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Consumer Bankruptcy Panel: Bringing Relevance Back to Consumer Bankruptcy

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CONSUMER BANKRUPTCY PANEL

BRINGING RELEVANCE BACK TO CONSUMER BANKRUPTCY[†]

Pamela Foohey[*]
Daniel Keating[**]
David Lander[***]
Nathalie Martin[****]
Honorable Sage M. Sigler[*****]

DEAN MARY ANNE BOBINSKI: Good morning. I'm delighted to be here today to offer a welcome on behalf of the Law School, and to say a few words of thanks. I know you've already heard about some of the important people, sponsors, advisors, and others who have helped make this event possible. So, I'm going to shift my focus a little bit off of them and talk just for a moment about the students.

I'm relatively new as Dean at Emory Law. I just joined the Law School in August, but I've been, in one way or another, meeting with students, and in particular meeting with the students from the *Bankruptcy Journal* since my arrival here. I have to tell you how impressed I am with the work of our students in journals generally, and with this journal in particular. It's so unique, being the only student-edited bankruptcy journal in the country. The work that they've done for this seventeenth annual symposium in the 36th year of the *Bankruptcy Journal's* existence, is truly impressive. They have said to me over time, and I'll say again here today, how important it's been to them to have the support of the sponsors, to have the support of the Advisory Board, their faculty advisors, and also to have the support of staff who helped make this event happen.

I think, in addition to talking about how impressive this Journal has been, and the way in which it's relied upon the help of so many others, I wanted to highlight the excellence of the people that you'll be speaking with today. I've spoken with several people who have talked about the amazing work that has gone into creating the panels that you'll see today, and the level of expertise and

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[†] This transcript has been edited for clarity and brevity.

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the types of ideas and exchange and debate that you will hear today really are what we hope to achieve at the Law School through conferences of this type, where we bring together academics, people in the profession, the judiciary, and really have a chance to talk about the key issues facing particular areas of law. And so we are particularly delighted that this has been arranged by our students.

Also, I would like to thank Matt Lindgren, Connor Edwards, and Howard He for their key role in planning today's program. And then as a shameless promoter, as deans always are, point out that there will be the 22nd annual banquet of the *Bankruptcy Journal* on March 3rd, where Mr. Jay Alix from AlixPartners will be presented with a distinguished service award for lifetime achievement. So, if you go through today's conference and think, I just need more, the annual banquet is coming, and I encourage you all to participate.

Thank you very much, and welcome.

JUDGE SAGE M. SIGLER: I'll do some quick introductions of our panelists before we get started. Immediately to my left is Daniel Keating. He is the Tyrrell Williams Professor of Law at the Washington University in St. Louis School of Law. He received his B.A. from Monmouth College, and his J.D. from the University of Chicago. He teaches in the areas of bankruptcy, commercial law, and UCC Article 2, and has written a treatise on the employment law implications of bankruptcy and has written on issues such as bankruptcy reform and the implication of bankruptcy on collective bargaining agreements, pension insurance, and the PBGC.

Then we have Professor Pamela Foohey, who is an Associate Professor of Law at the Maurer School of Law at Indiana University, Bloomington. She received her B.S. from NYU and her J.D. from Harvard. Her work primarily involves empirical studies, and we'll see some of that during the presentation—empirical studies of bankruptcy and related parts of the legal system. Professor Foohey is an investigator for the Consumer Bankruptcy Project, and the current chair of the Creditors' and Debtors' Rights Section of the Association of American Law Schools.

To Professor Foohey's left we have David Lander, who is a retired business bankruptcy lawyer. He has taught bankruptcy, secured transactions, and consumer law as an adjunct and professor of practice at St. Louis University. He currently teaches mindfulness to law students and to faculty and staff. He is a graduate of Bowdoin College, and the University of Chicago Law School.

And finally, we have Professor Nathalie Martin, Associate Dean for Faculty Development, Professor of Law and Frederick M. Hart Chair in Consumer and Clinical Law at the University of New Mexico School of Law. She received her B.A. from St. Olaf College, her J.D. from Syracuse, and her L.L.M. from Temple University. Her research focuses on high-cost loans such as payday, title and installment loans. She is also very involved in the mindfulness in law movement and teaches meditation and yoga.

With that, Professor Martin, you wrote the main paper that we're discussing here today, so why don't you get us started?

NATHALIE MARTIN: I want to start, also, by thanking all of the people that made this possible. It's incredibly humbling to be here, and a big, huge honor to be able to connect with a lot of old friends and make some new ones. I'm especially grateful for the *Journal* staff which has been incredibly professional and wonderful. I also want to thank my panelists here who are going to be making some comments. We have this split up into some small chunks to try to keep it exciting for you all early in the morning like this. You can see from Pamela's first slide there that what I'm doing in my paper is I'm questioning the relevance of the consumer bankruptcy system, given some changes that have taken place in the society with regard to the debt structures that consumers generally have. The very basic proposal is not new, and I know last year you talked about student loans, so it's really not new on that topic. But it's about allowing strip down, meaning reducing interest rates and even principal on debts on all principal residences and all cars, making discharge of student loans easier.

Perhaps the most controversial part of this paper is that it says that we need to provide some opportunity to get some much-needed emotional relief for consumers through the bankruptcy system. So you can see the theme of mindfulness coming through in this presentation as well. Kind of unusual to have two meditation teachers speaking on a bankruptcy panel at the same time. Right, Dave? You're going to hear from people that the system is still relevant, and I'm being a little bit provocative here obviously. I'm not saying it's totally worthless. I think people are using it but it's not as useful as it could be. I also want to mention some of those changes that have taken place in the debt structures that we are seeing now. I know you know about them already.

Part of the point is not just to help consumers and make them feel better about themselves, because they do experience a lot of shame through bankruptcy and just financial failure in general, but some of these changes could also stave off future financial crises and help stabilize the economy a bit.

What are some of these facts that we're seeing? You know them. There's a huge amount of consumer debt in the system now, much more than there ever has been before. A lot of it is at very high interest rates, which is why strip down can be useful. There's a growing wealth and income gap between people at the top of the income spectrum and those at the bottom. There's a growing income gap between persons of color, in society and other Americans, and there's certainly a huge gap in the amount of interest rate that people pay at the highest levels and the lowest levels. As you know, you can now buy a house and finance that at 3.6% over thirty years. But if you take out a payday loan, that's going to cost you 400 or 500%. Growing auto debt is a problem. I know mortgage debt isn't necessarily a huge problem right now but trust me; what happened before can happen again.

And finally, something the students know a lot about, that exponential growth in student loan debt, and the incredible onslaught of private lenders and also lower value educational opportunities I'll call them, educations that turn out to not be very valuable are a big problem.

The larger question that we're asking here, and I'll shut up in just a minute and let the other panelists address it, is this the place? Should we be trying to solve these kinds of problems through the bankruptcy system? The wrapping for the paper really deals with racial inequity. The backdrop is that people of color consistently pay higher interest rates on all forms of credit. It doesn't matter if it's a home loan, car loan, or student loan. Overall, this has been a persistent problem. It doesn't matter how much anti-discrimination laws we pass; this still is a pervasive issue. It's built into other parts of the system as well, such as the credit reporting system and credit scoring system. That's the first question: Whether in this segment, can bankruptcy help with this problem?

JUDGE SIGLER: Professor Lander, did you want to start us off?

DAVID LANDER: I'd be glad to, but I'm going to let Dan go ahead.

DANIEL KEATING: This is a really provocative and thoughtful article that Professor Martin wrote. It got me thinking, going way back thirty-five years ago when I first learned bankruptcy from Douglas Baird at the University of Chicago, and he'll be talking in the second panel today. Professor Baird has always emphasized the limited role of bankruptcy. He's a big fan of bankruptcy having a role, but he also appreciates its limits. He wrote a book called *The Logic and Limits of Bankruptcy Law*, and even back then when he was probably about thirty years old, a young bankruptcy professor, he was a believer in the limited role of bankruptcy.

The big question I have, as I read Professor Martin's very interesting paper, is whether the bankruptcy system is best suited or even well suited to address the systemic income and wealth inequality that clearly troubles many if not most of us today. My understanding of the role of bankruptcy law in the economy has always been that bankruptcy is best designed to treat the case of what I think of as a catastrophic economic disruption for the consumer debtor, things like medical debt, job loss, divorce and the like. Bankruptcy and its discharge will enable an individual, who could otherwise be economically self-sustaining, to wipe their slate clean with respect to whatever one-time financial catastrophe has left them unable to pay their debts as they come due. And if bankruptcy can discharge this large debt, the individual is able to create a personal budget that's going to finally leave them able to pay their debts as they come due in the future.

Even though consumer bankruptcy and business bankruptcy are very different in many respects, I think that both types of bankruptcy share a common core with respect to their role in allowing either an individual consumer or a business to overcome the effects of a non-recurring but major financial setback. In the chapter 11 casebook that I currently use for my seminar, the coauthors of that casebook at the very start present a contrast between two different businesses as potential candidates for a chapter 11 reorganization. First, they've got this hypothetical company called Acme Shoe, which makes a pair of shoes currently at a cost of $10 and then sells each pair for $9.50. Then we've got Ernestine and her coffee shop which is a start-up business that had been quite successful in its early months until a customer slipped and fell on the premises, the customer got a big tort judgment against Ernestine's business, and Ernestine had not paid her liability insurance which meant that the tort judgment was not covered by her insurance. The authors of the casebook posed the question to the students, which of these two companies is an appropriate candidate for chapter 11 bankruptcy? Now the short answer to that question is of course supposed to be Ernestine and her coffee shop because her business has proven that, in the absence of this massive one-time debt, it can be self-sustaining, and it's worth more as a going concern than if it's liquidated piecemeal.

The deeper answer to this question is that maybe Acme Shoe Company is also an appropriate candidate for chapter 11, but in order for Acme Shoe to be a viable business even with the help of chapter 11, it's a company that's going to have to change the way it does business so that it can become economically sustainable. Maybe that would involve figuring out how to cut some costs or otherwise finding ways to become more efficient and profitable. But simply filing chapter 11 bankruptcy with nothing more is not going to save Acme Shoe Company from its fast-approaching demise.

What concerns me the most about what I see in our country's current climate of income stratification is that a large segment of the economically marginalized population falls into a category that I would describe as structurally unsustainable. In other words, it seems like a significant portion of our lower wage workers simply don't make enough income at their current positions to afford what most of us would view as the basic necessities of life.

It seems like bankruptcy is much better at dealing with the one-time economic catastrophe than it is at addressing these cases of what I think of as structural unsustainability. In order to better address structural unsustainability, maybe we need to look at broader approaches such as income tax reform, a more robust social safety net, all those things that they were arguing about last night in the presidential debate.

PROFESSOR LANDER: Are we going to try to have the same kind of debate here again where I stand up and tell you I want the microphone?

audience laughter

PROFESSOR KEATING: Let me give you one more tidbit from another law professor from my days at University of Chicago, Judge Richard Posner, who was my Civil Procedure teacher. As I think about why bankruptcy may not be a viable solution for these structurally unsustainable financial situations that are faced by many consumer debtors, I'm reminded of a quote that I include in my sales casebook from Judge Posner in an opinion that he wrote about the unconscionability doctrine in UCC Article 2. Judge Posner was reflecting on the limited utility of the unconscionability doctrine to help economically marginalized debtors. He says, since the law of contracts could not compel the making of contracts on terms favorable to one party but can only refuse to enforce contracts with unfavorable terms, it is not an institution that is well designed to rectify inequalities in wealth. I think I would say essentially the same thing about bankruptcy as applied to a consumer debtor who simply doesn't make enough income to meet basic living expenses, and that is I might say, since bankruptcy cannot compel employers to pay a higher wage for the consumer debtor, but can only discharge their past debts once every eight years, it is not an institution that is well designed to rectify inequalities in wealth or income. And I think I'll stop there.

PAMELA FOOHEY: I'm going to make it really quick because I basically agree with everything Dan said, except I want to use the word relevant a little bit differently. I write in my response that the consumer bankruptcy system is even more relevant now to American households than ever before. Not because it should be, but because it just happens to be the only place that they can turn. Nathalie makes a really key observation about America's current economic and social structure and how it's changed drastically in the past decades.

For decades, primarily middle-class households have turned to bankruptcy because it's useful for them, and that is who should be in bankruptcy. They have assets that they can deal with. They have education. They have an occupation that should allow them to make money going forward, and they have some catastrophic issue in their lives like medical debt.

Nonetheless, people have been filing bankruptcy at basically the same rates for the last fifteen years, with the exception of the 2005 blip which really should be thought of as a blip. In fact, one of my co-authors can predict the number of consumer bankruptcy filings every year based on a regression analysis that has two main inputs, one of which is outstanding consumer credit. Which is why I think bankruptcy is even more relevant than before, because people are going to take out money to buy life necessities, get cars, be able to get to work. There are also fewer and fewer checks on how that money is taken out, which means it costs more. And then even less checks on how people can collect that money so debt collectors can wear people down. And when people take out money under these circumstances, they're necessarily going to default at even greater rates year over year. Debt collectors will come after them, and then they're going to turn to bankruptcy which is really the last vestige of our social safety net, even if it was never meant to be. I think absent anything else, absent the changes that Dan is talking about, that makes consumer bankruptcy extremely relevant to American households.

I spend the rest of my response talking more about Professor Martin's proposals, and then putting forth a broader vision of where bankruptcy can fit in a refined, informed safety net. I will turn it over to David and then I'll come back with some data.

PROFESSOR LANDER: Great, thank you. Data is always good. I want to thank Emory for this program, and also thank Nathalie for her really creative work. We've got a desperate problem with inequality, and we've got to find solutions for it. My notion is, I like what she says. I sort of see the Bankruptcy Code, both business and consumer but we'll leave the business until later, as sort of another arm like the Fed, like the Central Bank. The Central Bank controls the supply of dollars, and I think bankruptcy controls something that has become extremely more important.

Basically, I think we need to look at bankruptcy and its macroeconomic effects. We usually look at its microeconomic and sociologic impacts on the consumer side. That's really important. I don't want to lessen that impact. But in a society like ours, in an economy that desperately needs people to spend, the only thing that keeps our economy robust is consumer spending, in most cases more money than they have. Consumer credit historically, if you go back and look 75 or 100 years ago, basic consumer credit was really frowned on. The notion now is that consumer credit and consumer spending and consumer borrowing from a macroeconomic point is what keeps our economy robust. Therefore, we have to take a look at the bargain. We're going to encourage people to spend more than they have. We're going to encourage them to borrow to the edge and maybe beyond the edge of what they can sustain in order to keep the economy robust. Otherwise, what happens is we have the paradox of thrift. Everybody says how wonderful it is for people to save, but if too many people save, then nobody is spending, and people are losing their jobs and the economy is going downhill.

That's the paradox of thrift. We need people who can and will borrow and spend at or beyond their limits. Korea is an interesting example in the late 1990s. They gave credit cards out before they had a credit reporting system. All these people got enormous limits and they went and borrowed a whole lot. And the good news was, for about 10 years the economy did fabulous. But the problem was, they couldn't pay back. Then so what happened was a couple of things. First, they bailed out the banks. That was the first thing they did. But they realized that if they didn't bail out the people and give a robust discharge, those people couldn't spend again.

Another reason that we give a discharge is to help the people from the catastrophe, so that those people can spend again. Because we're in this lull in the economy now because we have people who can't spend enough and they can't borrow enough, so we have to look at bankruptcy and consumer spending and consumer debt in a macroeconomic piece.

When we look at the crash, 2005, 2006, 2007, 2008, we only look at the negative impacts, and they were terrible. But the positive impact was, for fifteen years before that we had a fabulous economy because people were borrowing and whatnot.

And I would say another piece of why bankruptcy is so important is it efficiently takes care of things. We'll be talking later about some lien stripping and whatnot. But just think about this for a second: When the crash came, instead of expanding chapter 13 to allow the people to stay in their houses and pay the reasonable value of those houses over time, we had this astoundingly complicated and failure and expensive forbearance system. Bankruptcy could have taken those people like that. It's a very efficient system. We would've set the rules. The lenders would've realized what was going to happen in bankruptcy, and adjusted what their forbearance was, and we would've spent a lot less. The neighborhoods wouldn't have been destroyed. So we also have to think about bankruptcy from a macro point of view as such an economic piece. Later on we'll be talking about student debt in that regard.

The last point I want to make is that we need to think through, if we're going to ask consumers to borrow beyond what they can spend, what they can pay back, then we have to recognize what happens when something changes, and we have to have a robust discharge. The reason people aren't filing bankruptcy today primarily is because it stinks. It's so narrow. You can't get education debt, you can't do much with your car, you can't do much with your house. It's a lot of trouble. It costs a lot of money to go to a consumer debtor attorney. Until we fix that discharge, we're going to have this huge slug of people who not only are going to be miserable and have a really rotten spot in their lives that they shouldn't have. They should have a happier life and a better life, but in addition, we're not going to have a robust economy because those people can't borrow. And if they can't borrow, and if they can't borrow to the edge of what they could sustain, then our economy doesn't work. So that's why I think your piece is so well done.

JUDGE SIGLER: We're going to talk about some of the practical proposals for changing the bankruptcy system. But in hearing Professor Keating's comments about the structural unsustainability and Professor Lander's comments about our economy's need to keep these people spending, it does strike me that in a chapter 13 case for example, where you have a debtor making payments through a plan for three to five years, there's not really a financial literacy piece or a budgeting piece of the bankruptcy system. There's no line item for saving in a chapter 13 plan. You exit chapter 13 with your discharge, but really no cushion at all to prepare for the next step.

PROFESSOR KEATING: It sounds like David thinks that maybe financial cushions are overrated. At least that's how I understood you to say that if these people are creating cushions, they're saving, and if consumers save too much, then that gets into this thrift—

PROFESSOR LANDER: Dan, Dan, you went to the University of Chicago, and somewhere, I don't know if Douglas Baird is out there, too, but I mean the key is this. I'm a real lefty and a softie and I want people to have good lives, and I don't want them to have to file bankruptcy, but it's an economic principle that if too many people save and they don't spend, the American economy which requires—I mean, contrast the American economy at its best with the German economy. The American economy requires like seventy-five percent of the dollars there, and you add government and you add business investment. If Americans don't spend, then Americans don't have jobs because too many people are saving, or too many people can't borrow, then they don't spend, and then the way our economy works, everybody's laid off.

So, while I agree with you as a theoretical principle that it would be nice if people could save, its impact on the economy is negative.

PROFESSOR KEATING: I think that your theory has certainly caught the minds and hearts of most consumers because I think if you look at the saving rate in this country, it's negative, which is most people are carrying debt rather than having—

PROFESSOR LANDER: And because we don't discharge them robustly enough, they can't borrow again.

PROFESSOR FOOHEY: So, Dan, you said that people don't have enough income to pay their life expenses. That's why they're carrying debt. A little chunk of savings can go a long way, and I don't think it's going to crash the economy because people will still be spending, and they'll feel better about what they're spending, and they'll be able to be more productive if they have that.

PROFESSOR LANDER: On a positive note, picking that point up. Washington U is the home of the individual development account. This is a notion that basically poor people should save. It's hard to know how poor people can save. But what they've done in states in Oklahoma and lots of other places, when somebody is born, the state puts some money in a saving account. It goes back to Dan's notion. The fundamental problem is that the people don't make a living wage even if they work two jobs. We can't fix that in the Bankruptcy Code, but we can find things like the individual development account that seems okay. And if the government is putting dollars in somebody's savings account, then that's a good thing. And also good for Washington University and Michael Sherraden and the Center for Social Development.

PROFESSOR FOOHEY: This is a good tee-up to the individual proposals that Nathalie puts forth in her paper, and how relevant they are to the people who file bankruptcy and whether it's going to change both how people use the bankruptcy system and then also in reaction, how lenders and banks give out credit in the way that David talked about.

My task is to first tee-up Professor Martin's proposals, which are relatively self-explanatory. Proposals one and two are the strip down of home and auto loans, and then the third proposal is discharge of student loans. Nathalie already described what strip down means. I think you all probably know what discharge of the student loans means. So, for those of you who are shaking your heads no, strip down is relatively self-explanatory. If you have a house that's worth less than the amount outstanding on it, or if you have a car that's worth less than the amount outstanding on it, in bankruptcy you can bifurcate your claims into secured and unsecured. Right now, you can't do that. Your entire claim is basically secured.

Nathalie in her paper says that the proposals are among changes that would have the biggest impact on improving consumer financial health. In my role as commentator, I'm going to argue with that. And I'm going to argue with the words, "biggest impact." Not that they won't have an impact, but that these are the things that really matter to the people who use the system. To do that, I'm going to use actual data about the people who file bankruptcy.

As background, as Judge Sigler mentioned, I'm one of the co-investigators on the Consumer Bankruptcy Project, which is an ongoing, long-term research project studying the people who file bankruptcy. Right now my co-partners are Robert Lawless at University of Illinois College of Law and Dr. Deborah Thorne, a sociologist at University of Idaho. There's been other people on this project since the 1980s. The current iteration started in 2013. It's an ongoing data-collection effort where we pull 200 cases every three months, randomly select them, chapter 7 and 13, send a questionnaire to debtors. We've been writing papers based on that evolving dataset since about 2015.

What I'm about to discuss comes from papers from this project that are published, and you can go to the website which is new and fun, and you can click on the links to the papers and look at what I'm talking about. For this reason, I'm not pulling any new data or doing analysis in a bigger way.

In fact, in his response, Dan says you could do an empirical study about how people use bankruptcy. We have the data to do what he says, and we've had that exact idea. It turns out, it's really hard to do really well. So, we've been working on it for the last two years, and our latest paper, which is called Driven to Bankruptcy, which is about cars in bankruptcy, it's basically a carve-out initial foray into exploring how people use bankruptcy with just cars. Nonetheless, we have data really to talk about strip down, which I'm going to do now.

As to student loans, I'm not going to say anything except I think that it will bring people into the system. There is not reliable data in bankruptcy cases right now about student loans, despite the fact that debtors are supposed to declare how many student loans they have and the dollar value outstanding. People just don't do it because it doesn't matter and thereby, we can't tell you anything about student loans.

To the strip down idea, I want to start with general trends about who files bankruptcy. I have three data points for that. First is how long people say they seriously struggled with their debts before they file. Two-thirds of debtors now report that they struggled to pay for two or more years before they filed. Thirty percent struggle for five or more years before they file, as is on this graph which is compared to what people said in 2007. You can see people are struggling longer before they file. I doubt that has anything to do with changes in what the law offers them because there's been no changes since 2007 in what the law offers them. And as 2007 was far enough after the 2005 amendments for those amendments now to be unduly affecting what people were saying.

Something else has changed. I think what has changed is how people are dealing with massive income inequality and wealth gaps, and why they end up in bankruptcy. To that, why people are struggling longer, my second data point is why people say they file bankruptcy. We asked people what contributed to your filing. We give them thirteen options, and then we say, you can also write whatever you want. This table is broken out by long strugglers, the people who are struggling for two or more years before they file, everyone else, the other debtors, and then there are some data points for all debtors. I focus on the leading reasons that people say that they're filing bankruptcy. Then the ones that go with the home strip down proposal.

People predominantly say that contributors are income loss. This includes having to change jobs, lose a job, take on another job that pays less. With medical expenses, it's not really catastrophic medical expenses. It's medical expenses that just keep accruing. Pressure from debt collectors, which all goes with income inequality and filling the gap with credit, particularly the debt collectors. We posit in the paper that goes with this data that it's debt collectors that push people to file for bankruptcy, not because it's financially beneficial, but it's the only place they can go to get away from the harassment that is really hurting them, despite the fact that their attorney might tell them, you're judgment-proof; why do you even need to file bankruptcy?

JUDGE SIGLER: I'll just interject for clarification. We have a lot of folks in the audience who don't necessarily have the practical experience yet. The idea there is that these debtors don't have any assets. They don't have expensive cars that are paid off. They don't have a lot of jewelry sitting around. They don't have a brokerage account. So, there are no assets for these creditors to access, either inside of bankruptcy or outside of bankruptcy. And any assets they do have are probably small enough that they're exempt under state law. So that's what you mean by judgment-proof. I guess in those situations the bankruptcy is really just to stop the harassing phone calls and letters, not for any other practical, financial purpose.

PROFESSOR LANDER: It's a very important point that the data shows which isn't necessarily intuitive, that it's the pressure and the harassment and the harangue and the overhang of that, rather than the real, what's going to change in their life afterwards legally.

PROFESSOR FOOHEY: Right. Of the people who file chapter 7, which is where judgment-proof really matters, ninety-three percent of them don't have any assets that are not exempt. They're in bankruptcy for a different reason. There are some people with unaffordable mortgage payments and foreclosure that are contributing to the cases, but they're not the leading contributors. I don't think it's the thing that's on people's minds when they come into the system. Also, to what people actually own. If people come with their mortgages, the question is, is strip down going to matter at all, or materially to them? For that, we have data about the median assets of the people who file bankruptcy. The median and the means are pretty similar. I use long struggler versus other debtors here because there's a nice contrast with what you lose while you struggle before you file bankruptcy. Most notably you get rid of your house.

The data points of interest up here are secured debt versus assets. Key background of this is people with cars, as I'll talk about in a second, come into bankruptcy with cars that are worth slightly more than the outstanding debt on it, sometimes about $1,000 more. You can look at secured debt versus assets and get a good approximation of whether these homes actually are underwater. They're not, or they're not massively underwater. There's not much that people are going to get out of filing bankruptcy as to strip down. Particularly if the relative value of their house to what they owe is not on their mind and they're dealing with other things, is it going to change who comes to the bankruptcy system in significant part? Also, to David's point, will that then trickle down to what lenders are doing in terms of extending credit? If bankruptcy doesn't matter, why would changes to the law matter to the lenders?

PROFESSOR LANDER: Can I respond just one second?

PROFESSOR FOOHEY: Sure.

PROFESSOR LANDER: The one thing we don't have is data on those who don't file, who don't file because it's not going to help them, and who might file if it would help them. So that's the only thing.

PROFESSOR FOOHEY: My point is, I think that's very few people because of the way people think about filing bankruptcy and come to the system. They struggle for a long time. Seventy percent say they feel shame upon filing. And so giving them strip down, it's not the salient thing for a lot of people as to why they end up using the bankruptcy system. They want to pay back their loans. They don't file because of a financial reason. If they were filing for the financial benefit, our bankruptcy courts would be flooded with people.

PROFESSOR LANDER: Right, because it's not relevant to their life. It's not going to give them the relief that they need. So that's what I think she's saying, is if we gave people the relief they needed, we'd have a different world in bankruptcy and we'd have a lot of people who would be getting benefits and to people who tomorrow, their balance sheet and their life is not very good, their life would be better because there would be a system that would help them.

PROFESSOR FOOHEY: I think that might be true with student loans, which I'm not addressing because we don't have the data. As to mortgage strip down, right now people into bankruptcy assumed the system is as it is. And if you tweak it, is that really going to matter?

JUDGE SIGLER: It assumes that the real estate market is as it is, too, right? Because certainly there were lots and lots of bankruptcy judges spending lots and lots of time during the recession talking with debtors about their choice to be in chapter 13 to keep their dreadfully underwater home.

PROFESSOR LANDER: Let me just say one other thing that people forget sometimes, that maybe the major cause of the crash was the home equity withdrawals at a time of very low interest rates and refinancing, and the astounding amount of billions of dollars that went into people with the home equity withdrawals as the real estate market went up and refinancing cost very little. So, the real estate market, even if it leveled, much less went down, created exactly what you're saying, the underwater notion, which bankruptcy could have helped.

PROFESSOR KEATING: I think there's a second factor that I haven't heard anyone talk about yet. I think the real estate market is obviously key, but the bank lending standards and right after 2000 for those five or six years, they were really lax. Banks were doing these inflated valuations, crazy inflated valuations, even relative to the market at the time. I think things tightened up a lot in that arena after the crash, and the question is, will they stay tight, or if things keep going well, will they loosen up?

PROFESSOR LANDER: One thing that I want to say about chapter 12 a minute here. When chapter 12 was put out there for farmers, what happened relatively quickly is the lenders, who had lots of let borrowers in default, saw what the bankruptcy court would do, and they began then doing that without the need to go to bankruptcy. And that's what would have happened in my view if we had expected, if we had allowed, if we had modified chapter 13 at that point, to write the amount of the loan down to the value of the house with the judge, where we'd have two or three years of real activity, and then the lenders would have done the same thing.

PROFESSOR MARTIN: I know it's not my turn, but it's coming soon, I think. I guess I really don't think the strip down of homes costs the system that much, and I've got some stuff in my paper about that from Adam Levitin. I just want to share one quick personal story. I live in New Mexico. I just bought a home in southern California, and I know you say that lending has tightened, and I admit it. I have good credit, but a low down payment, no appraisal, thank you very much, 3.75% interest on a 30-year mortgage. I'm not convinced that things are going to stay really tight in this home mortgage market. And as far as I'm concerned, what happened before can happen again, and I think—

PROFESSOR LANDER: It will happen again. We just don't know when.

PROFESSOR MARTIN: Exactly. I'm having trouble seeing the downside, but I'll stop there.

PROFESSOR FOOHEY: Can I add a wrinkle to this? I think it's an important wrinkle. It's who is filing for bankruptcy now and who might continue to need to use the bankruptcy system, particularly as to student loans and the strip down? Again, I'm pushing on biggest impact, not that it's not going to have an impact. The data point is that the demographics of who files bankruptcy has shifted drastically in the last decades.

As you can see on this slide, which tracks who from 1991 through now, by age groups, are filing bankruptcy. You can see that older people are coming into the system. In fact, over the last thirty years the shift is a 500% increase in people sixty-five and over. They own their homes, more or less, unless they have one of those awful reverse mortgages which you don't see all that often. They don't have as many student loans. We had a student look at their student loans, and the percentage of their student loans in bankruptcy, only ten percent of them actually have student loans when they come into the system.

They're coming into the system because of our fraying social safety net. So, unless we solve what's happening to our widening income inequality and wealth gaps, like Dan talked about, they're going to flood the system. I just want to put that out there, that we have to have a system that also takes care of them. And now I'll turn it over to you.

JUDGE SIGLER: We're talking about flooding the system, student loans.

PROFESSOR MARTIN: I will get to those in just two minutes. I know last year you talked about it for the whole consumer panel, I think. If I could just address a couple of the things that the other people have said about strip down. I guess I don't necessarily agree. I think generally the one-time catastrophe debtor is your best bet for helping someone as a consumer. But I think when there's a lot of high-cost lending in the mix, these really high-interest loans, sometimes bankruptcy can help people who are barely making ends meet, and especially strip-down because you can strip the interest rate down and that sort of thing.

I guess I have a view that many people may not share, which is just that people get into loans that are not good ones, and that it's in many cases unnecessary credit. I'm talking about people who see an opportunity to take out a loan for something that may not be a necessity, and then they end up in this 500 or 1,000% interest loan that they really would have been better off without.

In terms of the benefits and who can benefit, I agree with you, Pamela. This may not be the biggest thing, but I still think it might be worth doing because even if only a few people benefit, I think quality over quantity. These are difficult things to pass, but I think that it would help consumers.

On the student loan front, I think I won't say anything, and I'll just let you guys talk about it for eight minutes. I mean I'm concerned about private lenders and for-profit universities, and you guys know all that because I said it before.

PROFESSOR KEATING: The thing about student loans is it reminds me of other things that the federal government has done to create moral hazard and bubbles that are going to burst.

PROFESSOR LANDER: I was hoping we were going to hear about moral hazard.

PROFESSOR KEATING: I wrote a lot early in my career about ERISA and the federal guarantee of defined benefit pensions with employers. What it caused employers to do was just start making their defined benefit pensions bigger and bigger instead of giving higher wages because they knew that if push came to shove and they couldn't pay them, that the federal government would step in.

I think with student loans being federally guaranteed, it's meant that colleges and universities could raise tuition and students could afford to pay it, thanks to federally guaranteed student loans. I think that a bankruptcy discharge for student loans, a more liberal one, would certainly help students, that is former students who have the big loans, but the problem with bankruptcy as a solution to any of these deferred maintenance problems, whether it's the ERISA issue or student loans, is it doesn't put any new money on the table. It's just a wealth transfer. So, it's a good solution for the individual student who gets the discharge, but then the debt falls to the federal treasury, which is just going to have to be picked up by taxpayers.

Having said all that, I think I'm inclined to favor Professor Martin's proposal on student loan discharge, certainly as opposed to certain other ones out there like Bernie Sanders' universal loan forgiveness which would even forgive loans for doctors and lawyers making hundreds of thousands of dollars who still have a lot of student loan debt. At least with Professor Martin's use of bankruptcy, someone would have to go through bankruptcy. They'd have to at least pay seven years, so there's some price to pay, and I think that would reduce the number who took advantage of the forgiveness.

PROFESSOR LANDER: A couple of things I'd like to say. First, let's look at its impact on the economy. Basically, it appears that, with so much student debt out there, that folks are delaying things like getting married, buying a house, and very importantly, starting a new business. So, this overhang of student debt that we have to realize it just crescendoed so fast, so it's having an economic impact that's hurting everyone.

Secondly, I want to talk about the efficiency of the bankruptcy system, which is something that we take for granted, and it is astoundingly efficient. Look at the public service exemption under the student loan notion that's going on right now. The deal is supposed to be relatively simple, that if you go to work for the right kind of organization, that's kind of a do-good organization, and if you pay your students in a certain way, you're supposed to get a faster discharge from those student loans. Now there's two reasons that that's not working, maybe three reasons.

One reason is that Congress is concerned about the cost of that. A second reason is that we rely on these debt servicers that government handles to tell people how those work. But the third reason is, the system doesn't work. It's an inefficient system at the Department of Education. If you put it into the bankruptcy system, the one thing that will happen is that it will be administered efficiently. We've got great judges, we've got great clerks, we've got a system that works.

Two of the last things I'll say on it. One is, what we need to really do is get the universities not to raise the costs so artificially or get maybe state legislatures to put more dollars in, but one or the other. That's the message that has to come. There's a little bit of that in the student loan system already because if universities have too high a default rate within so many years, then they're penalized in a certain way. That's something that we've got to figure out how to do.

The last thing I'll say is when we talk about moral hazard, we want people to be able to go to college or trade school and improve their lives. The system requires they take a huge amount of debt not to spend on vacation, not to spend on jewelry, not to spend on luxuries, but to improve their lives. And then we leave them with this overhang which ruins their lives. And their whole life, they've got to worry about it, and then when they get old, their Social Security is docked because they still have the student loans. We need to find a way to improve this, and I think your proposal is a very good one.

JUDGE SIGLER: There's another smaller, in-between practical consideration I think for chapter 13's, and again, it's sort of like the lack of budgeting and the lack of saving that happens in a chapter 13 case. That is that debtors sometimes are not able to pay their full student loan payments that would cover their principal and interest during their chapter 13 case. I think in a lot of districts courts and chapter 13 trustees are maybe not focusing on that so much. But other courts have declined to confirm chapter 13 plans where debtors are proposing to pay enough on their student loans during the course of the bankruptcy case that they don't end up further in the hole than they were when they started the case five years earlier.

PROFESSOR MARTIN: I said I wouldn't say anything on student loans, but one thing that strikes me and I know I'm quite old at this point, but when I was in law school, we didn't have cars, we shared a house with six other people, and there wasn't all that private debt in the system. But now you can get so much debt. You can live as if you were already a lawyer when you're a law student. And so you were mentioning not to buy jewelry, but people do. I'm not trying to make eye contact with any of you students, and also your education is expensive; ours is not. But I am just floored by how much availability there is, and this becomes a legacy of debt that stays with people for the rest of their lives. And it also sets up, in my mind anyway—I teach financial literacy, so does David—a little bit of a legacy of non-austerity that a lot of people learn in law school. This is how you can really bulk up on savings—live like you're in law school for a few years after you graduate. But if you don't go through that process as an adult, it's kind of hard to internalize that once you get your job. And I know this isn't very popular with the students because nobody wants to be austere.

JUDGE SIGLER: Another thing that I think is factoring into that are all of the various options for the repayment programs, the income-based repayment programs and deferments and those sorts of things. If you do a clerkship after graduation, you can pay full freight on your student loans and have no money to do anything, which is what I did. Or you can defer, but then, again, you're digging a bigger hole.

PROFESSOR LANDER: And the advice in the deferment, I think it's important to understand the complexity of those deferments and the advice, and the system depends on these servicers to say what are the available options. And the problem is, the servicers do not have an economic incentive to give the advice that would be best for the borrower, and yet that's the only place we go. We don't have in this country a really effective education system for people who are overwhelmed with debt. We rely on consumer debtor attorneys. The consumer credit counseling system in this country is completely broken. It's completely useless. And now we get into the situation where the rules are complicated.

JUDGE SIGLER: It's not just one servicer. You graduate from law school, you've got two loans for every semester plus your bar loan, plus your whatever else. You can graduate with nine different loans split between two or three different servicers. You've got your federal stuff, your private stuff, some is subsidized, some is unsubsidized. Trying to figure all of that out, even for a lawyer, is complicated.

PROFESSOR LANDER: There's no question. I guess one of the things we're saying, to come back to agree with Dan on one point, is as long as the lenders have the incentive to lend the money and make a profit, the schools have an incentive to raise the tuition, and some students are going to live above their income. We can disagree on what percentage that would be, but we have a system that needs some fundamental change, and then we need to figure out how to give the best advice to those borrowers during their years, so they can understand in a clear way what the alternatives are. And then we get an education department which looks at the programs like the public service program and implements it in an effective way.

PROFESSOR FOOHEY: Can I just jump in quickly? Two words that David used, he used change and advice. I'm much more on the change word. We can't put the onus on people who don't have enough money who are being sold many different loans to necessarily completely understand what is going on in a system that is stacked against us. As to Nathalie's point with the law students, I think it's a very small percentage of law students that are living like that, and also, they'll figure it out.

But then finally, before we move on, to Dan's point about the moral hazard, if you look at the people who are currently filing bankruptcy, which I think are representative of people who have student loans, they really want to pay back their debts. They're not going to turn to the system in droves because they get the discharge. These are people where filing bankruptcy really is going to help them. It's going to be a sliver of the people I think that's going to help them.

PROFESSOR KEATING: When I was referring to the moral hazard in the student loan arena, it was mostly about colleges and universities. They could raise tuition knowing that this third party would take care of providing people who could pay with these artificial dollars that were being provided by the federally subsidized or guaranteed student loan system.

PROFESSOR LANDER: Isn't that capitalism at its best and worst?

PROFESSOR MARTIN: I just wanted to say that I think we will need to transition, but as far as change versus advice, yes, change. I'm for change. But the advice does come in handy if you're talking about somebody who's taken out a high cost option like a private student loan without exhausting the public loans, which is a theme in all of this. You take out the high cost mortgage instead of the cheaper one because you don't know about the cheaper one. Then the advice can come in handy. And that also ties into the idea of if somebody is living, they're not a one catastrophe bankruptcy debtor. They're coming in contact with a lot of really bad, high-cost credit.

Anything else on student loans? I just wanted to say, I did say the bankruptcy system was irrelevant, but I also want to say that I'm in the Clinical Law program at UNM right now teaching which I haven't done for almost a decade. And I say the system is irrelevant, but I got to tell you the truth. For a lot of these low-income folks, you can solve a lot from bankruptcy. Remember that old study about how if you go to a bankruptcy lawyer and you're going to get a bankruptcy whether you need one or not. Well, the system is pretty amazing. One scam, you can get rid of all of that in a bankruptcy a lot easier than finding the scammer. So by saying the system is irrelevant, I'm really just trying to be provocative.

Last thing we wanted to talk about here was the need for this, what I'm going to call shame healing or the need for consumer bankruptcy debtors to be heard. My premise in the paper is taken from Pamela's excellent paper on this issue that shows that bankruptcy and financial failure in general is shameful for most people. And the question is, can we find some way to deal with that in this system?

I am struck by the clients that I'm seeing in clinic, how much they really do want to tell their stories. I'm not sure exactly where we want to give them this opportunity. That's what I want to talk about now. This is the final part of the panel where we're talking about some of the bigger and more philosophical questions about what our system is supposed to do. It leads back into Dan's comments on what he said about Professor Baird's comments when he was a student, that maybe this isn't the place to do this. But I don't find many other places in our legal system where people actually have this right to be heard or it's a very adversarial system. Ours doesn't have to be. So maybe we can find some place.

I wanted to talk about one shaming thing that I just found out about this semester that I was really surprised. It's on a topic that has been mentioned several times. You guys know that credit counseling is mandatory for consumers now. This wasn't always the case. Dan's paper at length talks about how worthless this is. I've written about this, too. It is absolutely a waste of time. But I found out it's worse than that. It's not just a waste of time. It is, at least the programs that we have seen so far, and we've only tried two of them, actually create shame. As you're going through the thing, and it's mandatory, and you can't click through it. You have to spend a certain number of seconds on each slide. They put the debtor's negative net worth in the right-hand corner in red, like really huge. And then keep asking questions about things they can cut. And it's really patronizing. I mean, expensive dinners out, gym and club memberships. Our clients don't have these things. They don't have the kinds of problems that these programs are designed to fix. I know you have actually proposed some changes to how we give this. But my point is just that the system has a lot of shaming elements in it. So what are some ways we might be able to create this sort of healing environment for debtors?

Of course, the first question is, should we bother or should we just say, you'll get it somewhere else? Or should we try to do it, and if so, do we do that through the lawyers, through the courts, through the 341 meeting, through an administrative process and so on? Go for it, guys.

PROFESSOR FOOHEY: I'm going to comment, since Nathalie kindly discussed my paper, I'll make it really quick so that we can turn to you, because I know that we're running out of time.

The paper itself is actually about procedural justice across the legal system, and then I apply it to consumer bankruptcy to find that it really does not meet any of the standards, that literature and empirical studies show as to what people want in terms of their voice during a proceeding. And then in the paper I offer what I call two new deals for debtors that promote procedural justice. One of the smaller ideas that Nathalie talks about in the paper which is just to have people have a greater opportunity to tell their voice, and I say swap out the 341 meeting and have an in-court appearance. And I also say it can be in person, on the phone, online, something where there is more of a voice.

That's not the idea I like the most in the paper. That first idea is to keep the system as it is and make a change that is as small as possible. What I like more in my paper, and I think goes with what we've been talking about, is the bigger idea of completely reconfiguring the consumer bankruptcy system so that it can actually address why people are filing bankruptcy, even if they really shouldn't be or it's not a place for them to be because it's the only place that they're going to, and as Nathalie says, it really can't help them effectively at present.

The key features I bring up, which I'll just tee up, is collapsing 7 and 13, creating some sort of fast track for certain types of loans such as medical debt and credit cards, which often have medical debt on them. As a student loan discharge, yes; strip-down, yes; creating a repayment plan option as a menu option that actually gives debtors a budget that they can live on for as long as the plan. Because two-thirds of debtors don't complete their plan because there is no cushion. They're not learning anything except that the system is really stacked against them.

And then also, getting rid of all those unnecessary and horribly demoralizing paperwork that they have to do, including the credit counseling. Because people are still going to come to bankruptcy. It's increasingly important in their lives, and the words important and relevant are two different words. The question is, how can bankruptcy be aligned to make those words mean something closer? And that's the bigger vision.

PROFESSOR KEATING: The one thing I would say from conversations I had with people I know in St. Louis who do exclusively consumer bankruptcy, as well as a couple bankruptcy judges in St. Louis I know, is that they definitely get the need to be heard part as part of the process. They feel that it's better done in the lawyer's office. It should be the lawyer's job, and that if you try to do it at a discharge hearing, it's too unwieldly. It doesn't give each debtor the chance to really tell their story. So that seemed to be the one thing I got from talking to my friends who do this for a living, is that the better way to do it is to have it be part of what the consumer bankruptcy lawyer does in their counseling of the debtor through the process.

PROFESSOR LANDER: Let me just say a couple of quick things here so we give some time for questions, too. Those of us that go back a long way remember things like discharge hearings and reaffirmation hearings, which were supposed to be an opportunity. To some degree they still have a reaffirmation hearing; it's should you reaffirm this secured debt, even though it's a bad deal, is it the best deal for you because it's the only way to keep your car and get to work, or whatever. And the stories were really, really complicated. Many judges were not willing to do that, and then there used to be a discharge hearing. So, it's a complicated question how you structure this.

I think that, among the heroes and sheroes of the bankruptcy system is the effective debtor attorney. The consumer debtor attorney has an extraordinarily difficult job. First of all, I've written a lot about the consumer credit counseling industry and its failure and what might happen, how it could be improved. But it isn't good now, which means that the debtor attorney who doesn't want to charge too much or they'll scare the client away, is supposed to spend some extra time or have somebody in their office who could spend some time like a social worker helping the person understand. That's probably an impossible burden to put on that person.

A minute about the credit counseling responsibility. The amendment said you've got to see a credit counselor before and then you've got to have a budget counseling before you get your discharge. Capitalism at its best. The credit counseling industry saw an opportunity for revenue, and so they immediately started doing this for people and charging a fair amount and not giving very much. But then, folks who were really entrepreneurial start to see you could do it for much less money if you did it online, very quickly with these people and it took the revenue away from the traditional credit counseling industry. I always say, if a person has a good minister or a good rabbi, that they could talk to, maybe in rabbinical and ministerial school they should spend a little bit more time on counseling folks.

One last thing I'll say here. Social work, if you go back forty years, social work vigorously taught and practiced financial and budgeting counseling. And then, over a thirty-year period they abandoned that from a principle point of view. In the last five years, led by a woman named Margaret Sherraden, and a few others, they have put back into the social work school curriculum budget and financial counseling, so that social workers who work in all different places, will have the capacity and the understanding of what it means to budget and what the pressures are. So maybe that's the hopeful—I always look for a hopeful spark. There's now a new book out that Margaret and two other authors, Michael Collins at Wisconsin and Julie Birkenmaier at St. Louis U, wrote. It was the first book in like forty years on how to teach social workers how to help consumers who are over their head in this. And maybe that's the spark of hope.

PROFESSOR MARTIN: Just one or two things on this. After watching just a few of these slides on the credit counseling thing, I could think of a lot of things you could say to people other than don't go out to eat, such as, have you ever taken out a really expensive loan? Here's how much it costs you over time. Or did you know you can bundle your internet and your phone services? Did you know you can talk to your bank about not having the $35 cup of coffee, meaning attaching the checking and the savings account together so you aren't charged these huge overdraft fees? Judge, did you want to say anything else to close us out? No pressure, but anybody else, anything else before we get some questions?

JUDGE SIGLER: I will comment on the discussion about turning the 341 meeting into a hearing before the court, or a discharge hearing. One struggle that I think courts always have, certainly to speak for myself, I always have is, when is it justified to drag a debtor into court? Because they need to be at work, they need to be making money. It's not necessarily easy to get to the courthouse in downtown Atlanta. Parking is $25. So trying to figure out when is it that the debtor really does want to see me and talk to me and tell me their story, versus when do I need to just let them go on about their lives and try to continue making money? So that's a struggle for courts, I think. So whatever proposals are made, or whatever changes might be made, I think having them be voluntary to some extent would be a good thing. And certainly at least in my court, again, I'll only speak for myself, I spend a lot of time talking to debtors and listening to debtors and listening to their stories. It would be an exceedingly rare situation that a debtor specifically said, I want to have my day in court and I would say no.

PROFESSOR FOOHEY: Can I defend my proposal? Because part of it is swapping out the 341 meeting, which they're already going to. It's not creating another thing that they have to get to.

JUDGE SIGLER: The 341 is intended to serve a specific purpose.

PROFESSOR FOOHEY: And you can roll that into doing it in court. I don't think it serves the purpose that it's meant to serve when consumer bankruptcy attorneys, serving as trustees, are incentivized to make the meetings as short as possible. And I also say you can do it in person, on the phone, or on some sort of online thing. I'll just put that out there. I'm not trying to add to the system; I'm trying to make it better by changing something that isn't working right now.

PROFESSOR MARTIN: I also think what you say at this session is really important. That's where some of this healing can happen. You don't just say, okay, well now don't spend any more money. I remember them, these discharge hearings. I'm old enough to remember them, and it was very worthless, and I think it would be quite different if we really wanted to have healing be part of the goal, healing of shame.

PROFESSOR LANDER: One of the most astounding things to do is to go to the chapter 13 docket and listen if you want to fuel respect for your judges, so you have these—there's motions for relief from stay or motion to dismiss the 13 Plan, and the debtor wants to keep their house, and the debtor has made some promises in the past. The heartrending story that goes on at that moment is the one place where the person is saying, well, here's the reason that I couldn't do it last time, and here's the reason I will be able to do it this time, give me one more chance. Now if it's a relatively new judge, they usually do. If the judge has been there a long time, they have a pretty good idea of who's going to be able to do it and who isn't. I would really want every law student who takes a bankruptcy course to go watch that docket, because the respect you get from what we're putting in the hands of the bankruptcy judge is just an astounding burden. And the most effective ones, in most districts they rotate who's got the consumer docket, do a beautiful job of trying to assess that and then going home and knowing sometimes they've said no and they should've said yes, and sometimes they said yes and they should've said no. So, from my point of view it's heartrending and sad, but it's also really an opportunity for optimism, that we do save some people's homes that otherwise could be lost and then their life gets better.

PROFESSOR FOOHEY: I think that, yes, and that should happen, what should be able to happen in every bankruptcy case is not the case in chapter 7. And it's not the fault of the trustees at the 341 meeting. This is a systemic issue, that they have no incentive to have long meetings because they're making no money. They're losing money. It's a deeper issue, to say nothing about the consumer bankruptcy trustee bar, it doesn't work as it was intended to.

JUDGE SIGLER: It does strike me, though, that at the end of a consumer bankruptcy case, whether it's a chapter 7 debtor getting their discharge which hopefully is happening within six months of their filing, or a chapter 13 debtor who gets a discharge after making three to five years of payments over time, all they get is a little piece of paper in the mail. It's a form order. It's not even an order that my chambers have really touched in any way. They just get a piece of paper in the mail that says you got a discharge. Versus I think about a chapter 11 plan confirmation hearing, where it's sort of this big production and the plan is confirmed and everybody's happy and the judge says congratulations or good luck. But the consumer debtors, there's really not an opportunity for the court to convey to the debtor you've done everything that the bankruptcy system asked you to do, and now you get your discharge. Good luck to you.

PROFESSOR MARTIN: One or two questions. I take it upon myself. I'm not even the moderator here.

[Inaudible comment from audience]

PROFESSOR MARTIN: The comment was that the judge used to appear at the creditor's meetings in the pre-Code era.

PROFESSOR LANDER: Let me just add, a negative. I do remember that and so after I've said great things about the bankruptcy judge, here's a story about a referee before that who did a terrible job and luckily was not reappointed. He noticed that the debtor at the 341 hearing, whatever it was called then, noticed that there was a diamond ring on the finger of the debtor, who was at the hearing, and he pulled the ring off and he auctioned it off, and a lawyer on the other side bought the ring. So, we have the best people and we have the worst. Now thank goodness this one was not reappointed.

CONNOR EDWARDS: I want to say one last thank you to our Consumer Panel. Thank you all for coming. We really appreciate it.