

# THE CHANGING DEMOGRAPHICS OF BANKRUPTCY

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### TEXT:

The government reports a great deal of information about its citizens, from the attendance rates among high school graduates at opera performances<sup>2</sup> to the number of people hospitalized with broken bones.<sup>3</sup> But the debtors in bankruptcy remain the barest of statistics--number of cases, chapters, closings. There is no face for the people who come to the bankruptcy courts, at least, nothing more than "debtors."

Recently assembled data suggest that the faces of those in bankruptcy may be changing. The government reports no data on who files, but the painstaking work of independent studies put together over time suggests an update to the stereotype of a married couple in financial trouble supplemented by a single man losing his business. This year more women than men will file for bankruptcy. An estimated 538,000 women will file for bankruptcy alone, declaring their economic collapse, and another 450,000 women will file with their husbands, out of a total 1,379,000 filings. In addition, another 179,000<sup>4</sup> women will be creditors of their bankrupt exhusbands, hoping to collect and avoid their own skid into the bankruptcy courts. The bankruptcy story, as the numbers demonstrate, is a story about women.

### The Rise in Petitions by Women Filing Alone

The most striking finding from an initial analysis of our newest empirical data is that the proportion of women filing alone in bankruptcy has increased dramatically since the early 1980s. In 1981, single filing women were the smallest group in bankruptcy, comprising an estimated 17-22% of all bankruptcy filers.<sup>5</sup> By 1991, single filing women had overtaken single filing men and were 30% of all filers in the sample.<sup>6</sup> By 1999, our initial analysis suggests that single filing women have increased even more and now constitute almost 40% of all filers.<sup>7</sup> Based on our sample, women filing alone now outnumber either men filing alone or married couples.<sup>8</sup>

Because overall bankruptcy filings have risen dramatically in the past two decades, the increase in the proportion of filings among women represents a particularly steep increase in the number of bankrupt women. If our multi-district samples of consumer debtors were representative of all debtors in bankruptcy, the increase in filings would look like this:

Table 1: Estimated National Bankruptcy Petitions for Single-Filing Men and Women and Married Couples Filing Joint Petitions; Note: Numbers are rounded to nearest thousand; Source: Administrative Office of the U.S. Courts; Consumer Bankruptcy Project I (1981), Consumer Bankruptcy Project II (1991), and Consumer Bankruptcy Project III (1999)

While bankruptcies for couples have grown by about 150% from 1981 to 1999, and bankruptcies by men filing alone have grown by about 375%, bankruptcy filings for women have increased by more than 900%. The "bankruptcy boom" has been widely reported. Hidden from view, however, is the extent to which the growth has been fueled in large part by divorced, widowed and single women streaming into the bankruptcy courts for help.

Other researchers also have identified the number of women single filers in bankruptcy, and their work helps fill in missing pieces in establishing a trend line. Because the other studies were designed for other purposes, such as testing reaffirmation practices or capacity to repay, sometimes samples are drawn only from Chapter 7 cases rather than from a full sample of consumer bankruptcies. Even so, they can be useful in filling in more data over time.

Professor Oliver Pollak suggests that the trend extends over a long period of time. He examined 5,441 consumer filings (both Chapter 7 and Chapter 13) in a single district (Nebraska) for 1996-97 and found that 32.4% were by women

filing alone.<sup>10</sup> By comparison, he reports that the proportion of single-filing women was 14.6% in 1967, 11.1% in 1977, and 22.2% in 1987, demonstrating a thirty-year growth trend among women in bankruptcy filings.<sup>11</sup>

Professor Pollak extended his earlier time series of filing data to include the most recent (1997-1999) filings in Nebraska. Again, recording all nonbusiness cases, he reported a particularly sharp increase in the proportion of women filing alone in 1998 and 1999. He explains that from July 1997 through June 1999, the proportion of women filers "increased incrementally from 32.79% to 33.82% to 34.43% to 36.28% in the last six-month period ending June 30, 1999."<sup>12</sup> This represents a rate of growth in excess of ten percent in just a two-year period.

One other study analyzes data spanning into 1999 to confirm the trend. Researchers Gordon Berman and Ed Flynn from the Executive Office for the United States Trustees examined a national sample of all cases for 1998 and 1999, and reported that 35% of the cases were single filing women.<sup>13</sup>

The time line is filled in by two other researchers working with data from a single year. Professors Marianne Culhane and Michaela White report that in 1995 35.8% of the debtors in their sample were women filing alone.<sup>14</sup> Mr. Thomas Neubig has reanalyzed the data from the 1997 credit industry study to report 32% women single filers in Chapter 7.

Together, the data developed by Professor Pollak, Professors Culhane and White, the Office of the United States Trustee and the credit industry help fill in a picture of women increasingly turning to the bankruptcy courts for financial help.<sup>15</sup> A plot of the reported data points from our own research and from all other reported studies illustrates the trend:

; Notes to Figure 1, above:; #11981 data: Collected from 1,547 nonbusiness bankruptcy cases filed in Chapter 7 and Chapter 13 in ten federal districts. As *We Forgive Our Debtors*, supra note 4, at 149. We show both an original and an adjusted estimate based on subsequently published data. ; #21987 data: Collected from 5,441 nonbusiness bankruptcy cases filed in Chapter 7 and Chapter 13 in Nebraska. *Gender and Bankruptcy: An Empirical Analysis*, supra note 8, at 333-38 (reporting 22.2% women single filers). ; #3 1991 data: Collected from 2,650 cases filed in Chapter 7 and Chapter 13 in sixteen federal judicial districts. *Fragile Middle Class*, supra note 5. ; #4 1995 data: Collected from 1,047 Chapter 7 cases filed in seven judicial districts in 1995. *Preliminary Results of the Bankruptcy Reaffirmation Project*, supra note 12; *Taking the New Consumer Bankruptcy Model for a Test Drive: Means-Testing Real Chapter 7 Debtors*, supra note 12 (supplementary analysis by Culhane and White, July 26, 1999, reporting 34.5% women single filers). ; #5 1996-97 data: See Pollak, note 2 to Figure 1 (reporting 32.4%).; #6 1997 data: Collected from "more than 2,100" Chapter 7 cases self reported as "nationally representative" but protocols for site location, sampling and weighting are not published. Letter from Thomas Neubig, Ernst & Young LLP, to Samuel J. Gerdano, *Amer. Bankr. Inst.* (July 19, 1999) (reporting 32%).; #7 1998-99 data: Collected from 1,452 nonbusiness, no asset Chapter 7 filings from 65 districts from July 1998 through March 1999. Flynn & Bermant, supra note 11 (reporting 35%).; #8 1999 data: Collected from 1,521 bankruptcy cases filed in Chapter 7 and Chapter 13 in eight districts during the first quarter of 1999. In addition, in a review of 11,780 Nebraska cases, Oliver Pollak reports that from July 1997 through June 1999, the proportion of women filers "increased incrementally from 32.79% to 33.82% to 34.43% to 36.28% in the last six month period ending June 30, 1999." Fax from Mr. Pollak to Professor Warren (July 16, 1999), data reported in ABI website. Mr. Pollak counts all nonbusiness cases in Chapter 7 or Chapter 13, not just samples, from all filing locations within the state. See supra note 2 to Figure 1. Both data points are reported on the graph.

The growing proportion of women single filers in bankruptcy is startling, but the effects are much stronger than these proportions suggest because the proportion is increasing at the same time that the absolute numbers of debtors are increasing as well. This means that the absolute number of single filing women in the bankruptcy courts is also rising sharply. If the various reported proportions from all sources could be projected to the universe of filers, and using the higher estimate of women's filings from 1981 data, the overall number of women in bankruptcy from 1981 through 1999 would be charted as in Figure 2.; Source: Bankruptcy filing data are from the Administrative Office of the U.S. Courts, estimates of the proportion of women single filers are from all sources in notes 1-8 in Figure 1, using the higher data points when two figures are reported for notes 1 and 8.

Professor Pollak, who has collected data on all the nonbusiness cases filed in a single state over a several decades, expresses his concern about the accelerating proportion of women filing alone for bankruptcy. He notes that "women are increasing their lead as the largest group filing bankruptcy in Nebraska at the ominous rate of about 1.328% [percentage points] per year over the last 2 1/2 years."<sup>16</sup>

Professor Pollak's concern should be echoed around the country. The combination of samples here demonstrates that the increase in both the proportion of women and the absolute numbers of women filing alone suggests a group that is extraordinarily vulnerable financially.

#### More on the Numbers

These numbers show a strikingly consistent trend: the proportion of women filing for bankruptcy during the past two decades has risen sharply and consistently. All the data bases except Professor Pollack's are samples, and they are all subject to small, statistical variation. Additionally, each data base has a somewhat different mix of chapters, districts and courts within the districts. Even so, the trend is unmistakable: the proportion of women is changing over time. All three post-1997 reports, for example, show higher proportions of women filing alone than the credit industry reports for 1997.

One other difference stands out among the studies. Our 1991 and 1999 studies based the estimate of men and women on the self identification of the debtors themselves in detailed questionnaires. All other data are based on information in the bankruptcy files. Because petitioners do not report their sex in their bankruptcy petitions, the other reports rely on someone to guess the sex of the petitioner. In bankruptcy samples with Leslie, T.J., Chris, Dae Joon, Thien V., Jimmie, Lynn, H.L., Seno, Travell, Sukunya, Shannon, Kim, Dana, Luz and Marion (actual names from two of the samples reported here), classification by gender can be challenging. We have no doubt that all the researchers got it mostly right, but the possibility exists that the samples may have a two or three percentage point error rate. In their analysis, for example, Culhane and White report that when they looked at petition information, they could not determine gender for 1.2% of their single filers. Even when he carefully read through every page of the full files of the debtors with ambiguous names to find a single reference to "she" or "he" in the file, Ed Flynn reports that he could never classify 1% of the cases. Mr. Neubig does not report any debtors for whom he could not determine the sex, so we are left to guess his role in classification. To verify the representativeness of our questionnaire data, we pulled a random sample of 300 petitions in two of the same districts and classified them by joint petition, single petition male and single petition female. Couples were easy, but the researcher making the classifications had a question about the sex of 12 single filers out of a total of 180 single file cases. The problem is magnified, of course, by the fact that even a researcher who had no question about the sex of the petitioner could be wrong. Cameron, Campbell, and Alex are women recently in the news who might be easily classified as male single filers if they had appeared in a bankruptcy sample.

Until the government requires demographic data such as the sex of the petitioner, only questionnaire data will give conclusive evidence about the proportion of women in bankruptcy.

#### Women: The Poorest of the Poor

In our continuing analysis, we will examine the reasons why so many women file for bankruptcy. One obvious place to look is the effects of divorce. While the divorce rates have flattened out in these two decades, the consumer debt per household has risen sharply, suggesting that divorce and debt have become a financially lethal combination. Alimony and child support may be providing a shrinking percentage of the income needed to support a household. Research has been accumulating for years showing that divorce is a financial catastrophe for many women. Women typically are left with children to support and bills to pay from the marriage. They are often granted inadequate support payments--and sixty percent are unable to collect what they have been awarded.<sup>17</sup> Our study collected data about child support and alimony, family size, and age of the debtors and dependents, along with employment, income, and debt information. We also have asked the debtors about the reasons for their filings, which provides rich possibilities for better understanding the increase in filings.

In analyzing the credit industry data, Mr. Neubig provides an interesting insight into the problems facing women in bankruptcy. He reports that fewer of the single filing women in his sample will be swept into the means test than will couples. Because the means test is income based with an adjustment for family size, the only way they could be ensnared in the means test is if they have lower incomes and higher expenses, even when adjusted for family size. He may be right that the single filing women in bankruptcy are not only growing in numbers, but that they are in worse financial shape than their joint filing counterparts--suggesting that single filing women are economically distinct from joint filing women.

The economic disadvantage facing women does not, of course, translate into exemption from the effects of proposed changes in the bankruptcy laws. Because the overwhelming majority of the provisions apply to all debtors, regardless of income, the impact of increased filing requirements or reduced automatic protection would have a disproportional

tionate impact on those with the fewest resources to protect themselves through preplanning, extensive legal advice, and extensive record gathering. The creditors' data suggest the possibility that increases in debts treated as nondischargeable, increases in the amount of repayments required on secured debt, increases in the costs of filing for bankruptcy, increased reporting burdens and literally dozens of other provisions that are not income tested would fall hardest on women filing alone.

The dismal view of the economic status of women in bankruptcy is reinforced by the Flynn and Berman data. They report: "As a group, the females with no dependents had lower incomes, high debt-to-income ratios and were more likely to be disabled or retired."<sup>18</sup> Among the single filing women with dependents, they report that their incomes were about the same as that for men, but they also report that these women have more dependents. Among the bankrupt debtors, Flynn and Berman report that married couples have substantially higher incomes (\$ 18,012 median income for single filing women versus \$ 34,632 median income for joint filers) and worse debt-to-income ratios (1.23 for women versus .91 for couples).<sup>19</sup>

The credit industry data and the Flynn and Berman data not only add evidence of a trend toward increasing number of single filing women, but they also imply that the women filing alone are in relatively worse financial shape than their married counterparts by the time they file for bankruptcy. If this can be confirmed, it would suggest that women single filers are struggling to stay out of bankruptcy as long as they can and filing only after they are in more desperate shape than their married counterparts. This is another issue we hope to explore as we continue the analysis of our data and one we hope others will examine as well.

#### The Next Women's Issue?

Will bankruptcy become the next women's issue? How could something as complex, arcane, and ostensibly neutral as a bankruptcy law be a "women's issue?" Some people are sure that it cannot. Representative George Gekas (R) of Pennsylvania, sponsor of the House bill to ratchet back consumer protection in bankruptcy, proclaims that the pending bankruptcy legislation "helps women." Lobbyists pressing for the bill flatly proclaim, "There is no women's issue in bankruptcy."

But even as advocates loudly repeat those phrases, a group of creditors has taken out full page advertisements proclaiming that S.625 will benefit women, suggesting that perhaps there is a women's issue after all. They may be worried about the fact that 31 women's groups, along with Consumers Union, Consumer Federation of America, and Mothers Against Drunk Driving oppose the pending legislation, in part citing its disproportionate effect on women.

There can be no doubt that bankruptcy is about the collapse of all kinds of families--those headed by men and those headed by women. But as researchers try to put faces to the bankruptcy statistics and develop insights into the kinds of problems that the bankruptcy courts are called on to resolve, the recognition of the special economic vulnerability of women will shape future study.

#### More Reading

For additional commentary on women in bankruptcy, readers might consult Zipporah Batshaw Wiseman, *Women in Bankruptcy and Beyond*, 65 *Ind. L.J.* 107-121 (1989); Karen Gross, *Failure and Forgiveness*, 22, 67, 245-246 (New Haven: Yale, 1997). For a longer view of the role of women in the bankruptcy system, Karen Gross, Marie Stefanini Newman, and Denise Campbell, *Ladies in Red: Learning from America's First Female Bankrupts*, 40 *Am. J. Legal Hist.* 1 (January 1996), have provided a fascinating account. For a more contemporary view about the roles of women in the bankruptcy system see Commission on Gender, Commission on Race and Ethnicity, Report of the Third Circuit Task Force on Equal Treatment in the Courts, 42 *Vill. L. Rev.* 1355 (1997); Final Report and Recommendations of the Eighth Circuit Gender Fairness Task Force, 31 *Creighton L. Rev.* 9 (1997); The Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force, 67 *S. Cal. L. Rev.* 745 (1994).

; <sup>1</sup>We are grateful to Robert C. Clark, Dean, Harvard Law School, for allocating money for this project from the Robert K. Weary Fund. We also express our gratitude to Melissa Jacoby who helped us collect these data, and to the judges, trustees, law clerks and others from the bankruptcy courts in the Northern District of California, the Northern District of Illinois, the Eastern District of Kentucky, the Southern District of Ohio, the Eastern District of Pennsylvania, the Middle District of Tennessee, the Northern District of Texas, and the Western District of Wisconsin who offered critical support to this project. ; <sup>2</sup>See Bureau of the Census, U.S. Dep't of Commerce, *Statistical Abstract of the United States 1998*, Tbl. 446 (Attendance Rates for Various Arts Activities: 1997) (1998).; <sup>3</sup>Id. at 208 (Procedures for Inpatients Discharged from Short-Stay Hospitals: 1980-1996).; <sup>4</sup>Of the men filing alone, 29% said they owed such obliga-

tions. Another 14.7% of the joint filers said they owed child support or alimony. In addition, 3% of the women filing alone said they owed support or alimony.; An estimate based on the data provided by Ed Flynn & Gordon Bermant, *Bankruptcy by the Numbers: Demographics of Chapter 7 Debtors*, Am. Bankr. Inst. J. 24 (September 1999) would be somewhat lower, perhaps 135,000. Flynn & Bermant report 22.2% of the men filing alone owe support and 8.7% of the joint filers. ; The differences may have to do with how the data were collected. First, the Flynn & Bermant data are drawn from nearly all districts, but only Chapter 7 cases are examined. Our data are based on fewer districts, but on a sample of both Chapter 7 and Chapter 13 debtors. Second, the Flynn & Bermant data are drawn from 1998 and 1999. The reported data are from Schedule J filed with the court in which the debtor is asked, while our reported data are all drawn from 1999. Third, the Flynn & Bermant data are evidently drawn from Schedule J in which the debtors are expected to fill in an amount for expenses in each of 31 different categories. Presumably, if the debtor left blank the space next to "Alimony, maintenance, and support paid to others," the debtor was treated as owing nothing in this category. To the extent that some debtors may not complete the forms in perfect detail, the Flynn and Bermant calculation underestimates the number of debtors obligated to pay alimony or support. Our data were drawn from a questionnaire that asked a separate, specific question: Is this person required to pay child support or alimony? Yes/No; 5The 1981 data were collected from 1,547 bankruptcy cases filed in ten federal districts. The protocols for that study and the data are reported fully in full in Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* 149 (1989).; 6The 1991 data were collected from 2,650 cases filed in sixteen federal judicial districts. The protocols for that study and the data are reported fully in full in Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *The Fragile Middle Class: Americans in Debt* (1999). The proportion of single filing women in that sample is 30%. (This book will be available in the winter from Yale University Press, but the chapter on research protocols is available on request from the authors.) Data from this study and protocols on the study have already been published in Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *From Golden Years to Bankruptcy Years*, 7 *Norton Bankr. L. Adviser* 1 (1998) (a report on the growth in bankruptcy filings among older Americans).; 7The 1999 data were collected from 1,521 bankruptcy cases in eight bankruptcy courts during the first quarter of 1999. The districts are the Northern District of California, the Northern District of Illinois, the Eastern District of Kentucky, the Southern District of Ohio, the Eastern District of Pennsylvania, the Middle District of Tennessee, the Northern District of Texas, and the Western District of Wisconsin. The cases are all consumer cases filed initially in Chapter 7 or Chapter 13. The data were collected from questionnaires distributed during the statutorily required meeting between the debtors, the trustees and the creditors (the so called 341 meetings, named after the statutory provision that mandates them) during late January, February, and March of 1999. ; 8But see Flynn and Bermant, *supra* note 4. In their Chapter 7 sample, they estimate that the proportion of single filing women and married couples is tied at about 35% each. ; 9The first estimate listed in each category for 1981 comes from our empirical study of cases filed in 1981 in ten districts; 57% of the cases were joint filings, 26% were single males, and 17% were single females. Subsequent to our publication, Ed Flynn published Administrative Office data showing that the national proportion of joint filings in 1981 was 43% considerably lower than the proportion we recorded. Ed Flynn, *Bankruptcy by the Numbers*, Am. Bankr. Inst. J. (June 1992). The second estimate listed in each category for 1981 comes from a reanalysis assuming the national joint filing proportion of 43% and redistributing the remaining filings according to the ratio we found in the ten districts, yielding 35% single makes, 22% single females.; 10The protocols and findings for this study are reported in full in Oliver B. Pollak, *Gender and Bankruptcy: An Empirical Analysis of Evolving Trends in Chapter 7 and Chapter 13 Bankruptcy Filings 1996-1997*, 102 *Com. L.J.* 333, 333-38(1998).; 11Because there were no joint petitions before 1979, the earlier data must be interpreted with great caution. Women who filed alone before 1978 may or may not have been filing alone in fact. In their study of bankrupt debtors whose cases closed in 1964, pioneer researchers David T. Stanley and Marjorie Girth found that 76% of the debtors they interviewed were married. David T. Stanley and Marjorie Girth, Brookings Institution, *Bankruptcy: Problem, Process, Reform* 42 (1971). If both husband and wife filed separate petitions, the proportion of women "single filers" would still underestimate the proportion today when married couples can file a joint petition for a single filing fee. ; 12Letter to Samuel Gerdano, Am. Bankr. Inst., copy to Elizabeth Warren. Copy on file with author.; 13Flynn & Bermant, *supra* note 4 (reporting 35% women single filers).; 14The protocols for that study are reported fully in Marianne B. Culhane & Michaela M. White, *Preliminary Results of the Bankruptcy Reaffirmation Project* (Oct. 1998) (unpublished manuscript on file with authors) and in Marianne B. Culhane & Michaela M. White, *Taking the New Consumer Bankruptcy Model for a Test Drive: Means-Testing Real Chapter 7 Debtors*, 7 *Am. Bankr. Inst. L. Rev.* 27 (1999). ; 15Although not directly comparable, a Canadian study also shows a high proportion of women filing alone. Forty-one percent of a 1997 Canadian sample of bankrupt debtors were women. Saul Schwartz & Leigh Anderson, *An Empirical Study of Canadians Seeking Personal Bankruptcy Protection* 3 (1998).; 16See Figure 2, note 8 above.; 17Report of the U.S. Office of Child Support Enforcement, *Twentieth Annual Report to Congress for the Period Ending September 30, 1995*, at 1 (1997), explaining that only 35% of 11.5 million custodial

parents actually receive any child support payments--even a single payment. Either they did not receive a support order or they had an order but did not receive any payments. According to the report, less than half of all custodial parents of minor children (46%) had support orders and were supposed to receive child support payments. Of those parents, only 51% received full payment, 24% received partial payment, and 25% got nothing.; 18Flynn & Bermant, supra note 4, at 25.; 19Id. at 24.; <>;

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