

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.² Instead, advocates of the omnibus bankruptcy bill have been dismissive of so-called “bankruptcy establishment”³ concerns and input.⁴ 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.⁵

²Charles Jordan Tabb, *A Century of Progress or Regress? A Political History of Bankruptcy Legislation in 1898 and 1998*, 15 BANKR. DEV. J. 343, 348-350 (1999); Elizabeth Warren, *The Changing Politics of Bankruptcy Reform*, 37 OSGOODE HALL L.J. 189 (1999) (“[b]y politicizing the debates, the special interest groups take some of the most important professionals out of the debates”). For example, groups such as the National Bankruptcy Conference and the Commercial Law League produced detailed section-by-section analyses of the legislation and marked up each version of the legislation with technical corrections, often at the request of Congressional staffers. Bankruptcy judges, lawyers, trustees and academics testified at hearings and offered additional assistance to lawmakers and staffers. Yet, Congress rejected most of even the proposed technical changes. See, e.g., Elizabeth Warren, *The Market for Data: The Changing Role of Social Sciences in Shaping the Law*, 2002 WISC. L. REV. 1, 32-33 (2002) (discussing repeated – and never-returned – calls Warren made to Rep. Gekas’ staff to discuss statistics featured in Gekas press releases). See generally DAVID A. SKEEL, JR., *DEBT’S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA* (2001) (interest group history of bankruptcy); Susan Block-Lieb, *Congress’s Temptation to Defect: A Political and Economic Theory of Legislative Responses to Financial Common Pool Problems*, 39 ARIZ. L. REV. 801 (1997).

³Proponents 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.

⁴See, 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).

⁵See, 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 media⁶ – 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,

bankruptcy system and making it more balanced"); Rep. George W. Gekas, *Letter to the Editor, Protecting Poor Debtors*, N.Y. TIMES, May 17, 1999, at A20 (large amount of Democratic support for bill); News Release, *Gekas Introduces Bankruptcy Reform Measure; Bill Would Reduce Abuse and Protect Consumers* (January 31, 2001) ("bill has enjoyed broad bi-partisan support in the past and continues to do so").

⁶See, e.g., DOUGLASS CATER, *THE FOURTH BRANCH OF GOVERNMENT* (1959)(news media as fourth branch).

⁷Cf. Dorothy A. Brown, *The Invisibility Factor: The Limits of Public Choice Theory and Public Institutions*, 74 WASH. U. L. Q. 179, 215 (1996) (how media influenced legislative process in ways that public choice theory does not predict or explain); 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, 98 (1990) (media potentially powerful ally of, and having symbiotic relationship with, policy entrepreneurs); Vincent Schiraldi & Dan Macallair, *Framing the Framers; Changing the Debate Over Juvenile Crime in America*, in *DO THE MEDIA GOVERN? POLITICIANS, VOTERS, AND REPORTERS IN AMERICA* (Shanto Iyengar & Richard Reeves, eds., 1997) (advocates' attempt to use media to reframe juvenile justice debate); Gary Blasi, *Advocacy and Attribution; Shaping and Responding to Perceptions of the Causes of Homelessness*, 19 ST. LOUIS U. PUB. L. REV. 207, 209 (2000) (timing and approach of homeless advocates public relations strategy). See also Joshua Newberg, *The Narrative Construction of Antitrust*, S. CAL. INTERDISC. L. J. 181 (2003) (competing narratives in Microsoft case); KATHLEEN HALL JAMIESON & PAUL WALDMAN, *THE PRESS EFFECT: POLITICIANS, JOURNALISTS, AND THE STORIES THAT SHAPE THE WORLD* 184-187 (2003) (narratives used in political campaigns).

⁸For 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, RS20780: *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

2/25/04 draft

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 –

bankruptcy filing; to prevent bankruptcy from being utilized as a financial planning tool; to determine who can pay their indebtedness and to ensure that they do"). For news coverage to this effect, see notes __ through ____.

⁹For discussions of media being the principal source of the public's knowledge about law, see, e.g., Daniel M. Filler, *From Law To Content in the New Media Marketplace*, 90 CAL. L. REV. 1739, 1756 (2002) (reviewing FEDWA MALTI-DOUGLAS, STARR REPORT DISROBED (2000)) (news as principal intermediary for public to discover law); Cass R. Sunstein, *The Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2050 (1996) (public learns about court cases through news media, if at all); Linda Greenhouse, *Telling the Court's Story: Justice and Journalism at the Supreme Court*, 105 YALE L.J. 1537, 1538 (1996); Kathleen E. Vance & Paige Barr, *The Facts and Fiction of Bankruptcy Reform*, 1 DEPAUL BUS. & COMM. L. J. 361, 364 n.12 (2003) ("even extensive coverage in the print media [of bankruptcy reform] does not mean that most Americans fully understand bankruptcy reform and its heavy industry support"). *But see* John J. Oslund, *The Media and Government Regulation; Guarding the Henhouse*, 11 KAN. J. L. PUB. POL'Y 559 (2002) (media less good as educator on narrower and more abstract issues); WILLIAM JAMES WILLIS, *THE SHADOW WORLD: LIFE BETWEEN THE NEWS MEDIA AND REALITY* 103, 140-143 (1991) (values of reporting interfering with business reporters' ability to educate public). For a focus on how fictional accounts contribute to the public's understanding of law, see, e.g., Martha Merrill Umphrey, *Media Melodrama! Sensationalism and The 1907 Trial of Harry Thaw*, 43 N.Y.L.S. L. REV. 715 (1999-2000) (criminal trial reporting contributes to popular understanding of criminal responsibility); PRIME TIME LAW; FICTIONAL TELEVISION AS LEGAL NARRATIVE (Robert M. Jarvis & Paul R. Joseph, eds., 1998).

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

¹⁰See section III note ____.

¹¹Bankruptcy Reform Act of 1994, Pub. L. No. 103 394, 108 Stat. 4107 (1994).

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.

¹³H.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

overhaul it. The term "fine tuning" might better fit the purpose . . . because we on the Judiciary Committee are generally satisfied with the code and we are not interested in the proposals that start from scratch." 140 CONG. REC. S4508 (daily ed. April 20, 1994) (statement of Senator Grassley).

¹⁴The 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.

¹⁵See, e.g., William T. Bodoh & Lawrence P. Dempsey, *Bankruptcy Reform: An Orderly Development of Public Policy?*, 49 CLEV. ST. L. REV. 191, 194 (2001) (describing open process of Bankruptcy Commission).

¹⁶National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years* (1997) <<http://govinfo.library.unt.edu/nbrc/report/01title.html>>.

¹⁷*Id.*

¹⁸See Bankruptcy Filing Statistics, Administrative Office of the United States Courts (on file with author).

¹⁹See, 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 Hums*, 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

2/25/04 draft

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.

²⁰See, 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.²⁴ 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).²⁵ The industry turned to its friends in Congress.²⁶

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 1997.²⁷ Although Rep. McCollum was not even a member of the

²³National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years* 62 (1997).

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 and 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.

²⁶DAVID 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

²⁸ See, e.g., Paul Gentile, *No Happy Campers Here: National Bankruptcy Review Commission issues final report*, CREDIT UNION TIMES, October 29, 1997, at 1 (Rep. McCollum saying "I could see the Commission wasn't going to put a needs based provision in their recommendations, so we went ahead and drafted a bill"). Through his sponsorship and involvement with the bankruptcy bill, Rep. McCollum earned Public Campaign's first "Golden Leash" Award. See Public Campaign, Press Release, *First "Golden Leash Award" Presented for the Quid Pro Quo Practice of Dollar Democracy; Rep. McCollum Cited for Contributions from Credit Card Industry*, http://www.publiccampaign.org/leash_pr.html (March 10, 1998). See generally Victoria F. Nourse & Jane S. Schacter, *The Politics of Legislative Drafting*, 77 N.Y.U. L. REV. 575 (2002) (Senate staffers identifying bankruptcy as having particularly extensive industry lobbyist involvement, especially on House side).

²⁹The Bankruptcy Reform Act of 1998, H.R. 3150, introduced February 3, 1998. <http://thomas.loc.gov/cgi-bin/bdquery/z?d105:HR03150:@@L&summ2=m&>;

³⁰H.R. 3150 Hearing Testimony (on file with author).

³¹*Id.*

³²See, 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.

2/25/04 draft

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. 1301.³³ 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,³⁴ although Senator Grassley viewed those opposed to his bill as a “fringe element” and was not very receptive to most bankruptcy insider concerns.³⁵ The bill did evolve, however, as Senate Democrats sought to incorporate more provisions promoting responsible lending practices outside of the bankruptcy context.³⁶

The Clinton Administration supported most of the tenets of both the House and Senate bankruptcy bills.³⁷ After all, the bill’s proponents framed the bill as an issue of personal

³³This 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.

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

³⁵CONG. REC. S9094 (105th Cong.1998) (statement of Sen. Grassley).

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.

³⁷Statement 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 2/25/04 draft

responsibility, which had been a theme in welfare reform.³⁸ Yet, the Administration started to express concerns about discrete aspects of the bill, and also preferred the Senate bill to the House bill.³⁹

In the House, many Democrats supported the bill notwithstanding Administration concerns and the bill easily passed by 306-118 on June 10, 1998.⁴⁰ The Senate overwhelmingly approved its own bill 97-1 on September 23, 1998 with only Senator Wellstone voting against it.⁴¹

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.⁴²

commentary. See letter from Ann M. Harkins, Acting Assistant Attorney General, to Hon. Henry J. Hyde (May 7, 1998) (on file with author).

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

³⁹Statement 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 commentary. See letter from Ann M. Harkins, Acting Assistant Attorney General, to Hon. Henry J. Hyde (May 7, 1998) (on file with author).

⁴⁰House 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).

⁴¹Senate 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").

⁴²Katherine 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 2/25/04 draft

The House easily passed this conference report bill by a vote of 300-125, with plenty of Democratic support, on October 9, 1998.⁴³ Due to a filibuster threat preventing further action, the Senate voted only to consider the conference report.⁴⁴ 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,⁴⁵ which now was hundreds of pages and included an even wider range of provisions.⁴⁶ The House again easily approved the bill on May 5, 1999 (318-108).⁴⁷

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).

⁴³House Roll Call Vote #506 on House Report 794 (105th Cong. Oct. 9, 1998).

⁴⁴Senate Vote #313 on consideration of conference report (105th Cong. Oct. 9, 1998) (94-2).

⁴⁵Press Release, Gekas Introduces Bankruptcy Reform Act for 106th Congress (February 24, 1999) (announcing introduction of bill “virtually identical to the [bill] that passed the House with over 300 votes in the 105th Congress”); “Dear Colleague” Letter from Rep. Gekas, Rep. Boucher, Rep. McCollum, & Rep. Moran, Support Bipartisan Bankruptcy Reform (February 25, 1999) (explaining this was same bill 300 members had voted for in last congress). See also Letter from Jacob Lew, Director of the Executive Office of the President, Office of Management and Budget, to Hon. John Conyers (March 23, 1999) (on file with author) (“Our position from last year [on Conference Report] has not changed”); Statement of Administration Policy, H.R. 833- Bankruptcy Reform Act of 1999 (May 3, 1999); Letter from Dennis K. Burke, Acting Assistant Attorney General, to Hon. George W. Gekas (March 24, 1999) (on file with author)(35 pages of Department of Justice commentary on bill).

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

⁴⁷House 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, 2000,⁴⁸ after the Senate had engaged in another floor amendment process.⁴⁹

The House and Senate bills were similar but not identical,⁵⁰ 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.⁵¹ 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.⁵² 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, 2000.⁵³ Then, President Clinton "pocket-vetoed" the bill due to several

(failing 184-238). Rep. Henry Hyde, *Why Squeeze Every Last Penny from the Bankrupt?*, N.Y. TIMES, May 18, 1999, at A23 (justifying his amendment and calling power of credit industry "awesome").

⁴⁸Senate vote #5 (106th Cong. Feb. 2, 2000).

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

⁵⁰See 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).

⁵¹H.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.

⁵²House vote on House Report 970 (106th Cong. Oct. 12, 2000). See also News Release, Rep. George W. Gekas, *Bankruptcy Reform Bill Passes; Bill Moves to Senate; Passage Expected* (October 12, 2000) (on file with author).

⁵³Senate Vote # 297 on H.R. 2415 Conference Report (106th Cong. December 7, 2000).

discrete points of contention.⁵⁴ 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 reintroduced⁵⁵ and passed 306-108 in the House on March 1, 2001.⁵⁶ The Senate's approval (83-15) of a nearly-identical bill quickly followed less than two weeks later.⁵⁷ Yet, Congress took no further action until 2002,⁵⁸ 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 2002.⁵⁹

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

⁵⁴See, 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.").

⁵⁵News 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).

⁵⁶House Roll Call Vote #25 on H.R. 333 (107th Cong. March 3, 2001).

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

⁵⁸The 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.

108th Congress (2003-2004)

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.

⁶²Rep. McCollum ran for Senate and lost. After redistricting, Rep. Gekas encountered a longtime incumbent conservative Democrat, Rep. Tim Holden, and lost.

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.

⁶³House 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.

⁶⁴S. 1920 (108th Cong.).

⁶⁵Dow 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.⁶⁷

Courts increasingly have used news in judicial opinions,⁶⁸ and attribute statistics to such sources.⁶⁹ Lawyers engage in media management as part of their litigation strategies.⁷⁰ 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").

⁶⁸ John J. Hasko, *Persuasion in the Court; Nonlegal Materials in U.S. Supreme Court Opinions*, 94 LAW LIBR. J. 427 (2002); Frederick Schauer & Virginia J. Wise, *Nonlegal Information and the Delegalization of Law*, 29 J. LEGAL STUD. 495 (2000). *See also* David Nimmer, *Appreciating Legislative History The Sweet and Sour Spots of the DMCA's Commentary*, 23 CARDOZO L. REV. 909, 958 (2002) (describing Judge Kozinski's use of sources, including newspapers and magazines not in briefs or record); LaShanda D. Taylor, *Creating A Causal Connection: From Prenatal Drug Abuse to Imminent Harm*, 25 N.Y.U. REV. L. & SOC. CHANGE 383, 396-397 (1999) (noting family court use of newspaper and magazine articles).

⁶⁹ *See, e.g.*, *Ashcroft v. ACLU*, 535 U.S. 564, 567 (2002) (citing N.Y. Times for Internet use estimate); *A.D. Bedell Wholesale Co., Inc. v. Philip Morris Inc.*, 263 F.3d 239, 242 (3d Cir. 2001) (citing N.Y. Times for number of state lawsuits against tobacco companies); *In re Mercer*, 246 F.3d 391, 401 (5th Cir. 2001) (citing papers for estimates of cost of bankruptcy per year in total and by household); *U. S. v. Garrett*, 984 F.2d 1402, 1404 (5th Cir. 1993) (citing N.Y. Times for airport security firearm confiscation statistics); *Middleton v. City of Flint*, 92 F.3d 396, 407 (6th Cir. 1996) (citing L.A. Times for percentage of Indian-American owners in lodging/motel business); *Carroll v. Commr.*, 71 F.3d 1228, 1230 (6th Cir. 1995) (citing Washington Post for tax documents lost by IRS each year); *U.S. v. Milligan*, 17 F.3d 177, 183 (6th Cir. 1994) (citing L.A. Times for health insurance statistics); *Housing Opportunities Made Equal, Inc. v. The Cincinnati Enquirer, Inc.*, 943 F.2d 644, 666 (6th Cir. 1991) (Keith, J., dissenting) (citing papers for prevalence of housing discrimination); *Morrison v. Hall*, 261 F.3d 896, 904 (9th Cir. 2001) (citing L.A. Times for adult prisoner literacy rate and correlation between literacy and recidivism); *Roulette v. City of Seattle*, 97 F.3d 300, 315 (9th Cir. 1996) (Norris, Pregerson & Tashima, JJ., dissenting) (citing papers for rich-poor disparity in U.S.); *Hammer v. Gross*, 932 F.2d 842, 852 (9th Cir. 1991) (Reinhardt, Kozinski (in part) and Nelson (in part), JJ., concurring) (citing L.A. Times for drunk driving injury or death statistics); *McKinney v. Anderson*, 924 F.2d 1500, 1507 (9th Cir. 1991) (citing N.Y. Times for proportion of smokers in prison nationwide); *Hutchins v. D.C.*, 188 F.3d 531, 570 (D.C. Cir. 1999) (Rogers, J., dissenting) (citing Washington Post for curfew effect on reducing juvenile crime); *U.S. v. Smith*, 27 F.3d 649 (D.C. Cir. 1994) (Sentelle, J., dissenting) (citing papers for estimated numbers of illegal immigrants and incarcerated illegal immigrants); *People Against Nuclear Energy v. NRC*, 678 F.2d 222, 243 (D.C. Cir. 1982) (citing Washington Post for average loss of life in coal mining).

have studied media coverage of a range of law- and policy- related issues, including executive appointment candidates,⁷¹ judicial elections,⁷² presidential elections,⁷³ and press accounts of victims' families' comments in capital cases.⁷⁴

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.⁷⁵ News media offer new

⁷⁰See, e.g., RICHARD SHERWIN, WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE 147-148 (2000) (managing pre-trial publicity and media messages to sway popular opinion and “demoralize,” “antagonize,” “encourage settlement”); Tom Goldstein, *The Transformation of Legal Journalism*, 66 U CIN. L. REV. 895, 900 (1998) (lawyer as spokesperson in media); Peter J. Gardner, *Media at the Gates: Panic! Stress! Ethics?*, 27 SEP VT BAR J. (Sept 2002); Kateri Walsh, *Engaging the Media: What lawyers should know when talking to reporters*, 62 OREGON STATE BAR BULLETIN 9 (October 2001); Trudy Lieberman, *The Media and Government Regulation*, 11 KAN. J. L. & PUB. POL. 547 (2002).

⁷¹Laurel Leff, *The Making of a "Quota Queen": News Media and the Bias of Objectivity*, in FEMINISM, MEDIA & THE LAW (Martha A. Fineman & Martha T. McCluskey, eds., 1997) (objectivity norm “steered the media toward familiar constructs about race and gender to make sense of the controversy about appointment [of Lani Guinier],” and enabled journalists to disclaim responsibility for characterization).

⁷²Joseph 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).

⁷³See, e.g., KATHLEEN HALL JAMIESON & PAUL WALDMAN, THE PRESS EFFECT: POLITICIANS, JOURNALISTS, AND THE STORIES THAT SHAPE THE WORLD (Oxford 2003); SIDNEY KRAUS & DENNIS DAVIS, THE EFFECTS OF MASS COMMUNICATION ON POLITICAL BEHAVIOR (1976).

⁷⁴Samuel R. Gross & Daniel J. Matheson, *What They Say in the End: Capital Victims' Families and the Press*, 88 CORNELL L. REV. 486 (2003).

⁷⁵TIMOTHY E. COOK, GOVERNING WITH THE NEWS 3, 10-13 (1998) (political actors and journalists “interact in constant but implicit series of negotiations over who controls agenda”); MICHAEL SCHUDSON, THE SOCIOLOGY OF NEWS 21 (2003) (politicians as parajournalists); M. ETHAN KATSH, LAW IN A DIGITAL WORLD 9 (1995) (law and media “intimately linked institutions”); 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 (Shanto Iyengar & Richard Reeves, eds., 1997) (“[s]ometimes one leads and sometimes the other, and often both are following actions of some third party”); SIDNEY KRAUS & DENNIS DAVIS, THE EFFECTS OF MASS COMMUNICATION ON POLITICAL BEHAVIOR (1976) (centrality of media to policymaking, particularly since rise of tv imagery); Robert H. Giles, *The Media and Government Regulation in the Great Tradition of Muckraking*, 11 KANS. J. L. PUB. POL. 567, 570 (2002) (“news plays a formative role in the development of policy, of legislation, of regulations, of reform and in the overlay of politics that is so characteristic of our contemporary democracy”); Achilles Skordas, *Hegemonic Custom?*, in UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW (Michael Byers & George 2/25/04 draft

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

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

Nolte, eds., 2003) (media as source of public conscience, playing role in policymaking); Jan Ellen Rein, *Misinformation and Self-Deception in Recent Long-Term Care Policy Trends*, 12 J. L. & POLITICS 195, 233-234 (1996) (“profound effect on policy decisions at every level of government”); Lucy A. Williams, *Race, Rat-Bites, and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, 22 FORDHAM URB. L. J. 1159, 1174 (1995) (media imaging affecting poverty and welfare legislation).

⁷⁶Victoria F. Nourse & Jane S. Schacter, *The Politics of Legislative Drafting*, N.Y.U. L. REV. 575, 584 (2002) (survey of Senate congressional staffers on choosing and producing legislation); 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, 362 (Shanto Iyengar & Richard Reeves, eds., 1997) (news media “important determinant of which issues will manage to win space in the limited attentions of the public and Congress”); DOUGLASS CATER, *THE FOURTH BRANCH OF GOVERNMENT* (1959) (media surrogate of public opinion); LAURA E. GOMEZ, *MISCONCEIVING MOTHERS: LEGISLATORS, PROSECUTORS, AND THE POLITICS OF PRENATAL DRUG EXPOSURE* 31 (1997) (bill sponsorship responding in part to media construction of “crack baby”); Peter H. Huang, Kimberly D. Krawiec, & Frank Partnoy, *Derivatives on TV: A Tale of Two Derivatives Debacles in Prime Time*, 4 GREEN BAG 257 (2001) (partly justifying study of media coverage on fact that society’s lawmakers watch television, and noting that lawmakers cite news stories in pitches for reform). For a criticism of media’s lawmaking role, see WILLIAM JAMES WILLIS, *THE SHADOW WORLD: LIFE BETWEEN THE NEWS MEDIA AND REALITY* 155 (1991) (media should not be held responsible for Congress’s agenda).

⁷⁷TIMOTHY E. COOK, *GOVERNING WITH THE NEWS* 11 (1998) (media “influence perceptions of public moods, and in other ways shape context of one legislator asking another for support”); GARY C. WOODWARD, *PERSPECTIVES ON AMERICAN POLITICAL MEDIA*, 82, 83, 111 (1997) (discussing publicity functions of congress and use of news media to gain legislative power for both practical and philosophical reasons, and noting press secretaries find “greater reach and credibility of newspapers more useful than self generated communications such as targeted mail or newsletters.”); Shanto Iyengar, *Framing Responsibility for Political Issues: The Case of Poverty*, in DO THE MEDIA GOVERN? POLITICIANS, VOTERS, AND REPORTERS IN AMERICA (Shanto Iyengar & Richard Reeves, eds., 1997) (media’s significant influence on public opinion); Deborah A. Stone, *Causal Stories and the Formation of Policy Agendas*, 104 POL. SCI. Q. 281, 282 (1989) (imagemaking in policymaking and how political actors portray problem to garner support for preferred solution); LAURA E. GOMEZ, *MISCONCEIVING MOTHERS: LEGISLATORS, PROSECUTORS, AND THE POLITICS OF PRENATAL DRUG EXPOSURE* 32 (1997) (media as “free advertising” for legislators’ projects). See generally JOSEPH R. GUSFIELD, *THE CULTURE OF PUBLIC PROBLEMS: DRINKING-DRIVING AND THE SYMBOLIC ORDER* 10-12 (1981); SAM KERNELL, *GOING PUBLIC* (1993) (media management strategies of politicians); 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, 96 (1990) (“Press coverage is a tool that [politicians] manipulate to enhance their reelection prospects and other professional objectives”). For an alternative way to build support for a legislative proposal, see Leonard A. Jason & Thomas Rose, *Influencing the Passage of Child Passenger Restraint Legislation*, 12 AM. J. OF COMMUNITY PSYCHOLOGY 485 (1984) (evaluating impact of sending child automobile injury data to legislators on eve of legislative debate).

2/25/04 draft

this is regardless of the media portrayal's accuracy.⁷⁹ Media coverage also has the potential to change lawmakers' approaches to dealing with an issue.⁸⁰ Even if the media do not independently determine or influence Congressional attention, they indirectly may affect Congressional action, perhaps through influencing public opinion.⁸¹ The media also may help

⁷⁸See, 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).

⁷⁹Paul Colomy & Laura Ross Greiner, *Making Youth Violence Visible: The News Media and the Summer of Violence*, 77 *DENV. U. L. REV.* 661, 686-687 (2000) (studying Denver Post coverage of violent crimes from 1992-1994, finding it gave crime significantly more and higher profile news treatment in the summer of 1993, although crime reports disclosed a "small but unspectacular" upturn in violent crimes, which was followed by increased lawmaker receptiveness to legislation to curb violence, and arguing that press was a "cultural entrepreneur" in its narrative techniques and played a "critical role in making youth violence a salient public issue."); LAURA E. GOMEZ, *MISCONCEIVING MOTHERS: LEGISLATORS, PROSECUTORS, AND THE POLITICS OF PRENATAL DRUG EXPOSURE* 29 (1997) (tracking press coverage and California state legislative activity related to "crack babies" by studying coverage of drugs, pregnancy and child abuse from 1985-1992 in two newspapers and 57 bills and related materials in the California legislature). For reviews of Gomez, see Joseph R. Henry, *Substance Abuse, Families and the Courts: Legal and Public Health Challenges*, 3 *J. HEALTH CARE LAW & POL'Y* 207 (1999)(book review) (recommending Gomez track media changes in tone over time); Linda G. Mills, *Feminist Phallacies: The Politics of Prenatal Drug Exposure and the Power of Law*, 25 *LAW & SOC. INQ.* 1215 (2000) (review essay); Dorothy E. Roberts, *Creating and Solving the Problem of Drug Use During Pregnancy*, 90 *J. CRIM. L. & CRIMINOLOGY* 1353 (2000); Karen D. Ziri, *Who is the Guilty Party? Rights, Motherhood, and the Problem of Prenatal Drug Exposure*, 34 *L. & SOC'Y REV.* 237 (2000).

⁸⁰Denise Scheberle, *Radon and Asbestos: A Study of Agenda Setting and Causal Stories*, 22 *POLICY STUDIES J.* 74, 77-78, 82-83 (1994) (media helped transform legislative involvement in asbestos from industry promotion to a health problem); 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, 362 (Shanto Iyengar & Richard Reeves, eds., 1997).

⁸¹For 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).

change the public's understanding of legislation once enacted.⁸² 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.⁸³

Perhaps of even greater relevance are studies that implicitly recognize media coverage's effects on policymaking.⁸⁴ Social scientists have considered whether the media have roles in "agenda-setting," namely helping rank the salience of particular issues.⁸⁵ Researchers usefully question how the media "frame" issues or problems,⁸⁶ or focus on which causal stories more

⁸² See, e.g., Sarah F. Russell, *Covering Women and Violence: Media Treatment of VAWA's Civil Rights Remedy*, 9 MICH. J. GENDER & L. 327, 328, 334, 335, 352-353 (2003) (finding shift in press coverage of civil rights provision in Violence Against Women Act, and, as result, public less likely to conceptualize provision as civil rights or discrimination law). See also Lisa Finnegan Abdolian & Harold Takooshian, *The USA Patriot Act: Civil Liberties, The Media, and Public Opinion*, 30 FORDHAM URB. L. J. 1429, 1436-1438 (2003) (stating "it wasn't until months after its passage that reporters took a hard look at the new law and began to question what its provisions meant," and observing split in focus of coverage between liberal and conservative leaning news organizations).

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)).

⁸⁴ See generally William A. Gamson & Andre Modigliani, *Media Discourse and Public Opinion on Nuclear Power: A Constructionist Approach*, 95 AM. J. OF SOCIOLOGY, 1-37 (July 1989) (analyzing relevant material during "critical discourse moments" between 1945 and the late 1980s as "indicator of the issue culture that people draw on to construct meaning," and offering detailed narrative of media discourse, with an emphasis on interpretive packages (progress, energy independence)). See also Sharon M. Friedman, *Blueprint for Breakdown: Three Mile Island and the Media Before the Accident*, J. OF COMMUNICATION 116 (Spring 1981); William Gamson & Kathryn E. Lasch, *The Political Culture of Social Welfare Policy*, in *EVALUATING THE WELFARE STATE: SOCIAL AND POLITICAL PERSPECTIVES*, 397-415 (Shimon Spirot and Ephraim Yuchtman-Yaar, eds., 1983).

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*, 2/25/04 draft

likely lead to policy action.⁸⁷ They have used these techniques to study media coverage of many issues, including crime waves,⁸⁸ bridge collapse,⁸⁹ affirmative action,⁹⁰ welfare,⁹¹ homelessness,⁹² and a variety of poverty-related conditions,⁹³ and they sometimes approach this

AND THE STORIES THAT SHAPE THE WORLD 122 (2003) (product of “give and take between journalists and political actors”). For framing broader than media, see generally JOSEPH R. GUSFIELD, *THE CULTURE OF PUBLIC PROBLEMS: DRINKING-DRIVING AND THE SYMBOLIC ORDER* (1981).

⁸⁷Deborah A. Stone, *Causal Stories and the Formation of Policy Agendas*, 104 POL. SCI. Q. 281 (1989).

⁸⁸See, e.g., Mark Fishman, *Crime Waves as Ideology*, 25 SOCIAL PROBLEMS 531, 533 (1978) (studying reporting on crime against elderly in New York City and finding disproportionate focus on gruesome crimes compared to crime statistics indicating drop in murders of elderly); 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, 331 (1991) (studying reporting on L.A. freeway violence, and recounting alarming terms used, including “sudden evolution,” “trend,” “wave,” “spate,” “spree,” “upsurge,” “fad,” “rash,” “epidemic plaguing,” “reaching alarming proportions”). See also Salma Ghanem & D. Evatt, *Media coverage and public concern about crime: An exploration of the second dimension of agenda-setting*, cited in Maxwell McCombs & George Estrada, *The News Media and the Pictures in Our Heads*, in DO THE MEDIA GOVERN? (1997) (tracking media coverage and public opinions about crime in comparison to actual crime statistics); 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, 47 (2003)(media reporting does not reflect decline in juvenile crime); LINCOLN STEFFENS, *THE AUTOBIOGRAPHY OF LINCOLN STEFFENS* (1936) (autobiography of journalist who claims he made crime wave).

⁸⁹Robert 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).

⁹⁰William A. Gamson & Andre Modigliani, *The Changing Culture of Affirmative Action*, in THE POLITICAL SOCIOLOGY OF THE STATE: ESSAYS ON THE ORIGINS, STRUCTURE, AND IMPACT OF THE MODERN STATE 289, 300-301, 304 (Richard G. Braungart and Margaret M. Braungart, eds., 1990) (evaluating seven issue packages regarding affirmative action coverage in t.v. news, news magazines, editorial cartoons, and syndicated columns).

⁹¹William Gamson & Kathryn Lasch, *The Political Culture of Social Welfare Policy*, in EVALUATING THE WELFARE STATE: SOCIAL AND POLITICAL PERSPECTIVES 397, 400, 402 408 (Shimon Spirot and Ephraim Yuchtman-Yaar, eds., 1983) (using media coverage of welfare to help establish “issue culture,” which in turn affects how lawmakers determine what they should do about the poor, and identifying “welfare freeloaders,” “working poor,” “poverty trap,” and “regulating the poor” issue packages in media and other materials).

⁹²Barrett 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.⁹⁴ 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.⁹⁵ 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.⁹⁶ These projects offer helpful explorations of media coverage even if one prefers not to take an extreme social constructionist stance.⁹⁷

low percentage compared to poverty). 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).

⁹³Shanto 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 Rosene 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).

⁹⁴George 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).

⁹⁵See, e.g., Marta Elliott & Lauren Krivo, *Structural Determinants of Homelessness in the United States*, 38 SOCIAL PROBLEMS 113, 141 (1991) (describing two camps); Thomas J. Main, *Analyzing Evidence for the Structural Theory of Homelessness*, 18 J. URB. AFF. 449, 450 (1996).

⁹⁶See generally Kay Young McChesney, *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

2/25/04 draft

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.⁹⁸ Sources are "the deep, dark secret of the power of the press;" they even might "lead the dance" between reporters and themselves.⁹⁹ They

problems). *See also* JOSEPH R. GUSFIELD, *THE CULTURE OF PUBLIC PROBLEMS: DRINKING-DRIVING AND THE SYMBOLIC ORDER* 13 (1981); 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 (1991) ("Problems can always be depicted in more than one way: rape as sex crime or crime of violence, marijuana as cause of psychosis, predursor to hard drugs, or threat to economic productivity"); ALAN IRWIN, *RISK AND THE CONTROL OF TECHNOLOGY: PUBLIC POLICIES FOR ROAD TRAFFIC SAFETY IN BRITAIN AND THE UNITED STATES* (1986).

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).

⁹⁸ Jane Delano Brown, Carl R. Bybee, Stanley T. Wearden, & Dulcie Murdock Straughan, *Invisible Power: Newspaper News Sources and the Limits of Diversity*, 64 *JOURNALISM Q.* 45 (1987) (studying front page stories and sourcing from national press and 4 North Carolina papers); CAROL H. WEISS & ELEANOR SINGER, *REPORTING OF SOCIAL SCIENCE IN THE MEDIA* 176 (1988) (studying social science coverage and sourcing in national press and 3 weekly news magazines.); RICHARD V. ERICSON, PATRICIA M. BARANAK & JANET B.C. CHAN, *NEGOTIATING CONTROL: A STUDY OF NEWS SOURCES* (1989); Daniel C. Hallin, Robert Karl Manoff, and Judy K. Weddle, *Sourcing Patterns of National Security Reporters*, 70 *JOURNALISM Q.* 753 (1993); LEON V. SIGAL, *REPORTERS AND OFFICIALS: THE ORGANIZATION AND POLITICS OF NEWSMAKING* (1973) (analyzing news source diversity); Hugh M. Culbertson, *Veiled News Sources - Who and What Are They?* *NEWS RESEARCH BULL. OF THE AM. NEWSPAPERS PUBLISHERS ASS'N* 2-23 (May 1975); Naureckas & Jackson, *The FAIR Reader, 1996, NAFTA's Knee-Jerk Press, Extra! Update, January/February 1994* 151, In *TRADE: NAFTA'S MANIFEST DESTINY* (1994) (discussing Senator Byron Dorgan's analysis of Washington Post editorial and op eds on NAFTA, in which he found a pro-NAFTA bias of nearly 7-1); Naureckas & Jackson, *The FAIR Reader 1996, Happily Ever NAFTA? Extra Update, October 1993* 149, in *TRADE: NAFTA'S MANIFEST DESTINY* (reviewing sourcing in NAFTA stories, and observing pro-NAFTA bias among majority of sources, with scarce representation of environmentalists and trade unionists).

⁹⁹ MICHAEL SCHUDSON, *THE SOCIOLOGY OF NEWS* 54, 134 (2003). *See also* John J. Oslund, *The Media and Government Regulation; Guarding the Henhouse*, 11 *KAN. J. L. PUB. POL'Y* 559, 561 (2002) (reporter-source relationship is "alternately symbiotic, confrontational, clandestine and political").

2/25/04 draft

have a powerful opportunity to shape the way a problem or issue is understood.¹⁰⁰ 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.¹⁰¹ Researchers have suggested that the system rewards those who engage in outreach efforts with the media.¹⁰² Speaking in quotable sentences and having a flair for the dramatic certainly help as well.¹⁰³ Sources might be particularly influential in shaping

¹⁰⁰See, e.g., Robert A. Stallings, *Media Discourse and the Social Construction of Risk*, 37 SOC. PROB. 87 (February 1990) (relationship between journalists and sources helps explain which causes get identified); David Knoke and Edward O. Laumann, *The Social Organization of National Policy Domains: An Exploration of Some Structural Hypotheses*, in SOCIAL STRUCTURE AND NETWORK ANALYSIS 259 (Peter V. Mardsen and Nan Lin, eds., 1982) (media citations help determine “core actors” in debate); EDWARD S. HERMAN & NOAM CHOMSKY, MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF THE MASS MEDIA 18, 22 (1988) (sourcing as third filter, and powerful bureaucracies make information collection cheaper and easier for media).

¹⁰¹See, e.g., CAROL H. WEISS & ELEANOR SINGER, REPORTING OF SOCIAL SCIENCE IN THE MEDIA 45 (1988) (“veterans of the press” effect leads to finding that 57% of those quoted had been quoted more than 20 times before); WILLIAM JAMES WILLIS, THE SHADOW WORLD: LIFE BETWEEN THE NEWS MEDIA AND REALITY 145 (1991) (rolodex effect); MICHAEL SCHUDSON, THE SOCIOLOGY OF NEWS 52 (2003) (journalists seek experts that satisfy press’ “operational bias”) (citing Janet E. Steele, *Experts and the Operational Bias of Television News: The Case of the Persian Gulf War*, 72 JOURNALISM AND MASS COMMUNICATION Q. 799 (1995)); Jane Delano Brown, Carl R. Bybee, Stanley T. Wearden, & Dulcie Murdock Straughan, *Invisible Power: Newspaper News Sources and the Limits of Diversity*, 64 JOURNALISM Q. 45-48 (1987).

¹⁰²CAROL H. WEISS & ELEANOR SINGER, REPORTING OF SOCIAL SCIENCE IN THE MEDIA 26-28, 47 (1988). See also Douglas L. Colbert, *Broadening Scholarship: Embracing Law Reform and Justice*, 52 J. LEGAL. ED. 540, 556-557 (2002) (success of professors in gaining media attention for capital trial error rate study); LEON V. SIGAL, REPORTERS AND OFFICIALS (1973) (study finding only 1/4 stories were derived of research of reporter’s own initiative); MICHAEL SCHUDSON, THE SOCIOLOGY OF NEWS 135 (2003) (college and university impetus to engage in outreach with media, particularly “when good things happen”); Al Kamen, *In the Loop*, WASH. POST, April 3, 2001, at A19 (reporting on Harvard University’s outreach to media to increase citation of professors).

¹⁰³William Gamson & Kathryn Lasch, *The Political Culture of Social Welfare Policy*, in EVALUATING THE WELFARE STATE: SOCIAL AND POLITICAL PERSPECTIVES 397, 401 (Shimon Spirot 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 soundbiting, 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.¹⁰⁴ 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 high circulation and influential national newspapers: The Wall Street Journal, The New York Times, and The Washington Post.¹⁰⁵ These papers routinely are chosen for analysis by a wide range of researchers.¹⁰⁶ Although good arguments support expanding the analysis to other media outlets, including local newspapers,¹⁰⁷ 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 circulation of any seven day newspaper. http://nytadvertising.nytimes.com/adonis/html/aud_circ.htm. The Wall Street Journal declares a circulation of over 1.8 million as of the six months ending September 2002. http://www.dj.com/index_aboutdow.htm.

¹⁰⁶ See, e.g., CAROL H. WEISS & ELEANOR SINGER, REPORTING OF SOCIAL SCIENCE IN THE MEDIA 179 (1988) (N.Y. Times, Wall St J, Wash. Post, and three newsweeklies); Jane Delano Brown, Carl R. Bybee, Stanley T. 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 MICH. 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 EQUAL 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. SIGAL, REPORTERS AND OFFICIALS (1973) (information gathering in N.Y. Times and Wash. Post).

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 Brown, Carl R. Bybee, Stanley T. Wearden, & Dulcie Murdock Straughan, *Invisible Power: Newspaper News 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 Freeway Shootings Problem*, 61 SOCIOLOGICAL INQUIRY 327, 329 (1991) (national and local papers).

growing uniformity of national news, the consolidation of media ownership, and the political power of these particular publications.¹⁰⁸ 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.¹⁰⁹ I focused on news and commentary between August 31, 1997 and August 31, 2001.¹¹⁰ The next section explores three emerging frames that reflect a partnership with some bankruptcy establishment sources and their implications.

¹⁰⁸Ben H. Bagdikian, *The U.S. Media; Supermarket or Assembly Line?*, in DO THE MEDIA GOVERN? 66, 68-70 (Shanto Iyengar & Richard Reeves, eds., 1997); MICHAEL SCHUDSON, THE SOCIOLOGY OF NEWS 121 (2003) (ownership); Columbia Journalism Review, *Who Owns What*, <http://www.cjr.org/owners/> (last accessed August 10, 2003); KATHLEEN HALL JAMIESON & PAUL WALDMAN, THE PRESS EFFECT: POLITICIANS, JOURNALISTS, AND THE STORIES THAT SHAPE THE WORLD 96-97 (2003) (political impact of Sunday talk shows rivaled only by New York Times and Washington Post).

¹⁰⁹Cf. 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 spread sheet 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.

¹¹⁰The 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

¹¹¹See, e.g., 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"); Eric Schmitt, *Bankruptcy Bill Approved*, N.Y. TIMES, February 6, 2000, at sec 4 p 2 ("Despite their ability to pay, wealthier filers walk away from an estimated \$3 billion per year"); Katherine Q. Seelye, *Republicans Agree to New Limits On Consumer Bankruptcy Filings*, N.Y. TIMES, October 8, 1998, at A1 (Grassley referring to "abusive spending practices of those who exploit the Federal bankruptcy code for personal gain or convenience"); Philip Shenon, *How Bill in Senate Would Add Hurdles To Erasing of Debt*, N.Y. TIMES, March 14, 2001, at A1 (Hatch referring to "the unscrupulous who abuse our system"); Philip Shenon, *Senate Rejects Industry Curbs On Bankruptcy*, N.Y. TIMES, March 8, 2001, at A18 (Biden saying "Unnecessary and abusive bankruptcy costs everyone").

¹¹²Robert D. Hershey, *Creditors Lead Push To Curb Bankruptcy*, N. Y. TIMES, May 10, 1998, at sec. 3 p. 10 (Gekas); Katherine Q. Seelye, *Panel to Vote on Measure To Tighten Bankruptcy Law*, N.Y. TIMES, May 14, 1998, at A22 (Gekas); Peter Pae & Stephanie Stoughton, *Personal Bankruptcy Filings Hit Record; Easy Credit Blamed, Congress May Act*, WASH. POST, June 6, 1998, at A1 (McCollum); Steve France, *Big Brother Bankruptcy*, WASH. POST, March 21, 2000, at A25 (Hatch floor statements lamenting declining stigma).

¹¹³They characterized current law as a "free ride" or an "easy out" fraught with "loopholes" that lets "big spenders walk away from their debts," and was "as easy as going into a 7-11." Katherine Q. Seelye, *House Approves Legislation To Curb Laws on Bankruptcy*, N.Y. TIMES, June 11, 1998, at A22 (Roemer); Caroline E. Mayer, *Negotiators Complete Bankruptcy Reform Bill*, WASH. POST, October 8, 1998, at E1; Caroline E. Mayer, *Bankruptcy Bill Passed by Senate; Wiping Out Debts Would Be Harder*, WASH. POST, September 24, 1998, at E1; Jacob M. Schlesinger, *Card Games: As Bankruptcies Surge, Creditors Lobby Hard To Get Tougher Laws*, WALL ST. J., June 17, 1998, at A1; Katherine Q. Seelye, *Senate Votes to Curb Bankruptcy Abuse by Consumers*, N.Y. TIMES, September 24, 1998, at A25; Eric Schmitt, *Bankruptcy Bill Approved*, N.Y. TIMES, February 7, 2000, at sec. 4 p.2; Kathleen Day, *House Passes Tougher Debt Rules; Clinton opposes Bankruptcy Bill*, WASH. POST, October 13, 2000, at E3; Dawn Kopecki, *Law Would Require Credit Counseling --- Bankruptcy Filers Would Face Two Rounds of Classes*, WALL ST. J., April 16, 2001, at B3F; Kathleen Day, *Bankruptcy Bill Goes to House Floor*, WASH. POST, May 5, 1999, at E1; Eric Schmitt, *Bankruptcy Bill Approved*, N.Y. TIMES, February 6, 2000, at sec. 4 p. 2 (Sessions saying bill "closes loopholes and ends unfairness in provisions that are totally being abused and making a mockery out of legitimate bankruptcy").

¹¹⁴Jacob M. Schlesinger, *House Approves Bankruptcy Overhaul Amid Criticism Bill May Be Too Tough*, WALL ST. J., May 6, 1999, at A28 (Gekas saying "risk of squeezing the truly needy is very minimal."); Jacob M. Schlesinger & Katherine Ackley, *House Panel Approves Bankruptcy-Reform Bill*, WALL ST. J., April 29, 1999, at B16 (Gekas saying bill simply requires filers capable of repaying portion of debts do so); Tom Hamburger, *House Legislators Pass Measure to Curb Abuse of Bankruptcy-Protection Laws*, WALL ST. J., March 2, 2001, at B2 (Joe 2/25/04 draft

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

Rubin, former Gekas staffer, now with U.S. Chamber of Commerce told “wavering” House members “bill is targeted solely at wealthy debtors who have abused the bankruptcy system and can afford to repay their debts.”); Stephen Labaton, *Promised Veto Appears to Doom Congressional Agreement on Overhauling Bankruptcy Law*, N.Y. TIMES, October 13, 2000, at A30 (Gekas saying “[w]e guarantee a fresh start to any American who needs it”).

¹¹⁵As 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).

¹¹⁶Jacob 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 Cwyklik 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.

¹¹⁷Peter Pae, *House Rewrites Bankruptcy Laws; Measure Would Restrict Personal Filings*, WASH. POST, June 11, 1998, at A1; Caroline E. Mayer, *Bankruptcy Bill Passed by Senate; Wiping Out Debts Would Be Harder*, WASH. POST, September 24, 1998, at E1; Kathleen Day, *House Passes Tougher Debt Rules; Clinton Opposes Bankruptcy Bill*, WASH. POST, October 13, 2000, at E03; Kathleen Day, *Foes of Bankruptcy Bill Point Finger at Credit Card Issuers*, WASH. POST, February 28, 2001, at E01; 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; Kathleen

between candidate or party fundraising and bankruptcy bill support.¹¹⁸ 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."¹¹⁹ Other stories were quick to note that the bill's movement "underscores the new influence business has in Washington,"¹²⁰ and constitutes "a huge success for banks, credit-card companies, and retailers,"¹²¹ who "boast some of the best-connected lobbyists on Capitol Hill."¹²²

Day, *Senate Votes To Toughen Bankruptcy; 36 Democrats Support Measure Backed by Bush*, WASH. POST, March 16, 2001, at A1; Katherine Q. Seelye, *Senate Votes to Curb Bankruptcy Abuse by Consumers*, N.Y. TIMES, September 24, 1998, at A25 (credit card profitability).

¹¹⁸See, 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).

¹¹⁹Eric Schmitt, *Senate Approves a Bill to Toughen Bankruptcy Rules*, N.Y. TIMES, February 3, 2000, at A1.

¹²⁰Kathleen Day, *Senate Votes To Toughen Bankruptcy; 36 Democrats Support Measure Backed by Bush*, WASH. POST, March 16, 2001, at A1.

¹²¹Katherine Q. Seelye, *Republicans Agree to New Limits On Consumer Bankruptcy Filings*, N.Y. TIMES, October 8, 1998, at A1; Peter Pae & Stephanie Stoughton, *Personal Bankruptcy Filings Hit Record; Easy Credit Blamed, Congress May Act*, WASH. POST, June 7, 1998, at A1.

¹²²Philip Shenon, *Senate Democrats Stall Bankruptcy Bill*, N.Y. TIMES, February 17, 2001, at A11.

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

¹²³Caroline E. Mayer, *Bankruptcy Bill Passed by Senate; Wiping Out Debts Would Be Harder*, WASH. POST, September 24, 1998, at E01; Caroline E. Mayer, *Negotiators Complete Bankruptcy Reform Bill*, WASH. POST, October 8, 1998, at E01; Helen Dewar & Kathleen Day, *Senate Approves Bankruptcy Bill; Industry-Sought Overhaul Passes 83-14*, WASH. POST, February 3, 2001, at A1.

¹²⁴Philip Shenon, *Senate Democrats Stall Bankruptcy Bill*, N.Y. TIMES, February 17, 2001, at A11; Philip Shenon, *How Bill in Senate Would Add Hurdles To Erasing of Debt*, N.Y. TIMES, March 14, 2001, at A1; Philip Shenon, *Bankruptcy Measure Gains On a Lopsided Senate Vote*, N.Y. TIMES, March 15, 2001, at A22.

¹²⁵Kathleen Day, *House Passes Bankruptcy Limits; Measure Would Make It Harder for Consumers to Wipe Out All Debts*, WASH. POST, March 2, 2001, at A1; *Bankruptcy-Reform Bill Dies with a 'Pocket Veto'*, WALL ST. J., December 20, 2000; Tom Hamburger, *House Legislators Pass Measure to Curb Abuse of Bankruptcy-Protection Laws*, WALL ST. J., March 2, 2001, at B2; Eric Schmitt, *Senators Back Major Overhaul of Bankruptcy*, N.Y. TIMES, December 8, 2000, at A1 (lobbyists promising “furious” campaign to override veto).

¹²⁶Katherine 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 gaveled the bankruptcy bill to approval”).

¹²⁷Philip Shenon, *Bill to Tighten Bankruptcy Gets a Push*, N.Y. TIMES, June 12, 2001, at C1.

¹²⁸Kathleen Day, *Bankruptcy Bill Put on Fast Track; Republicans Say Law Would Curb Abuses*, WASH. POST, February 8, 2001, at E01; Kathleen Day, *Senate Votes To Toughen Bankruptcy; 36 Democrats Support Measure Backed by Bush*, WASH. POST, March 16, 2001, at A1.

¹²⁹See, 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

¹³⁰Peter Pae, *House Rewrites Bankruptcy Laws; Measure Would Restrict Personal Filings*, WASH. POST, June 11, 1998, at A1; Peter Pae & Stephanie Stoughton, *Senate's Bankruptcy Bill Gains Support; Vote Could Come in July*, WASH. POST, June 12, 1998, at F03.

¹³¹Katherine 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”).

¹³²Dan 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 benefitting” 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).

¹³³Philip Shenon, *Bankruptcy Measure Gains On a Lopsided Senate Vote*, N.Y. TIMES, March 15, 2001, at A22.

¹³⁴Yochi 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”).

¹³⁵David 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.¹³⁶ They said it was the “best bill money can buy,” the “industry’s wish list,”¹³⁷ “of, by and for the credit companies,”¹³⁸ “written by a lot of people who have very special interests to protect.”¹³⁹ They described the credit industry as “big givers, heavy hitters, a huge and powerful lobbying coalition,”¹⁴⁰ 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).

¹³⁶Philip 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”).

¹³⁷Dan Morgan & Kathleen Day, *Early Win Emboldens Lobbyists for Business; Groups to Push Much Broader Agenda*, WASH. POST, March 11, 2001, at A1 (Frank Torres, Consumers Union); Kathleen Day, *Bankruptcy Bill Goes to House Floor*, WASH. POST, May 5, 1999, at E1.

¹³⁸Jacob M. Schlesinger, *House Approves Big Bankruptcy-Code Overhaul*, WALL ST. J., June 11, 1998, at A2; Katherine Q. Seelye, *House Approves Legislation To Curb Laws on Bankruptcy*, N.Y. TIMES, June 11, 1998, at A22 (Nadler).

¹³⁹Jacob M. Schlesinger, *Card Games: As Bankruptcies Surge, Creditors Lobby Hard To Get Tougher Laws*, WALL ST. J., June 17, 1998, at A1 (Durbin).

¹⁴⁰Philip 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

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."¹⁴¹ Skeptics and opponents described credit industry lobbying as “brazen,” particularly when “their aggressive marketing and lending practices” that push families into financial trouble.¹⁴²

say that this is an institutional problem, because the people who are trying to rebuild their lives in bankruptcy, they don't have clout, the same economic resources”); Katherine Q. Seelye, *Senate Votes to Curb Bankruptcy Abuse by Consumers*, N.Y. TIMES, September 24, 1998, at A25.

¹⁴¹Dan Morgan & Kathleen Day, *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, *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, *Credit Counseling Agencies Dealt 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, *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, *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, *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, *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, *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 windfall and a lot more than they deserve.”); Philip Shenon, *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, *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”).

¹⁴²Kathleen Day, *Foes of Bankruptcy Bill Point Finger at Credit Card Issuers*, WASH. POST, February 2, 2001, at E1; Philip Shenon, *Senate Panel Approves Bill for Overhauling Bankruptcy Laws*, N.Y. TIMES, March 1, 2001, at A15 (similar quote); David Wessel, *The Muddled Course of Bankruptcy Law*, WALL ST. J., February 22, 2001, at A1 (unnamed consumer advocates claiming creditors too quick to lend). *See also* Associated Press, *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, *Legislation to Overhaul Laws on Bankruptcy Dies as President Fails to Sign It*, N.Y. TIMES, December 20, 2000, at A32 (Kennedy). *See also* Eric Schmitt, *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”). *See generally* DAVID A. SKEEL, JR., *DEBT’S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA* 187, 203 (2001) (debtor advocates blamed lenders for bankruptcy boom).

2/25/04 draft

In addition to news reporters, the New York Times and Washington Post editorial pages also strongly embraced this industry power angle.¹⁴³ 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.”¹⁴⁴ They found the support of both Republicans and Democrats being lobbied, bought,¹⁴⁵ 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.”¹⁴⁶ Authors of signed opinion pieces, including David Broder, Floyd Norris, and Senator Russell Feingold, also framed discussions of bankruptcy in terms of industry influence.¹⁴⁷

¹⁴³The 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).

¹⁴⁶*The Rich Win*, WASH. POST, June 9, 2000, at A32.

¹⁴⁷David 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

2/25/04 draft

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

before public becomes aware of the consequences of what they are doing and works to stop them. And one reason these interests can get Congress to act so quickly is that they have spent millions on lobbying and campaign contributions.”); Floyd Norris, *Bankruptcy Reform that Sparing the Wealthy*, N.Y. TIMES, May 9, 1999, at A16 (bill “pushed by credit card companies”).

¹⁴⁸See *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”).

¹⁴⁹Donald 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).

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

¹⁵¹*But see* National Review Staff, *Journalistically Bankrupt: How else to describe one network coverage of new bankruptcy legislation*, March 16, 2001, www.nationalreview.com/nr_comment/nr_commentprint031601c.html (criticizing reporters for focusing on lobbying and contributions rather than substantive merits of legislation); William F. Buckley, Jr., *Buy Now, Pay Never*, March 13, 2001, www.nationalreview.com/buckley/buckleyprint031301.html. (criticizing focus on lobbying and contributions).

2/25/04 draft

campaign finance reform,¹⁵² although there is little evidence that this link was forged successfully.¹⁵³

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.¹⁵⁴ Indeed, one might expect a lawmaker to chafe and become defensive at the notion that she supports bankruptcy

¹⁵²Russ Feingold, *Lobbyists' Rush for Bankruptcy Reform*, WASH. POST, June 7, 1999, at A19 (citing legislation as poster child for campaign finance reform); *A Bankrupt Proposal*, SAN FRAN. CHRON. July 25, 2001 (bankruptcy bill as special interest bonanza helping to justify campaign finance reform). *But see* Todd J. Zywicki, *The Problem With Using Bankruptcy as a Tool in the Campaign Finance Reform Crusade*, American Bankruptcy Institute, *Cracking the Code: A Newsletter of Insolvency Issues* (Sept. 7, 2000) (media treating bill "as a pawn in its larger agenda of advancing the case for campaign finance reform").

¹⁵³As 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.

¹⁵⁴This 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.¹⁵⁵ 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).¹⁵⁶

Although lawmakers modified some creditor-friendly provisions over time,¹⁵⁷ 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.¹⁵⁸

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

¹⁵⁵One example are the many letters to the editors lawmakers wrote in response to articles and editorials employing the industry influence frame. *See, e.g.*, Charles Grassley & Robert Torricelli, *Letters to the Editor, Bankruptcy Loopholes*, WASH. POST, Feb. 15, 2000, at A22; Joseph Biden, *Loopholes for Millionaires*, WASH. POST, July 19, 2001, at A26.

¹⁵⁶The 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.¹⁵⁹

This is troubling. Many versions of the bill had around 280 provisions, many with multiple parts, and spanned well over 500 pages.¹⁶⁰ They would change 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

¹⁵⁸ See section III(C).

¹⁵⁹ COMPARE MICHAEL SCHUDSON, *THE SOCIOLOGY OF NEWS* 52 (2003) (preference for politics over policy, strategy and tactics over ideas); KATHLEEN HALL JAMIESON & PAUL WALDMAN, *THE PRESS EFFECT: POLITICIANS, JOURNALISTS, AND THE STORIES THAT SHAPE THE WORLD* 169 (2003) (election as horse race, not issues); W. Lance Bennett, *Cracking the News Code: Some Rules that Journalists Live By*, in *DO THE MEDIA GOVERN? POLITICIANS, VOTERS, AND REPORTERS IN AMERICA* 105 (Shanto Iyengar & Richard Reeves, eds., 1997) (horse race plot of elections); 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, 96 (1990) (horse race rather than ideas); Joseph M. Schwartz, *Democracy Against the Free Market: The Enron Crisis and The Politics of Global Deregulation*, 35 CONN. L. REV. 1097 (2003) (mainstream media “frames the Enron and subsequent corporate scandals as a story of political insider trading: Bush’s Texas buddies using political connections to garner (de)regulatory breaks and manipulate energy prices” and comparing to corporate media coverage); Stuart W. Nolan, Jr., *Campaign Finance Reform: Applying the First Amendment in a Marketplace of Ideas*, 6 COMMLAW CONCEPTUS 113 (1998) (media focused on role of money in politics); Howard Kurtz, *Reading Green Between the Lines*, WASH. POST, April 2, 2001, at C1 (industry money reporting theme in bankruptcy and elsewhere).

¹⁶⁰ See, e.g., H.R. 833, 106th 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

¹⁶¹The 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 NW. L. REV. 303, 311-312 (2003) (discussing how bankruptcy debates today occur “by proxy” with only remote relationship to bankruptcy itself).

¹⁶²*See generally* Melissa B. Jacoby, *Collecting Debts from the Ill and Injured; The Rhetorical Significance, But Practical Irrelevance, of Culpability and Ability to Pay*, 51 AM. U. L. REV. 229 (2001).

¹⁶³*See* Stephen Nunez & Howard Rosenthal, *Bankruptcy “Reform” in Congress: Committees, Ideology, and Floor Voting in the Legislative Process*, Russell Sage Foundation Working Paper #196 (October 24, 2002) (House voting on bankruptcy “strongly reflected campaign contributions”); Victoria F. Nourse & Jane S. Schacter, *The Politics of Legislative Drafting*, 77 N.Y.U. L. Rev. 575, 587-588 (2002) (Senate staffers reporting ubiquitous role of lobbyists in drafting process, with cadre of lawyers at the ready). *Compare* Thomas Stratman, *Can Special Interests Buy Congressional Votes? Evidence From Financial Services Legislation*, 45 J. L. & ECON. 345 (2002) (“results in this paper support the hypothesis that interest groups “buy” legislators’ votes with PAC contributions. The findings show that contributions are most effective in swinging the vote of more junior legislators.”).

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.¹⁶⁴ Although bill proponents advanced this type of theme for a contrary purpose, e.g., to support the bill,¹⁶⁵ their position did not seem to have as much effect on the way these papers framed the bankruptcy story.¹⁶⁶ Rather, bill proponents’ reluctance

¹⁶⁴ For examples outside of the bankruptcy context, see, e.g., *I.R.S. More Likely to Audit the Poor and not the Rich*, N.Y. TIMES, April 16, 2000, sec. 1 p1; *Reducing Audits of the Wealthy, I.R.S. Turns Eye on Working Poor*, N.Y. TIMES, December 15, 1999, at A1. See also *Gap Between Rich and Poor Found Substantially Wider, A Growing Gap Between the Savers and the Save-Nots*, N.Y. TIMES, September 5, 1999, at sec 1 p16.

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.”¹⁶⁷

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 11.¹⁶⁸ Each state has its own set of property exemptions that applies in bankruptcy.¹⁶⁹ States such as Florida, Texas, South Dakota, Iowa, and Kansas permit debtors to exempt very high value homesteads.¹⁷⁰ Thus, it is technically possible that a bankruptcy filer could keep a multi-million dollar home and make little or no payment to creditors.¹⁷¹

The omnibus bankruptcy bill did not itself create this problem; this is a problem of current (and longstanding) law.¹⁷² The media, with some help from the bankruptcy establishment, made

were excluded from the Act's coverage. Even worse, the fresh start for the merchant might cancel debts owed to the farmer or artisan mechanic”).

¹⁶⁷ David J. Morrow, *Key to a Cozier Bankruptcy: Location, Location, Location*, N.Y. TIMES, January 7, 1998, at A1 (quoting Elizabeth Warren); Floyd Norris, *The New Bankruptcy Reform: Make the Rich Plan Ahead*, N.Y. TIMES, June 2, 2000, at C1 (quoting opponent saying bill just tells wealthy debtors how to asset plan). For a similar theme in an earlier piece, see Amy Stevens, *Some Folks Hide Cash in the Darndest Places*, WALL ST. J., November 8, 1996, at B1 (reporting on generous exemptions and the Bankruptcy Reform Commission's interest in capping them).

¹⁶⁸ 11 U.S.C. § 1129(a)(7), 1325(a)(4).

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 ____.

¹⁷² See generally Eric Posner, *The Political Economy of the Bankruptcy Reform Act of 1978*, 96 MICH. L. REV. 47, 94-108 (1997). SEE ALSO BRUCE MANN, REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN 2/25/04 draft

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.¹⁷³ 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."¹⁷⁴ 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."¹⁷⁵ The "high political symbolism" did not go unnoticed.¹⁷⁶ News reports suggested that President Clinton supported capping exemptions to prevent differential rich-poor treatment.¹⁷⁷ By

INDEPENDENCE 197 (2003) (discussing concerns of Jeffersonians that federal bankruptcy law would override local real property exemptions).

¹⁷³David J. Morrow, *Key to a Cozier Bankruptcy: Location, Location, Location*, N.Y. TIMES, January 7, 1998, at A1.

¹⁷⁴Dan Morgan, *GAO: 'Homestead Exemption' Aids Well-Off Few; Bush, Texas Officials on Record as opposing Move to Limit Bankruptcy Shelter*, WASH. POST, July 18, 1999, at A6 (reporting on General Accounting Office study).

¹⁷⁵Philip Shenon, *How Bill in Senate Would Add Hurdles To Erasing of Debt*, N.Y. TIMES, March 14, 2001, at A1.

¹⁷⁶Dan Morgan, *GAO: 'Homestead Exemption' Aids Well-Off Few; Bush, Texas Officials on Record as opposing Move to Limit Bankruptcy Shelter*, WASH. POST, July 18, 1999, at A6; Philip Shenon, *Bill to Tighten Bankruptcy Gets a Push*, N.Y. TIMES, June 12, 2001, at C1; Kathleen Day, *Senate Votes To Toughen Bankruptcy; 36 Democrats Support Measure Backed by Bush*, WASH. POST, March 16, 2001, at A1 (describing difference between House and Senate treatment of homestead exemption, and noting debate was sparked by bankruptcies of well-known people such as Burt Reynolds).

¹⁷⁷Caroline E. Mayer, *Negotiators Complete Bankruptcy Reform Bill*, WASH. POST, October 8, 1998, at E1; Stephen Labaton, *Promised Veto Appears to Doom Congressional Agreement on Overhauling Bankruptcy Law*, N.Y. TIMES, October 13, 2000, at A30 (letter from chief of staff John Podesta to House leaders). *See also* Susan Schmidt, *Toricelli's Money Push Also Raises Some Hackles; Business Fills Senate Democratic Coffers*, WASH. POST, June 17, 2000, at A1 (Democrats angry with Torricelli for supporting bill cracking down on poor but not rich)

2/25/04 draft

contrast, the press reported that Governor/President George W. Bush, and legislators who otherwise supported restricting bankruptcy relief, opposed correction of this disparity.¹⁷⁸

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.¹⁷⁹ 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.¹⁸⁰ 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.¹⁸¹

¹⁷⁸Philip Shenon, *Home Exemptions Snag Bankruptcy Bill*, N.Y. TIMES, April 6, 2001 at A1; Dan Morgan, GAO: 'Homestead Exemption' Aids Well-Off Few; Bush, Texas Officials on Record as opposing Move to Limit Bankruptcy Shelter, WASH. POST, July 18, 1999, at A6.

¹⁷⁹Compare 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."¹⁸² 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.¹⁸³

The Washington Post likewise expressed concern about the bill's failure to cap homestead exemptions while it restricted shelter for lower income debtors,¹⁸⁴ 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."¹⁸⁵ 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."¹⁸⁶ 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,"¹⁸⁷ while it scolded Senator Biden for supporting the bill "despite its inclusion of a loophole allowing

¹⁸² *A Gift for the Credit Card Industry*, N.Y. TIMES, May 5, 2000, at A22.

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.

¹⁸⁵ *The Rich Win*, WASH. POST, June 9, 2000, at A32.

¹⁸⁶ *Bankrupt Bipartisanship*, WASH. POST, December 15, 2000 at A40.

¹⁸⁷ *Reform Choice for Mr. Bush*, WASH. POST, February 19, 2001, at A32.

millionaires to shield mansions from their creditors.”¹⁸⁸ Signed opinion pieces expressed similar concerns about unequal restrictions.¹⁸⁹

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.¹⁹⁰

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 Sparing 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.

¹⁹⁰ Kathleen Day, *Bankruptcy Bill Benefits Chosen Few; Well-to-Do Investors Sought Special Provision*, WASH. POST, March 10, 2001, at A1.
2/25/04 draft

state's rights and state constitutional concerns.¹⁹¹ At least one lawmaker said that a cap would make her try to kill the whole bill, and others wholeheartedly opposed a cap.¹⁹² On the other side of the issue, President Clinton allegedly based his pocket veto in part on the lack of a cap.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.”¹⁹⁴ The Lloyds of London amendment itself was controversial, although its controversy was more likely related to its international implications.

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

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

¹⁹²See, e.g., Tom Hamburger, *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, *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, *Bankruptcy Bill Violates States’ Rights* (April 30, 2002) (Brownback opposing bill containing exemption cap).

¹⁹³See Statement of Administration Position, note ____.

¹⁹⁴See, e.g., Stephen Nunez & Howard Rosenthal, *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.

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.¹⁹⁵ Given that the loopholes frame relied almost exclusively on the homestead issue,¹⁹⁶ the opportunity for improvement was eliminated once the homestead exemption issue had been resolved.

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.¹⁹⁷

¹⁹⁵H.R. 975 §§ 307, 308, 322 (imposing a new fraudulent conveyance scheme counting back 1215 days and increasing domicile requirements for claiming state exemptions). *See also* Professors’ Letter, note ___.

¹⁹⁶The 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. *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. *See, e.g.*, Douglas Baird, *Bankruptcy Bill Would Prevent Some From Getting Fresh Start*, 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).

¹⁹⁷For 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 2/25/04 draft

Other examples of the legislation preferring the rich would have been more educational about the bankruptcy legislation's effects.¹⁹⁸ 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.¹⁹⁹ Bankruptcy is nowhere near being its own newsbeat,²⁰⁰ 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").

²⁰⁰ See generally Lance Bennett, *Cracking the News Code: Some Rules that Journalists Live By*, in DO THE MEDIA GOVERN? POLITICIANS, VOTERS, AND REPORTERS IN AMERICA 134, 140 (Shanto Iyengar & Richard Reeves, eds., 1997) (little specialization in business reporting, leading to superficiality); WILLIAM JAMES WILLIS, *THE SHADOW WORLD: LIFE BETWEEN THE NEWS MEDIA AND REALITY* 103, 140 (1991) (advocating greater business specialization, technical knowledge and experience and longevity, engaging in research, and also describing some newsbeats as "career stoppers"); Trudy Lieberman, *The Media and Government Regulation*, 11 KAN. J. L. & PUB. POL. 547, 548 (2002) ("reporters now avoid dull and complicated beats and stories," such as government). See also Tom Goldstein, *The Transformation of Legal Journalism*, 66 U CIN. L. REV. 895, 899 (1998) (quoting Wall Street Journal editor saying "law is core, core, core to business," but New York Times discarded special law section and weekly news magazines do not cover law very much).

subjects assigned to each journalist and the very short time-lines imposed.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.²⁰² This began when Professor

²⁰¹MICHAEL SCHUDSON, *THE SOCIOLOGY OF NEWS* 34 (2003). For example, Katherine Q. Seelye of The New York Times, who wrote 12 pieces on bankruptcy during the period studied – the most in the sample – also wrote a wide range of subjects including presidential campaigns, impeachment, terrorism, gun control, environmental protection, and campaign finance. See e.g. *Now, Democrats Take Turn at Abortion Fight*, N.Y. TIMES, January 30, 2000, at Section 1; Page 1; *Stumping as a Knowing Ally of Farmers*, N.Y. TIMES, January 22, 2000, at A11; *Low on Cash, Dole Withdraws From G.O.P. Race*, N.Y. TIMES, October 21, 1999, at A1; *Lading Environmentalists Put Support and Money Behind Gore*, N.Y. TIMES, October 8, 1999, at A24; *Gay Voters Finding G.O.P. Newly Receptive to Support*, N.Y. TIMES, August 11, 1999, at A1; *Bradley Proposes Revamping Federal Campaign Finance System*, N.Y. TIMES, July 23, 1999, at A19; *Killings in Littleton Pierced Soul of the Nation*, N.Y. TIMES, May 21, 1999, at A23; *Hillary Clinton Appeals For Gun Control Lobbying*, N.Y. TIMES, May 9, 1999, at Section 1; Page 25; *Clinton Asks Hunters to Back His Proposals Curbing Guns*, N.Y. TIMES, April 28, 1999, at A26; *Crisis in the Balkans: Political Memo; The Candidate Tied to the Decision*, N.Y. TIMES, March 31, 1999, at A12; *Italian Presses Clinton on Pilot's Acquittal*, N.Y. TIMES, March 6, 1999, at A5; *A Tough Fight Ahead as Republicans Work to Keep Control of the House*, N.Y. TIMES, February 8, 1999, at A20; *Livingston Wants Early Close To It All, 'if It Could Be Done'*, N.Y. TIMES, November 20, 1998, at A28; *G.O.P.'s Hopes Dim for Filibuster-Proof Senate Margin*, N.Y. TIMES, October 30, 1998, at A31; *In Time for Elections, A New Federal Budget*, N.Y. TIMES, October 25, 1998, at sec.4, p.2; *Report Suggests Jordan Suspected Affair*, N.Y. TIMES, September 12, 1998, at A15; *Bombings in East Africa: The American Dead; Clinton Tearfully Receives 10 Bodies, Praising Lives That 'Nothing Can Erase'*, N.Y. TIMES, August 14, 1998, at A10. Later, Seelye even wrote about cities and fat burning. Katherine Q. Seelye, *Cities Made For Walking May Be Fat Burners*, N.Y. TIMES, June 20, 2003.

²⁰²Cf. LAURA E. GOMEZ, *MISCONCEIVING MOTHERS: LEGISLATORS, PROSECUTORS, AND THE POLITICS OF PRENATAL DRUG EXPOSURE* 121 (1997) (transformation of crack baby into broader women’s problem).
2/25/04 draft

Elizabeth Warren wrote a high profile op ed framing bankruptcy as a women's issue.²⁰³ As she and others explain, women collecting child support compete with institutional lenders, and the bill strengthened the hand of institutional lenders.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.²⁰⁵

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

²⁰³Elizabeth Warren, *Bankrupt? Pay Your Child Support First*, N.Y. TIMES, April 27, 1998.

²⁰⁴See generally DAVID A. SKEEL, JR., *DEBT'S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA* 206 (2001) (explaining arguments).

²⁰⁵ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS ARE GOING BROKE* 97-122 (2003); Melissa B. Jacoby, Teresa A. Sullivan, and Elizabeth Warren, *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 N.Y.U. L. Rev. 375, 391 (2001) (describing rapid growth of percentage of women filing singly a share of all bankruptcy and implications for medical related bankruptcy); Oliver B. Pollak, *Gender and Bankruptcy: An Empirical Analysis of Evolving Trends in Chapter 7 and Chapter 13 Bankruptcy Filings 1996-1997* 102 COM. L.J. 333 (1998). See also Karen Gross, Marie Newman & Denise Campbell, *Ladies in Red: Learning from America's First Female Bankrupts*, 40 AM. J. LEGAL HIST. 1 (1996). See generally Elizabeth Warren, *What is a Women's Issue, Bankruptcy, Commercial Law, and Other Gender-Neutral Topics*, 25 HARV. WOMEN'S L. J. 19, 28 (2002) (women filing bankruptcy without spouse have increased 800% since the early 1980s).

²⁰⁶See, e.g., Katherine Q. Seelye, *Panel to Vote on Measure To Tighten Bankruptcy Law*, N.Y. TIMES, May 14, 1998, at A22. Stephen Labaton, *Rights Groups Shift Battle to New Front: Economic Issues*, N.Y. TIMES, May 10, 1999, at A18 ("House of Representatives passed a bill by a veto-proof margin that would make it much harder for American families, particularly women and the elderly, to have their debts erased through bankruptcy proceedings") (emphasis added); Peter Pae, *House Rewrites Bankruptcy Laws; Measure Would Restrict Personal Filings*, WASH. POST, June 11, 1998, at A1 (House amendment giving child support "top priority"); Dan Morgan, *Creditors' Money Talks Louder in Bankruptcy Debate; Consumer Groups Fight New Curbs on Insolvent Debtors*, WASH. POST, June 1, 1999, at A4 (effects of reform on women among list of opponents' concerns); Kathleen Day, *Bankruptcy Legislation Still Faces Hurdles*, WASH. POST, May 5, 2000, at E2 (Senator Grassley and Rep. Gekas announcing backing from support collection agencies around country).

²⁰⁷ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP* (2003) (reporting that First Lady Clinton's interest in talking to Professor Warren and learning about bankruptcy stemmed from the New York Times op-ed); Hillary Rodham Clinton, *Bankruptcy Shouldn't Let Parents Off the Hook*, WASH. TIMES, May 7, 1998, 2/25/04 draft

representatives, by offering quotes in bankruptcy stories and writing letters to the editor, helped cement bankruptcy's relevance to their constituencies.²⁰⁸ One article quoted Rep. Jerrold Nadler, a progressive Democrat well versed in bankruptcy, characterizing the bill as "Mom versus Chemical Bank."²⁰⁹ 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.²¹⁰

The media also paid close attention to the FACE abortion-protestor related amendment, which in turn heightened the gendered implications of bankruptcy reform.²¹¹ This issue was

at A2. See also Katherine Q. Seelye, *First Lady in a Messy Fight On the Eve of Her Campaign*, N.Y. TIMES, June 27, 1999, at sec. 1 page 1 (reporting on private meeting between Hillary Clinton and Warren about women's issues). Peter Pae & Stephanie Stoughton, *Personal Bankruptcy Filings Hit Record; Easy Credit Blamed, Congress May Act*, WASH. POST, June 7, 1998, at A1 (discussing Hillary Clinton's concerns). See also Hillary Clinton, *Bankruptcy shouldn't let parents off the hook*, WASH. TIMES, May 7, 1998 ("administration has worked too long and too hard to improve child support collection to see it now threatened [by bankruptcy bill]").

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 commercial lenders after bankruptcy).

²⁰⁹ Katherine Q. Seelye, *Panel to Vote on Measure To Tighten Bankruptcy Law*, N.Y. TIMES, May 14, 1998, at A22.

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.²¹²

Controversy?

In terms of heightening controversy, framing bankruptcy as a women's issue in the press seemed highly successful.²¹³ 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.²¹⁴ 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

²¹²Katherine 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).

²¹³This 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).

2/25/04 draft

avenues.²¹⁵ The legislative process slowed as lawmakers and staff sought to “solve” the women and children problem.²¹⁶ There is little question that the FACE amendment and the publicity surrounding it have delayed passage,²¹⁷ prompting organizations such as the United States Conference of Catholic Bishops to take a position on bankruptcy reform.²¹⁸ Whether the FACE amendment needed media coverage to become controversial is, of course, an open question.

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

²¹⁵See, 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, *Changes in Bankruptcy Law Bad News for Women* (April 24, 1998); News Release, *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).

²¹⁶See 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”).

²¹⁷See, e.g., Stephen Nunez & Howard Rosenthal, *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, *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.²¹⁹ The support amendments received praise from governmental collection agencies and others.²²⁰ 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,²²¹ and to denounce President Clinton’s pocket veto of the bill as “a blow to women and children everywhere.”²²²

²¹⁸United States Conference of Catholic Bishops, Office of Government Liaison, Legislative Concerns in the 108th Congress (“oppose provisions that would deny bankruptcy protection to abortion protestors”) <http://www.usccb.org/ogl/prolife.htm>

²¹⁹H.R. 975 §§ 211-219.

²²⁰*See, e.g.*, Letter from John R. Justice, President, National District Attorneys Association, to Hon. Trent Lott (Sept. 2, 1998) (bill helps collect support); Letter from Joel Bankes, Executive Director, National Child Support Enforcement Association, to U.S. Senators (Sept. 4, 1998) (bill promotes support collection); Letter from Jonathan Burris, President, California Family Support Council to Hon. George W. Gekas, re H.R. 3150- Commercial and Administrative Law Subcommittee (June 4, 1998) (on file with author) (“veritable ‘wish list’” of improvements); Letter from Michael D. Hess, Corporation Counsel of the City of New York, to Hon. George W. Gekas (June 5, 1998) (complementing bill’s improvement of support recipient treatment); Letter from Heidi Heitcamp, Chair, National Association of Attorneys General Bankruptcy and Taxation Working Group to Senator Orrin G. Hatch and Senator Patrick J. Leahy Re: S. 1301 - Domestic Support Provisions (July 30, 1998) (applauding provisions that ensure child support collection, although expressing some concerns). *But see* letter from Richard Blumenthal, Attorney General, State of Connecticut, to Hon. Jerrold Nadler (July 24, 1998) (on file with author) (supporting child support provisions but opposing anti-consumer legislation overall); Letter from the Association for Children for Enforcement of Support to Hon. George W. Gekas (March 17, 1999) (supporting parts of bill but expressing other concerns about keeping bankruptcy accessible for spouses who need bankruptcy after not receiving support).

²²¹News Release, Bankruptcy Reform Bill Passes: Bill Moves to Senate; Passage Expected (October 12, 2000). *See generally* Rep. Bill McCollum, *Bankruptcy Reform: A Return to Responsibility*, THE HILL (May 20, 1998) (“contrary to [news coverage], H.R. 3150 strengthens an ex-spouses ability to recover child support and alimony”); News Release, *Gekas Bankruptcy Bill Passes House: Measure will Protect Consumers and Reduce Fraud* (March 31, 2001) (“reform bill brings increased protection for women and children who are left destitute” when their ex-spouses file for bankruptcy).

²²²News Release, *Gekas Denounces Clinton Pocket Veto of Bankruptcy Reform; Gekas Encouraged by Bush Administration* (December 21, 2000).
2/25/04 draft

The support amendments, while hopefully helpful, really were not responsive to some of the concerns raised in the press.²²³ 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,²²⁴ some of the nondischargeability provisions were watered down and even omitted over time.²²⁵

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.²²⁶ Notwithstanding their reaction, this frame had the

²²³For a detailed discussion, see Elizabeth Warren, *What is a Women's Issue? Bankruptcy, Commercial Law, and Other Gender-Neutral Topics*, 25 HARVARD WOMEN'S LAW JOURNAL 21, 39-42 (2002); *Will Bankruptcy Reform Help Women and Children?*, CONSUMER BANKR. NEWS, June 2001 at 1; Letter from 91 Law Professors to Members of Congress, 147 CONG. REC. S2334-35 (daily ed. March 15, 2001).

²²⁴See Administration letters, note ___. See also Memorandum from Robin Jeweler, Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress, re: Impact of Consumer Bankruptcy Reform Proposals on Child Support Obligations CRS-4(May 13, 1998) (discussing additional categories of nondischargeable debt in bankruptcy bill).

²²⁵See, 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 women's 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).

²²⁶Letter from John R. Justice, President, National District Attorneys Association, to Hon. Trent Lott (Sept. 2, 1998) (calling critics of legislation either "disingenuous" 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 2/25/04 draft

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.²²⁷ 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.

Finally, the frame had the potential to reinforce an important but frightening fact: notwithstanding many major advances women have made, they continue to face serious financial trouble,²²⁸ whether or not they actually file for bankruptcy. The public needs to learn about the interplay between bankruptcy, financial distress, and other socio-economic problems.²²⁹ Framing the bankruptcy debate as a women's issue advanced that educational goal.

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.

²²⁷The 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).

²²⁸ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS ARE GOING BROKE 97-122 (2003).

²²⁹Melissa B. Jacoby, Teresa A. Sullivan, and Elizabeth Warren, *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375, 391 (2001) (describing rapid growth of percentage of women filing singly a share of all bankruptcy and implications for medical related bankruptcy); Oliver B. Pollak, *Gender and Bankruptcy: An Empirical Analysis of Evolving Trends in Chapter 7 and Chapter 13 Bankruptcy Filings 1996-1997* 102 COM. L.J. 333 (1998). See also Karen Gross, Marie Newman & Denise Campbell, *Ladies in Red: Learning from America's First Female Bankrupts*, 40 AM. J. LEGAL HIST. 1 (1996). See generally Elizabeth Warren, *What is a Women's Issue, Bankruptcy, Commercial Law, and Other Gender-Neutral Topics*, 25 HARV. WOMEN'S L. J. 19, 28 (2002) (women filing bankruptcy without spouse have increased 800% since early 1980s).

2/25/04 draft

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

²³⁰Kateri 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).

²³¹*See, e.g.*, CAROL H. WEISS & ELEANOR SINGER, REPORTING OF SOCIAL SCIENCE IN THE MEDIA 26-28, 47 (1988). *See also* Douglas L. Colbert, *Broadening Scholarship: Embracing Law Reform and Justice*, 52 J. LEGAL. ED. 540, 556-557 (2002) (success of professors in gaining media attention for capital trial error rate study); LEON V. SIGAL, REPORTERS AND OFFICIALS (1973) (study finding only 1/4 stories were derived of research of reporter's own initiative).

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.