# A Profile and Analysis of Repeat Bankruptcy Petitioners in the District of Utah 1984-2004

Bonny C. Llewellyn
*Utah State University*

# A PROFILE AND ANALYSIS OF REPEAT BANKRUPTCY PETITIONERS IN THE DISTRICT OF UTAH 1984-2004

by

Bonny C. Llewellyn

A thesis submitted in partial fulfillment
of the requirements for the degree

of

MASTER OF SCIENCE

in

Family, Consumer, and Human Development
(Consumer Sciences)

UTAH STATE UNIVERSITY
Logan, Utah

2005

# ABSTRACT

A Profile and Analysis of Repeat Bankruptcy Petitioners

in the District of Utah 1984-2004

by

Bonny C. Llewellyn, Master of Science

Utah State University, 2005

Major Professor: Dr. Jean M. Lown
Department: Family, Consumer, and Human Development

The purpose of this study was to describe the incidence of repeat filers in Utah and estimate the extent that repeat filers may be abusing the bankruptcy system. This study sought to develop a profile of repeat filers. Demographic and financial variables were examined to determine their association with abuser/nonabuser status. In this study, abuse of bankruptcy was characterized only by the timing and number of filings over 20 years. Debtors with three filings in a 2-year period or less and debtors with four or more total filings were classified as abusers. Nonabusers were defined as debtors who filed only once as well as debtors who had two or three scattered filings over the 20-year period.

About 11% of the total sample appeared to be abusing the bankruptcy system by filing repeatedly. The majority (76.2%) of the 1997 cases filed by abusers were dismissed while only 23.8% received a discharge of their unsecured debts. Only five (2.9%) of the 171 abusers who filed chapter 13 in 1997 completed their payment plan and received a discharge of their debts. The logistic regression model found chapter (7 versus 13), filing status, unsecured debt, and monthly income to be the most significant variables in estimating abuse. Males and females filing alone were nearly 50% less likely than joint filers to be abusers. Chapter 13 debtors are nearly five times as likely to be abusers when compared to chapter 7 debtors. Filers who had unsecured debt levels above the median were less likely to be abusers, and filers who had incomes above the median were almost twice as likely to be abusers.

Realistic repayment plans that pay careful attention to construction of budgets and a financial counselor to work with debtors who miss payments is one approach to combating abuse by repeat filing. Judges may need to discipline attorneys who file cases repeatedly. Perhaps a new Code is not what we need to combat abusers; instead, closer monitoring of cases by trustees, more responsible attorneys, and more responsible lending are needed.

(62 pages)

## ACKNOWLEDGMENTS

For countless hours of dedication to this thesis and its completion, I thank my major professor, mentor, and friend, Dr. Jean Lown. Immeasurable amounts of time were spent revising multiple drafts of this study. To her belongs the glory of the completion of this thesis, for without her, an incomplete project this would remain. Her example of hard work and dedication not only to the success and progress of her students but to the field of consumer sciences will have lasting influence in my life.

I am also indebted to Dr. Barbara Rowe who provided support, encouragement, and editorial expertise for which I am truly grateful. In addition, Dr. Maria Norton was highly influential in assisting with research methodology and statistical analysis. Her expertise in this area is insurmountable. Special thanks to Roxane Pfister who assisted with statistics and data analysis.

Thanks to the American Bankruptcy Institute for their financial support and the honorable Judge Glen E. Clark for allowing free access to the bankruptcy files used to collect data for this study. I cannot forget to thank Judge Judith Boulden who suggested this topic for a research project.

Finally, I thank my dear family and friends who saw in me a potential for success that I would otherwise never have known. Their support and encouragement have meant more to me than this accomplishment itself.

Bonny Llewellyn

# CONTENTS

# LIST OF TABLES

# LIST OF FIGURES

# CHAPTER I

# INTRODUCTION

Bankruptcy is not a modern day phenomenon. As early as 1 B.C. there were sabbatical years in which debts were forgiven. These sabbaticals occurred every seven years, quite similar to the modern bankruptcy system in which chapter 7 debtors are allowed to discharge their debts every six years. Historically, debtors who could not pay their debts were imprisoned. In 1542, debtors' prisons were so overcrowded that England passed the first law to give debtors options other than imprisonment. The United States passed its first bankruptcy law in 1800. In 1841, new laws allowed for voluntary consumer bankruptcies while prior to that, only creditors or merchants could file. Interestingly, this law was repealed two years later after complaints that people were taking advantage of it. Legislation that became the basis for U.S. bankruptcy law was passed in 1898 (MSN Money, 2004).

Bankruptcy law has been under scrutiny since its inception. "The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" is the title of the bankruptcy reform bill currently in the 109$^{th}$ session of Congress. This bill, among many other things, seeks to make bankruptcy law more restrictive by requiring more debtors to file chapter 13 repayment plans rather than chapter 7 liquidation. Questions arise over why filing rates are so high. Are debtors over-using the system by repeatedly filing chapter 7 as often as the law allows? The American Bankruptcy Institute (1996) has stated that bankruptcy reforms have been driven by concern over perceived abuses. While bankruptcy reform legislation has been passed by one or both houses of Congress since 1998. Supporters of the proposed reforms argue that it has become too easy to file for bankruptcy and that some consumers are using the system too frequently to discharge debts.

## Need for Study

Since 1994, the number of consumer bankruptcy filings in the United States increased from about 800,000 to 1,500,000 in 2004 (United States Department of Justice, 2005a). In the period between 1994 and 2003 personal bankruptcy filings in Utah rose from 6,591 per year to 20,802 (United States Department of Justice, 2005b). This gives Utah the distinction of being the state with the highest number of bankruptcies filed per household with one filing per 36.7 households (American Bankruptcy Institute, 2004). Descriptive data obtained from 1997 Utah bankruptcy filings revealed a combination of factors contributing to financial distress. Low wages, large families, large homes, and numerous vehicles are among the characteristics describing Utahns. Short job tenure and the likelihood of being single with dependents are more prevalent among bankruptcy filers (Lown & Rowe, 2003).

A survey of attorneys, accountants, academics, judges, trustees, lenders, and other bankruptcy professionals conducted by the American Bankruptcy Institute (1996) reported that serial bankruptcy filings are perceived to be a problem. Although debtor attorneys did not rate serial filings as a major issue, two-thirds of the creditor representatives and nearly half of the judges viewed serial filings as a significant problem. United States Senator Jeff Sessions commented on the problem of repeat filers when he proclaimed that there is a "deep problem of abusive and repeat" bankruptcy filings (Lewis, n.d.).

Empirical investigation of repeat filers is sparse; hence, a study on this topic is essential to increase understanding of the problem. Strand, Hira, and Carter (1994) studied the sociodemographic and financial attributes of repeat filers. They compared bankruptcy filers in one district in Canada (Manitoba) and the U.S. (Iowa) and found that 14 percent of debtors in each location had filed previously. Compared to first time debtors, repeaters were older, had lower incomes, lower assets and lower debt levels. Sullivan, Warren, and Westbrook (1989) studied repeat filers and defined a true repeater as someone who files for bankruptcy, receives a discharge of their debt, runs up more debt and files and receives another discharge. Repeat filers may also include debtors whose cases are dismissed, resulting in repeated attempts at discharging their debts. This may be the case for many dismissed chapter 13 debtors and may result in two to three filings in a short period of time, thus contributing to an increasing filing rate. While many authors and researchers have suggested that repeat filers are a problem, there has been little research on repeat filers and possible abuse of the bankruptcy system. Results of this study should enhance our understanding of the growing number of bankruptcy filings and contribute to information about repeat filings that may be useful for guiding bankruptcy policy.

## Bankruptcy Basics

Bankruptcy law and regulations are governed by the Federal Bankruptcy Code but property exemption levels differ among states while implementation of the law varies by court district (Braucher, 1993). As soon as a debtor files bankruptcy they are protected from their creditors by the automatic stay. This provision prohibits debt collection activity and halts any home foreclosure or eviction process.

Only unsecured debt can be discharged in bankruptcy. Consumer debtors can choose between chapter 7 and chapter 13. Chapter 7 results in a discharge of unsecured debts with no repayment obligation and currently limits the debtor to one discharge every six years. In a chapter 7 bankruptcy, the debtor's property is divided into exempt and nonexempt categories. While the Federal Bankruptcy Code specifies the amount and type of property that is exempt from creditors, 17 states including the District of Columbia have adopted their own exemption statutes. Debtors in these 17 states may choose between state and federal exemptions (Leonard & Loonin, 2001). Generally, a certain amount of equity in a home, car, clothes, jewelry, appliances, and furniture will be exempt from liquidation by a chapter 7 trustee to repay creditors. However, most chapter 7 cases are "no asset" cases in which debtors own no assets in excess of the state exemption levels (Flynn, Bermant, Burke, & Hazard, 2003).

Debtors with nonexempt property they wish to retain may choose chapter 13 bankruptcy to pay off a portion of their unsecured debt rather than lose the property as in a chapter 7 (Loonin, Williamson, & Klein, 2002). In a chapter 13 bankruptcy, debtors make monthly payments to the trustee according to a budget approved by the court and the funds are distributed to the creditors. It generally takes three to five years to complete a chapter 13 repayment plan; there are no statutory restrictions as to how often a debtor may file a chapter 13. The only limitation on repeat filings is that the court may prevent a debtor from refiling under any chapter for 180 days if the previous case was dismissed for willful failure to comply with the requirements of the court or the Bankruptcy Code (see 11 U.S.C. § 109 g). Chapter 13 debtors who are not successful in their repayment plan may convert to a chapter 7, otherwise, failure to make the monthly trustee payment will resulting dismissal of their case. Once a case is dismissed the debtor becomes subject to creditor collection efforts again. Dismissal may occur for a number of reasons including failure to: appear in court, fill out the paperwork correctly, or to make payments on their chapter 13 repayment plan. About one-third of chapter 13 plans are completed and the remaining unsecured debts discharged (Sullivan et al., 1989). Only 26.5% of 1997 chapter 13 filers in Utah completed their chapter 13 plan (Evans, 2004). When debtors' cases are dismissed for any reason, it is possible that they may file for bankruptcy again, thus inflating the number of bankruptcy filings.

One explanation for repeat filing is found in the automatic stay provision. The automatic stay goes into effect at the time of filing and prevents creditors from taking further collection actions against the debtor. The automatic stay prevents the start or continuation of foreclosures, repossessions, garnishments, attachments, utility shut-offs, evictions, and debt collection harassment, allowing the debtor time to sort out their financial problems (Loonin et al., 2002). Bankruptcy provides a temporary reprieve for homeowners who are behind on mortgage payments because a foreclosure action cannot go forward while the automatic stay is in place. Further, chapter 13 includes a provision for catching up on mortgage arrears, delinquent taxes, child support or alimony arrearages, and other debts that are not dischargeable in chapter 7.

One challenge of trying to study or quantify abuse of the bankruptcy system is that it is not always clear when a bankruptcy petition is not filed in good faith. Many good faith petitions could be filed right before a foreclosure due to the debtor attempting to save their home while other filers have no intention of completing their plan or repaying any of their unsecured debt. Debtors may be filing repeatedly to use the automatic stay to stave off foreclosure without having to make mortgage payments. Foreclosure actions can be delayed for up to five years or more when debtors file repeatedly (Nelson, 2000; Norberg, 1999).

## Specific Objectives of the Study

1. To determine the extent of repeat filings in the federal bankruptcy court district of Utah from 1984 to 2004.
2. To estimate the extent of debtor abuse of bankruptcy by repeat filing in Utah.
3. To establish a financial and demographic profile of debtors who appear to be abusing the bankruptcy system by filing repeatedly.
4. To develop a statistical model that tests for the unique contribution of each of these variables on abuser versus non-abuser status.

# CHAPTER II

# LITERATURE REVIEW

While there is a growing body of research on consumer bankruptcy, few studies have been conducted on repeat filers who may be abusing the bankruptcy system. Much of the literature merely suggests that there is a problem with repeat bankruptcy filers but little empirical research has actually been conducted. The first section of the literature review will discuss a number of factors that researchers and bankruptcy professionals suggest may lead to filing consumer bankruptcy. The second section of the literature review will focus on the few research studies that have been conducted on repeat bankruptcy filing.

## Factors Leading to Consumer Bankruptcy

When considering which factors contribute to bankruptcy filings, a natural conclusion is that consumers are spending irresponsibly. Research on consumer bankruptcy has shed some light on other factors that may trigger a bankruptcy filing. These circumstances include buying more home than is affordable, use of home equity loans, over-use of credit cards, inadequate insurance, unstable jobs and job loss, medical expenses, variable incomes, marital break-up, and the cost of raising children (Himmelstein, Warren, Thorne, & Woolhandler, 2005; Lown & Rowe, 2003; SMR Research Corporation, 2001; Sullivan et al., 1989; Sullivan, Warren, & Westbrook, 2000).

In addition, credit card issuers are granting credit to riskier borrowers who may not be credit worthy (Black & Morgan, 1999). Amid this willingness to lend, Americans are now holding substantially more debt than a decade ago (Aizcorbe, Kennickell, & Moore, 2003). Getter (2003) concluded that consumer delinquency problems are mainly the result of unexpected negative events that neither lender nor borrower anticipate such as declines in household wealth or future income. Warren and Tyagi (2003) suggested that the addition of a child is one of the best predictors of family financial problems. Other research has indicated that households with no children face the least risk of financial collapse while families with children are at more than double the risk (Warren, 2002). Evans (2004) found that the presence of children diminished the chances of discharge among debtors by 45.4%.

The rapid increase in bankruptcy filings may be affected by the prosperous state of the American economy during most of the past two decades. Records for economic growth, low unemployment, and low interest rates, were matched by record-high bankruptcy filings. Amid a prosperous economy, high bankruptcy filing rates indicates that many consumers are filing for bankruptcy even though they could repay a substantial portion of their debt (Congressional Budget Office, 2000; Zywicki, 2005).

In a survey conducted by the American Bankruptcy Institute (1996), experts identified the primary causes of bankruptcy as ease of obtaining credit, loss of a job, financial mismanagement, medical problems, and marital/family problems such as divorce. The declining social stigma of bankruptcy may also encourage filing (Zywicki, 2005). Other literature suggests that there may be macroeconomic factors that trigger bankruptcies. Strong prosperous economies, low interest rates, and low unemployment rates may increase consumers' willingness to take on more financial risk which may result in inability to repay debt when the business cycle turns down again (Lewis, n.d.).

## The Role of Repeat Filings in Bankruptcy Abuse

A survey of bankruptcy professionals conducted by the American Bankruptcy Institute (1996) confirmed that abuse of the bankruptcy system is perceived as a problem, but it is not rampant. Attorneys, accountants, academics, judges, trustees, lenders, credit managers, and other bankruptcy professionals completed a survey covering a broad spectrum of possible areas in need of reform. About 40% of respondents believed that repeat filing by individual debtors is a significant problem. Debtor attorneys dismissed repeat filings as a problem while almost two-thirds of creditor representatives, and more than half of the judges, viewed repeat filing as a significant problem.

Courts are organized into districts and some states contain more than one district; Williams (1997) suggested that it is possible there is wide variation in the extent of the problem of abuse among districts although there is no statistical evidence. On October 1, 2001, the United States Trustee Program launched the Civil Enforcement Initiative as part of a continuing effort to improve the effectiveness of bankruptcy administration. Among other concerns, serial filers and substantial abuse were identified as important emerging issues that present significant challenges to the bankruptcy system (Darling & Redmiles, 2002).

*Defining Repeaters*

According to Weston (2004), repeat bankruptcy filers tend to fall into one of three categories: chapter 7 repeat liquidators, chapter 13 repayment plan failures, and serial filers. Repeat liquidators file chapter 7 every 6 years to discharge their unsecured debts. Repayment plan failures are those debtors who file chapter 13 and do not complete their repayment plan. When their case is dismissed, repayment plan failures may file chapter 13 again or convert to chapter 7 if they have not obtained a chapter 7 discharge in the previous six years. These groups may have overlap where debtors who are waiting out the six years between chapter 7 discharges file chapter 13 and repeatedly fail to complete their repayment plans. Weston defined serial filers as those who attempt to use bankruptcy deliberately to thwart creditors' attempts to collect, often with no intention of completing their proposed repayment plan.

Sullivan et al. (1989) defined a "true repeater" as someone who receives more than one discharge of debt in bankruptcy. Using data directly from the bankruptcy petitions where filers are asked to state whether they have filed bankruptcy in the previous six years, they found that about 8% of their sample (120 of 1,502) had filed a prior bankruptcy petition. Because debtors did not always specify whether their previous filing was a chapter 7 or 13 and whether they were dismissed or discharged, the researchers could only identify "potential repeaters" or those who filed previous bankruptcies who may have received a discharge. Next, Sullivan et al. categorized filers in to four groups: double-filers, chapter 7 non-repeaters, chapter 13 dropouts, and the 100% payers in chapter 13. There were 23 debtors whose circumstances caused them to file twice (double-filers) in order to complete one discharge. Five debtors filed two bankruptcies in quick succession (chapter 7 non-repeaters) and did not receive a second discharge. These debtors filed chapter 7 within 2 to 6 years after their first filing, thus barring them from a second discharge in chapter 7. Thirty-two debtors filed a second time in chapter 13 and were dismissed (chapter 13 dropouts) without a discharge. The last group of debtors were those who the authors labeled as not seeking a second discharge. These debtors filed chapter 13 a second time trying to pay 100% of their debts (100% payers in chapter 13). There were 14 debtors who promised 100% repayment. Whether these debtors succeeded or failed, they did not receive two discharges because they were either dismissed from their bankruptcy or paid back 100% of their debts and, therefore, were not considered repeat filers. Ultimately, 56 of the 1,502 (3.7%) debtors could possibly have received two discharges and were classified as potential repeaters (Sullivan et al.). Few details were provided on the sociodemographic characteristics of these potential repeaters. One limitation of this study was that data were collected before the five year chapter 13 payment limit so outcomes of many of the repayment plans were unknown. Further, the researchers limited their study to the six-year look back period required by the court for determining whether debtors are eligible to file chapter 7. Some debtors may have filed more than 6 years previously so were not required to report a prior bankruptcy. These debtors would appear to be one-time filers.

Norberg's (1999) research on bankruptcy filers in the Southern Mississippi district considered whether multiple filings indicate abuse. Results indicated that 28 of 71 (39%) of the sampled debtors filed one or more previous bankruptcy cases. One-third (32.4%) of all debtors had filed only once previously. Of those debtors who filed only one previous bankruptcy (23 of 71), 65.2% (15 of 23) filed chapter 13 while the remaining 24.8% (8 of 23) filed chapter 7. Debtors who filed only one previous bankruptcy were significantly more likely to achieve a discharge. Only five debtors (7%) reported having filed more than one previous bankruptcy. All five of these debtors filed their previous cases in chapter 13 and none received a prior discharge. Norberg concluded that the filing of a single previous case was not an indicator of abuse, while multiple prior bankruptcies may be a strong indicator. While Norberg's research reported data on repeaters, this was not the focus of the study.

Only one empirical study was found that specifically focused on repeat filers and compared repeat petitioners to one-time petitioners (Strand et al., 1994). Data were collected in one Canadian province (Manitoba) and one U.S. state (Iowa) from randomly selected bankruptcy records and a survey of debtors. The sample consisted of 150 total respondents; 14% of debtors at each location had filed previously. Repeat petitioners had lower mean monthly income, lower monthly expenses, lower mean value of total assets, lower mean value of secured debt, and lower mean values of unsecured debt compared to first time filers. While financial characteristics differed between repeat and one-time petitioners, sociodemographic characteristics were similar with the exception that second time filers were older (Strand et al.).

As the American Bankruptcy Institute survey (1996) suggests, repeat bankruptcy filing is a concern for many bankruptcy professionals. Previous research concludes that a relatively small percentage of bankruptcy filers actually repeat. Sullivan and colleagues (1989) were unable to determine a precise number of actual repeaters because the bankruptcy documents were incomplete and the three to five year time period for chapter 13 repayment plans left some cases still pending. Yet many bankruptcy professionals believe that there is a problem with repeat filings. Although no research quantifies the extent to which repeat filers over-use the bankruptcy system, the ABI study (1996) confirms that there is considerable concern among bankruptcy professionals on the issue.

This study is unique because it utilizes a twenty-year time frame and a much larger sample than prior studies. Bankruptcy petitioners are asked to report on their petition if they have filed bankruptcy in the previous six years. This question could be overlooked or ignored or the debtor might give incomplete information about prior filings (Sullivan et al., 1989). This study takes advantage of a court electronic case filing system to track previous bankruptcy filings by the Social Security number of the filer, revealing all bankruptcy petitions filed in this district under that number. Tracking Social Security numbers reduces but does not completely eliminate the problem of incomplete information on other filings because debtors could have filed previously in other court districts.

## Problem Statement and Purpose of Study

Forty percent of bankruptcy professionals surveyed by the American Bankruptcy Institute (1996) identified repeat bankruptcy filers as a problem. The United States Trustee Program included serial (repeat) filings and abuse of the system among the issues that present significant challenges to the bankruptcy system (Darling & Redmiles, 2002). Few studies have focused on repeat filers or the extent to which they are abusing the system. This study examined those debtors who filed for bankruptcy more than once in twenty years in one federal bankruptcy court district. The purpose of this study is to describe the incidence of repeat filers in Utah and estimate the extent that repeat filers may be abusing the bankruptcy system. This study sought to develop a profile or demographic and financial picture of repeat filers. Demographic and financial variables were examined to determine their association with abuser/non-abuser status. Results of this study should enhance our understanding of the growing number of bankruptcy filings and contribute to information about repeat filings that may be useful for guiding bankruptcy policy at the national level and practices at the district level.

# CHAPTER III

# METHODS

This study focused on repeat filings to determine the extent to which repeat filers appear to be abusing the bankruptcy system. For purposes of this study, repeat filers are debtors who filed for bankruptcy two or more times in the federal bankruptcy district of Utah during the 20-year period (1984-2004). The 20-year period is used because it is the longest time frame available to view the bankruptcy records over the PACER/Electronic Case Filing System (ECF). This system includes all of the bankruptcy files for the district of Utah, and can be viewed via the Internet. The United States Bankruptcy Court chief judge for the district of Utah, the honorable Glen E. Clark, granted free access to the PACER system.

## Population and Sample

This study used the same sample as a previous study that developed a profile of bankruptcy filers in Utah in 1997 (Lown & Rowe, 2003). Their study systematically selected every tenth case from the 12,055 debtors who filed for bankruptcy in the federal district of Utah in 1997. Financial, employment, family, and sociodemographic variables were collected and drawn directly from the bankruptcy court records through the PACER/Electronic Case Filing System (ECF) for the 1997 filing year.

The sample consisted of 2,567 bankruptcy petitioners who filed for bankruptcy in Utah in 1997. Social Security numbers were used to track the filing history of debtors. Social Security numbers were drawn from the voluntary petitions of the sample of 1997 debtors. Social Security numbers were then entered into the PACER system to identify all bankruptcy filings associated with that number. The researcher completed Utah State University's Institutional Review Board human subjects training, and confidentiality measures were taken to assure that Social Security numbers and all other personal information remained private.

When seeking bankruptcy court protection, debtors may file a joint petition or file alone. According to the Bankruptcy Code (see 11 U.S.C. § 302), joint filing is reserved for married couples. Only debtors who filed with the same filing status across the entire 20-year period were included in the analysis. Debtors whose filing status stayed the same, were married, or filed alone each time they filed during the 20-year period. Debtors whose filing status changed during the 20-year period were excluded because of the significant role that finances play when marital status changes. Although a married person may file alone, a change of filing status between joint and individual suggests a change in marital status with accompanying financial upheaval.

There were 25 instances where debtors filed twice in 1997 and both of their filings appeared in the 1997 sample. To address this problem, because both cases have the same filing history and would therefore contain similar data, one of the double sampled filings was removed from the sample. An additional 20 cases were removed from the sample because of discrepancies or missing information on the files that did not allow for tracking the filing history of the debtor. For example, a missing digit in the Social Security number would not allow the researcher to use the number to search for previous and subsequent filings. After removing the debtors whose filing status (filing alone vs. joint) did not stay the same throughout the 20-year period (328 cases) and these 45 cases, the final sample consisted of 2,194 bankruptcy petitions filed in Utah in 1997.

Debtors are asked to document on their petition if they moved within the two years immediately preceding their bankruptcy filing. If so, they are required to list all addresses during that period. In order to estimate geographic mobility of the sample of debtors, a random sample of 100 cases was drawn from the 1997 sample and information on previous residency was collected from the files. Six out of the 100 cases reported having lived outside the state of Utah prior to their 1997 filing. Thirty-nine of the cases reported a previous residence within Utah and 51 cases reported no previous residence. The four remaining cases were missing the documents containing residency information. The Census Bureau (2004-2005) reported that in the year 2000, 49% of Utah's population lived in the same house in 1995, 9% lived in a different house in the same state, and 12% lived in a different state in 1995. Mobility remains a concern and limitation of this study, but considering that nearly 60% of Utah's population did not move in to or out of the state between 1995 and 2000 it is possible that most of the sample had not filed bankruptcy in other court districts.

## Conceptual Framework

In this study, abuse of bankruptcy was characterized only by the number of times a debtor filed for bankruptcy. Based on information provided by a court trustee about the definition of abuse used in the Utah bankruptcy district (Anderson, personal communication, July 8, 2004), debtors with three filings in a two-year period or less were classified as abusers. Debtors with four or more filings across the 20-year period were also classified as abusers. Non-abusers were defined as debtors who filed only once as well as debtors who had two and three scattered filings over the 20-year period.

While the literature has identified repeat or serial filers as abusers of the bankruptcy system, there is no accepted definition regarding the number of filings that marks the boundary between legitimate and abusive filings. Although Darling and Redmiles (2002) identified the problem of repeat filers and describe a couple of egregious examples, they did not provide a definition. Based on the definition of repeat filing abuse in this district, abusers were defined as debtors who filed three times in a two-year period or less and debtors with four or more filings.

## Data and Instrumentation

Bankruptcy petitioners are required to report on their petition, or application for bankruptcy, whether they have filed for bankruptcy in the previous six years. This six year look back period is designed to prevent debtors who previously received a chapter 7 discharge from receiving a second discharge in less than six years as required by the Bankruptcy Code. It is expected that some of this information will be incomplete, as petitioners may not report previous filings (Sullivan et al., 1989). Therefore, the PACER system was used to search by Social Security number for all cases filed in this district between 1984 and 2004 for each debtor in the sample. Court documents are scanned into a computer and made available to view over the Internet. The researcher had to comb through up to 30 pages of paperwork to find information on characteristics of debtors.

*Independent Variables*

Independent variables include financial and demographic variables. Sullivan et al. (1989) included items such as secured and unsecured debt levels, mortgage amounts, occupation of filer, job tenure of filer, and income levels in describing the bankruptcy filers in their study. Based on data available in the court files and previous research, the independent variables included whether they filed chapter 7 or chapter 13 in 1997 (1997 chapter), filing status (male, female, or joint), marital status, household size (number of dependents), secured debt level, unsecured debt level, monthly income, and monthly expenses. Many other demographic variables would be of interest but data in the bankruptcy files are limited to only court required information directly pertaining to debts. For example, filers are not required to report their level of education, marital history, medical coverage, or age on the forms (only one third of the filers actually reported information on age). The following is a description of how each variable was operationalized.

*1997 chapter.* In the bankruptcy files viewed through the PACER system, the documents clearly specify if the debtor filed chapter 13 or chapter 7. Chapter 7 was coded as 1 and chapter 13 was coded as 2.

*Filing status.* Debtors fall into two filing status categories: individual or joint filers. When viewing the files through the PACER system, the name(s) of the debtor(s) are shown. When there were two debtors listed, the filing status was coded as joint. When there was a single name the filing status was coded as an individual. Best guesses for gender were based on the name and occupation of the filer. Filing status was then assigned to one of three categories: couple (joint filers), male (males filing alone), and female (females filing alone). Males were coded as one, females were coded as two, and couples were coded as three.

*Marital status.* The marital status of debtors was coded in three categories: married, divorced, and single. All joint filers were assumed to be married based on the requirement of the Bankruptcy Code. Individuals filing alone could be of any marital status. Married debtors are those who reported on the bankruptcy files that they were married as well as those who reported that they were separated. Married and separated debtors were combined into one category because preliminary analysis of the economic profiles of married and separated debtors indicated that separated debtors were more like married debtors than single debtors (Evans, 2004). Divorced debtors are those who indicated on their petition that they were divorced. Single debtors are a combination of those who reported being single and those who reported being widowed. These two categories were combined because widowed debtors were few in number and are neither divorced nor married. Married debtors were coded as one, divorced debtors were coded as two, and single debtors were coded as three. There were also too few separated debtors to be their own category.

*Household size.* Household size was calculated by counting the number of debtors on the petition and adding to that the number of dependents listed in Schedule I of the Statement of Financial Affairs (Evans, 2004). Household size values were grouped in three categories: one-to-three, four-to-six, and seven-to-eleven. Household sizes of one-to-three were coded as one, four-to-six as two, and seven-to-eleven as three. The largest household size reported in the sample consisted of eleven persons.

*Secured debt level.* On Schedule D of the Statement of Financial Affairs, debtors report their secured debts. Secured debt is any debt that is "secured" by some sort of collateral. Mortgages and auto loans are examples of secured debts. Debtors list all their secured debts and a total dollar value of secured debt is shown in the files. This variable was continuous since there was a wide range of dollar values reported by the debtors in the sample.

*Unsecured debt level.* Debtors report their unsecured debts in Schedules E and F of the Statement of Financial Affairs. Unsecured debts are debts such as credit card debt and medical debt that have no collateral. The unsecured debts listed on Schedules E and F were totaled and the dollar values were reported. This is also a continuous variable considering the wide range of dollar values reported.

*Monthly income and expenses.* Debtors report their monthly income at the time of filing on Schedule I of the Statement of Financial Affairs. Monthly expenses are reported on Schedule J of the Statement of Financial Affairs. Expenses include all monthly obligations to lenders, utility companies, insurance, food clothing, etc. Monthly income and monthly expenses are also continuous variables.

### *Dependent Variable*

The dependent variable is whether the filer is an abuser or non-abuser based on the number and pattern of filings. Debtors were sorted into one of four categories: one or two filings, three filings spread over more than two years, three filings in two years or less, and four or more filings (Figure 1). Debtors in the first two groups, with one or two and three total filings in more than two years were be classified as non-abusers.

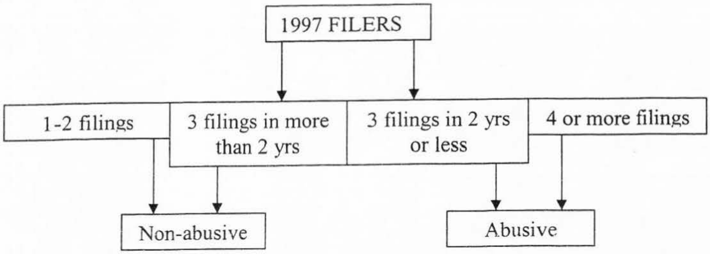


*Figure 1.* Framework for sorting filers.

Debtors with three filings in a 2-year period or less and debtors with four or more filings were classified as abusers.

## Data Analysis

The statistical analysis began by calculating descriptive statistics for abusers and non-abusers in order to profile the two groups. Comparisons were also made to national data. Analysis continued by establishing bivariate relationships between the independent variables and the dependent variable. The $t$ tests were used to compare abusers and non-abusers on continuous variables such as income and debt levels. Chi-square analyses were used to evaluate whether abuser/non-abuser status is independent of each categorical variable. Because the dependent variable was dichotomous, logistic regression was the appropriate analysis. The logistic regression model was built using a "backward elimination" approach, starting with the "full model" containing all independent variables. At successive steps, new models were computed by eliminating the independent variable that was the least significant in its association with the dependent variable: abusers versus non-abusers. Changes in model fit were tested using a

Chi-square test for the net effect of having removed the variable. The final model contained all independent variables that remained significant in the presence of all other variables in the model.

Odds ratios (OR) from logistic regression for independent variables which have extremely large ranges (such as these financial variables ranging in the tens of thousands of dollars) are not meaningful because the OR gives an estimate of the effect of changing the independent variable by one unit on the scale. The effect of a one dollar change on any of these financial variables would have a non-existent impact on the outcome. Therefore, in order to make a more meaningful test for the impact of the financial variables on abuser versus non-abuser status, each was dichotomized into values above versus below the median level for this sample. Secured debt was dichotomized into 0 through $11,153, versus $11,154 through the highest value. Unsecured debt was dichotomized into 0 through $16,238, versus $16,239 through the highest value. Monthly income was dichotomized into $46 through $1,587, versus $1,588 through the highest value. Monthly expenses were dichotomized into $41 through $1,495, versus $1,496 through the highest value. This approach provides an estimate of the unique effect of each independent variable in terms of the entire group of independent variables and their association with the dependent variable. Abusers, one-time filers, and other repeat filers were compared based only on descriptive statistics to determine the general differences among the three groups. No further analysis was conducted with these three groups.

# CHAPTER IV

# RESULTS

This chapter begins with a description of those debtors who appear to be abusing the bankruptcy system through repeat filings. Bankruptcy filers were sorted into one of four categories: one-to-two filings, three filings spread over more than 2 years, three filings in 2 years or less, and four or more filings. Debtors with one-to-two and three total filings in more than 2 years were classified as non-abusers. Debtors with three filings in a 2-year period or less and debtors with four or more filings were classified as abusers.

While there are many ways to take advantage of the bankruptcy system (Darling & Redmiles, 2002), this study determined potential abuse based only on the number of bankruptcy petitions filed by debtors in the federal district of Utah between 1984 and 2004. To begin, debtors were sorted into two categories, abusers and non-abusers and descriptive statistics are reported. Following this descriptive illustration, demographic and financial characteristics of the two groups are compared using *t* test and chi-square statistics. Finally, results of the logistic regression model, developed to estimate the effect of key independent variables on the odds of being an abuser, are presented.

## A Profile of Repeat Filing Abusers

This section describes some demographic and financial variables for those repeat filers who appear to be abusing bankruptcy by filing repeatedly. Demographics included filing status (male filing alone/female filing alone/joint filers), marital status, and household size. An age variable was also used, but only 63 of the 235 abusers (26.8%) reported their age in the bankruptcy files. Age data are included in this descriptive section of the analysis but, because there are so many missing values, age is excluded from further analysis.

Debtors with one or two and three total filings in more than two years were classified as non-abusers. Debtors with three filings in a two-year period or less and debtors with four or more filings were classified as abusers. The total number of abusive repeat filers in the sample was 235 (10.7%) out of 2,194 filers. There were 171 (72.8%) abusers who filed chapter 13 in 1997 and 64 (27.2%) who filed chapter 7. The majority (76.2%) of the abusers were dismissed from their 1997 filing while only 24% received a discharge of their unsecured debts. Table 1 illustrates the case outcomes of the abusers by chapter filed in 1997. Only five (2.9%) of the 171 abusers who filed chapter 13 in 1997 completed their payment plan and received a discharge of their debts. There were 64 abusers who filed chapter 7 in 1997, 51 of whom received a discharge of their unsecured debts.

Few of the chapter 7 cases were dismissed but when comparing the chapter 7 dismissals of abusers and non-abusers, abusers were dismissed in chapter 7 at a much higher rate (20.3%) than non-abusers (4.9%, see Table 1). Completing chapter 7 liquidation is much less rigorous than completing a three-to-five year chapter 13 repayment plan. A chapter 7 discharge of unsecured debts may take as little as three months.

Table 1

*Abusers and Non-Abusers: 1997 Chapter by Outcome (n=235)*

| Chapter filed in 1997 | Total | Discharged *n* (%) | Dismissed *n* (%) |
|---|---|---|---|
| Abusers | | | |
| 7 | 64 (100%) | 51 (79.7%) | 13 (20.3%) |
| 13 | 171 (100%) | 5 (2.9%) | 166 (97.1%) |
| Non-Abusers | | | |
| 7 | 1,360 (100%) | 1,293 (95.1%) | 67 (4.9%) |
| 13 | 599 (100%) | 227 (37.9%) | 372 (62.1%) |

### *Demographic Variables*

Demographic variables included filing status, marital status, and household size. Demographics are limited to data available from the bankruptcy files. While other demographics such as occupation, marital and employment history, and race/ethnicity would be of interest to researchers, these data are not available in the court files. Frequencies and percentages are shown in Table 2 for the categorical demographic variables.

*Filing status.* Filing status is an important factor in describing a bankruptcy filing. There is a distinct difference between filing alone and not being married. A debtor who files alone may actually be married at the time of filing but for many reasons may chose not to include their spouse in the bankruptcy. As indicated previously, this study included only those debtors who filed with the same filing status each time. In the 1997 sample, 29.6% of debtors were males filing alone, 31.8% were females filing alone, and 38.6% were joint filers. Joint filers made up slightly more than half (58.9%) of all the abusers. Debtors who filed alone made up 41.0% of the sample. Single filers were sorted by

Table 2

*Demographic Characteristics of Abusers (n=235)*

| Variable | Frequency | % |
|---|---|---|
| Filing Status | | |
| Joint filer | 129 | 58.9% |
| Male filing alone | 45 | 20.5% |
| Female filing alone | 45 | 20.5% |
| Marital Status | | |
| Married | 152 | 66.2% |
| Divorced | 31 | 13.6% |
| Single | 45 | 20.2% |
| Household Size | | |
| 1 thru 3 | 120 | 52.4% |
| 4 thru 6 | 98 | 42.8% |
| 7 thru 10 | 11 | 4.7% |

gender. Interestingly, the number of male and female abusers was equal at 45, each representing 20.5% of abusers (see Table 2).

*Marital status.* Debtors who reported being married on their 1997 petition made up 66.2% of the abusive repeat filers. Debtors who reported being divorced and single made up 13.6% and 20.0% of abusers, respectively. Because marital status data for both the state and national level are not available for the year 1997; these results were compared to the 2000 Census. In the year 2000, 64.2% of the Utah adult population was married, 8.1% were divorced, and 27.9% were single (never married). The 2000 Census also reports that on the national level 52.5% of the population was married, 9.8% were divorced, 23.9% were single (never married), and 6.8% were widowed (U.S. Bureau of the Census, 2000). It is possible that some debtors indicated their marital status as single even though they were divorced, separated, or widowed.

A cross-tabulation of marital status and filing status of abusers revealed that nine married males filed alone and two married females filed alone in 1997. Of the 31 divorced filers, 14 were males filing alone and 17 were females filing alone. Of the 45 debtors who reported their marital status as single, 19 were males filing alone and 24 were females filing alone.

*Household size.* The average household size for the sample of abusive repeat filers was 3.47 persons per household. The average household size in the state of Utah was 3.19 according to the 2000 Census while the average household size in the United States was 3.13 (U.S. Bureau of the Census, 2000). More than (52.4%) of the abusers had households of one to three persons at the time of the 1997 filing. A large portion of abusers (42.8%) reported having four to six people in their household, but only 4.7% reported having a household between seven and ten persons in 1997 (see Table 2).

A cross-tabulation of household size and marital status of abusers revealed that 49 (32.2%) of the 152 married filers had household sizes of one-to-three, 92 (60.5%) reported between four and six household members, and 11 (7.2%) listed between seven and ten persons (see Table 3). Joint filers may be expected to report a minimum household size of two but some may be technically married and living alone. Of the divorced abusers, 83.9% (26 of 31) had a household size between one and three, 16.1% (5 of 31) reported four-to-six persons. No divorced filers reported a household size between seven and ten. With one exception, single filing abusers listed household sizes between one and three persons. One single filer reported a household size of five persons. The majority of single filers (30 of 44) were the only person in their household.

Table 3

*Abusers: Household Size by Marital Status 1997*

| Household size in 1997 | Married | Divorced | Single |
|---|---|---|---|
| 1 thru 3 | 49 (32.2%) | 26 (83.9%) | 44 (97.8%) |
| 4 thru 6 | 92 (60.5%) | 5 (16.1%) | 1 (2.2%) |
| 7 thru 10 | 11 (7.2%) | - | - |

*Age of Filer.* As mentioned, data on age are limited in the bankruptcy files. Only 63 of the 235 (27%) abusers indicated their age. Based on the limited data available, the mean age was 35.3 years. The minimum and maximum age of abusers was 21 years and 56 years respectively. Utah has the lowest median age in the U.S. (27.1), considerably less than the median age of the U.S. population, which was 35.9 according to the 2000 census (U.S. Bureau of the Census, 2000).

*Financial Variables*

The financial variables will enhance the understanding of the financial situations of debtors who appear to be abusing the bankruptcy system. Financial variables included secured and unsecured debt levels, monthly expenses, and monthly income, all of which are continuous variables reported in dollars. Means, medians, standard deviations, minimum values, and maximum values are reported for the financial variables and are reported in Table 4.

*Secured debt.* As shown in Table 4, the mean and median values of secured debt among abusers were $56,581 and $15,982, respectively. There were 20 abusers who reported zero secured debt and 14 instances of missing data on secured debt. Minimum and maximum values were zero dollars and $132,800, respectively (see Table 4).

Table 4

*Financial Characteristics of Abusers (n=235)*

| Variable | *n* (% of abusers) | Mean (Median) | Standard deviation | Minimum | Maximum |
|---|---|---|---|---|---|
| Secured debt | 221 (94%) | $56,581 (15,982) | 108869.59 | $0 | $132,800 |
| Unsecured debt | 229 (97%) | $19,204 (13,670) | 20957.46 | $0 | $163,806 |
| Monthly income | 229 (97%) | $2,147 (2,003) | 1098.53 | $152 | $6,517 |
| Monthly expenses | 228 (97%) | $1,829 (1,700) | 892.38 | $41 | $5,480 |

Of the debtors who reported having some secured debt, the minimum value was $150. Including only those abusers with some level of secured debt, the mean was $56,265, while the median was $19,241.

*Unsecured debt.* The mean value of unsecured debt among abusers was $19,204 while the median value was $13,670. Minimum and maximum values are zero dollars and $163,806, respectively (see Table 4). There were six instances of missing data on unsecured debt and four debtors reported zero unsecured debt. Of the debtors who reported having unsecured debts, the minimum value was $623. Including only those with some level of unsecured debt, the mean was $19,546, while the median was $13,877.

*Monthly income.* Debtors are required to report their monthly income at the time that they file for bankruptcy. Table 4 shows the mean monthly income of abusers was $2,147 while the median was $2,003. Minimum and maximum values were $152 and $6,517, respectively. Median household income for the state of Utah according to the 2000 Census was $3,810 per month while the median monthly household income of the

U.S. population was $4,284 (U.S. Bureau of the Census, 2000), a difference of $474. Joint filers are likely to have two incomes resulting in higher income of abusers. There were 84 of 129 (65.1%) joint filing abusers who reported having dual incomes.

*Monthly expenses.* Debtors must report their monthly expenses as part of the bankruptcy filing process. The mean and median dollar figures of monthly expenses for abusers were $1,829 and $1,700, respectively. Minimum and maximum values were $41 and $5,480 respectively (see Table 4). High monthly expenses may possibly be attributed to filers who were small business owners.

*Small Business Owners*

Although one might expect that debtors filing chapter 7 or 13 are filing for personal bankruptcy, Sullivan et al. (1989) reported that one in five of their sample were self-employed or small business owners either prior to or at the time of their bankruptcy filing. Because debtors who own small businesses may have very different financial circumstances than other debtors, the sample of abusers was examined to determine which debtors, if any, were small business owners. The 1997 bankruptcy files include some information on employment status. Of the 235 abusers, 19 (8%) reported on their bankruptcy petition that they owned a small business. Monthly expenses, monthly income, unsecured debt, and secured debt levels of the abusers owning small businesses are reported in Table 5.

As might be expected, the median secured debt level for small business owners was substantially higher ($108,799) than the median debt level for the rest of the abusers ($22,799). The median unsecured debt level of abusers owning small businesses was

Table 5

*Financial Characteristics of Abusers: Small Business Owners (n=19)*

| Variable | Mean (Median) | Standard deviation | Minimum | Maximum |
|---|---|---|---|---|
| Secured debt | $114,386 (108,799) | 101,647 | $0 | $315,466 |
| Unsecured debt | $25,012 (18,703) | 19,862 | $3,694 | $67,718 |
| Monthly income | $3,079 (2,430) | 1,826 | $461 | $6,517 |
| Monthly expenses | $2,600 (2,116) | 1,551 | $41 | $5,434 |

$18,703 while the median for the rest of the abusers was $13,215. Abusers owning small businesses also had slightly higher monthly incomes and monthly expenses than the rest of the abusers (see Table 5).

## Demographic Comparisons

The chi-square test of independence revealed a significant association between abusers, non-abusers, and chapter filed in 1997($p \leq .001$, Table 6). The percent of abusers filing chapter 7 was 4.5%, while 22.2% of those filing chapter 13 were categorized as abusers. Results of the chi-square test indicate that filing status and abuser status were not independent of each other ($p \leq .001$). The percent of abusers who filed joint petitions was 16.2% as compared to 7.4% males filing alone and 6.8% females filing alone.

Marital status results indicate that abusers were more likely to be married ($p \leq .001$). As Table 6 indicates, 66.2% of abusers were married while 13.6% were divorced

Table 6

*Chi-Square Test Results for Abusers and Non-Abusers*

| | Total | Abusers | Nonabusers | Chi-square ($p$-value) |
|---|---|---|---|---|
| Chapter | | | | |
| 7 | 1,424 | 64 (4.5%) | 1,360 (95.5%) | $\chi^2 = 163.961$ |
| 13 | 770 | 171 (22.2%) | 599 (77.8%) | $p \leq .001$ |
| Filing Status | | | | |
| Joint | 797 | 129 (16.2%) | 668 (83.8%) | |
| Male | 609 | 45 (7.4%) | 564 (92.6%) | $\chi^2 = 42.651$ |
| Female | 658 | 45 (6.8%) | 61 (93.2%) | $p \leq .001$ |
| Marital Status | | | | |
| Married | 1,099 | 151 (13.7%) | 948 (86.3%) | |
| Divorced | 385 | 31 (8.1%) | 354 (91.9%) | $\chi^2 = 23.803$ |
| Single | 668 | 46 (6.8%) | 622 (93.1%) | $p \leq .001$ |
| Household Size | | | | |
| 1 thru 3 | 1,371 | 120 (8.6%) | 1,251 (91.2%) | |
| 4 thru 6 | 716 | 98 (13.7%) | 618 (86.3%) | $\chi^2 = 23.803$ |
| 7 thru10 | 65 | 11 (16.9%) | 54 (83.1%) | $p \leq .001$ |

and 20.2% were single. Results of chi-square tests of household size indicated that abuser status and household size were not independent of one another ($p \leq .001$). Joint filers were most likely to have larger household sizes than single filers and joint filers were more likely to be abusers.

## Financial Comparisons

The *t* test for equality of means revealed that the mean value of secured debt of abusers and non-abusers was significantly different ($p = .041$, Table 7). The *t* tests of significance showed that the mean (and standard deviation) secured debt for abusers was \$56,581 (*SD* = \$108,869) while the mean value for non-abusers was \$40,960 (*SD* =

\$86,616). The mean difference of unsecured debt between abusers and non-abusers was also significantly different ($p$ = .000). The mean value of unsecured debt for abusers (\$19,546, $SD$ = 20957.46) was less than the unsecured debt level for non-abusers (\$34,491, $SD$ = \$138,013). The mean values for monthly income of abusers and non-abusers were significantly different ($p$ = .000). Abusers had a higher mean monthly income (\$2,147, $SD$ = \$1,098) than non-abusers (\$1,726, $SD$ = \$1,139). The mean difference of monthly expenses of abusers and non-abusers was significantly different ($p$ = .005). Mean monthly expenses reported by abusers was \$1,829 ($SD$ = \$892) while the mean reported by non-abusers was \$1,649 ($SD$ = \$911).

Table 7

*t Test Significance Levels for Abusers and Non-Abusers*

| Variable | Abuser mean (median) (*SD*) | Nonabuser mean (median) (*SD*) | P-value | Effect size |
|---|---|---|---|---|
| Secured debt | \$56,581<br>(19,241)<br>(108,869) | \$40,960<br>(11,000)<br>(86,616) | $p = .041^{**}$ | 0.18 |
| Unsecured debt | \$19,546<br>(13,877)<br>(20,957) | \$34,491<br>(16,627)<br>(138,013) | $p \leq .001^{**}$ | -0.11 |
| Monthly Income | \$2,147<br>(2,003)<br>(1,098) | \$1,726<br>(1,528)<br>(1,139) | $p \leq .001^{*}$ | 0.37 |
| Monthly Expenses | \$1,829<br>(1,700)<br>(892) | \$1,649<br>(1,468)<br>(911) | $p = .005^{*}$ | 0.20 |

*Note.* $t$ tests are calculated using the "separate variance" formula for t-tests, if the homogeneity of variance test indicated significantly different variances, and using the "pooled variance" t-test formula otherwise. $^{*}$equal variances assumed $^{**}$equal variances not assumed

## Logistic Regression Model

Using the backward elimination approach, the full logistic regression model began with all independent variables: 1997 chapter, filing status, marital status, household size, secured debt, unsecured debt, monthly income, and monthly expenses. The first variable removed was household size ($p = .824$) followed by monthly expenses ($p = .800$), and marital status ($p = .738$). The final variable removed was secured debt ($p = .123$). The final model included filing status, chapter, unsecured debt, and monthly income (Table 8).

As Table 8 indicates, joint filing status was the reference category, and males filing alone were less likely to be abusers (OR = 0.566, 95% CI: 0.377-0.850) as were females filing alone (OR = 0.560, 955 CI: 0.371-0.844). Those who filed chapter 13 in

Table 8

*Logistic Regression Model for Predicting Abuse*

| | | | | 95% confidence intervals | |
|---|---|---|---|---|---|
| Variable | df | Significance | Odds ratio | Low | High |
| Filing status | | | | | |
| (Joint) | | | | | |
| Male | 1 | .006 | .566 | .377 | .850 |
| Female | 1 | .006 | .560 | .371 | .844 |
| Chapter | | | | | |
| (7) | | | | | |
| 13 | 1 | .000 | 4.775 | 3.436 | 6.635 |
| Unsecured debt | | | | | |
| (< median) | | | | | |
| > median | 1 | .047 | .728 | .532 | .995 |
| Monthly income | | | | | |
| (< median) | | | | | |
| > median | 1 | .003 | 1.755 | 1.210 | 2.547 |

( ) indicates reference group

1997 (OR = 4.775, 95% CI: 3.463-6.635) were nearly five times as likely to be abusers compared to chapter 7 filers. For unsecured debt, the reference category was having a debt level below the median. Filers who had debt levels above the median unsecured debt level were less likely to be abusers (OR = .728, 95% CI: .532-.995). Filers who had incomes above the median were almost twice as likely to be abusers (OR = 1.755, 95% CI: 1.210-2.547).

## Comparison of Abusers, One-Time Filers, and Other Repeaters

Abusers were compared to debtors who filed only one bankruptcy and debtors who filed more than one bankruptcy but did not meet the definition of abuser. In this section, debtors who filed more than one bankruptcy but were not considered abusers will be referred to as "repeaters." Demographic variables for these three groups are shown in Table 9 and financial variables are shown in Table 10. The total number of one-time filers made up 66.1% of the sample (1,451 of 2,194). Repeaters comprised 23.3% and abusers comprised 10.7% of the total sample.

### *Filing Status*

Filing status of one-time filers was almost equally distributed among the three categories; 31.2% were joint filers, 30.2% were males filing alone, and 32.7% were females filing alone. For the repeaters, 42.3% of the debtors filed joint petitions and males and females filing alone filed at similar rates (see Table 9). More than half of the abusers (58.9%) filed joint petitions.

*Marital Status*

Close to half (47.1%) of the one-time filers indicated that they were married on their 1997 bankruptcy petition. Single and divorced filers made up 32.2% and 19.2% of one-time filers respectively. Almost half (52.2%) of the repeaters were married while 15.0% were divorced and 30.3% were single. The majority (66.2%) of abusers were married, 13.6% were divorced, and 20.2% were single.

*Household Size*

One-time filers, repeaters, and abusers had comparable representation in household size but abusers appear to have larger household sizes. As shown in Table 9, 65.6% of one-time filers, 58.9% of repeaters, and 52.4% of abusers indicated a household size between one and three persons. Comparable values for the other household size

Table 9

*Demographic Characteristics of One-Time Filers, Repeaters, and Abusers (N=1,194)*

| Variable | One-time filers *N* (%) | Repeaters *N* (%) | Abusers *N* (%) |
|---|---|---|---|
| Total | 1,451 (66.1%) | 508 (23.3%) | 235 (10.7%) |
| | | | |
| Filing status | | | |
| Joint filer | 453 (31.2%) | 215 (42.3%) | 129 (58.9%) |
| Male filing alone | 438 (30.2%) | 126 (24.8%) | 45 (20.5%) |
| Female filing alone | 475 (32.7%) | 138 (27.1%) | 45 (20.5%) |
| Marital status | | | |
| Married | 683 (47.1%) | 265 (52.2%) | 152 (66.2%) |
| Divorced | 278 (19.2%) | 76 (15.0%) | 31 (13.6%) |
| Single | 468 (32.3%) | 154 (30.3%) | 45 (20.2%) |
| Household size | | | |
| 1 thru 3 | 952 (65.6%) | 299 (58.9%) | 120 (52.4%) |
| 4 thru 6 | 440 (30.3%) | 178 (35.05) | 98 (42.8%) |
| 7 thru 10 | 37 (2.5%) | 15 (3.0%) | 11 (4.7%) |
| 11 | 2 (0.1%) | - | - |

Categories are shown in Table 9. Two one-time filers had households consisting of 11 persons.

*Secured Debt*

Table 10 compares one-time filers, repeaters, and abusers by financial variables. Mean and median secured debt levels for one-time filers, repeaters, and abusers were \$41,743, \$56,351, and \$56,481 respectively. Mean and median values were calculated only for those who reported having some level of secured debt. Median values were also similar between the three groups; one-time filers had the lowest at \$13,933. One-time filers had lower secured debt levels than the other groups (see Table 9).

*Unsecured Debt*

Abusers reported much lower unsecured debt than repeaters and one-time filers. The mean value for unsecured debt of abusers was \$19,546 while the mean values for one-time filers and repeaters were \$30,876 and \$34,066 respectively (see Table 10). Median values for repeaters (\$13,452) and abusers (\$13,877) were similar while one-time filers had slightly higher median values of unsecured debt at \$18,005. Mean and median values were calculated only for those who reported having some level of unsecured debt.

*Monthly Income*

On their 1997 petition, one-time filers reported a lower mean monthly income (\$1,680) than repeaters (\$1,857). The mean monthly income of abusers was \$2,147, somewhat more than repeaters and one-time filers. Median monthly income values were similar for one-time filers (\$1,455) and repeaters (\$1,644) and slightly higher for abusers

Table 10

*Financial Characteristics of One-Time Filers, Repeaters, and Abusers (N=2,194)*

| Variable | One-time Filers Mean (Median) | Repeaters Mean (Median) | Abuser Mean (Median) |
|---|---|---|---|
| Secured debt | $41,743 (13,933) | $56,351 (20,518) | $56,581 (19,241) |
| Unsecured debt | $30,876 (18,005) | $34,066 (13,452) | $19,546 (13,877) |
| Monthly income | $1,680 (1,469) | $1,857 (1,664) | $2,147 (2,003) |
| Monthly expenses | $1,632 (1,455) | $1,701 (1,542) | $1,829 (1,700) |

(see Table 10). Abusers reported having the highest mean monthly income compared to one-time filers and repeaters.

*Monthly Expenses*

One-time filers, repeaters, and abusers report similar mean values of monthly expenses (see Table 10). Mean values for monthly expenses were $1,632, $1,701, and $1,829, respectively, for one-time filers, repeaters, and abusers. Abusers had greater mean and median monthly expenses than repeaters and repeaters had greater monthly expenses than one-time filers.

## Summary of Results

About 11% of the total sample appeared to be abusing the bankruptcy system by filing repeatedly. The majority (76.2%) of the repeat filing abusers were dismissed from their 1997 filing while only 24% received a discharge of their unsecured debts. Only five (2.9%) of the 171 abusers who filed chapter 13 in 1997 completed their payment plan and received a discharge of their debts. The logistic regression model found chapter, filing status, unsecured debt, and monthly income to be the most significant variables in estimating abuse. Males and females filing alone are nearly 50% less likely than joint filers to be repeat filing abusers. Chapter 13 debtors are nearly five times as likely to be abusers when compared to chapter 7 debtors. Filers who had debt levels above the median unsecured debt level were less likely to be abusers and filers who had incomes above the median were almost twice as likely to be categorized as abusing bankruptcy through repeat filings.

# CHAPTER V

# DISCUSSION

This chapter first reviews the principal findings and conclusions of this study. Findings are then addressed and discussed in terms of demographic and financial characteristics of bankruptcy filers. Limitations of the study are presented. Conclusions are drawn from the logistic regression results and policy implications discussed. Recommendations are made for future research as well as policy and practice at the district court level.

The principal finding of this study is that 10.7% (235 of 2,194) of the sample appeared to be abusing bankruptcy. Undoubtedly, some repeat filers have legitimate reasons for repeat filing. However, this finding is consistent with the results of the few previous studies of repeat filers. The American Bankruptcy Institute Report on the State of the American Bankruptcy System (1996) suggested that abuse is perceived as a problem by some professionals but that it is not considered rampant. Sullivan et al. (1989) reported that a small portion of the bankrupt debtors in their sample, perhaps only 5%, *might* be abusing the system. Norberg (1999) found only five debtors (7% of the sample) had filed more than one previous bankruptcy.

The title of the bill to reform the Bankruptcy Code, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, presumes that abuse is a significant problem. Some researchers and policy makers have suggested that debtors, creditors, and professionals within the system are somehow taking advantage of each other and the public, and that the system suffers from fraud and abuse (American Bankruptcy Institute, 1996; Bermant & Burke, 1999).

Another key finding is that out of the 171 abusers who filed chapter 13, only 5 (2.9%) of them completed their repayment plan and achieved a discharge of their unsecured debts. Norberg (1999) also found that the five debtors who filed more than one prior bankruptcy filed previously in chapter 13 and none of them received a discharge. Earlier research on 1997 filers in Utah found that 26.5% of chapter 13 debtors who filed in 1997 completed their repayment plan (Evans, 2004). Interestingly, the regression results indicated that abusers were nearly five times as likely to have filed chapter 13 in 1997 compared to chapter 7. One interpretation of this very low discharge rate among repeat abusers is that debtors who previously discharged their debts in chapter 7 may be filing chapter 13 repeatedly, with no intention of completing a repayment plan, until they can file a chapter 7 and discharge their unsecured debts again. Also, 20.3% (13 of 51) of the abusers who filed chapter 7 had their cases dismissed. Debtors who have previously discharged their debts in chapter 7 cannot file another chapter 7 for six years, so their only bankruptcy option is to file a chapter 13.

## Demographic Characteristics

The results indicated that nearly 60% of repeat filing abusers filed joint petitions with the remainder split evenly between males and females filing alone at 20% each. According to the logistic regression results, the only significant demographic variable in estimating abuse by repeat filing was the filing status of the debtor. Males and females filing alone were nearly 50% less likely to be abusers compared to joint filers. In their sample of bankruptcy filers, Sullivan, Warren, and Westbrook (2000) found that 28% were women filing alone and 28% were men filing alone. Among single individuals in this sample, males and females appear to file at equal rates. Roughly 66% of the abusers were married while 14% were divorced and 20% were single. Married couples make up 64.2% of the Utah adult population compared to 52.5% nationally (U.S Bureau of the Census, 2000).

It is difficult to make assumptions about debtors who filed repeatedly and whose marital status may have changed. Sullivan et al., (2000) found that it is the combination of marriage, divorce, and no remarriage that appears to correlate with financial ruin. Individuals who experience divorce may have cause to file bankruptcy more than once considering that their households are under emotional and financial stress. Changing marital status is an important factor to consider when analyzing repeat bankruptcy filing but is beyond the scope of this study. The exclusion of these repeat debtors from this study may result in underestimating the extent of abuse by repeat filers.

Abusers appeared to have filed joint petitions, to have been married, and to have larger household sizes. Compared to U.S. households (3.13 persons), on average, Utah households are larger (3.19, U.S. Bureau of the Census, 2000). These three variables, filing status, marital status, and household size, demonstrate some degree of multicollinearity because joint filers are almost always married, resulting in a minimum household size of two persons. Only 63 of the 235 abusers indicated their age on one of their bankruptcy petitions. With what little data were available, the mean age of abusers was 35.2 years while the minimum and maximum ages were 21 and 56 years respectively. Previous research, although not focused on repeat filing or abuse of bankruptcy, found that the greatest number of bankrupt debtors were middle aged category (Sullivan, Thorne, & Warren, 2001).

## Financial Characteristics

Previous research on repeat petitioners (Strand et al., 1994) found that they had lower mean monthly income, lower monthly expenses, lower mean secured debt, and lower mean unsecured debt compared to one-time debtors. In the present study abusers tended to have higher secured debt but lower unsecured debt than one-time filers. Abusers probably discharged unsecured debts in previous bankruptcies resulting in lower unsecured debt levels on their 1997 petitions. Debtors who reported having zero unsecured debt were in an interesting situation because only unsecured debt can be discharged in bankruptcy. All of the four debtors who reported zero unsecured debt filed chapter 13 in 1997. This leads one to believe that these debtors were filing bankruptcy perhaps to halt a foreclosure process or cram down vehicle debt from the amount owed to the value of the vehicle.

In addition, abusers reported higher monthly income than the rest of the sample. Because abusers were more likely to be joint petitioners, it is possible that their monthly incomes are higher because they have two incomes. The logistic regression results revealed that unsecured debt and monthly income were the only two financial variables significant in estimating debtor abuse. Debtors who had debt levels above the median unsecured debt level for the sample were nearly 70% less likely to be abusers, while debtors with incomes above the median for the sample were almost twice as likely to be abusers.

## Limitations

This study sought to determine the extent to which debtors are abusing bankruptcy by filing repeatedly. One limitation is that data were restricted only to information contained in the bankruptcy court records. These documents do not provide the necessary information to make judgments about the intentions or individual circumstances of debtors in bankruptcy. Secondly, this study categorized abuse based solely on the number of times a debtor filed bankruptcy over a 20-year time period. This approach was taken because of the limited information on the bankruptcy court records. One-time filers have the potential to be abusers. Also, multiple filings were the only determinant of abuse. Several other factors come into play when determining whether a debtor is abusing bankruptcy or not.

Ideally, one would examine each bankruptcy case filed by a debtor in order to obtain more specific information on their financial situations at each filing to determine if their repeated bankruptcy filings are abusive. Even examining all the court records may not provide a complete picture of the debtor's circumstances or intentions. Debtors' ages are unknown because this information is often left off the petition. Age is an important variable considering that younger debtors may be more likely to be one-time filers because they were too young to have filed in previous years.

The data are also limited to only one federal bankruptcy court district (Utah). Debtors who moved into or out of the state during the 20-year period could have filed in other court districts and thereby may be incorrectly labeled as non-abusers.

## Future Research

The frequency of repeat filings is likely related to the chapter 13 filing rates, which vary substantially from one district to another. Districts with very low chapter 13 rates are likely to have few repeat filers because of the statutory limit on filing chapter 7 only once every six years. Replication of this study with a national sample including other bankruptcy court districts, especially those with high chapter 13 filing rates, would be ideal. Unfortunately, Social Security numbers are no longer available to the public through the bankruptcy files so replication may be difficult. The PACER system allows one to search for multiple filings by the name and address of debtor but this approach is clearly not as reliable as using the Social Security number. The paucity of research reporting abuse and fraud among debtors implies that the system is being abused so researchers need to keep examining and studying abuse. Further research to determine the incidence of abusive repeat filers should include the effect of changing marital status and the role it plays in financial distress and repeat bankruptcy filing. Other research should include information in addition to the data from bankruptcy files. The bankruptcy files are limited to information that is insufficient to answer complex questions about repeat bankruptcy filers. Interviews with or surveys of debtors would be the ideal method of gathering further data on repeat bankruptcy filers to determine potential abuse.

## Conclusion, Implications, and Recommendations

This study was based on an assumption reflected in Congressional action over the past eight years to reform the law, that abuse of the bankruptcy system is a serious problem. Although there are undoubtedly some instances of abuse, results of this study lead to the conclusion that abuse of consumer bankruptcy by repeat filers is not extensive. As this final chapter is being written, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 awaits the approval of Congress. Supporters of this bill believe that the bankruptcy system suffers from abuse and fraud. While it appears that the legislation will become a law, other approaches may be more effective and efficient in combating abuse by repeat filers.

Using court records that include full Social Security numbers, court officials can track previous bankruptcy filings and impose greater scrutiny upon those debtors who filed multiple times. Debtors may have circumstances that can be dealt with more efficiently outside of bankruptcy court. Some repeat filers may have legitimate debt problems requiring a discharge via bankruptcy while others might suffer from alcohol/drug or some other addiction and need to be referred to other forms of assistance. An on-staff financial counselor could offer assistance to debtors who lack money management skills. Sullivan et al. (1989, 2000), found that families in bankruptcy are also victims of larger economic troubles. These troubles include vulnerability of single women with children, risky entrepreneurial ventures, low paying jobs, unsteady income for wage earners, and creditors extending credit with the knowledge that the debtors are unlikely to be able to pay. For the majority of American households, variable income may be more of a problem in repaying credit obligations than unemployment (SMR Research Corporation, 2001).

There are several confounding factors that contribute to family financial distress and increasing bankruptcy filing rates (Bermant & Flynn, 2001). Problems lie with the credit industry and their willingness to extend credit to increasingly risky borrowers (Black & Morgan, 1999). Mortgage lenders are more flexible by allowing no down payment or stretching ratios to allow a borrower to qualify for a loan whether they can truly afford it or not. Lack of or insufficient health insurance coupled with medical problems and job loss contribute to financial distress (Himmelstein et al., 2005). It seems that this financial fallout is a result of several factors and that increasing bankruptcy filing rates only estimate a portion of consumers in financial trouble. Financially distressed families can file bankruptcy for relief, but there are many more families who are struggling to pay debt yet not filing bankruptcy (Sullivan, Warren, & Westbrook, 1995). If high bankruptcy filing rates indicate a large number of families suffering from financial difficulties, the solution is not to make it more difficult to file for bankruptcy, but to decrease families' financial difficulties. Sullivan and colleagues (1989) stated the following:

> The purpose of bankruptcy law, properly used rather than abused, is to serve as a financial hospital for people sick with debt. If hospital admissions rise dramatically, there are at least two explanations for the increase. It may be that doctors have started admitting patients who are not seriously ill and who could be treated as outpatients. Or the crowded hospital wards may simply reflect a breakdown of health in the community. If the hospital population suddenly rose, no sensible person would close the hospital doors and announce that the problem has been solved. Instead medical researchers would examine the patients to find out if they were really sick, and if so, why. (p. 6)

At this time it appears that the Bankruptcy Code revision will become a law. Regardless of changes made to the, Bankruptcy Code each bankruptcy district should implement policies to identify, evaluate, and monitor repeat filings. While the revised code is likely to lead to an increase in chapter 13 filing rates by forcing some chapter 7 debtors into chapter 13 repayment plans, policies may be implemented to reduce repeaters and increase the chapter 13 completion rates. Realistic repayment plans that pay careful attention to construction of budgets and a financial counselor to work with debtors who miss payments is one approach. Judges may need to discipline attorneys who file cases repeatedly. Perhaps a new Code is not what we need to combat abusers; instead, closer monitoring of cases by trustees, more responsible attorneys, and more responsible lending are needed.

REFERENCES

Aizcorbe, A. M., Kennickell, A. B., & Moore, K. B. (2003). Recent changes in U.S. family finances: Evidence from the 1998 and 2001 Survey of Consumer Finances. *Federal Reserve Bulletin, 88*.

American Bankruptcy Institute. (1996, December). *Report on the state of the American Bankruptcy System.* Retrieved July 2004, from http://www.abiworld.org/survey/reportfront.html

American Bankruptcy Institute. (2004). *Households per filing, rank.* Retrieved July 2004, from: http://www.abiworld.org/statcharts/HouseRank.htm

Bermant, G., & Burke, V. (1999, March). What we know, and still need to know, about consumer cases. *American Bankruptcy Institute Journal,* 16-17.

Bermant, G., & Flynn, E. (2001, September). Exploring the (complex) causes of bankruptcy. *American Bankruptcy Institute Journal, Vol.XXI,* 3.

Black, S. E., & Morgan, D. P. (1999). Meet the new borrowers. *Federal Reserve Bank of New York Current Issues in Economics and Finance, 5*(3), 1-5.

Braucher, J. (1993). Lawyers and consumer bankruptcy: One code, many cultures. *American Bankruptcy Law Journal, 67*, 501-583.

Congressional Budget Office. (2000). *Personal bankruptcy: A literature review.* Washington DC: Kim Kowalewski.

Darling, A. G., & Redmiles, M. A. (2002). *The civil enforcement initiative: A review of the first ten months and a look at the next stage.* Retrieved July 2004, from http://www.usdoj.gov/ust/press/articles/abi_092002.htm

Evans, D. (2004). *Predictors of 1997 chapter 13 bankruptcy completion and dismissal rates in Utah.* Unpublished master's thesis, Utah State University, Logan, Utah.

Flynn, E., Bermant, G., Burke, V., & Hazard, S. (2003). *Chapter 7 asset cases.* Retrieved March 2005, from http://www.usdoj.gov/ust/press/articles/abi_04_2003.htm

Getter, D. E. (2003). Contributing to the delinquency of borrowers. *Journal of Consumer Affairs, 37*(1), 86-100.

Himmelstein, D, Warren, E., Thorne, D., & Woolhandler, S. (2005). *Health affairs web exclusive.* News Release, Feb 2, 2005, Harvard Medical School.

Lewis, J. D. (n.d.). *The repeat bankruptcy filer: Some economic considerations.* Unpublished manuscript, Mercer University Law School.

Leonard, R., & Loonin, D. (2001). *Money troubles: Legal strategies to cope with your debt.* Berkeley, CA: Nolo Press.

Loonin, D., Williamson, O., & Kline G. (2002). *Guide to surviving debt.* Boston: National Consumer Law Center.

Lown, J. M., & Rowe, B. R. (2003). A profile of Utah consumer bankruptcy petitioners. *Journal of Law and Family Studies, 5*(1), 113-130.

MSN Money. (2004). *Key dates in bankruptcy history.* Retrieved July 2004, from http://moneycentral.msn.com/content/Common/Flash/banktime.asp?special=bank rupt

Nelson, K. L. (2000). Abusive filings: Can courts stop the abuse within the confines of the bankruptcy code? *Bankruptcy Developments Journal, 17*, 331-368.

Norberg, S. F. (1999). Consumer bankruptcy's new clothes: An empirical study of discharge and debt collection in chapter 13. *American Bankruptcy Institute law Review,* 7, 415-463.

SMR Research Corporation. (2001, June). *The new bankruptcy epidemic: Forecasts, causes, & risk control.* Hackettstown, NJ: Stu Feldstein.

Strand, J. K., Hira, T. K., & Carter, R. B. (1994). Repeat consumer bankruptcy: A comparative analysis with one time petitioners in the United States and Canada. *Proceedings of the Association for Financial Counseling and Planning Education,* 143.

Sullivan, T. A., Thorne, D., & Warren, E. (2001). Young, old, and in between: Who files for bankruptcy? *Norton Bankruptcy Law Advisor,* September 2001, 9a, 1-10.

Sullivan, T. A, Warren, E., & Westbrook, J. L. (1989). *As we forgive our debtors: Bankruptcy and consumer credit in America.* New York: Oxford University Press.

Sullivan, T. A, Warren, E., & Westbrook, J. L. (1995). Bankruptcy and the family. In L.J. McIntyre & M. Sussman (Eds.), *Families and the law.* Binhamton, NY: Haworth Press.

Sullivan, T. A, Warren, E., & Westbrook, J. L. (2000). *The fragile middle class: Americans in debt.* New Haven, CT: Yale University Press.

United States Department of Justice. (2005a). *Total bankruptcy filings nationwide 1994-2004.* Retrieved March 2005, from http://www.usdoj.gov/ust/statistics/stats-new/national/01national/pdf

United States Department of Justice. (2005b). *Total filings in Utah: Calendar years 1994-2004.* Retrieved March 2005, from: http://www.usdoj.gov/ust/statistics/Bank-Stats/States/01/pdf/1ut.pdf

U.S. Bureau of the Census. (2004-2005). Statistical Abstract of the United States (121st ed.). Washington, DC: U.S. Government Printing Office.

Warren, E. (2002). Bankrupt children. *Minnesota Law Review, 86*(5), 1-31.

Warren, E., & Tyagi, A. W. (2003). *The two-income trap: Why middle-class mothers and fathers are going broke.* New York: Basic Books.

Weston, L. P. (2004). *The secret struggles of serial bankruptcy.* Retrieved July 2004, from http://moneycentral.msn.com/content/specials/P87468.asp?special=bankrupt

Williams, J. F. (1997). National bankruptcy review commission tax recommendations: Individual debtors, priorities, and discharge. *Bankruptcy Developments Journal,* 14, 1-72.

Zywicki, T. (2005). *Congressional testimony on bankruptcy reform.* Retrieved April 2005, from http://judiciary.senate.gov/testimony.cfm?id=1381&wit_id=3997