

## American Bankruptcy Institute Law Review

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#### INTRODUCTION

Prof. Robert M. Zinman

Our major theme for this issue of the *American Bankruptcy Institute Law Review* is Consumer Bankruptcy – a subject hotly debated before the National Bankruptcy Review Commission and during the last two sessions of Congress.

One of the most pressing problems being considered by Congress is "needs-based bankruptcy." In this issue, we present the two major empirical studies on the subject: Marianne Culhane and Michaela White's Creighton University study, and an updated Ernst & Young Study by Tom Neubig, Gautam Jaggi and Robin Lee. These studies are commented upon by a Consumer Bankruptcy Reform Roundtable panel of experts representing the spectrum of players in this area: Judge Eugene Wedoff, John McMickle, Gary Klein, Richardo Kilpatrick, and Jill Sturtevant.

In a thoughtful piece, Professor Jack Williams decries the rhetoric of both sides in the needs-based bankruptcy battle and sees the rhetoric as a mask to hide a more fundamental divide over the role of the bankruptcy judge as gatekeeper in the bankruptcy process. He supports a means testing provision that gives reasonable discretion to the judge as decision-maker, within the confines of statutory guidance as to what may constitute abuse.

Next, Richard Stehl reviews the proposed legislation dealing with credit counseling and debtor education requirements, concluding that the proposals are ill-conceived and that much more homework on the causes and solutions to the increases in the number of consumer bankruptcies is needed before legislation is enacted.

David Lander, in an essay, next explores the two systems that are designed to help consumers in financial difficulty – the bankruptcy court system and the debt counseling industry. He discusses the types of problems that are best solved by each system, where the systems overlap, and the strengths and limitations of each as a starting point for future detailed examinations of these systems.

Richardo Kilpatrick and Kevin Calhoun review Winton Williams' book "The Games Creditors Play: Collecting from Overextended Consumers," finding that it provides "a useful analysis of potential cooperation among creditors when information transaction costs are reduced."

Finally three student notes focus on discrete bankruptcy problems and legislation dealing with consumer issues: the dischargeability of student loans in bankruptcy; when a chapter 13 proceeding ends; and recent legislation dealing with the debtor's ability to overcome fraudulent transfer laws through charitable contributions under recent legislation.

In addition to consumer bankruptcy, this issue contains an article by Richard Lieb suggesting a new jurisdictional approach to Eleventh Amendment immunity; a student note on the Final Report of the Bankruptcy Foreclosure Scam Task Force; and an insightful comment by Robin Phelan on the task force's report. The issue ends with a student note making a proposal on how to deal with the disinterested standard of §327(a).

