ARTICLE

NEGOTIATING BANKRUPTCY LEGISLATION THROUGH THE NEWS MEDIA

*Melissa B. Jacoby**

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I. INTRODUCTION

For the past seven years, bankruptcy experts have watched from the sidelines as Congress has considered an omnibus bankruptcy bill.[1] Proponents of the bill have been dismissive of

1. *See* Richard L. Stehl, *The Failings of the Credit Counseling and Debtor Education Requirements of the Proposed Consumer Bankruptcy Reform Legislation of 1998*, 7 AM. BANKR. INST. L. REV. 133, 143–44 (1999); Charles Jordan Tabb, *A Century of Regress or Progress? A Political History of Bankruptcy Legislation in 1898 and 1998*, 15 BANKR. DEV. J. 343, 348–50 (1999); Elizabeth Warren, *The Changing Politics of American Bankruptcy Reform*, 37 OSGOODE HALL L.J. 189, 201 (1999) ("By politicizing the debates, the special interest groups took 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. *See* Tabb, *supra*, at 349 (noting the numerous pleas by the National Bankruptcy Conference and other bankruptcy groups). Bankruptcy judges, lawyers, trustees, and academics testified at hearings and offered additional assistance to lawmakers and staffers. *See, e.g.*, *The Consumer Bankruptcy Reform Act: Seeking Fair and Practical Solutions to the Consumer Bankruptcy Crisis: Hearing on S. 1301 Before S. Judiciary Subcomm. on Admin. Oversight and the Courts*, 105th Cong. (Mar. 11, 1998) [hereinafter *Hearing on S. 1301*], 1998 WL 8993073 (witness list); *Hearing on S. 1301*, *supra*, 1998 WL 8993336 (opening statement of Chuck Grassley, Chairman, S. Judiciary Subcomm. on Admin. Oversight and the Courts). Yet Congress did not seriously engage with these parties. *See, e.g.*, Elizabeth Warren, *The Market for Data: The Changing Role of Social Sciences in Shaping the Law*, 2002 WIS. L. REV. 1, 32–33 (discussing repeated and unreturned calls that Professor Warren made to Rep. Gekas's staff to discuss statistics featured in Gekas's press release). *See generally* DAVID A. SKEEL, JR., DEBT'S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA (2001) (discussing interest group history of bankruptcy); Susan Block-Lieb, *Congress' Temptation to Defect: A Political and Economic Theory of Legislative Resolutions to Financial Common Pool Problems*, 39 ARIZ. L. REV. 801 (1997) (contrasting disorganized representation of debtor's interests with organized and narrowly focused groups within the credit industry); *cf. generally* Bruce G. Carruthers & Terence C. Halliday, *Professionals in Systemic Reform of Bankruptcy Law: The 1978 U.S. Bankruptcy Code and the English Insolvency Act 1986*, 74 AM. BANKR. L.J. 35 (2000) (discussing the role of bankruptcy experts in the 1978 Bankruptcy Code revision).

bankruptcy "establishment"[2] concerns and input.[3] The bankruptcy establishment generally has thought that the bill is misguided and poorly drafted, but lawmakers have overwhelmingly supported it, largely on a bipartisan basis.[4] Year after year, Congress after Congress, lawmakers have lined up in favor of the bill in large numbers. Yet proponents have had surprising difficulty actually getting this bill enacted.

Although the determinants of legislative development are complex and controversial, this Article focuses on the role of the news media. Notwithstanding Congress's general dismissal of the bankruptcy establishment's criticisms and concerns,[5] the "fourth branch"[6] may have helped the excluded opposition by reframing the debates in ways that had the potential to produce controversy and delay.[7] Once a story of debtor irresponsibility and a

2. Proponents of the bankruptcy bill sometimes 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.

3. *See, e.g.*, Rep. Bill McCollum, *Bankruptcy Reform: A Return to Responsibility*, 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," but finding that "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., Mar. 13, 2001, at A28 [hereinafter Hamburger, *Auto Firms See Profit in Bankruptcy-Reform*] ("The bankruptcy establishment likes the system the way they have been running it." (quoting an industry analyst)); Jacob M. Schlesinger, *Card Games: As Bankruptcies Surge, Creditors Lobby Hard to Get Tougher Laws*, WALL ST. J., June 17, 1998, at A1 [hereinafter Schlesinger, *As Bankruptcies Surge*] (stating that the bankruptcy establishment simply prefers the status quo); refer also to note 5 *infra*.

4. *See, e.g.*, *Congress Returns to an Active Legislative Agenda*, WASH. WKLY., Feb. 26, 1999, http://www.bondmarkets.com/w-weekly/1999/wk022699.shtml (stating that Gekas's bill has wide bipartisan support in the House); Kathleen Day, *House Passes Bankruptcy Limits: Measure Would Make It Harder for Consumers to Wipe Out All Debts*, WASH. POST, Mar. 2, 2001, at A1 [hereinafter Day, *House Passes Bankruptcy Limits*] ("There's broad, bipartisan support for updating the nation's bankruptcy system and making it more balanced." (quoting Sen. Grassley)); Rep. George W. Gekas, *Protecting Poor Debtors*, N.Y. TIMES, May 17, 1999, at A20 (observing the large amount of Democratic House support for the bill); Michael Schroeder & Jacob M. Schlesinger, *Financial-Services Bills Appear Dead, For Now*, WALL ST. J., Oct. 12, 1998, at A4 (quoting American Bankers Association lobbyist as stating that given "clear bipartisan majorities for both bills, we believe we can start early next year and have them enacted fairly quickly"); Katharine Q. Seelye, *First Lady in a Messy Fight on the Eve of Her Campaign*, N.Y. TIMES, June 27, 1999, § 1, at 1 [hereinafter Seelye, *First Lady in a Messy Fight*] (quoting a MasterCard representative as stating that "it's fair to say there is strong bipartisan support for bankruptcy reform").

5. Tabb, *supra* note 1, at 348–50 (chronicling Rep. Gekas's statement that "he and others in Congress would do what they pleased about bankruptcy, and did not really care what the bankruptcy community thought about the matter").

6. *See* DOUGLASS CATER, THE FOURTH BRANCH OF GOVERNMENT 13 (1959) (referring to the news media).

7. *Cf.* 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) (discussing the timing and approach of homeless advocates' public relations strategy); Dorothy A. Brown, *The*

permissive system,[8] bankruptcy became framed by issues of credit industry power, predation, and influence, loopholes for the rich, and, perhaps most effectively, concerns for women and children.[9]

This Article describes the path of this omnibus bankruptcy legislation, offers an interdisciplinary analysis of the role of news media in policymaking, and discusses these three emerging frames. It then presents a structure for evaluating the impact of the frames: controversy, bill improvement, and public

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Invisibility Factor: The Limits of Public Choice Theory and Public Institutions, 74 WASH. U. L.Q. 179, 215 (1996) (showing how media can influence legislative processes in ways that public choice theory does not predict or explain); Vincent Schiraldi & Dan Macallair, *Framing the Framers: Changing the Debate over Juvenile Crime in San Francisco*, *in* DO THE MEDIA GOVERN? POLITICIANS, VOTERS, AND REPORTERS IN AMERICA 409, 411–12 (Shanto Iyengar & Richard Reeves eds., 1997) [hereinafter DO THE MEDIA GOVERN?] (observing advocates' attempt to use the media to frame juvenile justice); 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) (stating that the media is a potentially powerful ally of, and has a symbiotic relationship with, policy entrepreneurs); *see also* KATHLEEN HALL JAMIESON & PAUL WALDMAN, THE PRESS EFFECT: POLITICIANS, JOURNALISTS, AND THE STORIES THAT SHAPE THE WORLD 185 (2003) (analyzing strategic narratives used in political campaigns); Joshua A. Newberg, *The Narrative Construction of Antitrust*, 12 S. CAL. INTERDISC. L.J. 181, 185–92 (2003) (analyzing competing narratives in Microsoft antitrust case); Joshua Wolf Shenk, *Get Me Rewrite! Stories Make the World Go Around. So How Come Liberals Can't Tell One?*, Mother Jones, *at* http://www.motherjones.com/commentary/columns/2004/05/05_200.html (May 14, 2004) (noting the lack of compelling narrative in the John Kerry campaign).

8. For lawmakers' views along these lines, see, e.g., *Bankruptcy Reform Act of 1998: Hearing on H.R. 3150 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 105th Cong. 8 (1998) (statement of Rep. McCollum).

> [P]eople see bankruptcy as a financial planning tool, spurred on by advertisements . . . . [T]he 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. These "bankruptcies of convenience" are a clear misuse of the bankruptcy system, as bankruptcy becomes a first stop rather than a last resort.

Id.; *Hearing on Bankruptcy Reform and Financial Services Issues Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 106th Cong. (1999) (prepared testimony of Rep. Boucher) ("Bankruptcies of convenience are driving this increase."), http://banking.senate.gov/99_03hrg/032599/boucher.htm; 145 CONG. REC. H2646 (daily ed. May 5, 1999) (statement of Rep. Pryce) ("[W]hen 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, Congressional Res. Serv., *Issues in Consumer Bankruptcy Reform Before the 107th Congress* 2–3 (Feb. 9, 2001).

> The high volume of consumer bankruptcy filings during the 1990's fuels the argument that the current law is too lenient, *i.e.*, "debtor-friendly." . . . The legislation is intended, among other things, to make filing more difficult and thereby thwart "bankruptcies of convenience"; to revive the social "stigma" of a 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.

Id. For news coverage to this effect, refer to notes 20–23 *infra* and accompanying text.

9. Refer to Part IV *infra*; *see also* JAMIESON & WALDMAN, *supra* note 7, at 122 (stating that the framing of issues is "the product of a give-and-take between political actors and reporters").

educational value.[10] In a brief analysis of each of these issues, I posit that two frames increased the bill's controversy, two were likely related to changes made to the bill (although it is disputed whether those changes constitute improvements), and the frame of women and children had the greatest educational value, notwithstanding assertions by some lawmakers and commentators that this frame was contrived.[11]

Demonstrating a precise causal relationship between the media and the legislative process goes well beyond the far more modest aims of this Article and would have required a different type of analysis and methodology. Nonetheless, this initial exploration suggests that had the news media continued to frame bankruptcy principally in terms of debtor irresponsibility and system permissiveness, the legislative process may have unfolded differently. The implications far transcend the subject of bankruptcy.

II. 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.[12] It also established a National Bankruptcy Review Commission to study the bankruptcy system for a two-

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10. For discussions of media being the principal source of the public's knowledge about law, see, e.g., Linda Greenhouse, *Telling the Court's Story: Justice and Journalism at the Supreme Court*, 105 YALE L.J. 1537, 1538 (1996) (noting that the public's only knowledge of the workings of the Supreme Court derives from occasional references in the media); Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2050 (1996) (noting that the public learns about court cases through the news media, if at all); Catherine E. Vance & Paige Barr, *The Facts & Fiction of Bankruptcy Reform*, 1 DEPAUL BUS. & COMM. L.J. 361, 364 n.12 (2003) ("[E]ven extensive coverage [of bankruptcy reform] in the print media does not mean that most Americans fully understand bankruptcy reform and its heavy industry support."); Daniel M. Filler, *From Law to Content in the New Media Marketplace*, 90 CAL. L. REV. 1739, 1754–55 (2002) (reviewing FEDWA MALTI-DOUGLAS, STARR REPORT DISROBED (2000)) (observing that the news serves as the principal intermediary for the public to discover law). *But see* JIM WILLIS, THE SHADOW WORLD: LIFE BETWEEN THE NEWS MEDIA AND REALITY 140–43 (1991) (arguing that the anti-big-business values of reporting interfere with business reporters' ability to educate the public); John J. Oslund, *The Media and Government Regulation: Guarding the Hen House*, 11 KAN. J.L. & PUB. POL'Y 559, 561 (2002) (arguing that the media is a less effective educator on "narrower issues that are more complex and/or abstract"). For a focus on how fictional accounts contribute to the public's understanding of law, see, e.g., PRIME TIME LAW: FICTIONAL TELEVISION AS LEGAL NARRATIVE VII (Robert M. Jarvis & Paul R. Joseph eds., 1998) (surveying television's ability to influence people's understandings of the legal world); Martha Merrill Umphrey, *Media Melodrama! Sensationalism and the 1907 Trial of Harry Thaw*, 43 N.Y.L. SCH. L. REV. 715, 718 (1999) (noting that criminal trial reporting contributes to a popular understanding of criminal responsibility).

11. Refer to Part IV.C *infra*.

12. Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4107.

year period.[13] Congress told the Bankruptcy Commission that it did not have a mandate to propose significant changes.[14]

Commission members were chosen by the President, Chief Justice Rehnquist, and minority and majority leaders in the House and Senate.[15] Both the bankruptcy establishment and the financial services industry were actively involved.[16] They participated in well-attended meetings and hearings around the country[17] and wrote thousands of letters and e-mail submissions.[18]

During this process, however, the annual bankruptcy filing rate surpassed one million.[19] This large number of bankruptcy

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13. §§ 602, 608, 108 Stat. at 4147, 4149. 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. § 603.

14. H.R. REP. NO. 103-835, at 59 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3368.

> [T]he 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 and balance of current law.

Id. Sen. 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 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 (1994) (statement of Sen. Grassley).

15. The Commission members themselves generally cannot be described as quintessential bankruptcy establishment. In terms of membership, President Clinton chose labor lawyer Babette Ceccotti and CPA and turnaround expert Jay Alix as members, and former Congressman Mike Synar as the chair, who was succeeded by lawyer Brady Williamson after Synar passed away. Nat'l Bankr. Review Comm'n, *Bankruptcy: The Next Twenty Years* 15 (Oct. 20, 1997) [hereinafter *Bankruptcy: The Next Twenty Years*], http://govinfo.library.unt.edu/nbrc/report/01title.html. 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. *Id*. at 54, 56. Rep. Robert Michel (R-Ill.) appointed former Congressman M. Caldwell Butler, Rep. Thomas Foley (D-Wash.) appointed real estate lawyer John Gose, Senators Robert Byrd (D-W. Va.) and George Mitchell (D-Me.) appointed lawyer Jeffery Hartley, and Sen. Bob Dole (R-Kan.) appointed tax consultant James Shepard. *Id*. at 56–57. The reporter was Professor Elizabeth Warren, and the two principal consultants were Professor Lawrence P. King and lawyer Stephen H. Case. *Id*. at 57.

16. *See, e.g.*, Hon. 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).

17. *Bankruptcy: The Next Twenty Years*, *supra* note 15, at 65 (noting that the Commission held twenty-one hearings and meetings at sites throughout the nation, which were attended by more than 2600 people).

18. *Id.* at 68 (noting that the Commission received over 2300 submissions from the bankruptcy community and the general public).

19. *See* Bankruptcy Filing Statistics, Administrative Office of the United States Courts (on file with the Houston Law Review) (including business & nonbusiness bankruptcy cases for the period ending September 30, 1996).

filings within a single year provoked questions about the neediness of bankruptcy filers and the permissiveness of the system.[20] For example, newspapers quoted Federal Reserve Board Chair Alan Greenspan as lamenting that "personal bankruptcies are soaring because Americans have lost their sense of shame in filing for bankruptcy court protection" and noting that "a disappearance of 'the stigma of bankruptcy.'"[21] The *USA Today* editorial desk blamed consumer attitudes, a decline in stigma, and bankruptcy laws that were too easy.[22] A later editorial asked, "Could 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?"[23] Examples of similar quotes could fill a law review article by themselves, and it was within this environment that the Bankruptcy Commission completed its work.

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20. *See, e.g.*, Mary Deibel, *Bankruptcies Booming in '97 Despite Economic Prosperity*, ROCKY MOUNTAIN NEWS, June 11, 1997, at 10B (recognizing that "people who are feeling good about the economy and get in over their heads also are contributing to the increase"); Saul Hansell, *Personal Bankruptcies Surging as Economy Hums*, N.Y. TIMES, Aug. 25, 1996, § 1, at 1 (stating that one reason for the increase in bankruptcy filings is that the stigma attached to filing bankruptcy is no longer present); Editorial, *"Last Resort Is Coming First": Something's Wrong: In These Good Times, Bankruptcy Is Booming*, L.A. TIMES, July 28, 1997, at B4 ("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 job growth, decreasing unemployment and much improved economies?"). Notably, the *L.A. Times* editorial page later became critical of the bankruptcy legislation. *See* Editorial, *Bankruptcy Non-Reform: Proposed Changes Would Weaken Protections for Truly Needy Debtors and Leave Unchanged Gaping Loopholes that Wealthy Filers Use to Put Up Shield of Bankruptcy*, L.A. TIMES, June 8, 1998, at B4 (observing that the credit industry claims that consumers are avoiding debt through bankruptcy laws).

21. Bloomberg News, *Filings Worry Greenspan*, TIMES-PICAYUNE, Mar. 20, 1997, at C6; *see also* James Carter, *Bankruptcy as the Last Resort*, WASH. TIMES, Dec. 18, 1996, at A15 ("In practice, however, [a] fresh start sometimes becomes a free ride."); L. Stuart Ditzen, *Credit Cards Paving a Path to Bankruptcy*, PHILA. INQUIRER, Aug. 25, 1996, at A1 (describing credit-card use as an addiction and a nasty vice, and describing bankruptcy as a "quick way out of excess credit-card debt"); Hansell, *supra* note 20 ("'I'm just taking advantage of one of the opportunities the Government offers. It doesn't have the stigma it had.'" (quoting an individual debtor)).

22. Editorial, *Too-Easy Bankruptcy Laws Give Abusers a Free Ride*, USA TODAY, Oct. 4, 1996, at 12A (explaining that overuse of the bankruptcy system costs each American family about $100 per year in higher interest costs and prices). However, *USA Today* also published an "opposing view" editorial. *See* Gary Klein, Editorial, *Blame the Credit Pushers*, USA TODAY, Oct. 4, 1996, at 12A ("Responsibility for the increase in filings should be placed where it belongs—on a system that pushes people to use more credit than they can afford. The pusher in this system is the consumer-credit industry.").

23. Editorial, *Debtor's Delight*, INVESTOR'S BUS. DAILY, Jan. 15, 1998, at A30.

> 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 no good reason have become routine, bankruptcy shows signs of becoming positively fashionable.

Morally Bankrupt, N.Y. POST, Dec. 21, 1997, at 60.

The Bankruptcy Commission's final report, dated October 20, 1997, bulged with over 170 recommendations for changes to all types of bankruptcy cases.[24] Although the majority of the Commission expressed concern about the filing rate, it did not attribute the filing increase to the reasons that the press and cited sources often identified.[25] Even before the Commission issued its final report, however, the credit industry expressed public distaste for its proposals and its failure to propose new restrictions on bankruptcy eligibility.[26] Consequently, the industry turned to friends in Congress.[27]

A. 105th Congress (1997–1998)

Rep. Bill McCollum (R-Fla.) did not wait for the Bankruptcy Commission to submit its report before introducing consumer bankruptcy legislation, The Responsible Borrower Protection Bankruptcy Act, House Bill 2500, on September 18, 1997.[28]

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24. *See generally Bankruptcy: The Next Twenty Years*, *supra* note 15 (providing chapters of recommendations on topics ranging from family payment plans to partnership recommendations).

25. *Id.* at 82–95 (citing, among other things, an increase in available consumer credit as contributing to the rise in bankruptcy filings).

26. *See, e.g.*, Paul Gentile, *No Happy Campers Here: National Bankruptcy Review Commission Issues Final Report*, CREDIT UNION TIMES, Oct. 29, 1997, at 1 ("'What I think they should do with the report is forget they ever wrote it.'" (reporting a credit union president's statement)); Donald G. Ogilvie, Executive Vice President, Am. Bankers' Ass'n, *Letters to the Editor: Placing the Blame for Bankruptcy Reform*, WALL ST. J., Aug. 26, 1997, at A17 ("[R]ecommendations 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."); *see also* 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?*, A.B.A. BANKING J., Aug. 1997, at 30 (noting that the Commission has received criticism from both debtor and creditor interests), http://www.banking.com/aba/cover_0897.htm; Jaret Seiberg, *Deeply Split Bankruptcy Commission May Lack Clout with Lawmakers*, AM. BANKER, June 20, 1997, at 1 (quoting a credit industry lobbyist describing a Commission proposal as "'one nail in the credibility of the commission'"). Some Commission proposals, however, did coincide with credit industry proposals. *Compare Bankruptcy: The Next Twenty Years*, *supra* note 15, *with* Transcript, Presentation of National Consumer Bankruptcy Coalition to the National Bankruptcy Review Commission (Dec. 17, 1996) (including recommendations for multiple filing restrictions, random audits, and better data collection).

27. *See* SKEEL, JR., *supra* note 1, at 187–88 (noting that "creditors were less than enthusiastic" about the Bankruptcy Commission process and promoted legislation to "preempt" the Bankruptcy Commission recommendations); Robert J. Landry, III, *The Policy and Forces Behind Consumer Bankruptcy Reform: A Classic Battle Over Problem Definition*, 33 U. MEM. L. REV. 509, 517–18 (2003) (suggesting that when credit industry lobbyists failed to induce the Commission to produce a report aligned with their interests, the creditors turned to Congress and tried to shape public opinion in aid of their cause).

28. H.R. 2500, 105th Cong. (1997); Gentile, *supra* note 26 ("'I could see the Commission wasn't going to put in a needs based provision in their recommendations, so we went ahead and drafted a bill.'" (quoting Rep. McCollum)). *See generally* Robin

Although Rep. McCollum was not a member of the relevant Judiciary Committee subcommittee,[29] his bill sought to alter consumer bankruptcy in accordance with industry proposals and the prominent media portrayals of the bankruptcy crisis.[30]

In the winter of 1998, the chair of the relevant Judiciary Committee subcommittee (Rep. George Gekas (R-Pa.)) introduced another bankruptcy bill, House Bill 3150.[31] This bill contained consumer bankruptcy provisions that essentially replicated House Bill 2500, but it also included extensive business bankruptcy and bankruptcy tax amendments.[32] Rep. McCollum also supported this bill,[33] and the bill began its multi-year bipartisan odyssey through Congress.

Rep. Gekas's subcommittee held a series of hearings that included many credit industry representatives and some members of the bankruptcy establishment as witnesses.[34] The bankruptcy establishment expressed concern about policy issues, drafting problems, and the lack of evidence to support significant changes in any event.[35] The bankruptcy establishment was also concerned that the bill would proceed with undue haste, departing from the tradition of deliberation that had accompanied large legislative changes in the past.[36] These legislative hearings were pro forma, however, and seemed to have little effect on the bill's development.

Like the House, the Senate essentially preempted the Bankruptcy Commission's efforts with its own bill. One day after the Commission submitted its report, two senators—Senators

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Jeweler, *Survey of the Impact of Advisory Study Commissions*, Congressional Res. Serv., The Library of Congress CRS-9 (Sept. 3, 1997) (noting that "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").

29. *See* Bill McCollum, *Biography*, *at* http://www.leadingauthorities.com/14371/Bill_McCollum.htm (2004).

30. *See generally* Victoria F. Nourse & Jane S. Schacter, *The Politics of Legislative Drafting: A Congressional Case Study*, 77 N.Y.U. L. REV. 575, 587 (2002) (reporting that Senate staffers identified bankruptcy as having particularly extensive industry lobbyist involvement, especially on the House side).

31. Bankruptcy Reform Act of 1998, H.R. 3150, 105th Cong (1998).

32. §§ 302, 402–415, 802–818 (setting forth business requirements, such as requiring credit counseling, and tax requirements, such as interest rates on tax claims and information to be specified by the filer).

33. *See* H.R. 3150 (listing Rep. McCollum as a cosponsor).

34. H.R. 3150 Hearing Testimony (Mar. 12, 18, 1998) (on file with the Houston Law Review).

35. *Id.*

36. *Id*.

Charles Grassley (R-Iowa) and Richard Durbin (D-Ill.)—introduced the Consumer Bankruptcy Reform Act of 1997, Senate Bill 1301.[37] Later in the 105th Congress, Sen. Grassley would also introduce a business and tax bankruptcy bill,[38] which ultimately was folded into the large omnibus bill.

Sen. Grassley's subcommittee held hearings,[39] although Sen. Grassley viewed those who voiced opposition to his bill as a "fringe element."[40] But the bill did evolve, particularly as Senate Democrats became more actively involved in the discussions.[41]

The Clinton Administration supported most of both the House and Senate bankruptcy bills.[42] After all, the bill's proponents framed the bill as an issue of personal responsibility, which was a theme of the welfare reform that President Clinton had supported.[43] Yet the Administration's

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37. S. 1301, 105th Cong. (1997). This bill differed from the House Bill in its approach to screening Chapter 7 debtors and in its amendments directed toward abusive creditor practices. *Compare* S. 1301, *with* H.R. 3150. Perhaps for these reasons, the Grassley-Durbin bill later would be characterized as the "liberal" or "moderate" bill that was "more friendly to borrowers." *See, e.g.*, Dan Morgan, *Creditors' Money Talks Louder in Bankruptcy Debates: Consumer Groups Fight New Curbs on Insolvent Debtors*, WASH. POST, June 1, 1999, at A4 [hereinafter Morgan, *Creditors' Money*].

38. Business Bankruptcy Reform Act, S. 1914, 105th Cong. (1998).

39. *See, e.g.*, *Hearing on S. 1301*, *supra* note 1, 1998 WL 8993073 (witness list); *Hearing on S. 1301*, *supra* note 1, 1998 WL 8993336 (opening statement of Chuck Grassley, Chairman, S. Judiciary Subcomm. on Admin. Oversight and the Courts).

40. 144 CONG. REC. S9093 (1998) (statement of Sen. Grassley).

41. As one example, Senate Democrats were interested in promoting responsible lending practices outside of the bankruptcy context. *See, e.g.*, S. Amends. 3540–3617, 105th Cong., 144 CONG. REC. S9942–10,728, S10,843–44 (1998) (showing amendments to Senate Bill 1301, including extensions of credit to underage consumers and enhanced disclosures); Richard Durbin, Editorial, *Credit Blues: Banks, Consumers Both Responsible*, PANTAGRAPH, Dec. 26, 1997, at A11. For example, the bill as passed amended the Truth in Lending Act to require that credit-card statements include an estimate of the borrower's total cost of making only the recommended minimum monthly payment. Consumer Bankruptcy Reform Act of 1998, H.R. 3150, 105th Cong. § 209(a) (1998).

42. Executive Office of the President, Office of Mgmt. & Budget, *Statement of Administration Policy on H.R. 3150—Bankruptcy Reform Act of 1998* (June 10, 1998) [hereinafter *Statement of Administration Policy on H.R. 3150*] (noting that although the Clinton Administration supported debtor responsibility for those with the means to pay, it did not support House Bill 3150 in its then present form), http://www.whitehouse.gov/omb/legislative/sap/105-2/HR3150-h.html; Digest, WASH. POST, May 9, 1998, at C1 (showing that the Clinton Administration opposed the House Bill because it lacked sufficient debtor protections). The Department of Justice previously had submitted twenty-four pages of detailed commentary. *See* Letter from Ann M. Harkins, Acting Assistant Attorney General, U.S. Department of Justice, to Hon. Henry J. Hyde, Chairman, Committee on the Judiciary (May 7, 1998) [hereinafter Letter from Ann M. Harkins] (on file with the Houston Law Review).

43. *See generally* A. Mechele Dickerson, *America's Uneasy Relationship with the Working Poor*, 51 HASTINGS L.J. 17, 51 & n.144 (1999) (describing the categories of debtors and identifying irresponsible spending as the primary cause of debt in two of the three categories). For similar reasons, moderate and conservative Democrats generally

support was not iron-clad: it developed concerns about discrete aspects of the bill and preferred the Senate Bill to the House Bill.[44]

In the House, many Democrats supported the bill notwithstanding Administration concerns, and the bill easily passed by a 306–118 vote on June 10, 1998.[45] The Senate overwhelmingly approved its own bill 97–1 on September 23, 1998, with only the late Sen. Paul Wellstone (D-Minn.) voting against it.[46] In the reconciliation process, however, lawmakers excluded most Democrats from the negotiations, omitted or watered down most of the provisions that Senate Democrats had incorporated into the bill, and added provisions that many Senate Democrats would find objectionable.[47]

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supported the bankruptcy bill. *See, e.g.*, New Democrats Online, Message of the Week, New Democrats Support Bankruptcy Reform (Feb. 26, 2001) (expressing view that bankruptcy has become a first option for debtors due to the lack of stigma associated with bankruptcy), http://www.ndol.org/print.cfm?contentid=3099. "Personal responsibility" is a key value for New Democrats. *Id.*

44. *See Statement of Administration Policy on H.R. 3150*, *supra* note 42 (criticizing, among other things, House Bill 3150's "rigid and arbitrary means test" for determining debtor ability to pay); Digest, *supra* note 42. The Department of Justice previously had submitted twenty-four pages of detailed commentary. *See* Letter from Ann M. Harkins, *supra* note 42, at 1 (advocating rejection of House Bill's means test).

45. Bankruptcy Reform Act of 1998, H.R. 3150, House Roll Call Vote #225, 105th Cong. (June 10, 1998), http://clerk.house.gov/evs/1998/roll225.xml. 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 exemption 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) (reviewing homestead exemption's origin as a mechanism for sparsely populated states such as Texas to encourage migration from other states). Rep. Gekas successfully sponsored a floor House amendment to eliminate the cap. H. Amend. 666, H.R. 3150, House Roll Call Vote #222, 105th Cong. (June 10, 1998) (passing Gekas's amendment, 222–204), http://clerk.house.gov/evs/1998/roll222.xml.

46. Bankruptcy Reform Act of 1998, H.R. 3150, Senate Roll Call Vote #284, 105th Cong. (Sept. 23, 1998) (passing House Bill 3150 with text of Senate Bill 1301 as amended by vote of 97–1, with Sen. Wellstone as the lone dissenter), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=105&session=2&vote=00284; *Who Cast That Lone Vote Against S. 1301?*, 8 CONSUMER BANKR. NEWS, Oct. 22, 1998, at 4, 4 ("'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.'" (quoting Sen. Wellstone)).

47. For example, the lawmakers included provisions banning class actions against lenders who violate certain provisions of bankruptcy law. *See* H.R. REP. NO. 105-794 §§ 116–117, at 19–20 (1998); Caroline E. Mayer, *Negotiators Complete Bankruptcy Reform Bill*, WASH. POST, Oct. 8, 1998, at E1 [hereinafter Mayer, *Negotiators Complete Bankruptcy Reform Bill*] (quoting the comments of angered Sen. Durbin, who was excluded from bill reconciliation); Schroeder & Schlesinger, *supra* note 4 (noting Durbin's threats to filibuster the bill based on his belief that the bill was too procreditor); Katharine Q. Seelye, *Republicans Agree to New Limits on Consumer Bankruptcy Filings*, N.Y. TIMES, Oct. 8, 1998, at A1 [hereinafter Seelye, *Republicans Agree to New Limits*]

The House easily passed this conference report bill by a vote of 300–125, with plenty of Democrat support, on October 9, 1998.[48] Due to a filibuster threat preventing further action, the Senate voted only to consider the conference report.[49] Notwithstanding overwhelming support, the 105th Congress adjourned with no enactment of a bankruptcy bill.

B. 106th Congress (1999–2000)

Early in the 106th Congress, Sen. Grassley and Rep. Gekas reintroduced the failed conference report with some additional provisions, now hundreds of pages,[50] in both the Senate and House.[51] Again, the House easily approved the bill on May 5, 1999 by a vote of 313–108.[52]

Given the events at the end of the 105th Congress, one might have expected Senate Democrats to oppose the bill or be

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(quoting Sen. Durbin as saying that the Senate Bill "'has been devastated in a closed-door Republican conference'"); *see also* Letter from Jacob J. Lew, Director, Office of Management and Budget, Executive Office of the President, to Hon. Trent Lott (Oct. 9, 1998) (on file with the Houston Law Review) (making veto threat).

48. H.R. REP. NO. 105-794, House Roll Call Vote #506, 105th Cong. (Oct. 9, 1998), http://clerk.house.gov/evs/1998/roll506.xml.

49. Motion to Proceed to Consider Conference Report on H.R. 3150, Senate Roll Call Vote #313, 105th Cong. (Oct. 9, 1998) (94–2), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=105&session=2&vote=00313; *Bankruptcy Bill Dies a Slow Death as Term Ends*, CREDIT CARD NEWS, Oct. 15, 1998, at 1, *available at* 1998 WL 14086506.

50. Bankruptcy Reform Act of 1999, H.R. 833, 106th Cong. §§ 101–1130 (1999).

51. *Congress Returns to an Active Legislative Agenda*, *supra* note 4; "Dear Colleague" Letter from Reps. Gekas, Boucher, McCollum, and Moran (Feb. 25, 1999) (on file with the Houston Law Review) (explaining that this was same bill 300 members had voted for in the last congressional session and seeking bipartisan support); *see also* Letter from Dennis K. Burke, Acting Assistant Attorney General, U.S. Department of Justice, to Hon. George W. Gekas, Chairman, Subcommittee on Commercial and Administrative Law (Mar. 24, 1999) (on file with the Houston Law Review) (detailing thirty-five pages of Department of Justice commentary on the proposed bill); Letter from Jacob Lew, Director of the Executive Office of the President, Office of Management and Budget, to Hon. John Conyers, Member, Committee on the Judiciary (Mar. 23, 1999) (on file with the Houston Law Review) ("Our position from last year [on the Conference Report] has not changed."); Executive Office of the President, Office of Mgmt. & Budget, *Statement of Administration Policy on H.R. 833—Bankruptcy Reform Act of 1999* (May 5, 1999) (reporting the Clinton Administration's strong opposition to H.R. 833), http://www.whitehouse.gov/omb/legislative/sap/106-1/HR833-h.html.

52. Bankruptcy Reform Act of 1999, H.R. 833, House Roll Call Vote #115, 106th Cong. (May 5, 1999), http://clerk.house.gov/evs/1999/roll115.xml. As 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. H. Amend. 54 to H.R. 833, 106th Cong. (1999) (agreed to by voice vote). In addition, Judiciary Committee Chair Henry Hyde (R-Ill.) had tried to replace the means test with a more discretionary approach to screening cases, but Congress overruled him. H. Amend. 83 to H.R. 833, 106th Cong. (1999) (failing 184–238); *see also* Rep. Henry J. Hyde, Editorial, *Why Squeeze Every Last Penny from the Bankrupt*?, N.Y. TIMES, May 18, 1999, at A23 (justifying his amendment).

skeptical of the prospect of a balanced product.[53] Nonetheless, the bill passed 83–14 on February 2, 2000,[54] after the Senate had engaged in another round of floor amendments.[55]

The House and Senate Bills were similar but not identical,[56] and the reconciliation process again was not a model of negotiation and compromise. Bill proponents excluded many Democrats and inserted their preferred version of the legislation into the shell of a moribund embassy security conference report.[57] Again, much of the Senate's long amendment process was largely for naught.

The House adopted the bankruptcy conference report on October 12, 2000 by a voice vote.[58] Notwithstanding the changes made in conference, a veto-proof majority of the Senate (70–28) voted favorably on the conference report on December 7, 2000.[59] President Clinton then "pocket-vetoed" the bill because of several discrete points of contention.[60] Like the 105th Congress, the

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53. Refer to note 47 *supra* and accompanying text.

54. Bankruptcy Reform Act of 2000, H.R. 833, Senate Roll Call Vote #5, 106th Cong. (Feb. 2, 2000), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=106&session=2&vote=00005.

55. S. Amends. 1695–2530, 106th Cong., 145 CONG. REC. S11143–71, S14102–11 (1999). Several Senate Democrats also unsuccessfully introduced an alternative bill, which was based on the bill that had passed the Senate 97–1 the prior year. "Dear Colleague" Letter from Sens. Durbin, Leahy, Kennedy, and Feingold (May 14, 1999) (on file with the Houston Law Review)

56. *See generally* Am. Bankr. Inst., Summary of Key Areas of Disagreement S. 625/H.R. 833 Conference (2000) (on file with the Houston Law Review); 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 the Houston Law Review) (comparing the House and Senate Bills).

57. *See* Bankruptcy Reform Act of 2000, H.R. 2415, 106th Cong. (2000) ("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."). This resolution had passed by voice vote and unanimous consent earlier. *Id*. *See generally* Press Release, Statement of U.S. Senator Paul Wellstone on the 11th Hour Attempt to Pass So-Called Bankruptcy Reform Legislation, Common Dreams Progressive Newswire, *at* http://www.commondreams.org/news2000/1012-04.htm (Oct. 12, 2000) ("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 . . . ."). Sen. Grassley and Majority Leader Trent Lott also introduced another omnibus bankruptcy reform bill, Senate Bill 3046, which did not go forward. Bankruptcy Reform Act of 2000, S. 3046, 106th Cong (2000).

58. H.R. CONF. REP. NO. 106-970, House Voice Vote, 106th Cong. (Oct. 12, 2000), http://thomas.loc.gov/cgi-bin/bdquery/z?d106:HR02415:@@@X; *see also* Press Release, Rep. George W. Gekas, Bankruptcy Reform Bill Passes: Bill Moves to Senate; Passage Expected (Oct. 12, 2000) (on file with the Houston Law Review).

59. H.R. CONF. REP. NO. 108-970, Senate Roll Call Vote #297, 106th Cong. (Dec. 7, 2000), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=106&session=2&vote=00297.

60. *See, e.g.*, Associated Press, *Legislation to Overhaul Laws on Bankruptcy Dies as President Fails to Sign It*, N.Y. TIMES, Dec. 20, 2000, at A32 ("'President Clinton let the

106th Congress adjourned without enactment of a bankruptcy bill, notwithstanding overwhelming support.

C. 107th Congress (2001–2002)

In 2001, the text of the pocket-vetoed conference report was reintroduced[61] and passed 306–108 in the House on March 1, 2001.[62] The Senate's approval (83–15) of a nearly identical bill followed less than two weeks later.[63] Yet Congress took no further action until 2002, when Democrats controlled the Senate by a tiny majority.[64] Although the bill remained hundreds of pages long and contained many provisions that had never been seriously debated, public Congressional discussion of bankruptcy focused on two narrow but salient issues. First, lawmakers disputed how to deal appropriately with generous or unlimited state homestead exemptions that applied in bankruptcy cases. Lawmakers found a compromise on this issue in the spring of 2002.[65]

Second, lawmakers disputed the need for a specific exception to discharge for debts arising from violations of the Freedom of

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American people down by pocket vetoing the bipartisan bankruptcy reform bill.'" (quoting Sen. Grassley)); Stephen Labaton, *Promised Veto Appears to Doom Congressional Agreement on Overhauling Bankruptcy Law*, N.Y. TIMES, Oct. 13, 2000, at A30 [hereinafter Labaton, *Promised Veto*] ("[O]bjections raised by the White House were not central to the issues and are excuses." (quoting lobbyist Ed Yingling)); Press Release, Gekas Denounces Clinton Pocket Veto of Bankruptcy Reform; Gekas Encouraged by Bush Administration (Dec. 21, 2000). For some of the stated reasons for the pocket veto, refer to note 209 *infra* and accompanying text.

61. News Release, U.S. House of Reps., Comm. on the Judiciary, *Committee Passes Bankruptcy Reform Legislation*, *at* http://www.house.gov/judiciary/news021501.htm (Feb. 15, 2001) (noting that "this legislation is virtually identical to the conference report on H.R. 2415, the 'Gekas-Grassley Bankruptcy Reform Act of 2000' that was pocket vetoed last December by then-President Clinton").

62. Bankruptcy Abuse Prevention and Consumer Protection Act, H.R. 333, House Roll Call Vote #25, 107th Cong. (Mar. 1, 2001), http://clerk.house.gov/evs/2001/roll025.xml.

63. Bankruptcy Reform Act of 2001, S. 420, Senate Roll Call Vote #36, 107th Cong. (Mar. 15, 2001), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=107&session=1&vote=00036.

64. The time delay is likely explained by other events, such as Sen. Jefford's leaving the Republican party, *Balance of Power*: *"A Struggle for Our Leaders to Deal With Me and for Me to Deal With Them"*, N.Y. TIMES, May 25, 2001, at A20 (displaying transcript of Sen. Jefford's public announcement that he was leaving the Republican Party), the terrorist attacks of September 11, 2001, *see* Todd S. Purdum & Robin Toner, *A Day of Terror: The Federal Government: Driven Underground, Administration and Congressional Officials Stay on the Job*, N.Y. TIMES, Sept. 12, 2001, at A5, and the discovery of anthrax in the congressional buildings, Philip Shenon, *A Nation Challenged: Discovery on Anthrax; Suspicious Letter to a 2nd Senator*, N.Y. TIMES, Nov. 17, 2001, at A1.

65. *See* Philip Shenon, *Congress Panel Agrees to Limit Home Shield in Bankruptcy*, N.Y. TIMES, Apr. 24, 2002, at C1.

Access to Clinic Entrances (FACE) Act.[66] Some Senate Democrats conditioned their support for the bill on the addition of a new exception to discharge, while other members of Congress strongly opposed such an amendment.[67] Lawmakers reached what they thought was a suitable compromise on this issue in the summer of 2002,[68] and the consumer credit industry retained Kenneth Starr, at that time an attorney with the law firm of Kirkland and Ellis, to assure antiabortion lawmakers that the legislation would have "little practical effect" on the rights of abortion protesters.[69]

Neither the Starr letter nor the language of the compromise swayed enough members of the House to ensure passage. In the post-midterm election lame-duck session, members of the House of Representatives voted against bringing up the conference report (243–172),[70] with antiabortion representatives substantially tipping the scales.[71] Like the two prior Congresses, the 107th Congress ended without enactment of the omnibus bankruptcy bill.

D. 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 House sponsors.[72]

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66. *See generally* Margaret Whiteman, Comment, *F.A.C.E.-ing Up to Bankruptcy Reform: Why a Separate Provision Denying Discharge of Debts Arising Out of Abortion Clinic Violence Is Redundant*, 108 PENN. ST. L. REV. 395, 395–96, 405–06 (2003).

67. *Id*.

68. *See* Linda Punch, *Bankruptcy Reform: Try, Try Again*, CREDIT CARD MGMT., Feb. 27, 2003, at 32, 32 (chronicling the myriad legislative attempts at bankruptcy reform, including compromise on the FACE amendment), *available at* 2003 WL 11823279.

69. Letter from Kenneth Starr, to Hon. Steve Barlett, President, The Financial Services Roundtable (Oct. 4, 2002) (on file with the Houston Law Review).

70. Waiving Points of Order Against the Conference Report on H.R. 333, Bankruptcy Abuse Prevention and Consumer Protection Act, H.R. Res. 606, House Roll Call Vote #478, 107th Cong. (Nov. 14, 2002), http://clerk.house.gov/evs/2002/roll478.xml.

71. Right 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. Bankruptcy Abuse Prevention and Consumer Protection Act, H.R. 333, House Roll Call Vote #484, 107th Cong. (Nov. 15, 2002), http://clerk.house.gov/evs/2002/roll484.xml.

72. Rep. McCollum ran for Senate and lost. FED. ELECTION COMM'N, 2000 U.S. SENATE RESULTS, http://www.fec.gov/pubrec/fe2000/2000senate.htm (last visited Nov. 12, 2004). After redistricting, Rep. Gekas encountered a longtime incumbent conservative Democrat, Rep. Tim Holden, and lost. CLERK OF THE HOUSE OF REPS., STATISTICS OF THE CONGRESSIONAL ELECTION OF NOV. 5, 2002, at 39 (2003).

Nonetheless, early in the 108th Congress, Rep. Jim Sensenbrenner (R-Wis.) reintroduced the omnibus bill, absent the FACE amendment.[73] The bill quickly passed the House on March 19, 2003 (315–113).[74]

After almost ten months, the House tried to force action in the Senate. Lawmakers added the entire omnibus bill to a one-page reauthorization of Chapter 12 (family farmer bankruptcy), which had already passed the Senate.[75] The House passed this bill by a vote of 265–99 in January 2004.[76] Sen. Tom Daschle (D-S.D.) expressed doubt in the press that the House's approach would be successful,[77] and as of this writing, lawmakers have made no further progress.[78]

Thus, even though large majorities of lawmakers have expressed support for the omnibus bankruptcy bill, it is not law. The bankruptcy establishment has had very little direct influence, notwithstanding attempts to provide substantive input.[79] As is discussed in the following two sections, however, evaluating news media coverage offers another dimension to the story of this bill's long and tortured path.

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73. Bankruptcy Abuse Prevention and Consumer Protection Act of 2003, H.R. 975, House Roll Call Vote #74, 108th Cong. (Mar. 19, 2003), http://clerk.house.gov/evs/2003/roll074.xml.

74. That bill differs from the prior bill in that it includes a few legislative responses to recent corporate scandals. *See* H. Amend. 8 to H.R. 975, 108th Cong. (2003) (amending House Bill 975 to extend the reach-back period for rescinding fraudulent transfers and to require courts, in some circumstances, "to reinstate retiree benefits that a corporate debtor modified" just prior to filing), http://thomas.loc.gov/bss/d108/d108bill.html.

75. S. 1920, 108th Cong. (2004).

76. To Extend for 6 Months the Period for Which Chapter 12 of Title 11 of the United States Code Is Reenacted, S. 1920, House Roll Call Vote #10, 108th Cong. (Jan. 28, 2004), http://clerk.house.gov/evs/2004/roll010.xml.

77. Dawn Kopecki, *U.S. House GOP Tries to Resurrect Stalled Bankruptcy Bill*, DOW JONES BUS. WIRE, Jan. 28, 2004 (citing Daschle stating that Democrats have enough votes to sustain a filibuster in Senate), *available at* 1/29/04 DJINS 12:37:00 (Westlaw).

78. *See* Molly M. Peterson, *House Passes Bankruptcy Bill, but Senate Democrats Object*, CONG. DAILY, Jan. 29, 2004, *available at* 2004 WL 65987404. In the meantime, Chapter 12 expired. *See generally* Melissa B. Jacoby, *The Bankruptcy Code at Twenty-Five and the Next Generation of Lawmaking*, 78 AM. BANKR. L.J. 221, 226–230 (2004) (describing legislative developments relating to Chapter 12 for family farmers).

79. Press Release, U.S. Sen. Russ Feingold, Statement of U.S. Senator Russ Feingold on Legislation to Restore Chapter 12 Bankruptcy Protection for Farmers (Sept. 29, 2004), http://feingold.senate.gov/~feingold/statements/04/09/2004929B16.html.

III. THE RELEVANCE OF MEDIA TREATMENT TO DEVELOPMENTS IN BANKRUPTCY LEGISLATION

News media play a varied and complex role in American lawmaking and policymaking.[80] Courts increasingly use news in judicial opinions[81] and attribute statistics to news sources.[82]

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80. Scholars in other disciplines debate characterizations of news making as an institution and its precise relationship to law and policy, but apparently do not debate its importance. *See, e.g.*, TIMOTHY E. COOK, GOVERNING WITH THE NEWS: THE NEWS MEDIA AS A POLITICAL INSTITUTION 4 (1998) (characterizing news as a "political institution" and discussing differences between political scientists' and sociologists' conception of journalists); GAYE TUCHMAN, MAKING NEWS: A STUDY IN THE CONSTRUCTION OF REALITY 3–5 (1978) (describing news as "first and foremost a social institution"); *see also* HERBERT J. GANS, DECIDING WHAT'S NEWS, 4–7 (1979) (characterizing content analysis of news reporting as painting a "picture of America"); M. ETHAN KATSH, LAW IN A DIGITAL WORLD 9 (1995) (describing law and media as "two of society's more powerful forces" and expressing surprise that links between the two forces receive "negligible attention"); MICHAEL SCHUDSON, THE SOCIOLOGY OF NEWS 6–7 (2003) (asserting that journalists "construct" but do not "conjure" the world).

81. *See, e.g.*, John J. Hasko, *Persuasion in the Court: Nonlegal Materials in U.S. Supreme Court Opinions*, 94 LAW LIBR. J. 427 *passim* (2002) (studying the increased use of nonlegal sources in U.S. Supreme Court decisions); Frederick Schauer & Virginia J. Wise, *Nonlegal Information and the Delegalization of Law*, 29 J. LEGAL STUD. 495 *passim* (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 the record); LaShanda D. Taylor, *Creating A Causal Connection: From Prenatal Drug Abuse to Imminent Harm*, 25 N.Y.U. REV. L. & SOC. CHANGE 383, 396–97 (1999) (noting family court use of newspaper and magazine articles).

82. *See, e.g.*, Ashcroft v. ACLU, 535 U.S. 564, 567 & n.2 (2002) (citing *New York Times* for Internet use estimate); A.D. Bedell Wholesale Co. v. Philip Morris Inc., 263 F.3d 239, 241–42 & n.9 (3d Cir. 2001) (citing *New York Times* for number of state lawsuits against tobacco companies); Morrison v. Hall, 261 F.3d 896, 904 n.7 (9th Cir. 2001) (citing *Los Angeles Times* for adult prisoner literacy rate and correlation between literacy and recidivism); *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); Hutchins v. D.C., 188 F.3d 531, 570 n.35 (D.C. Cir. 1999) (Rogers & Tatel, JJ., dissenting) (citing *Washington Post* for curfew effect on reducing juvenile crime); Middleton v. City of Flint, 92 F.3d 396, 407 (6th Cir. 1996) (citing *Los Angeles Times* and *New York Times* for percentage of Indian-American owners in lodging and motel business); Roulette v. City of Seattle, 97 F.3d 300, 315 & n.5 (9th Cir. 1996) (Norris, Pregerson & Tashima, JJ., dissenting) (citing papers for rich-poor disparity in U.S.); Carroll v. Comm'r, 71 F.3d 1228, 1230 & n.1 (6th Cir. 1995) (citing *Washington Post* for prevalence of tax documents lost by IRS each year); United States v. Smith, 27 F.3d 649, 668 (D.C. Cir. 1994) (Sentelle, J., dissenting) (citing papers for estimated numbers of illegal immigrants and incarcerated illegal immigrants); United States v. Milligan, 17 F.3d 177, 183–84 (6th Cir. 1994) (citing *Los Angeles Times* for health insurance statistics); United States v. Garrett, 984 F.2d 1402, 1404 & n.1 (5th Cir. 1993) (citing *New York Times* for airport security firearm confiscation statistics); Hous. Opportunities Made Equal, Inc. v. Cincinnati Enquirer, Inc., 943 F.2d 644, 666 & n.13 (6th Cir. 1991) (Keith, J., dissenting) (citing papers for prevalence of housing discrimination); Hammer v. Gross, 932 F.2d 842, 852 (9th Cir. 1991) (Kozinski & Nelson, JJ., concurring in part) (citing *Los Angeles Times* for drunk driving injury or death statistics); McKinney v. Anderson, 924 F.2d 1500, 1507 & n.21 (9th Cir. 1991) (citing *New York Times* for proportion of smokers in prison nationwide); People Against Nuclear Energy v. NRC, 678 F.2d 222, 243 n.37 (D.C. Cir. 1982) (Wilkey, J., dissenting) (citing

Lawyers engage in media management as part of their litigation strategies.[83] Scholars have studied media coverage of a range of law and policy-related issues, including executive appointments,[84] judicial elections,[85] presidential elections,[86] and press accounts of comments that victims' families have made in capital cases.[87]

The study of news coverage of legislation should be at least as fruitful as studying these other lines of inquiry. Reporters and legislators "coproduce" both news and policy.[88] News media offer

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Washington Post for average loss of life in coal mining).

83. *See, e.g.*, RICHARD K. SHERWIN, WHEN LAW GOES POP: THE VANISHING LINE BETWEEN LAW AND POPULAR CULTURE 147–48 (2000) (reviewing trial lawyers' management of pretrial publicity and media messages to sway popular opinion and "demoralize," "antagonize," and encourage plea bargaining); Tom Goldstein, *The Transformation of Legal Journalism*, 66 U. CIN. L. REV. 895, 900 (1998) (examining lawyers as spokespersons in media during high publicity trials); Peter J. Gardner, *Media at the Gates: Panic! Stress! Ethics?*, VT. B.J., Sept. 2001, at 39, 40–41 (providing lawyers with a succinct approach to media relations); Kateri Walsh, *Engaging the Media: What Lawyers Should Know When Talking to Reporters*, OR. ST. B. BULL., Oct. 2001, at 9 (identifying several media related strategies lawyers can adopt to inform the general public of the legal process).

84. Laurel Leff, *The Making of a "Quota Queen": News Media and the Bias of Objectivity*, *in* FEMINISM, MEDIA, AND THE LAW 27, 27–28 (Martha A. Fineman & Martha T. McCluskey eds., 1997) (asserting that the objectivity norm "steered the media toward familiar constructs about race and gender to make sense of the controversy over [Lani Guinier's] appointment," and "enabled journalists to disclaim responsibility" for characterizing Guinier as a left-wing extremist and a "quota queen").

85. Joseph D. Kearney & Howard B. Eisenberg, *The Print Media and Judicial Elections: Some Case Studies from Wisconsin*, 85 MARQ. L. REV. 593, 769–70, 775–77 (2002) (studying whether readers gained sufficient information from print media to vote on the 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).

86. *See, e.g.*, JAMIESON & WALDMAN, *supra* note 7, at 4–7 (chronicling the media's coverage of the 2000 presidential election and the resulting lawsuit); SIDNEY KRAUS & DENNIS DAVIS, THE EFFECTS OF MASS COMMUNICATION ON POLITICAL BEHAVIOR 58–59 (1976) (researching the television coverage of the presidential debates and its effect on the voting public).

87. Samuel R. Gross & Daniel J. Matheson, *What They Say at the End: Capital Victims' Families and the Press*, 88 CORNELL L. REV. 486 (2003) (concluding that the media gathers reactions from victims' families as a fundamental component of assembling an execution news story).

88. COOK, *supra* note 80, at 3, 10–13 (emphasizing that political actors and journalists "interact in a constant but implicit series of negotiations over who controls the agenda"); STEPHEN HESS, LIVE FROM CAPITOL HILL! STUDIES OF CONGRESS AND THE MEDIA 104–07 (1991) (identifying Congress members' efforts to influence media coverage, despite research indicating that Congress "overestimate[s] the extent of television coverage and hence its importance in the legislative and electoral processes"); KATSH, *supra* note 80, at 9 ("[L]aw and media are intimately linked institutions."); KRAUS & DAVIS, *supra* note 86, at 123–24 (describing the centrality of the media to policymaking, particularly since the rise of television imagery); SCHUDSON, *supra* note 80, at 21 (characterizing U.S. presidents as parajournalists); Frank R. Baumgartner et al., *Media Attention and Congressional Agendas*, *in* DO THE MEDIA GOVERN?, *supra* note 7, at 349, 350 ("Sometimes one leads and sometimes the other, and often both are following the

new legislation ideas,[89] and legislators and others use the media as outlets to construct and highlight public problems and to gain support for particular solutions.[90]

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actions of some third party . . . ."); Robert H. Giles, *The Media and Government Regulation in the Great Tradition of Muckraking*, 11 KANS. J.L. PUB. POL'Y 567, 570 (2002) ("[N]ews 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."); Jan Ellen Rein, *Misinformation and Self-Deception in Recent Long-Term Care Policy Trends*, 12 J.L. & POL. 195, 233–34 (1996) (identifying the media and insurance industry's "profound effect on policy decisions at every level of government"); Achilles Skordas, *Hegemonic Custom?*, *in* UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW 317, 323–24 (Michael Byers & Georg Nolte eds., 2003) (describing the media as a source of "public conscience," playing a role in policymaking); Lucy A. Williams, *Race, Rat Bites, and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, 22 FORDHAM URB. L.J. 1159, 1174 (1995) (arguing that media imaging affects poverty and welfare legislation).

89. *See, e.g.*, LAURA E. GÓMEZ, MISCONCEIVING MOTHERS: LEGISLATORS, PROSECUTORS, AND THE POLITICS OF PRENATAL DRUG EXPOSURE 32 (1997) (hypothesizing bill sponsorship's response in part to media construction of "crack baby"); Baumgartner et al., *supra* note 88, at 350 (asserting that news media "attention is an important determinant of which issues will manage to win space in the limited attentions of the public and of Congress"); Peter H. Huang et al., *Derivatives on TV: A Tale of Two Derivatives Debacles in Prime-Time*, 4 GREEN BAG 257, 266–67 (2001) (justifying partly study of media coverage on fact that society's lawmakers watch television and noting that lawmakers cite news stories in pitches for reform); Nourse & Schacter, *supra* note 30, at 584 (surveying Senate congressional staffers on sources used to choose and produce legislation). For a criticism of media's lawmaking role, see WILLIS, *supra* note 10, at 154–55 (concluding that media should not be held responsible for Congress's agenda).

90. *See* CATER, *supra* note 6, at 13–21 (positing that the media is the "means by which government explains itself to the people"); COOK, *supra* note 80, at 11, 82–84, 110–15 (stating media "influence perceptions of public moods, and in other ways shape the context of one legislator asking another for support" and discussing publicity functions of Congress and use of news media to gain legislative power for both practical and philosophical reasons while noting press secretaries find "the greater reach and credibility of newspapers makes them more useful than self-generated communications such as targeted mail or newsletters"); GÓMEZ, *supra* note 89, at 32 (portraying media as "free advertising" for legislators' projects); GARY C. WOODWARD, PERSPECTIVES ON AMERICAN POLITICAL MEDIA 237 (1997) (arguing that popular media is crucial "when assessing the forms of American political discourse"); Ben H. Bagdikian, *Congress and the Media: Partners in Propaganda*, *in* CONGRESS AND THE NEWS MEDIA 388, 388–91 (A. William Bluem ed., 1974); Shanto Iyengar, *Framing Responsibility for Political Issues: The Case of Poverty*, *in* DO THE MEDIA GOVERN?, *supra* note 7, at 276, 276 (discussing the media's significant influence on public opinion); Nancy J. Knauer, *How Charitable Organizations Influence Federal Tax Policy: "Rent-Seeking" Charities or Virtuous Politicians?*, 1996 WIS. L. REV. 971, 1051 ("Legislators support the charitable community in order to generate the favorable voter perception that they are acting in the public interest."); Francis E. Rourke, *Congressional Use of Publicity*, *in* CONGRESS AND THE NEWS MEDIA, *supra*, at 128, 128 (discussing the battle between the legislature and the executive for control of the media); Deborah A. Stone, *Causal Stories and the Formation of Policy Agendas*, 104 POL. SCI. Q. 281, 282 (1989) (illustrating imagemaking in policymaking and the way political actors portray problems to garner support for preferred solutions). *See generally* SAM KERNELL, GOING PUBLIC: NEW STRATEGIES OF PRESIDENTIAL LEADERSHIP (2d ed. 1993) (outlining politicians' media management strategies); Shaviro, *supra* note 7, at 96 ("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

Researchers who have directly explored media coverage of particular legislation have concluded that media coverage increases the possibility of legislative attention,[91] sometimes regardless of the media portrayal's accuracy.[92] Media coverage also has the potential to change lawmakers' approaches to dealing with an issue.[93] Even if the media do not independently determine or influence Congressional attention, they may indirectly affect Congressional action, perhaps through influencing public opinion.[94] The media may also help change the public's understanding of legislation once enacted.[95] Legal

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proposal, see Leonard A. Jason & Thomas Rose, *Influencing the Passage of Child Passenger Restraint Legislation*, 12 AM. J. OF COMMUNITY PSYCHOL. 485, 491–92 (1984) (evaluating the impact of sending child automobile injury data to legislators on the eve of legislative debate).

91. *See, e.g.*, Baumgartner et al., *supra* note 88, at 350, 359–63 (studying the relevance of both the 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).

92. Paul Colomy & Laura Ross Greiner, *Making Youth Violence Visible: The News Media and the Summer of Violence*, 77 DENV. U. L. REV. 661, 668–71, 683–88 (2000) (finding that the *Denver Post* gave higher profile and increased attention to crime during the summer of 1993 and that this increased attention was followed by heightened lawmaker receptiveness to legislation curbing violence even though crime statistics reveal only a "small but unspectacular upturn" in violent crimes during the summer of 1993). Professors Colomy and Greiner argue that the press was a "cultural entrepreneur" in its narrative techniques and "played a critical role in making youth violence a salient public issue." *Id.* at 661, 679; GÓMEZ, *supra* note 89, at 29–33 (tracking press coverage and California state legislative activity related to "crack babies" by studying media coverage of drugs, pregnancy, and child abuse from 1985–1992 in two newspapers and fifty-seven bills and related materials in the California Legislature). For reviews of GÓMEZ, *supra* note 89, see generally Joseph R. Henry, 3 J. HEALTH CARE L. & POL'Y 207 (1999) (book review) (recommending that Gómez track changes in the media's tone over time); Linda G. Mills, *Feminist Phallacies: The Politics of Prenatal Drug Exposure and the Power of Law*, 25 LAW & SOC. INQUIRY 1215 (2000) (book review); Dorothy E. Roberts, *Creating and Solving the Problem of Drug Use During Pregnancy*, 90 J. CRIM. L. & CRIMINOLOGY 1353 (2000) (book review); Karen D. Zivi, *Who Is the Guilty Party? Rights, Motherhood, and the Problem of Prenatal Drug Exposure*, 34 LAW & SOC'Y REV. 237 (2000) (book review).

93. *See* Baumgartner et al., *supra* note 88, at 350, 362–63 (noting that changes in governmental policy concerning societal issues are often preceded by media coverage of the issue); Denise Scheberle, *Radon and Asbestos: A Study of Agenda Setting and Causal Stories*, 22 POL'Y STUD. J. 74, 78, 82–83 (1994) (explaining that the media helped transform legislative involvement in asbestos from industry promotion to a health problem).

94. For example, Paul Burstein studied *New York Times* coverage and other potential determinants of congressional sponsorship and support for equal employment opportunity legislation between 1941 and 1972. PAUL BURSTEIN, DISCRIMINATION, JOBS, AND POLITICS: THE STRUGGLE FOR EQUAL EMPLOYMENT OPPORTUNITY IN THE UNITED STATES SINCE THE NEW DEAL 82–87 (1985). Burstein found only a weak correlation between media coverage and legislative sponsorship and support, but observed that media coverage may have had indirect effects, such as influencing public opinion. *Id.*

95. *See, e.g.*, Sarah F. Russell, *Covering Women and Violence: Media Treatment of VAWA's Civil Rights Remedy*, 9 MICH. J. GENDER & L. 327, 328–29, 334–35, 352–54 (2003)

academics and professionals who want to understand, or perhaps influence, the legislative process might miss a piece of the puzzle if they do not investigate related news treatment.[96]

Many studies also implicitly recognize and evaluate media coverage effects on policymaking.[97] Social scientists have considered whether the media have roles in "agenda-setting," namely, helping to rank the salience of particular issues.[98] Researchers question how the media "frame" issues or problems[99]

(finding shift in press coverage of civil rights provision in Violence Against Women Act, and as result, finding the 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, 1436–40 (2003) (stating that "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 a split in focus of coverage between liberal and conservative leaning news organizations).

96. *See* KATSH, *supra* note 80, at 9 (describing law and media as "two of society's more powerful forces" and finding it "surprising . . . that the links between the two have received negligible attention"); Filler, *supra* note 10, at 1756 n.80 (surveying myriad articles that highlight the connection of the legal system to the public via the media and noting the dearth of scholarship that explores this relationship).

97. *See generally* Sharon M. Friedman, *Blueprint for Breakdown: Three Mile Island and the Media Before the Accident*, J. COMM., Winter 1981, at 116 (criticizing the biased press coverage of the Three Mile Island nuclear facility before the major accident of March 1979 and concluding that energy officials should invest more money and resources in public relations to give the local community a better understanding of the risks and benefits of nuclear energy); William A. Gamson & Kathryn E. Lasch, *The Political Culture of Social Welfare Policy*, *in* EVALUATING THE WELFARE STATE: SOCIAL AND POLITICAL PERSPECTIVES 397 (Shimon E. Spiro & Ephraim Yuchtman-Yaar eds., 1983) (presenting several models of understanding clusters of ideas that describe a political culture to the populace and identifying the various factors that make up the "culture" of an issue); William A. Gamson & Andre Modigliani, *Media Discourse and Public Opinion on Nuclear Power: A Constructionist Approach*, 95 AM. J. SOC. 1, 10–11 (1989) (analyzing relevant material during "critical discourse moments" between 1945 and the late 1980s as "indicat[ive] 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)).

98. For a foundational study, see Maxwell E. McCombs & Donald L. Shaw, *The Agenda-Setting Function of Mass Media*, 36 PUB. OPINION Q. 176, 176–85 (1972) (advocating the existence of 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 generally* Everett M. Rogers et al., *A Paradigmatic History of Agenda-Setting Research*, *in* DO THE MEDIA GOVERN?, *supra* note 7, at 225 (tracing the history of scholarly research on the agenda-setting process from the 1930s to the late 1990s).

99. Professor Schudson defines framing as "principles of selection, emphasis, and presentation composed of little tacit theories about what exists, what happens, and what matters." SCHUDSON, *supra* note 80, at 35; *see also* JAMIESON & WALDMAN, *supra* note 7, at 122 (stating that the framing of issues is "the product of a give-and-take between political actors and reporters"). For framing broader than media, see generally JOSEPH R. GUSFIELD, THE CULTURE OF PUBLIC PROBLEMS: DRINKING-DRIVING AND THE SYMBOLIC ORDER 1–4 (1981) (discussing how our culture transforms certain situations into public problems and the inconsistencies between what actions are publicly criticized and privately have become "routine behavior").

or focus on causal stories that lead to policy action.[100] They have used these techniques to study media coverage of many issues, including crime waves,[101] bridge collapse,[102] affirmative action,[103] welfare,[104] homelessness,[105] and a variety of poverty-related conditions,[106] and they have sometimes approached these studies

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100. *See* Stone, *supra* note 90, at 281–83, 299 (discussing how political actors portray stories through the media in "ways calculated to gain support for their side").

101. *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, 331 (1991) (reporting on L.A. freeway violence and recounting alarming terms used, including "sudden evolution," "trend," "wave," "spate," "spree," "upsurge," "fad," "rash," "epidemic," "plaguing," and "reaching alarming proportions"); Mark Fishman, *Crime Waves as Ideology*, 25 SOC. PROBS. 531, 532 (1977) (studying reporting on crime against the elderly in New York City and finding a disproportionate focus on gruesome crimes compared to crime statistics indicating drop in murders of the elderly); s*ee also* Salma Ghanem & Dixie 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?, *supra* note 7, at 237, 245–46 (tracking media coverage and public opinions about crime in comparison to actual crime statistics); Hon. Ernestine S. Gray, *The Media—Don't Believe the Hype*, 14 STAN. L. & POL'Y REV. 45, 47 (2003) (declaring that media reporting does not reflect the decline in juvenile crime).

102. *See* Robert A. Stallings, *Media Discourse and the Social Construction of Risk*, 37 SOC. PROB. 80, 81–82 (1990) (studying interstate bridge collapse coverage and the role of experts in providing themes about risk and responsibility and finding one storyline on causality and blame regarding the collapse, and another representing the collapse as an example of a growing unsafe bridge problem).

103. *See* William 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, 300–01, 304 (Richard G. Braungart & Margaret M. Braungart eds., 1990) (evaluating seven issue-packages regarding affirmative action coverage in television news, news magazines, editorial cartoons, and syndicated columns).

104. *See* Gamson & Lasch, *supra* note 97, at 400–08 (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).

105. *See* Blasi, *supra* note 7, at 221 (studying articles on homelessness in five major newspapers and finding that four percent "attributed individualistic causes to homelessness," an extremely low percentage compared to poverty); Barrett A. Lee et al., *Are the Homeless to Blame? A Test of Two Theories*, 33 SOC. Q. 535, 537–38 (1992) [hereinafter Lee et al., *Homeless to Blame?*] (finding the media to be a valuable public arena to gauge public opinion and predict legislative developments on homelessness and finding that the majority of reporting mentioning any cause of homelessness identified structural determinants, such as a shrinking supply of low cost housing); *see also* Barrett A. Lee et al., *Public Beliefs About the Causes of Homelessness*, 69 SOC. FORCES 253, 253, 257 (1990) (finding that beliefs about "causes of homelessness emphasize structural forces and bad luck over individualistic factors").

106. *See* Iyengar, *supra* note 90, at 279 ("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."). *See generally* Kevin B. Smith & Lorene H. Stone, *Rags, Riches, and Bootstraps: Beliefs about Causes of Wealth and Poverty*, 30 SOC. Q. 93, 93, 103 (1989) (noting that individualism has been widely accepted as the metatheory for explaining wealth and poverty but is not as universally accepted as

with a comparative perspective.[107] These researchers are not trying to determine the nature of a particular problem, such as homelessness, although plenty of studies certainly focus on that type of question.[108] Rather, they explore media portrayal of homelessness and its effects on perceptions of problems and support for solutions.[109] These projects offer helpful explorations of media coverage even if one is ambivalent about social constructionism.[110] They also offer important analytical tools to

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is often assumed).

107. *See* Annette Benedict et al., *Attitudes Toward the Homeless in Two New York City Metropolitan Samples*, J. VOLUNTARY ACTION RES., July-Dec. 1988, at 90, 91–92 (evaluating perceptions of the homeless among suburbanites working in New York City and comparing perceptions of the elderly, welfare recipients, and the unemployed). *See generally* George Wilson, *Toward a Revised Framework for Examining Beliefs About the Causes of Poverty*, 37 SOC. Q. 413 (1996) (analyzing reports on welfare, homelessness, and migrant workers, finding that groups have not been uniformly framed, and concluding media messages alter individuals' perceptions derived from personal experiences). *See also* Blasi, *supra* note 7, at 221 (noting the adage that "the media provide instruction to the public" and that public opinion "surveys determines [sic] how well the 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 McCombs & Estrada, *supra* note 101, at 237–38.

108. *See, e.g.*, Marta Elliott & Lauren J. Krivo, *Structural Determinants of Homelessness in the United States*, 38 SOC. PROBS. 113, 114 (1991) (describing two explanations: personal problems and structural conditions); Thomas J. Main, *Analyzing Evidence for the Structural Theory of Homelessness*, 18 J. URB. AFF. 449, 450, 456 (1996) (finding fault in structural theory, based on the high personal disability rate among the homeless).

109. *See, e.g.*, Lawrence Bobo, *Social Responsibility, Individualism, and Redistributive Policies*, 6 SOC. FORUM 71, 72, 84–87 (1991) (concluding that individual responsibility theory dominates public opinion); Kay Young McChesney, *Family Homelessness: A Systemic Problem*, J. SOC. ISSUES, No. 4, at 191, 191, 200 (1990) (noting that perceptions of homelessness as a personal or family problem may lead people to conclude that the federal government need not be involved); *see also* GUSFIELD, *supra* note 99, at 13 ("Public problems have a shape which is understood in a larger context of a social structure in which some versions of 'reality' have greater power and authority to define and describe that 'reality' than do others."); ALAN IRWIN, RISK AND THE CONTROL OF TECHNOLOGY: PUBLIC POLICIES FOR ROAD TRAFFIC SAFETY IN BRITAIN AND THE UNITED STATES 28–29 (1986) (discussing problems associated with the public's participation in technical decisionmaking); Best, *supra* note 101, at 327 ("Problems can always be depicted in more than one way: rape as sex crime or crime of violence; marijuana as a cause of psychosis, a precursor to hard drugs, or a threat to economic productivity . . . ."); Gray, *supra* note 101, at 47–48 (studying the limited media coverage of juvenile crime and arguing that media portrayal of crime and race leads to more punitive responses to juvenile problems).

110. For explanations of social constructionism, see, e.g., Best, *supra* note 101, at 327 ("Explaining how and why particular images of problems emerge has become a central task for constructionist analysts."); Theresa Glennon, *Knocking Against the Rocks: Evaluating Institutional Practices and the African-American Boy*, 5 J. HEALTH CARE L. & POL'Y 10, 36 (2002) ("The 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? 2–3 (1999) (noting that "social construction analyses do not always liberate," can have the opposite effect—as in the case of anorexia—and

legal scholars interested in a broader conception of the determinants of legislative developments.

The parties on whom reporters rely to shape and fill their stories deserve attention as well.[111] Sources "are the deep, dark secret of the power of the press"; they might even lead the dance between reporters and themselves.[112] They have a powerful opportunity to shape the way a problem or issue is understood.[113] Players readily become repeat players if they follow the rules.[114]

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generally only liberate "those who are on the way to being liberated"). *See generally* Steve Woolgar & Dorothy Pawluch, *Ontological Gerrymandering: The Anatomy of Social Probs. Explanations*, 32 SOC. PROBS. 214 (1985) (examining several examples of social problems to provide critical commentary on the social constructionist arguments used to explain them).

111. *See, e.g.*, RICHARD V. ERICSON ET AL., NEGOTIATING CONTROL: A STUDY OF NEWS SOURCES 3–4 (1989) (recognizing the power of a news source to shape the public's perception of an event or issue in society); LEON V. SIGAL, REPORTERS AND OFFICIALS: THE ORGANIZATION AND POLITICS OF NEWSMAKING 123–25 (1973) (analyzing news source diversity); CAROL H. WEISS & ELEANOR SINGER, REPORTING OF SOCIAL SCIENCE IN THE NATIONAL MEDIA 175–79 (1988) (studying social science coverage and sourcing in national press and three weekly news magazines); Jane Delano Brown et al., *Invisible Power: Newspaper News Sources and the Limits of Diversity*, 64 JOURNALISM Q. 45, 47, 49, 53 (1987) (studying front page stories and sourcing from national press and four North Carolina papers); Hugh M. Culbertson, *Veiled News Sources—Who and What Are They?* NEWS RES. BULL., May 1975, at 5, 5–6, 8–10, 13 (studying source attribution patterns in twelve newspapers); Daniel C. Hallin et al., *Sourcing Patterns of National Security Reporters*, 70 JOURNALISM Q. 753, 753–54 (1993); Jim Naureckas & Janine Jackson, *Happily Ever NAFTA? Extra! Update, October 1993*, *in* THE FAIR READER: AN EXTRA! REVIEW OF PRESS AND POLITICS IN THE '90S, at 149, 149–50 (Jim Naureckas & Janine Jackson eds., 1996) (reviewing sourcing in NAFTA stories, and observing pro-NAFTA bias among majority of sources, with scarce representation of environmentalists and trade unionists); Jim Naureckas & Janine Jackson, *NAFTA's Knee-Jerk Press, Extra! Update, January/February 1994*, *in* THE FAIR READER, *supra*, at 151, 151 (discussing Sen. Byron Dorgan's analysis of *Washington Post* editorials and op-eds on NAFTA, in which he found a pro-NAFTA bias of nearly seven to one).

112. SCHUDSON, *supra* note 80, at 54, 134; *see also* John J. Oslund, *The Media and Government Regulation: Guarding the Hen House*, 11 KAN. J.L. PUB. POL'Y 559, 561 (2002) (arguing that the reporter-source relationship is "alternately symbiotic, confrontational, clandestine and political").

113. *See, e.g.*, EDWARD S. HERMAN & NOAM CHOMSKY, MANUFACTURING CONSENT: THE POLITICAL ECONOMY OF THE MASS MEDIA 18, 22 (1988) (noting that powerful bureaucracies acting as sources make information collection cheaper and easier for media); David Knoke & Edward O. Laumann, *The Social Organization of National Policy Domains: An Exploration of Some Structural Hypotheses*, *in* SOCIAL STRUCTURE AND NETWORK ANALYSIS 255, 259 (Peter V. Marsden & Nan Lin eds., 1982) (arguing that "the social structure of a national policy domain is primarily determined by the network of access to trustworthy and timely information about policy matters"); Stallings, *supra* note 102, at 87 (asserting that the relationship between journalists and sources helps explain which causes get identified).

114. *See, e.g.*, SCHUDSON, *supra* note 80, at 52 (observing that journalists seek experts that satisfy the press's "operational bias" (citing Janet E. Steele, *Experts and the Operational Bias of Television News: The Case of the Persian Gulf War*, 72 JOURNALISM & MASS COMM. Q. 799 (1995))); WEISS & SINGER, *supra* note 111, at 45 (identifying that the "veterans of the press" effect leads to a finding that fifty-seven percent of those quoted in articles had been quoted "more than twenty times before"); WILLIS, *supra* note 10, at

The system rewards those who reach out to the media.[115] Speaking in quotable sentences and having a "flair for the dramatic" certainly help as well.[116] Sources might be particularly influential in shaping stories about a legal system or issue if the details are relatively unfamiliar.[117] Ultimately, the research suggests that sources many be able to play a role in legislative developments if they gain the trust of reporters and collaborate with them to help shape the media discourse.

To gain insight on the role of the news media with respect to the omnibus bankruptcy legislation, I studied coverage of the bill in three high circulation and influential national newspapers: the *Wall Street Journal*, the *New York Times*, and the *Washington Post*.[118] These papers are routinely chosen for analysis by a wide

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145 (describing reporters' reliance on a small group of experts for stories, creating a rolodex effect); Brown et al., *supra* note 111, at 45–48 (arguing that reporters' traditional sources satisfy two important criteria: availability and suitability).

115. WEISS & SINGER, *supra* note 111, at 26–29, 46–48 (concluding that the majority of reporters who write on social-science issues cite to or quote scientists who actively seek media coverage); *see also* SCHUDSON, *supra* note 80, at 135 (elucidating the college and university impetus to engage in outreach with media, particularly "when good things happen"); SIGAL, *supra* note 111, at 120–22 (finding that only one-fourth of the stories are derived of reporter's own research initiative); Douglas L. Colbert, *Broadening Scholarship: Embracing Law Reform and Justice*, 52 J. LEGAL EDUC. 540, 556–57 (2002) (describing the dynamic between media reporters and a professor who was forthcoming with his research efforts); Al Kamen, *In the Loop*, WASH. POST, Apr. 3, 2001, at A19 (reporting on Harvard Law School's outreach to media to increase the citation of professors).

116. WEISS & SINGER, *supra* note 111, at 47; *see also* Gamson & Lasch, *supra* note 97, at 401 (describing the process by which symbolic actors and organizations influence their portrayal in the media and noting that "an 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 generally Daniel C. Hallin, *Sound Bite News: Television Coverage of Elections, 1968–1988*, 42 J. COMM. 5-24 (1992), *reprinted in* DO THE MEDIA GOVERN?, *supra* note 7, at 57.

117. *See generally* MELVIN L. DEFLEUR & SANDRA BALL-ROKEACH, THEORIES OF MASS COMMUNICATION (3d ed. 1975) (commenting that the relative importance of media discourse depends on readily available meaning-generating experiences in readers' everyday lives); S.J. Ball-Rokeach & M.L. DeFleur, *A Dependency Model of Mass-Media Effects*, 3 COMM. RES. 3 (1976) (asserting that media's often incomplete reporting immediately following unexpected events creates ambiguity in the audience and discussing media's subsequent role in ambiguity resolution).

118. *See, e.g.*, Audit Bureau of Circulations, Top 150 Newspapers by Largest Reported Circulation, *at* http://www.accessabc.com/reader/top100.htm (Nov. 12, 2004) (ranking the *Wall Street Journal* with the second highest circulation, the *New York Times* with the third, and the *Washington Post* with the fifth); Matthew Rose, *Most Top Newspapers in U.S. Post Little Change in Circulation*, WALL ST. J., Nov. 6, 2002, at B4 (same). The *New York Times* claims to have the highest circulation of any *seven day* newspaper. N.Y. Times, The Best of Both Worlds, *at* http://www.nytadvertising.com/was/circulation/pages/contentCirculation/0,1013,,00.html?l1Id=5 (last visited Nov. 12, 2004) (citing Audit Bureau of Circulations Publisher's Statement for six months ending March 31, 2004). The *Wall Street Journal* declares a circulation of over 2.1 million as of the six months ending March 31, 2004. Dow Jones & Co., The Wall Street Journal Global

range of researchers.[119] Other media outlets and local newspapers would have enriched the analysis.[120] These three national newspapers offer a good initial inquiry, however, given the growing uniformity of national news, the consolidation of media ownership, and the political power of these particular publications.[121] I studied what I identified as the most relevant treatments of the omnibus bankruptcy bill in these three sources[122] and focused on news and commentary between August

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Franchise, *at* http://www.dowjones.com/TheCompany/FactSheets.htm (last visited Nov. 12, 2004) (citing Audit Bureau of Circulations Publisher's Statement for six months ending March 31, 2004).

119. *See, e.g.*, BURSTEIN, *supra* note 94, at 202–03 (using *New York Times* articles as reprinted in the *New York Times Index*); WEISS & SINGER, *supra* note 111, at 179 (examining the *New York Times*, the *Wall Street Journal*, the *Washington Post*, and three newsweeklies); Brown et al., *supra* note 111, at 47 (performing content analysis on the *New York Times* and the *Washington Post*, among others); Lee et al., *Homeless to Blame?*, *supra* note 105, at 537–38 (1992) (studying the *New York Times* and the *Washington Post* coverage of homelessness); Russell, *supra* note 95, at 329 & n.6 (including the *Wall Street Journal*, the *Washington Post*, and the *New York Times*); Stallings, *supra* note 102, at 81 (focusing on the *New York Times*); Wilson, *supra* note 107, at 415–16, 425 app. 1 (analyzing the top five circulation newspapers); *see also* HERMAN & CHOMSKY, *supra* note 113, at 132–37 & tbls. 3-1 to 3-3 (studying the *New York Times* reporting for systematic media bias); SIGAL, *supra* note 111, at 5–6 (singling out the *New York Times* and *Washington Post* for study).

120. *See, e.g.*, Best, *supra* note 101, at 328–29 (analyzing several national and local papers as well as television news journals for freeway violence study); Brown et al., *supra* note 111, at 47 (using national sources and North Carolina papers for content analysis); J. William Spencer & Elizabeth Triche, *Media Constructions of Risk and Safety: Differential Framings of Hazard Events*, 64 SOC. INQUIRY, 199, 199–200 (1994) (studying a New Orleans newspaper for a comparative assessment of "local versus nonlocal consequences").

121. *See* Ben H. Bagdikian, *The U.S. Media: Supermarket or Assembly Line?*, *in* DO THE MEDIA GOVERN?, *supra* note 7, at 66, 68–70 (concluding that the consolidation of media outlets into relatively few hands has resulted in a homogenization of information that crowds out independent voices); *see also* JAMIESON & WALDMAN, *supra* note 7, at 96–97 (arguing that the political impact of Sunday television talk shows is rivaled only by the *New York Times* and the *Washington Post*); SCHUDSON, *supra* note 80, at 121–22 (describing the effects of corporate ownership newspapers' uniform content); Who Owns What, Columbia Journalism Review, *at* http://www.cjr.org/tools/owners/ (last visited Nov. 12, 2004) (providing links to information about major media holdings).

122. *Cf.* Best, *supra* note 101, at 328–29 (examining "the most significant treatments—both local and national—of the freeway violence problem" rather than collecting random sample); *cf. see also* Gross & Matheson, *supra* note 87, at 487–88 (explaining that a set of newspaper articles are not representative or exhaustive, but are "interesting and suggestive"); Nourse & Schacter, *supra* note 30, at 580–81 (justifying a case study method rather than a large quantitative sample study for examining the legislative process). 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 H. Tribe, *The Unbearable Wrongness of* Bush v. Gore, 19 CONST. COMMENT. 571, 573 (2002) (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. Research assistants entered into a spreadsheet basic information about these 12,000-plus items. The sample was narrowed based on subject coding. A subsequent review by the Author of omitted pieces resulted in the recharacterization of approximately fifty items. One item was added that is

31, 1997 and August 31, 2001.[123] From these news outlets, within this period, three striking frames emerged.

IV. THREE PROMINENT EMERGING FRAMES OF BANKRUPTCY

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

As in earlier pieces noted in the beginning of Part II, certain quoted sources, such as industry representatives and other bill proponents, sought to frame discussions of bankruptcy in terms of debtor irresponsibility[124] and declining bankruptcy stigma.[125] The bankruptcy bill, they asserted, simply fixes the flaw in the current system that encourages irresponsibility,[126] but will not

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inexplicably missing from the Lexis archive of *New York Times* pieces.

123. The start date slightly precedes the 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.

124. *See, e.g.*, Kathleen Day, *Senate Votes to Toughen Bankruptcy: 36 Democrats Support Measure Backed by Bush*, WASH. POST, Mar. 16, 2001, at A1 [hereinafter Day, *Senate Votes to Toughen Bankruptcy*] ("Wealthier filers walk away from billions of dollars in debt each year, regardless of their ability to pay . . . ."); Eric Schmitt, *Senate Approves a Bill to Toughen Bankruptcy Rules: Higher Bar for Debtors*, N.Y. TIMES, Feb. 3, 2000, at A1 [hereinafter Schmitt, *Higher Bar for Debtors*] ("'Despite their ability to pay, wealthier filers walk away from an estimated $3 billion per year in debt.'" (quoting Edward L. Yingling)); Seelye, *Republicans Agree to New Limits*, *supra* note 47 (referring to "abusive spending practices of those who exploit the Federal bankruptcy code for personal gain or convenience" (quoting Sen. Charles E. Grassley)); Philip Shenon, *How Bill in Senate Would Add Hurdles to Erasing of Debt*, N.Y. TIMES, Mar. 14, 2001, at A1 [hereinafter Shenon, *Bill Would Add Hurdles to Erasing of Debt*] (referring to "'the unscrupulous who abuse our system'" (quoting Sen. Orrin Hatch)); Philip Shenon, *Senate Rejects Industry Curbs on Bankruptcy*, N.Y. TIMES, Mar. 8, 2001, at A18 [hereinafter Shenon, *Senate Rejects Industry Curbs*] ("Unnecessary and abusive bankruptcy costs everyone." (quoting Sen. Joseph Biden Jr.)).

125. *See, e.g.*, Steve France, Editorial, *Big Brother Bankruptcy*, WASH. POST, Mar. 21, 2000, at A25 (citing Sen. Hatch's floor statements lamenting the declining stigma); Robert D. Hershey Jr., *Creditors Lead Push to Curb Bankruptcy*, N.Y. TIMES, May 10, 1998, at BU10 ("'The only reasonable explanation [for the increase in bankruptcy filings] is that the stigma of bankruptcy is all but dead . . . .'" (quoting Rep. Gekas)); Peter Pae & Stephanie Stoughton, *Personal Bankruptcy Filings Hit Record: Easy Credit Blamed, Congress May Act*, WASH. POST, June 7, 1998, at A1 ("[N]ow [bankruptcy is] no big deal. It's a way of doing business. I can't completely explain why the stigma is gone, but it's gone.'" (quoting Rep. Bill McCollum)); Katharine Q. Seelye, *Panel to Vote on Measure to Tighten Bankruptcy Law*, N.Y. TIMES, May 14, 1998, at A22 [hereinafter Seelye, *Vote on Measure to Tighten Bankruptcy*] (citing Rep. Gekas as arguing that the stigma of filing bankruptcy has all but vanished).

126. Sources 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 convenient as going into a 7-Eleven." Kathleen Day, *Bankruptcy Bill Goes to House Floor*, WASH. POST, May 5, 1999, at E1 [hereinafter Day, *Bankruptcy Bill Goes to House Floor*] (characterizing bankruptcy bill as "'clos[ing] the loopholes'" used by the wealthy to get out of debt (quoting Sen. Grassley)); Kathleen Day, *House Passes Tougher Debt Rules: Clinton*

affect access for legitimate users.[127] Unlike in some of the earlier stories, however, the sentiments did not shape the reporting. To the contrary, some journalists covered the omnibus bankruptcy bill as a story of industry influence.[128] For example, in a front page *Wall Street Journal* story in June 1998, *Card Games: As Bankruptcies Surge, Creditors Lobby Hard to Get Tougher Laws*, reporter Jacob Schlesinger attributed the likely success of the bankruptcy bill to a "multimillion-dollar public-relations and lobbying blitz run largely by companies with the most to gain."[129]

Opposes Bankruptcy Bill, WASH. POST, Oct. 13, 2000, at E3 [hereinafter Day, *House Passes Tougher Debt Rules*] (claiming the bill "'strikes the balance needed to strengthen the safety net for people who need a fresh start after a hardship while closing the loopholes exploited by big spenders'" (quoting Sen. Grassley)); Dawn Kopecki, *Law Would Require Credit Counseling: Bankruptcy Filers Would Face Two Rounds of Classes*, WALL ST. J., Apr. 16, 2001, at B3F (claiming bankruptcy is thought of as an "'easy out'" (quoting Sen. Grassley)); Caroline E. Mayer, *Bankruptcy Bill Passed by Senate: Wiping Out Debts Would Be Harder*, WASH. POST, Sept. 24, 1998, at E1 [hereinafter Mayer, *Bankruptcy Bill Passed by Senate*] (quoting Sen. Grassley); Mayer, *Negotiators Complete Bankruptcy Reform Bill*, *supra* note 47 ("'The measure 'sends a clear signal for those who have abused the bankruptcy code that the free ride is over.'" (quoting Sen. Grassley)); Schlesinger, *As Bankruptcies Surge*, *supra* note 3 (quoting Sen. Grassley); Schmitt, *Higher Bar for Debtors*, *supra* note 124 ("'It was time for Congress to close the loopholes that let big spenders walk away from debts . . . .'" (quoting Sen. Grassley)); *id.* ("[The] bill closes loopholes and ends unfairness in provisions that are totally being abused and making a mockery out of legitimate bankruptcy." (quoting Sen. Sessions)); Katharine Q. Seelye, *House Approves Legislation to Curb Laws on Bankruptcy*, N.Y. TIMES, June 11, 1998, at A22 ("Filing for bankruptcy 'shouldn't be as convenient as going into a 7-Eleven.'" (quoting Rep. Tim J. Roemer)); Katharine Q. Seelye, *Senate Votes to Curb Bankruptcy Abuse by Consumers*, N.Y. TIMES, Sept. 24, 1998, at A25 [hereinafter Seelye, *Senate to Curb Bankruptcy Abuse*] (quoting Sen. Grassley).

127. Katherine Ackley & Jacob M. Schlesinger, *House Panel Approves Bankruptcy-Reform Bill*, WALL ST. J., Apr. 29, 1999, at B16 ("'This legislation simply requires that individuals filing for bankruptcy who are capable of repaying even a portion of their debts do so . . . .'" (quoting Rep. Gekas)); Tom Hamburger, *House Legislators Pass Measure to Curb Abuse of Bankruptcy-Protection Laws*, WALL ST. J., Mar. 2, 2001, at B2 [hereinafter Hamburger, *House Measure to Curb Abuse*] (reporting that Joe Rubin, a former Gekas staffer now with the U.S. Chamber of Commerce, "told wavering House members that 'this bill is targeted solely at wealthy debtors who have abused the bankruptcy system and can afford to repay their debts'"); Labaton, *Promised Veto*, *supra* note 60 ("'We guarantee a fresh start to any American who needs it . . . .'" (quoting Rep. Gekas)); Jacob M. Schlesinger, *House Approves Bankruptcy Overhaul amid Criticism Bill May Be Too Tough*, WALL ST. J., May 6, 1999, at A28 ("The risk of squeezing the truly needy . . . 'is very minimal.'" (quoting Rep. Gekas)).

128. As early as January 1998, political reporter Bill McAllister, who admittedly focuses on lobbying for the *Washington Post*, reported that "a powerful coalition of credit card and financial companies is promising to make the seemingly arcane intricacies of bankruptcy law one of the most heavily lobbied issues of 1998." Bill McAllister, *Reopening Chapter 7*, WASH. POST, Jan. 1, 1998, at A23 (discussing lobbyists, public relations firms, and heavy hitters and describing 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).

129. Schlesinger, *As Bankruptcies Surge*, *supra* note 3 (explaining how consumer

The industry influence frame thrust campaign contribution and credit-card lending statistics to the forefront even though they are not technically bankruptcy issues.[130] Reporters questioned the existence of a connection between candidate or party fundraising and bankruptcy bill support.[131] They observed that "the campaign contributions and lobbying muscle come

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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 special focus on a credit-industry-funded academic center that produced studies supporting the industry's bankruptcy reform requests. Robert Cwiklik, *Ivory Tower Inc.: When Research and Lobbying Mesh*, WALL ST. J., June 9, 1998, at B1.

130. *See, e.g.*, Kathleen Day, *Foes of Bankruptcy Bill Point Finger at Credit Card Issuers*, WASH. POST, Feb. 28, 2001, at E1 [hereinafter Day, *Foes of Bankruptcy Bill*] (reporting that a nonprofit consumer group issued a "report showing that in addition to shipping an estimated 3.3 billion mail offers [for credit-cards] last year," the industry also "expanded available credit beyond consumer demand"); Day, *House Passes Bankruptcy Limits*, *supra* note 4 (reporting that total federal campaign contributions for the 2000 election year almost doubled from those in 1996); Day, *House Passes Tougher Debt Rules*, *supra* note 126 (reporting on the $6 million in campaign contributions made by retailers, banks, and credit-card companies in the first six months of 2000); Day, *Senate Votes to Toughen Bankruptcy*, *supra* note 124 (reporting similar figures); Mayer, *Bankruptcy Bill Passed By Senate*, *supra* note 126 (reporting similar contributions); Peter Pae, *House Rewrites Bankruptcy Laws: Measure Would Restrict Personal Filings*, WASH. POST, June 11, 1998, at A1 (reporting that "banks, consumer finance companies and credit card issuers made about $6.7 million in campaign contributions in the past year"); Seelye, *Senate to Curb Bankruptcy Abuse*, *supra* note 126 (reporting on credit-card profitability and the potential profits from the bill's passage).

131. *See, e.g.*, Tom Hamburger et al., *Influence Market: Industries that Backed Bush Are Now Seeking Return on Investment*, WALL ST. J., Mar. 6, 2001, at A1 (analyzing whether the credit industry expected and would receive payback from the Bush Administration by the Administration's support of the bankruptcy bill); John D. McKinnon, *Senate Hopeful in Florida Banks on His Role in Bankruptcy Bill*, WALL ST. J., Sept. 26, 2000, at A28 (considering Rep. McCollum's reliance on credit industry funds for Senate campaign financing and his leading role with the bankruptcy bill); Dan Morgan & Kathleen Day, *Early Wins Embolden Lobbyists for Business: Groups to Push Much Broader Agenda*, WASH. POST, Mar. 11, 2001, at A1 (claiming that business lobbyists are hoping to "cash[] in" on a favorable business climate created by the Bush Administration); Jacob M. Schlesinger, *Bush to Support Bankruptcy Bill that Clinton Vetoed Last Year*, WALL ST. J., Feb. 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."); Susan Schmidt, *Torricelli's Money Push Also Raises Some Hackles: Business Fills Senate Democratic Coffers*, WASH. POST, June 17, 2000, at A1 (questioning whether Sen. Torricelli supported the bill because he was "courting" industry for party fundraising); Philip Shenon, *Hard Lobbying on Debtor Bill Pays Dividend*, N.Y. TIMES, Mar. 13, 2001, at A1 [hereinafter Shenon, *Hard Lobbying Pays Dividend*] ("[L]obbying 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 the nation's bankruptcy system.").

mainly from the politically powerful financial community."[132] They were quick to note that the bill's movement "underscores the new influence business has in Washington,"[133] and constitutes "a huge success for banks, credit-card companies and retailers,"[134] who "boast some of the best-connected lobbyists on Capitol Hill."[135]

Even stories with a broader focus used language suggesting credit industry power and sometimes even aggression. The legislation was "vigorously sought,"[136] "championed,"[137] and "pushed"[138] by the credit industry. The credit industry "swarmed,"[139] "fanned out across Capitol Hill,"[140] and "lobbied hard"[141] through a "multimillion-dollar lobbying, research and advertising campaign"[142] "to ensure . . . it would be first in line to

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132. Schmitt, *Higher Bar for Debtors*, *supra* note 124.

133. Day, *Senate Votes to Toughen Bankruptcy*, *supra* note 124.

134. Seelye, *Republicans Agree to New Limits*, *supra* note 47; *see also* Pae & Stoughton, *supra* note 125 (describing the push for bankruptcy reform by creditors).

135. Philip Shenon, *Senate Democrats Stall Bankruptcy Bill*, N.Y. TIMES, Feb. 17, 2001, at A11 [hereinafter Shenon, *Senate Democrats*].

136. Mayer, *Bankruptcy Bill Passed by Senate*, *supra* note 126; Mayer, *Negotiators Complete Bankruptcy Reform Bill*, *supra* note 47; Helen Dewar & Kathleen Day, *Senate Approves Bankruptcy Bill: Industry-Sought Overhaul Passes 83–14*, WASH. POST, Feb. 3, 2000, at A1 (stating that bankruptcy overhaul "was sought by the credit card industry" to control escalating filings).

137. Philip Shenon, *Bankruptcy Measure Gains on a Lopsided Senate Vote By 80–19, Chamber Acts to Cut Off Debate*, N.Y. TIMES, Mar. 15, 2001, at A22 [hereinafter Shenon, *Measure Gains on a Lopsided Senate Vote*]; Shenon, *Bill Would Add Hurdles to Erasing of Debt*, *supra* note 124 (claiming bill is being championed by the credit industry as a cure-all for their problems that are due to the increase in bankruptcy filings); Shenon, *Senate Democrats*, *supra* note 135.

138. *Bankruptcy-Reform Bill Dies with a "Pocket Veto"*, WALL ST. J., Dec. 20, 2000, at 1; Day, *House Passes Bankruptcy Limits*, *supra* note 4; Hamburger, *House Measure to Curb Abuse*, *supra* note 127 (stating that businesses have "pushed" for bankruptcy system overhaul for three years); Eric Schmitt, *Senators Back Major Overhaul of Bankruptcy*, N.Y. TIMES, Dec. 8, 2000, at A1 (reporting on lobbyists who were promising a "furious" campaign to override the potential veto).

139. Katharine Q. Seelye, *House to Vote Today on Legislation for Bankruptcy Overhaul*, N.Y. TIMES, June 10, 1998, at A18 [hereinafter Seelye, *House to Vote on Bankruptcy Overhaul*] ("[S]cores of lawyers and industry lobbyists swarmed over the House and Senate Judiciary Committees as they gaveled the bankruptcy bill to approval.").

140. Philip Shenon, *Bill to Tighten Bankruptcy Gets a Push*: *Democratic Senate Helps Break a Logjam*, N.Y. TIMES, June 12, 2001, at C1 [hereinafter Shenon, *Bill to Tighten Bankruptcy Gets a Push*].

141. Kathleen Day, *Bankruptcy Bill Put on Fast Track: Republicans Say Law Would Curb Abuses*, WASH. POST, Feb. 8, 2001, at E1; Day, *Senate Votes to Toughen Bankruptcy*, *supra* note 124.

142. Jacob M. Schlesinger, *Senate Approves Overhaul of Bankruptcy Code*, WALL ST. J., Sept. 24, 1998, at A2; *see also* Ackley & Schlesinger, *supra* note 127 (stating that "credit-card companies and other lenders have lobbied hard over the past two years to toughen the Bankruptcy Code," and reporting that even Rep. Henry Hyde found the

collect from bankruptcy filers,"[143] and to "recoup billions of dollars."[144] Dan Morgan of the *Washington Post* described creditor representatives who "patrolled" outside of key House votes and engaged in "behind-the-scenes-maneuvering."[145] A photograph accompanying one *New York Times* article had little to do with bankruptcy and everything to do with lobbying power: the picture featured a grouping 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 long championed by the banking and credit-card industries moved toward final passage."[146] Stories of creditor infighting and internal fractures to the coalition also emerged,[147] notwithstanding the credit industry's general assertion of a unified position and interest in bankruptcy.[148]

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credit-industry supported legislation heavy handed); Schroeder & Schlesinger, *supra* note 4 ("[C]redit-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.").

143. Pae, *supra* note 130; *see also* Peter Pae & Stephanie Stoughton, *Senate's Bankruptcy Bill Gains Support: Vote Could Come in July*, WASH. POST, June 12, 1998, at F3 (positing that creditors are seeking "greater powers to recoup what they are owed").

144. Seelye, *Senate to Curb Bankruptcy Abuse*, *supra* note 126; *see also* Kathleen Day, *Bankruptcy Legislation Still Faces Hurdles*, WASH. POST, May 5, 2000, at E2 [hereinafter Day, *Bankruptcy Legislation Still Faces Hurdles*] ("[A]fter 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.").

145. Morgan, *Creditors' Money*, *supra* note 37 (noting the "wide spectrum of special interests" backing the bill and saying the House Bill is "salted with language benefiting" a variety of creditor types who have also lobbied heavily); *see also* Morgan & Day, *supra* note 131 (claiming lawmakers "consulted closely with representatives" of key lobbyists and creditor representatives).

146. Shenon, *Measure Gains on a Lopsided Senate Vote*, *supra* note 137.

147. Yochi J. Dreazen, *Bankruptcy Reform Pits Industries Against Each Other*, WALL ST. J., Apr. 20, 2000, at A28 ("[I]n 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.").

148. Hamburger, *Auto Firms See Profit in Bankruptcy-Reform*, *supra* note 3 (claiming that the "long-sought bill . . . contains several other obscure provisions that . . . provide special benefits to groups with the ability to influence decision makers"). *Cf.* Mike McEneney, Remarks at the Meeting of the National Bankruptcy Review Commission 202 (Dec. 17, 1996) (transcript on file with the Houston Law Review) ("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."). *But see* Dreazen, *supra* note 147 (claiming that the facially unified creditor's lobby becomes increasingly fragmented behind the scenes); David Wessel, *The Muddled Course of Bankruptcy Law*, WALL ST. J., Feb. 22, 2001, at A1 (explaining that bankruptcy at its "loftiest level" is about balancing debtors' fresh starts with creditor fairness, but "at ground level, it's about consumer lenders—car dealers, credit-card issuers, furniture stores—jockeying for position to get what they can from families with little money left"). *See generally* Posner, *supra* note 45, at 55–56 (explaining potential conflicts among creditors in the creation of the 1978 Act).

The quotes of sources opposed to the bill or critical of portions of it often focused on the credit industry rather than substantive bankruptcy issues.[149] Critics called the bill the "'best bill money can buy,'" the "'industry's wish list,'"[150] "'of, by and for the credit companies,'"[151] and "'written by a lot of people who have very special interests to protect.'"[152] They described the credit industry as "big givers, heavy hitters, a huge and powerful lobbying coalition"[153] that wrote "large parts of the 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."[154] Skeptics and opponents

149. *See, e.g.*, Dreazen, *supra* note 147 ("'This whole bill is a case of one industry picking the pockets of another.'" (quoting Professor Warren)); Katharine 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.'" (quoting Professor Warren)); Seelye, *House to Vote on Bankruptcy Overhaul*, *supra* note 139 (estimating that 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'" (quoting Professor Warren)); Seelye, *Senate to Curb Bankruptcy Abuse*, *supra* note 126 ("'How can democratically elected representatives vote to transfer wealth from financially troubled families to corporate lenders who are making record profits?'" (quoting Professor Warren)); Shenon, *Hard Lobbying Pays Dividend*, *supra* note 131 ("'This bill is the 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.'" (quoting Professor Warren)).

150. Day, *Bankruptcy Bill Goes to House Floor*, *supra* note 126 (quoting Frank Torres, a lobbyist for Consumers Union); Morgan & Day, *supra* note 131 (quoting Torres).

151. Jacob M. Schlesinger & Christina Duff, *House Approves Big Bankruptcy-Code Overhaul*, WALL ST. J., June 11, 1998, at A2 (quoting Rep. Jerrold Nadler); Katharine Q. Seelye, *House Approves Legislation to Curb Laws on Bankruptcy*, N.Y. TIMES, June 11, 1998, at A22 (interviewing Rep. Nadler, who emphasized the creditors' central focus of increasing debt recovery).

152. Schlesinger, *As Bankruptcies Surge*, *supra* note 3 (quoting Sen. Dick Durbin). Although Sen. Durbin was an original sponsor of the Senate Bill, he sought to achieve a balanced product and thus was critical of versions of the bill that restricted bankruptcy relief as proposed by the credit industry without also addressing credit industry practices. *See e.g.*, Mayer, *Negotiators Complete Bankruptcy Reform Bill*, *supra* note 47 (indicating that Sen. Durbin was "disturbed" by the Republican version of the bill that eliminated a requirement for credit-card companies to provide a form of credit counseling to consumers); Morgan, *Creditors' Money*, *supra* note 37 (describing Sen. Durbin's version of the bill as "more friendly to borrowers").

153. Shenon, *Measure Gains on a Lopsided Senate Vote*, *supra* note 137 ("[Industry representatives] have way too much access, and they have way too much say. And I 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." (quoting Sen. Paul Wellstone)); *see also* Seelye, *Senate to Curb Bankruptcy Abuse*, *supra* note 126 (noting the overwhelming support for the bill in the Senate).

154. Morgan & Day, *supra* note 131 (quoting Travis Plunkett of the Consumer Federation of America); *see also* Kathleen Day, *Credit Counseling Agencies Dealt Setback: Banks Reduce Funding as Bankruptcies Rise; Consumer Groups Hit Move*, WASH. POST,

described credit industry lobbying as "brazen," particularly when "their aggressive marketing and lending practices" push families into financial trouble.[155]

Aside from the news reporting, the *New York Times* and *Washington Post* editorial pages also strongly embraced this industry power frame.[156] 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."[157] They found the support of both Republicans and Democrats being lobbied, bought,[158] and "generously paid" for: on

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July 16, 1999, at E1 (quoting Plunkett as saying that the "'credit card industry has spent millions of dollars to scapegoat many working Americans'"); Day, *House Passes Bankruptcy Limits*, *supra* note 4 ("'This one-sided bill demonstrates the power of political money over balanced public policy.'" (quoting Ed Mierzwinski of the U.S. Public Interest Research group)); Day, *Senate Votes to Toughen Bankruptcy*, *supra* note 124 ("'The 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.'" (quoting Howard M. Metzenbaum, head of Consumer Federation of America); *Id.* (quoting Sen. Patrick Leahy as saying the industry got "'a heck of windfall and a lot more than they deserve'"); Labaton, *Promised Veto*, *supra* note 60 (quoting John J. Sweeny, president of AFL-CIO, as saying the "'bill is a heartless attack on working families by powerful financial institutions'"); Seelye, *First Lady in a Messy Fight*, *supra* note 4 ("'It was a combination of aggressive industry lobbying, by retailers as well as creditors, and they spent a great deal . . . .'" (quoting Stephen Brobeck, executive director of Consumer Federation of America)); Seelye, *House to Vote on Bankruptcy Overhaul*, *supra* note 139 ("'It's hard to find someone on K Street who hasn't been called in to work on this bill.'" (quoting Sen. Christopher Dodd)); Shenon, *Hard Lobbying Pays Dividend*, *supra* note 131 (reporting Sen. Leahy's comment on credit industry influence over lawmakers' support for bill); Shenon, *Senate Rejects Industry Curbs*, *supra* note 124 (quoting Sen. Russell Feingold accusing the credit industry of "'shower[ing] senators and the political parties, and it shows'").

155. Day, *Foes of Bankruptcy Bill*, *supra* note 130 (quoting Travis Plunkett); Philip Shenon, *Senate Panel Approves Bill for Overhauling Bankruptcy Laws*, N.Y. TIMES, Mar. 1, 2001, at A15 (same); *see also* Associated Press, *Legislation to Overhaul Laws on Bankruptcy Dies as President Fails to Sign It*, N.Y. TIMES, Dec. 20, 2000, at A32 (reporting on Sen. Edward Kennedy's views that the veto was appropriate and that the bankruptcy bill was too harsh on innocent debtors); Associated Press, *Resisting Credit Cards' Allure*, N.Y. TIMES, Jan. 23, 2000, at BU11 (stating that consumer advocates attribute a decline in filings to changes in lending and borrowing practices); Schmitt, *Higher Bar for Debtors*, *supra* note 124 (referring to bill as "'industry's cure'" that was "'worse than the disease'" (quoting Sen. Kennedy)); Wessel, *supra* note 148 (emphasizing industry practices by citing unnamed consumer advocates claiming that "creditors are too quick to lend"). *See generally* SKEEL, JR., *supra* note 1, at 203 (noting that some debtor advocates blamed lenders for bankruptcy boom).

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

157. Editorial, *A Gift for the Credit Card Industry*, N.Y. TIMES, May 30, 2000, at A22.

158. Editorial, *A Business-Dictated Bankruptcy Law*, N.Y. TIMES, Mar. 16, 2001, at A18 (classifying the bill as a reward for industry generosity to Republican candidates and noting that "now credit card issuers want the government to reduce all risk from their profitable business"); Editorial, *A Retreat in the Senate*, WASH. POST, Jan. 27, 2000, at A26 ("The lending industry badly wants the bankruptcy bill. That's the pressure to which the Senate Democrats are yielding."); Editorial, *Bankrupt Bipartisanship*, WASH. POST,

account of "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 may squeeze $3 billion extra from bankrupt debtors every year."[159] Authors of signed opinion pieces, including David Broder, Floyd Norris, and Sen. Russ Feingold, also framed discussions of bankruptcy in terms of industry influence.[160]

Anecdotal observation suggests parallels in other media outlets.[161] For example, *Time* magazine ran a major article,

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Dec. 15, 2000, at A40 [hereinafter *Bankrupt Bipartisanship*] (encouraging Senators to back possible Clinton veto "however generous the contributions from the credit-card industry"); Editorial, *Loophole for Millionaires*, WASH. POST, July 16, 2001, at A14 [hereinafter *Loophole for Millionaires*] (questioning whether conference committee could make meaningful progress given Senators Daschle and Biden's support for credit industry); Editorial, *Reform Choice for Mr. Bush*, WASH. POST, Feb. 19, 2001, at A32 (predicting industry would remind lawmakers about contributions when they scrutinized the bill).

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

160. David S. Broder, *Business in the Driver's Seat*, WASH. POST, Mar. 14, 2001, at A25 ("Banks 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 . . . ."); David S. Broder, *Morally Bankrupt Creditors*, WASH. POST, May 16, 1999, at B7 ("[T]he banks that dominate that business have been the most aggressive lobbyists for tightening the bankruptcy law."); Russ Feingold, *Lobbyists' Rush for Bankruptcy Reform*, WASH. POST, June 7, 1999, at A19 (characterizing bankruptcy legislation as the poster child for campaign finance reform).

> Powerful economic interests see an opportunity to push through major structural changes to the bankruptcy system before the 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.

Id.; Floyd Norris, Editorial, *Bankruptcy Reform that Spares the Wealthy*, N.Y. TIMES, May 9, 1999, at A16 [hereinafter Norris, *Bankruptcy Reform that Spares the Wealthy*] (asserting that the "bill was pushed by the credit card companies").

161. *See Deeper in Debt*, ECONOMIST, July 3, 1999, at 64, 64 (arguing that profitability of risky lending "has not stopped the credit-card industry from lobbying furiously" for bankruptcy reform and questioning if "anybody [can] stop the credit-card companies [from] changing the rules after the game has [already] started"); Michele Jacklin, Editorial, *U.S. House Gives a Boost to Credit-Card Sharks*, Editorial, HARTFORD COURANT, June 23, 1999, at A15 (highlighting the favorable concessions that credit-card companies would gain with the bill and the amount that the credit industry has contributed to political campaigns); Christopher H. Schmitt, *Tougher Bankruptcy Laws—Compliments of MBNA?*, BUS. WEEK, Feb. 26, 2001, at 43, 43 (describing MNBA's efforts to influence the Republican lawmakers); 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, 16–17 (examining credit industry profitability and lobbying efforts); Robert Reno, *Feeding Sharks, Starving Minnows*, NEWSDAY, Sept. 27, 1998 (commenting that "rarely does the U.S. Senate disgrace itself with such perfect symmetry," suggesting that lenders' success with bankruptcy reform was accomplished by "pour[ing] $17 million into the last congressional elections," and asserting that lenders "are getting full value for their money").

Soaked by Congress: Lavished with Campaign Cash, Lawmakers Are "Reforming" Bankruptcy—Punishing the Downtrodden to Catch a Few Cheats,[162] which was rumored to have affected the political future of bankruptcy during the Clinton Administration.[163]

1. Controversy? The industry influence frame was perhaps the most ubiquitous and the least effective of those explored in this Article. Framing the bankruptcy debate in terms of credit industry power arguably enabled a broader group of people, including consumer advocates and some lawmakers, to speak critically about the bill without deep expertise in bankruptcy.[164] It also was an integral part of an attempt to make the omnibus bankruptcy bill a "poster child" for campaign finance reform.[165] There is, however, little evidence that lawmakers embraced this link in large numbers.[166] Given the ubiquity of special interests in federal lawmaking, the fact of credit industry support hardly could itself be a substantial roadblock to legislation.[167]

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162. Donald L. Barlett & James B. Steele, *Soaked by Congress: Lavished with Campaign Cash, Lawmakers Are "Reforming" Bankruptcy—Punishing the Downtrodden to Catch a Few Cheats*, TIME, May 15, 2000, at 64; Charles Jordan Tabb, *The Death of Consumer Bankruptcy in the United States?*, 18 BANKR. DEV. J. 1, 47–48 (2001) (noting this type of general press coverage, including prominent *Time* magazine article).

163. Interview with Brady Williamson (Oct. 24, 2002) (reporting that Sen. Ted Kennedy hand-delivered "Soaked by Congress" to President Clinton).

164. Refer to notes 150–55 *supra* and accompanying text.

165. Editorial, *A Bankrupt Proposal*, S.F. CHRON., July 25, 2001, at A18 (describing the bankruptcy bill as a "special-interest bonanza" helping to justify campaign finance reform); Feingold, *supra* note 160 (citing bankruptcy legislation as the poster child for campaign finance reform). *But see* William F. Buckley, Jr., *Buy Now, Pay Never: What About the Excesses of the Appetites of the Borrower?*, *at* http://www.nationalreview.com/buckley/buckleyprint031301.html (Mar. 13, 2001) (criticizing media focus on lobbying and contributions); National Review Staff, *Journalistically Bankrupt: How Else to Describe One Network's Coverage of New Bankruptcy Legislation?*, *at* http://www.nationalreview.com/nr_comment/nr_commentprint031601c.html (Mar. 16, 2001) (criticizing reporters for focusing on lobbying and contributions rather than substantive merits of legislation); Todd J. Zywicki, *The Problem With Using Bankruptcy as a Tool in the Campaign Finance Reform Crusade*, American Bankruptcy Institute, *at* http://www.abiworld.org/Template.cfm?Section=Archives3&CONTENTID=7470&TEMPLATE=/ContentManagement/ContentDisplay.cfm (May 22, 2000) (arguing that the media was treating the bill "as a pawn in its larger agenda of advancing the case for campaign finance reform").

166. One indication that the issues were never successfully linked is that Sen. John McCain and Rep. Shays—two main sponsors of campaign finance reform bills—voted in favor of the bankruptcy bill. *See* Bankruptcy Reform Act of 1998, H.R. 3150, House Roll Call Vote #506, 105th Cong. (Oct. 9, 1998), http://clerk.house.gov/evs/1998/roll506.xml; Motion to Proceed to Consider Conference Report on H.R. 3150, H.R. 3150, Senate Roll Call Vote #313, 105th Cong. (Oct. 9, 1998), http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=105&session=2&vote=00313.

167. Nonetheless, this frame also affected bankruptcy reporting in the early 1980s. *See, e.g.*, Jacoby, *supra* note 78, at 229 n.47 (listing examples).

Lawmakers become defensive at the notion that they support bankruptcy legislation simply because of industry support and lobbying.[168] The "controversy" value of this frame is thus arguably limited.

2. Improvement? To the extent that allegations of special interest fail to create substantial controversy, one should not expect this frame to coincide with or encourage specific changes to legislation. Although Senate Democrats sought to increase credit industry accountability throughout 1998 and may have found some encouragement to do so in the media, Congress watered down and deleted those very provisions even as the press continued to characterize the bill as a gift to the credit industry.[169] Lawmakers did remove or modify some provisions that especially strengthened the collection rights of the credit industry,[170] but these changes more likely were connected to framing bankruptcy in terms of women and children, discussed later.[171]

3. Educational Value? An evaluation of media-establishment influence is more complete if one also asks whether a particular frame advanced readers' understanding of the substantive law and proposals to change it, which ultimately may affect the political viability of future legislative developments. The reporting implicitly told readers that the consumer credit industry has a lot at stake in the bankruptcy system.[172] This is an important and relevant message, but the educational value may stop there. Campaign contribution

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168. One finds examples in the letters lawmakers wrote in response to articles and editorials employing the industry influence frame. *See, e.g.*, Sen. Joseph R. Biden Jr. (D-Del.), Letter to the Editor, *"Loopholes for Millionaires"*, WASH. POST, July 19, 2001, at A26 (clarifying his voting record and denying alleged support for the credit industry); Sen. Charles Grassley (R-Iowa) & Sen. Robert Torricelli (D-N.J.), Letter to the Editor, *Bankruptcy Loopholes*, WASH. POST, Feb. 15, 2000, at A22 (denouncing allegations that the bankruptcy reform bill favored creditors).

169. The version of Senate Bill 1301 passed by the Senate in the 105th Congress addressed credit industry accountability by further regulating credit-cards, dual use debit cards, and home equity loans and lines of credit. *See* S. 1301, 105th Cong. (1997); refer also to note 41 *supra*. The bill's managers diluted or eliminated these provisions through managers' amendments, conference reports, and reintroduced versions of the bill rather than discrete amendments. *See, e.g.*, S. Amends. 3540–3617, 144 CONG. REC. S9942–10,728, S10,843–44 (1998).

170. Refer to note 237 *infra* and accompanying text.

171. Refer to Part III.C *infra* (attributing the weakening of provisions favoring the credit industry to amendments packaged as helping women and children).

172. Refer to notes 128–29 *supra* and accompanying text.

statistics and K Street lobbying gossip teach readers little about the omnibus bankruptcy bill and how it might affect their lives.[173]

Many versions of the omnibus bankruptcy bill had around 280 provisions with multiple parts, and spanned well over 500 pages.[174] Its provisions would change the rules for the reorganization of large and small enterprises, municipalities, family farmers, family fisheries, and individuals in Chapter 11; add an entire new Chapter to the Bankruptcy Code to deal with transnational insolvency; regulate lawyers and their conversations with debtor clients; impose a variety of new obligations on the court system and the United States trustee system; and substantially complicate the consumer bankruptcy system for all filers.[175] Stories framed in terms of the credit industry do not invite discussion of these important issues.[176]

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173. *Cf.* JAMIESON & WALDMAN, *supra* note 7, at 168 (noting that election coverage focuses on the "horse race," rather than the issues); SCHUDSON, *supra* note 80, at 52 (noting the media's preference for politics over policy and strategy and tactics over ideas); W. Lance Bennett, *Cracking the News Code: Some Rules that Journalists Live By*, *in* DO THE MEDIA GOVERN?, *supra* note 7, at 103, 105 (describing the "horse race plot" of elections); Stuart W. Nolan, Jr., *Campaign Finance Reform: Applying the First Amendment in a Marketplace of Ideas*, 6 J. COMM. L. & POL'Y 113, 113 (1998) (noting that the media have traditionally "focused on the role of money in politics"); Joseph M. Schwartz, *Democracy Against the Free Market: The Enron Crisis and the Politics of Global Deregulation*, 35 CONN. L. REV. 1097, 1097 (2003) (stating that the "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 discounting this frame as only part of the story); Shaviro, *supra* note 7, at 96–97 (describing how media coverage focuses on "horse races" rather than ideas); Howard Kurtz, *Reading Green Between the Lines*, WASH. POST, Apr. 2, 2001, at C1 (highlighting the industry money reporting theme in bankruptcy and elsewhere).

174. *See, e.g.*, Bankruptcy Reform Act of 1999, H.R. 833, 106th Cong (1999).

175. *See, e.g.*, Bankruptcy Reform Act of 2000, H.R. 833, 106th Cong., tits. III–V, VIII (2000).

176. The means test was the main substantive provision that reporters covered, and even this was not reported in significant detail. *See, e.g.*, Pae & Stoughton, *supra* note 125 ("Among the proposals being debated in Congress is a 'means test' that is intended to move some filers from a Chapter 7 bankruptcy filing to a Chapter 11 filing, which requires a repayment plan."). Three major newspapers published at least one story on the existence of business bankruptcy provisions, but did not delve into the changes that needed exposure and discussion. *See* Bankruptcy Media Database (on file with Author). 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. *Id.* 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. *Id.*; *see also* John F. Witt, *Narrating Bankruptcy/Narrating Risk*, 98 NW. U. L. REV. 303, 311 (2003) (book review) (discussing how bankruptcy debates today occur "by proxy" with only remote relationship to bankruptcy itself).

This frame also leaves little room for more than oversimplified statements of current law. As just one important example, the media tended to draw an overly stark distinction between the two basic consumer bankruptcy options—Chapter 7 and Chapter 13—in terms of debtor-friendliness and creditor treatment.[177] Framing bankruptcy as an industry influence story was prevalent and not very surprising,[178] but had questionable utility.

B. Loopholes for the Rich

Reporters and commentators in the *New York Times* and the *Washington Post* sometimes framed bankruptcy in terms of "loopholes for the rich," suggesting that proponents of the bill preserved liberal bankruptcy policies for rich people but restricted relief for lower income filers.[179] Although bill proponents similarly framed some discussions to justify support for the bill,[180] their efforts seem less influential in shaping the

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177. *See* 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, 258–62 (2001) (explaining that arguments favoring legislation relied on inaccurate distinctions between types of bankruptcy).

178. *See* Nourse & Schacter, *supra* note 30, at 587–88 (highlighting the Senate staffers' reporting of the ubiquitous role of lobbyists in the drafting process, with a cadre of lawyers at the ready); Stephen Nunez & Howard Rosenthal, *Bankruptcy "Reform" in Congress: Creditors, Committees, Ideology, and Floor Voting in the Legislative Process*, 20 J.L. ECON. & ORG. 527, 528, 552–54 (2004) (finding that House voting on bankruptcy "strongly reflect[ed] campaign contributions"), http://www.jleo.oupjournals.org/cgi/reprint/20/2/527; *cf.* Thomas Stratmann, *Can Special Interests Buy Congressional Votes? Evidence from Financial Services Legislation*, 45 J.L. & ECON. 345, 368 (2002) ("The 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.").

179. For examples outside the bankruptcy context, see, e.g., David Cay Johnston, *I.R.S. More Likely to Audit the Poor and Not the Rich*, N.Y. TIMES, Apr. 16, 2000, § 1, at 1 (highlighting the shift in auditing rates to focus on the poor); David Cay Johnston, *Reducing Audits of the Wealthy, I.R.S. Turns Eye on Working Poor*, N.Y. TIMES, Dec. 15, 1999, at A1 (same); *see also* David Cay Johnston, *Gap Between Rich and Poor Found Substantially Wider*, N.Y. TIMES, Sept. 5, 1999, at 16.

180. *See* Day, *Foes of Bankruptcy Bill*, *supra* note 130 (citing a creditor representative as saying he was "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"); Day, *Senate Votes to Toughen Bankruptcy*, *supra* note 124 ("Wealthier filers walk away from billions of dollars in debt each year, regardless of their ability to pay, . . . [which is] not fair to the 96 percent of Americans who pay their bills on time." (quoting Edward Yingling of the American Bankers Assocation)); Stephen Labaton, *House Votes to Make It Tougher to Escape Debt Through Personal Bankruptcy*, N.Y. TIMES, May 6, 1999, at A28 ("'The more we're able to recoup some debt from high-income people, the less burden we will put on everyone else . . . .'" (quoting Rep. Gekas)); Seelye, *Republicans Agree to New Limits*, *supra* note 47

reporting, at least in this particular sample.[181] Bill proponents' reluctance to cap state homestead exemptions, "'the single biggest scandal in the consumer bankruptcy system,'" became the principle vehicle for this frame.[182]

A bit of background may be useful here. Property exemptions establish the types of property an individual debtor must forfeit or keep in Chapter 7 and help determine the minimum amount an individual debtor must repay to creditors in Chapters 13 or 11.[183] Each state has its own set of property exemptions that applies in bankruptcy.[184] States such as Florida, Texas, South Dakota, Iowa, and Kansas permit debtors to exempt very high value homesteads.[185] Thus, it is technically possible that a bankruptcy filer could keep a multi-million dollar home and make little or no payment to creditors.[186] The omnibus

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("'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 . . . .'" (quoting Sen. Grassley)); Shenon, *Bill Would Add Hurdles to Erasing of Debt*, *supra* note 124 (quoting professor saying that there is "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"); Shenon, *Measure Gains on a Lopsided Senate Vote*, *supra* note 137 ("'This bill will do an awful lot of good for people in our society.'" (quoting Sen. Hatch)). Burt Reynolds was supposed to be the "poster child" for bankruptcy reform, *see, e.g.*, 144 CONG. REC. E88 (1998) (statement of Rep. Gekas), not the poster child for killing bankruptcy reform.

181. *Cf.* Witt, *supra* note 176, at 313.

> [C]ritics 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 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.

Id.

182. David J. Morrow, *Key to a Cozier Bankruptcy: Location, Location, Location*, N.Y. TIMES, Jan. 7, 1998, at A1 (quoting Elizabeth Warren) [hereinafter Morrow, *Cozier Bankruptcy*]; 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 protect their assets). For a similar theme in an earlier piece, see Amy Stevens, *Some Folks Hide Cash in the Darnedest Places*, WALL ST. J., Nov. 8, 1996, at B1 (reporting on the generous exemptions in various states and the National Bankruptcy Reform Commission's interest in capping them).

183. *See* 11 U.S.C. §§ 552, 1129(a)(7), 1325(a)(4) (2000) (providing for exemptions for individual debtors and requiring that creditors in repayment plans receive at least as much as they would have received from the liquidation of nonexempt assets).

184. *See* CHARLES JORDAN TABB, THE LAW OF BANKRUPTCY 640–45 (1997). States are, however, permitted to prevent their citizens from choosing the Federal Bankruptcy Code exemptions as an alternative. 11 U.S.C. § 522 (b)(1).

185. *See generally* Lawrence Ponoroff, *Exemption Limitations: A Tale of Two Solutions*, 71 AM. BANKR. L.J. 221 (1997) (reviewing diversity of state property exemptions).

186. Bankruptcy law contains other policing mechanisms that can be used to curb particularly egregious behavior along these lines, particularly if a debtor invested

bankruptcy bill did not itself create this situation; this is a problem of current (and longstanding) law.[187] Yet the news reporting suggested that proponents of the bill were at fault for tolerating and preserving a 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.[188] 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."[189] Articles attributed the failure to end what "is perhaps the most notorious abuse of the [bankruptcy] system in some states" to the omnibus bill and its supporters.[190] The "high political symbolism" did not go unnoticed.[191] News reports suggested that President Clinton supported capping exemptions to prevent differential rich-poor treatment.[192] By contrast, the press reported that then Governor and later President George W. Bush, and legislators who

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nonexempt assets in an exempt home on the eve of bankruptcy. *See, e.g.*, TABB, *supra* note 184, at 651–55.

187. *See* Posner, *supra* note 45, at 94–96 (discussing the conflict between federal and state exemption laws); *see also* BRUCE H. MANN, REPUBLIC OF DEBTORS: BANKRUPTCY IN THE AGE OF AMERICAN INDEPENDENCE 197 (2002) (discussing concerns of Jeffersonians that federal bankruptcy law would override local real property exemptions). The bill did, however, include amendments that would permit a landlord to evict a bankruptcy filer without seeking permission from the bankruptcy court first, thus making bankruptcy harder on low-income renters than on those who owned expensive homes. *See, e.g.*, Bankruptcy Reform Act of 2000, H.R. 833, 106th Cong. § 305(2)(B) (2000).

188. Morrow, *Cozier Bankruptcy*, *supra* note 182.

189. 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 [hereinafter Morgan, *Homestead Exemption*] (reporting on a General Accounting Office study that analyzed approximately 30,000 bankruptcy cases in Texas and Florida).

190. Shenon, *Bill Would Add Hurdles to Erasing of Debt*, *supra* note 124 (pointing out the bankruptcy loophole created by state homestead exemption laws).

191. Morgan, *Homestead Exemption*, *supra* note 189; *see also* Day, *Senate Votes to Toughen Bankruptcy*, *supra* note 124 (describing the difference between the House and Senate's treatment of the homestead exemption and noting that the debate was sparked by bankruptcies of well-known people such as Burt Reynolds); Shenon, *Bill to Tighten Bankruptcy Gets a Push*, *supra* note 140 (noting the conflict between House and Senate versions of the bill).

192. *See, e.g.*, Labaton, *Promised Veto*, *supra* note 60 (citing a letter from White House Chief of Staff John Podesta to House leaders warning that the proposed bankruptcy bill fails to eliminate homestead exemptions); Mayer, *Negotiators Complete Bankruptcy Reform Bill*, *supra* note 47 (noting that the White House was concerned over the bill's lack of "fairness"); *see also* Schmidt, *supra* note 131 (noting that some Democrats were angry with Sen. Torricelli for supporting a bill that cracks down on the poor but not the rich).

otherwise supported restricting bankruptcy relief, opposed correction of this disparity.[193]

Once the *New York Times* and the *Washington Post* editorial pages began their series of editorials on bankruptcy, they regularly framed discussions of bankruptcy in terms of preferential treatment and loopholes for the rich with a focus on property exemptions.[194] In *Bad Bankruptcy Legislation*, the *New York 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.[195] In *Protecting Rich Bankrupts*, the *New York 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 deadbeats.[196]

The *New York Times* distinguished the bill's gentle treatment of the "well heeled" from its harsh treatment of "unsophisticated debtors."[197] While a potential Clinton veto was looming, the *New York Times* editorial desk lamented the bill's

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193. *See, e.g.*, Morgan, *Homestead Exemption*, *supra* note 189 (noting that President Bush is solidly against changing the homestead exemption); Philip Shenon, *Home Exemptions Snag Bankruptcy Bill*, N.Y. TIMES, Apr. 6, 2001, at A1 (stating that President Bush was a "passionate defender of the unlimited homestead exemption when he was governor of Texas").

194. *Cf.* Shaviro, *supra* note 7, at 11 & n.33 (noting the consistent concern about "loopholes" in the income tax system from inception through the 1970s). Although Shaviro notes that the term "loopholes" is out of fashion in tax policy because it connotes an unintended rather than intended benefit, the term seemingly remains vibrant in bankruptcy policy discussions. *Id.* at 11 n.33.

195. Editorial, *Bad Bankruptcy Legislation*, N.Y. TIMES, Oct. 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.").

196. Editorial, *Protecting Rich Bankrupts*, N.Y. TIMES, Aug. 13, 1999, at A20 (noting that the Texas Legislature had been seeking to expand the acreage of the homestead exemption).

197. Editorial, *A Gift for the Credit Card Industry*, N.Y. TIMES, May 30, 2000, at A22 (highlighting that the bill allows wealth debtors to lock away millions in trust, while making those on modest incomes combine paying off credit-cards with paying for child care).

protection of those with "mansions, trust funds and pension accounts."[198]

Likewise, the *Washington Post* expressed concern about the bill's failure to cap homestead exemptions[199] 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."[200] The "egregious homestead exemption," the *Washington 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."[201] The *Washington 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,"[202] and it scolded Sen. Biden for supporting the bill "despite its inclusion of a loophole allowing millionaires to shield mansions from their creditors."[203] Signed opinion pieces expressed similar concerns about unequal restrictions.[204]

The reporting only occasionally applied the "loopholes for the rich" frame to other issues, which were far from central to the bankruptcy bill. For example, the bill briefly contained a controversial provision shielding investors from suit by Lloyds of

198. Editorial, *An Unfair Bankruptcy Bill*, N.Y. TIMES, Dec. 13, 2000, at A34.

199. Editorial, *Bad Ideas on Bankruptcy*, WASH. POST, Feb. 18, 2000, at A22.

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

201. *Bankrupt Bipartisanship*, *supra* note 158.

202. Editorial, *Reform Choice for Mr. Bush*, WASH. POST, Feb. 19, 2001, at A32.

203. *Loophole for Millionaires*, *supra* note 158 (commending Sen. Leahy for wanting to restrict homestead exemptions and require more credit-card disclosures, even though the outcome would depend on Sen. Biden's support).

204. *See, e.g.*, David S. Broder, *Business in the Driver's Seat*, WASH. POST, Mar. 14, 2001, at A25 (stating that 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"); Norris, *Bankruptcy Reform that Spares the Wealthy*, *supra* note 160 (noting that the 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 that 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, 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.

London, which a front page story in the *Washington Post* characterized as an additional protection for millionaires.[205]

1. Controversy? Exemptions have long been controversial, as suggested earlier,[206] and were again here. The news media did not itself create the controversy, but arguably reinforced it and kept pressure on lawmakers to seek a federal limit on state homestead exemptions—inevitably to be strenuously opposed by colleagues fighting for states' rights—when proponents of limiting exceptions otherwise might have quietly retreated. Lawmakers dedicated multiple rounds of amendments to the homestead exemption in several congresses: One lawmaker would try to insert a homestead exemption limitation while another would try to remove the limitation or add an opt-out provision to address state rights and state constitutional concerns.[207] At least one lawmaker would have tried to kill the bill on the basis of a homestead exemption cap, and others wholeheartedly opposed a cap.[208] President Clinton allegedly

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205. Kathleen Day, *Bankruptcy Bill Benefits Chosen Few: Well-to-Do Investors Sought Special Provision*, WASH. POST, Mar. 10, 2001, at A1.

206. Refer to note 187 *supra* and accompanying text (discussing the property exemption controversy). Some members of Congress presumably were interested in this issue before the media so actively framed the omnibus bankruptcy bill in these terms. For example, in the mid-1990s, Sen. Herb Kohl proposed freestanding legislation to cap state homestead exemptions for bankruptcy purposes. *See* Bankruptcy Abuse Reform Act of 1995, S. 769, 104th Cong. § 2 (1995). As noted in the text, however, the media may have had a role in encouraging these lawmakers to continue the fight on this issue.

207. For examples of amendments, see S. Amend. 68 to S.420, 107th Cong. (2001) (limiting the value of property debtors may exempt under state or local law); S. Amend. 2778 to S.625, 106th Cong. (1999) (same); H. Amend. 54 to H.R. 833, 106th Cong. (1999) (allowing states to opt out of the homestead exemption); S. Amend. 2516 to S. 625, 106th Cong. (1999) (limiting the value of property debtors may exempt under state or local law); S. Amend. 3599 to S. 1301, 105th Cong. (1998) (expressing the Senate's sense of misuse regarding the homestead exemption); H. Amend. 666 to H.R. 3150, 105th Cong. (1998) (striking the $100,000 homestead exemption cap); H. Amend. 665 to H.R. 3150, 105th Cong. (1998) (proposing to reorder the priority of governments when funds are disbursed); H. Amend. 660 to H.R. 3150, 105th Cong. (1998) (limiting the amount of a debtor's homestead).

208. *See, e.g.*, 145 CONG. REC. S14,481 (1999) (statement of Sen. Hutchison arguing that states should be able to opt out of any exemption cap); Tom Hamburger, *Senate Approves Bankruptcy Legislation Provision Capping Exemption on Home Equity May Lead to Battle with Bush, House*, WALL ST. J., Mar. 16, 2001, at A3 (quoting Sen. Kay Bailey Hutchison as vowing to "'do everything I can to fix this in conference . . . or unfortunately I am going to have to try and kill the bill'" (alteration in original)); Press Release, Bankruptcy Bill Violates States' Rights, *at* http://brownback.senate.gov/pressapp/record.cfm?id=175597& (Mar. 23, 2001) (reporting Sen. Brownback's opposition to a bill containing a homestead exemption cap); Press Release, Senator Hutchison Vows Continued Effort to Preserve Texas' Homestead Exemption: Will Work with Conference on Final Bankruptcy Legislation, *at* http://hutchison.senate.gov/prl201.htm (Feb. 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-

based his pocket veto, in part, on the lack of a cap.[209] This issue was significant enough to be described by political scientists as having "killer properties."[210] Because lawmakers developed a compromise, however, the controversy of the frame was not as enduring as some opponents to the bill may have hoped.

2. Improvement of Legislation? As just noted, lawmakers compromised in a manner that is not necessarily helpful.[211] Had the media and experts used this frame to discuss other aspects of the omnibus bill,[212] improvements might have been possible. Absent a focus on these other issues, however, the homestead exemption compromise limited the improvement possibilities.

3. Educational Value? The "loopholes for the rich" frame as applied to the homestead exemption may have taught readers the accurate lesson that state law fundamentally controls some of the perceived benefits of bankruptcy unless bankruptcy overrides that state law. On the other hand, the "loopholes for the rich" story principally relied on highlighting famous people with ample assets to satisfy creditors' claims.[213] Researchers have unearthed

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size-fits-all solution.").

209. *See* Memorandum of Disapproval for Bankruptcy Reform Legislation, 3 PUB. PAPERS 2730, 2730–31 (Dec. 19, 2000) (opposing the bill because of the "glaring omission of a real homestead cap").

210. *See, e.g.*, Nunez & Rosenthal, *supra* note 178, at 1–2 (finding that in the Senate, "state interests in homestead exemptions influenced voting" and that the homestead issue "had killer properties").

211. H.R. 975, 108th Cong. §§ 307, 308, 322 (2003) (imposing a new fraudulent conveyance scheme, limiting exemptions claimed on property acquired within 1215 days of filing, and increasing domicile requirements for claiming state exemptions); *see also* 147 CONG. REC. S2334–35 (2001) (letter from ninety-one law professors) (criticizing earlier compromise proposals that fell short of a firm cap on exemptions).

212. Two examples from the means test are illustrative. First, the means test partially 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. 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. *See* I.R.S. Publication 1854 (Rev. 8-2004) (setting the national standards for calculating food, clothing, and miscellaneous other expenses for the purpose of completing I.R.S. Form 433-A), *available at* http://www.irs.gov/pub/irs-pdf/p1854.pdf (providing a $976 monthly food, clothing, and miscellaneous allowance for an individual with a monthly income of $5834 or more, but providing $859 monthly food, clothing, and miscellaneous allowance for a family of four with a monthly income of less than $833). 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, Editorial, *Bankruptcy Bill Would Prevent Some from Making a Fresh Start*, CHI. TRIB., June 25, 1999, § 1, at 21 (explaining different outcomes for a high-income businessperson and a lower income widow with medical debts).

213. *See, e.g.*, *Bad Bankruptcy Legislation*, *supra* note 195 (criticizing bankruptcy legislation for allowing wealthy filers such as Burt Reynolds to remain millionaires after filing for personal bankruptcy).

very few rich and famous bankruptcy filers.[214] A disproportionate focus on this group could breed further distrust about the bankruptcy system and its users, the vast majority of whom, by most empirical accounts, are of quite modest means.

Notwithstanding concerns about overemphasizing wealthy filers, readers might have been educated by a discussion of provisions included in the omnibus bankruptcy bill that preferred well-off, or at least well advised, bankruptcy filers.[215] Those examples did not receive coverage, either because sources refrained from discussing them with reporters, or because reporters focused on more easily digestible issues. Many reporters do not believe that their job description includes thoroughly analyzing complex legal problems.[216] Bankruptcy is not its own newsbeat.[217] Journalists' capacity for copious details is

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214. For example, the GAO studied exemption usage in districts in Florida and Texas. The GAO found average homestead exemption claims of about $15,000 and median claims of $9000 in these districts for homestead exemptions of less than $100,000. The average and median exemption claims among those exceeding $100,000 (only one percent of the sample) hovered around $148,000 in Texas and $120,000 in Florida. GEN. ACCOUNTING OFFICE, PUB. NO. GAO/GGD-99-118R, BANKRUPTCY REFORM: USE OF THE HOMESTEAD EXEMPTION BY CHAPTER 7 BANKRUPTCY DEBTORS IN THE NORTHERN DISTRICT OF TEXAS AND THE SOUTHERN DISTRICT OF FLORIDA IN 1998, at 1–3 (1999), http://www.gao.gov/archive/1999/gg99118r.pdf; TODD J. ZYWICKI, WHY SO MANY BANKRUPTCIES AND WHAT TO DO ABOUT IT: AN ECONOMIC ANALYSIS OF CONSUMER BANKRUPTCY LAW AND BANKRUPTCY REFORM 102 (George Mason Univ. Sch. of Law, Law & Econ. Working Paper Series No. 03-46, 2003) (finding that a cap on "homestead exemptions would have little effect on the bankruptcy filing rate"), http://ssrn.com/abstract_id=454121. For a list of "people with valuable personas who have filed for bankruptcy," see Melissa B. Jacoby & Diane Leenheer Zimmerman, *Foreclosing on Fame: Exploring the Uncharted Boundaries of the Right of Publicity*, 77 N.Y.U. L. REV. 1322, 1325–26 (2002).

215. Refer to note 212 *supra* (describing a scenario in which a high-income individual would receive a larger personal expense allowance than low-income family of four).

216. 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?, *supra* note 7, at 18, 25. *See generally* Trudy Lieberman, *The Media and Government Regulation*, 11 KAN. J.L. & PUB. POL'Y 547, 550, 552–53 (2002) (noting that journalists shy away from detailed regulation as "too much inside baseball" and report underinclusively on legislation: "The law does not do a lot of things the press said it would, and it does others that the press entirely missed"); Walsh, *supra* note 83, at 9 (conceding that reporters' "need for brevity will inevitably lead to articles that oversimplify").

217. *See* WILLIS, *supra* note 10, at 103, 140 (advocating greater business specialization, technical knowledge and experience, and engagement in research and describing some newsbeats as "career stoppers"); W. Lance Bennett, *Cracking the News Code: Some Rules that Journalists Live By*, *in* DO THE MEDIA GOVERN?, *supra* note 7, at 103, 105 (stating that journalists decide which issues to cover based on the degree of public pronouncement and opposition to the issues); Lieberman, *supra* note 216, at 548 (expressing that "reporters now avoid dull and complicated beats and stories" such as government) *see also* Goldstein, *supra* note 83, at 899 (quoting the *Wall Street Journal* managing editor as saying, "Law is 'core, core, core' to business," but recognizing that the

likely sated by the breadth of subjects they cover.[218] Short deadlines also may limit their tolerance for complexity.[219] As a consequence, the educational potential of the "loopholes for the rich" frame likely was diminished.

C. Women and Children

Far removed from the once-dominant theme of debtor irresponsibility and a permissive bankruptcy system, media reporting sometimes framed the omnibus bankruptcy issue as a story of women and children.[220] This frame developed with a high-profile op-ed in *The New York Times* by Professor Elizabeth Warren.[221] The women and children frame has two underlying substantive components that should be noted here. First, women collecting child support compete with institutional lenders, not only in but after bankruptcy, and the omnibus bankruptcy bill

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New York Times discarded its special law section and that weekly news magazines do not cover law very much).

218. For example, Katharine Q. Seelye of the *New York Times* wrote twelve pieces on bankruptcy—the most in the sample—during the period studied, but she also wrote on a wide range of subjects including presidential campaigns, impeachment, terrorism, gun control, environmental protection, and campaign finance. *See e.g.*, Richard L. Berke & Katharine Q. Seelye, *Now, Democrats Take Turn at Abortion Fight*, N.Y. TIMES, Jan. 30, 2000, at 1; Katharine Q. Seelye, *A Tough Fight Ahead as Republicans Work to Keep Control of the House*, N.Y. TIMES, Feb. 8, 1999, at A20; Katharine Q. Seelye, *Bradley Proposes Revamping Federal Campaign Finance System*, N.Y. TIMES, July 23, 1999, at A19; Katharine Q. Seelye, *Clinton Asks Hunters to Back His Proposals Curbing Guns*, N.Y. TIMES, Apr. 28, 1999, at A26; Katharine Q. Seelye, *Clinton Tearfully Receives 10 Bodies, Praising Lives That "Nothing Can Erase"*, N.Y. TIMES, Aug. 14, 1998, at A10; Katharine Q. Seelye, *Gay Voters Finding G.O.P. Newly Receptive to Support*, N.Y. TIMES, Aug. 11, 1999, at A1; Katharine Q. Seelye, *G.O.P.'s Hopes Dim for Filibuster-Proof Senate Margin*, N.Y. TIMES, Oct. 30, 1998, at A31; Katharine Q. Seelye, *Hillary Clinton Appeals for Gun Control Lobbying*, N.Y. TIMES, May 9, 1999, at 25; Katharine Q. Seelye, *Italian Presses Clinton on Pilot's Acquittal*, N.Y. TIMES, Mar. 6, 1999, at A1; Katharine Q. Seelye, *Killings in Littleton Pierced Soul of the Nation*, N.Y. TIMES, May 21, 1999, at A23; Katharine Q. Seelye, *Leading Environmentalists Put Support and Money Behind Gore*, N.Y. TIMES, Oct. 8, 1999, at A24; Katharine Q. Seelye, *Livingston Wants Early Close to It All, If It Could Be Done"*, N.Y. TIMES, Nov. 20, 1998, at A28; Katharine Q. Seelye, *Low on Cash, Dole Withdraws from G.O.P. Race*, N.Y. TIMES, Oct. 21, 1999, at A1; Katharine Q. Seelye, *Report Suggests Jordan Suspected Affair*, N.Y. TIMES, Sept. 12, 1998, at A15; Katharine Q. Seelye, *Stumping as a Knowing Ally of Farmers*, N.Y. TIMES, Jan. 22, 2000, at A11; Katharine Q. Seelye, *The Candidate Tied to the Decision*, N.Y. TIMES, Mar. 31, 1999, at A12. Later, Seelye even wrote about cities and fat burning. *See* Katharine Q. Seelye, *Cities Made for Walking May Be Fat Burners*, N.Y. TIMES, June 20, 2003, at A16.

219. SCHUDSON, *supra* note 80, at 34 (stating that subjectivity in journalism results from strict deadlines).

220. *Cf.* GÓMEZ, *supra* note 89, at 121 (discussing the transformation of the crack baby problem from a narrow concern into a broader women's problem).

221. Elizabeth Warren, Editorial, *Bankrupt? Pay Your Child Support First*, N.Y. TIMES, Apr. 27, 1998, at A15 (describing how proposed legislation could give credit-card debt the same priority as child support payments).

strengthens the rights of those institutional lenders.[222] Second, although less prominent in the news reporting, single-filing women are the fastest growing group of bankruptcy filers.[223] The hundreds of changes buried within the omnibus bankruptcy bill would have a large and likely negative effect on these women and their families.

A variety of stories mentioned the possibility that the omnibus bankruptcy bill would adversely affect women and children.[224] The reporting attracted First Lady Hillary Rodham Clinton's attention, which in turn became a news media focus.[225] Women's group representatives, by offering quotes in bankruptcy

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222. *See id.*

223. *See* ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE 97–122 (2003) (explaining that the filing rate among single mothers has increased dramatically, but conceding that the filing rate among divorced fathers is almost as alarming and that "filing for bankruptcy may be the most responsible thing these divorced fathers can do for their children"); Melissa B. Jacoby et al., *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375, 391 (2001) (describing the rapid growth of the percentage of women filing singly and the 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, 335 tbl.2, 336 (1997) (showing that the percentage of bankruptcy filings attributable to women has increased since 1967); *see also* Karen Gross et al., *Ladies in Red: Learning from America's First Female Bankrupts*, 40 AM. J. LEGAL HIST. 1, 14, 20 (1996) (stating that the earliest female bankruptcy filers in the 1800s were predominantly single women); 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) [hereinafter Warren, *What Is a Women's Issue?*] (finding that the number of women filing for bankruptcy without a spouse has increased 800% since the early 1980s).

224. *See, e.g.*, Day, *Bankruptcy Legislation Still Faces Hurdles*, *supra* note 144 (reporting on bill proponents' defense of bill, claiming "backing from child-support collection agencies around the country"); Stephen Labaton, *Rights Groups Shift Battle to New Front: Economic Issues*, N.Y. TIMES, May 10, 1999, at A18 ("[T]he 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)); Morgan, *Creditors' Money*, *supra* note 37 (discussing the effects of reform on women among list of reform opponents' concerns); Pae, *supra* note 130 ("[Children] would be reduced to no more than a piece of jewelry." (quoting Rep. Louise Slaughter (D-N.Y.))); Seelye, *Vote on Measure to Tighten Bankruptcy*, *supra* note 125 (reporting that critics of the bill state that it would place credit-card companies on the same plane as single parents recovering alimony or child support payments).

225. *See* HILLARY RODHAM CLINTON, LIVING HISTORY 384–85 (2003) (discussing involvement with women and children's issue in the bankruptcy bill); WARREN & TYAGI, *supra* note 223, at 123–26 (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, at A2 (stating that the "administration has worked too long and too hard to improve child support collection to see it now threatened [by the bankruptcy bill]"); *see also* Pae & Stoughton, *supra* note 125 (discussing Hillary Clinton's concerns for single parents); Seelye, *First Lady in a Messy Fight*, *supra* note 4 (reporting on the private meeting between Hillary Clinton and Professor Warren about women's issues).

stories and writing letters to the editor, helped cement bankruptcy's relevance to their constituencies.[226] One article quoted Rep. Jerrold Nadler (D-N.Y.), a progressive Democrat well-versed in bankruptcy, characterizing the bill as "'Mom versus Chemical Bank.'"[227] Other media outlets outside the Article's sample, such as *USA Today*, also used this frame.[228]

News reports and editorials also framed bankruptcy discussions in terms of the FACE abortion-protestor amendment, which in turn heightened the gendered implications of bankruptcy reform.[229] This issue was particularly newsworthy when Vice President Al Gore rushed from the presidential campaign trail in case he was needed to cast the tie-breaking vote in the Senate on this amendment.[230]

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226. *See, e.g.*, Joan Entmacher, Letter to the Editor, *Children, Bankruptcy, Creditors*, WASH. POST, June 22, 1999, at A16 (explaining that the bill gives greater priority to commercial lenders after bankruptcy); Seelye, *First Lady in a Messy Fight*, *supra* note 4 ("'There is a big stake in this for women and children,' said Joan Entmacher, vice president of the 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.'").

227. Seelye, *Vote on Measure to Tighten Bankruptcy*, *supra* note 125.

228. *See, e.g.*, *Deeper in Debt*, ECONOMIST, July 3, 1999, at 64, 64 (calling First Lady Hillary Clinton the most vocal opponent of the bill and suggesting that she might therefore be able to stop it); Christine Dugas, *Critics Say Bankruptcy Bills Threaten Child Support*, USA TODAY, Apr. 30, 1998, at 1A (citing sources complaining that "'the credit industry will be taking money out of the pockets of women and children'"); Christine Dugas, *Women Rank 1st in Bankruptcy Filings*, USA TODAY, June 21, 1999, at 1A (quoting sources explaining that bankruptcy is a women's issue and that bankruptcy reform would have a particularly hard effect on women); Associated Press, *Study Shows Women Resorting to Bankruptcy More than Men*, CHI. TRIB., June 22, 1999, at 4 (comparing different viewpoints on whether or not the legislation will hurt women); Elizabeth Warren, *The New Women's Issue: Bankruptcy Law*, CHRISTIAN SCI. MONITOR, Sept. 10, 1999, at 11, 11 (discussing how proposed legislation would negatively impact "financially troubled families," a group increasingly headed by women).

229. Dewar & Day, *supra* note 136 (quoting Sen. Patty Murray saying that the issue is not about theater, but "'about the very real issue of violence against women'"); Lois Romano & Helen Dewar, *Gore Rushes to Hill Abortion Vote*, WASH. POST, Feb. 3, 2000, at A14 (quoting Sen. Grassley, who characterized Gore's trip back to Washington as "'theater'"). Refer to note 235–36 *infra* and accompanying text (providing examples of reactions to tying the abortion issue to the bankruptcy bill). For reporting on President Clinton's position on the abortion provision, see Editorial, *Bankruptcy Law and Violence*, N.Y. TIMES, June 9, 2000, at A30 (referring to the use of bankruptcy to discharge FACE debts and expressing concern about this "increasingly popular loophole"); Day, *House Passes Tougher Debt Rules*, *supra* note 126 (mentioning FACE Amendment as one of President Clinton's major concerns).

230. Katharine Q. Seelye, *Gore Abortion Scramble*, N.Y. TIMES, Feb. 3, 2000, at A20 (describing how Gore's frantic return to Washington on a commercial airline was unnecessary because the Republicans decided at the last minute to support the amendment).

1. Controversy? Although the use of this frame seems less extensive in this sample, most who were involved with or followed the bankruptcy bill's development would likely agree that this media frame sparked controversy.[231] First Lady Hillary Rodham Clinton's interest, initially fueled by this framing, contributed to the development of the Clinton Administration's position, including the pocket veto.[232] More than thirty women's groups came out in opposition to a bill regarding 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 avenues.[233] The legislative process slowed as lawmakers and staff had little choice but to "solve" the women-and-children problem.[234]

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231. This approach also continued beyond the time period studied in this Article. *See, e.g.*, Elizabeth Warren, Editorial, *A Quiet Attack on Women*, N.Y. TIMES, May 20, 2002, at A19 (describing the effects of the proposed bankruptcy legislation on women as "devastating").

232. *See, e.g.*, Letter from Jacob J. Lew, Acting Director, Office of Management and Budget, Executive Office of the President, to Hon. George W. Gekas (May 21, 1998) (complaining that the bill puts credit-cards in competition with support obligations after bankruptcy); Letter from Jacob J. Lew, Director, Office of Management and Budget, Executive Office of the President, to Hon. Trent Lott (Oct. 9, 1998) (listing among reasons for opposing bill, the bill's increase of competition between credit-card lenders and support recipients); Press Release, Office of the Press Secretary, The White House, President Clinton Hails Child Support Progress and Signs into Law Tough New Penalties for Deadbeat Parents (June 24, 1998) ("[T]he President will reiterate his position that bankruptcy reform legislation should not make it harder to collect child support and alimony."); *Radio Address of the President to the Nation* (Office of the Press Secretary, The White House, radio broadcast, May 9, 1998) (criticizing bankruptcy bill, in honor of Mother's Day, for forcing mothers "to compete with powerful banks and credit card companies"); *Statement of Administration Policy on H.R. 3150*, *supra* note 42 (basing opposition to house bill in part on the fact that increased credit-card nondischargeability would adversely affect domestic support recipients).

233. *See, e.g.*, Letter from Patricia Ireland, President, NOW, to Hon. John Conyers Jr. and Hon. Jerrold Nadler (May 15, 1998) (on file with the Houston Law Review) (opposing legislation); Letter from the National Partnership for Women and Families, to U.S. Representatives (June 9, 1998) (expressing "deep concerns" about House Bill 3150 because of its effects on women as debtors and as creditors); Letter from National Women's Law Center and National Partnership for Women and Families, to U.S. Senate (Sept. 17, 1999) (regarding Senate Bill 625 and its potential impact on women who file for bankruptcy); Letter from National Women's Law Center and National Partnership for Women and Families, to U.S. Senators (June 24, 1999); Press Release, NOW Action Alert, Changes in Bankruptcy Law Bad News for Women, *at* http://www.now.org/issues/economic/alerts/04-24-98.html (Apr. 24, 1998) (urging women's advocates to oppose Senate Bill 1301); Press Release, NOW, NOW Warns Senate and Credit Card Companies: "Bankruptcy Legislation Will Harm Women, Children, Retirees" (May 2, 2000) (commenting on both the child support and the abortion issues).

234. *See* Letter from 31 Senators, U.S. Senate, to Hon. Orrin Hatch, Chairman, and Hon. Patrick Leahy, Ranking Member, Senate Judiciary Committee (May 5, 1998) (on file with the Houston Law Review) ("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.").

The media also may have helped attract additional attention to the FACE amendment, which of course was inherently controversial. This issue has not only delayed the bill's passage,[235] but also prompted organizations such as the United States Conference of Catholic Bishops to take a position on bankruptcy legislation.[236]

2. Improvement? This frame affected the contents of the bill. After initially denying any adverse effects, bill proponents quickly shifted course and added provisions directed toward child support collection in bankruptcy.[237] Governmental collection agencies and select others lauded the amendments,[238] leading bill proponents to describe the bill as helpful to women and

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235. *See, e.g.*, Nunez & Rosenthal, *supra* note 178 (describing the abortion amendment as an issue that can be used strategically to sink legislation); Letter from Gene Sperling, National Economic Advisor, to Hon. Trent Lott (Sept. 22, 2000) (explaining that President Clinton "will not sign any legislation that does not contain an effective means to ensure accountability and responsibility of perpetrators of clinic violence"). Refer to Part II.C *supra*. For a politically charged entanglement of another women's issue with the bankruptcy legislation, see 146 CONG. REC. 8097 (2000) (statement of Rep. Nadler) (reacting to proposal to tie Violence Against Women Act reauthorization to bankruptcy legislation, "I urge the other body to not use battered, abused, and murdered women, who do not have the millions to lobby Congress, to give a gift to the banks and creditors").

236. Office of Gov't Liaison, U.S. Conference of Catholic Bishops, *Our Legislative Concerns in the 108th Congress*, *at* http://www.usccb.org/ogl/prolife.htm (Jan. 6, 2004) (stating that the conference "oppose[s] provisions that would deny bankruptcy protection to abortion protesters").

237. H.R. 975, 108th Cong. §§ 211–219 (2003) (proposing various amendments relating to child support obligations).

238. *See, e.g.*, Letter from Joel Bankes, Executive Director, National Child Support Enforcement Association, to U.S. Senators (Sept. 4, 1998) (on file with the Houston Law Review) (stating that the bill promotes support collection); Letter from Jonathan Burris, President, California Family Support Council, to Hon. George W. Gekas (June 4, 1998) (on file with the Houston Law Review) (positing that the bill "contains a veritable 'wish list'" of improvements for support obligations); Letter from Heidi Heitcamp, Chair, National Association of Attorneys General Bankruptcy and Taxation Working Group, to Senator Orrin G. Hatch & Senator Patrick J. Leahy (July 30, 1998) (on file with the Houston Law Review) (applauding provisions that ensure child support collection, but expressing some concerns); Letter from Michael D. Hess, Corporation Counsel of the City of New York, to Hon. George W. Gekas (June 5, 1998) (on file with the Houston Law Review) (complementing bill's improvement in treatment of support recipients); Letter from John R. Justice, President, National District Attorneys Association, to Hon. Trent Lott (Sept. 2, 1998) (on file with the Houston Law Review) (stating that the bill helps collect support). *But see* Letter from Richard Blumenthal, Attorney General, State of Connecticut, to Hon. Jerrold Nadler (July 24, 1998) (on file with the Houston Law Review) (supporting child support provisions but opposing anticonsumer legislation overall); Letter from Geraldine Jensen, Association for Children for Enforcement of Support, to Hon. George W. Gekas (Mar. 17, 1999) (on file with the Houston Law Review) (supporting parts of the bill but expressing other concerns about keeping bankruptcy accessible for spouses who need bankruptcy after not receiving support).

children[239] and to denounce President Clinton's pocket veto of the bill as "a blow to women and children everywhere."[240] Others would contend that these amendments were not responsive to the concerns raised in the press, and in some respects were rather superficial.[241]

Aside from the support amendments, however, there is reason to believe this frame ultimately encouraged the omission or limitation of some provisions that were particularly beneficial to the credit industry. For example, early versions of the bill substantially expanded the nondischargeability of credit-card debt.[242] After complaints that these provisions hampered the collection of child support and alimony, some of these nondischargeability provisions were watered down and even omitted in amendments designated as having implications for women and children.[243]

3. Educational Value? Bill supporters claimed that this frame was contrived and disingenuous.[244] Notwithstanding their

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239. S*ee, e.g.*, Rep. Bill McCollum, *Bankruptcy Reform: A Return to Responsibility*, HILL, May 20, 1998, at 38 ("Contrary to [news coverage], H.R. 3150 strengthens an ex-spouse's ability to recover child support and alimony . . . ."); News Release, Gekas Bankruptcy Bill Passes House: Measure Will Protect Consumers and Reduce Fraud (Mar. 31, 2001) (stating that the "reform bill brings increased protection for women and children who are left destitute" when their ex-spouses file for bankruptcy).

240. Press Release, Rep. George W. Gekas, Gekas Denounces Clinton Pocket Veto of Bankruptcy Reform: Gekas Encouraged by Bush Administration (Dec. 21, 2000) (on file with the Houston Law Review).

241. For a detailed discussion, see Warren, *What Is a Women's Issue?*, *supra* note 223, at 21, 39–42; *Will Bankruptcy Reform Help Women and Children?*, CONSUMER BANKR. NEWS, May 31, 2001, at 9, 9 (reporting that women's groups see the bill as "window dressing on an empty house"); *see also* 147 CONG. REC. S2334–35 (2001) (Letter from 91 Law Professors) (criticizing the omnibus bankruptcy bill because alleged problems affecting women and children have not been fixed).

242. Bankruptcy Reform Act of 1998, H.R. 3150, 105th Cong. § 141 (as introduced on Feb. 3, 1998); *see also* Memorandum from Robin Jeweler, American Law Division, Congressional Research Service, Impact of Consumer Bankruptcy Reform Proposals on Child Support Obligations 4 (May 13, 1998) (on file with the Houston Law Review) (discussing additional categories of nondischargeable debt in bankruptcy bill). Refer to note 232 *supra* (providing examples from the Clinton Administration that criticize the effects of the bankruptcy bill on child support recipients).

243. *See, e.g.*, Boxer Amendment, S. 108, 147 CONG. REC. S2415 (2001) (proposing changes to Senate Bill 420). 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. Leahy Amendment, S. 105, 147 CONG. REC. S2348 (2001) (reducing the automotive debt "cramdown" period from five years to three, consistent with the requests of women's groups).

244. Letter from John R. Justice, President, National District Attorneys Association, to Hon. Trent Lott (Sept. 2, 1998) (on file with the Houston Law Review) (calling critics of legislation either "disingenuous" or lacking knowledge of the child support collection process). Judge Jones asserts that the *USA Today* quotes of Professors Elizabeth Warren and Ken Klee were a

reaction, this frame arguably was the most educational of those described in this Article.

General audience discussions tend to conceptualize bankruptcy and debtor-creditor law in terms of debtor versus creditor, downplaying or disregarding the competition between creditors. Yet in bankruptcy, many types of creditors have long competed with each other over hopelessly meager assets or future income.[245] Enhancements to one creditor's entitlements inevitably have distributional consequences, and the women and children frame brought this issue to the forefront. If we have not given up hope of a reasonably informed discourse about legal systems and proposals to change them, it is important that the public and lawmakers understand this dynamic in the debtor-creditor system.

This frame also had the potential to teach the public that women continue to face serious financial trouble even though they have made many major advances.[246] The public benefits from

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> 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.
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> . . . .
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> . . . Professors Klee and Warren are not attempting to be precise, only to be obstructionist.

Letter from Hon. Edith H. Jones, to Hon. Orrin C. Hatch, Hon. Charles E. Grassley, Hon. Henry J. Hyde, and Hon. George W. Gekas 1, 3 (Apr. 30, 1998) (on file with the Houston Law Review); Bill McCollum, Letter to the Editor, *Bankruptcy Reform*, N.Y. TIMES, May 3, 1998, at A16 (stating that Professor Warren's claims were "false," asserting that Professor Warren "opposes reforms that would return responsibility to bankruptcy," and arguing that Professor Warren "offers no reason why she believes that middle-class families should bear the burden for irresponsible higher income borrowers"); "Dear Colleague" Letter from Reps. George W. Gekas, Rick Boucher, Bill McCollum, and James F. Moran (Apr. 2, 1998) (stating that the "attempt by opponents of bankruptcy reform to create confusion in the minds of Congress and the American public by raising the emotionally charged issue of unpaid child support is merely a smokescreen"); *see also* David Frum, *Bankruptcy Reform Is a Moral Issue*, WALL ST. J., Feb. 11, 2000, at A14 (noting sarcastically that we should now expect to hear that women will be burdened by this legislation); Hiatt, *supra* note 204 (noting that 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)"); Letter from Rep. Bill McCollum et al., to President William J. Clinton (May 11, 1998) (on file with the Houston Law Review) (writing to "correct any misinformation" expressed in his radio address and to "assure [him] that this is false").

245. *A Statement of the Interest of Creditors in a Bankruptcy Case: Hearing on H.R. 833 Before the House Subcomm. on Commercial and Admin. Law of the Comm. on the Judiciary*, 106th Cong. (Mar. 16, 1999) (testimony of Leon S. Forman, esq.) ("Enhancement of the treatment of one type of creditor often comes at the cost of another."); JAMES ANGELL MACLACHLAN, HANDBOOK OF THE LAW OF BANKRUPTCY 57, 381 (1956) (explaining how creditors jockey for position and contest one another's claims).

246. *See generally* WARREN & TYAGI, *supra* note 223, at 97–122 (concluding that "despite all the progress, middle-class single mothers are no more financially secure today than they were a generation ago").

learning about the interplay between bankruptcy, financial distress, and other socioeconomic problems.[247] Framing the bankruptcy debate in terms of women and children had the potential to advance that educational goal.

To be sure, the media rarely presented these points in fine detail, but the frame attracted the attention of those with a special interest in these issues. Thus, once exposed to a general conception of the problem, readers could educate themselves further about how current bankruptcy law really works and how the legislation would change the system.[248]

IV. CONCLUSION

This Article has explored the roles of the media in legislative development with a specific focus on the lingering omnibus bankruptcy bill. I cannot prove causation, but the analysis suggests that the news media interacted with the legislative process, and, in some instances, may have altered the course of deliberations. In light of the academic literature on the role of sources in news reporting,[249] it is possible that some opposed to the legislation who were denied seats at the Congressional bargaining table found an indirect method of participation.[250] If that is the case, the news media's role in the legislative process may include giving a voice to otherwise-excluded parties.

Because evaluating the consequences of news coverage is a more complex inquiry, however, this is not entirely an empowering story. Negotiating legislation through the news media is a time consuming enterprise, requiring immediate responsiveness to reporters who seek one's input[251] and reaching

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247. Jacoby et al., *supra* note 223, at 391 (describing the rapid growth of the percentage of women filing singly and the implications for medical-related bankruptcy); Pollak, *supra* note 223, at 336 (discussing sociological issues and filing rates among women); *see also* Gross et al., *supra* note 223, at 20–21 (providing the demographic characteristics of America's earliest female debtors). *See generally* Warren, *What Is a Women's Issue*, *supra* note 223, at 28 (reporting on single filing women in bankruptcy).

248. The Author's files and e-mail archives include dozens of communications involving women's groups seeking to understand bankruptcy law and legislation and to communicate their concerns to others. *See* Nat'l Women's Law Ctr., Bankruptcy Bill: Harsh on Economically Vulnerable Women and Families, Tolerant of Abuses by Perpetrators of Clinic Violence (Mar. 2003) (on file with the Houston Law Review) (presenting a detailed discussion of the bankruptcy bill and its effects on women).

249. Refer to notes 111–17 *supra* and accompanying text.

250. Refer to notes 2–7 *supra* and accompanying text (describing the bankruptcy establishment's involvement with the reform bill).

251. Walsh, *supra* note 83, at 14 (explaining the importance of returning media calls extremely promptly).

out to reporters who do not.[252] Due to journalistic conventions, experts who make the commitment and the connections still must refrain from comments and complaints heavy on substance and legal details if they wish to be heard.[253] With respect to legislation as dense and incomprehensible as the omnibus bankruptcy bill, this means that legitimate concerns about the drafting and effects may never enter the public discourse at all. Complexity becomes a convenient cloak for policy decisions.

Without a forum to explain complex issues, expert sources must either find more salient and thematic ways to expose these problems or, more likely, simply attempt to increase the controversy of legislation they find troubling. Yet even if a source actively and successfully participates in framing an issue in a controversial fashion, that source cannot control the consequences. For example, those who may have helped frame bankruptcy in terms of loopholes for the rich probably do not relish the fact that the reporting unduly emphasizes the rich and famous, nor do they likely approve of the compromises the lawmakers reached. Those who helped frame bankruptcy as an issue of women and children may have been surprised by the ultimate reaction—the addition to the bill of an entire section of domestic support collection amendments having little to do with the concerns raised in the press.

These limits notwithstanding, researchers in other disciplines have long recognized and closely examined the relevance of the news media to law. Lawyers and law professors with interest in the legislative process or legislative-intense subjects have much to gain from joining in the study of this important relationship.

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252. *See, e.g.*, WEISS & SINGER, *supra* note 111, at 26–28 (describing how reaching out to the media via press releases can be effective); SIGAL, *supra* note 111, at 104–07 (explaining how extensively reporter rely on press conferences and press releases as sources for news stories); *see also* Colbert, *supra* note 115, at 556–57 (discussing the success of a professor in gaining media attention for his capital trial error rate study).

253. WEISS & SINGER, *supra* note 111, at 47 (describing the ideal news source as cooperative, concise, and straightforward).