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Lesson From the Trenches: Debtor Educator in Theory and Practice

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LESSONS FROM THE TRENCHES: DEBTOR EDUCATION IN THEORY AND PRACTICE

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I. INTRODUCTION

Bankruptcy reform is still pending in Congress,² with both the House and Senate having passed their own versions of legislation designed to improve the bankruptcy system.³ The conference committee to reconcile differences has been stalled, most recently because of the aftermath of the September 11th tragedies.⁴ That

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2. The easiest and fastest way to keep up with bankruptcy legislative developments is by logging onto www.abiworld.org, a website maintained by the American Bankruptcy Institute, a membership organization dedicated to developing information and understanding of the bankruptcy system.

3. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, H.R. 333, 107th Cong. (2001); The Bankruptcy Reform Act of 2001, S. 420, 107th Cong. (2001).

4. *See Bankruptcy Legislation Hits Latest Wall*, AM. BANKR. INST. J., Oct.

pause has not stopped discussion and debate about what type of legislation might ultimately emerge and whether that contemplated is justified, wise, and feasible.

It is in that spirit that this Article focuses its attention on one particular proposed change to the bankruptcy laws: the introduction of a post-filing financial management course.⁵ Interestingly, post-filing financial management courses and pre-bankruptcy debtor counseling have been one of the less frequently debated features of the pending legislation. In his recent book, *Debt's Dominion*, Professor David Skeel observes that educational initiatives were supported by creditors, as they would serve to increase consumer debtor repayment and fiscal responsibility and to decrease utilization of the bankruptcy process.⁶ Skeel suggests that debtor advocates, such as ourselves, might be expected to be disinclined toward these educational proposals, but in fact, have been supportive - consistent with longstanding beliefs in fostering consumer empowerment.⁷ Our Article begins with a discussion of the rationale for post-filing debtor education. We then turn to a detailed description of a pilot project to provide a voluntary financial management course to 1200 individual debtors in the Eastern District of New York,⁸ sponsored by the Coalition for

2001, at 3.

5. H.R. 333, §§ 105 & 106; S. 420, §§ 105 & 106. The proposed legislation contemplates a mandatory postpetition course for every individual debtor in the United States who commences a chapter 7 or chapter 13 bankruptcy case. Under the proposed legislation, an individual debtor's failure to complete such a course may result in the denial of his or her discharge. For a discussion of the pending legislation related to debtor education, see Susan Block-Lieb & Karen Gross, *Debtor Education: Making Sure A Good Idea Doesn't Go Awry*, 1 NORTON BANKR. L. ADVISER 6 (2000). For copies of the key legislative provisions, see Appendix C, 7 FORDHAM J. CORP. & FIN. L. C1 (2002).

6. DAVID A. SKEEL, JR., *DEBT'S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA* 207-08 (2001).

7. *Id.*

8. The Eastern District of New York spans Brooklyn, Queens, Staten Island, and Long Island (both Nassau and Suffolk Counties), and encompasses urban, suburban and rural areas. The district is ideally suited for a pilot, given its enormous diversity on all levels. Indeed, the district served previously as a pilot region for the *in forma pauperis* project run by the Federal Judicial Center. See generally ELIZABETH C. WIGGINS, IMPLEMENTING AND EVALUATING THE

Consumer Bankruptcy Debtor Education (the “Coalition”).⁹ Our “in the trenches” work in developing, implementing, overseeing, and studying the Pilot Project has enabled, and will continue to enable, us to reach certain conclusions with respect to the development and implementation of financial management courses for debtors, as well as the mandate for debtor education in the pending bankruptcy bills.

II. RATIONALE FOR POST-FILING DEBTOR EDUCATION

We live in a world in which money and credit play a central role in our daily lives. Over the past two decades, consumer credit has expanded exponentially.¹⁰ Between 1981 and 2001, total consumer credit outstanding expanded by more than 400%, from \$370 billion to \$1.7 trillion.¹¹ Revolving consumer credit, which is largely credit card debt, represents the lion’s share of this increase; it increased more than ten times over this period, from approximately \$61 billion to \$670 billion.¹² As a result of this growth, an increasing number of individuals, many of whom previously were excluded from the world of credit, have gained access to the credit markets.¹³ Increased competition, low interest

CHAPTER 7 FILING FEE WAIVER PROGRAM: A REPORT TO THE COMMITTEE ON THE ADMINISTRATION OF THE BANKRUPTCY SYSTEM OF THE JUDICIAL CONFERENCE OF THE UNITED STATES (1998).

9. The Coalition is a not-for-profit corporation organized in 1998. It has a diverse Board of Directors, which includes debtor representatives, creditor representatives, judges, educators, trustees, and a money therapist. Prior to its formal organization, the Coalition worked informally as a debtor education think tank.

10. See *infra* notes 11-12 and accompanying text (providing examples of this growth).

11. FEDERAL RESERVE STATISTICAL RELEASE G.19 HISTORICAL DATA available at http://www.federalreserve.gov/releases/G19/hist/cc_hist_mt.html (last visited May 12, 2002).

12. *Id.*

13. See Arthur B. Kennickell et al., *Recent Changes in U.S. Family Finances: Results from the 1998 Survey of Consumer Finances*, FED. RES. BULL., Jan. 2000, at 1 (reporting that, among families with debt, the median amount of debt outstanding rose 42.3% from 1995 to 1998, and that debt repayments in 1998 accounted for a larger share of the income of the typical family with debt; also concluding that families whose debt payments represented more than 40% of

rates, technological advances, and deregulation in the consumer finance sector have all helped to expand access to consumer credit to a broader socioeconomic range of borrowers, including sizable increases in the subprime lending market.¹⁴ Rapid growth in the market for subprime consumer lending has raised regulatory concerns in light of findings that subprime lending is disproportionately concentrated in the nation's minority and low-income neighborhoods, and that some subprime lenders have employed predatory practices to induce this growth.¹⁵

Consumers are regularly exposed to a complex array of credit products in the mail, on television, in stores and in various print media.¹⁶ The vast majority of consumer legal protections related to

their income rose for most demographic groups between 1995 and 1998, with particularly large increases among families with incomes below \$50,000 and those in the 65-or-older age groups). The Survey of Consumer Finances, conducted every three years by the Board of Governors of the Federal Reserve System, collects information on a cross-section of about 4000 households representing the U.S. population as a whole. *See also* Sandra E. Black & Donald P. Morgan, *Meet the New Borrowers*, 5 *CURRENT ISSUES IN ECON. FIN.* (Feb. 1999), *available at* http://www.ny.frb.org/rmaghome/curr_iss/ci5-3.pdf (comparing 1989 and 1995 Survey of Consumer Finances and concluding that lenders are reaching out to riskier borrowers).

14. Ron Feldman & Jason Schmidt, *Why All Concerns About Subprime Lending Are Not Created Equal*, *FEDGAZETTE*, July 1999 (defining subprime lending as involving "the extension of credit to borrowers with poor or minimal credit histories" and concluding that subprime lending has increased substantially in the past ten years).

15. *See, e.g.*, U.S. DEPT. HOUSING AND URBAN REDEVELOPMENT, OFFICE OF POLICY DEVELOPMENT AND RESEARCH, *UNEQUAL BURDEN IN AMERICA: INCOME AND RACIAL DISPARITIES IN SUBPRIME LENDING* (Apr. 2000), *available at* <http://www.huduser.org/publications/fairhsg/unequal.html> (last visited May 15, 2002); Interagency Guidance on Subprime Lending (Sept. 2001), *available at* <http://www.fdic.gov/news/press/2001/pr0901a.html> (last visited May 15, 2002); *see also* Allen Fishbein & Harold Bunce, *Subprime Market Growth and Predatory Lending*, in U.S. Dept. Housing and Urban Redevelopment, *HOUSING POLICY IN THE NEW MILLENNIUM* (2001), *available at* <http://www.huduser.org/publications/pdf/brd/13Fishbein.pdf> (last visited Jan. 22, 2002).

16. According to the Federal Reserve's Survey of Consumer Finances, credit card holding substantially increased between 1989 and 1998. While 56% of all households had a credit card in 1989, this number rose to 67.5% by 1998. Among families having outstanding credit card balances, the median total balances

credit require lenders to provide disclosure to borrowers.¹⁷ The efficacy of this regulation is premised upon consumers' abilities to read and understand the material that the purveyors of credit are required to distribute. Unfortunately, there may be a schism between what consumers need to know and what they actually understand about their rights and responsibilities in our credit-based economy.¹⁸ This is because, at least in part, we teach remarkably little about money and credit in our schools and within our families.

Without adequate financial literacy skills, consumers cannot effectively compare and contrast credit offers; nor can they distinguish between legitimate and predatory lending practices. They may be unable to create suitable spending plans. We suspect that people regularly make choices about credit use without appreciating the short and long-term impact of their selections. Consumers may not understand that when they take out a loan based on their home equity and use the proceeds to repay credit card and other bills, they are converting unsecured debt into secured debt. Consumers may not understand that, if they charge \$3000 on their credit card today, and make only the minimum payments going forward (at 19.8% interest), it could take over thirty-nine years to repay this debt. Consumers may not know how to locate, let alone fix, their credit report or the steps they can take to improve their credit score. Stated most simply, we live and deal with money daily, but may not understand and communicate effectively about it.

increased from \$1100 in 1989 to \$1700 in 1998. See Kennickell et al., *supra* note 13, at 23.

17. The prime example of consumer protection legislation that mandates disclosure is the Truth in Lending Act, 15 U.S.C. §§ 1601-1667(e) (2000).

18. See generally CASS R. SUNSTEIN, *BEHAVIORAL LAW & ECONOMICS* (2000); Norman I. Silber, *Observing Reasonable Consumers: Cognitive Psychology, Consumer Behavior and Consumer Law*, 2 LOY. CONSUMER L. REP. 69 (1990); see also Ndiva Kofele-Kale, *The Impact of Truth-in-Lending Disclosures on Consumer Market Behavior: A Critique of the Critics of Truth-in-Lending Law*, 9 OKLA. CITY. U. L. REV. 117 (1984). For a discussion of the disclosure requirements in the Truth-in-Lending Act, see e.g., Jonathan M. Landers & Ralph J. Rohner, *A Functional Analysis of Truth in Lending*, 26 U.C.L.A. L. REV. 711 (1979); Edward L. Rubin, *Legislative Methodology: Some Lessons from the Truth-in-Lending Act*, 80 GEO. L. J. 233 (1991).

Consumer debtors in the bankruptcy system are an identifiable audience of individuals with financial trouble and a need for information about personal finance. Recent scholarship reveals that debtors are a varied group, and that many debtors were propelled into bankruptcy for reasons that have nothing to do with financial literacy skills or fiscal mismanagement.¹⁹ Nonetheless, it is our hypothesis that most individual debtors can benefit from learning more about the credit-based economy in which we live. The primary rationale for this belief is that no matter what precipitated an individual to file for bankruptcy, the filing itself will have a profound and lasting effect on her creditworthiness and the price she will pay for credit after bankruptcy.²⁰ The loss of money is a particularly harsh form of failure in our society. In our culture, money is the central language of exchange, and, thus, diminished access to affordable credit creates a type of aphasia. Debtors are, in a very real sense, cut off from the language we speak because they cannot participate in our commercial marketplace. The filing of a bankruptcy is a very overt and public recognition of failure; it is tantamount to admitting that one has failed at life's major game. As such, the filing of a bankruptcy creates, in the parlance of educators and psychologists, a "teachable moment."²¹ Even if the reasons for debtors' filings are vastly different each from the other and involve a complex intersection of endogenous and exogenous factors, debtors can all benefit from information on how to get back on the road to, or maintain and nurture, financial solvency. They can all use information on the issues they will confront during the bankruptcy process. They can all use information about common schemes and abuses to which they may be subjected following bankruptcy. They can all benefit from hearing the stories

19. See THERESA SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS* (2000); THERESA SULLIVAN ET AL., *AS WE FORGIVE OUR DEBTORS* (1996).

20. *The State of Financial Literacy Education in America: Hearings Before the Sen. Comm. on Banking, Housing and Urban Affairs*, 107th Cong. (Feb. 5, 2002) (statement of Hon. Paul O'Neill, Secretary of the Treasury) ("There is a tragic human and personal cost that our society pays for this lack of financial knowledge . . . [a] lack of financial knowledge is especially problematic for the most vulnerable members of our society.").

21. See ROLAND THARP & RONALD GALIMORE, *ROUSING MINDS TO LIFE: TEACHING, LEARNING, AND SCHOOLING IN SOCIAL CONTEXT* (1991).

of others who are similarly situated.

Why we should help debtors also relates to, and is rooted in, larger issues of a society's interest in and willingness to help those who are less privileged. In recent times, social safety nets have been contracting, and there has been an increased effort to look to the private sector to provide support for those less fortunate.²² Bankruptcy is a form of social safety net for failures that manifest themselves in economic terms.²³ Rather than simply moving debtors through the bankruptcy system, we should focus on giving them a true fresh start.²⁴ This means enabling debtors to function more effectively in our credit-based economy. An educational program for those who seek that relief is a way of empowering consumers prospectively. While some want to focus on debtor education as a means of curtailing bankruptcy recidivism, increasing responsible consumer behavior, and producing greater economic efficiencies,²⁵ we are also interested in rehabilitating debtors so they can function more effectively in the marketplace.

The development of a debtor education program, then, should consider ways in which a debtor's substantive knowledge about finance can be increased. For example, debtors could take steps to manage their personal finances differently when informed about things they can do to enhance their access to and wisdom about credit (writing debt collectors to get them to cease and desist collection action; correcting credit reports; taking steps to improve credit scores; challenging erroneous bills; reporting creditor contact

22. See, e.g., Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion, and Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121 (2000).

23. See KAREN GROSS, FAILURE AND FORGIVENESS: REBALANCING THE BANKRUPTCY SYSTEM 248-49 (1997); William C. Whitford, *The Ideal of Individualized Justice: Consumer Bankruptcy as Consumer Protection, and Consumer Protection in Consumer Bankruptcy*, 68 AM. BANKR. L.J. 397 (1994).

24. This is a point explored in GROSS, *supra* note 23, at 91-103.

25. *Id.*; see also Karen Gross, *Testimony Before the House Subcommittee on Commercial and Administrative Law (March 12, 1998)*, 52 CONSUMER FIN. L. Q. 180 (1998). We have remarkably little concrete data on the rates of recidivism. This is, in part, because there is no centralized database that enables us to track debtors. Moreover, some debtors are precluded from seeking relief in certain chapters for a prescribed period following their discharge. However, it is clear that at least some debtors are repeat filers.

post-discharge; and comparing credit offers).²⁶ At the same time, however, debtor education should also seek to alter debtor attitudes and behavior with respect to money choices.²⁷

We are not alone in advocating the importance of financial education to consumer borrowers and the market for consumer credit. Alan Greenspan, Chairman of the Federal Reserve Board, recently remarked on the importance of financial education to home ownership, household savings, and economic development:

Financial education can equip consumers with the fundamental knowledge required to choose among the myriad of products and providers in the financial services industry. It can also help to inculcate individuals with the financial knowledge necessary to create household budgets, initiate savings plans, and make strategic investment decisions. Such financial planning can help families meet near-term obligations and maximize their longer-term well-being and is especially valuable for populations that have traditionally been underserved by our financial system.²⁸

The need for financial education is no less important for individuals who have accessed the bankruptcy system. Financial education is an important tool for all consumers, but it is indispensable for consumer debtors looking for a fresh start after bankruptcy.

III. THE PILOT PROJECT: DETAILS

The Pilot Project is designed to assure that individual debtors

26. For a self-help guide to these issues, see, for example, JONATHAN SHELDON & GARY KLEIN, *SURVIVING DEBT* (National Consumer Law Center 2d ed. 1996); ROBIN LEONARD, *MONEY TROUBLES: LEGAL STRATEGIES TO COPE WITH YOUR DEBT* (6th ed., 2000).

27. See, e.g., OLIVIA MELLAN & SHERRIE CHRISTIE, *MONEY SHY TO MONEY SURE: A WOMAN'S ROAD MAP TO FINANCIAL WELL-BEING* (2001); OLIVIA MELLAN, *YOUR MONEY STYLE: THE NINE ATTITUDES TO MONEY AND HOW THEY AFFECT HAPPINESS, LOVE, WORK, AND FAMILY* (2001); DAVE RAMSAY, *FINANCIAL PEACE* (1997).

28. Chairman Alan Greenspan, Remarks at the Ninth Annual Economic Development Summit (Jan. 10, 2002), available at <http://www.federalreserve.gov/boarddocs/speeches/2002/20020110/default.html> (last visited Jan. 25, 2002).

who attend an adult financial literacy program, perhaps for the first time, leave the bankruptcy system with meaningful, new financial management skills. The Pilot Project will provide financial literacy training to consumers who filed in the Eastern District of New York, and consists of two parts: the classroom component and the empirical study.

A. Classroom Component: Through the Pilot Project, all consumer debtors who file either a Chapter 7 or 13 bankruptcy petition in the Eastern District of New York can volunteer to take a three-hour long personal financial management course taught free of charge through the Coalition.²⁹ The Coalition anticipates educating up to 1200 individual debtors (together with any family members who care to attend the programs) between September 2001 and January 2003. Classes will be taught to up to thirty individuals per session, and held in “non-threatening” locations that are easily accessible by public transportation.³⁰

The Coalition has developed a curriculum to be used in these training sessions called “Making Sense of Cents.”³¹ In designing this curriculum, the Coalition reviewed the materials from other financial literacy training courses for debtors. A diverse committee of the Coalition’s Board of Directors, including academics, bankers, debt counselors, a psychologist, and specialists in adult

29. The Coalition has received special permission from the bankruptcy judges in the Eastern District of New York to conduct this program. See Letter from Hon. Conrad Duberstein, Chief Judge, U.S. Bankruptcy Courts for the Eastern District of New York, to the Coalition for Consumer Bankruptcy Debtor Education (May 5, 2000) (on file with the Fordham Journal of Corporate & Financial Law). The Pilot Program has also received the support of the Office of the U.S. Trustee for the Second District (of which the Eastern District of New York is a part), and the Clerk’s Office of the Eastern District (which has referenced the Pilot Project on its website and provided other valuable assistance in informing debtors about this program).

30. To date, classes have been held at the Brooklyn and Nassau County Bar Associations and at Brooklyn, Fordham, and New York Law Schools. Future classes will be scheduled to take place at local banks, community centers, churches, and law schools in the Long Island and New York metropolitan area. Some classes may include individuals who have not sought bankruptcy relief, but desire financial literacy education. These individuals will not be studied under the empirical protocol described *infra* notes 33-43 and accompanying text.

31. A sample of the curriculum is available from the authors upon request.

education, evaluated these collected materials. The committee then designed a curriculum utilizing concepts from the existing materials as well as newly developed materials in order to balance four goals: to give debtors better information to assure that they receive the maximum benefit from the bankruptcy system's fresh start; to make debtors more alert to uses and misuses of credit; to help debtors develop budget plans that include future savings; and to provide debtors with a vocabulary to enable them to discuss financial issues. The reading level of the curriculum is aimed at between a 7th and 9th grade level. At the present time, the curriculum is written in English. The Coalition plans to translate these materials into Spanish and Chinese, and to conduct some of its classes in these other languages.

The Pilot Project utilizes volunteer teachers from among the bankruptcy legal community, the financial services industry, and community-based organizations. An initial group of sixteen individuals were trained in two six-hour "train-the-trainer" sessions held on July 26 and 27, 2001, at space donated by a major law firm in New York City. A second session took place on January 10 and 11, 2002, at New York and Fordham Law Schools. Recognizing the diversity among the individuals volunteering to teach and the importance of interactive rather than lecture-style teaching for adult learners, the train-the-trainers program includes substantive information, teaching strategies and techniques, and information on the psychology of debt and debtor behavior.³² The trainees practice teaching a segment of the curriculum, and are given opportunities to observe and critique teaching at the training program and at an actual debtor education class. A teacher's manual has been prepared for all trainees containing the information in the program and providing concrete and detailed suggestions for in-class activities and exercises.³³

32. For example, teachers are encouraged to ask debtors to commit to a course of conduct and write the commitment on an index card; the card is sealed in a self-addressed envelope at the time of the class and then mailed to the debtors at a later date as a way of reminding them of money strategies learned in the class.

33. Evaluations of the "train-the-trainers" program have been very good. Trainees appreciated the hands-on training, the blend of substance and psychology, and insights into adult learning.

Debtors who attend an educational program receive: a copy of the financial management guide prepared by the Coalition; free snacks at the program; a small parting gift (which, to date, has consisted of colorful calculators or pen and paper sets); a certificate of course completion suitable for framing; and \$10.00 upon completion of pre- and post-course questionnaires.

The Coalition also plans to develop a website where debtors will be able to interact with their instructor and fellow classmates and post questions for trained debtor educators to answer. Although still in the planning stages, we view the website as a useful means of reinforcing and supplementing the classroom experience (which is limited in duration).³⁴ Currently, we do not contemplate relying on the website as a substitute for debtors' participation in a live classroom setting.

B. Empirical Study: We believe that financial literacy training can assist consumer debtors in effectuating a truly fresh financial start following the bankruptcy discharge, but so far our beliefs rest on humanistic optimism and not empirical proof. The Pilot Project is designed to study the effect of the classroom component on debtors' knowledge and attitudes about borrowing and their borrowing behavior after bankruptcy.

Through the Project, all debtors in the Eastern District of New York are invited to participate in an empirical study of their experiences following bankruptcy, whether or not they attend a training session.³⁵ Dr. Richard L. Wiener will conduct the empirical evaluation of the classroom component as an independent social researcher. While the co-authors of this article will continue to collaborate on constructing reports of this project, the empirical research will be done by Dr. Wiener and his staff,

34. The Coalition, as a purely pragmatic matter, limited the educational offering to a one session, three hour course. This decision does not suggest that longer, multi-session courses lack utility. Indeed, by partnering in some community organizations, certain debtors may be able to take longer courses if they so choose.

35. The Pilot Program has been authorized and approved by the Internal Review Boards for Baruch College and Fordham University. All information about individual debtors will be coded so that debtor identity is not revealed and debtors are promised anonymity. Moreover, debtors participating in the study complete an informed consent form.

independent of the involvement of Professors Block-Lieb and Gross.

The questionnaire uses quasi-experimental techniques to compare and determine changes in attitudes and behavior toward borrowing and spending of debtors who did and did not receive the proffered education. We struggled to develop a questionnaire that addresses a wide range of issues in a comprehensible fashion, but that, at the same time, can be completed within a reasonable time frame without feeling burdensome.³⁶ In addition to demographic information, the questionnaire asks respondents about their attitudes about borrowing and spending,³⁷ money behavior,³⁸ and substantive knowledge about basic financial information.³⁹ Different types of questions were formulated, including responses to hypothetical scenarios, self-reported money behavior and multiple choice knowledge questions about money issues.

Respondents will be asked to answer this questionnaire twice: for the first time, early in their bankruptcy case and, again, approximately three months later. The questionnaire will be completed by debtors who receive the debtor education program and also by three control groups. One control group will be debtors who neither volunteered for nor received debtor education. Another control group will be debtors who volunteered for, but did not receive debtor education. A final control group consists of individuals who have not filed for bankruptcy; we expect this latter control group will demonstrate a higher level of

36. The questionnaire was pre-tested on law students and others, and adjusted based on our initial findings.

37. Questions regarding respondents' attitudes about borrowing are based on Icek Ajzen's theory of planned behavior. See Icek Ajzen, *The Theory of Planned Behavior*, 50 *ORG. BEHAV. HUM. DEC. PROC.* 179 (1991); see also Icek Ajzen, *The Directive Influence of Attitudes on Behavior*, in *THE PSYCHOLOGY OF ACTION: LINKING COGNITION AND MOTIVATION TO BEHAVIOR* 385 (Peter M. Gollwitzer & John A. Bargh eds. 1996).

38. Questions regarding borrowing behavior ask respondents to self-report on their own borrowing behavior and related activities. Self-report measures are commonplace in the social studies literature. See, e.g., HARRY T. REIS & CHARLES M. JUDD, *THE HANDBOOK OF RESEARCH METHODS IN SOCIAL AND PERSONALITY PSYCHOLOGY* (2000).

39. A copy of the questionnaire is available from the authors upon request.

financial literacy than those who have filed for bankruptcy.⁴⁰

The questionnaire will be distributed to debtors by several means. Some will be mailed directly to debtors. Lists of debtors are available from court records and have been obtained with the cooperation of the Clerk of the Bankruptcy Court for the Eastern District of New York. Copies of the questionnaire are available for debtors to pick up at the clerks' office and other locations. In addition, Coalition workers will contact debtors at § 341 meetings to invite debtors to attend the voluntary debtor education sessions and answer questions about the class and the questionnaire they will receive.⁴¹ All completed questionnaires are mailed or delivered to Dr. Wiener and his staff for analysis.

The results from this empirical study will be significant for several reasons. First, although there have been several reports on the provision of debtor education to Chapter 13 debtors,⁴² no one has conducted an extensive empirical study of the feasibility, effects, and potential benefits and detriments of debtor education initiatives on Chapter 7 debtors in the bankruptcy system. Second, personal financial education programs are costly to design and implement given the number of debtors in the bankruptcy system and their diversity and dispersion. Before there is a mass expenditure of money to develop curricula, train teachers, arrange implementation systems, and conduct empirical assessments, the

40. This non-bankruptcy control group consists of evening students enrolled at Baruch College. Evening students were selected because generally they represent a more demographically diverse group than day students, especially where age is considered, and because they are more likely than day students to hold gainful employment.

41. 11 U.S.C. § 341 (2000). Section 341 of the Bankruptcy Code requires each debtor to appear at a public meeting to answer questions from their trustee and creditors about their personal financial affairs. Because the Code no longer requires the bankruptcy court to conduct a discharge hearing, the § 341 meeting may be the only time that Chapter 7 consumer debtors come into personal contact with the bankruptcy system.

42. Jean Braucher, *Empirical Study of Debtor Education in Bankruptcy: Impacts on Chapter 13 Completion Not Shown*, 9 AM. BANKR. INST. L. REV. 557 (2001); Pamela Stokes & Sharon Polansky, *Shifting the Economic Locus of Control: Improving Financial Decision-Making in High Risk Populations*, 3 ACAD. ACCTG. FIN. STUD. J. 95 (1999). Some Chapter 13 trustees conducting programs have conducted their own unpublished studies.

efficacy of debtor education needs to be studied.⁴³ As educators, we are inclined (for obvious reasons) to believe that education works, but thinking it is so is not the same as demonstrating that it is so. Despite the hue and cry for financial management education, it is valuable – indeed critical – to assess what such education can achieve, remembering that we are assessing a voluntary, single-session, three-hour program, NOT a six-session, three-week program!

In thinking through the results, we are anxious to learn answers to the following types of questions:⁴⁴ Does financial management education increase participating debtors' knowledge base at a greater rate than any of the control groups? If such an increase is found, does it correlate to a debtor's age, educational background, ethnicity or gender? Does financial management education alter a debtor's attitude towards spending and borrowing at a greater rate than any of the control groups? If so, does it correlate to a debtor's age, educational background, ethnicity or gender? Does financial management education change a debtor's money related behavior at a greater rate than any of the control groups? If such a change is found, does it correlate to a debtor's age, educational background, ethnicity or gender? Does the filing of a bankruptcy, in and of itself, explain any of the results? Can we identify any factors that make debtor education more successful, such as particular aspects of the curriculum, characteristics of the

43. Of course, results are directly related to that which is sought in the questionnaire. Moreover, the project is based on a voluntary debtor education system in contrast to the mandatory system contemplated by Congress in pending legislation. Hence, even if no findings were made, that would not necessarily mean that the educational program was unsuccessful. Instead it could mean that that which was studied produced no discernable results.

44. Our effort is different from other studies on debtor education that have been conducted to date. For example, Jean Braucher's study, *see supra* note 42, addressed Chapter 13 completion rates as a measure of educational success, something that we can use as a measure of success as we are studying both Chapter 7 and Chapter 13 debtors. Pamela Stokes, *id.*, looked at a shift in economic locus of control using the Furnham "economic locus of control" test. The economic locus of control test is a published scale based on a forty-question survey. *See, e.g.*, Adrian Furnham, *Economic Locus of Control*, 39 HUM. RE. 29 (1986); Michael A. Busseri, et al., *Locus of Control for Consumer Outcomes: Predicting Consumer Behavior*, 28 J. APPLIED SOC. PSYCH. 1067 (1998).

debtors or the teaching methodologies?

IV. THE ROAD AHEAD (AND WHAT WORRIES US)

The Coalition has developed a curriculum that addresses both the substance and psychology of consumer borrowing. We have trained more than thirty people to teach this curriculum to consumer debtors. We have begun the process of providing classes to the debtor population in the Eastern District of New York. Even without the benefits of the empirical evaluations, we can make certain preliminary observations about our program to date.

Each step of the process – curriculum development, teacher training, delivery systems, and empiricism – requires thought and time; there are no shortcuts on the long road toward educating debtors about personal financial decision-making. We have learned that it is costly and labor-intensive to provide debtor education, even when done on a relatively small scale.⁴⁵ We have also learned that hard work does not bring any guarantees and may not be enough. Curricular development and teacher training, while by no means simple tasks, have been far easier than getting debtors to attend financial literacy classes. To be sure, our initial timing proved problematic: the first debtor-education class, scheduled to take place in downtown Brooklyn on September 13, 2001, was cancelled due to its proximity (both temporally and geographically) to the World Trade Center attacks. Classes subsequently were offered in Brooklyn and Long Island during September, October and November, but attendance at these classes never approached our target of thirty students/class.

We do not know why debtors have not attended our courses in the numbers we had hoped. We suspect that some debtors, like all of us, were paralyzed by the tragic events of September 11, unable to think about leaving the comfort of their homes and family. But the World Trade Center attack may not alone explain debtors'

45. The Pilot Project relies on volunteer teachers and donated space. Thus, we have avoided some of the major costs of debtor education. We do not predict that this sort of volunteerism would persist in a world in which debtor education is mandated for all 1.5 million individuals who access the bankruptcy system each year.

reluctance to attend financial literacy classes that took place in November and January. We also know from our own field work that some debtors do not perceive themselves in need of financial literacy training; accurately or inaccurately, they view their financial problems as the result of exogenous events, such as job loss or severe uninsured medical expenses, and do not believe that attendance at a personal financial management course can help them relieve the inevitable pressure of these external events. We also suspect that some debtors recognize that they might benefit from the class, but for one reason or another do not set aside the time to attend.

Between August 2001 and January 2002, we sought to encourage debtors to attend by: including information in the official notice sent to all debtors in the Eastern District of New York; posting notices in the clerks' office and in the locations at which § 341 meetings were conducted; sending informative letters to debtors' counsel in Brooklyn, Queens, Staten Island and Long Island; holding informational meetings with the office of the U.S. Trustee for the Second Region and with the Chapter 7 and Chapter 13 trustees who serve in the Eastern District; meeting with bankruptcy committees in the various local bar associations; and sending volunteers to § 341 meetings to talk with debtors, attorneys and trustees about the class and hand out written material containing information about where and when the classes were scheduled to be conducted. We have decided that these efforts are alone insufficient.

In the future we plan not only to continue these existing methods, but also to broaden our outreach to debtors. While our enhanced marketing plan is still in the planning stages, we tentatively anticipate increasing our participation with debtors' counsel who practice in the Eastern District of New York and the paralegals and assistants who work closely with these attorneys. We also hope to partner with existing organizations, including community outreach programs, unions, and churches and other religious organizations. We are also considering demographically targeted programs for women, young and elderly debtors.

Our "in the trenches" experience has also alerted us to another serious issue: the possibility of the development of predatory educational practices. We are worried about groups and

individuals that see a new commercial niche on the horizon and plan to seize upon it without adequate or serious regard to the constituency to be served – individual debtors. The bankruptcy system already suffers from this type of problem. There are petition preparers and bankruptcy mills that take advantage of many debtors.⁴⁶ There are credit-repair organizations, debt consolidators and debt-repayment agencies that actually make matters worse, not better, for debtors.⁴⁷ Now, there will be the opportunity for yet another group to make money on the backs of debtors (apparently significant money according to those with experience in Canada).⁴⁸ In a recent book, Ed Balleisen identifies a group of “wreckers” in *Antebellum America* who made their money off the misfortune of debtors.⁴⁹ In observing their role, he notes that wreckers were part of our growing entrepreneurship and the creation of markets – even on the backs of those less fortunate. Perhaps history can teach us something here. While economic failure can and currently does create opportunities for others to take advantage of failure and to make a good living doing so, education does not need to be one of those enterprises.

V. PENDING LEGISLATION

Although our Pilot Project is only just beginning, we have come to appreciate the difficulty of mandating a nationwide debtor education program such as that called for under H.R. 333 and S. 420, and offer the following observations about the pending legislation:

First, the bills do not articulate a vision of the goals sought to

46. See Mary Jo Heston, *Bankruptcy Fraud: Introduction*, 6 AM. BANKR. INST. L. REV. 271 (1998) (commenting on fraudulent conduct practiced by bankruptcy petition preparers); Constantine Dean Poiurakis, *Final Report of the Bankruptcy Foreclosure Scam Task Force*, 7 AM. BANKR. INST. L. REV. 341, 347-48 (1999). Congress has reacted to these predatory practices by adding § 110 to the Bankruptcy Code. 11 U.S.C. § 110 (2000).

47. See Credit Repair Organizations Act, 15 U.S.C. §§ 1679-1679j (2000).

48. See Iain Ramsay, *Mandatory Bankruptcy Counselling: The Canadian Experience*, 7 FORD. J. CORP. & FIN. L. 525 (2002).

49. EDWARD J. BALLEISEN, *NAVIGATING FAILURE: BANKRUPTCY AND COMMERCIAL SOCIETY IN ANTEBELLUM AMERICA* 135-62 (2001).

be achieved through mandatory post-filing debtor education.⁵⁰ Proposed new § 111 of the Bankruptcy Code permits the U.S. trustee (or bankruptcy administrator) to approve “an instructional course concerning personal financial management” for an initial probationary period only if “the course will provide at a minimum:”

(A) trained personnel with adequate experience and training in providing effective instruction and services;

(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such course of instruction;

(C) adequate facilities situated in reasonably convenient locations at which such course of instruction is offered, except that such facilities may include the provision of such course of instruction or program by telephone or through the internet, if the course of instruction or program is effective;

(D) the preparation and retention of reasonable records (which shall include the debtor’s bankruptcy case number) to permit evaluation of the effectiveness of such course of instruction program, including any evaluation of satisfaction of course of instruction or program requirements for each debtor attending such course of instruction or program, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United State trustee, bankruptcy

50. Post-filing debtor education is rendered mandatory under the bills by amending §§ 727 and 1328 to provide that an individual’s discharge under those chapters is conditioned upon the completion of “an instructional course concerning personal financial management,” except that these conditions “shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of that district determines that the approved instructional courses are not adequate to service the additional individuals required to complete such instructional courses under this section.” H.R. 333, 107th Cong. §§ 106(b) & (c) (2001); S. 420, 107th Cong. §§ 106(b) & (c) (2001).

administrator, or chief bankruptcy judge for the district in which such course of instruction or program is offered.⁵¹

Following the expiration of this probationary period, the U.S. trustee or bankruptcy administrator must also determine that the instructional course concerning personal financial management “has been effective in assisting a substantial number of debtors to understand personal financial management” and that it “is otherwise likely to increase substantially debtor understanding of personal financial management.”⁵²

Thus, short of providing that the course should be taught by “trained personnel with adequate experience” using “learning materials and teaching methodologies” in “adequate facilities situated in reasonably convenient locations,”⁵³ the statute provides little guidance to the U.S. trustee or bankruptcy administrator as to whether it should certify a debtor education program, even on a probationary basis. Nearly anyone claiming to have access to trained and experienced teachers (trained in what? experienced in what?), a personal financial management curriculum (no matter what it says or does not say?), and a telephone can receive probationary certification under this provision. The bills provide slightly more guidance following expiration of this probationary period, but just what does the statute mean when it requires a U.S. trustee or bankruptcy administrator to show that the course “has been effective in assisting a substantial number of debtors to understand personal financial management” (how many is a substantial number? how do we discern debtors’ understanding?) and “is likely to increase substantially debtor understanding of personal financial management” (is this a different standard or a repeat of the earlier one?). In short, the bill suffers from a “vision thing,” to paraphrase our pithy President. And, while the statute also creates a pilot test to evaluate the effectiveness of post-filing debtor education,⁵⁴ this pilot test does not commence until “270 days after the date of enactment of this Act,” while nothing limits debtors’ mandate to complete “an instructional course concerning

51. H.R. 333, 107th Cong. § 106(e) (2001); S. 420, 107th Cong. § 106(e).

52. *Id.*

53. *Id.* at § 106(e).

54. *Id.* at § 105.

personal financial management,” other than the certification of the U.S. trustee or bankruptcy administrator as to the absence of sufficient courses within the district “to service the additional individuals required to complete such instructional courses.”⁵⁵ In this Article, we begin with an articulation of a rationale for post-filing debtor education.⁵⁶ Debtor education, like education in general, can serve a variety of ends. Although the merits of chosen ends can be debated, the absence of ends is intolerable because it dooms a project to failure. Congress should provide guidance to assist educators and researchers in identifying its goals for financial education.

Second, the bills do not fund the implementation of their mandate for debtor education. The Executive Office for the U.S. Trustees receives general operational funding out of which it can fund the development of a financial management and training curriculum and materials. But Congress has historically undermined the U.S. trustee system by failing to provide it sufficient funding.⁵⁷ Moreover, nothing in the bills would fund teachers to provide personal financial management training to debtors; nor does the bill provide funding for the facilities in which these courses would take place. The Coalition has been able to obtain volunteer teachers and donated space for its debtor education classes, but the Pilot Project envisions a limited academic study of 1200 debtors over a twelve to eighteen month period. A nationwide mandatory debtor education program is qualitatively different in its scope. We fear that an unfunded mandate for debtor education will invite either ineffective or “predatory” classes and undermine the benefits of financial education.

Finally, we remain convinced that *mandatory* debtor education is wrong headed, even though we have ourselves experienced substantial difficulties in getting debtors voluntarily to attend financial education classes. Experts on adult education

55. *Id.* at §§ 106(b) & (c).

56. *See supra* notes 10-28 and accompanying text.

57. *See* Hon. J. Vincent Aug, Jr., *A View From the Bench, of the Other “R” Word*, 61 U. CIN. L. REV. 397 (1992); *see also* Richard L. Levine, *The United States Trustee System*, 526 PLI/COMM. 351 (1990).

recommend against requiring adults to learn anything they do not want to learn.⁵⁸ Moreover, the proposed legislation would enforce its mandate for debtor education by withholding discharges in Chapter 7 and Chapter 13 cases to debtors who fail to complete a post-filing personal financial management course.⁵⁹ The difficulty we have faced in encouraging debtors voluntarily to attend debtor education classes convinces us that the practical effect of such a mandate may be to confound and, in many cases, defeat individual debtors' effort to receive a fresh start after bankruptcy. As such, mandatory debtor education may prove counterproductive – rather than assisting consumer debtors in effectuating their fresh start, mandatory debtor education may stand in the way of their bankruptcy discharge.

VI. CONCLUSION

So, let's pause, then, and start slowly, observing each step of the way. Maybe we will be able to avoid some pitfalls going forward. We welcome sharing our ongoing journey with you and hearing your comments and insights as we proceed.

58. See THARP & GALIMORE, *supra* note 21.

59. H.R. 333, 107th Cong. §§ 106(b) & (c) (2001); S. 420, 107th Cong. §§ 106(b) & (c).

Notes & Observations