Exhibit D - *Bankruptcy Reform Act of 1998: Part I*, Hearing on H.R. 3150 before House Judiciary Comm., 105 Cong., 2d Sess. 14-25 (1998)

BANKRUPTCY REFORM ACT OF 1998 PART I

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

ON

H.R. 3150

BANKRUPTCY REFORM ACT OF 1998
PART I

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STATEMENT OF HON. JAMES P. MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. MORAN. Well, thanks very much, Mr. Chairman, and members of the subcommittee. This is an important bill because the current bankruptcy system is broken. Somewhere over the past decade, the integrity of the bankruptcy process has been corrupted, and an important moral principle has been eviscerated. The time-honored principle of moral responsibility and personal obligation to pay one's debts has been eroded by the convenience and the ease with which one can now discharge his or her obligation. What was once the option of last resort, has too often become the preferred option of first resort.

A legislative fix is vital to distinguish between those who truly need a fresh start, and deserve one, and those capable of assuming greater responsibility and making good on at least some of what they owe. That's why we need needs-based bankruptcy reform. It's unbelievable when you hear the statistics that my colleagues and you have cited, that we have almost 1.4 million bankruptcies in a ...r when we have as good an economy as we've ever had. Interest ...es are down. Incomes are up. Growth is up. Why do we have as many bankruptcies as we do? It doesn't make sense.

More people filed for personal bankruptcy last year than graduated from college. That's wrong. Instead of bankruptcy being a safety net, it's become a convenient financial management tool. That's why we need this legislation. It's unacceptable and it's unfair that those who do pay their bills have to foot the bill for those who, in many instances, have the ability to pay, but choose not to.

It's been conservatively estimated that personal bankruptcy cost every household, in this country, $400 per year. The decent, responsible, honest people are paying for those who are not. And, it takes 15 responsible borrowers to cover the cost of one banker fee of convenience. The system will continue to be void of integrity if debtors persist in using it as a tool of first resort. It was never intended to be a tool of first resort. It should be a tool of last resort, when every other option has been exhausted. This Nation's bankruptcy system is broken because it enables people to avoid paying their debts when they can afford to, and that's what this legislation is all about. I'm not going to belabor that point, but that's the underlying issue.

Seventy-six percent of Americans believe that individuals should not be allowed to erase all of their debt in bankruptcy if they are able to repay a portion of what they owe. We know that. That's just common sense, and it's basic tenant of our system. So we want to go to a needs-based system, and, you know, when you talk about low income people, we exclude low income people. We take care of them. The average bankruptcy filer earns approximately $34,000 a year.

But, we don't apply this to people whose incomes are less than 75 percent of the National median income, by family size. For a family of four, that's 75 percent of National median income, it's almost $39,000 per year. So, most people are excluded. What we're trying to get at is those who have money and who are avoiding paying their debts, and then causing the rest, the working class families, to have to pick up that cost.

It's not a matter of credit cards, necessarily, although too many people are charging too much on credits cards, I think that would be generally recognized, but 96 percent of credit card holders pay their bills. Only 1 percent ever end up in bankruptcy, and, in fact, bank credit cards only represent one-sixth of total debt in the average bankruptcy petitions. So, that's not the main problem.

This is a consumer-friendly bill. We've got a debtor's bill of rights; it enables you to protect yourselves from these bankruptcy mills that are proliferating across the country. That's why we have over 170 sponsors to H.R. 2500, which was the first bill, and is now incorporated in this bill—a record bill. I've been pushing this for years, as I know you have, Mr. Chairman. I think that we've got a good bill here because it's good for the American people. It's in their interest to support this bill. It ought to be bipartisan, and I'm confident it's going to be bicameral, and I would hope that it would passed this year, because it can be passed not too soon for those honest, good Americans who shouldn't be paying $400 a year to bail out people who are abusing the system. Thank you, Mr. Chairman.

[The prepared statement of Mr. Moran follows:]

PREPARED STATEMENT OF HON. JAMES P. MORAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

INTRODUCTION

Chairman Gekas, Members of the Subcommittee, thank you for allowing me to come before you today to speak on behalf of the Bankruptcy Reform Act of 1998 (H.R. 3150). I am sponsoring this bill with Chairman Gekas because the current bankruptcy system is broken. Somewhere over the past decade, the integrity of the bankruptcy process has been corrupted and an important moral principle has been eviscerated. The time-honored principle of moral responsibility and personal obligation to pay one's debts has been eroded by the convenience and ease with which one can discharge his or her obligations. What was once the option of last resort has too often become the preferred option of choice.

A legislative fix is vital to distinguish between those who truly need a "fresh start" and those capable of assuming greater responsibility and making good on at least some of what they owe. I look forward to working with this Committee to bring needs-based bankruptcy reform to fruition this year.

THE SYSTEM IS BROKEN AND LACKS INTEGRITY

Despite this country's strong economy—wages are up, unemployment is down, and interest rates and inflation are low—the rate of personal bankruptcy filings has increased dramatically. Last year personal bankruptcy filings rose nearly 20 percent reaching a startlingly record high of more than 1.3 million filings. More people filed for personal bankruptcy than graduated from college last year. Instead of bankruptcy being a safety net, it has become for some a convenient financial management tool. The Bankruptcy Reform Act will help to bring this equation back into balance.

I find it unacceptable and inherently *unfair* that those who do pay their bills have to foot the bill for those who, in many instances, have the ability to pay, but choose not to. It has been conservatively estimated that personal bankruptcies cost $400 per household per year, and it takes fifteen responsible borrowers to cover the cost of one bankruptcy of convenience. The system will continue to be void of integrity if debtors persist in using it as a tool of first resort rather than a tool of last resort when all other financial options have been exhausted. Clearly, this nation's bankruptcy system is broken when it enables individuals to avoid paying their debts despite their ability to do so. What this Congress must do is to undertake genuine needs-based bankruptcy reform to require those who have the ability to repay a portion of their debts to enter a Chapter 13 repayment plan, while also preserving the historic "fresh start" in Chapter 7, for people who have fallen on hard economic times. The goal of our bankruptcy system has always been to protect those who need protecting—to provide those who experience genuine and serious financial hardship the opportunity to wipe the slate clean. What we must do is return our system back to its original mission through a simple legislative fix.

BANKRUPTCY REFORM IS A CONSUMER ISSUE BECAUSE IT PRESERVES THE "FRESH START"

Bankruptcy reform is not a Republican or a Democrat issue—it is a consumer issue. According to the National Consumer League's 1997 survey, 76 percent of Americans believe that individuals should not be allowed to erase all of their debts in bankruptcy if they are able to repay a portion of what they owe. This survey merely reflects the American public's belief that individuals should be responsible for their own actions. Our bill would help to remedy the glaring problems of today's bankruptcy system by creating a needs-based system which would continue to protect the rights of those citizens who need a fresh start, while at the same time requiring those who don't to carry their fair share of the load.

It has been argued that such an approach—a needs-based system—will disproportionately hurt low income groups. First let me say that low income debtors are simply not filing for bankruptcy in large numbers. In fact a recent study found that counties with low average incomes have the lowest bankruptcy filing rates per capita. The average bankruptcy filer earns approximately $34,000 a year.

The needs-based bankruptcy system, as outlined in the Bankruptcy Reform Act, does not prevent anyone from receiving bankruptcy relief. In fact, the needs-based approach applies only to debtors with an income of greater than 75 percent of the national median income by family size and the ability to repay at least 20 percent of total unsecured debt out of income, which exceeds what is needed to cover secured debt, prioritized unsecured debt, and living expenses. Individuals or families with an income below 75 percent of the national median income are not affected by the needs-based approach. Currently, 75 percent of the national median income for a family of four is $38,639.

Moderate and low-income families are not the target of this legislation, but they may be the victims of restricted credit if we do not fundamentally reform the present system. Because of the rise in bankruptcies, financial service companies, even credit unions, may be left with little recourse but to restrict the credit currently available to those low-income families who need it most.

CREDIT CARDS ARE NOT THE REASON FOR THE INCREASE IN BANKRUPTCIES

Despite all the anecdotal evidence to the contrary, the credit card industry is not the impetus for the bankruptcy crisis in the nation. The vast majority of individuals recognize the personal responsibility they take on in using a credit card. More than 96 percent of credit card holders pay their bills as agreed to and only 1 percent ever end up in bankruptcy. Bank credit cards represent less than 16 percent of total debt on the average bankruptcy petitions. According to a Federal Reserve Board survey last year, credit cards account for a mere 3.7 percent of consumer debt—hardly large enough to cause the bankruptcy crisis.

BANKRUPTCY REFORM ACT HAS IMPORTANT PRO-CONSUMER PROVISIONS

I am also pleased to mention that the Bankruptcy Reform Act includes a number of pro-consumer provisions. In order to provide debtors with the best possible information before they take the step of bankruptcy, the bill requires the distribution of information on bankruptcy and its alternatives to all potential filers. This is extremely important because in a study done in April of 1997 found that 50 percent of those individuals who filed for bankruptcy were not aware of their options besides bankruptcy. Of this group, 65 percent indicated they would have chosen financial counseling had they been aware of it as an option. Many people do not understand that repayment plans can often be worked out with creditors without having to file for bankruptcy. In addition, the bill provides for a test program through the U.S. Trustees office in which consumers who discharge their debts will have to attend a financial management training class. It is our hope that this class will teach consumers how to better handle their money and avoid bankruptcy in the future.

Also the bill includes a unique *Debtor's Bill of Rights*, which outlines protection from so called "bankruptcy mills" for those who legitimately need a bankruptcy's safety net. Regrettably, there are some within the bankruptcy profession operating like a mill, steering many consumers into bankruptcy without adequately informing them of their choices and the potential harm that bankruptcy can have on their future financial records. The bill of rights would require any for-profit debt counseling agency to fully disclose the services they perform and the fee for this service upfront. The bill also provides for a full refund to the consumer if he or she is not represented fairly and adequately.

I believe that the *Debtor's Bill of Rights* and the consumer protection provisions provide the correct balance needed to restore our bankruptcy system to one of fairness and responsibility.

CONCLUSION

Many in Congress have already embraced the concept of needs-based bankruptcy reform. In fact, there are currently almost 170 co-sponsors from both sides of the aisle signed on to H.R. 2500 which has been encompassed in the consumer portions of H.R. 3150. This bi-partisan bill laid the foundation for the more expansive bankruptcy reform bill, the Bankruptcy Reform Act of 1998, introduced by this Committee's distinguished Chairman and myself, and the principle sponsors of H.R. 2500, Representatives McCollum and Boucher.

A reasonable needs-based formula permits a front-end determination, prior to filing, to ascertain under which Chapter a filer should proceed. This approach preserves the Chapter 7 fresh start for those debtors unable to repay their debts. Indeed, this front-end determination improves that fresh start by ensuring improper Chapter 7 filings are prevented from entering the system and clogging up the Chapter 7 process to the detriment of those Chapter 7 filers who genuinely need fast relief. The only "losers" in a needs-based approach are those individuals who have enjoyed the safety net of Chapter 7 despite their lack of need, and they, my colleagues, do not need our protection.

I urge this Committee to expeditiously consider needs-based bankruptcy reform legislation and look forward to working with each and every one of you to accomplish this very important goal.

Thank you.

Mr. GEKAS. We thank the gentleman.

We now excuse our colleagues, with our gratitude, and expect them to stay in touch with us to proceed along the path of final passage. We thank them.

The record should indicate that we've also invited the gentleman from Michigan, Mr. Conyers, to join that panel, and we had not received an affirmation of that invitation as of this moment. But, we are told that he may join us at any time and, when he does, we'll accord him the opportunity to sit with the members.

Now, we'll turn to the first panel: The Honorable Edith Hollan Jones, Judge of the United States Court of Appeals for the Fifth Circuit in Texas; The Honorable Randall Newsome, U.S. Bankruptcy Judge, Northern District of California, and Lloyd N. Cutler, Esq., of Wilmer, Cutler & Pickering, who represents the Bankruptcy Issues Counsel.

We are pleased to have your testimony. We say at the outset that your written statements will become automatically a part of the record, without objection, and we will ask you very kindly to try to limit your oral presentation to 5 minutes. And, we'll give you some leeway, but we'll start pounding the gavel at some point.

With that, we'll ask Judge Jones to begin the testimony.

STATEMENT OF HON. EDITH HOLLAN JONES, JUDGE, UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Judge JONES. Thank you, Congressman Gekas, and the other gentlemen here.

And I want to thank the co-sponsors of the predecessor bill to the Gekas bill for not taking the recommendations of the National Bankruptcy Review Commission seriously. I was a member of that Commission, as many in this room are aware. I was the person who dissented from most of its recommendations on consumer bankruptcy, which had no merit whatsoever, and I will not dwell on them further, except to note that the split within the Commission represented what, I believe, is a very unrepresentative split regarding the background and problems that we see today with consumer bankruptcy. I can't really improve upon the statements that Congressman McCollum, and Moran, and Boucher made about the abuse of our bankruptcy system today.

It is very difficult to ask me, as a former Commissioner, much less as a judge, to try to compress 2 years of my experience on the commission into a 5-minute presentation. But, I will endeavor to do so.

The Commission heard testimony from hundreds of witnesses. We received thousands of letters. They confirmed the impression that our bankruptcy system today lacks integrity, it lacks control. It is a system in which where everyone is nominally responsible for the integrity, no one is responsible. Most debtors never see a judge. Many bankruptcy lawyers never talk to their clients. The first time they see their clients often is when they are in a herd of people in the bankruptcy courts and the lawyers raises a hand and says, "Anyone who's my client needs to step forward right now." They do not oversee the integrity of the schedules. The lawyers are not bound by rule 11, as they are in every other Federal pleading, to verify the integrity of the schedules and the statements of affairs that the debtors have to present.

Now, am I saying that every debtor is a louse and unworthy of relief? Of course not. Nor does H.R. 3150. What I am saying is that in the present system we have no way of verifying that the people who seek chapter 7 relief really need that relief.

The benefits of means testing seem to be manifest. First of all, we've got a novel problem in this country, in that we have 1.5 million filings—or that's the estimate for this year during unprecedented economic well being. This is completely novel. It demands a creative legislative solution.

Second, the means testing proposal builds on what already is means testing in chapter 13 of the Bankruptcy Code in the disposable income test. But, what it does is make that test uniform. It makes it predictable. It makes it administratively feasible because it is a test that the lawyer can apply, with his client, in their conference before the client files bankruptcy.

Finally, it is not inconsistent to have means testing in bankruptcy the same way, that we means test every other part of our social safety net in this society. Welfare, food stamps, social security, disability, medicaid—all are means tested. Bankruptcy is part of the social safety net. It ought to be means tested as well.

I support H.R. 3150. I want to make a final comment about the fact that you will hear from many representatives of the bankruptcy bar and the judiciary, and this is not personal against Judge Newsome in any way. You will hear great opposition, based on the fact that we judges will have to do much more work under this bill. I disagree with that. They haven't read the bill. They haven't applied the test. There will, of course, be a period of uncertainty as the kinks get worked out. But, generally speaking, its an objective test. It would provide a uniform test, which is something that our law sorely lacks now.

Furthermore, the argument that these judges would have more work imposed on them is exactly the argument that my colleagues on the Article III bench complained about in sentencing guidelines. We have the guideline system. It has its flaws. But, it works fairly effectively.

Means testing is not anomalous to bankruptcy. In fact, it will ensure the integrity of our bankruptcy system. And, a final word on the data. No, we do not know all the data about bankruptcy. But, the studies that are coming out confirm that some people can repay some portion of their debt. Why in fairness should they not be required to do so? Nobody has successfully answered that question for me, and it seems to me that is the burden that the opponents of means testing must bear.

Thank you so much for your time.

[The prepared statement of Judge Jones follows:]

PREPARED STATEMENT OF HON. EDITH H. JONES, JUDGE, UNITED STATES COURTS OF APPEALS FOR THE FIFTH CIRCUIT

Thank you for inviting me to speak today on the need for reform of our nation's bankruptcy laws. It was an honor to serve at the request of Chief Justice Rehnquist on the National Bankruptcy Review Commission during our two-year tenure. The Commission offered me an unparalleled opportunity to consider questions that had bothered me ever since I practiced bankruptcy law, largely but not exclusively in business cases, for over five years before going on the bench.

As you may know, the Commission split 5–4 on its most important recommendations, and I wrote several of the dissents. I am pleased to see that Congressmen Gekas, Moran, McCollum, Boucher and their many cosponsors saw through the fog created by the majority report and realized that there is a serious, immediate need for real bankruptcy reform. Consequently, unless you desire it, I will not dwell on the Commission's report but on insights I gained from the Commission's fact-gathering process that support the pending Bill, H.R. 3150, the Gekas-Moran Bankruptcy Reform Act of 1998.

I. CONSUMER BANKRUPTCY

The following remarks can be summarized in three propositions. First, bankruptcy has reached epidemic proportions in this country. Second, the bankruptcy reforms envisioned by H.R. 3150 will encourage bankruptcy as a last resort rather than a first resort for income-earning debtors, without hurting the truly deserving. Third, these bankruptcy reforms will especially help the poor and minorities by decreasing the cost and increasing the availability of credit.

A. The Need for Reform

Personal bankruptcy filings have reached epidemic proportions. In 1980, just after the Bankruptcy Code was passed and amid an economic recession, annual filings stood at slightly over 330,000. Last year, in 1997, following a sustained period of economic growth, the number of filings reached 1.3 million consumer bankruptcies. There has been a 60% increase in the last 5 years!

We now confront an anomalous situation in which unemployment is falling but bankruptcy is rising. Opponents of reform have no response to the question—What will happen to our credit-driven economy when the next downturn occurs? Given present trends, and without reform, the personal bankruptcy filings can be expected to spiral out of control, dramatically affecting the availability of credit and aggravating economic problems.

None of the hundreds of experts and witnesses before the Commission could fully explain the bankruptcy epidemic. But no one suggests that the filings are any longer demographically confined to the lowest socioeconomic groups or those who have irrevocably lost their jobs or have become physically disabled. Seeking bankruptcy protection has become more and more common among fully employed middle- and upper-class people. More disturbingly, many debtors are now filing for bankruptcy protection *before* actually defaulting on debt. As Congressman Pete Sessions recently described it, bankruptcy is "for some people . . . just another tool of financial management."

Further, contrary to the inferences drawn by many bankruptcy practitioners and academics before the Commission, the rapid increase in filings cannot mean that the bankruptcy system requires amendment to soften its impact on debtors. If it were unfair to debtors, there would not be a vast migration toward bankruptcy when, as we see today, employment prospects seem brighter than ever.

In part, the bankruptcy boom springs from the intention of the 1978 Code. The drafters of the Code, some of whom still actively influence Congress, consciously sought to remove the social stigma from filing bankruptcy. The Code, for instance, replaced the term bankrupt with "debtor" and described a case filing as seeking an "order for relief." The Commission process confirmed the following facts. Filing bankruptcy is easy and relatively inexpensive. Most debtors never appear before a judge. Sanctions are rarely imposed for misuse of bankruptcy. Standards of debtor conduct are not enforced.

Social and moral changes have also accelerated the trend to accepting bankruptcy as a feature of "normal" life. Movie stars, governors and "famed heart surgeons" have undergone bankruptcy to discharge their debts, so why shouldn't ordinary Americans? Gambling debts have caused dramatic increases in some jurisdictions. Bankruptcy is actively promoted in lawyer advertising and self-help literature. To take just two examples, a book titled *Debt Free!* offers "Your Guide to Personal Bankruptcy without Shame,"[1] and my grocery store features a $16.99 guide to personal bankruptcy.

A prominent bankruptcy judge once commented to me that when he graduated from law school around 1950, there were two things that "people never did: divorce and bankruptcy." This comment captures an insight often overlooked by those who make their living from the bankruptcy process. Declaring bankruptcy has a moral dimension. To declare bankruptcy is to break one's contracts and agreements. Our society cannot function if it becomes widely acceptable to do this. In fact, the sanctity of contract—enforced by the rule of law—animated the growth, development and prosperity of the Western world. Enforceable contracts permit economic freedom to flourish and provide opportunity for all precisely because they are the product of voluntary action rather than state-sponsored preferences, priorities, or corruption. To regress from a norm in which contracts are enforceable threatens the foundation of our economic engine.

Beyond contracts and mere transactional effects are the distrust, disaffection and misunderstanding that erupt in a society which broadly permits such promise-breaking as occurs in bankruptcy. The large number of heartfelt and often poignant letters received by the Commission from creditors who were short-changed by debtors in bankruptcy attests to this sad reality. No doubt, bankruptcy is a necessary feature of Judeo-Christian capitalist societies, but to advance the equally moral goals of protecting social cohesion and general welfare, it cannot become more than an act of grace available to those who are truly and seriously needy. We must not, to paraphrase Senator Moynihan and former Treasury Secretary Lloyd Bentsen, "define bankruptcy deviancy downward."

Finally, bankruptcy has a macroeconomic effect on the cost and availability of credit. Graphically demonstrating this impact are hundreds of letters the Commission has received from credit unions. Credits unions' losses in bankruptcy directly affect their loan rates and practices, and in the past three to four years, those losses have dramatically increased. Other lenders, large and small, have had similar experiences. The rising number of bankruptcies will increase interest rates for all consumers and will cause businesses to scrutinize credit more closely and discriminate among borrowers. The real losers as the supply of consumer credit tightens are those at the bottom of the ladder. Ultimately, a bankruptcy system that is too hospitable to debtors hurts bill-paying customers. It should be an obvious point that bankruptcy as a social welfare program is subsidized by creditors and, through them, by the vast majority of Americans who struggle and succeed to make ends meet financially.

B. Means-Testing

The time for means-testing access to bankruptcy relief has arrived. That is to say, debtors who are income earners and at least relatively well-off should be required to agree to repay some portion of their unsecured, non-priority debts in exchange for receiving a "fresh start" though discharge. These selected debtors should be channeled into Chapter 13 debt payment plans rather than being permitted to discharge all unsecured debts in Chapter 7.

Means-testing is not novel to bankruptcy. Moreover, to describe it as philosophically abhorrent to bankruptcy, as opponents do, is illogical and unrealistic.

Means-testing is not a novel concept because the Chapter 13 disposable income test already embodies a form of needs-based relief. The difference is that Chapter

[1] Caher & Caher, *Debt Free!*, Henry Holt & Co. publishers, 1996.

13 isn't required for those who have the ability to pay, and it is unevenly applied throughout the country.

Means-testing is not philosophically contrary to the bankruptcy system, properly viewed as a part of our social safety net. In every other government program that furthers social welfare—social security disability, food stamps, Medicaid, school lunches, etc.—benefits schedules and eligibility are means-tested to ensure that only those who really need help receive public largesse. In no social program other than bankruptcy is the beneficiary permitted to make a unilateral determination of the amount of relief desired.

Finally, means-testing is not inimical to bankruptcy relief simply because it hasn't been required before. Such hide-bound opposition overlooks present-day reality: the bankruptcy epidemic is also novel in our history. Dramatic problems demand creative solutions.

The issues in means-testing bankruptcy eligibility are simplicity, judicial and administrative feasibility, and fairness.

H.R. 3150 satisfies these standards. The bill measures income against fixed statistics for regional costs of living that are already in use by the IRS, social service agencies and some Chapter 13 trustees. The measures for income and expenses are objective, and eligibility for Chapter 7/13 relief can be easily determined in the debtor's first consultation with his lawyer. If the debtor and lawyer provide accurate information to the trustee, judicial intervention will rarely be necessary. Means-testing will not even apply to the majority of debtors whose income falls well below its threshold of approximately $38,000. Moreover, an "extraordinary circumstances" provision allows the court to determine when a debtor, although nominally in the higher income-earning range, experiences compelling need, such as a family illness, that mandates Chapter 7 relief.

Other bills pending in Congress address means testing by modification of § 707(b) of the Bankruptcy Code. Those bills would require a creditor to file a lawsuit, or adversary proceeding, against a debtor who the creditor thinks can repay a threshold amount of unsecured, nonpriority debt. This is a plausible alternative, as my dissent from the Commission report stated, but I do not think it preferable to the up-front, uniform test embodied in H.R. 3150. First, the § 707(b) approach leaves it to each bankruptcy court to determine in each case what is an acceptable level of household expenses and repayment ability for a debtor. Non-uniform results are certainly more predictable here than through the up-front eligibility determination. Second, as this remedy proceeds through litigation, creditors will face a costly hurdle to proving a debtor's ability to repay. Some bankruptcy judges who commented to the Senate on a § 707(b) modification endorsed it precisely because they foresaw few cases being brought under it. If this is correct, § 707(b) will not be an effective remedy for bankruptcy abuse by those with an ability to repay.

The best way to defend the up-front eligibility test set out in H.R. 3150 is to address objections that have been raised to it. I will summarize these objections and my responses.

1. Means-testing will impose costs and burdens on the judiciary, trustees and attorneys. Response: First, there may be increased costs while the technical details of the law are worked out, but they should be minimized by the objective test used in H.R. 3150. Second, means-testing will be relevant for only about 20% of consumer debtors. Third, increased costs can be defrayed by higher filing fees or trustee fees. Fourth, any reform that curtails bankruptcy abuse will carry some initial costs.

2. Means-testing is "unfair." Response: This is incorrect. Means-testing is a *progressive* reform in the sense that our tax system is progressive. The more you have the ability to repay, the more you ought to repay. It is not "unfair" to impose a price on higher income-earning debtors in exchange for the immense benefit of the automatic stay and fresh start discharge.

3. Means-testing "can't work" because debtors' schedules are unreliable. Response: This widely-voiced concern proves the need for reform! The objectors are admitting that the present system lacks effective oversight. If debtors are smart enough to "game" the system, they must be understating their assets and ability-to-repay.[2] H.R. 3150 enhances the reliability of debtor's filings by requiring pay stubs, tax returns and other documents to be furnished timely to the trustee and by requiring random audits.

4. Using standard levels of expenses to measure debtors' ability to repay is unfair. Response: On the contrary, this bill incorporates standards already in use by gov-

[2] *See, e.g.*, Lynn M. LoPucki, Common Sense Consumer Bankruptcy, 71 American Bankruptcy Law Journal, 461 (1997); Judge Robert E. Ginsberg, Commission Vice-Chairman (Bankruptcy schedules are the "great American novel.")

ernment agencies. Dollar-indexed tax exemptions are also "unfair" geographically but perceived as necessary to achieve predictability and uniformity.

5. Means-testing does nothing to control bankruptcy fraud and may encourage it by giving debtors incentives to increase their expenses or secured debt. Response: I agree that means-testing does not reach certain forms of bankruptcy fraud and abuse. The Code addresses some of those abuses, and H.R. 3150 contains additional sanctions. Further, some debtors may misuse a means-testing system just as they do the present law, but that is not a reason to reject needed change, and H.R. 3150 contains provisions to discourage such misuse.

6. Requiring some debtors to repay a portion of their unsecured debt violates the Thirteenth Amendment. Response: No court or serious scholar has accepted the argument on involuntary servitude.

7. Means-testing excludes other reforms. Response: Not at all, as H.R. 3150 shows. We still need reforms to enforce accuracy in debtors' schedules, limit repeat bankruptcies, and clarify rights of secured and unsecured creditors.

8. Chapter 13 doesn't work, because most debtors never complete their payments, and debtors in "forced" Chapter 13 cases will perform worse. Response: I disagree, because the higher income-earning debtors will not get a discharge if they do not complete their plans. Without a discharge, creditors will have incentives to pursue these well-off debtors.

9. "No one" in the bankruptcy system has a realistic ability to repay debt. Response: If this extraordinary blanket statement were true, then a means test, particularly the modest means test imposed by H.R. 3150, would have no adverse impact at all. It is contrary to human nature, however, to suppose that when the government offers a "free" discharge from debt, *no one* will take undue advantage of that system. The real question is how best to identify those who are taking advantage of bankruptcy and to make them pay for the privilege.

10. There are insufficient or unreliable data to support means-testing. Response: On the contrary, at least three recent studies have concluded, based on information available in debtors' actual bankruptcy filings, that a significant portion of debtors are able to repay some of their unsecured, non-priority debt. The last comparable study that might show otherwise was performed in 1981, well before recent dramatically increased filings. Many, many letters and articles received by the Commission emphasized that income-earning debtors are filing bankruptcy as a matter of convenience rather than dire necessity. As I see it, the empirical studies can't tell Congress exactly what means test to adopt, but they confirm these communications. Congress often legislates on principle, and many laws impose means-testing requirements as a matter of principle even though no precise data are available. At some level, means-testing is necessary and fair. The no data argument is a red herring.

Means-testing is a modest attempt to restore even-handedness in the only social program our society now has which is guided entirely by debtor self-selection. The issue is like welfare reform, and the consequences are just as great.

C. Other Reforms

The Bankruptcy Commission members uniformly recognized the existence of particular forms of bankruptcy abuse not related to ability-to-repay. Three of those abuses are the widespread inaccuracy of debtors' schedules and statements of affairs, serial bankruptcy filings by individual debtors or groups of debtors, and excessive exemptions. We agreed on the need to study debtor education programs and encourage debtors' counsel to provide more adequate representation to their clients. The four dissenting Commissioners commented upon additional sources of problems, such as unclear provisions relating to secured creditors' rights, loading up on debt just before bankruptcy, and vague valuation standards for collateral.

H.R. 3150 responds to all of these concepts with provisions that strengthen and clarify the law. These changes will enhance the integrity of the bankruptcy system for debtors and creditors and, by clarifying the law, will reduce transaction costs in bankruptcy. All of these amendments stand fully independent of means-testing and should receive widespread support.

II. DIRECT APPEALS

The provision in H.R. 3150 for direct appeals of bankruptcy decisions to courts of appeals is also a valuable contribution to bankruptcy practice. Every group involved in the Commission's work, except the U.S. Justice Department, endorsed direct appeals. This measure is necessary to ensure uniform application of bankruptcy law.

The current two-tiered scheme of appeals includes a stop at the district court. Bankruptcy law suffers from a lack of definite circuit-wide rulings because the parties cannot afford to appeal twice. This bill's direct appeal mechanism ameliorates any constitutional problem by modeling bankruptcy appeals after the provision for appeals from magistrate judge decisions. Finally, as a judge who has previously testified in the Senate on our appellate case load, I can state with some confidence that the increased number of bankruptcy appeals will not impose an undue burden on our courts. Civil appeals in the Fifth Circuit have decreased steadily for six years, and we anticipate a decline in prisoner section 1983 and habeas appeals following Congressional reform laws that are now taking effect.

III. BUSINESS PROVISIONS AND CLARIFICATIONS OF CONSUMER BANKRUPTCY LAW

In the interest of conserving time, I state my categorical support for the provisions of H.R. 3150 that would expedite small business bankruptcies and single-asset real estate cases, clarify parties' rights where the law is currently ambiguous, and streamline pre-packaged plans of reorganization.

Please do not be misled: these provisions are all workable, practical and in many cases they simply nationalize bankruptcy court and U.S. trustee practices in the most efficient jurisdictions. As we learned during the Commission process, much of the opposition to bankruptcy reform emanates from those with a vested interest in the system or whose ideology simply favors debtors. But these other provisions of H.R. 3150 are modest and fair measures that would reduce costs, delay and the geographic non-uniformity of current law.

Mr. GEKAS. We thank you, Judge Jones, and turn to Judge Newsome for his testimony.

STATEMENT OF HON. RANDALL J. NEWSOME, U.S. BANKRUPTCY JUDGE, NORTHERN DISTRICT OF CALIFORNIA

Judge NEWSOME. Mr. Chairman, members of the subcommittee, ladies and gentlemen, allow me to express my appreciation for the invitation to testify here today.

During my 5 minutes, I'd like to highlight a couple of points from the data I've collected. I hope you have a copy of it. It is a survey of 100 chapter 7 cases that I personally reviewed in Oakland, over the course of the last couple of months. It has a couple of typos. I've sent an errata sheet. I hope you can take a look at it at some point.

Mr. GEKAS. Yes, and we will include that as part of the record, unless it's already made a part of the record through your statement.

Judge NEWSOME. I don't know whether it's a part of the record or not, but I appreciate that, Mr. Chairman.

Mr. GEKAS. Well, we will make it so. Thank you.

Judge NEWSOME. Even for those of us who review bankruptcy schedules on a daily basis, the amount of credit card debt in these cases is shocking. It amounts to some 52 percent of all of the unsecured non-priority debt listed in the schedules. I am speaking here, solely, about all-purpose credit cards, such as Visa, Mastercard, American Express, and Discover—not lines of credit, not department store cards, not gasoline cards.

The average household in these cases has unsecured credit card debt amounting to almost $25,000 per household. There may be many reasons why the debtors in the survey incurred so much credit card debt. I don't have time at this point to point to any specific cases.

You might want to take a look at case number 44 and case number 48. Case number 44 involved an Asian person, who does not speak English, who makes $600 a month on SSI and who had five credit cards and ran up a bill of $42,000 on them, probably to live.

The other case is 48. It involved a husband and wife, self-employed, who ran up $177,000 on 34 credit cards. Wouldn't you like to know what the people were thinking who issued the last 20 of those?

There may be many reasons, as I've indicated, why the debtors in the survey incurred so much credit card debt. Some of them understandable and, perhaps, even justifiable. Some of them not excusable, and, perhaps, not even lawful. Section 523(a)(2) of the Code, as presently written, is designed to root out those who have committed fraud in incurring debt. Judgments under the statute are handed down every day against debtors who are proven to have engaged in credit card fraud. No one could argue with the proposition that borrowers should borrow and use credit responsibly. Presumably, no one would argue with the proposition also that lenders should lend responsibly, pursuant to prudent lending practices. From the looks of these cases, Mr. Chairman, there is plenty of irresponsibility to go around.

These two cases may stand out more prominently than the other 98, but they certainly are not isolated instances in this 100 case survey, as I'm sure you'll see. Of all the numbers that have been thrown around in the debate over bankruptcy reform, the one I fear the most, but have not yet seen, is the estimate of the number of people in this country who are in the same financial shape as these 100 debtors, or not far from it, but who have not filed a bankruptcy. Perhaps I'm just an alarmist. My job tends to make you that way. But, the thought sends shivers down my spine.

Now, you can change the bankruptcy laws to try to address this problem. You could even make all credit card debt non-dischargeable, which is pretty near what H.R. 3150 does, but it probably won't do anybody much good. You probably won't measurably improve the credit card companies' collections. Ask a few creditors' attorneys about their success rate in collecting on non-dischargeability judgments. They will tell you, almost uniformly, that they're usually not worth the paper they're written on—even after the debtor has discharged all of his other debts. The money's gone. The debtor is tapped out. There's just no more money to be had.

The only question is, what do we do now? If you, in essence, chain them to their indebtedness for life, you probably won't do the economy any good, and, who knows, you might even do it some harm. If the creditors hound them too much, they'll try to run and hide; they do. They will become financial desperados, in essence. In my view, the last thing we need in this country is millions of financially desperate people running around with no hope of relief.

Perhaps the credit card problem is solvable on the lender's end. Perhaps, if left alone, the free marketplace for consumer credit will correct itself through tougher lending standards and smaller extensions of credit. There is some indication that that correction is already underway—to the benefit of lenders, debtors, and the country as a whole.

My time is up. I would only respond—mention means testing in this sense. I have read the bill. I have attempted to apply the formula. It doesn't work very well. That is my opinion, with all due respect, Mr. Chairman.

[The prepared statement of Judge Newsome follows:]

PREPARED STATEMENT OF HON. RANDALL J. NEWSOME, U.S. BANKRUPTCY JUDGE, NORTHERN DISTRICT OF CALIFORNIA

Mr. Chairman and distinguished members of this subcommittee, I am honored to have been invited to testify before you regarding the important issue of bankruptcy reform. By way of background, I received a B.A. from Boston University in 1972, and a J.D. from the University of Cincinnati College of Law in 1975. I was appointed a United States Bankruptcy Judge for the Southern District of Ohio in Cincinnati on October 15, 1982, and was reappointed to a fourteen year term on that bench in 1986. I subsequently applied for and was appointed to my present position in 1988. I have sat as a visiting judge in the Western District of Washington, the District of Arizona, and the Central District of California. I have presided over cases ranging from the third largest chapter 11 case ever filed (Baldwin-United Corporation and over 200 of its subsidiaries) to the smallest chapter 7 and 13 filings, and virtually everything in between. It is no exaggeration to state that I have reviewed the schedules and statements of affairs of thousands of debtors over the last 15 years.

Let me preface my remarks by emphasizing that I appear before you representing only myself. Although my colleagues' views might be aligned with mine on numerous issues, it almost goes without saying that we wouldn't agree on everything. We never do. One thing I think we would agree on is that there are abuses occurring in the bankruptcy system. We see them all too frequently. No one is more concerned about them than we are, and no one works harder to stem them than we do. Regardless of my views on the bankruptcy legislation presently under consideration, I applaud your efforts to correct some of the problems in the present law.

My goal in appearing here today is not to critique H.R. 3150. I am quite concerned about a number of issues, such as the potential overall cost of the bill, the virtual elimination of the chapter 13 super discharge, and the impact that this legislation will have on the bankruptcy courts' workload. I leave those subjects for others to address. In particular, I sincerely hope that Judge Robert Hershner, President of the National Conference of Bankruptcy Judges, will be given an opportunity to testify before you regarding the potentially significant increase in the courts' workload.

My intent here today is to make a small, but I believe important, contribution to the record of these hearings by presenting you with the results of a survey I personally conducted of 100 randomly-selected chapter 7 cases from the division in which I sit. One of the problems which plagued the National Bankruptcy Review Commission, and which continues to plague us today, is the lack of reliable, timely data upon which to make conclusions and propose reforms. The Commission took thousands and thousands of pages of testimony from dozens of witnesses, and received additional thousands of pages of position papers and other documents. At best, some of what was submitted could be termed an educated guess. At worst, some of what it received was self-serving conjecture and hyperbole. Particularly in the area of consumer bankruptcy, the Commission was frustrated in its efforts to carry out its assignment by the lack of reliable empirical research.

Unfortunately, this subcommittee is confronted with a similar lack of data. As I understand it, you are being asked to make decisions which may have profound effects upon the nation's economy and social fabric essentially based upon one empirical study, that being "Personal Bankruptcy: A Report on Petitioner' Ability-to-Pay" by Barren and Staten. While certainly a good first step, this study was funded by the credit industry, a group which would not meet the disinterestedness test, to use bankruptcy parlance. You are entitled to, and should insist upon, raw data from disinterested sources from which you may draw your own conclusions regarding the state of the bankruptcy system. Hopefully, the survey data I have presented to you today will be viewed as a first, but by no means the final, step towards filling the empirical void.

My methodology for conducting this survey is set forth in a separate document attached to the data reports, and will not be repeated here. The cases which the Oakland clerk's office pulled were filed over nineteen separate months between January 1, 1996 and September 30, 1997. The debtors who filed those cases come from thirty different cities in Alameda and Contra Costa counties, which comprise the area served by the Oakland Division. Some 65 of the cases were filed as voluntary cases by individuals under 11 U.S.C. § 301, and the rest were filed as husband-and-wife petitions under § 302.

The debtors in this survey are not a picture of prosperity. According to the Bureau of the Census, the median income for California as a whole in 1995 was 38,780. The press of time prevented me from obtaining the median income figure for the relevant counties, but suffice it to say that the Bay Area of California has one of the highest cost-of-living figures in the country. The average gross income from all sources for the 100 households in this study is about $32,800. Of the 36 households who have children residing therein, the average income from all sources is approximately $48,611. Forty-eight households were earning less than $30,000 per year as of the date of filing. Six households receive all or some of their income from pensions or Social Security. Seven people were reported as disabled. Ten people were reported as unemployed, and a few held only temporary jobs. Fifty-eight households were renters, and paid average rent of $614. Thirty-three were homeowners, and their total average mortgages were about $171,142.[1]

The nature of the motor vehicles owned by these debtors reinforces the view that by and large, they are not living luxurious lifestyles. The average model year for the 129 vehicles listed in the debtors' schedules is about 1987. By my count, only 43 have secured vehicle debt. The rest are making do with older cars. Given the legendary length of commutes to work in the Bay Area, most debtors are probably spending an excessive amount of their income just keeping their cars in running order.

One of the most striking figures in this data is the amount of credit card debt owed. As the explanatory notes to the data indicate, this calculation does not include anything other than all-purpose credit cards such as Visa, MasterCard, American Express and Discover. When in doubt, I excluded debts that I was uncertain represented credit card indebtedness. Lines of credit were also excluded. Even using a conservative approach, credit card debt constituted fully 52% of the total unsecured nonpriority debt listed. The average amount of credit card debt per household was a staggering $24,800.[2] The average number of such credit cards held by debtors was about 6. By comparison, retail store and gasoline card debt averaged only $526, and the number of such cards held by debtors was less than three. Assuming that the primary objective in filing a chapter 7 case is to obtain relief from unsecured indebtedness, it is fair to state that credit card debt in the overwhelming majority of these cases was not merely a factor in the debtors' decision to file, it was the prime, and indeed in many cases, the sole reason for filing.

After compiling the data you have before you, I attempted to apply the proposed means testing formula in H.R. 3150 to a sample of the cases I reviewed. I encountered significant problems in doing so, and a few unpleasant surprises in the results. Section 101 sets forth a new subpart (h) to § 109 which essentially sorts out those who may file under chapter 7 and those who must file under chapter 13. If a debtor has more than 75% of the "national median family income for a family of equal size," has more than $50 in "projected monthly net income", and has sufficient projected monthly net income to pay at least 20% of her unsecured nonpriority debt, then she may not file a chapter 7 case. New § 101(40A) defines national median family income to be the Census Bureau figures as of January 1 of the previous calender year. I will assume that those figures exist, but I was unable to find them.

The crux of the means test is in the definition of projected monthly net income. This figure is arrived at by subtracting the following from the "currently monthly net income" as defined in § 101(10A):[3]

(1) "the expense allowances under the applicable National Standards, Local Standards and other Necessary Expenses allowance . . . in the area in which the debtor resides" promulgated by the Internal Revenue Service;
(2) average monthly payments to secured creditors;
(3) average monthly payments to priority creditors;
(4) such other expenses as the debtor establishes are justified by extraordinary circumstances.

I instructed my law clerk to contact the IRS to obtain a copy of the National Standards. However, our local IRS office apparently has never heard of them. We then obtained over the Internet what appear to be the publications described in the statute. They consist of collection financial standards "to help determine a delinquent taxpayer's ability to pay a delinquent tax liability." There are National Standards for food, clothing and other items; National Standards for the monthly cost of purchasing an automobile, and Local Standards for operating costs and public transportation; and Local Standards for housing and utilities.

[1] Debtors who were part owners of their residence were not included in this calculation, nor were debtors whose total mortgages included those on nonresidential real property.

[2] The debtors in case 48 ran up a whopping $177,095 in credit card debt. If this case is excluded from the calculation, the average is $23,230 per debtor.

[3] § 101(10A) does not state whether "income" is gross or net after withholding taxes are deducted. I assumed it was gross.

If in fact these are the standards the statute is referring to, I believe they are fatally flawed and demonstrably unfair. For example, refer to case 15. This is a family of four with two children, ages 5 and 3 living in the upper-middle class suburb of Danville. The father is the sole provider, and the family's gross monthly income is $7,740. The monthly mortgage on the family home is $2,145, which does include taxes, but does not include insurance. Homeowner insurance in the Bay Area, even without earthquake coverage, is very expensive. The local standards for housing expense also include utilities, but do not break these expenses out. Actual mortgage payments are deductible under the formula, but utilities are not provided for. It is entirely unclear whether they can be deducted, and in what amount, if the debtor is a homeowner.

The debtors' only other secured debt payments amount to $570 per month on two cars (one of which he intends to surrender). His payroll taxes are $2,322. The IRS local standards for automobile operating costs on two cars is $373. I was unable to determine what this number includes, but it would barely cover gas, tolls and parking in the Bay Area, all of which are inordinately expensive. Automobile insurance alone would consume most of this amount.

In addition to their mortgage, car and tax payments, the debtors would be entitled to a deduction under the formula for "food, clothing and other items." The National Standard for a family of four within the debtors' income range is $ 1424. Again, the standards are silent as to how this number was arrived at and what is included.

The mathematical calculation for determining chapter 7 eligibility for the debtors would be as follows:

$7,740—Gross Income
−2,145—Mortgage
− 570—Car payments
−2,322—Payroll taxes
− 373—Auto operating allowance
−1,424—Food, etc. allowance

\+ 906.

There may be other taxes that the debtor could deduct, but they probably would not amount to more than $200 per month, and utilities have not been factored in because the IRS allowance for them cannot be determined. Assuming the net current monthly income with a deduction for utilities is $600, debtors clearly are not qualified for chapter 7 relief, since they could pay at least 20% of their almost $60,000 in unsecured debt over 60 months as well as all of their small priority tax debt.

What about the fact that the debtors calculate gas and electric, water, telephone, cable and garbage at $422 per month? The telephone bill at $146 per month may be high, but the rest of the utilities look appropriate. Should the trustee have them bring in a year's worth of telephone bills to establish extraordinary circumstances? How about the $250 in medical expenses the debtors claim in Schedule J, or $119 in recreation, or $100 for home maintenance, or $191 for homeowners insurance, or $95 in life insurance, or $164 in automobile insurance? Shall we effectively prohibit the debtors from making charitable contributions? Some church denominations require tithing of up to 10% of their members' gross income. There appears to be no room in this formula for that sort of contribution. Where does health insurance fit into the formula? Must the debtors simply forego having any for 5 years? What about 401(k) and other pension contributions? They're taken out of payroll, but the formula does not allow them as a deduction. The same holds true for union dues. What about child care? Neither the IRS nor the formula addresses this major expense for young working families. What about tuition and other expenses of parochial or other private schools? What about assistance with a child's college education? To what extent are we to intrude into the debtors' privacy as the cost of eligibility for chapter 7 relief? It does not require extended examination to determine that the IRS standards are woefully inadequate for the task they've been assigned.

Assume that on the same day that the chapter 7 trustee shows case number 15 to the chapter 13 door, case number 48 is also heard. This case involves a husband and wife with three children ranging in ages from 5 to 19. The debtors are both self-employed, and their businesses generate combined income of $13,935 per month. Their business expenses are claimed as $7,856 per month. Are these deductible under the formula? The statute doesn't say. Assuming they are, their total gross income per month is about $6,079. They lease a 1991 Mercedes 420SEL and are purchasing a 1990 BMW 525i. The statute only allows deductions for secured obligations. It says nothing about car leases, which typically are a hybrid of secured and unsecured obligations. Assuming that the Mercedes lease can slip under the definition of secured, the debtors would be entitled to deduct all of their $916 car payments per month. Their mortgage is $1960 per month, real estate taxes are $250, and their income taxes are $2,000. Add as deductions under the IRS guidelines $1,619 for food, etc. and $373 for auto operating expenses, as well as $300 for utilities (even though the guidelines don't say we can), and you come up with minus $1,339 in current monthly net income. Even if their expenses could be pared by the trustee to show a positive $1,000 per month cash flow, they could still choose chapter 7. They have $44,766 in priority income taxes which must be paid in full. They also have $210,720 in unsecured nonpriority debt,[4] over $177,000 of which is credit card debt. Obviously, they will fall far short of the 20% threshold, even if $1,000 per month is paid into the plan.

How do we explain to the debtors in case number 15 why the debtors in case number 48 are entitled to chapter 7 relief, but they aren't? Indeed, how do we explain that to the debtor in case number 31? She is a single mother who is a teacher in the Oakland school system. She must commute about 25 miles each way from her home in Antioch to work. She lists as her only vehicle a 1979 Volvo with 160,000 miles. She lists an 18-year old son as her only dependent. Her expenses include $400 per month for college tuition and books. Her gross income is $4,399 per month. Her deductions under the means testing formula would be as follows: her mortgage is $1,451 including taxes (which are deductible) and insurance (the deductibility of which is not clear). She lists no other secured debts. Her payroll taxes are $955 per month. She is only entitled to an automobile operating allowance under the IRS standards, since she has no car payment. That allowance for one car is $320. Assuming another $300 for utilities is allowable (again, unclear) and with the IRS food, etc. allowance of $927 for a family of two, her projected monthly net income is $746. Sixty months times this amount is $44,760. She easily meets the 20% threshold, and thus is not eligible under chapter 7, since she owes no taxes or other priority debt, and her nonpriority unsecured debt is only $25,556.

With the raw data before you, the committee can do its own means testing calculations as to any of these 100 cases.[5] What you may find, among other things, are the following:

(1) Under this proposal, homeowners may be penalized and renters may benefit. That is because the IRS standards will more easily cover the rent and utilities of a renter than a property owner.

(2) The more debt that is incurred prior to filing, the more likely the debtor will qualify for chapter 7. Perverse as it may seem, I can envision debtor's counsel advising their clients to buy the most expensive car that someone will sell them, and sign on to the biggest payment they can afford (at least until the bankruptcy is filed) as a way of increasing their deductions under § 109(h). The tax game of maximizing deductions will become a way of life in bankruptcy court.

(3) People's circumstances and problems do not fit easily into a matrix. Means testing will discriminate unfairly among those who are similarly situated.

In conclusion, I urge this distinguished subcommittee to go forward with legislation that will provide data on the reasons for the steadily-rising numbers of consumer bankruptcies, to pursue some sort of auditing process for consumer cases which is adequately funded, and to pass the chapter 11 amendments that are contained in H.R. 3150. Action on the consumer amendments should be deferred until sufficient data has been gathered and analyzed by an independent, disinterested party. Thank you again for giving me this opportunity to be heard.

Mr. GEKAS. We thank the gentleman.

And, now we turn to Mr. Cutler. By the way, Mr. Cutler, in your resume, why isn't there mention of frequent appearances on "Nightline" or "Meet the Press?" I didn't see such a notation.

STATEMENT OF LLOYD N. CUTLER, ESQ., WILMER, CUTLER AND PICKERING, REPRESENTING THE BANKRUPTCY ISSUES COUNCIL

Mr. CUTLER. I was trying to keep away from those as much as I can. [Laughter.]

[4] Since the unsecured debt limit in chapter 13 is $250,000, they would not be eligible for chapter 13 in any event.

[5] The figures for secured car payments were mistakenly excluded from my data, but a monthly payment number can be extrapolated from the total vehicle debt. I also failed to note whether insurance and taxes were included in the mortgage payment. I gladly will provide this and any other data you seek.