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Bankruptcy

Bangladesh

Beijing
- Beijing

Belarus

Belfast

Ela Bhatt

Benazir Bhutto

Berenson

Berlin

Bernardin

Veronica Biggins

Bilderbergs

Bernard Van Leer Foundation

Blue Room
- White House Preservation

Susan Blumenthal

Bolivia

Bolton Music Co.
- Arts

Bosnia

Bosnia

Bosnia

Bosnia

file
Bankruptcy

FINAL VOTE RESULTS FOR ROLL CALL 115

(Republicans in roman; Democrats in *italic*; Independents underlined)

H R 833 YEA-AND-NAY 5-MAY-1999 7:07 PM
QUESTION: On Passage
BILL TITLE: Bankruptcy Reform Act of 1999

	YEAS	NAYS	PRES	NV
REPUBLICAN	217			5
DEMOCRATIC	96	107		8
INDEPENDENT		1		
TOTALS	**313**	**108**		**13**

--- YEAS 313 ---

Aderholt	*Goode*	*Pallone*
Andrews	Goodlatte	*Pascrell*
Archer	Goodling	*Pastor*
Armey	*Gordon*	Paul
Bachus	Goss	Pease
Baird	Graham	*Peterson (MN)*
Baker	Granger	Peterson (PA)
Ballenger	Green (WI)	Petri
Barcia	Greenwood	*Phelps*
Barr	Gutknecht	Pickering
Barrett (NE)	*Hall (TX)*	*Pickett*
Bartlett	Hansen	Pitts
Barton	Hastert	Pombo
Bass	Hastings (WA)	*Pomeroy*
Bateman	Hayes	Porter
Bentsen	Hayworth	Portman
Bereuter	Hefley	*Price (NC)*
Berkley	Herger	Pryce (OH)
Berry	*Hill (IN)*	Quinn
Biggert	Hill (MT)	Radanovich
Bilbray	Hilleary	Ramstad
Bilirakis	*Hinojosa*	*Rangel*
Bishop	Hobson	Regula
Blagojevich	Hoekstra	*Reyes*
Bliley	*Holden*	Reynolds
Blumenauer	*Holt*	Riley
Blunt	*Hooley*	*Rivers*
Boehlert	Horn	*Roemer*

Boehner	Hostettler	Rogan
Bonilla	Houghton	Rogers
Bono	*Hoyer*	Rohrabacher
Boswell	Hulshof	Ros-Lehtinen
Boucher	Hunter	*Rothman*
Boyd	Hyde	Roukema
Brady (TX)	*Inslee*	Royce
Bryant	Isakson	Ryan (WI)
Burr	Istook	Ryun (KS)
Burton	*Jefferson*	Salmon
Buyer	Jenkins	*Sandlin*
Callahan	*John*	Sanford
Calvert	Johnson (CT)	Saxton
Camp	*Johnson, E. B.*	Scarborough
Campbell	Johnson, Sam	Schaffer
Canady	Jones (NC)	Sensenbrenner
Cannon	*Kaptur*	Sessions
Capps	Kasich	Shadegg
Cardin	Kelly	Shaw
Castle	*Kennedy*	Shays
Chabot	*Kind (WI)*	*Sherman*
Chambliss	King (NY)	Sherwood
Chenoweth	Kingston	Shimkus
Clement	*Kleczka*	*Shows*
Coble	Knollenberg	Shuster
Coburn	Kolbe	*Sisisky*
Collins	Kuykendall	Skeen
Combest	LaHood	*Skelton*
Condit	*Lampson*	Smith (MI)
Cook	Largent	Smith (NJ)
Cooksey	*Larson*	Smith (TX)
Costello	Latham	*Smith (WA)*
Cox	Lazio	*Snyder*
Cramer	Leach	Souder
Crane	Lewis (CA)	Spence
Crowley	Lewis (KY)	*Spratt*
Cubin	Linder	*Stabenow*
Cunningham	*Lipinski*	Stearns
Danner	LoBiondo	*Stenholm*
Davis (FL)	*Lucas (KY)*	*Strickland*
Davis (VA)	Lucas (OK)	Stump
Deal	*Maloney (CT)*	Sununu

DeLay	*Maloney (NY)*	Sweeney
DeMint	Manzullo	Talent
Deutsch	*McCarthy (MO)*	Tancredo
Diaz-Balart	*McCarthy (NY)*	*Tanner*
Dickey	McCollum	*Tauscher*
Dicks	McCrery	Tauzin
Dooley	McHugh	*Taylor (MS)*
Doolittle	McInnis	Taylor (NC)
Dreier	McIntosh	Terry
Duncan	*McIntyre*	Thomas
Dunn	McKeon	*Thompson (CA)*
Ehlers	*Meeks (NY)*	Thornberry
Ehrlich	*Menendez*	Thune
Emerson	Metcalf	Tiahrt
English	Mica	Toomey
Etheridge	Miller (FL)	*Turner*
Everett	Miller, Gary	Upton
Ewing	*Minge*	*Velazquez*
Fletcher	*Mollohan*	Walden
Foley	*Moore*	Walsh
Forbes	Moran (KS)	Wamp
Fossella	*Moran (VA)*	Watkins
Fowler	Morella	Weldon (FL)
Frank (MA)	Myrick	Weldon (PA)
Franks (NJ)	*Napolitano*	Weller
Frelinghuysen	*Neal*	*Weygand*
Frost	Nethercutt	Whitfield
Gallegly	Ney	Wicker
Ganske	Northup	Wilson
Gekas	Norwood	*Wise*
Gibbons	Nussle	Wolf
Gilchrest	*Ortiz*	*Wu*
Gillmor	Ose	Young (AK)
Gilman	Oxley	
Gonzalez	Packard	

--- NAYS 108 ---

Abercrombie	*Green (TX)*	*Murtha*
Allen	*Gutierrez*	*Nadler*
Baldacci	*Hall (OH)*	*Oberstar*
Baldwin	*Hastings (FL)*	*Obey*
Barrett (WI)	*Hilliard*	*Olver*
Bonior	*Hinchey*	*Owens*
Borski	*Hoeffel*	*Payne*
Brady (PA)	*Jackson (IL)*	*Pelosi*
Brown (FL)	*Jackson-Lee (TX)*	*Rahall*
Brown (OH)	*Jones (OH)*	*Rodriguez*
Capuano	*Kanjorski*	*Roybal-Allard*
Carson	*Kildee*	*Rush*
Clay	*Kilpatrick*	*Sabo*
Clayton	*Klink*	*Sanchez*
Clyburn	*Kucinich*	Sanders
Conyers	*LaFalce*	*Sawyer*
Coyne	*Lantos*	*Schakowsky*
Cummings	*Lee*	*Scott*
Davis (IL)	*Levin*	*Serrano*
DeFazio	*Lewis (GA)*	*Stark*
DeGette	*Lofgren*	*Stupak*
Delahunt	*Lowey*	*Thompson (MS)*
DeLauro	*Markey*	*Thurman*
Dingell	*Martinez*	*Tierney*
Dixon	*Mascara*	*Towns*
Doggett	*Matsui*	*Traficant*
Doyle	*McDermott*	*Udall (CO)*
Edwards	*McGovern*	*Udall (NM)*
Engel	*McKinney*	*Vento*
Eshoo	*McNulty*	*Visclosky*
Evans	*Meehan*	*Waters*
Farr	*Meek (FL)*	*Watt (NC)*
Fattah	*Millender-McDonald*	*Waxman*
Filner	*Miller, George*	*Weiner*
Ford	*Mink*	*Wexler*
Gejdenson	*Moakley*	*Woolsey*

--- NOT VOTING 13 ---

Ackerman	Hutchinson	Watts (OK)
Becerra	LaTourette	*Wynn*
Berman	*Luther*	Young (FL)
Brown (CA)	Simpson	
Gephardt ✓	*Slaughter*	

File
Bankruptcy

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 12,2000

The Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

The Administration understands that, although conferees have not been named, congressional staff are discussing ways to reconcile the House and Senate versions of H.R. 833, the Bankruptcy Reform Act. The enclosure to this letter outlines the Administration's views on these two versions of the bill. As you and your staff develop an agreement on this bill, your consideration of these views would be appreciated.

The President supports balanced consumer bankruptcy reform that would encourage responsibility and reduce abuses of the bankruptcy system on the part of debtors and creditors alike. He believes that we can eliminate abuse without hurting those forced to turn to bankruptcy, the vast majority of whom are faced with some of the hardest circumstances that life has to offer -- divorce, unemployment, illness, and uninsured medical expenses. Although we should not countenance people using bankruptcy to escape bills they can afford to repay, we also should not enact punitive legislation that places insurmountable barriers before the people who file for bankruptcy as a last resort. We must remember that too often those who need bankruptcy's "fresh start" are single mothers or divorcing spouses, displaced workers, low-income households (many of whom are minorities), victims of predatory lending, or those who faced unexpected illness that reduced their income and burdened them with expensive medical bills.

To meet the test of balance, the bill that emerges from conference should be consistent with the key principles that have been set forth by the President. The President was disappointed that the House once again failed to produce balanced bankruptcy legislation that he could support. As we stated when H.R. 833 came to the House floor last spring, the President's senior advisors would recommend that he veto the House bill if it were presented to him. The bankruptcy provisions of the Senate bill generally do a better job of meeting the President's principles, although the Administration has serious concerns about some provisions. The detailed enclosure describes the President's principles, the Senate bill provisions that should be preserved, the Senate bill provisions that raise concerns, and our strong objection to various provisions of the House bill.

The Administration notes that certain non-relevant amendments have been included in the Senate version of the bill. The President has made clear on a number of occasions that he strongly supports an increase in the minimum wage of $1 over the next two years. However, as the Administration has stated previously, if Congress sends him a bill delaying the increase, repealing overtime protections for certain workers, adding costly and unnecessary tax cuts that threaten fiscal discipline and direct benefits away from working families, thwarting ongoing efforts to enforce pension law, and including an objectionable private school voucher provision, he will veto it.

Thank you for your consideration of the Administration's views on these bills. We would be happy to discuss any of these concerns with you or your staff.

Sincerely,

Jacob J. Lew
Director

Enclosure

Identical Letter Sent To The Honorable Orrin G. Hatch
The Honorable Henry J. Hyde, and The Honorable John Conyers, Jr.

ADMINISTRATION VIEWS ON H.R. 833 -- THE BANKRUPTCY REFORM ACT

NON-RELEVANT AMENDMENTS

The Senate version of the bankruptcy bill includes non-relevant amendments on the subjects described below.

Minimum Wage and Tax Amendment

The President strongly supports an increase in the minimum wage of $1 over two years. Working families across this country deserve this increase, which would restore the real value of the minimum wage to what it was in 1982, helping more Americans share in our current economic prosperity. But the Senate bill would delay the increase. The Senate bill also includes a provision that would repeal overtime protections for certain workers, and a tax and pension package that would direct benefits away from working families and reduce Federal unemployment taxes without addressing needed system reforms. These tax and pension provisions are regressive, could lead to cuts in retirement and health benefits for moderate- and lower-income workers, would not significantly increase plan coverage or national savings, and would hamper efforts to enforce pension law. Moreover, we must establish a proper framework for paying down the debt, strengthening Social Security and Medicare, and funding key priorities before we consider major new tax cuts. If the Congress sends the President a bill delaying the minimum wage increase, creating regressive, costly, and unnecessary tax cuts that threaten fiscal discipline, repealing protections for certain workers, hampering the enforcement of pension law, directing benefits away from working families and potentially reducing their retirement and health benefits, he will veto it.

Drug Amendment

The Administration also opposes the provisions that would reduce the current disparity between crack and powder cocaine sentences solely by increasing powder cocaine penalties dramatically instead of addressing both crack and powder cocaine penalties. Decreasing the threshold amount of powder cocaine that an individual must possess to receive 5- and 10-year mandatory minimum sentences may be counterproductive because it could significantly redirect Federal law enforcement resources from the most serious offenders. In addition, this amendment would actually exacerbate the disproportionate impact of cocaine sentencing on minorities because, according to U.S. Sentencing Commission statistics, approximately 31% of defendants sentenced at the Federal level for powder cocaine offenses in 1998 were African American, 48% were Hispanic, and only 19% were white. Please note, however, that the Administration supports many of the provisions contained in the amendment to combat the spread and abuse of methamphetamine and hopes that the Congress will consider them outside of bankruptcy legislation.

Private School Vouchers Amendment

The drug amendment discussed above also contains an objectionable school voucher provision that is unrelated to the underlying bill. The Administration's opposition to private school vouchers is well known. Rather than improving and reforming public schools, private school vouchers drain scarce resources from public schools and are a distraction from the serious work of education reform. Instead, the President is committed to a comprehensive agenda to improve our schools by investing more in them and demanding more from them. The Administration also opposes the provision to require States to mandate the expulsion of students who bring a "felonious" quantity of drugs onto school property. A similar provision was defeated in a bipartisan House vote during consideration of the juvenile justice bill last year, and we oppose the inclusion of this type of measure in bankruptcy legislation. Finally, the Administration objects to the inclusion of any provisions affecting elementary and secondary education in the bankruptcy bill, because the Elementary and Secondary Education Act of 1965 (ESEA) is currently being reauthorized in the House and Senate. Congress should continue to address elementary and secondary education issues through the ESEA reauthorization process.

CONSUMER BANKRUPTCY PROVISIONS

The President supports balanced consumer bankruptcy reform that would encourage responsibility and reduce abuses of the bankruptcy system on the part of debtors and creditors alike. To meet the test of balance, the bill that emerges from conference should be consistent with the key principles set forth by the President. The President was disappointed that the House once again failed to produce balanced bankruptcy legislation that he could support. As the Statement of Administration Policy said when H.R. 833 came to the House floor last spring, the President's senior advisors would recommend that he veto the House bill if it were presented to him. The bankruptcy provisions of the Senate bill generally do a better job of meeting the President's principles, although the Administration has serious concerns about some provisions.

Means Test

Principle: **Access to Chapter 7 should not be governed by an arbitrary means test, but by reasonable guidelines that take into account individual circumstances.** The goal of the means test is to identify those debtors who genuinely have the capacity to repay a portion of their debts under a Chapter 13 plan. Many debtors who now enter Chapter 13 fail to complete their plans. To ensure positive outcomes instead of higher failure rates and greater hardships, we should ensure that debtors' specific circumstances are considered in a meaningful way. Neither creditors nor debtors are helped by wasting scarce resources establishing and overseeing repayment plans that will quickly fail. The House bill fails to meet the President's principle (despite valuable efforts by Chairman Hyde to bring some balance to its provisions). Because it limits access to Chapter 7 through a tight, inflexible, and arbitrary means test, it would force into Chapter 13 repayment plans many debtors who are unlikely to succeed. Specifically, the House bill would:

-- allow exceptions to the means test only to those demonstrating "extraordinary circumstances" that require additional exceptional expenses or income adjustments -- a nearly insurmountable burden of proof that would deny bankruptcy judges the appropriate discretion in the application of the means test.

-- not allow for expenses related to the long-term care of family members, including the elderly and disabled. Such assistance may be essential to enable these family members to avoid institutionalization and maintain their quality of life, yet may not qualify the family member as a legal dependent of the debtor.

-- not allow for expenses that debtors may incur in protecting themselves against domestic violence. These expenses could include relocation expenses to move away from the violent spouse, transportation expenses to get to work from a new location or to work removed from the spouse's knowledge, legal costs to get and enforce a protective order, security costs, and income gaps associated with unavoidable absences from work.

-- rigidly use IRS guidelines that were designed for a different purpose -- collecting taxes -- where they are applied far more flexibly than the means test would allow. We urge the Conferees to adopt Chairman Hyde's proposal to authorize the creation of standards specific to bankruptcy, using the IRS guidelines as a starting point.

-- not incorporate payments for arrearages on secured debt for necessary property, which must be paid under a Chapter 13 plan. Thus, the means test could leave some debtors in bankruptcy "no-man's land": unable to file under Chapter 7, but unable to get a Chapter 13 plan confirmed because they cannot pay these arrearages.

-- subject many debtors to burdensome paperwork that is not needed for bankruptcy determinations, including the collection of back tax returns regardless of their relevance at a cost of millions per year.

The House bill does take into account required administrative expenses under a Chapter 13 plan in calculating whether the debtor has the capacity to repay. (This important provision, which is not in the Senate bill, should be retained in the final bill.) It also contains both essential safe harbors: (1) protecting below-median income debtors from 707(b) "abuse" motions by creditors that could be the basis for threats or coercion; and (2) protecting below-median income debtors from 707(b) means-test motions by bankruptcy trustees. It includes a proposal by Chairman Hyde to allow adjustments for reasonable food and clothing expenses to take into account regional differences in costs. Finally, it clarifies sensibly the definition of household goods that a debtor can claim as exempt property (and thus upon which the debtor can void a non-purchase money, non-possessory lien), by limiting household goods to those "normally" found in or around a residence. These provisions should be retained.

The Senate bill uses a more reasonable means test, which provides more-appropriate relief to debtors, although improvements could be made. The Senate bill would:

-- allow exceptions to the means test to debtors who can show "special circumstances."

-- use a more appropriate threshold for access to Chapter 7.

-- provide a means test that includes expenses for the long-term care of elderly and other family members, and for protection of victims of domestic abuse and their families.

Certain provisions of the Senate bill, however, are also problematic.

-- The Senate bill also uses IRS guidelines for the means test, but includes a Congressional finding that the Treasury Secretary can modify the guidelines for bankruptcy purposes. Because this interpretation of existing Treasury authority is subject to legal challenge, we prefer Chairman Hyde's approach described above.

-- The Senate bill's means test calculation includes arrearages on secured debt for necessary property; however, it does leave some debtors in bankruptcy "no-mans' land" because it does not include the important provision, included in the House bill by Chairman Hyde, incorporating the required administrative expenses of a Chapter 13 plan in calculating the means test.

-- The Senate bill avoids needless filing of back tax returns and streamlines the means test for debtors between 100% and 150% of median income. However, further reductions in the paperwork burden on low-income debtors could be achieved at no cost to the effectiveness of the means test.

-- The Senate bill's motions safe harbor would protect below-median income debtors from 707(b) motions by creditors that could be the basis for threats or coercion. It fails, however, to provide a "safe harbor" for low-income debtors from means test calculations and paperwork or a full safe harbor from means test motions by United States trustees. Including both safe harbors would improve both the efficiency and fairness of the means test. If low-income debtors are abusing the process for other reasons, they would still be subject to general 707(b) motions by the court, the United States Trustee or the Chapter 7 trustee.

-- The Senate bill's definition of household goods is so narrowly drawn that the debtor may be deprived of reasonable or even vital household items that would be exempt under the House bill's definition.

Finally, we note that both bills contain inconsistent references to median income standards (State, Regional, and National). Administration of the new law will be eased by use of consistent standards.

Homestead Exemption and Other Loopholes for the Wealthy

Principle: **It is fundamentally unfair to ask low- and moderate-income debtors to devote future income to repay the debts that they can, while leaving loopholes that allow the wealthy to shield income and assets from their creditors.** High or unlimited homestead exemptions allow people with expensive homes to avoid their responsibility to repay a significant portion of their debts. Similarly, some wealthy debtors can file under Chapter 11 where they can shield their future income from creditors.

The House bill provides a $250,000 cap on homestead exemptions, but allows the states to opt out of the cap. With the opt-out, the provision is effectively the same as having no cap at all. Moreover, the bill does nothing to close the Chapter 11 loophole for wealthy debtors.

The Senate bill provides a meaningful cap of $100,000 on homestead exemptions. It also closes the Chapter 11 loophole for wealthy debtors. These provisions should be retained.

Protection Against Coercive Reaffirmations and Practices

Principle: **There must be appropriate safeguards against coercive creditor practices that compel debtors to forgo their rights and that disadvantage more scrupulous creditors.** Debtors often reaffirm debt on unfavorable terms, sometimes when they demonstrably cannot afford the future payments. These new commitments put their future, as well as their payments to socially more important debts (e.g., child support, alimony, and taxes), at risk. These reaffirmations are frequently the result of insufficient or misleading information and sometimes the result of intimidation or outright coercion. Unfortunately, such practices have been all too frequent, and the new legislation may increase the risk of such coercion by giving creditors new opportunities to challenge debtors' actions. In light of these new opportunities for abuse, the Administration cannot countenance weakening existing protections; in fact, enhanced safeguards are essential.

The House bill gives debtors the right to a hearing on a reaffirmation of wholly unsecured, non-credit union debt, but allows represented debtors to waive the hearing, which effectively does little to change current law and might inadvertently bolster arguments that courts have no authority to review agreements filed by represented debtors. The bill expressly provides a private right of action for failure to comply with reaffirmation agreements or willful violations of a discharge, but it precludes use of class actions to bring such claims. This eliminates the most effective approach -- used in the Sears case among others -- to remedy widespread coercive practices. The private right of action should be retained, but the bar on class actions should be dropped.

The Senate bill does not ban class action remedies. Moreover, it requires disclosure of the terms of debt being reaffirmed and creates a new presumption of undue hardship if the debtor does not have the capacity to repay debts that he or she is reaffirming. These mechanisms will go a long way toward preventing debtors from reaffirming debts because of creditor threats or intimidation or because of simple confusion. The bill proposes a form of disclosure, although it is not as comprehensive as the one developed by the Administrative Office of the U.S. Courts now in use in a few districts; Congress could provide districts discretion to use the more extensive form. The new Subsection 524(j) in the Senate bill codifies existing practice by providing that creditors can accept payments before and after a reaffirmation agreement is filed with the court; however, if debtors exercise their right to rescind a reaffirmation agreement or the agreement is found to be invalid, subsections (j)(2) and (j)(3) may raise issues in litigation and should be clarified or struck. Specifically, Congress should clarify that nothing therein is intended to preempt any Federal or State law or eliminate remedies available under current Federal or State law, including disgorgement of funds collected under invalid agreements.

Finally, the Senate bill includes a provision that would allow debtors to waive in advance bankruptcy protection for their retirement assets. We fear that those of limited means or sophistication could easily be compelled, perhaps even as a condition of receiving credit, to put these critical assets at risk. As the Department of Labor recently testified before the Senate Health, Education, Labor and Pensions Committee, this provision should be struck.

Improving Credit Card Practices

Principle: Both debtors and creditors must be required to be responsible. Bankruptcy reform should be balanced by including provisions that address credit-card practices that may lead to bankruptcies. Creditors should give consumers the information they need to manage their credit card debt successfully. Doing so would allow more consumers to make informed decisions and give many households better control of their finances, reducing the number of bankruptcies.

The House bill requires that consumers receive a generic description of the impact of making only minimum payments on the duration of the debt. However, it provides no way for a consumer to obtain more specific information about the impact of making the minimum payment in his or her own circumstance. The House bill requires conspicuous disclosures of "teaser" rates, but it does not require that the rates be labeled "introductory" or that the permanent interest rate be disclosed in close proximity to the teaser rate.

The Senate bill provides more-useful provisions though it could be further improved. It requires most lenders to provide an 800 number for consumers who want specific information about the impact of minimum payments in their situation. (The information provided could be more valuable, if it included the cost as well as the duration of debt when only the minimum payment is made.) It also requires that consumers be given clear and conspicuous notice of teaser rates by labeling them as introductory each time they appear in a solicitation, as well as disclosure of the permanent interest rate in close proximity to the teaser rate. Lastly, the bill includes new disclosures on high loan-to-value home equity loans so consumers are not misled about their tax implications.

Non-Dischargeable Debts and "Cram Downs"

Principle: The goal of repaying creditors must be balanced with the need to protect social priorities, such as payment of child support, alimony and taxes, and to preserve a meaningful opportunity for a fresh start. The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose to protect those debts. To the extent that the bills make more credit-card debt nondischargeable and preserve secured claims regardless of the value of their collateral, these societal priorities will compete for scarce resources and the fresh start will become ephemeral.

The House bill gives secured creditors in bankruptcy unprecedented rights to collect amounts in excess of the value of their collateral. It precludes "cramming down" debt to the collateral value for any debt secured by personal property purchased within five years of the bankruptcy filing. Were these provisions to become law, societal priorities would suffer, unsecured creditors would be placed at a disadvantage, and secured creditors would have less incentive to evaluate properly lending risk. The House bill also makes nondischargeable all cash advances above $250 and all debts incurred to pay nondischargeable debts, both if within 90 days of bankruptcy. This rule endangers societal priorities and may trap debtors who are trying to feed their families or meet debt obligations before they realize that bankruptcy is inevitable.

The Senate bill is preferable because it protects under-secured debt other than for automobiles for only six months before filing; nonetheless, the ban for car loans should be far shorter than five years. Similarly, the Senate bill has a shorter window before bankruptcy in which cash advances (with a higher threshold) and debts incurred to pay nondischargeable debts become nondischargeable. An even better approach would be to limit the new nondischargeability provisions to above-median income debtors, as Senator Moynihan has proposed.

Barriers to Entry or Representation in the Bankruptcy System

Principle: Inappropriate barriers should not be created to entry into or effective representation in the bankruptcy system. Filing fees, fee-shifting provisions, and inflexible pre-filing hurdles can unfairly deny access to the bankruptcy system to people who do not have the ability to repay their debts.

The House bill would require mandatory credit counseling before a bankruptcy filing, but does not make clear that the requirement can be met by telephone or over the Internet, creating a barrier for those without convenient access to counseling. It also would require a debtor's attorney to pay a trustee's attorney's fees if the debtor is not "substantially justified" in filing for Chapter 7. Fear of such sanctions may deter attorneys from representing debtors with bona fide claims. However, the bill does allow courts to waive filing fees for debtors unable to pay, for the first time removing this important barrier to entry for indigent debtors.

The Senate bill ensures that mandatory credit counseling can be provided by telephone or over the Internet. It also applies an appropriate and more reasonable standard to the effort to deter abusive use of Chapter 7, allowing the trustee to recover reasonable costs from the debtor's attorney if filing under Chapter 7 was "frivolous." It also would allow courts to waive filing fees for indigent debtors, but would limit the courts' option to waive the fees only to debtors with incomes below 125% of the poverty level. We think no such cap is needed.

The Senate bill does require a debtor's counsel to attest under oath to the accuracy of any adjustments to income and expenses that the debtor provides (also under oath). This requirement will chill even the most responsible and scrupulous of attorneys from representing financially distressed debtors.

Prevent Abuse of Bankruptcy To Facilitate Clinic Violence

Principle: The abuses of the bankruptcy system must be stemmed, including abuse by those who would use bankruptcy to avoid penalties for violence against family planning clinics. The Administration is deeply concerned by the incidents of violence, vandalism, and harassment committed against family-planning clinics, some of which have resulted in the deaths and maiming of innocent people. The Administration believes that these unlawful activities must not be tolerated, and that when they are committed, those found liable should be held accountable. In 1994, Congress made clear its disapproval for those who would use unlawful means to deny citizens access to legal clinic services by enacting the Freedom of Access to Clinic Entrances Act (FACE).

Unfortunately, there is evidence that those found liable have been making strategic use of bankruptcy to avoid the penalties for their actions established by Congress and the States. This abuse of the bankruptcy system to facilitate unlawful behavior must not be tolerated. Senator Schumer's amendment, passed by the Senate by a margin of 80 to 17, would make court-ordered and other fines and debts resulting from family-planning clinic violence nondischargeable. The Administration opposes the expansion of categories of nondischargeable debt unless there is an overriding public policy objective and no other way to achieve that objective. The Schumer amendment meets that test, providing a necessary tool to ensure that bankruptcy is not used strategically to avoid the legal consequences of clinic violence and intimidation. It should be included in the final legislation.

Privacy Of Personal Financial Records In Bankruptcy

Principle: The financial and personal privacy of those who seek protection in the bankruptcy system must be protected.

The electronic aggregation and availability of public and non-public bankruptcy information could serve at least two important purposes: (1) it could lower costs for participants in the bankruptcy system; and (2) it could improve our understanding of bankruptcy trends and the impact of policy changes. The Administration strongly supports these goals. At the same time, however, disseminating bankruptcy information electronically could threaten the security and privacy of debtors in bankruptcy by making sensitive information (including account numbers, social security numbers, balances, income sources, and payment histories) widely available to curious neighbors, employers, marketers, and predators looking for those most likely to be lured by scams.

Far too little attention has yet been given to complicated questions such as: who needs what information and under what circumstances? Does new technology change our perception of what information should be in the public domain? And what kinds of information in bankruptcy records could be used to prey upon debtors and their families?

These questions have been raised as private trustees explore the development of a national database of bankruptcy information to answer creditor inquiries about the status of payments under Chapter 13 plans. The database may contain material obtained independently by the private trustees in the administration of the case, as well as records from the public court file. Though such a database would provide creditors with one location to obtain information about their claims, important decisions must be made about privacy and the commercial use of this information. The private trustees appear interested in performing this function responsibly, and the Executive Office for U.S. Trustees is working with the private trustees to explore ways to safeguard the privacy of this information. However, legislative language in both the Senate and House bills designed to facilitate efforts by the private trustees without taking into account privacy considerations is, at best, premature.

The House bill would protect the private trustees from liability for dissemination of information unless a trustee has actual knowledge that the information is false. This provision provides no safeguards against misuse; and no compelling argument has been presented as to why the normal liability rules should not apply. We strongly recommend that this provision be removed from the final bill. In addition, the House bill also expresses the "sense of the Congress" that all public record data held by bankruptcy clerks shall be released in electronic form to the public, subject to privacy safeguards that the Judicial Conference may determined. The privacy issues regarding bankruptcy information should be fully explored before the Congress makes any determinations in this area.

The Senate bill contains language (in a section regarding collection of child support) that would require Chapter 13 trustees to provide non-public information about their cases to any not-for-profit entity that shall provide such information to parties in interest. The bill also contains "sense of the Congress" language about dissemination of bankruptcy information. The possible implications of these provisions, in particular the risk to personal privacy, have not been adequately explored, so these provisions should be dropped.

OTHER ISSUES

New Provisions

The Administration understands that consideration is being given to including, in the conference report, additional provisions that were not in either the House or Senate versions of the bankruptcy bill.

First, the Administration would strongly oppose the inclusion of provisions, under the bankruptcy law or other law, that would alter the police and regulatory exception or the legal principles that allow governmental units to enforce regulatory programs with regard to debtors who may hold interests in licenses, permits, franchises or entitlements issued by the Government.

Second, the Administration understands that some are urging adoption of an amendment that would exclude collection of bad checks from the provisions of the Fair Debt Collection Practices Act (FDCPA). The Administration would oppose such a provision. Courts have repeatedly found that check collection is covered by the FDCPA, which protects consumers from invasion of privacy, harassment, abuse, false or deceptive representations, and unfair collection methods. No compelling argument has been made explaining why these protections provided by the Congress are not as appropriate to collection of checks as they are to collection of other debts. In any event, before any such important consumer protections are weakened or eliminated, the case for the change should be subjected to sunlight and public scrutiny.

Certain Contract for Electric Power Voided

The Senate bill contains a provision that would void a power supply contract between Hydro Quebec and a consortium of Vermont utilities. While the intent of this provision appears to be to protect Vermont utilities that may be facing bankruptcy, the legislative abrogation of a contract between two commercial entities raises troubling policy issues, as more fully set out in a letter, dated March 3, 2000, to Senator Jeffords from Assistant Secretary for Fossil Energy Robert W. Gee. The Department of Justice has also raised concerns that the provision could give rise to a "taking" of private property for which just compensation would be required under the Fifth Amendment of the Constitution. It is also possible that a claim for money damages could be brought to international arbitration under NAFTA on the theory that NAFTA affords comparable protections to investments through the investment chapter's expropriation provision (Article 1110).

file
Bankruptcy

Melanne
~~This went to HRC + POTUS this evening~~

May 5, 2000

MEMORANDUM FOR THE PRESIDENT

CC: **JOHN PODESTA**

FROM: **GENE B. SPERLING**
SARAH ROSEN WARTELL

RE: **BANKRUPTCY LEGISLATION**

ISSUE PRESENTED:

The NEC Bankruptcy Working Group has prepared a letter to the Congress setting forth our detailed views on the House and Senate bankruptcy reform bills. Both of these bills passed by overwhelming margins, despite our threat to veto the House bill and the important reservations we expressed about the Senate bill. Consumer groups continue to oppose these bills. Many major editorial pages have been critical of both bills, although most are more favorable toward the Senate bill. We expect some will oppose the final product. The letter to Congress would reiterate our previous statements: It again threatens to veto the House bill and says that the Senate bill better meets your principles, although we have some serious concerns. Despite the lengthy criticism of the bills' provisions, the letter effectively signals that you are likely to sign the final legislation unless it contains the most noxious House provisions or drops most of the consumer and debtor protections achieved by Senate Democrats. We seek your reaction to this strategy before the letter is sent.

VIEWS OF YOUR ADVISORS:

All of your advisors support balanced bankruptcy reform. All believe that the final bill will do some good by encouraging personal responsibility and lowering credit card interest rates that are inflated because some debtors are too ready to use and even abuse Chapter 7's bankruptcy discharge. All of your advisors also agree that, due to an expensive lobbying effort by the credit card industry, the final bill will lack the balance we sought and will not demand similar responsibility from the credit card industry.

An important issue is whether or not the new rules, determining who should be required to go into Chapter 13 (which requires repayment of what a formula says you can repay), are flexible enough to deal with specific cases of hardship in unusual circumstances. The provisions we have pushed for – ultimately allowing the bankruptcy trustees and courts greater discretion – have been largely rejected. We have made reasonable progress in the bill in other areas; for example, the bill protects child support and alimony from competition from credit card debt in many cases and includes a safe harbor from the means test for below-median-income debtors.

Assuming that the final bill that comes to your desk is close to the Senate bill, all of your advisors agree that you should sign it, although for somewhat different reasons. Jack Lew, Chuck Brain, and Gene Sperling believe that, while the final bill may be on the whole a net minus, it is a relatively close call, and not worth the political downside of a veto override. Larry Summers believes that a final bill relatively close to the Senate bill is a net plus and should be signed on the merits. Bankruptcy reform, Larry argues, will have an impact similar to that of open trade: a few visible cases of hardship, but a larger less visible benefit of lower interest rates for credit card borrowers.

All of us feel that, while it is unfortunate that we do not have a more balanced bill, if the final bill stays relatively close to the Senate bill, it would be better to sign the bill with some reservations than to risk a veto override. For you to have any chance of sustaining a veto, or even to make a strong public statement through an override, we would need to launch a high profile battle against a "paid-for" bankruptcy bill – a battle that would indirectly put us at odds with friends like Senators Daschle and Torricelli, and allow others to say we were walking away from our individual responsibility message.

BACKGROUND:

Last May, the House bill passed by a veto-proof margin of 313 to 108. A Democratic substitute that we crafted with Congressman Nadler received only 149 votes and had no effect on our effort to give enough Democrats cover to help us achieve a veto-sustaining margin. Key House Democratic leaders, including Representatives Martin Frost, Bob Menendez, and Patrick Kennedy supported the underlying bill and opposed the Nadler substitute. Minority Leader Gephardt opposed the bill, although he announced his position well after other Members' positions in support had settled. When we talked to Senate Democrats, we found few were interested in our substantive concerns and many were eager to see a reform bill enacted. Some were willing to press for changes and modest improvements were achieved as a result. But few Senate Democrats were willing to oppose the legislation despite its imbalances. As a result, an improved but flawed bill passed the Senate by a vote of 83-14. Democrats opposing the bill on bankruptcy grounds were Senators Kennedy, Wellstone, Dodd, Feingold, Harkin, Reed, Sarbanes, Schumer, Lautenberg, and Moynihan. (A few of the 14 opposed the bill for other reasons.)

Although a formal conference committee has not been named, Congress is now working to reconcile the House and Senate bills. Republican and Democratic leadership expect to attach the bankruptcy provisions to a conference report on other legislation (perhaps Digital Signatures or Crop Insurance) in order to avoid procedural roadblocks placed by Senators Wellstone and Kennedy in trying to force another Senate vote on a two-year minimum wage increase.

The NEC working group drafted a letter to the informal conferees setting forth the Administration's detailed views on various provisions of both bills. It reiterates your senior advisors' veto threat that we issued on the House version of the legislation last May.
It describes the Senate bill as more balanced and doing a better job of meeting your principles, although it details serious concerns we have about some of the Senate bill's provisions.

In a few cases, the letter explains that the House language is actually better than the Senate approach. (The letter also reiterates the veto threat on a bill including the minimum wage, tax, and school voucher amendments that were attached to the bill by the Senate, but we expect those non-relevant provisions to be dropped.) (Copy of cover letter at Appendix A.)

Your senior advisors believe that the relatively muted tone of this letter signals that you are likely to sign the final legislation, albeit with reservations. The details in the letter provide helpful guidance to the Democratic negotiators attempting to improve the bill in conference. Unless we significantly raise the level of our rhetoric now, your advisors will likely recommend that you sign the final bill, unless it drops the most visible improvement achieved by Senate Democrats or includes the most noxious aspects of the House bill.

Appendix B is a more detailed summary of some of our substantive concerns with the House and Senate Bills.

DECISION:

Proceed with Letter __________ ***Let's Discuss*** __________

APPENDIX A

[Date]

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch:

The Administration understands that, although conferees have not yet been named, your staff are discussing ways to reconcile the House and Senate versions of H.R. 833, the Bankruptcy Reform Act. The attachment to this letter outlines the Administration's views on these two versions of the bill. As you and your staff develop an agreement on this bill, your consideration of these views would be appreciated.

The President supports balanced consumer bankruptcy reform that would encourage responsibility and reduce abuses of the bankruptcy system on the part of debtors and creditors alike. To meet the test of balance, the bill that emerges from conference should be consistent with the key principles set forth by the President, as described in the enclosure. The President was disappointed that the House once again failed to produce balanced bankruptcy legislation that he could support. As we stated when H.R. 833 came to the House floor last spring, the President's senior advisors would recommend that he veto the House bill if it were presented to him. The bankruptcy provisions of the Senate bill generally do a better job of meeting the President's principles, although the Administration has serious concerns about some provisions.

The Administration notes that certain non-relevant amendments have been included in the Senate version of the bill. The President has made clear on a number of occasions that he strongly supports an increase in the minimum wage of $1 over the next two years. However, as the Administration has stated previously, if Congress sends him a bill delaying the increase, repealing overtime protections for certain workers, adding costly and unnecessary tax cuts that threaten fiscal discipline and direct benefits away from working families, thwarting ongoing efforts to enforce pension law, and including an objectionable private school voucher provision, he will veto it.

Thank you for your consideration of the Administration's views on these bills. We would be happy to discuss any of these concerns with you or your staff.

Sincerely,

Jacob J. Lew

Enclosure

Identical letters sent to The Honorable Patrick J. Leahy,
The Honorable Henry J. Hyde, and The Honorable John Conyers, Jr.

APPENDIX B

SUBSTANTIVE CONCERNS WITH THE HOUSE AND SENATE BILLS

Homestead Exemption: The Senate bill includes a $100,000 cap on the amount of home equity that states can allow debtors to shield from their creditors. The House bill has a cap of $250,000, but allows a state to opt-out, effectively eviscerating the cap. We have argued that it is fundamentally unfair to ask moderate-income debtors to repay what they can, while wealthy debtors can shield their resources in expensive homes. Most expect that the Senate cap will be dropped in conference, although rhetoric on this issue has the greatest potential to embarrass bill proponents.

Credit Card Protections: Although the provisions in both bills are weak, the Senate is somewhat stronger, providing new disclosures on teaser rates and the impact of making only the minimum payment on the length of time one will be repaying debt. Senate Democrats, including the leading Democratic bill proponent Senator Torrecelli, say they will oppose a conference report that further weakens these provisions, so the Senate provisions are likely to survive intact.

Means Test for Chapter 7 Discharge: Both bills use IRS tax collection guidelines to establish tests to determine whether a debtor has the capacity to repay a portion of their debt under a Chapter 13 repayment plan. If so, filing for a Chapter 7 discharge is deemed abuse. The House test is very rigid; the Senate bill has a bit more flexibility. We have argued unsuccessfully that various changes are needed to build more discretion into the system to determine whether, in the debtor's individual circumstances, they really have the capacity to repay (like the IRS has when it used the guidelines for tax collection). We also sought less stringent thresholds and various technical changes to prevent unfairness in the application of the test. Some provisions from each bill are better, but neither bill would address our fundamental concern. We expect a compromise with some of the better and worse features of each.

Protection of Child Support and Alimony: In the last Congress, the First Lady wrote of her concern with provisions that made additional credit card debt nondischargeable in bankruptcy, thus leaving it to compete with higher societal priorities that also are nondischargeable – especially payment of child support and alimony. In response, the bill's proponents added numerous provisions to clarify that child support and alimony are the highest priority. We believe that these provisions will work in many cases to improve the payment of child support and alimony in bankruptcy; however, in a small portion of cases after bankruptcy discharge, where there is no court supervision of child support and alimony payments or wage garnishment, these credit card debts could crowd out child support or alimony. Our argument is very technical; rhetorically, they have neutralized our criticism.

Debtor Protections Against Coercion: During bankruptcy, too many debtors are misled or tricked into agreeing to repay debts that they cannot afford and have a legal right to discharge. The Senate bill contains provisions that make it significantly more difficult to mislead or deceive debtors who cannot afford to reaffirm their debts, although the provisions could be significantly improved to strengthen the hand of debtors seeking remedies when the bill's requirements are not observed. (Certain consumer groups actually oppose the stronger Senate provisions, even though they would prevent many more abusive reaffirmations, because they also may provide creditors with new legal arguments in defending litigation.)

The House bill has far weaker provisions and, most notably, a ban on class actions when seeking remedy for abuse of these requirements. We expect the class action ban to be dropped and the Senate provisions to be retained largely intact, but without the desired improvements. If the class action ban is retained, newfound opposition to the bill may arise.

Clinic Violence: Recently, anti-abortion protesters have used personal bankruptcy to avoid penalties for violence against family planning clinics, some even strategically sending protestors who are judgment proof. Senator Schumer offered an amendment in the Senate that would make court-ordered and other debts resulting from such violence nondischargeable. We strongly supported the amendment. The Vice President was present in the Senate Chamber when they voted on the amendment to break a tie, if needed. To avoid embarrassment, Republicans urged their members to vote for the amendment and it passed by a vote of 80-17. The House has no comparable provision. In conference, they are expected to modify the amendment so that it covers debts from acts of violence generally, so they can avoid special protection for clinic violence debts. There may be technical flaws in their drafting of the broader amendment, so it will not protect all clinic-related debts. Abortion rights groups are not sure whether they want to fix these flaws, preferring to have the issue. If the Republicans drop the provision, Senate Democrats will likely rally; but if they simply broaden it to cover other violence, those eager to vote for the bill will likely concur.

Pension Benefit Protections: The Senate bill also included a provision that would allow debtors to waive in advance bankruptcy protections for certain retirement assets (IRAs and non-ERISA plans). Senator Grassley had earlier offered a provision that would have capped the pension assets that debtors could shield from creditors in bankruptcy, but facing labor opposition to that he instead opted for this. We fear that those of limited means and sophistication could be compelled (perhaps in the boilerplate of a credit card or loan application) to waive protections for the retirement assets. As awareness of this provision has grown, it has provoked a firestorm. We expect it to be modified or eliminated.

file Bankruptcy

Republicans Agree to New Limits On Consumer Bankruptcy Filings

A1

By KATHARINE Q. SEELYE

WASHINGTON, Oct. 7 — House and Senate Republicans agreed today on a vast overhaul of the bankruptcy system, making it more difficult for consumers to walk away from their debts and handing the banking and credit-card industries a major victory.

The agreement was reached without the consent of Congressional Democrats or the White House, and Administration officials said they would recommend that President Clinton veto the bill because of its treatment of low-income consumers.

Under the Republican agreement, only consumers with relatively low incomes could declare bankruptcy under the rules that wipe out many debts. But the agreement would give bankruptcy judges some discretion in determining whether debtors could file under Chapter 7, which wipes out many debts, or under Chapter 13, which requires the repayment of most debts.

Debtors who earn more than the median income — $17,900 for single people and $51,000 for a family of four — would be moved into Chapter 13. Also sent into Chapter 13 would be debtors who could repay 25 percent of their unsecured debts, like credit cards, or $5,000 over five years.

The negotiated bill weakens a requirement approved by the Senate that credit card companies disclose on monthly bills how much consumers will owe and for how long if they make only the minimum payment.

It also drops a Senate provision that sets a $100,000 limit on the value of homes that could be kept by those declaring bankruptcy. This means that people could still move to certain states, like Florida and Texas, buy expensive homes, declare bankruptcy and keep the entire worth of their homes. But the compromise bill requires these people to live in the adopted state for at least two years before they can claim the homestead exemption.

With the perception that low-income Americans — primarily women and minorities, who are among Mr. Clinton's most reliable political allies — would be hurt most by the bill, Hillary Rodham Clinton has argued against the House version, toward which the compromise tilts.

Mrs. Clinton's concern is that credit-card companies will have a stronger claim than women and children on debtors — usually ex-husbands — who file for bankruptcy but who owe child support and alimony.

Republicans say alimony and child support will be the priorities in any bankruptcy liquidation under this agreement, but Democrats say the language is far from that clear.

The industry supported the bill passed by the House, which was guided by a concern that filing for bankruptcy had become too easy and that thousands of Americans were abusing the system. The Senate bill started from the premise that easily available credit was also responsible for the increase in bankruptcies and that the credit-card industry needed to be held accountable along with consumers.

The House and Senate approved vastly different bills, and negotiators have been scrambling to iron out the differences before Congress recesses this weekend. The Republican agreement was sent to the House for a vote, which could come as early as Thursday.

Republicans said today that they were happy with the compromise and that it was fair, but Democrats were furious, none more so than Senator Richard J. Durbin of Illinois.

Mr. Durbin had joined Republicans in seeking an overhaul of the bankruptcy system, and his name gave the process bipartisan credibility. But he said he was shut out of the final negotiations.

The Senate bill, which had passed 97 to 1, "has been devastated in a closed-door Republican conference," Mr. Durbin said.

"Republican conferees stripped out every significant consumer protection in the Senate bill," he said. "The President will not sign this bill in its present form."

Today's agreement represents a huge success for banks, credit-card companies and retailers. The lending industry spent more than $40 million to lobby for the changes, which could help it recoup an estimated $4 billion a year.

Bankruptcy filings reached a record 1.42 million over the 12 months ending on June 30, continuing a three-year trend that has persisted despite the robust economy. More than one million of these bankruptcies were filed under Chapter 7, which erases all debt except taxes, mortgages, student loans, child support, alimony and, in some cases, loans on a car needed to get to work.

Senator Charles E. Grassley, the Iowa Republican who led the negotiations for the Senate, said the compromise protected honest consumers from those who abused the bankruptcy rules.

"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," Mr. Grassley said.

William P. Binzel, a lobbyist for MasterCard International, said complaints of a bill that let the industry off the hook were unfounded.

"If a lender makes credit available to someone who can't afford to repay it, the lender loses the principal and interest," Mr. Binzel said. "The bill addresses the fundamental flaw in the law that allows a debtor who can repay a portion of his debts to use the system to walk away from those debts."

The New York Times
THURSDAY, OCTOBER 8, 1998

AIDS Deaths in U.S. Drop by Nearly Half As Infections Go On

A1

By STEVEN A. HOLMES

WASHINGTON, Oct. 7 — The number of Americans who died from AIDS fell to 16,865 last year, almost half the number of the year before and well below the 43,000 deaths in the peak year of 1995, Government figures released today show.

The increased access to new and effective drug treatments took the death rate from AIDS to the lowest since 1987, the first year epidemiologists tracked mortality data related to the disease.

Researchers at the National Center for Health Statistics said the number of deaths in 1997 decreased by 46.4 percent from the 31,130 people who died from the illness the year before. The fall in AIDS deaths was much steeper than the previous record decrease, the 29 percent drop from 1995 to 1996.

Still, other studies show that the annual rate of new infections of H.I.V., the virus that causes AIDS, has remained stable at about 40,000 in the United States in recent years, which means that more and more people are living with the virus. But longer life means a greater chance of infecting others, officials said, and they expressed concern that the good news was bringing a complacency about the deadly disease.

"This reflects the tremendous power of the new combination drug therapies, the enormous effort to get the drugs to people and the huge Federal effort to pay for these drugs," said Donna E. Shalala, the Secretary of Health and Human Services, of the drop in AIDS deaths. "What this also tells us is that we have serious problems when we have not brought down the rate of new infections."

Though 83 fewer people died of AIDS in 1988 than last year, the 1997 death rate of 5.9 deaths from AIDS per 100,000 people was the lowest since 1987.

News of the drop in AIDS deaths is in the report on vital statistics, produced twice a year by the National Center for Heath Statistics. Based on an examination of birth and death records provided by the states, the latest report shows a country in which many of the leading causes of death, like AIDS, homicide, heart disease and cancer, which were once considered scourges, are at record or near-record lows.

Indeed, when adjusting for the country's aging population, the death rate in 1997 was the lowest on record, 478.1 per 100,000 people. The report indicated that only 48 more people died last year than in 1996.

One result of the startling decline is that AIDS went from the 8th leading cause of death in the United States in 1996 to the 14th in 1997. Once the leading cause of death of people 25 to 44 years old, the disease is now the fifth leading cause of death for that age group.

Other highlights of the report include these:

¶Infant mortality fell to 7.1 deaths per 1,000 live births, a record low, from 7.3 the previous year.

¶Life expectancy for those born in 1997 rose to 76.6 years, the highest ever recorded.

¶A 7 percent decline in death rates for black males, mainly the result of the continuing drop since 1993 in the overall homicide rate.

¶Declines of 3 percent in the death rate for heart disease and 2 percent in the death rate from cancer.

But it was the sharp drop in the death-rate from AIDS that surprised researchers the most.

"We expected there to be a decline, but we didn't expect it to be quite so big," said Robert N. Anderson, a statistician at National Center for Health Statistic and the author of the mortality section of the report. "We expected to see something on the order of 29 or 30 percent. We're talking about 15,000 fewer deaths than the year before. In terms of the human equation, that's a big deal."

Researchers and other experts credit the increased use of newer combinations of drugs, including those known as protease inhibitors, with preventing people who are infected with H.I.V. from developing full-blown AIDS and with keeping those who have the disease from succumbing to opportunistic infection that in the past easily and painfully killed them.

"We now have the ammunition and already made a major positive impact on H.I.V.-infected individuals when it comes to longevity and quality of life," said Dr. Anthony S. Fauci, director of the National Institute of Allergy and Infectious Diseases.

But even as researchers and AIDS advocacy groups rejoiced over the hefty declines in AIDS deaths, many expressed concern that apparently the rate of people becoming infected by the virus that causes AIDS has not gone down. Some researchers and advocates say this indicates that while great strides have been made in treating the disease and, therefore, forestalling deaths, efforts to prevent the spread of the disease have not born fruit.

That, some epidemiologists say, presents a new set of worries. A much larger number of people who are infected with the AIDS virus are now living longer and, therefore, have a much greater chance of infecting others.

"We have people who, in the past, might have been very ill, in bed, not able to be sexually active who now are much more active and potentially could continue to pass on H.I.V.," said Dr. Helene Gayle, director of the National Center for H.I.V., Sexually Transmitted Diseases and and Tuberculous Prevention. "We don't yet know if people on these therapies are less infectious or not."

Already, some researchers say there are signs that complacency is seeping into the population of people who are most susceptible to H.I.V. infection. Researchers report a surge in unsafe sexual practices among gay men, and they say it remains difficult to carry out effective prevention programs among intravenous drug users.

"This is great news," Dr. Gerry McQuillan, senior infectious disease epidemiologist at the National Center for Health Statistics said of the drop in AIDS death. "But, I have a 23-year-old son, and I'm periodically shocked when he says things, like, 'It's not a problem anymore, right, Mom?' "

The New York Times
THURSDAY, OCTOBER 8, 1998

file Bankruptcy

HARVARD LAW SCHOOL

CAMBRIDGE · MASSACHUSETTS · 02138

ELIZABETH WARREN
LEO GOTTLIEB PROFESSOR OF LAW

Direct Phone: (617) 495-3101
Direct Fax: (617) 496-6118

August 12, 1998

The First Lady
c/o Melanne Verveer
The White House
Washington, D.C. 20001

Dear Mrs. Clinton:

The bankruptcy legislation we've discussed remains a very serious threat. While its momentum has been slowed, thanks in part to your efforts, Senator Lott apparently has agreed that the bill will be brought to the Senate floor on September 4. Senator Kennedy may try to append his minimum wage proposal to the bill and there will be other amendments as well. Whether or not they succeed, the Republicans will push for 60 votes and cloture.

Here is a brief summary of what has happened since you and Brady Williamson last spoke.

Abusive Creditor Practices

While the pending legislation focuses almost exclusively on inadequately substantiated debtor abuses, there is uncontroverted evidence of widespread creditor abuse. Retailers and lenders have violated the federal discharge injunction in hundreds of thousands of cases by seeking payment on charge card debts that have been or can be discharged in bankruptcy.

Sears, Roebuck, and Co. was the first to concede that it engaged in this practice with over 200,000 consumers, resulting in a settlement earlier this year of $475 million. A federal criminal investigation of Sears' practices is still pending as are state investigations.

In the past few weeks, May Department Stores (Hecht's, Lord & Taylor) and GE Capital settled charges for violations of the consumer bankruptcy laws for over $100 million.

Other retailers and lenders that have admitted or have been named as participants in these unlawful activities include Circuit City, Montgomery Ward, Federated (Bloomingdale's, Macy's), Ford Motor Credit, Chrysler Motor Credit, AT&T Universal, Beneficial, and Avco.

The current bankruptcy filing rate

The Administrative Office of the United States Courts reports that bankruptcy filings increased 8.5% for the twelve month period ending June 30, 1998. Total filings numbered 1,429,451, up from 1,316,999 for the same period in 1997. Ninety-six percent of these cases were consumer bankruptcies.

At least one researcher, SMR Research Corporation, predicts that the number of personal bankruptcy filings will be flat in 1998 and will decline in 1999. However, SMR warns that the decline merely reflects low long term interest rates and that the causes of bankruptcy are getting worse, which ultimately will lead to a higher filing rate.

Status of the Senate Bill

The Consumer Bankruptcy Reform Act of 1997 was reported favorably out of the Senate Judiciary Committee in May by a vote of 16-2. Senator Lott's staff has announced that the senator is planning to bring S. 1301 to the floor of the Senate on or around September 4th.

This bill, co-sponsored by Senator Grassley (R-IA) and Senator Durbin (D-IL), contains consumer bankruptcy provisions, technical corrections, and an authorization for additional bankruptcy judges. The bill expands the nondischargeability of credit cards and other consumer debts.

S. 1301 differs in significant ways from H.R. 3150, but also has caused substantial concern among those familiar with the bankruptcy system due to its substantive changes and the technical unworkability of many of its provisions.

Under S. 1301, an individual debtor would be required to make a good faith attempt to create a debt repayment plan through a consumer credit counseling service within 90 days prior to filing for bankruptcy as a condition of eligibility to file. There are no exceptions for people facing imminent foreclosure or other creditor collection actions, and there is no provision for expanding or funding credit counseling services.

S. 1301 would make the ability to pay 20% of one's nonpriority unsecured debts out of disposable income grounds for conversion or dismissal of a Chapter 7 bankruptcy case, thereby imposing a "means test" to remain in Chapter 7 rather than at the point of filing, as the House bill requires.

While Senator Grassley's business bankruptcy bill, S. 1914, has not been marked up by the relevant subcommittee, substantial portions of this bill will probably be introduced on the Senate floor as amendments to the consumer bill. S. 1914 contains some controversial provisions dealing with asset securitization, small business, and employee benefits--all pro bank.

Status of the House Bill

The Bankruptcy Reform Act of 1998 is the omnibus bankruptcy bill introduced by Rep. Gekas (R-PA), Rep. McCollum (R-FL), Rep. Boucher (D-VA), and Rep. Moran (D-VA). On June 10, the House of Representatives passed H.R. 3150 by a vote of 306 to 118. No Republicans voted against passage of H.R. 3150.

The bill would increase the amount of credit card debt surviving bankruptcy and would establish an up-front "means test" to determine Chapter 7 eligibility based on budget guidelines prescribed by the Internal Revenue Service for the purpose of offers in compromise. The bill also would eliminate the ability of self-employed people to reorganize very small businesses in Chapter 13.

When reported out of the Judiciary Committee, the bill would have curbed abuse by high end debtors by capping state homestead exemptions, but the House voted to eliminate this restriction, choosing instead to restrict bankruptcy relief for heavily indebted middle class families.

When debating this bill, the House also defeated a substitute bill introduced by several Democrats on the House Judiciary Committee that would have employed a more workable means test, deleted the new special interest exceptions to discharge for credit card debt, and modified the provisions in H.R. 3150 that discriminate against small businesses.

On the date of passage, the Administration issued a statement that it "strongly opposes" H.R. 3150 in its current form, and reiterated concerns regarding the "formulaic" means test and the nondischargeability provisions. Since then, the Attorney General has publicly said she would recommend a veto of the house bill.

The injury to women and children in this legislation has *not* been resolved. Both the House and the Senate have tinkered with the bill, but the fact remains that substantial credit card debt would be elevated to non-dischargeable status, forcing ex-spouses trying to collect support payments to compete with banks.

Thank you again for the energy you have put into this. Each year more than a million vulnerable families will be affected by whatever changes occur.

Very truly yours,

Elizabeth

Elizabeth Warren
Leo Gottlieb Professor of Law

cc: Brady Williamson

file bankruptcy

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Direct Phone: (617) 495-3101
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August 12, 1998

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c/o Melanne Verveer
The White House
Washington, D.C. 20001

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While the pending legislation focuses almost exclusively on inadequately substantiated debtor abuses, there is uncontroverted evidence of widespread creditor abuse. Retailers and lenders have violated the federal discharge injunction in hundreds of thousands of cases by seeking payment on charge card debts that have been or can be discharged in bankruptcy.

Sears, Roebuck, and Co. was the first to concede that it engaged in this practice with over 200,000 consumers, resulting in a settlement earlier this year of $475 million. A federal criminal investigation of Sears' practices is still pending as are state investigations.

In the past few weeks, May Department Stores (Hecht's, Lord & Taylor) and GE Capital settled charges for violations of the consumer bankruptcy laws for over $100 million.

Other retailers and lenders that have admitted or have been named as participants in these unlawful activities include Circuit City, Montgomery Ward, Federated (Bloomingdale's, Macy's), Ford Motor Credit, Chrysler Motor Credit, AT&T Universal, Beneficial, and Avco.

The current bankruptcy filing rate

The Administrative Office of the United States Courts reports that bankruptcy filings increased 8.5% for the twelve month period ending June 30, 1998. Total filings numbered 1,429,451, up from 1,316,999 for the same period in 1997. Ninety-six percent of these cases were consumer bankruptcies.

At least one researcher, SMR Research Corporation, predicts that the number of personal bankruptcy filings will be flat in 1998 and will decline in 1999. However, SMR warns that the decline merely reflects low long term interest rates and that the causes of bankruptcy are getting worse, which ultimately will lead to a higher filing rate.

Status of the Senate Bill

The Consumer Bankruptcy Reform Act of 1997 was reported favorably out of the Senate Judiciary Committee in May by a vote of 16-2. Senator Lott's staff has announced that the senator is planning to bring S. 1301 to the floor of the Senate on or around September 4th.

This bill, co-sponsored by Senator Grassley (R-IA) and Senator Durbin (D-IL), contains consumer bankruptcy provisions, technical corrections, and an authorization for additional bankruptcy judges. The bill expands the nondischargeability of credit cards and other consumer debts.

S. 1301 differs in significant ways from H.R. 3150, but also has caused substantial concern among those familiar with the bankruptcy system due to its substantive changes and the technical unworkability of many of its provisions.

Under S. 1301, an individual debtor would be required to make a good faith attempt to create a debt repayment plan through a consumer credit counseling service within 90 days prior to filing for bankruptcy as a condition of eligibility to file. There are no exceptions for people facing imminent foreclosure or other creditor collection actions, and there is no provision for expanding or funding credit counseling services.

S. 1301 would make the ability to pay 20% of one's nonpriority unsecured debts out of disposable income grounds for conversion or dismissal of a Chapter 7 bankruptcy case, thereby imposing a "means test" to remain in Chapter 7 rather than at the point of filing, as the House bill requires.

While Senator Grassley's business bankruptcy bill, S. 1914, has not been marked up by the relevant subcommittee, substantial portions of this bill will probably be introduced on the Senate floor as amendments to the consumer bill. S. 1914 contains some controversial provisions dealing with asset securitization, small business, and employee benefits--all pro bank.

Status of the House Bill

The Bankruptcy Reform Act of 1998 is the omnibus bankruptcy bill introduced by Rep. Gekas (R-PA), Rep. McCollum (R-FL), Rep. Boucher (D-VA), and Rep. Moran (D-VA). On June 10, the House of Representatives passed H.R. 3150 by a vote of 306 to 118. No Republicans voted against passage of H.R. 3150.

The bill would increase the amount of credit card debt surviving bankruptcy and would establish an up-front "means test" to determine Chapter 7 eligibility based on budget guidelines prescribed by the Internal Revenue Service for the purpose of offers in compromise. The bill also would eliminate the ability of self-employed people to reorganize very small businesses in Chapter 13.

When reported out of the Judiciary Committee, the bill would have curbed abuse by high end debtors by capping state homestead exemptions, but the House voted to eliminate this restriction, choosing instead to restrict bankruptcy relief for heavily indebted middle class families.

When debating this bill, the House also defeated a substitute bill introduced by several Democrats on the House Judiciary Committee that would have employed a more workable means test, deleted the new special interest exceptions to discharge for credit card debt, and modified the provisions in H.R. 3150 that discriminate against small businesses.

On the date of passage, the Administration issued a statement that it "strongly opposes" H.R. 3150 in its current form, and reiterated concerns regarding the "formulaic" means test and the nondischargeability provisions. Since then, the Attorney General has publicly said she would recommend a veto of the house bill.

The injury to women and children in this legislation has *not* been resolved. Both the House and the Senate have tinkered with the bill, but the fact remains that substantial credit card debt would be elevated to non-dischargeable status, forcing ex-spouses trying to collect support payments to compete with banks.

Thank you again for the energy you have put into this. Each year more than a million vulnerable families will be affected by whatever changes occur.

Very truly yours,

Elizabeth

Elizabeth Warren
Leo Gottlieb Professor of Law

cc: Brady Williamson

COPY

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July 23, 1998

Patti Solis-Doyle, Director of Scheduling
Office of the First Lady
The White House
Washington, D.C. 20001

Dear Ms. Solis-Doyle:

It has been two months since I met personally with the First Lady in Boston to discuss pending bankruptcy legislation. Since then, she has written a column on the subject, the President has publicly expressed his concern and the debates have expanded both in scope, volume and importance.

It occurred to me that the First Lady might enjoy joining me in a discussion of bankruptcy issues at one of my classes at Harvard Law this fall. I'll be teaching every Monday, Tuesday and Wednesday from September through November, and I would be delighted if she would like to participate in leading a class with me on the timely policy issues in these consumer debates. This is an area in which the First Lady has already demonstrated both leadership and knowledge, particularly as the issues relate to women and children.

If this is something that Mrs. Clinton might like to do, please let me know when she will next be in the Boston area and we can arrange a time.

Very truly yours,

Elizabeth Warren
Leo Gottlieb Professor of Law

cc: Melanne Verveer
enclosure

The Washington Post
Sunday May 16, 1999

file Bankruptcy

David S. Broder

Morally Bankrupt Creditors

Politics, as everyone knows, makes strange bedfellows. But it still raises eyebrows—and suspicions—to discover Hillary Rodham Clinton and Henry Hyde making common cause on the bankruptcy bill that passed the House on May 5 and is scheduled to be up for debate in the Senate this week.

A year ago, when similar legislation was close to final approval on Capitol Hill, the first lady sounded the alarm inside the White House and a veto threat from the president stopped it cold. When it was revived earlier this month in the House, Hyde, the chairman of the Judiciary Committee and leader of the effort to impeach and remove President Clinton, found himself in the odd position of repeating some of her arguments.

Conscious that he was in strange company, the veteran Illinoisan explained, "I am as capitalist as anybody, but it does not seem to me when there is a bill that is truly tilted toward the creditors, that giving a little flexibility for living standards for people who are bankrupt is a violation of one's credentials as a conservative."

Hyde had made the same argument in committee, recounting some of the "75 enhancements here for the creditors" and pleading with his colleagues to "throw a little, small bone to the debtor." But his amendment was defeated by what he called the "awesome creditor lobby" led by the banks that control the credit card market.

The complexities of bankruptcy law are beyond my understanding, but the odd alliance between Hyde and Hillary—who argued inside the administration that the legislation might give the issuers of plastic as much claim to a bankrupt worker's earnings as his ex-wife or their children—is not the only signal that this legislation may deserve more scrutiny than the press has given it so far.

There's also the fact that the members of the National Conference of Bankruptcy Judges endorsed Hyde's amendment, as did Brady Williamson, the chairman of the bankruptcy law reform commission, and major consumer groups.

They all admit there is a problem in the explosion of bankruptcy cases in this decade. Last year, more than 1.4 million Americans filed for individual bankruptcy, seeking legal protection against their creditors. That is almost a threefold increase in 12 years.

No one disputes that among these cases, there are a number of people—the estimates range from 4 percent up to 15 percent—who could, if pressed, pay off some of their debts. A few of them are the publicized wealthy individuals who run up big bills for luxuries, then put all their assets into lavish homes in states with high homestead exemptions and laugh when their creditors try to collect.

It is only these cases the bankers and retailers say they want to reach, by making it harder for people to file under Chapter 7, which basically lets you wipe out your debts and start clean, and forcing them instead to file under Chapter 13, which requires repayment of at least some debts over a period of up to five years.

But statistics show most of the Chapter 7 filers are people with modest incomes who just get in over their heads. The fastest-rising category of debt is in revolving credit card accounts, and the banks that dominate that business have been the most aggressive lobbyists for tightening the bankruptcy law.

But they have been at least as aggressive in marketing their cards, mailing out an incredible 3.45 billion—not million but billion—solicitation letters last year. Beth Climo, a spokeswoman for the American Bankers Association, told me that since the banks underwrite these loans, they are careful about issuing credit.

But Elizabeth Warren, a Harvard Law School professor who has studied this issue, countered that banks make so much money on unpaid credit card balances—thanks to interest rates much higher than on home mortgages, car loans or other forms of "secured" debt—that they deliberately lure people into borrowing beyond their means. Now, she said, they are trying to get Congress to rig the rules so their loan losses will be reduced.

Critics of the legislation say it should at least force the credit card bankers to include more specific consumer warnings on the monthly bills, telling customers, for example, how many months (or years) it will take them to pay off the outstanding balance if they make only the minimum required monthly payment. But disclosure provisions in the House bill are modest—and in the Senate version, almost nonexistent.

After his amendment was defeated, Hyde voted for final passage of the bill, expressing the hope that it will be improved in the Senate. But the Clinton administration—with Hillary Clinton riding herd—is demanding big changes and threatening a veto.

This one bears watching.

file

HR 833 and the Democratic Alternative: Bankruptcy Reform

The Democratic alternative (offered by Nadler, Conyers, and Meehan) makes ***a limited number of targeted changes*** to the House Judiciary Committee print that are necessary to achieve balance and fairness to low and moderate income debtors. Among the changes to the bill are:

Means Test: The Democratic alternative makes a few key changes to make the means test fair and less rigid.

- **Expense Standards Designed for Use in Bankruptcy:** H.R. 833 uses IRS expense formulas to determine a debtor's repayment ability. These standards were created for tax collection, not bankruptcy, and are not appropriate for bankruptcy purposes. The Democratic alternative would allow Treasury and the Executive Office of the U.S. Trustee to develop standards specifically for use in the bankruptcy context.
- **Limited Judicial Discretion.** Whatever the guidelines, I.R.S. experience shows that they should not be applied rigidly. H.R. 833 requires a showing of "extraordinary circumstances" and "necessary" expenses. The Democratic alternative would require that the expenses be only "reasonably necessary" allowing the court to determine whether a person truly has the capacity to repay.
- **Reducing Unnecessary Paperwork Burden and Unnecessary.** H.R. 833 requires that a complex means test analysis be performed on debtors even though a quick review could tell that they have no capacity to repay. The Democratic alternative would provide a streamlined process so that the paperwork and analysis is only done for those for whom there is some possibility they can repay under a Chapter 13 plan.

Limiting Coercive Reaffirmations: There is extensive evidence of coerced or abusive reaffirmations of unsecured debt and low-value secured debt. Such reaffirmations frequently are the result of misleading information or threats from creditors. H.R. 833 would ban class actions filed against creditors who violate reaffirmation requirements -- the mechanism that was effectively used to end abusive practices in important consumer protection cases. The Democratic alternative eliminates this rollback of existing consumer protections and would provide a streamlined process for reviewing if the creditor is making an informed choice and has the capacity to repay the reaffirmed debt.

Protecting Child Support and Alimony – Limiting New Nondischargeable Debts: H.R. 833 places the payment of high-priority debts like child support and alimony at risk after bankruptcy, by reducing the debts that can be discharged in bankruptcy. The Democratic alternative does not.

Balance – Responsibility for Creditors: H.R. 833 asks greater responsibility of debtors but not of creditors. The Democratic alternative asks credit card companies to provide information that consumers need to manage their credit card debts effectively, including equally conspicuous display of all terms accompany marketing of teaser rates and disclosure of the implications of making minimum payments.

file Bankruptcy

The New York Times
TUESDAY, MAY 18, 1999

Why Squeeze Every Last Penny From the Bankrupt?

By Henry J. Hyde

WASHINGTON

Early this month, with the support of more than 300 of my colleagues, the House of Representatives approved sweeping changes in our national policy on bankruptcy. Generally, these are much-needed reforms, but one part of the legislation could leave some debtors without enough money for basic needs.

For the last century, Americans filing for bankruptcy generally have been able to receive an immediate financial fresh start. The legislation now making its way through Congress effectively channels many debtors into a form of bankruptcy relief where they will have to repay a portion of what they owe for up to five years, a fair expectation in a society operating on the premise that obligations will be honored. The sticking point is how to determine whether an individual has some meaningful ability to repay.

Even those in debt need to eat.

I'm a conservative, and I'm certainly a market capitalist, but I also believe in capitalism with a human face. Declaring bankruptcy can be a traumatic experience, and as we justifiably bolster creditors' rights, we ought not ignore the need to leave the debtor with a decent standard of living during the repayment period.

A majority of my colleagues believe that we should be guided by the Internal Revenue Service's expense allowance standards in determining the expenses of bankrupt individuals and their families for certain basic needs like food, clothing, rent and utilities. These standards, which are far too restrictive, were developed by the I.R.S. to maximize the collection of taxes from delinquent taxpayers, and I do not think it is a particularly Republican idea to advance them. In our successful effort last year to curb abuses by the I.R.S., Congress required it to apply these standards more flexibly in tax collection cases.

The treatment of food needs is an example of what is wrong here. The I.R.S. allowance applies uniformly in the contiguous 48 states, failing to reflect regional differences in the cost of food. In addition, under the I.R.S. schedule, allowable expenses for food increase dramatically with increases in income, a confirmation that the standards are not designed to reflect actual need. Serious problems are evident when a debtor earning $51,000 a year gets $421 per month for food when living alone and $619 per month — less than 50 percent more — when supporting a household of four. If more than a 5 percent increase beyond these standards in a family's food budget is needed, the bill passed by the House does not allow it unless the debtor can demonstrate extraordinary circumstances.

An amendment that I offered would have replaced the I.R.S. expense allowances in the bankruptcy legislation with a "reasonably necessary" standard that has been used for the past 15 years in voluntary debt repayment plans. Although existing case law already interprets and applies this standard, I proposed that the Department of Justice issue more precise guidelines. If my amendment had been adopted, many Americans still could have been channeled into repayment plans without depriving debtors and their families of the means to pay for their basic needs.

I hope Congress will reconsider this humane approach to living expenses, perhaps in similar legislation to be taken up as early as this week in the Senate or in a House-Senate conference to reconcile different versions of bankruptcy reform legislation. Decency and dignity need not be victims in an otherwise useful reform. □

Henry J. Hyde, a Republican from Illinois, is chairman of the House Judiciary Committee.

Book, Movie, War, Reality

By Larry Beinhart

WOODSTOCK, N.Y.

Taking a detour into the absurd, a Yugoslavia official, Goran Matic, claimed last week that there are no real Kosovar refugees. That the people we see acting like refugees are just that — actors, 3,000 to 4,000 of them, getting paid $5.50 a day by NATO. The way it was in the film "Wag the Dog."

As if to match him, a NATO spokesman would deny the story *only on condition of anonymity.*

But nobody believed Mr. Matic anyway. His problem was that he only saw the movie. He didn't go back to the book it was based on. The book has a different title — "American Hero" — and it's about the creation of an actual war as a theatrical event, while the movie is about the creation of the *illusion* of a war.

The thing is that modern war really is a theatrical event. In the old days, the media cooperated with government — by commandment in totalitarian countries, by mutual agreement (with some few exceptions) in the democracies.

Until Vietnam. In its analysis of that failure, as Colin Powell pointed out in his biography, the American military explicitly understood that it is necessary to plan how the war will play out on television as well as on the ground.

Combat is now a theatrical event. That's good.

That sounds like a bad, cynical thing. But it's not. As we learned in the Persian Gulf, a well-thought-out, thoroughly planned war in which civilian casualties are avoided and our casualties are lower than they are for stunt men working on normal movies, a war that has a definite conclusion and is over quickly, is better than an unfocused, messy, dragged-out war.

Thus the Bush Administration took a look at Yugoslavia years ago and said — I'm paraphrasing here — "That's going to make a lousy picture; let's not do it."

But now the Clinton Administration has put it into production. They too should have gone back to the book first — not necessarily my book, "the book." If somebody had actually worked on the plot, story conferenced it, they might have said: "O.K., let's say we bomb them, and Milosevic doesn't fold, he just steps up his campaign against the Kosovars. What then?" What now?

We know several things about war movies. First of all, it's necessary for the good guys to do bad things. We have to prepare for that; we have to know that the bad things really are necessary. Also, it's better if the good guys seem purposeful and smart, not confused and ineffectual. Finally, we know that we'll need an ending, preferably happy.

So Mr. Matic's remark inadvertently gives us a lesson, unfortunately too late to follow this time: if wars are to be theatrical events, never start shooting without a script. Which is the Hollywood version of what Karl von Clausewitz used to say: "No one starts a war — or rather no one in his senses should do so — without being clear in his mind what he intends to achieve by that war and how he intends to achieve it." □

Larry Beinhart, the author of "American Hero," is working on a screenplay titled "Divorce."

Enforce Campaign Laws

To the Editor:

Once again you are advocating more laws regarding campaign financing (editorial, May 12). What is wrong with the laws that exist? Active enforcement of existing laws would provide sufficient control to prevent the abuses we saw during 1996. The Justice Department has fallen asleep in its enforcement responsibilities, the members of the Federal Election Commission act as if they are political appointees (surprise!), and both political parties are taking advantage of the situation by pushing the limits as far as they can.

If the President took the lead by telling Attorney General Janet Reno to take the gloves off on law enforcement, more legislation would become unnecessary. Adding more subheadings to the legal code is counterproductive and will lead to more lobbying and more campaign contributions. DAVID M. BARRETT JR.
LaGrange, Ga., May 12, 1999

Insuring Our Children

To the Editor:

Re "Kids' Insurance Fund" (letter, May 16):

If states are having trouble finding children without medical insurance, they should print pamphlets about the program that schools could give to parents when they register children for school. No child's registration should be complete without proof that he or she has medical coverage from a private insurer, Medicaid or a state-subsidized program. ELLEN FREILICH
New York, May 17, 1999

Bottom Line on Kosovo

To the Editor:

Owen Harries (Op-Ed, May 16) is right when he castigates the Clinton Administration for using "parsimonious means" to solve the Kosovo humanitarian crisis. The Administration wants the Yugoslav Government to accept terms that neither it nor any other government would ever accept unless threatened by a more than adequate use of force.

The Administration, however, does not want to send the ground troops to fight a war over what it officially does not wish to dispute — Yugoslavia's sovereignty over Kosovo. This forces the Administration to modify its demands and negotiate with the Yugoslav Government. The Administration will have to do what Mr. Harries suggests: "bear fully in mind the interrelatedness of things." It must be prepared to do something it has so far refused to do: negotiate over Kosovo's future political status and convince the Yugoslavs that the Kosovars will neither now nor in the future have de facto independence. JOHN P. PAVELEC
Lakewood, N.J., May 16, 1999

Raise Teacher Standards

To the Editor:

In the debate over the Board of Regents' push to raise graduation standards and New York State legislators' rebellion against it (front page, May 12), little attention has been paid to teacher preparation. It is true that employers expect schools to provide better prepared students, but this cannot be done with current staffing, particularly in mathematics. The recent import of Austrian mathematics teachers, which I helped arrange, demonstrated the severe shortage of qualified teachers.

This is a national crisis. Raising standards without addressing teacher shortages and providing appropriate teacher training will result in higher failure rates and punish the very students we are trying to help. ALFRED S. POSAMENTIER
New York, May 12, 1999

The writer is a professor of mathematics education at City College, CUNY.

Unethical Referrals

To the Editor:

Re the May 16 and 17 front-page "Research for Hire" series: The relationship of trust between a patient and a physician is paramount. When a physician accepts money for referring patients to clinical trials, that is the ultimate abuse of that trust and an abuse of power.

The American Medical Association's Council on Ethical and Judicial Affairs has had a clear policy on this issue for more than 20 years. Payment by or to a physician solely for the referral of a patient is fee splitting and is unethical. A physician's primary concern must always be with the health of the patient. Receiving payment for referral to a clinical trial violates the requirement to deal honestly with patients. D. TED LEWERS, M.D.
Vice Chairman, Board of Trustees
American Medical Association
Chicago, May 17, 1999

Saving City Gardens

To the Editor:

The celebration of Bette Midler's philanthropic support for New York City's community gardens (editorial, May 14) obscures the government failure that precipitated the need for this private intervention.

Mayor Rudolph W. Giuliani's extortionate demand that private parties pay the city not to destroy the community gardens located on city-owned property will make it more difficult to save hundreds of other community gardens across the city. Viewed as a potential national model, it establishes a high price for our own government not to destroy the livability of our communities.

Preservation of publicly owned urban green space should be recognized as a legitimate function of government, not left to the serendipitous intervention of one generous movie star. JOHN D. ECHEVERRIA
Washington, May 17, 1999

The writer is the director of the Environmental Policy Project at Georgetown University Law Center.

America's Love for Guns

To the Editor:

President Clinton blames Hollywood and television for encouraging gun crimes like the massacre in Colorado (news article, May 16), but the same television shows and movies are watched by children and adults in almost every other country of the world without producing the same degree of slaughter. Canada, for example, had fewer than 200 gun deaths in 1997, while the United States had 10,000.

The real issue is the almost nationwide desire to embrace guns as a necessary and normal way of life, which only increases the availability of weapons to Americans of all ages. As long as it is considered reasonable to own a gun, the United States will continue to have the highest death toll by guns in the world. Reversing that mind-set and removing guns from homes is the real challenge to a bold leader. Television and film are useful scapegoats for a cautious one. DAMON McELHONE
Brooklyn, May 16, 1999

file

June 22, 2000

MEMORANDUM TO THE PRESIDENT

FROM: GENE B. SPERLING/SARAH ROSEN WARTELL
CHARLES BRAIN/JOEL WIGINTON

SUBJECT: DECISION ON BANKRUPTCY REFORM LEGISLATION

CC: JOHN PODESTA

ISSUE PRESENTED:

Senator Lott has advised Senator Daschle that negotiations on bankruptcy reform legislation are over. The Republicans agreed to make some further concessions on a couple of the outstanding issues, but the final resolution fails to address our concerns on three key issues you noted in your recent letter to the Congressional leadership: the homestead exemption, discharge of penalties for violations of clinic access laws, and an exemption from the Fair Debt Collection Practices Act (FDCPA) for check collectors. These problems come on top of the dissatisfaction many of your advisors feel with the balance struck in the bill's other provisions. Senator Daschle has asked about your intentions and believes that a strong, clear message from you quickly could enhance the chances of obtaining a veto-sustaining margin.

Your advisors unanimously recommend that you send another letter to the Congress that: (1) indicates that you will veto the bill that Lott described as final; (2) strongly implies that you will sign no bill without adequate clinic access provisions; (3) stresses your concerns with the current resolution of the check collector and homestead issues and the lack of balance in the remainder of the bill; but (4) urges the Congress to fix these problems and leaves you room to decide how to proceed if the clinic access issue is resolved.

STATUS IN CONGRESS

Senator Daschle believes that the chances of achieving 34 Democratic votes are enhanced by your sending a clear, strong veto message as soon as possible. However, it is not certain that a veto-sustaining margin can be obtained. While Daschle would personally support the bill in its current form, if you have a strong veto message premised upon the clinic access and check collector provisions, Daschle may stand with you. Nonetheless, there is some risk, as we have never heard a credible assertion that even 25 Democrats are willing to oppose the bill.

Senator Torricelli, the lead Democratic sponsor of the legislation, also appears to be inclined to support the bill in its current form. Torricelli's staff, however, notes that if you come out with a clear and strong veto statement, the Senator may stand with you against the clinic access and check collector provisions.

Eleven Democratic Senators were opposed to the bill on relevant grounds when it passed the Senate. Senator Durbin, who led the bipartisan effort last year and voted for the Senate bill, has determined that the final bill is unacceptable to him, regardless of the outcome of these remaining issues. Senator Leahy, who voted for the Senate bill and has worked hard to ensure a fair process, believes that the clinic access and the check collector issue swing the balance against an already flawed product; he will vote against it in this form and recommend a veto. Senator Schumer, who strongly opposes the bill, believes that the clinic access issue will mobilize others.

There are five to seven Democrats, led by Senators Biden, Johnson, Breaux, and Reid of Nevada, however, who will likely support the bill in whatever form it is presented to them. Senator Jeffords is the only Republican who has publicly noted some concerns with the measure.

There is little prospect for overcoming the strong veto-proof margin of 313 to 108 by which the House passed its bill last May. Moreover, it is likely that the Republicans will send whatever vehicle they use for the bankruptcy bill to the House first to try to gather momentum.

ADMINISTRATION APPROACH TO BANKRUPTCY REFORM

We have said repeatedly that you support balanced consumer bankruptcy legislation that would encourage responsibility and reduce abuses of the bankruptcy system on the part of debtors and creditors alike. We can eliminate abuse without hurting those forced to turn to bankruptcy, the vast majority of whom are faced with some of the hardest circumstances that life has to offer – divorce, unemployment, illness, and uninsured medical expenses. Although we should not countenance people using bankruptcy to escape bills they can afford to repay, we also should not enact punitive legislation that places insurmountable barriers before the people who file for bankruptcy as a last resort.

To guide Congress in striking the proper balance, we have set forth principles that should be met by a final bill. Many of these issues were resolved on a bipartisan basis by Congressional staff. Others were reserved as "member issues." Just this week, Lott advised Daschle of the Republicans' final offer on these issues and their plan to move forward attaching bankruptcy to the next available vehicle.

ASSESSMENT OF NON-MEMBER ISSUES

In a letter to the informal conferees on May 12, 2000, Jack Lew set forth your key principles. A detailed assessment of the resolution of these issues is in the attached appendix.

In short, the final bill's provisions are closer to the Senate bill than the House bill, but they do not incorporate the balance that you have sought. They reflect a compromise between a House bill that we thought badly one-sided and a better Senate bill about which we still had significant concerns. While all of your advisors believed when we wrote you on May 5th that you should sign a bill close to the Senate bill, this bill is a somewhat closer call.

For example, our fundamental concern about the rigidity of the means test in the Senate bill was not addressed. Moreover, changes were made from the Senate bill to shift a few more debtors out of Chapter 7 and limit a bit further the court's discretion to determine whether a debtor has the capacity to repay. Similarly, flawed language from the Senate bill narrowly limiting the family household goods that debtors can protect from creditor seizure was included in the final bill. While no one of these provisions alone merits your veto, cumulatively they represent undesirable changes relative to the Senate bill.

ASSESSMENT OF RESOLUTION OF MEMBER ISSUES

You wrote to Congressional leaders on June 9th setting out your concerns about five open member issues. Our assessment of the resolution of these issues is below. In short, we believe two of those issues have been resolved to our satisfaction (pension cap and credit card disclosures, although Senator Kennedy is having trouble getting confirmation of the agreement on pension cap); one issue has been resolved to the satisfaction of key Senate Democrats but not to ours (homestead); and the Republican resolution of two issues (clinic access and check collector exemption) is unacceptable to us and the lead Democrats on those issues, although some Democrats would support the bill nonetheless.

Pensions: "The final bill may eliminate protections for reasonable retirement pensions that reflect years of contributions by workers and their employers."

The Senate bill included a noxious provision that would have allowed creditors to demand that debtors waive bankruptcy protection for pension assets as a condition of receiving credit. That was dropped in Conference, but Senator Grassley insisted on some limit on otherwise unlimited pension assets shielded from creditors. Senator Kennedy was deeply concerned that such a cap would send the wrong message about retirement savings. Moreover, seemingly large retirement accounts do not necessarily provide for extravagant lifestyles for workers with increasingly long life expectancies. A compromise was apparently reached between Kennedy and Grassley that caps only certain IRAs, excluding amounts rolled over from employer pension plans, at $1 million. Moreover, the court has discretion to waive the cap in the interests of justice. Senator Kennedy is having difficulty getting confirmation that the Republicans will stick with this agreement. ***If there is no backsliding, this resolution seems reasonable and consistent with our arguments in the homestead context.***

Credit Card Disclosures: "The final bill may weaken important credit card disclosure provisions that will help ensure consumers understand the implications of the debt they are incurring."

The Senate bill requires modest new credit card disclosures. Consumers would be given better information about credit card "teaser rates" and the impact of making only the minimum payment on the length of time one would be repaying debt. Your letter referred to an effort by Senator Gramm to exclude small banks from the provisions' scope. However, the provisions survived without the exclusion, although for two years the Federal Reserve Board will be asked to provide consumers with an 800 number for information about credit cards issued by smaller banks – an 800 number that larger banks will have to provide themselves. ***The Senate bill's modest disclosure requirements have been effectively preserved.***

Homestead: "The final bill may not adequately address the problem of wealthy debtors who use overly broad homestead exemptions to shield assets from their creditors."

State law allows debtors to exempt from the bankruptcy estate home equity valued up to specified homestead exemption thresholds. Five states (including Texas and Florida) have unlimited homestead exemptions, effectively allowing wealthy debtors to shield millions in assets in valuable mansions, while avoid repayment of their creditors. It seems to us fundamentally unfair to ask low- and moderate-income debtors to devote future income to repay all the debts that they can, while leaving loopholes that allow the wealthy to shield assets from their creditors.

The final bill has a modest limitation on unlimited homesteads to address abuse by those who move to states with unlimited homestead exemptions within two years of the bankruptcy filing. ***This does not address our fundamental issue.*** Moreover, wealthy debtors often can use bankruptcy planning to postpone bankruptcy for two years while they qualify for the unlimited homestead exemption.

Senator Kohl, the Democratic Senate champion of this issue, is satisfied that this resolution represents a good first step and establishes the principle that some nationwide limitation on homestead exemptions is appropriate. (Kohl is undecided whether he will support or oppose the overall bill.) Senator Leahy does not want to flank Senator Kohl on the left on this issue. Thus, if you take this issue to the public, you will have only long-time bankruptcy-bill opponents like Wellstone, Kennedy, and Nadler joining you from Congress. However, many editorial pages around the country have pressed this issue hard and would applaud your concern.

Fair Debt Collection Practices Act: "The final bill may include an anti-consumer provision eliminating existing law protections against inappropriate collection practices when collecting from people who bounce a check."

In conference, Senator Hatch has insisted on an anti-consumer provision (in neither the House or the Senate bill) which would eliminate attorneys fee awards for violations of the Fair Debt Collection Practices Act, if the defendant is collecting bounced checks rather than other defaulted debt. This is a pernicious provision because it could give check collectors de facto rein to intimidate and harass lower-income debtors, knowing that their financial position would prevent them from hiring counsel. Often, the only effective enforcement of the check collector provisions is class action litigation, financed by firms because of the potential for attorneys fee awards. Senator Torricelli suggested a minor change, which the Republicans accepted, that limits attorneys' fees to cases where the debtor can prove that he or she had no intent to defraud. Senators Leahy and Sarbanes argue that such a standard is impossible to prove. ***Our fundamental concerns have not been addressed.***

Clinic Access: "Some in Congress still object to a reasonable provision that would end demonstrated abuse of the bankruptcy system. We cannot tolerate abusive bankruptcy filings to avoid the legal consequences of violence, vandalism, and harassment used to deny access to legal health services."

The Senate bill included a Schumer amendment to address the announced strategy of anti-abortion protestors using bankruptcy to avoid penalties for violence against family planning clinics in violation of the Freedom of Access to Clinic Entrances Act (FACE) and its state counterparts. We strongly supported the amendment. The Vice President was in the Senate chamber when they voted to break a tie, if needed. To avoid embarrassment, the Republicans ensured that the amendment passed by a vote of 80-17. However, in conference, they have steadfastly refused to include it or a comparable measure. Their alternative, which they have unilaterally announced will be in the final bill, does little beyond current law. It precludes discharge of all judgements for acts of violence where behavior was shown to be willful and malicious. Advocacy groups argue that few of the actual judgements against, or settlements reached with, defendants who harassed clinic patients include a finding of willful and malicious behavior. Moreover, harassment and intimidation does not always include violence. ***Thus, the final unilateral resolution does not satisfy our concerns.***

This is the hardest issue for the Democrats who want to support the bill. Abortion rights groups are energized. If you take a strong position, this is the issue most likely to rally Democrats in opposition to the bill. Even Senator Torricelli may join you in opposing the bill if further changes are not made to this provision, although Senator Biden does not believe this issue should bring down the entire bill.

RECOMMENDATION

Your advisors unanimously recommend that you send another letter indicating that the Republicans' "final" bankruptcy bill is one that you would veto. The letter would note that there has been an acceptable resolution on pensions and credit card disclosures, but that you have continuing concerns about the check collector, homestead, and clinic access provisions. Special emphasis will be given to the clinic access issue, so that no one reading the letter would doubt you would veto any bill without its satisfactory resolution. A reader should also be concerned that you might veto a bill that does not resolve the homestead and check collection issues to your satisfaction, but the letter will give urge the Congress to fix these problems and give you sufficient latitude to make the veto decision later. There is a real risk that Congress could resolve the clinic access issue, leaving you with only a handful of Democratic Senators joining you in opposition to a bill with the other provisions.

DECISION

___ **1. Send the letter as proposed**

___ **2. Let's discuss**

APPENDIX
ASSESSMENT OF BANKRUPTCY BILL'S OTHER PROVISIONS

In a letter to the informal conferees on May 12, 2000, Jack Lew set forth your key principles. Our assessment of the resolution of these issues is below.

Means Test: "Access to Chapter 7 should not be governed by an arbitrary means test, but by reasonable guidelines that take into account individual circumstances."

We have argued unsuccessfully that various changes are needed to build more discretion into the system to determine whether, in the debtor's individual circumstances, they really have the capacity to repay. We have also sought less stringent thresholds and various technical changes to prevent unfairness in the application of the test. We did succeed in preventing creditors from filing motions to challenge low-income debtors' bankruptcy filings, but these below-median income debtors will be subject to the burdens of new means test paperwork and trustee scrutiny even though only a tiny fraction will have any capacity to repay their debts. While some modest improvements were made in conference, ***the final bill (like both House and Senate bills) does not address many of our fundamental concerns.***

Protection Against Coercive Reaffirmations and Practices: "There must be appropriate safeguards against coercive creditor practices that compel debtors to forgo their rights and that disadvantage more scrupulous creditors."

During bankruptcy, too many debtors are misled or deceived into agreeing to repay debts that they cannot afford and have a legal right to discharge. The final bill contains provisions, based on an Administration proposal, that make it significantly more difficult to mislead or deceive debtors who cannot afford to reaffirm their debts. To get our proposal included in the Senate, we had to make some significant compromises with the credit card industry that cause consumer advocates concern. We sought further improvements in conference but they were not made. However, truly offensive provisions from the House bill (that would have banned class actions as a remedy for existing law violations) were dropped. As a whole, your staff believe ***these provisions are a net improvement for consumers over current law.***

Improving Credit Card Practices: "Both debtors and creditors must be required to be responsible. Bankruptcy reform should be balanced by including provisions that address credit-card practices that may lead to bankruptcies."

As discussed in the body of the memorandum, modest new credit card disclosure requirements were included in the Senate. These largely survived in tact in the final bill. Consumers are given better information about credit card "teaser rates" and the impact of making only the minimum payment on the length of time one would be repaying debt. ***Overall, while we believe more information could be provided more clearly, these provisions are an improvement over current law.***

Non-dischargeable Debts and "Cram Downs": "The goal of repaying creditors must be balanced with the need to protect social priorities, such as payment of child support, alimony, and taxes, and to preserve a meaningful opportunity for a fresh start."

In the last Congress, the First Lady wrote of her concern with provisions that make additional credit card debt nondischargeable in bankruptcy, thus leaving it to compete with higher societal priorities that also are nondischargeable – especially payment of child support and alimony.

In response, the bill's proponents left the new categories of nondischargeable credit card debt, albeit somewhat narrower, but added provisions to clarify that child support and alimony are the highest priority. These provisions will work in many cases to improve the payment of child support and alimony in bankruptcy; however, in a small portion of cases after bankruptcy discharge, these new nondischargeable credit card debts could crowd out child support or alimony. Our argument is very technical, however. ***Rhetorically, they have neutralized our child support and alimony criticism.***

We have a similar concern about provisions in the final bill that would give secured creditors unprecedented rights to collect amounts in excess of the value of their collateral. (Current laws "crams down" their claim to the value of the security. Thus, if a car is worth less than the amount originally borrowed, the claim is limited to the car's value.) Since secured debt must be satisfied if the collateral is to be kept, collection of other societal priorities (like child support, alimony, and taxes) might also suffer a bit. The bill also skews the distribution of scarce debtor assets toward undersecured creditors instead of unsecured creditors (like credit card companies). The latter firms support is ironic, but this was a political bargain they made with car financing firms to win Senator Abraham's support. While the final bill is better than the House provisions, ***our fundamental concern was not addressed.***

<u>Barriers to Entry or Representation in the Bankruptcy System:</u> "Inappropriate barriers should not be created to entry into or effective representation in the bankruptcy system."

The Administration has been concerned about inflexible pre-bankruptcy filing hurdles, including paperwork and counseling requirements and fees. We were also concerned about attestation requirements and sanction provisions that could deter attorneys from representing debtors or raise the costs of representation. The final bill waives fees for low-income debtors, reduces some of the paperwork requirements, and eliminates the most chilling requirements for debtors' attorneys. ***While hardly the provisions we would have written, we do not have strong objections to the remaining provisions.***

June __, 2000

Dear Mr. Speaker:

I write again because I am deeply concerned about recent developments concerning bankruptcy reform legislation pending before Congress. I understand the House and Senate Republican Leadership has reached a conclusion on a package they will soon move through the Congress. We have not seen the final language, but, if the verbal description is accurate, I will veto the bill.

In my letter of June 9, 2000, I highlighted five issues -- then still unresolved -- that could help to determine whether the balance struck in the final bill meets my standards of balance and fairness. On three of these issues, the Republican resolution is seriously flawed.

First [and foremost] ***[Chuck wants it in, Larry wants it out***], I cannot support a bankruptcy bill that fails to require accountability and responsibility from those who use violence, vandalism, and harassment to deny others access to legal health services. Too many have strategically abused the bankruptcy system to avoid the penalties that Congress and the States have imposed for such illegal acts. The language that I understand the Republicans will include is inadequate to this task. It would require a finding that there was a "willful and malicious" threat of serious bodily injury before certain debts would be made nondischargeable. Such a finding is often not made in judgements or settlements for violations of the Freedom of Access to Clinic Entrances Act or similar state laws. In addition, by limiting the scope of the provision to violence only, it would exclude harassment and vandalism that can effectively deny citizens access to legal health services. The final legislation must include an effective approach such as the one contained in the amendment by Senator Schumer, which was passed the Senate by a vote of 80 – 17.

I am also concerned that the changes proposed to the Fair Debt Collection Practices Act would deny an effective remedy to victims of abusive check collection practices. We have yet to hear a compelling rationale for why check collectors should not be subject to the same requirements as those who collect other debts. No committee in either body of Congress ever considered this issue, raised for the first time in Conference. At a minimum, the proposal should be subject to full Congressional consideration, so that public scrutiny can be applied to the implications of the proposed changes.

The proposed limitation on state homestead exemptions will address, for the first time, those who move their residence shortly before bankruptcy to take advantage of large state exemptions to shield assets from their creditors. But the proposal does not address a more fundamental question: Is it fair that people with extravagant homes can retain so much wealth through bankruptcy while we require average-income debtors to devote their modest, future incomes to repay their creditors?

I am satisfied that the agreement reached with Senator Kennedy on the pension issue will appropriately protect retirement assets in bankruptcy while addressing any abuse that may exist. Similarly, the minor changes to the credit card disclosure provisions that have been described will not seriously threaten the ability of consumers to access important information that can help them understand the implications of the debt they are incurring.

I remain concerned, however, that the negotiations on other provisions have produced a bill that has lost some of the balance that the Senate bill had tried to achieve, albeit imperfectly from my perspective. As a result of all these concerns, I will veto the bill that we understand the Republicans plan to forward to my desk. But I continue to urge Congress to reconsider and send me a fair bill that meets the test of balance.

Sincerely,

WILLIAM J. CLINTON

Sarah Rosen Wartell
06/23/2000 10:41:14 AM

Record Type: Record

To: Ann O'Leary/OPD/EOP@EOP

cc: ruby shamir/who/eop@eop, lissa muscatine/who/eop@eop, eric j. morse/opd/eop@eop
Subject: Re: Congress Daily AM today

Thanks. FYI -- At staff meeting yesterday, there was a long but not clearly conclusive discussion about whether we wanted to make it seem like the clinic access issue was more important than the others. We rejected saying we'll veto this bill and we'll veto any bill with clinic access, because it implied the other issues didn't count. But my vague instructions were: a person reading the letter should think it highly likely that we would veto any bill that had the clinic access issue in it; and that person should worry and believe it possible, but not be sure, whether we would veto over the other two issues. The concern is that homestead is not fixable -- they won't budge further -- and if the other two issues went, the support in Congress for this bill among senate dems would then be overwhelming and we'd be leaving the president in a difficult position.

With that as guidance, Chuck believes foremost should be in, while Larry believes foremost should be out I am waiting to see where Gene is. Does that influence your view about in or out?

Ann O'Leary
06/23/2000 10:36:31 AM

Record Type: Record

To: Sarah Rosen Wartell/OPD/EOP@EOP
cc: Ruby Shamir/WHO/EOP@EOP, Lissa Muscatine/WHO/EOP@EOP, Eric J. Morse/OPD/EOP@EOP
bcc:
Subject: Re: Congress Daily AM today

Sarah -

This letter looks good -- I agree that we should not include "and foremost" regarding the clinic violence as it makes the other two points seem less important to resolve. I still believe that we should send a strong message that we're offering the veto on all three.

I wanted to let you know that I will be out of the office on official travel from Sunday night through Thursday morning of next week. Melanne is back today and I will fully brief her -- I'm copying Ruby on this email. I have also briefed Lissa Muscatine for press purposes. Could you please include Ruby on any correspondence for Melanne and if there is press guidance, could you please be sure to include Lissa? If you need to reach me after Sunday, please be in touch with Eric Morse at 6-0122.

Thank you.

-Ann

Sarah Rosen Wartell

Sarah Rosen Wartell
06/23/2000 09:25:53 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Congress Daily AM today

I believe this makes our letter most timely if we send it monday morning with some sort of press strategy. (Note: Memo to potus went into staff secretary last night.)

Gene's Folks -- Please make sure gene sees this and reviews letter ASAP so we can complete clearance. We should get podesta to review as soon as gene has signed off. Joel J. -- Welcome your comments on strategy and text per my earlier email.

BANKRUPTCY

For convenience, here is current text of letter:

bk00potusletter.622.v5.

---------------------- Forwarded by Sarah Rosen Wartell/OPD/EOP on 06/23/2000 09:22 AM ---------------------------

Edward_Pagano@judiciary.senate.gov (Edward Pagano)
06/23/2000 08:42:03 AM

Record Type: Record

To: Joel K. Wiginton/WHO/EOP, Sarah Rosen Wartell/OPD/EOP

cc:
Subject: Congress Daily AM today

JUDICIARY

Lott Plans To Hold Bankruptcy Reform Vote Next Week

Senate Majority Leader Lott upped the ante Thursday in the partisan debate that has emerged over bankruptcy reform legislation, signaling his intention to schedule a vote on the measure next week. But Lott conceded he still is searching for an appropriate vehicle for the legislation.

A spokesman said Lott's goal is to move the legislation before the Independence Day recess--but that does not necessarily mean he would pull the plug on the measure if it does not come to the Senate floor by then.

Lott's scheduling announcement came as Senate Democratic leaders were in the process of wrapping up a formal whip count of their membership on the bankruptcy legislation.

Democratic sources said a sizable portion of the caucus appears undecided. But a spokesman said Minority Whip Reid wants to keep the results of the head count confidential.

Citing different concerns, both Judiciary ranking member Patrick Leahy, D-Vt., a leader on the informal bankruptcy conference committee, and Sen. Richard Durbin of Illinois, a member of the Senate Democratic leadership, have said they will oppose the legislation in its current form.

Sources said those objections likely would send a strong signal to other members seeking guidance on how to vote.

Meanwhile, the Consumers Union late Thursday was poised to send an open letter to Congress, urging members to think carefully before committing themselves to the bill.

Frank Torres of CU noted that Democrats have yet to see the final legislative language--which was
hammered out largely by Republicans.
"Be aware. If you don't read the fine print of this bill, you don't know what you're voting on," Torres said,
adding, "This is a major reform, and [Republicans] can't figure out how to get a stand-alone bill on it."
? By Pamela Barnett
(Back to Contents)

Message Sent To:

Gene B. Sperling/OPD/EOP@EOP
Melissa G. Green/OPD/EOP@EOP
David Tseng/OPD/EOP@EOP
Elliott H. Baer/OPD/EOP@EOP
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broderick johnson/who/eop@eop
joel k. wiginton/who/eop@eop

file Bankruptcy

Ann O'Leary
07/26/2000 04:46:13 PM

Record Type: Record

To: Ruby Shamir/WHO/EOP@EOP

cc:

Subject: URGENT -- bankruptcy offer en route

I mentioned this latest bankruptcy deal to Melanne, but here are the details. Could you please share with her? Thanks.

---------------------- Forwarded by Ann O'Leary/OPD/EOP on 07/26/2000 04:45 PM ---------------------------

Sarah Rosen Wartell
07/25/2000 12:39:08 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message

Subject: URGENT -- bankruptcy offer en route

We understand from Torrecelli staff (confidentially) and other sources that an offer to the President is likely to come to us today (or possibly tomorrow). It will include:

(1) **Drop Fair Debt Collection Practices Act** amendment

(2) **Homestead: hard cap of $250,000, with the ability of the court to lift cap "in the interests of justice"** (Unable to confirm if the offer also assumes inclusion of the deal Kohl got about assets transfered within 2 years.)

(3) **Drop Schumer amendment and drop the Hyde language** that is in the current draft. Return to current law.

(4) In exchange for dropping the Schumer amendment, they will **accept the means test safe harbor** that the Administration and Hyde sought (was in House bill). (Recall: The bill already prevents debtors from filing abuse motions against below median income debtors (a "motions safe harbor"). The means test safe harbor will prevent the US trustees from having to review each below median income debtor for capacity to repay under the means test, although we do not expect that they will find many to be abusing the system and will find streamlined ways to implement even without this provision. This is not a big substantive change to the impact of the means test but streamlining and helpful symbolically.)

(5) There is some debate about whether the offer will include a new issue -- never yet discussed in this context -- **limitations on the rent-to-own industry** (sought by the industry itself to deal with their worst actors and preempt more rigorous state efforts). I am told that Senator Harry Reid first suggested some

time ago including it in the bankruptcy bill. More recently, Rep. Armey said that if we're going to give up the homestead cap, we should get this in exchange. However, Senate Dems checked with Consumer Groups who are STRONGLY OPPOSED. And apparently the banks do not like it either, so they may push back on Armey. Torrecelli's staff are urging that this not be included in the offer, which may delay its transmission to us.

Finally, there is no indication that the Republicans yet have a vehicle upon which to attach the bankruptcy bill. Torrecelli's staff are not aware of any plans to send it to the floor this week. Thus, the offer to us appears to be their next step. We wouldn't be surprised if they went forward with it if they had a vehicle; however, if we don't agree, unclear that they would include the homestead cap.

Message Sent To:

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Message Copied To:

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Joseph J. Minarik/OMB/EOP@EOP

file bankruptcy

September 5, 2000

TO: GENE SPERLING

CC: SARAH ROSEN WARTELL

FROM: DAVID MEDINE

RE: PRELIMINARY REVIEW OF REPUBLICANS' BANKRUPTCY OFFER

We have reviewed (preliminarily) the offer sent late last week by Majority Leader Lott's office. When forced to put the offer on paper, it became clear that Senator Hatch has not agreed to drop his FDCPA provision and that Rep. Armey was, in fact, insisting that a Rent-to-Own (RTO) provision be added to the package, as had been reported. Lott's office apparently indicated to Chuck Brain that Hatch had walked them back, but if we could agree on the other elements of the offer as presented verbally, they would roll him. It is not clear whether that same sentiment applies to Armey's RTO provision.

Trade press reported Tuesday afternoon that we had received the offer. Copies are in circulation and details of the proposal are in the press. Congress Daily reports that "Democratic sources expressed doubt today the package would prove acceptable to the White House. One Senate staffer noted, 'It doesn't seem likely the White House is willing to deal without getting ... concessions' in the area of abortion. " Nadler's office call to recommend we use the further retreats as the basis to claim they are not negotiating in good faith and reject this out of hand.

Review of the Offer

(1) Schumer Clinic Violence: The offer drops both Schumer's and Hyde's language on clinic violence, leaving current law intact.

(2) Homestead: The offer adopts our proposed language with a hard cap of $500,000 hard cap (instead of $250,000) and an "interest of justice" exception (e.g., if the court finds that it is in the interest of justice for the debtor to maintain her home "upon consideration of factors including but not limited to medical expenses, necessary living expenses, and the age of the debtor.") was accepted. As Sarah noted in her earlier message on this subject, the interest of justice language is nonsensical, but probably not harmful. However, we may want to note the irony that -- when we want to give discretion to the courts to help low income debtors "in the interests of justice", they refused, but here they want to give discretion to the courts to relieve burden on those with half million dollar homes. The hard cap was a big concession on their part.

(3) Hatch Check Collection: The offer includes the Hatch check collection provision in substantially the same form as the Senate bill. It precludes consumers from obtaining attorneys' fees in successful suits under the Fair Debt Collection Practices Act (FDCPA) when a dishonored or counterfeit check has created a debt, unless the consumer can establish that he or she (1) could not reasonably have been expected to know that the check would bounce and (2) were prevented by "extraordinary circumstances" from make the check good. This is a small step back from the Senate bill, which limited the focus on the consumers' reasonable expectation to the time when the check was presented (proposal deletes "at the time"). It is a larger step back from the Hatch proposal to Leahy in June to prevent attorneys' fees only where the consumer "did not knowingly and with intent to defraud pass, utter or present the dishonored or counterfeit instrument." FTC believes that, because consumers have to disprove something (prove a negative: a lack of intent or knowledge about the check clearing), the higher intent standard would actually be easier to disprove. In other words, its easier to prove one lacked intent than to prove one couldn't anticipate something happening, namely that a check would bounce. Lott has signaled this provision could be dropped if an overall agreement could be reached.

(4) Hyde "Means Test Safe Harbor": The offer adds to the bill a means test safe harbor sought by Rep. Hyde, the Democrats, and us (will be checking specifics of these additions and the homestead provision with Treasury). As Sarah noted in her prior message, we were fighting for two different safe harbors: (1) a "motions safe harbor" which would prevent creditors from challenging the Chapter 7 filings as abusive for below median income debtors, fearing that creditors would use the threat of a Chapter 7 filing to coerce debtors to reaffirm debt, forego the filing, or otherwise forego their rights: and (2) a "means test safe harbor" that would mean that trustees would not need to scrutinize the Chapter 7 filings of below median income debtors under the means test formula. With this, we'd have both.

(5) **Rent-to-Own.** Although this was not included in the bill, and Lott and Grassley's staff had seemed to say this was not included in their offer, Armey's insistence seems to have prevailed, at least on paper. The new provision would change the treatment in bankruptcy of RTO agreements in ways more favorable to the RTO firms, by characterizing them as "leases" instead of "credit sales." Currently, while the industry has successfully lobbied to get most state laws to say expressly that RTO agreements are not credit sales for disclosure and other purposes, bankruptcy courts are not bound by those state laws and look to the underlying nature of the agreement. Thus many bankruptcy courts treat these agreements more akin to credit sales. When treated as a credit sale, it means that a consumer who has a $1000 contract with an RTO firm for a TV that was worth $200 new would, in bankruptcy, pay the value of a used TV to keep it (plus some interest); when treated as a lease, the consumer would have to pay the balance on the $1000 RTO contract in order to keep the TV. Sen. Torrecelli and consumer groups strongly oppose this provision.

Zimbabwe's Victory

DOES ANYONE still remember the high hopes surrounding the ascension of Robert Mugabe to power in Zimbabwe almost exactly two decades ago? In 1980, culminating a peace process brokered by then-President Jimmy Carter, Mr. Mugabe, a former guerrilla leader who had resisted the illegal white government of what was then called Rhodesia, was elected in a landslide to lead the new nation. His victory was celebrated by Zimbabwe's black majority and greeted with aid and goodwill from Western governments.

Today Zimbabwe is a tableau of decay and despotism. Annual inflation tops 60 percent. Half the population is jobless. Yet Mr. Mugabe balks at reforming his unproductive state-dominated economy. He prefers to pursue a military expedition in Congo, apparently to plunder in that mineral-rich country what he cannot produce at home. He rails against enemies abroad and jails—and sometimes tortures—opponents at home.

Last weekend's national referendum on a new constitution was Mr. Mugabe's latest attempt to grab more power. This time Zimbabwean voters said no—no to a charter that would have empowered Mr. Mugabe to dissolve an already weakened parliament without cause and to confiscate the country's few remaining white-owned farms without compensation.

To its credit, Zimbabwe's electorate was unswayed by Mr. Mugabe's demagogic offer of free white land. But the low turnout in traditionally pro-Mugabe rural areas may also have to do with the country's most horrific crisis: Some 25 percent of Zimbabweans are HIV-positive, and, as The Post's Jon Jeter recently reported, the plague is especially crippling in the countryside, where corn production dropped 61 percent in 1999 because farmers are simply too exhausted by disease to work.

To his credit, Mr. Mugabe resisted the temptation to overthrow the election results. Now Western governments must keep pressing for economic reforms, help Zimbabwe's growing democratic opposition maintain its newfound unity and do whatever is possible to prevent Mr. Mugabe from manipulating April's parliamentary vote. If all goes well, Mr. Mugabe will have a chance to graciously concede after that election, too.

Bad Ideas on Bankruptcy

file

AMERICA, AS Sen. Daniel Patrick Moynihan said recently, is the land of the second chance: You can declare bankruptcy, pay your creditors what you can afford and then start your life again. This clean-slate possibility is part of the American ethos, much as immigration is: It welcomes risk-takers, people with ambition; but sometimes the risk-takers fail, triggering a backlash. A few years ago, immigration was the object of restrictive efforts in Congress. Now, thanks to some pricey lobbying by financial firms, bankruptcy is in the spotlight.

The House and Senate have each passed a bankruptcy reform bill and are now working on a joint one. The reformers point out that the number of people filing for bankruptcy has shot up from 330,000 in 1980 to 1.4 million in 1999, and that this is costing credit card firms and other lenders a few billion dollars annually. The fact that credit card issuers mail out more than 3 billion solicitation letters a year suggests that they may not be suffering all that much. But the reformers also argue that the growth in bankruptcy signifies that risk-taking has gone too far. People are borrowing casually, then using the law to avoid even repayments they could afford. Consumers ultimately bear some of the cost.

This may be true: A balance must be struck between risk-taking and responsibility. If so, reform should seek in part to influence creditors, who spend millions enticing people into debt. The House bill does very little in this regard; the Senate, more, but not enough. For example, the Senate would require that solicitations disclose lenders' normal interest rates, not just the "teaser" rates that are seductive but temporary. But the Senate has dropped restraints on predatory lending that were part of an earlier reform effort. Equally, it wants credit card statements to carry warnings about accumulating debt, but it shrinks from making these too scary.

Reform should deter debtors from using the law to avoid obligations they can afford to repay, while at the same time not penalizing those who are genuinely bankrupt. Again, the House bill gets this back-to-front. It fails to close a loophole that puts a debtor's house beyond the reach of creditors, even if the house is lavish. Meanwhile, it clamps down on shelters that matter to poor debtors. The Senate bill is better.

If no bankruptcy reform passes, that will be fine. Creditors and lenders have noted the rise in bankruptcy, and they seem to be adjusting: Last year's bankruptcy filings were considerably down from the 1998 peak. The administration should therefore let it be known that it will only sign a bill cleansed of the House's harshness. Most bankruptcies are triggered by misfortune, not irresponsibility: by illness, a job loss, a broken marriage. America should remain the home of second chances.

The Washington Post
Friday, February 18, 2000

A1

What's News—

* * *

Business and Finance

GREENSPAN SIGNALED that the Fed will keep boosting interest rates unless both consumer spending and the stock market quickly cool down. In remarks to Congress, the Fed chairman adopted a harder line on the perils of rapid growth. Separately, the producer-price index was unchanged in January after rising 0.1% in December, the Labor Department said.

(Articles on Page A2)

* * *

UPM-Kymmene of Finland agreed to buy Champion International in a $5.81 billion stock deal, extending the paper industry's rapid consolidation. The combination will create the world's third-largest paper firm.

(Article on Page A3)

* * *

Some oil exporters are starting to acknowledge that petroleum prices have risen too much and are suggesting OPEC should boost output. But oil ministers aren't saying exactly what they might do to force down prices.

(Article on Page A3)

* * *

U.S. firms may balk at any move to allow foreign companies to list on stock exchanges here under international accounting standards, which are less rigorous than U.S. rules.

(Article on Page A3)

* * *

The Nasdaq soared to another record close, rising 121.27 points to 4548.92. The Dow Jones industrials, meanwhile, fell 46.84 to 10514.57. The 30-year Treasury bond again rose.

(Article on Page C1)

* * *

A GE dishwasher recall is prompting complaints and additional legal problems for the company. The 3.1 million dishwashers had a defective energy switch that could cause fires.

(Article on Page A4)

* * *

The FTC launched a review of whether some health-care Web sites improperly shared personal data on their visitors with third parties.

(Article on Page B6)

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Some big plaintiffs opted out of a $1.17 billion settlement of a vitamin price-fixing case, meaning the actual settlement award will be less than $400 million. It is unclear how many plaintiffs will pursue their court fights.

(Article on Page B10)

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Hackers posted a bogus notice on a biotech firm's Web site about a supposed merger between the firm, Aastrom Biosciences, and rival Geron.

(Article on Page C1)

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Nissan concluded that its troubled truck unit is a noncore business, possibly foreshadowing a move to sell it.

(Article on Page A12)

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France's Alcatel is in talks to buy Canada's Newbridge Networks for more than $6.5 billion in stock, people familiar with the situation said.

(Article on Page A10)

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PricewaterhouseCoopers said its executive board approved a restructuring that will separate its audit, business-advisory and tax units from its management-consulting practice.

(Article on Page B8)

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Congressional leaders reached an accord allowing Lockheed's proposed acquisition of Comsat to proceed without damaging the satellite-services provider's longer-term value.

(Article on Page B8)

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Markets—

Stocks: NYSE vol. 1,029,598,930 shares, Nasdaq vol. 1,938,792,628. Dow Jones industrials 10514.57, off 46.84; transportation 2470.36, up 15.57; utilities 303.99, off 2.12.

Bonds: Lehman Brothers Treasury index 8171.56, up 24.65.

Commodities: Oil $29.48 a barrel, off $0.57. Dow Jones-AIG futures index 98.387, off 0.334; DJ spot index 119.01, up 0.17.

Dollar: 110.66 yen, up 1.26; 1.0118 euros, off 0.0017; 1.9791 marks, off 0.0032.

World-Wide

SOUTH CAROLINA VOTES tomorrow in a crucial test for both McCain and Bush.

Late polls show a dead heat, with turnout, particularly among independents and Democrats, the factor likely to prove decisive. A defeat after losing New Hampshire would be a crippling blow to the Texas governor, who has had to spend heavily to guard what he once saw as his Southern firewall. McCain has to at least stay close to keep his insurgency alive, though he vows a protracted struggle. (Articles on Page A16)

Michigan is the next battleground, with its primary Tuesday. The state was supposed to be a Bush insurance policy against early losses, but is no longer.

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Russia was accused by human-rights groups and refugees of brutality toward Chechens in camps and rounding up 1,000 males after Grozny fell. Moscow denies the charges. Meanwhile, electoral authorities barred extreme nationalist Zhirinovsky from the presidential ballot on March 26.

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Russia-funds investigators are looking at two young bankers who ran Moscow's DKB, identified by prosecutors as the primary client of firms that moved $7 billion out of Russia through Bank of New York accounts. They could know a lot about the sources of the funds. (Article on Page A4)

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Ireland's prime minister said Dublin opposed Britain's suspension of Northern Ireland home-rule government and passed to London a last-minute IRA disarmament proposal last week. British officials claim they never saw the plan before suspension. Ulster factions seek meetings in the U.S.

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Balkan peacekeeping may last indefinitely and the conditions for withdrawing troops won't exist until Milosevic is out of power, NATO's military chief told Congress. Meanwhile, Milosevic told his Socialist party Kosovo will always be part of Serbia and called on NATO to get out of the province.

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Gene therapy has come under congressional scrutiny after an Arizona teen's fall death, but such trials are moving ahead and a government panel is set to review 10 new procedures next month. So far, there is little evidence that the controversy is scaring off potential patients. (Article on Page B4)

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Charges of spying for Cuba were leveled at a high-ranking U.S. immigration official in Miami, who was arrested by the FBI. Havana-born Mariano Faget, 54, had access to sensitive data in his INS job supervising rulings in matters such as political asylum.

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Military anthrax vaccinations should be suspended because they aren't supported by scientific evidence, a report by a House panel asserts. The Pentagon says that the program is a necessary safeguard against biological warfare. (Article on Page B6)

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Israel was criticized by the U.S. for air raids after recent Hezbollah attacks, saying they contributed to the suffering of Lebanese civilians. Despite Washington's stance, Lebanese police fought with about 2,000 protesters at the U.S. Embassy in Beirut.

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Jet-stabilizer inspections were made tougher in a voluntary effort adopted years ago by American, which has the biggest fleet of MD-80s and MD-90s. Following the Alaska Air crash, questions on maintenance disparities are arising. (Article on Page B8)

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A Taiwan maverick is shaking up politics as the March 18 presidential vote nears and could hand the ruling party a first-ever defeat. James Soong, a former Nationalist governor, could win or split the vote, helping an anti-China rival. (Article on Page A12)

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Russia's battered space station may get a new lease on life as U.S. investors and Russia's Energia signed contracts that could see the Mir used by guests willing to pay $25 million. Cosmonauts are to board the vacant station on March 30. (Article on Page B9)

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The mayor of Los Angeles recommended that the city set aside up to $300 million from the tobacco settlement to pay for lawsuits in a big police evidence-tampering scandal. So far, 40 convictions have been overturned.

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Affirmative action is to end at Florida public universities after regents adopted a plan pushed by Gov. Bush despite protests. He says it will boost diversity by admitting the top one-fifth of high-school seniors.

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A former New York policeman testified a colleague was wrongly convicted of aiding a brutal assault on Haitian immigrant Abner Louima. Justin Volpe, who didn't speak up at his trial, said Charles Schwarz had no role.

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file
bankruptcy

The New York Times

THE NEW YORK TIMES **EDITORIALS/LETTERS** *SUNDAY, MAY 9, 1999*

Editorial Observer/FLOYD NORRIS

Bankruptcy Reform That Spares the Wealthy

Watching a rich man stiff his creditors while walking away with millions can grate on people. Yet a gaping loophole in the bankruptcy laws routinely allows that to happen.

That loophole enabled such people as Martin A. Siegel, the former investment banker who was convicted of insider trading; Bowie Kuhn, the former baseball commissioner, and Burt Reynolds, the actor, to emerge from bankruptcy with ample assets — sometimes valued in the millions — even as their creditors suffered huge losses.

Last week, amid much rhetoric about how outrageous it was that people who could afford to pay some of their bills were able to walk away from all of them, the House of Representatives passed a bankruptcy reform bill. If enacted, the bill will make it much easier for creditors — particularly credit card companies — to collect money from bankrupts.

But while it will become harder to evade a few thousand dollars of credit card debt, it will not be any more difficult for millionaires to shelter their assets while declaring bankruptcy.

The House helps a few lucky debtors go broke in style.

The wealthy can often stay millionaires because the laws in a handful of states — most notably Florida and Texas — set no limit on the value of a home that a bankrupt person can keep even as his debts are discharged by the court. So some people, as bankruptcy nears, sell their homes in states like New York and buy million-dollar homes, for cash, in Florida.

A fair bill would put a limit on the amount of home equity that could be protected from creditors. The Senate tried to do that last year, with a limit of $100,000, but that bill was killed. The House wants no limits on what state legislatures let the rich keep.

The House bill will make life harder for poor and middle-class people who file for bankruptcy. People whose income has been above the regional median income will be forced into plans requiring some repayment of debts, even if future income is likely to be less because the person has lost his previous job. The calculations regarding how much a person can afford to pay may not take into consideration his actual living costs. It is reasonable to try to force bankrupts to pay what they can afford, but this bill, with its lack of discretion for bankruptcy trustees and judges, is likely to bring unreasonable hardship for some.

This bill was pushed by the credit card companies, who worry that people abuse them by taking on credit card debts and then going broke. The companies already can challenge any bankruptcy on fraud grounds, but doing so costs money and may not seem to be worth it when only a few thousand dollars or less are at stake in any one filing. They hope that strict rules will enable them to force many more people to repay at least some money.

The 1990's have seen booms in bankruptcy filings — and in credit card issuance. Last year, 1.45 million people filed for bankruptcy, up 3 percent from 1997, while credit card companies sent out 3.4 billion card solicitations, a 15 percent increase. It would appear that rising bankruptcies have not yet caused lenders to grow more cautious.

One interesting feature of the House bill is that it requires the Government to pay for random audits of bankruptcy filings to see if people are cheating. Yet Congress will not spend money to let the Internal Revenue Service conduct random audits of tax returns. Protecting Visa's revenues would seem to be a higher priority than protecting those of the Government.

Two centuries ago, it was common for states to allow creditors to throw people into prison if they had not paid their debts. But even then, the creditor had to pay the state the cost of imprisoning the man. Now, if this bill passes, the taxpayers will foot the bill to force people to pay their debts.

Unless, of course, they are once-rich people who can afford to buy expensive houses in Texas or Florida. Those people are to be protected even as the Government cracks down on middle-class people who have fallen on hard times.