intelligent citizens ignore basic common sense by spending outside of their means, we need to establish a reasonable level of accountability and demand some personal responsibility to protect those who have extended credit to them in good faith”); Robin Jeweler, R520780: Issues in Consumer Bankruptcy Reform Before the 107th Congress, Congressional Research Service (updated February 19, 2001) (“high volume of consumer bankruptcy filings during the 1990's fuels the argument that the current law is too lenient, i.e., 'debtor-friendly.' . . . legislation is intended, among other things, to make filing more difficult and thereby thwart "bankruptcies of convenience"; to revive the social "stigma" of a
predation, and influence, a story of loopholes for the rich, and, perhaps most effectively, a women’s issue.

This article describes the path of this omnibus bankruptcy legislation, offers an interdisciplinary analysis of the role of news media in policymaking, and discusses three emerging frames in the bankruptcy debates that competed successfully with the prevailing debtor irresponsibility/flawed system frame. It then evaluates these frames in light of presumed bankruptcy establishment goals by asking three questions about each frame: 1) might it have heightened the bill’s controversy?; 2) might it have improved the bill?; and 3) did it advance the public’s understanding of the real issues at stake in the law and legislation?9

In response to these questions, I posit that some frames may have increased the controversy of the bill and slowed its progress. Yet, the framing only rarely led to improvements in the bill. In addition, only the third frame – bankruptcy as a women’s issue –

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had substantial educational value for the public, notwithstanding bill proponents’ assertions that this frame was contrived. 10

I conclude that the news media (and the establishment it empowered) may well have affected present and future development of bankruptcy law. It did not get the bankruptcy establishment a place at the bargaining table, but more than once helped disrupt and shift the focus of the bargaining. This is an important lesson for anyone involved in the legal system and is not limited to bankruptcy. Arguably, however, the lawmaking process would be better served by reincorporating the establishment players back into legislative negotiations, even if they do not regain the control they once enjoyed.

I. Legislative Development and the Prominent Bankruptcy Story

In the mid-1990s, Congress had no obvious interest in making major bankruptcy changes. It passed a set of modest amendments in 1994. 11 It also established a National Bankruptcy Review Commission to study the bankruptcy system for a two-year period. 12 Congress told the Bankruptcy Commission that it did not have a mandate to propose significant changes to business or consumer bankruptcy. 13

10 See section III note ___.


12 Id. The Bankruptcy Commission was charged with investigating and studying issues and problems relating to title 11, evaluating the advisability of proposals and current arrangements, preparing a report, and soliciting divergent views. Id § 603.

13 H.R. Rep. No. 103-835, 59 (1994) (“Commission should be aware that Congress is generally satisfied with the basic framework established in the current Bankruptcy Code. Therefore, the work of the Commission should be based upon reviewing, improving, and updating the Code in ways which do not disturb the fundamental tenets of current law”). Senator Grassley, who later would figure prominently in bankruptcy reform, echoed this sentiment in floor statements: “I want to stress that this Commission is designed to review the code, and we are not setting it up to
Members were chosen by the President, Chief Justice Rehnquist, and minority and majority leaders in the House and Senate.\(^{14}\) The bankruptcy establishment and the financial services industry both were actively involved in the Commission’s inclusive process.\(^{15}\) They participated in well-attended meetings and hearings around the country,\(^{16}\) and wrote thousands of letters and electronic mail submissions.\(^{17}\)

In the midst of this process, the annual bankruptcy filing rate surpassed one million.\(^{18}\) Having this number of bankruptcy filings within a single year provoked questions about the neediness of bankruptcy filers and the permissiveness of the system.\(^{19}\) For example, papers

\(^{14}\) The Commission member themselves generally cannot be described as quintessential bankruptcy establishment. In terms of membership, President Clinton chose lawyer Babette Ceccotti, CPA and turnaround expert Jay Alix, and Former Congressman Mike Synar as the chair, who was succeeded by lawyer Brady Williamson after Synar passed away. Chief Justice Rehnquist chose Hon. Edith Jones of the U.S. Court of Appeals for the Fifth Circuit and Hon. Robert Ginsberg of the U.S. Bankruptcy Court for the Northern District of Illinois. Rep. Robert Michel (R-Ill) appointed former Congressman M. Caldwell Butler, Rep. Thomas Foley appointed real estate lawyer John Gose, Senators Robert Byrd and Senator George Mitchell appointed lawyer Jeffery Hartley, and Senator Dole appointed tax lawyer James Shepard. The reporter was Prof. Elizabeth Warren, and the two principal consultants were Prof. Lawrence P. King and lawyer Stephen Case.


\(^{17}\) Id.


\(^{19}\) See, e.g., Mary Deibel, Scripps-Howard News Service, Bankruptcies Booming in ’97 Despite Economic Prosperity, ROCKY MOUNTAIN NEWS, June 11, 1997, at 10B; Saul Hansell, Personal Bankruptcies Surging as Economy Hum, N.Y. TIMES, August 25, 1996, at sec. 1 p. 1; Last Resort is Coming First - Something’s Wrong: In these Good Times, Bankruptcy is Booming, L.A. TIMES, July 28, 1997 (“Something is haywire in the way Americans deal with personal debt. How else to explain the record bankruptcy filings in California and other states with strong...
quoted Federal Reserve Board Chair Alan Greenspan lamenting that “[p]ersonal bankruptcy filers are soaring because Americans have lost their sense of shame in filing for bankruptcy court protection,” and noting a disappearance in the stigma of bankruptcy.20 The U.S.A. Today editorial desk blamed consumer attitudes, a decline in stigma, and too-easy bankruptcy laws.21 A later editorial asked “[c]ould there really be so much quiet desperation amid so much plenty? Or – as seems more likely – is bankruptcy protection just too easy to get these days?”22 The examples of quotes to this effect could themselves fill this entire article. It is within this frame of reference that the Bankruptcy Commission finished its work.

The Bankruptcy Commission’s final report, dated October 20, 1997, bulged with over 170 recommendations for changes to all types of bankruptcy cases.23 Although the majority of the Commission expressed concern about the filing rate, it did not attribute the filing increase to the

job growth, decreasing unemployment, and much improved economies?”). The L.A. Times editorial page later became critical of the bankruptcy legislation, however. See Bankruptcy Non-Reform, L.A. TIMES.

20 See, e.g., Bloomberg News, Filings Worry Greenspan, TIMES-PICAYUNE, March 20, 1997, at C6; Saul Hansell, Personal Bankruptcies Surging as Economy Hums, N.Y. TIMES, August 25, 1996, at sec. 1 p. 1 (individual debtor explaining that “I’m just taking advantage of the opportunities the Government offers. It doesn’t have the stigma it had”); L. Stuart Ditzen, Credit Cards Paving a Path To Bankruptcy, PHILA. INQUIRER, August 25, 1996, at A1 (describing credit card use as addiction and nasty vice, and describing bankruptcy as “quick way out of excess credit card debt”); James Carter, Bankruptcy as the Last Resort, WASH. TIMES, Dec. 18, 1998, at A15 (“In practice, however, fresh start sometimes becomes a free ride”). For economic research casting doubt on assumptions about stigma, see, e.g., Kartik Athreya, The Growth of Unsecured Credit: Are We Better Off? 87 ECON. Q. 11, 25-26, 29 (Fed. Reserve Bank of Richmond Summer 2001) (stigma-related costs of bankruptcy have not fallen, and may have risen, and research “strongly suggests that rumors of the demise of stigma and conscience are greatly exaggerated”).

21 Too-easy Bankruptcy Laws Give Abusers a Free Ride, USA TODAY, October 4, 1996, at 12A (overuse of the bankruptcy system cost each American family about $100 per year). USA Today published an “opposing” view editorial as well, however. Gary Klein, Blame the Credit Pushers, USA TODAY, October 4, 1996 at 12A.

22 Debtor’s Delight, INVESTOR’S BUS. DAILY, January 15, 1998; See also Morally Bankrupt, THE NEW YORK POST, December 21, 1997 (“Once upon a time, bankruptcy was a shameful state, one indulged in only by ‘deadbeats’ and losers.’ Unfortunately, just as sharing living quarters with a member of the opposite sex, bearing children out of wedlock and suing people for new good reason have become routine, bankruptcy shows signs of becoming positively fashionable.”)
reasons frequently being identified in the press. Even before the Commission issued its final report, however, the credit industry expressed distaste for its proposals and its failure to propose new restrictions on bankruptcy eligibility (sometimes called means testing). The industry turned to its friends in Congress.

105th Congress (1997-1998)

Rep. Bill McCollum (R-FL) did not wait for the Bankruptcy Commission to submit its report before introducing consumer bankruptcy legislation, The Responsible Borrower Protection Act (H.R. 2500) in September 1997. Although Rep. McCollum was not even a member of the


24 Id. Its most significant structural proposals related to jurisdiction and appeals. Id. (proposing Article III status for bankruptcy judges and direct appeal from bankruptcy courts to the courts of appeals).

25 See, e.g., Donald G. Ogilvie, Executive Vice President, American Bankers’ Association, Letters to the Editor: Placing the Blame for Bankruptcy Reform, WALL ST. J., August 26, 1997 (“recommendations make it easy for people of means to walk away from their debts while raising the cost of goods an services for every U.S. consumer – not the solution we need given record consumer bankruptcy filings.”); Paul Gentile, No Happy Campers Here: National Bankruptcy Review Commission issues final report, CREDIT UNION TIMES, October 29, 1997, at 1 (credit union president stating “[w]hat I think they should do with the report is forget they ever wrote it”). See also Jaret Seiberg, Deeply Split Bankruptcy Commission May Lack Clout with Lawmakers, AMERICAN BANKER, June 20, 1997 (credit industry lobbyist describing one Commission proposal “one nail in the credibility of the Commission”); Steve Cocheo, In Debt and Loving it: With Record Numbers Filing for Bankruptcy, Something besides these debtors is “broke.” Question is, will upcoming recommendations of a federal commission fix anything? ABA BANKING JOURNAL, Aug. 1997, at 30. Some Commission proposals did coincide with credit industry proposals, however. See National Bankruptcy Review Commission, Bankruptcy: The Next Twenty Years (1997) to the recommendations contained in Transcript, Presentation of National Consumer Bankruptcy Coalition to the National Bankruptcy Review Commission (December 17, 1996). Examples include repeat filing restrictions, random audits, and better data collection.

26 DAVID A. SKEEL, JR., DEBT’S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA 187-188 (2001) (creditors were “less than enthusiastic” about Bankruptcy Commission process and promoted legislation to “preempt” Bankruptcy Commission recommendations).

27 See generally Robin Jeweler, Survey of the Impact of Advisory Study Commissions, Congressional Research Service, American Law Division, The Library of Congress CRS-9 (September 3, 1997) (“In some instances, advisory commissions are hampered when they deal with subjects that are controversial, political, and subject to strong emotional convictions,” and including among factors that affect commission efficacy “lack of consensus about the nature of impact of the problem” or controversy over solutions”).
relevant Judiciary Committee subcommittee, his bill sought to alter consumer bankruptcy in accordance with industry proposals and the prominent media portrayals of the bankruptcy crisis.\(^{28}\)

In the winter of 1998, the chair of the relevant Judiciary Committee subcommittee (Rep.
George Gekas (R-PA)) introduced another bankruptcy bill. This bill contained consumer bankruptcy provisions that essentially replicated Rep. McCollum’s bill, but also included extensive business bankruptcy and bankruptcy tax amendments.\(^{29}\) Rep. McCollum also supported this bill, and the bill started its multi-year bipartisan odyssey through Congress.

Rep. Gekas’ subcommittee held some hearings and invited many credit industry representatives and some of the bankruptcy establishment.\(^{30}\) The bankruptcy establishment expressed concern about policy issues, bad drafting, or both.\(^{31}\) The bankruptcy establishment also was concerned that the bill would speed ahead without the deliberation that historically had accompanied this type of change to bankruptcy law.\(^{32}\)


\(^{30}\) H.R. 3150 Hearing Testimony (on file with author).

\(^{31}\) Id.

\(^{32}\) See, e.g., Press Release, Law Professors Urge Congress to Slow Down on Bankruptcy Reform (March 31, 1998) (describing letter by 57 bankruptcy professors comparing current process to extensive deliberation that preceded bankruptcy reform in 1978) (on file with author); Judges’ Letter.
Like the House, the Senate essentially preempted the Bankruptcy Commission by having its own bill ready to go. One day after the Commission had submitted its report, two senators – Senator Charles Grassley (R-IA) and Richard Durbin (D-IL) – introduced The Consumer Bankruptcy Reform Act, S. 1301. Later in the 105th Congress, Senator Grassley also would introduce a business and tax bankruptcy bill (S. 1914), which, after some hearings, would get folded into what would become a very large omnibus bill.

Senator Grassley’s subcommittee also held the usual hearings, although Senator Grassley viewed those opposed to his bill as a “fringe element” and was not very receptive to most bankruptcy insider concerns. The bill did evolve, however, as Senate Democrats sought to incorporate more provisions promoting responsible lending practices outside of the bankruptcy context.

The Clinton Administration supported most of the tenets of both the House and Senate bankruptcy bills. After all, the bill’s proponents framed the bill as an issue of personal

33 This bill differed from the House bill in its approach to screening chapter 7 debtors and in its amendments directed toward abusive creditor practices. Perhaps for these reasons, the Grassley-Durbin bill later would be characterized as the “liberal” or “moderate” bill that was “softer” on consumers. See, e.g., Dan Morgan, Creditors’ Money Talks Louder in Bankruptcy Debate; Consumer Groups Fight New Curbs on Insolvent Debtors, WASH. POST, June 1, 1999, at A4.

34 S. 1301 Hearing Testimony (on file with author).


36 See, e.g., Amendments S. 3540 - 3617 to S. 1301 (105th Cong. 1998). Richard Durbin, Capital View: Credit Blues: Banks, Consumers Both Responsible (1998). For example, the bill as passed amended the Truth in Lending Act to require that credit card statements include an estimate of the borrowers total cost of making only the recommended minimum monthly payment.

37 Statement of Administration Policy, H.R. 3150 - Bankruptcy Reform Act of 1998 (June 10, 1998); Digest, WASH. POST, May 9, 1998, at C1. The Department of Justice previously had submitted 24 pages of detailed
responsibility, which had been a theme in welfare reform. Yet, the Administration started to express concerns about discrete aspects of the bill, and also preferred the Senate bill to the House bill.

In the House, many Democrats supported the bill notwithstanding Administration concerns and the bill easily passed by 306-118 on June 10, 1998. The Senate overwhelmingly approved its own bill 97-1 on September 23, 1998 with only Senator Wellstone voting against it.

The bill encountered problems in the reconciliation process. The strongest proponents of the legislation excluded most Democrats from the negotiations, omitted or watered down most of what the Senate Democrats had incorporated into the bill, and added provisions banning the use of class actions against lenders who violate bankruptcy law.


38 See, e.g., A. Mechele Dickerson, America’s Uneasy Relationship with the Working Poor, 51 HASTINGS L.J. 17, 51 n.144 (1999).


40 House Roll Call Vote #506 (105th Cong. June 10, 1998). As discussed later, a challenge to garnering maximum support was a provision that capped the amount of homestead exemption that a state could provide, which was problematic for representatives from states such as Texas and Florida. This historically has been controversial. See, e.g., Eric Posner, The Political Economy of the Bankruptcy Reform Act of 1978, 96 MICH. L. REV. 47, 94-108 (1997). Representative Gekas successfully sponsored a floor amendment to eliminate the cap. Amendment H. 666 to H.R. 3150 (105th Cong. June 10, 1998) (Gekas amendment, passing 222-204).

41 Senate Vote #284 (105th Cong. Sept. 23, 1998) (passing H.R. 3150 with text of S. 1301 as amended); Who Cast That Lone Vote Against S. 1301? 8 CONSUMER. BANKR. NEWS 4 (Oct. 22, 1998) (quoting Senator Wellstone’s reasons: “Unfortunately, thanks to a well-orchestrated, well-funded lobbying campaign by the credit card industry, the voices of these people were drowned out today. It’s another case in Washington of well-organized, high-paid lobbyists carrying the day at the expense of ordinary citizens and consumers”).

42 Katherine Q. Seelye, Republicans Agree to New Limits On Consumer Bankruptcy Filings, N.Y. TIMES, October 8, 1998, at A1 (Senator Durbin saying bill that had passed 97-1 had been devastated in closed-door
The House easily passed this conference report bill by a vote of 300-125, with plenty of Democratic support, on October 9, 1998. Due to a filibuster threat preventing further action, the Senate voted only to consider the conference report. The 105th Congress adjourned with no bankruptcy bill.

106th Congress (1999-2000)

Early in the 106th Congress, Senator Grassley and Rep. Gekas reintroduced the failed conference report in both the Senate and House, which now was hundreds of pages and included an even wider range of provisions. The House again easily approved the bill on May 5, 1999 (318-108).

Republican conference); Caroline E. Mayer, Negotiators Complete Bankruptcy Reform Bill, WASH. POST, October 8, 1998, at E1 (comments of angered Senator Durbin who was excluded from bill reconciliation); Michael Schroder & Jacob M. Schlesinger, Financial-Services Bills Appear Dead, For Now, WALL ST. J., Oct. 12, 1998, at A4 (Durbin threatening to filibuster bill). For the class action ban, see House Report 105-794 §§ 116, 117. See also Letter from Jacob Lew, Director of the Executive Office of the President, Office of Management and Budget, to Hon. Trent Lott (Oct. 9, 1998) (veto threat).


46 Bankruptcy Reform Act of 1999 (H.R. 833, S. 625).

47 House Roll Call Vote # 115 (106th Cong. May 5, 1999). Like in the 105th Congress, Rep. Gekas successfully sought to diffuse objections to a homestead exemption cap by permitting the states to opt-out of the cap. House Amendment H. 54 to H.R. 833 (106th Cong. May 5, 1999) (agreed to by voice vote). In addition, Judiciary Committee Chair Henry Hyde (R-IL) had tried to replace the means test with a more discretionary approach to screening cases, but Congress overruled him. House Amendment H. 83 to H.R. 833 (106th Cong. May 5, 1999)
One might have expected Senate Democrats to oppose bill because their input had been stripped out in the prior reconciliation. Nonetheless, the bill passed 83-14 on February 2, 2000, after the Senate had engaged in another floor amendment process.

The House and Senate bills were similar but not identical, and again the reconciliation process again was not a model of negotiation and compromise. Bill proponents excluded many Democrats and inserted their preferred version into the shell of a moribund embassy security conference report. Thus, much of the Senate’s long amendment process again was for naught.

The House adopted the bankruptcy conference report on October 12, 2000 by a voice vote. Again, one might expect these procedural tactics would lead Senate Democrats to oppose this bill. Yet, a veto-proof majority of the Senate (70-28) voted favorably on the conference report on December 7, 2000. Then, President Clinton “pocket-vetoed” the bill due to several


49 Amendments S. 1695-S.2530 (106th Cong.).

50 See letter from Jacob J. Lew, Director, Office of Management and Budget, Executive Office of the President, to Hon. Orrin G. Hatch (May 12, 2000) (on file with author) (commentary on House and Senate bills).

51 H.R. 2414, “To enhance security of United States missions and personnel overseas, to authorize appropriations for the Department of State for fiscal year 2000, and for other purposes.” (having passed by voice vote and unanimous consent earlier). See generally News Release, Statement of U.S. Senator Paul Wellstone on the 11th Hour Attempt to Pass So-Called Bankruptcy Reform Legislation (October 12, 2000) (on file with author) (“House and Senate Republicans have taken a secretly negotiated bankruptcy bill and stuffed it into the hollowed-out husk of the State Department authorization bill”). Senator Grassley and Majority Leader Trent Lott also introduced another omnibus bankruptcy reform bill, S. 3046, which did not go forward.


discrete points of contention. Like the 105th Congress, the 106th Congress adjourned without enactment of a bankruptcy bill.

107th Congress (2001-2002)

In 2001, the text of the pocket-vetoed conference report was reintroduced and passed 306-108 in the House on March 1, 2001. The Senate’s approval (83-15) of a nearly-identical bill quickly followed less than two weeks later. Yet, Congress took no further action until 2002, when Democrats controlled the Senate by a tiny majority. At that time, public Congressional discussion of bankruptcy focused on two narrow but salient issues that also apparently had influenced the Clinton Administration’s pocket veto. First, lawmakers disputed how to deal with generous or unlimited state homestead exemptions that applied in bankruptcy cases. Lawmakers found a compromise on this issue in the spring of 2002.

Second, lawmakers disputed the ability of an abortion clinic protestor to discharge debts incurred from violations of the Freedom of Access to Clinic Entrances (FACE) Act. Some

54 See, e.g., Associated Press, Legislation to Overhaul Laws on Bankruptcy Dies as President Fails to Sign It, N.Y. TIMES, December 20, 2000, at A32 (Reform proponent saying "President Clinton let the American people down by pocket vetoing the bipartisan . . . bill"); News Release, Gekas Denounces Clinton Pocket Veto of Bankruptcy Reform; Gekas Encouraged by Bush Administration (December 21, 2000); Stephen Labaton, Promised Veto Appears to Doom Congressional Agreement on Overhauling Bankruptcy Law, N.Y. TIMES, October 13, 2000, at A30 (lobbyist saying "objections raised by the White House were not central to the issues and are excuses.").

55 News Release, Gekas Introduces Bankruptcy Reform Measure; Bill Would Reduce Abuse and Protect Consumers (January 31, 2001) (‘‘Because of the tremendous work done on this bill . . . only a small portion of time will be needed for hearings to effect a positive result for this much needed and widely-supported bill).”


57 Senate Vote #36 on S. 420 (107th Cong. March 15, 2001).

58 The time delay is likely explained by other events, such as Senator Jefford’s leaving the Republican party, September 11, 2001, and the discovery of anthrax in the Congressional buildings.
Senate Democrats would not support the bill without a new exception to discharge, while other members of Congress strongly opposed such an amendment. Lawmakers reached what they thought was a suitable compromise on this issue in July 2002, and the consumer credit industry retained Kenneth Starr, at that time an attorney with the law firm of Kirkland and Ellis, to assure doubtful anti-abortion lawmakers that the legislation would have little practical effect on the rights of abortion protesters.60

Starr’s logic did not sway enough members of the House to assure passage. In the post-mid-term election lame-duck session, members of the House of Representatives voted against bringing up the conference report (243-172), with the anti-abortion representatives substantially tipping the scales.61 Like the two prior Congresses, the 107th Congress ended without enactment of the omnibus bankruptcy bill.


By the beginning of the 108th Congress, plenty had changed since lawmakers initially introduced a bankruptcy bill in 1997. In addition to the obvious change in the economic climate and the change in presidents, voters had sent home Reps. McCollum and Gekas, who were two of the original main House sponsors.62 Nonetheless, early in the 108th Congress, Representative

59See text accompanying notes __ to __.

60Letter from Kenneth Starr to Financial Services Roundtable President Steve Barlett (November 13, 2002) (on file with author).

61Right before going out of session, House leaders again called a vote on the bill stripped of the FACE amendment. The House passed this version (244-116) but without expectation of further Senate movement.

Sensenbrenner re-introduced the omnibus bill, absent the FACE amendment. The bill quickly passed the House on March 19, 2003 (315-113). 63

After almost ten months of Senate inaction, the House tried to force action. It added the entire omnibus bill to a one-page reauthorization of chapter 12 (family farmer bankruptcy), which already had passed the Senate. 64 The House passed this substantially larger bill by a vote of 265-99 in January of 2004. Senate majority leader Tom Daschle expressed doubt in the press that the House’s approach would be successful, 65 and as of this writing, lawmakers have made no further progress. 66

For the bankruptcy establishment that opposes much of the 500 page omnibus bankruptcy bill on policy or drafting grounds, the tortured path of the bill over the past seven years has brought intermittent sadness, jubilation, and overall exhaustion. Many within the bankruptcy establishment watched the drama unfold, wondering how they would be able to implement this bill that was so out of touch with current bankruptcy law and practice. Others, however, may have found an avenue of indirect impact through the news media.

63 House Roll Call Vote # 74 on H.R. 975 (108th Cong. March 19, 2003). That bill differs from the prior bill in that it includes a few legislative responses to recent corporate scandals. See H. 8 (voice vote) to H.R. 975.

64 S. 1920 (108th Cong.).

65 Dow Jones Business Wire, U.S. House GOP Tries to Resurrect Stalled Bankruptcy Bill (Jan. 28, 2004) (citing Daschle stating that Democrats have enough votes to sustain a filibuster in Senate).
II. The Relevance of Media Treatment to Developments in Bankruptcy Legislation

News media play a varied and complex role in American law- and policy-making. Courts increasingly have used news in judicial opinions, and attribute statistics to such sources. Lawyers engage in media management as part of their litigation strategies. Scholars

66 Apparently, Senator Feingold (D-WI) is blocking the Senate’s appointment of conferees.

67 Scholars in other disciplines debate characterizations of news making as an institution and its precise relationship to law and policy, but apparently not its importance. See, e.g., TIMOTHY E. COOK, GOVERNING WITH THE NEWS 4 (1998) (characterizing news as political institution and discussing differences between political scientists’ and sociologists conception of journalists); GAYE TUCHMAN, MAKING NEWS: A STUDY IN THE CONSTRUCTION OF REALITY 4 (1978) (news as “first and foremost a social institution”). See generally HERBERT J. GANS, DECIDING WHAT’S NEWS (1980); MICHAEL SCHUDSON, THE SOCIOLOGY OF NEWS (2003); M. ETHAN KATSH, LAW IN A DIGITAL WORLD 9 (1995) (describing law and media as “two of society’s more powerful forces,” thus surprising that links between two forces receive “negligible attention”).


have studied media coverage of a range of law- and policy-related issues, including executive appointment candidates, judicial elections, presidential elections, and press accounts of victims’ families’ comments in capital cases.

Studying news coverage of legislation should be at least as fruitful as these other lines of inquiry. Reporters and legislators “co-produce” both news and policy. News media offer new

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72 Joseph D. Kearney & Howard B. Eisenberg, *The Print Media and Judicial Elections: Some Case Studies from Wisconsin*, 85 Marquette L. Rev. 593, 770, 775-777 (2002) (studying whether readers gained sufficient information from print media to vote on Abrahamson-Rose election, and finding that information “seems to lack the educative component needed to overcome the general public ignorance” about judges and judicial elections).


legislation ideas,\textsuperscript{76} while legislators and others use the media as outlets to construct and highlight public problems and to gain support for particular solutions.\textsuperscript{77}

Researchers who have directly explored media coverage of particular legislation have concluded that media coverage increases the possibility of legislative attention,\textsuperscript{78} and sometimes


this is regardless of the media portrayal’s accuracy. Media coverage also has the potential to change lawmakers’ approaches to dealing with an issue. Even if the media do not independently determine or influence Congressional attention, they indirectly may affect Congressional action, perhaps through influencing public opinion.

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78 See, e.g., Frank R. Baumgartner, Bryan D. Jones, and Beth L. Leech, *Media Attention and Congressional Agendas*, in *Do the Media Govern? Politicians, Voters, and Reporters in America* 350, 359, 362 (Shanto Iyengar & Richard Reeves, eds., 1997) (studying relevance of both nature and frequency of media coverage, and finding, among other things, that media helped shift nuclear power debate toward negative safety issues, which in turn led to policy changes, and that media and Congressional attention on urban problems tracked each other).


81 For example, Paul Burstein studied New York Times coverage and other potential determinants of congressional sponsorship and support for equal employment opportunity legislation between 1941 and 1972. *Paul Burstein, Discrimination, Jobs, and Politics: The Struggle for Equal Employment Opportunity in the United States since the New Deal* 80-86 (1985) (finding only weak correlation between media coverage and Congressional sponsorship and support, and concluding that media coverage did not play an independent role, but noting that media coverage may have had indirect effects, such as on public opinion).

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change the public’s understanding of legislation once enacted. Legal academics and professionals who want to understand, or perhaps influence, the legislative process might miss a piece of the puzzle if legislative news treatment goes un-investigated.

Perhaps of even greater relevance are studies that implicitly recognize media coverage’s effects on policymaking. Social scientists have considered whether the media have roles in “agenda-setting,” namely helping rank the salience of particular issues. Researchers usefully question how the media “frame” issues or problems, or focus on which causal stories more


83 See generally M. ETHAN KATSH, LAW IN A DIGITAL WORLD 9 (1995) (describing law and media as “two of society’s more powerful forces,” thus surprising that links between two forces receive “negligible attention); Daniel M. Filler, From Law To Content in the New Media Marketplace, 90 CAL. L. REV. 1739, 1756 n. 80 (2002) (reviewing FEDWA MALTI-DOUGLAS, STARR REPORT DISROBED (2000)).


85 For a foundational study, see Maxwell McCombs and D. Shaw, The Agenda-Setting Function of Mass Media, 36 PUBLIC OPINION QUARTERLY 176-185 (1972) (high correlation between order of salience of public policy issues as covered in media and as described by undecided voters, using content analysis and surveys). See also WALTER LIPPMANN, PUBLIC OPINION (1922) (arguing role of news media in shaping individuals’ conceptions about public affairs). See generally Everett M. Rogers, William B. Hart & James W. Dearing, A Paradigmatic History of Agenda-Setting Research, in DO THE MEDIA GOVERN? (Shanto Iyengar & Richard Reeves, eds., 1997).

86 Schudson defines framing as “principles of selection, emphasis, and presentation composed of little tacit theories about what exists, what happens, and what matters.” MICHAEL SCHUDSON, THE SOCIOLOGY OF NEWS 35 (2003). See also KATHLEEN HALL JAMIESON & PAUL WALDMAN, THE PRESS EFFECT: POLITICIANS, JOURNALISTS,
likely lead to policy action. They have used these techniques to study media coverage of many issues, including crime waves, bridge collapse, affirmative action, welfare, homelessness, and a variety of poverty-related conditions, and they sometimes approach this


89 Robert A. Stallings, Media Discourse and the Social Construction of Risk, 37 SOCIAL PROBLEMS 80 (February 1990) (studying interstate bridge collapse coverage and role of experts providing theme about risk and responsibility, and finding one story line on causality and blame regarding the collapse, and another representing the collapse as an example of a growing unsafe bridge problem).


92 Barrett Lee, Sue Hinze Jones and David W. Lewis, Are the Homeless to Blame?, 33 SOCIOLOGICAL Q. 511-524, 537-538 (1992) (finding media valuable public arena to gauge public opinion and predict legislative developments on homelessness, and finding majority of reporting mentioning any cause mentioned structural determinants, such as a shrinking supply of low cost housing); Gary Blasi, Advocacy and Attribution; Shaping and Responding to Perceptions of the Causes of Homelessness, 19 ST. LOUIS U. PUB. L. REV. 207 (2000) (studying articles on homelessness in five major newspapers, and finding 4% attributing to individualistic causes, an extremely
with a comparative perspective. These researchers are not necessarily asking whether a condition such as homelessness actually is an individual or structural problem, although certainly plenty of studies focus on that type of question. Rather, they consider how the media portray or construct homelessness, and the extent to which this portrayal increases receptiveness to a certain conception of a problem or its supposed solution. These projects offer helpful explorations of media coverage even if one prefers not to take an extreme social constructionist stance.

See also Barrett A. Lee, Sue Hinze Jones, & David W. Lewis, Public Beliefs About the Causes of Homelessness, 69 SOCIAL FORCES 253 (1990) (beliefs about homelessness emphasize structural forces and bad luck rather than individualistic factors).

Shanto Iyengar, Framing Responsibility for Political Issues: The Case of Poverty, in DO THE MEDIA GOVERN? POLITICIANS, VOTERS, AND REPORTERS IN AMERICA, 279 (Shanto Iyengar & Richard Reeves, eds., 1997) (participants “were generally least apt to hold individuals causally responsible and most apt to consider society responsible [for poverty] when the [television] news frame was societal”); Robert M. Entman & Donna Rose Leff, The Media’s Coverage of Poverty, A Report of the Chicago Council On Urban Affairs (1990) (finding most routinely used image clusters involved urban blight and African Americans, and major media rarely mentioned unemployment, economic suffering or homelessness); Kevin B. Smith & Lorene H. Stone, Rags, Riches, and Bootstraps: Beliefs About Causes of Wealth and Poverty, 30 SOCIOLOGICAL QUARTERLY 93-107 (1989) (individualism widely accepted metatheory for explaining wealth and poverty, but not as universally supported as often assumed).

George Wilson, Toward A Revised Framework For Examining Beliefs About The Causes Of Poverty, 37 SOC. Q. 413 (1996) (analyzing top-5 newspaper reporting on welfare, homeless, and migrant workers, finding groups have not been uniformly framed, and believing media messages alter individuals’ perceptions derived from personal experiences); Annette Benedict, Jeffrey S. Shaw, and Leanne G. Rivlin, Attitudes Towards the Homeless in Two New York City Metropolitan Samples, 17 J. VOLUNTARY ACTION RES. 90, 92 (1998) (evaluating perceptions of homeless among suburbanites working in New York City, and comparing to perceptions of elderly, welfare recipients, and unemployed). See also Gary Blasi, Advocacy and Attribution; Shaping and Responding to Perceptions of the Causes of Homelessness, 19 ST. LOUIS U. PUB. L. REV. 207 (2000) (noting adage that media provide instruction and public opinion surveys determine how well lessons have been learned). Early agenda setting studies relied to some extent on a comparative approach, ranking salience among several issues. For a review, see Maxwell McCombs & George Estrada, The News Media and the Pictures in Our Heads, in DO THE MEDIA GOVERN? 237-238 (1997).


See generally Kay Young McCchesney, Family Homelessness: A Systemic Problem, 46 J. OF SOCIAL ISSUES 191, 200 (1990) (perceptions of homelessness as personal/family problem may lead people to conclude federal government need not be involved); Lawrence Bobo, Social Responsibility, Individualism, and Redistributive Policies, 6 SOCIOLOGICAL FORUM 71 (1991); Ernestine S. Gray, Children, Crime, and Consequences: Juvenile Justice in America: The Media - Don’t Believe the Hype, 14 STAN. L. & POL’Y REV 45, 48 (2003) studying limited media coverage of juvenile crime and arguing that media portrayal leads to more punitive responses to juvenile
Exploring the media’s role in legislation has an important related component. One should consider not only what news reporters and commentators say and how they say it, but the parties on whom they rely to shape and fill their stories. Sources are “the deep, dark secret of the power of the press;” they even might “lead the dance” between reporters and themselves. They


97 For explanations of social constructionism, see, e.g., Joel Best, "Road Warriors" on "Hair Trigger Highways": Cultural Resources and the Media's construction of the 1987 freeway shootings problem, 61 SOC. INQUIRY 327 (1991) (“Explaining how and why particular images of problems emerge has become the central task for constructionist analysis”); Theresa Glennon, Knocking Against the Rocks: Evaluating Institutional Practices and the African American Boy, 5 J. HEALTH CARE L. & POL. 10 (2002) (“basic insight of social construction theory is that much of what we accept as fact is, rather, a culturally influenced interpretation of phenomena”). For commentary on and criticism of social constructionism, see, e.g., IAN HACKING, THE SOCIAL CONSTRUCTION OF WHAT? (1999); Steve Woolgar & Dorothy Pawluch, Ontological Gerrymandering: The Anatomy of Social Problems Explanations, 32 SOC. PROBLEMS 214 (February 1985).


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have a powerful opportunity to shape the way a problem or issue is understood. They establish themselves as players in the debate, and ultimately have the potential to become “repeat players” because they have been proven cite-worthy, speak in ways that the reporter can use, and have made themselves easy to find. Researchers have suggested that the system rewards those who engage in outreach efforts with the media. Speaking in quotable sentences and having a flair for the dramatic certainly help as well. Sources might be particularly influential in shaping


103 William Gamson & Kathryn Lasch, The Political Culture of Social Welfare Policy, in Evaluating the Welfare State: Social and Political Perspectives 397, 401 (Shimon Spiro and Ephraim Yuchtman-Yaar, eds., 1983) (describing process by which actors in symbolic arena influence media portrayal of events, and noting “[a]n apt metaphor or catchphrase will be picked up and amplified through the media - serving the interest of both sources and journalists”). For an evaluation of soundbites, particularly with respect to television, see Daniel C. Hallin, Sound Bite News; Television Coverage of Election, 42 J. COMMUNICATION 5-24, reprinted in Do the Media Govern? (Shanto Iyengar & Richard Reeves, eds., 1997);
stories about a legal system or issue if the details are relatively unfamiliar. Bankruptcy likely
fits that characterization well, and is the subject discussed here.

To evaluate press coverage of the omnibus bankruptcy bill, I principally focused on three
Times, and The Washington Post. These papers routinely are chosen for analysis by a wide
range of researchers. Although good arguments support expanding the analysis to other media
outlets, including local newspapers, these national newspapers are a good start given the

104 See, e.g., Sandra J. Ball-Rokeach & Melvin DeFleur, A Dependency Model of Mass Media Effects,
COMMUNICATION RESEARCH 3:3-21 (1976); THEORIES OF MASS COMMUNICATION (1982) (relative importance of
media discourse depends on readily available meaning-generating experiences in readers’ everyday lives).

105 See, e.g., Audit Bureau of Circulations, Top 100 Newspapers by Largest Reported Circulation (January
12, 2003) http://www.accessabc.com/reader/top100.htm; Matthew Page, Most Top Newspapers in US Post Little
Change in Circulation, WALL ST. J. B4, November 6, 2002, at B4. The New York Times claims to be the highest
Street Journal declares a circulation of over 1.8 million as of the six months ending September 2002.

106 See, e.g., CAROL H. WEISS & ELEANOR SINGER, REPORTING OF SOCIAL SCIENCE IN THE MEDIA 179
Wearden, & Dulcie Murdock Straughan, Invisible Power: Newspaper News Sources and the Limits of Diversity, 64
JOURNALISM Q. 45 (1987) (N.Y. Times and Wash. Post, among others); Robert A. Stallings, Media Discourse and
the Social Construction of Risk, 37 SOCIAL PROBLEMS (February 1990) (N.Y. Times); Barrett Lee, Sue Hinze Jones
and David W Lewis, Are the Homeless to Blame, 33 SOCIOLOGICAL Q. 511-524 (1992) (N.Y. Times and Wash. Post);
George Wilson, Toward A Revised Framework For Examining Beliefs About The Causes Of Poverty, 37 Soc. Q 413,
415-416, 425 app. 1 (1996) (top five circulation newspapers); Sarah F. Russell, Covering Women and Violence:
Media Treatment of VAWA's Civil Rights Remedy, 9 MIC. J. GENDER & L. 327, 328 (2003) (including Wall St. J.,
Wash, Post, and N.Y. Times); PAUL BURSTEIN, DISCRIMINATION, JOBS, AND POLITICS: THE STRUGGLE FOR E QUAL
EMPLOYMENT OPPORTUNITY IN THE UNITED STATES SINCE THE NEW DEAL 202 (1985) (using N.Y. Times Index in
other type of study). See also EDWARD S. HERMAN & NOAM CHOMSKY, MANUFACTURING CONSENT: THE POLITICAL
ECONOMY OF THE MASS MEDIA 132-136 (1988) (studying N.Y. Times reporting for systematic media bias); LEON V.

107 See, e.g., J. William Spencer & Elizabeth Triche, Media Constructions of Risk and Safety: Differential
Framings of Hazard Events, 64 SOCIOLOGICAL INQUIRY, 199-213 (May 1994) (New Orleans paper); Jane Delano
Sources and the Limits of Diversity, 64 JOURNALISM Q.45 (1987) (national sources and North Carolina papers); Joel
Best, "Road Warriors" on "Hair Trigger Highways": Cultural Resources and the Media's Construction of the 1987
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growing uniformity of national news, the consolidation of media ownership, and the political power of these particular publications. Occasionally, however, I supplement the analysis with other media sources. I studied what I identified as the most relevant treatments of bankruptcy reform in these papers. I focused on news and commentary between August 31, 1997 and August 31, 2001. The next section explores three emerging frames that reflect a partnership with some bankruptcy establishment sources and their implications.


109 Cf. Joel Best, "Road Warriors" on "Hair Trigger Highways": Cultural Resources and the Media's Construction of the 1987 freeway shootings problem, 61 Sociological Inquiry 327, 328 (1991) (capturing “most significant treatments locally and nationally of freeway violence problem” rather than collecting random sample). See also Victoria F. Nourse & Jane S. Schacter, The Politics of Legislative Drafting, 77 NYU L. REV. 575, 580-581 (2002) (justifying case study rather than large quantitative sample study); Samuel R. Gross & Daniel J. Matheson, What They Say in the End: Capital Victims’ Families and the Press, 88 Cornell L. Rev. 486, 487-488 (2003) (set of newspaper articles not representative or exhaustive, but are “interesting and suggestive”). The term “bankruptcy” appears with incredible frequency, including references to specific cases or as a pejorative term (both in and out of newspapers). See, e.g., Laurence Tribe, The Unbearable Wrongness of Bush v. Gore, 19 Const. Commentaries 571, 573 (2003) (referring to the “embarrassing bankruptcy” of the Supreme Court’s rationale in Bush v. Gore). A random sample of the more than 12,000 pieces mentioning “bankruptcy” therefore would have been fruitless. Basic information about these 12,000+ items was entered into a spreadsheet and coded for specific information, and subject coding was used to narrow the sample. A subsequent review by the author of omitted pieces resulted in the recharacterization of approximately 50 items. One item was added that is inexplicably missing from the Lexis archive of New York Times pieces. This narrowing left more than 500 items, many of which were still not directly relevant. Thus, the author reviewed the articles or their coding and removed those least relevant even though this had the potential to inject additional subjectivity.

110 The start date slightly precedes introduction of the initial bankruptcy bills in the 105th Congress, and the end date was chosen at a time when it seemed virtually certain the bill would have passed.
III. Three Prominent Emerging Frames of Bankruptcy

A. A Campaign Finance Story: Industry Power, Money, and Predation

As in earlier pieces, industry representatives and other bill proponents who were asked for quotes stressed debtor irresponsibility,\(^{111}\) declining bankruptcy stigma,\(^{112}\) and the assertion that the bill fixes a flaw in the current system,\(^{113}\) but that fix does not affect legitimate users.\(^{114}\) The


difference is that these concepts no longer framed the story all the time. Some journalists covered the omnibus bankruptcy bill almost exclusively as a story of industry influence. \(^{115}\) In one prominent story, for example, a front page Wall Street Journal story in June 1998, “Card Games: As Bankruptcies Surge, Creditors Lobby Hard to Get Tougher Laws,” Jacob Schlesinger attributed the likely success of bankruptcy reform to a “multimillion-dollar public-relations and lobbying blitz run largely by companies with the most to gain.” \(^{116}\)

Although not substantively/legally relevant to the current system or the details of proposed amendments, this frame made campaign contribution statistics and credit card lending statistics part of the bankruptcy reform story. \(^{117}\) Reporters questioned the existence of a connection

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\(^{115}\) As early as January 1998, political reporter Bill McAllister, who admittedly focuses on lobbying for the Washington Post, reported that a “powerful coalition of credit card and financial companies is promising to make the seemingly arcane intricacies of bankruptcy law one of the most heavily lobbied issues of 1998.” Bill McAllister, *Reopening Chapter 7*, WASH. POST, January 1, 1998, at A23 (discussing lobbyists, public relations firms, and heavy hitters, and described the power of the American Financial Services Association, whose representative “promise[d] lots of ‘old-fashioned lobbying,’” which McAllister translated into “financial CEOs buttonholing lawmakers and urging them to put the screws to” bankruptcy filers).

\(^{116}\) Jacob M. Schlesinger, *Card Games: As Bankruptcies Surge, Creditors Lobby Hard To Get Tougher Laws*, WALL ST. J., June 17, 1998, at A1 (explaining how consumer lending coalition helped “nuke” the Bankruptcy Commission’s report, drafted parts of the House bill, funded and widely advertised research justifying reform, underwrote opinion polls to show public support for reform, retained expert lobbyists, increased campaign contributions for legislators, and tried to pressure another group into taking a less negative stance toward the legislation). Around the same time, Robert Cwiklik of the Wall Street Journal wrote an in-depth story on industry-funded research, with a special focus on a credit-industry-funded academic center that had produced studies to support the industry’s bankruptcy reform requests. Robert Cwiklik, *Education: Ivory Tower Inc.: When Research and Lobbying Mesh*, WALL ST. J., June 9, 1998, at B1.

between candidate or party fundraising and bankruptcy bill support. They explained the bill’s overwhelming support by the fact that “the campaign contributions and lobbying muscle come mainly from the politically powerful financial services community.” Other stories were quick to note that the bill’s movement “underscores the new influence business has in Washington,” and constitutes “a huge success for banks, credit-card companies, and retailers,” who “boast some of the best-connected lobbyists on Capitol Hill.”


118 See, e.g., John D. McKinnon, A Florida Hopeful Banks on His Role in Bankruptcy Bill, WALL ST. J., September 26, 2000, at A28 (considering Rep. McCollum’s reliance on credit industry funds for Senate campaign and leading role with bankruptcy bill); Tom Hamburger, Laurie McGinley & David S. Cloud, Influence Market: Industries that Backed Bush Are Now Seeking Return on Investment, WALL ST. J., March 6, 2001, at A1 (considering whether industry expected and would receive payback from Bush Administration by supporting bankruptcy bill); Jacob M. Schlesinger, Bush to Support Bankruptcy Bill That Clinton Vetoed Last Year, WALL ST. J., February 6, 2001, at A4 (“President Bush will soon give an important boost to the credit-card industry and other lenders, endorsing their efforts to tighten bankruptcy laws that were blocked by former President Clinton”); Philip Shenon, Hard Lobbying On Debtor Bill Pays Dividend, N.Y. TIMES, March 13, 2001, at A1 (“lobbying campaign led by credit card companies and banks that gave millions of dollars in political donations to members of Congress and contributed generously to President Bush’s 2000 campaign is close to its long-sought goal of overhauling” bankruptcy); Dan Morgan & Kathleen Day, Early Win Emboldens Lobbyists for Business; Groups to Push Much Broader Agenda, WASH. POST, March 11, 2001, at A1; Susan Schmidt, Torricelli’s Money Push Also Raises Some Hackles; Business Fills Senate Democratic Coffers, WASH. POST, June 17, 2000, at A1 (wondering whether Senator Torricelli supported bill because he was “courting” industry for party fundraising).


Even stories with a broader focus used language suggesting credit industry power and even sometimes aggression. The legislation was “vigorously sought,”123 “championed”124 and “pushed”125 by the credit industry. The credit industry “swarmed,”126 “fanned out across Capitol Hill,”127 and “lobbied hard,”128 through a “multimillion dollar lobbying, research, and advertising campaign”129 “to ensure . . . it would be first in line to collect from bankruptcy


126 Katherine Q. Seelye, House to Vote Today on Legislation for Bankruptcy Overhaul, N.Y. TIMES, June 10, 1998, at A18 (“scores of lawyers and industry lobbyists swarmed over the House and Senate Judiciary Committees as they gavelled the bankruptcy bill to approval”).


129 See, e.g., Jacob M. Schlesinger, Senate Approves Overhaul of Bankruptcy Code, WALL ST. J., September 24, 1998, at A2; Michael Schroder & Jacob M. Schlesinger, Financial-Services bills Appear Dead, For Now, WALL ST. J., Oct. 12, 1998, at A4 (“credit card companies spent heavily on lobbying, advertising, and research over the past year to promote the most sweeping overhaul of the federal bankruptcy code in 20 years”); Katherine Ackley & Jacob M. Schlesinger, House Panel Approves Bankruptcy-Reform Bill, WALL ST. J., April 29, 1999, at B16 (“credit card companies and other lenders have lobbied hard over the past two years to toughen the Bankruptcy Code,” and even Rep. Henry Hyde found legislation heavy handed).
filers,”130 and to “reap billions of dollars.””131 Dan Morgan of the Washington Post described creditor representatives who “patrolled” outside of key House votes and engaged in “behind-the-scenes-maneuvering.”132 In one article, the accompanying visual had little to do with bankruptcy and everything to do with lobbying power: the New York Times ran a picture of lobbyists who “can regularly be found in the Senate Reception Room, just off the Senate chamber, and there was no exception yesterday as the bankruptcy overhaul legislation championed by the banking and credit card industries moved toward final passage.”133 Stories of creditor infighting and internal fractures to the coalition also emerged,134 notwithstanding the credit industry’s general assertion of a unified position and interest in bankruptcy.135


131 Katherine Q. Seelye, Senate Votes to Curb Bankruptcy Abuse by Consumers, N.Y. TIMES, September 24, 1998, at A25. See also Kathleen Day, Bankruptcy Legislation Still Faces Hurdles, Wash. Post, May 5, 2000, at E2. (“after three years of trying – and spending more than $23.4 million in contributions . . . industry groups were closer than ever to getting the bankruptcy bill they wanted enacted”).

132 Dan Morgan, Creditors’ Money Talks Louder in Bankruptcy Debate; Consumer Groups Fight New Curbs on Insolvent Debtors, Wash. Post, June 1, 1999, at A4 (noting “wide spectrum of special interests” backing bill, saying House bill is “salted with language benefiting” a variety of types of creditors who have lobbied heavily); Dan Morgan & Kathleen Day, Early Win Emboldens Lobbyists for Business; Groups to Push Much Broader Agenda, WASH. POST, March 11, 2001, at A1 (lawmakers “consulted closely with representatives” of key lobbyists and creditor representatives).


134 Yochi J. Dreazen, Bankruptcy Reform Pits Industries Against Each Other, WALL ST. J., April 20, 2000, at A28 (“In the back rooms of Capitol Hill, the nature of the fight changes. Industry lobbyists, many ostensibly allied in favor of bankruptcy overhaul legislation, vie to carve out as many favors for their clients as possible at the expense of other business groups”).

135 David Wessel, Capital: The Muddled Course of Bankruptcy Law, WALL ST. J., February 22, 2001, at A1 (front-page piece explaining that bankruptcy at “loftiest level” is about balancing debtors’ fresh starts with creditor fairness but “at ground level, its about consumer lenders – car dealers, credit-card issuers, furniture stores – jockeying
Throughout these pieces, members of the bankruptcy establishment and others among the growing opposition to the bill were quoted throwing barbs at the credit industry rather than being quoted on matters of substantive bankruptcy law. They said it was the “best bill money can buy,” the “industry’s wish list,” “of, by and for the credit companies,” “written by a lot of people who have very special interests to protect.” They described the credit industry as “big givers, heavy hitters, a huge and powerful lobbying coalition,” who wrote “large parts of the for position to get what they can from families with little money left”); Tom Hamburger, *Auto Firms See Profit in Bankruptcy- Reform Bill Provision*, WALL ST. J., March 13, 2001, at A28 (“long-sought bill . . . contains several other obscure provisions that . . . provide special benefits to groups with the ability to influence decision makers”); Yochi J. Dreazen, *Bankruptcy Reform Pits Industries Against Each Other*, WALL ST. J., April 20, 2000, at A28. *Compare Transcript, Presentation of National Consumer Bankruptcy Coalition to the National Bankruptcy Review Commission (December 17, 1996) (“We’ve tried to convey that we are a unified industry. We’re trying to speak with one voice. We find it to be a harmonious one, not a cacophony, for example, and if you hear any discord, please let us know.”). See generally Eric Posner, *The Political Economy of the Bankruptcy Reform Act of 1978*, 96 Mich. L. Rev. 47, 55-56 (1997) (explaining conflicts among creditors in creation of 1978 Act).”)

136 Philip Shenon, *Hard Lobbying On Debtor Bill Pays Dividend*, N.Y. TIMES, March 13, 2001, at A1 (“credit card industry's wish list . . . They've hired every lobbying firm in Washington. They've decided that it's time to lock the doors to the bankruptcy courthouse”); Katherine Q. Seelye, *House to Vote Today on Legislation for Bankruptcy Overhaul*, N.Y. TIMES, June 10, 1998, at A18 (creditors "could easily see a billion a year in windfall profits from this legislation . . . by squeezing hard-pressed families out of the bankruptcy system and continuing to collect from them $50 here and $50 there"); Katherine Q. Seelye, *D'Amato Proposes Cut in Some Fees Charged to A.T.M. Users*, N.Y. Times, July 23, 1998, at A17 ( "If you vote against it, you lose campaign contributions from the banks . . . But if you vote for it, you let your opponent point out to voters that you just socked it to consumers”); Katherine Q. Seelye, *Senate Votes to Curb Bankruptcy Abuse by Consumers*, N.Y. TIMES, September 24, 1998, at A25 (“How can democratically elected representatives vote to transfer wealth from financially troubled families to corporate lenders who are making record profits?”); Yochi J. Dreazen, *Bankruptcy Reform Pits Industries Against Each Other*, WALL ST. J., April 20, 2000, at A28 (“bill is a case of one industry picking the pockets of another”).


140 Philip Shenon, *Bankruptcy Measure Gains On a Lopsided Senate Vote*, N.Y. TIMES, March 15, 2001, at A22 (Wellstone saying industry representatives “have way too much access, and they have way too much say. And I 2/25/04 draft
bill, paid for questionable research to support their claims, hired some of the best lobbyists in
town and liberally stuffed the campaign coffers of key members of both parties."\textsuperscript{141} Skeptics and
opponents described credit industry lobbying as “brazen,” particularly when "their aggressive
marketing and lending practices" that push families into financial trouble.\textsuperscript{142}

\textsuperscript{141} Dan Morgan & Kathleen Day, \textit{Early Win Emboldens Lobbyists for Business; Groups to Push Much
Broader Agenda}, WASH. POST, March 11, 2001, at A1 (Travis Plunkett, Consumer Federation of America); Kathleen
Day, \textit{House Passes Bankruptcy Limits; Measure Would Make It Harder for Consumers to Wipe Out All Debts},
WASH. POST, March 2, 2001, at A1 ("one-sided bill demonstrates the power of political money over balanced public policy"); Kathleen Day, \textit{Credit Counseling Agencies Deal Setback; Banks Reduce Funding as Bankruptcies Rise; Consumer Groups Hit Move}, WASH. POST, July 16, 1999, at E1 ("industry has spent millions of dollars to scapegoat many working Americans"); Katherine Q. Seelye, \textit{First Lady in a Messy Fight On the Eve of Her Campaign}, N.Y.
TIMES, June 27, 1999, at sec. 1 p. 1 ("combination of aggressive industry lobbying, by retailers as well as creditors,
and they spent a great deal"); Kathleen Day, \textit{Senate Votes To Toughen Bankruptcy; 36 Democrats Support Measure
Backed by Bush}, WASH. POST, March 16, 2001, at A1 ("cries, claims and concerns of vulnerable Americans who
have suffered a financial emergency have been drowned out by the political might of the credit card industry");
Stephen Labaton, \textit{Promised Veto Appears to Doom Congressional Agreement on Overhauling Bankruptcy Law}, N.Y.
TIMES, October 13, 2000, at A30 ("heartless attack on working families by powerful financial institutions"); Philip
Shenon, \textit{Senate Rejects Industry Curbs On Bankruptcy}, N.Y. TIMES, March 8, 2001, at A18 (credit industry
“showered senators and the political parties, and it shows”); Kathleen Day, \textit{Senate Votes To Toughen Bankruptcy; 36
Democrats Support Measure Backed by Bush}, WASH. POST, March 16, 2001, at A1 (Leahy saying industry got “a
heck of a windfall and a lot more than they deserve.”); Philip Shenon, \textit{Hard Lobbying On Debtor Bill Pays Dividend},
N.Y. TIMES, March 13, 2001, at A1 (Leahy commenting on credit industry influence over lawmakers’ support for
bill); Katherine Q. Seelye, \textit{House to Vote Today on Legislation for Bankruptcy Overhaul}, N.Y. TIMES, June 10, 1998,
at A18 (“hard to find someone on K Street who hasn’t been called in to work on this bill”).

\textsuperscript{142} Kathleen Day, \textit{Foes of Bankruptcy Bill Point Finger at Credit Card Issuers}, WASH. POST, February 2,
2001, at E1; Philip Shenon, \textit{Senate Panel Approves Bill for Overhauling Bankruptcy Laws}, N.Y. TIMES, March 1,
2001, at A15 (similar quote); David Wessel, \textit{The Muddled Course of Bankruptcy Law}, WALL ST. J., February 22,
2001, at A1 (unnamed consumer advocates claiming creditors too quick to lend). \textit{See also} Associated Press,
\textit{Resisting Credit Cards’ Allure}, N.Y. TIMES, January 23, 2000, at sec 3 p 11 (consumer advocates attributing decline
in filings to changes in lending/borrowing practices); Associated Press, \textit{Legislation to Overhaul Laws on Bankruptcy
Dies as President Fails to Sign It}, N.Y. TIMES, December 20, 2000, at A32 (Kennedy). \textit{See also} Eric Schmitt,
\textit{Bankruptcy Bill Approved}, N.Y. TIMES, February 6, 2000, at sec. 4 p. 2 (Kennedy referring to bill as “industry’s
cure” that was “worse than the disease”). \textit{See generally} DAVID A. SKEEL, JR., \textit{DEBT’S DOMINION: A HISTORY OF
In addition to news reporters, the New York Times and Washington Post editorial pages also strongly embraced this industry power angle. They described the bill as “stuffed with gifts to the credit card industry, which has gained leverage in Congress through millions of dollars in campaign contributions.” They found the support of both Republicans and Democrats being lobbied, bought, and “generously paid:” for “a modest investment – perhaps $20 million in political contributions and another $5 million or so to grease the palms of lobbyists – banks, credit card companies, and other lenders are hoping for legislation that squeeze $3 billion extra from bankrupt debtors every year.” Authors of signed opinion pieces, including David Broder, Floyd Norris, and Senator Russell Feingold, also framed discussions of bankruptcy in terms of industry influence.

143 The Wall Street Journal editorial board did not directly address bankruptcy reform during the period of study.

144 A Gift for the Credit Card Industry, N.Y. TIMES, May 5, 2000, at A22.

145 A Retreat in the Senate, WASH. POST, Jan. 27, 2000, at A26 (“lending industry badly wants the bankruptcy bill. That’s the pressure to which the Senate Democrats are yielding.”); A Business Dictated Bankruptcy Law, N.Y. TIMES, March 16, 2001, at A18 (bill as reward for industry generosity to Republican candidates, and noting “[n]ow credit card issuers want the government to reduce all risk from their profitable business.”); Bankrupt Bipartisanship, WASH. POST, December 15, 2000 at A40 (encouraging Senators to back possible Clinton veto “however generous the contributions from the credit-card industry”); Reform Choice for Mr. Bush, WASH. POST, February 19, 2001, at A32 (predicting industry would remind lawmakers about contributions when they scrutinized bill); Reform Choice for Mr. Bush, WASH. POST, February 19, 2001, at A32. Loopholes for Millionaires, WASH. POST, July 16, 2001, at A14 (questioning whether conference committee could make meaningful progress given Senators Daschle and Biden’s support for credit industry).


147 David S. Broder, Morally Bankrupt Creditors, WASH. POST, May 18, 1999, at A23 (“banks that dominate that business have been the most aggressive lobbyists for tightening the bankruptcy law.”); David S. Broder, Business in the Driver’s Seat, WASH. POST, March 14, 2001, at A25 (“[b]anks and credit card companies have been pressing for the bankruptcy law changes for five years, eager to stem their losses from people who accept the ‘easy credit’ these same companies market with 3 billion solicitations a year”); Russ Feingold, Lobbyists’ Rush for Bankruptcy Reform, WASH. POST, June 7, 1999, at A19 (citing legislation as poster child for campaign finance reform, and stating “powerful economic interests see an opportunity to push through major structural changes to the bankruptcy system

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Anecdotal observation reveals that these reporting and editorial examples have parallels in other media outlets. \(^{148}\) For example, Time Magazine ran a major article, “Soaked by Congress; Lavished with Campaign Cash, Lawmakers are ‘Reforming’ Bankruptcy - Punishing the Downtrodden to Catch a Few Cheats,” \(^{149}\) which was rumored to have affected the political future of bankruptcy during the Clinton administration. \(^{150}\)

**Controversy?**

Did this frame increase the controversy of the omnibus bankruptcy bill? Perhaps slightly. This frame clearly empowered people beyond the bankruptcy establishment to be involved and critical of the bill without learning bankruptcy law or using bankruptcy lingo. \(^{151}\) This frame could have encouraged lawmakers to think about bankruptcy as a so-called poster child for

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\(^{148}\) See Deeper in Debt, THE ECONOMIST, July 3, 1999, at 64 (profitability of risky lending “has not stopped the credit-card industry from lobbying furiously” for bankruptcy reform. “Can anyone stop the credit-card industry from changing the rules after the game has already started?”); Michele Jacklin, House Gives a Boost to Credit-Card Sharks, HARTFORD COURANT, June 23, 1999; Christopher Schmitt, Tougher Bankruptcy Laws – Compliments of MBNA?, BUS. WEEK, February 26, 2001, at 43; Paul Wiseman, Lenders Lobby for Reform of Bankruptcy, USA TODAY, Oct. 21, 1997, at 6A; Joshua Wolf Shenk, Bankrupt Policy, THE NEW REPUBLIC, May 18, 1998, at 16; Robert Reno, Feeding Sharks, Starving Minnows, NEWSWEEK, March 27, 1999 (“rarely does the Senate disgrace itself with such symmetry”) (suggesting that lenders’ success with bankruptcy reform was accomplished by “pouring $17 million into the last election. They are getting full value for their money”).

\(^{149}\) Donald L. Barlett & James B. Steele, Soaked by Congress; Lavished with Campaign Cash, Lawmakers are “reforming” bankruptcy - punishing the downtrodden to catch a few cheats, TIME 64-75 (May 15, 2000).

\(^{150}\) Interview with Brady Williamson, October 24, 2002 (reporting that Senator Ted Kennedy hand-delivered “Soaked by Congress” to President Clinton).

campaign finance reform, although there is little evidence that this link was forged successfully.

On the other hand, given the ubiquity of special interests in federal lawmaking, the fact of credit industry support hardly would be a substantial roadblock by itself. Indeed, one might expect a lawmaker to chafe and become defensive at the notion that she supports bankruptcy

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153 As one example that the issues were never successfully linked, Senator John McCain and Rep. Shays – two main sponsors of campaign finance reform bills – regularly voted in favor of the bankruptcy bill.

154 This is especially true because this theme has guided bankruptcy reporting before, in the early 1980s. *Bankrupt on Bankruptcy*, N.Y. TIMES, March 28, 1984 (transformation of bill into Christmas tree); *System in Bankruptcy*, WALL ST. J., April 5, 1984 (“special interests climbed aboard the legislative train. . . can’t shed many tears for the special-interest aid in this collapsed legislation”); Bill Keller, *Senate Votes Bankruptcy Bill*, N.Y. TIMES, June 20, 1984, at D19 (provisions desired by lobbying interests); *Bankruptcy Courts are Going Bust*, N.Y. TIMES, September 28, 1982 (fixing court system “could be threatened by amendments that would make it a Christmas tree for creditors”); Stephen Engleberg, *Congress Fails to Act on Bankruptcy System*, N.Y. TIMES, June 29, 1984 (intense lobbying caused delays); *Bankruptcy Bill is Stalled*, N.Y. TIMES, March 30, 1984, at D3 (“lobbying free-for-all . . . deadlock . . . result of spending both political clout and political dollars by the consumer finance industry, which wants to be protected from the consumer bankruptcies that its easy credit practices often create”); Stuart Taylor, Jr., *Bankruptcy Court Setup Extended Until April 30*, N.Y. TIMES, March 31, 1984 (special interest issues); Stuart Taylor, Jr., *The Free-For-All on the Bankruptcy Express*, N.Y. TIMES, March 2, 1984 (lobbying free-for-all, three ring circus, with sideshows involving shopping centers, drunk drivers, grain elevators); *Bankrupt on Bankruptcy*, N.Y. TIMES, March 28, 1984 (“disgraceful” bills laden with special interests); Jane Bryant Quinn, *Credit Industry Media Hype Pushes Bankruptcy Law Revision*, WASH. POST, December 7, 1981, at 51 (“consumer–credit industry wants to rewrite the federal law on personal bankruptcies, and is using tactics that would make a sailor blush . . . . Newswriters and broadcasters are being peppered with press releases, asserting that America has become a nation of debt dodgers”); See also William H. Jones, *Creditors Miss Target in War on Bankruptcy Law*, WASH. POST, October 12, 1981; *Panel Bill Alters Personal Bankruptcy Law; Proposals Aid Creditors: Bid to Bar Some Debtors From Chapter 7 is Ended*, WALL ST. J., April 20, 1983, at 60. See also *Bankruptcy on the Brink*, NEWSWEEK, March 26, 1984 (“eager lobbyists – representing lenders, farmers, and even federal judges – cut in to prosecute their own claims, blocking action and turning the orderly dance of legislation into a game of musical chairs”).
legislation simply because of industry support and lobbying. Thus, the “controversy value” of this frame is arguably limited.

**Improvement of legislation**?

Might the industry influence frame have helped improve the bill? Admittedly this would be difficult to prove, but it seems unlikely. Congress and the press coverage actually seemed to diverge: as editorial pages revved up the industry influence theme, Congress actually watered down and deleted provisions that would have imposed more requirements on the credit industry and held lenders more accountable (to the extent one considers these improvements). Although lawmakers modified some creditor-friendly provisions over time, there is no evidence that this was in response to the industry influence theme. More likely, these changes are connected to framing bankruptcy as a women’s issue, discussed later.

**Educational value to public**?

A third important element of evaluating media-establishment influence to ask is whether this frame advanced readers’ understanding of bankruptcy law. The reporting implicitly told readers that the consumer credit industry has a lot at stake in the bankruptcy system. But


156 The first Senate bill, S. 1301, likely was the high water mark for the bill addressing credit industry responsibility through changes to both the Bankruptcy Code and the Truth in Lending Act addressing credit card disclosures, dual use debit cards, and home equity loans and lines of credit. Many of the changes that watered down the provisions were made through managers amendments or the conference report, so were not voted on as discrete amendments.

157 See text accompanying note ___.
campaign contribution statistics teach readers little about the substantive aspects of bankruptcy or criticisms (or benefits) of the legislation. A story framed in terms of industry power and influence delves into the details of campaign contribution figures and K Street lobbying, not the details of the omnibus bankruptcy bill itself.\textsuperscript{159}

This is troubling. Many versions of the bill had around 280 provisions, many with multiple parts, and spanned well over 500 pages.\textsuperscript{160} They would changes the rules for the reorganization of large and small enterprises, municipalities and family farmers, family fisheries, individuals in chapter 11, add an entire new chapter of the Bankruptcy Code to deal with transnational insolvency, regulate lawyers and the conversations they may have with their debtor clients, impose a variety of new obligations on the court system and the United States trustee

\textsuperscript{158} See section III(C).


\textsuperscript{160} See, e.g., H.R. 833, 106\textsuperscript{th} Cong. (1999).
system, and substantially complicate the consumer bankruptcy system for all filers. The media covered hardly any of this.161

Focusing on industry influence also resulted in quite oversimplified statements of current law. As just one important example, the media tended to draw an overly stark distinction between the two basic consumer options – chapter 7 and chapter 13 – in terms of debtor-friendliness and creditor treatment. These repeated oversimplifications clearly had the potential to mislead readers about the problems with current law and the impact of proposed changes.162

In conclusion, framing bankruptcy as an industry influence story was prevalent, and not very surprising,163 but its utility is questionable. It engaged a wider number of people, such as consumer advocates, but probably could not stop or even substantially slow down the bill on its own, likely did not generate improvements, and taught the public very little that will help them

161 The means test was the main substantive provision that reporters covered, and even this was not reported in significant detail. All three papers did at least one story on the existence of business bankruptcy provisions, but did not delve into the changes that needed exposure and discussion. Reporters sometimes focused on proposed amendments that were newsworthy but were not Bankruptcy Code amendments, such as minimum wage, limiting ATM fees, restricting Lloyds of London from suing U.S. investors in U.S. Courts, application of the Fair Debt Collection Practices Act to bounced checks, and consumer credit regulation and disclosure. The press also tended to discuss provisions addressing narrow but independently newsworthy categories of hypothetical or actual bankruptcy filers, such as gun manufacturers, recording artists and other celebrities, and, particularly, abortion protestors. See Bankruptcy Media Database (on file with author). See also John Fabian Witt, Narrating Bankruptcy/Narrating Risk, 98 N.W. L. Rev. 303, 311-312 (2003) (discussing how bankruptcy debates today occur “by proxy” with only remote relationship to bankruptcy itself).


sort out the details of bankruptcy law. This is a problem not only for the current debate, but for future legislative endeavors.

B. Loopholes for the Rich

Reporters and commentators in The New York Times and Washington Post sometimes framed the bankruptcy story as a “loopholes for the rich story:” in other words, they suggested that proponents of the bill preserved liberal bankruptcy policies for rich people while they restricted relief for lower income filers. Although bill proponents advanced this type of theme for a contrary purpose, e.g., to support the bill, their position did not seem to have as much effect on the way these papers framed the bankruptcy story. Rather, bill proponents’ reluctance


165 Kathleen Day, Foes of Bankruptcy Bill Point Finger at Credit Card Issuers, WASH. POST, February 28, 2001, at E1 (creditor representative “dumbfounded that a group that purports to be concerned about low- and moderate-income people would be opposing legislation designed to force wealthy people who can afford to pay some of their debts to do so rather than sticking lower- and-moderate income people with their tab”); Philip Shenon, How Bill in Senate Would Add Hurdles To Erasing of Debt, N.Y. TIMES, March 14, 2001, at A1 ("no good reason why a schoolteacher earning $30,000 a year should have to pay more for a mortgage or more for a new couch because some guy making $100,000 a year finds it inconvenient to pay his debts"); Kathleen Day, Senate Votes To Toughen Bankruptcy: 36 Democrats Support Measure Backed by Bush, WASH. POST, March 16, 2001, at A1 ("Wealthier filers walk away from billions of dollars in debt each year, regardless of their ability to pay . . . not fair to the 96 percent of Americans who pay their bills on time"); Katherine Q. Seelye, Republicans Agree to New Limits On Consumer Bankruptcy Filings, N.Y. TIMES, October 8, 1998, at A1 (Grassley saying "Consumers across the country who work hard and pay their own way should not be forced to subsidize the abusive spending practices of those who exploit the Federal bankruptcy code for personal gain or convenience"); Stephen Labaton, House Votes to Make It Tougher to Escape Debt Through Personal Bankruptcy, N.Y. TIMES, May 6, 1999, at A28 (Gekas saying "The more we're able to recoup some debt from high-income people, the less burden we will put on everyone else"); Philip Shenon, Bankruptcy Measure Gains On a Lopsided Senate Vote, N.Y. TIMES, March 15, 2001, at A22 (Hatch, "bill will do an awful lot of good for people in our society"). Burt Reynolds was supposed to be the "poster child" for bankruptcy reform, see, e.g., 144 CONG. REC. E88 (daily ed. Feb. 4, 1998) (statement of Rep. Gekas), not the poster child for killing bankruptcy reform.

166 Compare John Fabian Witt, Narrating Bankruptcy/Narrating Risk, 98 NW. L. REV. 303, 313-314 (2003) ("critics of the [1800 Bankruptcy] Act began pointing out that the Act effectively granted fresh starts to formerly wealthy merchants but not to the artisans and farmers who were increasingly drawn into commercial relations but
to cap state homestead exemptions became the principal vehicle. Opponents of the bill, with some help from the news media, fixated on this “single biggest scandal in the consumer bankruptcy system.”

Property exemptions establish what property an individual debtor must forfeit or keep in chapter 7. They also help determine the minimum an individual debtor must repay to creditors in chapter 13 or 11. Each state has its own set of property exemptions that applies in bankruptcy. States such as Florida, Texas, South Dakota, Iowa, and Kansas permit debtors to exempt very high value homesteads. Thus, it is technically possible that a bankruptcy filer could keep a multi-million dollar home and make little or no payment to creditors.

The omnibus bankruptcy bill did not itself create this problem; this is a problem of current (and longstanding) law. The media, with some help from the bankruptcy establishment, made


169 11 U.S.C. § 522. States are permitted to prevent their citizens from choosing the Bankruptcy Code exemptions as an alternative, and most do so limit.

170 COLLIER ON BANKRUPTCY, EXEMPTION MANUAL (collecting state exemption statutes).

171 Bankruptcy law contains other policing mechanisms that can be used to curb particularly egregious behavior along these lines, particularly if a debtor invested non-exempt assets in an exempt home on the eve of bankruptcy. See note ___.

this issue the legislation’s problem. The question that the media raised is why proponents of a bill touted as ending bankruptcy abuse would tolerate this so-called loophole for the rich.

A big front page New York Times article in early January 1998 focused intensively on generous or unlimited homestead exemptions for wealthy bankruptcy filers. A journalist reporting on a General Accounting Office study of exemption usage noted that the “unlimited homestead exemption isn’t the populist shield it has often been cracked up to be, but rather a convenient protection for a few affluent people.” Articles then blamed the omnibus bill and its supporters for failing to end what “is perhaps the most notorious abuse of the system in some states.” The “high political symbolism” did not go unnoticed. News reports suggested that President Clinton supported capping exemptions to prevent differential rich-poor treatment. By

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contrast, the press reported that Governor/President George W. Bush, and legislators who otherwise supported restricting bankruptcy relief, opposed correction of this disparity.  

Once the New York Times and Washington Post editorial pages began their series of editorials on bankruptcy, they regularly framed bankruptcy in terms of preferential treatment and loopholes for the rich. In “Bad Bankruptcy Legislation,” the Times proclaimed it could not support the House bill -- a “parody of reform” -- because the bill inflexibly “cracks down” on ordinary debtors but does “next to nothing” about the bankruptcies of Burt Reynolds and Bowie Kuhn. In “Protecting Rich Bankrupts,” the Times complained that the pending legislation: would do nothing to limit the ways that the formerly wealthy have of stiffing creditors, of which the unlimited homestead exemption is only the best known. But the bill would be a boon to the credit card companies, which have pushed hard to get it enacted. . . . The bill deserves to be defeated, but if it is to be passed, it should at least be amended to keep Texas and Florida from providing such blatant protection to once wealthy debtors.


179 Compare Daniel Shaviro, Beyond Public Choice and Public Interest: A Study of the Legislative Process as Illustrated by Tax Legislation in the 1980s, 139 U. PA. L. REV. 1, 11-12 (1990) (discussing history of tax reform and concern about “loopholes”). Although Shaviro notes that the term “loopholes” is out of fashion in tax policy because it connotes an unintended rather than intended benefit, id. n. 33, the term seems to remain vibrant in bankruptcy policy.

180 Bad Bankruptcy Legislation, N.Y. TIMES, October 10, 1998, at A14 ( “A fair bill would attack the real abuses, while giving judges flexibility to consider the circumstances of debtors. This bill does neither. If it reaches his desk, President Clinton should veto it”).

181 Protecting Rich Bankrupts, N.Y. TIMES, August 13, 1999, at A20. This editorial noted that the Texas legislature had been seeking to expand the acreage of the homestead exemption. Id.
The Times distinguished the bill’s gentle treatment of the “well heeled” from the harsh treatment of “unsophisticated debtors.” While a Clinton veto was looming, The New York Times editorial desk lamented the bill’s predicted effect on “unsophisticated debtors” compared to debtors with mansions, trust funds, and pension accounts.

The Washington Post likewise expressed concern about the bill’s failure to cap homestead exemptions while it restricted shelter for lower income debtors, and called this an “egregious loophole.” “Ordinarily, a proposal to tighten the screws on average families while allowing millionaires a loophole would attract some robust criticism, but the White House and Congressional democrats are oddly quiet.” The “egregious homestead exemption,” the Post explained, “allows millionaires to keep the full value of a house they have owned for two years out of reach of creditors . . . With a bit of planning, therefore, movie stars can still escape their creditors.” The Post applauded President Clinton’s pocket veto “for the good reason that it was too tough on ordinary debtors . . . and too generous to high-rollers with fancy tax accountants,” while it scolded Senator Biden for supporting the bill “despite its inclusion of a loophole allowing

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183 An Unfair Bankruptcy Bill, N.Y. TIMES, December 13, 2000, at A34.
184 Bad Ideas on Bankruptcy, WASH. POST, Feb.18, 2000, at A22. The bill includes amendments that would permit a debtor to be evicted by a landlord without seeking permission from the bankruptcy court first, hence the comparison.
millionaires to shield mansions from their creditors.” Signed opinion pieces expressed similar concerns about unequal restrictions.

The “loopholes for the rich” frame need not have been limited to discussion of homestead exemptions. As an example the media did explore in one piece, the bill briefly contained a controversial provision shielding investors from suit by Lloyds of London. A front page story in the Washington Post characterized this as an additional protection for millionaires while the bill cracked down on lower income and middle class people.

Controversy?

Did the “loopholes for the rich” frame, and its homestead exemption focus, increase the bill’s controversy? It may have helped slow down the bill for a little while. Lawmakers dedicated multiple rounds of amendments to this issue in several congresses: one lawmaker would try to insert a cap while another would try to remove it or add an opt-out provision to address

188 Loopholes for Millionaires, WASH. POST, July 16, 2001, at A14. The editorial commended Senator Leahy for wanting to restrict homestead exemptions and require more credit card disclosures, the outcome would depend on Biden’s support.

189 David S. Broder, Business in the Driver’s Seat, WASH. POST, March 14, 2001, at A25 (legislation would “squeeze money” from those “clobbered by job losses, divorce, or medical disasters, yet allow some millionaires to plead bankruptcy while turning their assets into mansions in states with unlimited homestead exemptions.”); Floyd Norris, Bankruptcy Reform that Spares the Wealthy, N.Y. TIMES, May 9, 1999, at A16 (House bill would not change entitlements of Burt Reynolds and Bowie Kuhn to keep expensive homes, but would “make life harder for poor and middle class people,” and taxpayers “will foot the bill to force people to pay their debts,” unless those people are rich enough to shield their assets in valuable Texas or Florida homes”); Floyd Norris, In Florida, Fraud Doesn’t Matter, Will Congress Object?, N.Y. TIMES, July 6, 2001, at C1 (“So Congress will crack down on struggling families that do not plan bankruptcies well. The question is whether it will close the loophole that allows some people to live in luxury while stiffing their creditors.”). Even Fred Hiatt, who was guarded in his support of either “side” of the bankruptcy debate, also found after interviewing bankruptcy experts that it was “worth noting that the House refused to close the biggest loophole for the wealthy – a provision in some state laws that allows those entering bankruptcy to shield their assets in million-dollar mansions.” Fred Hiatt, Credit Due vs. Undue Credit, WASH. POST, June 14, 1998, at C7.

state’s rights and state constitutional concerns.\textsuperscript{191} At least one lawmaker said that a cap would make her try to kill the whole bill, and others wholeheartedly opposed a cap.\textsuperscript{192} On the other side of the issue, President Clinton allegedly based his pocket veto in part on the lack of a cap.\textsuperscript{193} Ultimately, the various interested parties developed a (not-very-effective) compromise, but in the meantime this issue became significant enough to be described by political scientists as having “killer properties.”\textsuperscript{194} The Lloyds of London amendment itself was controversial, although its controversy was more likely related to its international implications.

\textit{Improvement of legislation?}

Did the loopholes for the rich frame help improve the bill? The opportunity for improvement was limited. To the extent an exemption cap is an “improvement” (and, as just discussed, some would disagree, including some in the so-called bankruptcy establishment), the

\textsuperscript{191} For examples of floor votes, see, e.g., 105\textsuperscript{th} Congress: H665 (house roll call vote 221), S3599 (voice vote). 106\textsuperscript{th} Congress: H. 54 (voice vote); S2516 (vote 364); S2778 (vote 363). 107\textsuperscript{th} Congress: S68 (voice vote).

\textsuperscript{192} See, e.g., Tom Hamburger, \textit{Senate Approves Bankruptcy Legislation --- Provision Capping Exemption on Home Equity May Lead To Battle With Bush, House}, WALL ST. J., March 16, 2001, at A3 (Sen. Kay Bailey Hutchison vowing to “do everything I can to fix this in conference . . . Or unfortunately I am going to have to try and kill the bill”); Floor Speech, Kay Bailey Hutchison, November 10, 1999, p. S14481 (states should be able to opt out of any exemption cap); News Release, \textit{Senator Hutchison Vows Continued Effort to Preserve Texas’ Homestead Exemption; Will Work With Conference on Final Legislation} (February 2, 2000) (“It is wrong to pre-empt 130 years of American history – and the rights of every state – to go after a handful of bad actors. This is the classic government attempt to impose a one-size-fits-all solution”); News Release, \textit{Bankruptcy Bill Violates States’ Rights} (April 30, 2002) (Brownback opposing bill containing exemption cap).

\textsuperscript{193} See Statement of Administration Position, note \textsuperscript{\textit{\textit{\textit{\_\_\_}}}}.

\textsuperscript{194} See, e.g., Stephen Nunez & Howard Rosenthal, \textit{Bankruptcy “Reform” in Congress: Committees, Ideology, and Floor Voting in the Legislative Process}, Russell Sage Foundation Working Paper #196 (October 24, 2002) (finding that in Senate “state interests in homestead exemptions influenced voting” and that homestead issue had “killer properties”). Some members of Congress presumably were interested in this issue before the media framed the omnibus bankruptcy bill in these terms. For example, in the mid-1990s, Senator Herb Kohl had proposed freestanding legislation to cap state homestead exemptions for bankruptcy purposes. On the other hand, the media and their sources arguably helped foment lawmakers’ insistence that a homestead cap accompany the credit industry backed restrictions.

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frame was unsuccessful. After multiple rounds of adding and deleting a homestead cap, lawmakers compromised with a more complicated amendment that hardly can be said to improve bankruptcy law.\footnote{H.R. 975 §§ 307, 308, 322 (imposing a new fraudulent conveyance scheme counting back 1215 days and increasing domicile requirements for claiming state exemptions). \textit{See also} Professors’ Letter, note __.} Given that the loopholes frame relied almost exclusively on the homestead issue,\footnote{The media and experts could have expanded this frame to a variety of other aspects of the bill that preferred higher income filers. Two examples from the means test alone are illustrative. First, the means test relies on IRS guidelines to determine expenses of bankrupt households, but the IRS guidelines let richer families spend more money. \textit{See, e.g.}, H.R. 975 § 102 (108th Congress). Thus, the default expense rules in the means test would let a high income household of one spend more on food than a low income family of four. http://www.irs.ustreas.gov/prod/ind_info/coll_stds/cfs-other.html (last accessed October 16, 2001) (providing $456 monthly food allowance for individual with monthly income of $5,830 or more, while providing $374 monthly food allowance for family of four with monthly income of less than $830). In addition, the means test does not apply to debtors unless they have primarily consumer debts, and thus high income individuals with large business-related debts who file chapter 7 would not be means tested. \textit{See, e.g.}, Douglas Baird, \textit{Bankruptcy Bill Would Prevent Some From Getting Fresh Start}, \textit{Chicago Tribune}, June 25, 1999, at sec 1 p 21 (editorial explaining different outcomes for high income businessperson and lower income widow with medical debts).} the opportunity for improvement was eliminated once the homestead exemption issue had been resolved.

\textit{Educational value to public?}

Did the “loopholes for the rich” frame educate the public about bankruptcy? On the one hand, it may have taught readers that state law controls some of the perceived benefits of bankruptcy. On the other hand, the loopholes-for-the-rich story principally relied on egregious examples of rich debtors with ample assets. This frame could breed distrust of the bankruptcy system among readers, and ultimately make them more receptive to unwise reform proposals in the future. This would be unfortunate because researchers have unearthed only a tiny fraction of unlimited exemption advantage taking.\footnote{For example, the General Accounting Office studied exemption usage in districts in Florida and Texas. The GAO found average homestead exemption claims of about $15,000 and median claims of $8,000 in these districts.}
Other examples of the legislation preferring the rich would have been more educational about the bankruptcy legislation’s effects. Yet, either experts refrained from offering these examples to the press, or the press found them too complex to pursue. This is disappointing but not surprising. Many reporters would describe their roles as reporting on newsworthy parts and not thoroughly analyzing complex legal problems. Bankruptcy is nowhere near being its own newsbeat, and journalists’ capacity for juggling copious details is likely sated by the breadth of districts. The average and median exemption claims among those exceeding $100,000 (only 1% of the sample) hovered around $145,000 in Texas and $120,000 in Florida. General Accounting Office, Bankruptcy Reform: Use of the Homestead Exemption by Chapter 7 Bankruptcy Debtors in the Northern District of Texas and the Southern District of Florida (GAO/GGD-99-118R, June 18, 1999); Todd J. Zwyicki, Why so Many Bankruptcies and What to Do About it: An Economic Analysis of Consumer Bankruptcy Law and Bankruptcy Reform, George Mason University School of Law, Law and Economics Working Paper 03-46, at 102 (2003).

198 See note __.

199 For example, according to one study in the early 1990s, a significant majority of journalists attributed extreme importance to providing quick information, while less than half thought providing analysis of complex problems was extremely important. David H. Weaver & G. Cleveland Wilhoit, The American Journalist in the 1990s in DO THE MEDIA GOVERN? 18, 25 (1997). See generally Trudy Lieberman, The Media and Government Regulation, 11 KAN. J. L. & PUB. POL. 547, 552-553 (2002) (journalists shy away from detailed regulation as “too much inside baseball,” and report underinclusively on legislation: “law does not do a lot of things the press said it would, and it does others that the press entirely missed”); Kateri Walsh, Engaging the Media: What lawyers should know when talking to reporters, OREGON STATE BAR BULLETIN (October 2001) (“need for brevity will inevitably lead to articles that oversimplify”).

subjects assigned to each journalist and the very short time-lines imposed.\textsuperscript{201} Thus, much of the educational potential of the “loopholes for the rich” frame likely was lost.

In summary, experts helped foment the media’s natural interest in the loopholes for the rich frame, but mostly limited its scope to the homestead exemption. The possibility for controversy ceased when lawmakers found a politically-suitable compromise. In the meantime, by focusing on the homestead exemption, the public read more about rich bankruptcy filers, and this unrelenting focus on rich filers may prime the public for questionable legislation in the future.

C. Bankruptcy as a Women’s Issue

Media coverage very much helped tell the story of bankruptcy as a women’s issue as an alternative to the once-dominant debtor irresponsibility story.\textsuperscript{202} This began when Professor

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Elizabeth Warren wrote a high profile op ed framing bankruptcy as a women’s issue.\textsuperscript{203} As she and others explain, women collecting child support compete with institutional lenders, and the bill strengthened the hand of institutional lenders.\textsuperscript{204} In addition, single-filing women are the fastest growing group of debtors in bankruptcy, and thus are very much affected by restrictions to bankruptcy relief.\textsuperscript{205}

A variety of stories, in turn, mentioned the possibility that bankruptcy reform adversely affected women and children.\textsuperscript{206} The reporting attracted First Lady Hillary Rodham Clinton’s concerns about the legislation, which in turn became a news media focus.\textsuperscript{207}


\textsuperscript{204} \textit{See generally David A. Skeel, Jr., Debts’ Dominion: A History of Bankruptcy Law in America} 206 (2001) (explaining arguments).


representatives, by offering quotes in bankruptcy stories and writing letters to the editor, helped cement bankruptcy’s relevance to their constituencies. One article quoted Rep. Jerrold Nadler, a progressive Democrat well versed in bankruptcy, characterizing the bill as “Mom versus Chemical Bank.” Other papers outside the sample, such as USA Today, emphasized this theme, particularly when Professor Warren released data showing the ascent of bankruptcy filings by single-filing women.

The media also paid close attention to the FACE abortion-protestor related amendment, which in turn heightened the gendered implications of bankruptcy reform. This issue was

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208 See, e.g., Katherine Q. Seelye, First Lady in a Messy Fight On the Eve of Her Campaign, N.Y. TIMES, June 27, 1999, at sec 1 p 1 ( “big stake in this for women and children," said Joan Entmacher, vice president of National Women's Law Center in Washington. “It was a really critical role that Mrs. Clinton played in having the White House insist that the final bill had to protect those populations.”); Joan Entmacher, Letters to the Editor: Children, Bankruptcy, Creditors, WASH. POST, June 22, 1999, at A16 (explaining that bill gives greater priority to child support collection to see it now threatened [by bankruptcy bill]”).


210 Christine Dugas, Critics Say Bankruptcy Bills Threaten Child Support, USA TODAY, April 30, 1998, at A1 (citing sources complaining that “the credit industry will be taking money out of the pockets of women and children”); Christine Dugas, Women Rank First in Bankruptcy Filings, USA TODAY, June 21, 1999, at A1 (quoting sources explaining that bankruptcy is women’s issue and bankruptcy reform would have particularly hard effect on women); Associated Press, Study Shows More Women Resorting to Bankruptcy Than Men, CHICAGO TRIBUNE, June 22, 1999, at sec 3 p 4; Elizabeth Warren, The New Women’s Issue: Bankruptcy Law, CHRISTIAN SCIENCE MONITOR 11 (September 10, 1999); Deeper in Debt, THE ECONOMIST, 64 (July 3, 1999) (calling First Lady Hillary Clinton the most vocal opponent to bill, and thus might be able to stop it).

211 See note ___ and associated text.
particularly newsworthy when Vice President Gore rushed back from his presidential campaign in case he was needed to cast the tie-breaking vote in the Senate to add the amendment to the bill.  

Controversy?

In terms of heightening controversy, framing bankruptcy as a women’s issue in the press seemed highly successful. First Lady Hillary Rodham Clinton’s interest, initially fueled by the media, likely was critical to the development of the Clinton Administration’s position, including a pocket veto. More than thirty women’s groups came out in opposition to a bill about an issue that previously was not even on their radar screens, and took their concerns to the public, legislators, and the White House through written commentary, meetings, testimony and other

212 Katherine Q. Seelye, Gore Abortion Scramble, N.Y. TIMES, February 3, 2000, at A20; Lois Romano & Helen Dewar, Gore Rushes to Hill Abortion Vote, WASH. POST, February 3, 2000, at A14; Helen Dewar & Kathleen Day, Senate Approves Bankruptcy Bill; Industry-Sought Overhaul Passes 83-14 WASH. POST, February 3, 2000, at A1. For reporting on President Clinton’s position on the abortion provision, see Kathleen Day, House Passes Tougher Debt Rules; Clinton opposes Bankruptcy Bill, WASH. POST, October 13, 2000, at E3 (mentioning FACE amendment concern as being one of major concerns of President Clinton); Bankruptcy Law and Violence, N.Y. TIMES, June 9, 2000, at A30 (expressing concern about this “increasingly popular loophole,” referring to use of bankruptcy to discharge FACE debts).

213 This approach also continued after the end of time period studied in this article. See, e.g., Elizabeth Warren, A Quiet Attack on Women, N.Y. TIMES, May 20, 2002.

214 See, e.g., Statement of Administration Policy, H.R. 3150 - Bankruptcy Reform Act of 1998 (June 10, 1998) (basing opposition to house bill in part on fact that increased credit card nondischargeability would adversely affect domestic support recipients); Radio Address of the President to the Nation (May 9, 1998) (in honor of Mother’s Day, criticizing bankruptcy bill for forcing mothers “to compete with powerful banks and credit card companies”); Letter from Jacob J. Lew, Acting Director, Office of Management and Budget, Executive Office of the President, to Hon. Trent Lott (Oct. 9, 1998) (listing among reasons for opposing bill fact that bill increased competition between credit card lenders and support recipients); Press Release, President Clinton Hails Child Support Progress and Signs into Law Tough New Penalties for Deadbeat Parents (June 24, 1998) (“President will reiterate his position that bankruptcy reform legislation should not make it harder to collect child support and alimony”); Letter from Jacob J. Lew, Acting Director, Office of Management and Budget, to Hon. George W. Gekas (May 21 1998) (complaining that bill puts credit cards in competition with support obligations after bankruptcy).
avenues.\textsuperscript{215} The legislative process slowed as lawmakers and staff sought to “solve” the women and children problem.\textsuperscript{216} There is little question that the FACE amendment and the publicity surrounding it have delayed passage,\textsuperscript{217} prompting organizations such as the United States Conference of Catholic Bishops to take a position on bankruptcy reform.\textsuperscript{218} Whether the FACE amendment needed media coverage to become controversial is, of course, an open question.

\textit{Improvements of legislation?}

Framing bankruptcy reform as a women’s issue in the media definitely affected the contents of the bill, although parties may differ on how well the amendments address the

\textsuperscript{215} See, e.g., Letter from Gene Sperling, National Economic Advisor, to Hon. Trent Lott (Sept. 22, 2000) (“President is deeply troubled that your offer fails to address the problem of abusive bankruptcy filings by those who seek to avoid the legal consequence of violence, vandalism, and harassment used to deny access to legal health services . . . I reiterate that the President will not sign any legislation that does not contain an effective means to ensure accountability and responsibility of perpetrators of clinic violence”); Letter to the U.S. Senate Regarding S. 625 and its Potential Impact on Women Who File for Bankruptcy, Prepared by the National Women’s Law Center and the National Partnership for Women and Families (September 17, 1999) (signed by 31 women’s groups); Letter from the National Partnership for Women and Families and 21 other women and children organizations to U.S. representatives (June 9, 1998) (expressing deep concerns about H.R. 3150 because of its effects on women as debtors and as creditors); Letter from the National Women’s Law Center and the National Partnership for Women and Families, and 27 other women and children organizations to U.S. Senators (June 24, 1999); NOW Action Alert, \textit{Changes in Bankruptcy Law Bad News for Women} (April 24, 1998); News Release, \textit{NOW Warns Senate and Credit Card Companies: “Bankruptcy Legislation Will Harm, Women, Children, Retirees”} (May 2, 2000); Letter from National Organization for Women to Hon. John Conyers Jr. & Hon. Jerrold Nadler (May 15, 1998) (on file with author) (opposing legislation).

\textsuperscript{216} See Letter from 31 Senators to Hon. Orrin Hatch and Hon. Patrick Leahy, May 5, 1998 (on file with author) (“We are particularly concerned with the impact of the proposed legislation on children and single parents and urge you to eliminate provisions that harm these vulnerable families”).

\textsuperscript{217} See, e.g., Stephen Nunez & Howard Rosenthal, \textit{Bankruptcy “Reform” in Congress: Committees, Ideology, and Floor Voting in the Legislative Process}, Russell Sage Foundation Working Paper #196 (October 24, 2002) (describing abortion amendment as issue that can be used strategically to sink legislation); See News Release, \textit{Floor Statement on the Violence Against Women Act by Rep. Nadler} (Sept. 26, 2000) (on file with author) (reacting to proposal to tie Violence Against Women Act reauthorization to bankruptcy legislation, “I urge the other body, do not use battered, abused, and murdered women, who do not have the millions to lobby Congress and make soft money contributions in an effort to deliver an end-of-session gift to banks and creditors”).
identified problems. After initially denying any adverse effects, bill proponents quickly shifted course and added provisions that appeared to be directed toward improving child support collection. The support amendments received praise from governmental collection agencies and others. On this basis, Representative Gekas came to describe the bill as a “boon to women and children” and a “veritable wish list of provisions” for support collection agencies, and to denounce President Clinton’s pocket veto of the bill as “a blow to women and children everywhere.”


222 News Release, Gekas Denounces Clinton Pocket Veto of Bankruptcy Reform; Gekas Encouraged by Bush Administration (December 21, 2000).
The support amendments, while hopefully helpful, really were not responsive to some of the concerns raised in the press. Nonetheless, it is possible that this frame helped omit or limit the scope of some of the most aggressive credit industry sponsored provisions in the bill. For example, early versions of the bill substantially expanded the nondischargeability of credit card debt. Because nondischargeable credit card debt could make support collection more difficult, some of the nondischargeability provisions were watered down and even omitted over time.

Educational value to public?

Bill supporters and some commentators would say the story of bankruptcy as a women’s issue was not legitimately educational; indeed, they often suggested in no uncertain terms that this frame was contrived and disingenuous. Notwithstanding their reaction, this frame had the


225 See, e.g., Amendment S. 62 to S. 420 (107th Cong. March 15, 2001) (Boxer amendment, agreed to by voice vote). Along the same lines, the involvement of womens’ groups probably helped limit the scope of a provision in the bill that substantially enhanced the treatment of secured creditors in chapter 13 plans. Amendment S. 105 to S. 420 (107th Cong. March 15, 2001) (Leahy amendment, agreed to by voice vote).

226 Letter from John R. Justice, President, National District Attorneys Association, to Hon. Trent Lott (Sept. 2, 1998) (calling critics of legislation either “disengenuous” or lacking knowledge of the child support collection process); Letter from Hon. Edith H. Jones to Hon. Orrin C. Hatch, Hon. Charles E. Grassley, Hon. Henry J. Hyde & Hon. George W. Gekas (April 30, 1998) (on file with author) (USA Today quotes of Prof. Warren and Prof. Kenneth Klee were “blatant misrepresentation of the bills and current bankruptcy law. I think we all have a right to expect more expertise and candor from tenured professors at two of our nation’s outstanding law schools than are displayed in these statements . . . Professors Klee and Warren are not attempting to be precise, only to be obstructionist”); “Dear Colleague” Letter from Hon. George W. Gekas, Hon. Rick Boucher, Hon. Bill McCollum, & Hon. James F. Moran, re: Child and Spousal Support Payments are Priority Debt in H.R. 3150 (April 29, 1998) (“attempt by opponents of bankruptcy reform to create confusion in the minds of Congress and the American public by raising the
potential to teach readers more about the current bankruptcy system, and the implications of reform, than perhaps any of the others.

First, thinking about women and children as creditors and in competition with institutional lenders is a significant advancement over the frequent debtor-versus-creditor conception of bankruptcy. In bankruptcy, many types of creditors compete with each other over assets or future income. All too often, the assets or income are hopelessly meager. Thus, enhancements to the entitlements of one type of creditor inevitably has distributional consequences. If we have not given up all hope on having a reasonably informed discourse about legal systems and proposals to change them, it is important that the public and lawmakers understand this creditor-versus-creditor dynamic.

As a related matter, understanding why this bill may adversely affect women and children actually requires some knowledge of bankruptcy law and practice. Although the media did not present this issue in fine detail, they offered enough to engage those who care about women’s and children’s issues. Representatives of women’s groups, in turn, invested substantial time and effort in educating themselves about current bankruptcy law on the books, in action, and how the emotionally charged issue of unpaid child support is merely a smokescreen”); Rep. Bill McCollum, Letters to the Editor, Bankruptcy Reform, N.Y. TIMES, May 3, 1998, at A16 (Professor Warren’s claims were “false,” “she opposes reforms that would return responsibility to bankruptcy. She offers no reason why she believes that middle-class families should bear the burden for irresponsible higher income borrowers.”) See also David Frum, Bankruptcy is a Moral Issue, WALL ST. J., February 11, 2000, at A14 (sarcastically noting we should now expect to hear that women will be burdened by this legislation); Bill McCollum, Letter to the Editor, Bankruptcy Reform, N.Y. TIMES, May 3, 1998, at sec 4 p 16 (criticizing Elizabeth Warren’s op ed). See also Fred Hiatt, Credit Due vs. Undue Credit, WASH. POST, June 14, 1998, at C07 (bill opponents had difficulty countering bill’s rhetoric until they came up with the “widows-and-children argument (updated for our era to divorcees-and-children”)”). See also letter from Rep. Bill McCollum, Rep. George W. Gekas, Rep. Rick Boucher, and Rep. James P. Morgan to President William J. Clinton (May 11, 1998) (writing to “correct any misinformation” expressed in radio address and to “assure you that this is false”).
legislation would change it.\footnote{The author’s files and e-mail archives include dozens of communications involving women’s groups seeking to understand bankruptcy law and legislation and to communicate their concerns to others.)} Thus, even if the media shy away from details, they perform a service to the extent they frame the issue in a way that leads readers to follow up.


\textbf{Conclusion}

This article has explored the roles of the media in legislative development and the public’s understanding of legislation, particularly with respect to the omnibus bankruptcy bill that has both grown and foundered since 1997. To the extent that the bankruptcy establishment, as quoted and behind the scenes, helped shape how the news media told the bankruptcy story, the bankruptcy establishment indirectly participated even after it was denied one or more seats at the bargaining table.
One can find both positive and negative messages in this discussion. On the one hand, some members of the bankruptcy establishment were able to find a way to make a difference about issues that affect their professional lives and about which they care deeply. Individuals with full time jobs and other obligations took on another major commitment: being immediately responsive to reporters who call,230 and engaging in outreach with reporters who do not.231 Although this article cannot prove causation, it appears likely that there was some payoff to this investment of time and energy.

Yet, even when a member of the bankruptcy establishment has the ear of a reporter, the prominent frames reveal that she could not relay substantive complaints in detail – quoting long statutory provisions and scores of reported court decisions – and expect that the media would help get them heard. Rather, the media and members of the establishment found frames that were consistent with journalistic conventions.232 The resulting story might produce some unexpected results. For example, the loopholes for the rich/exemption issue might briefly fracture consensus on the bill, but result in convoluted compromise amendments and a message to the public that overly emphasizes rich debtors. In other words, the legislative and educational consequences of the controversies they helped create are not within the news sources’ control. This situation is no

230 Kateri Walsh, Engaging the Media: What lawyers should know when talking to reporters, OREGON STATE BAR BULLETIN (October 2001) (explaining that if reporter calls, and you get back to reporter next day, it is worthless because story is already done).


232 See text accompanying note __.
better for proponents of the legislation, who were dragged off their own messages, had to respond to different sets of allegations, and were forced to develop new amendments that may not be particularly helpful to anyone.

Congress should consider inviting the bankruptcy establishment back to the bargaining table and, to the extent it is concerned about parochialism or self-interest, giving it a carefully watched seat. Many members of the bankruptcy establishment are willing to offer substantive expertise to accomplish lawmakers’ goals even if they are not permitted to set the policy agenda. It can participate in a more direct fashion, and, if lawmakers really are distrustful of the establishment, its impact can be better controlled.

Whether or not Congress invites the bankruptcy establishment back into the fold, participants in any part of the legal system should recognize and harness their power to influence the lawmaking process without ever calling their representative or being invited to testify. They can participate, and can provide crucial legal and legislative education for the public, by working with the news media.