

PREFACE

The American bankruptcy system is as much about economic progress and stability as it is economic failure. Since 1978, when Congress adopted the United States Bankruptcy Code, the law has helped families, farms and businesses, saving countless jobs, while providing creditors with a fair opportunity for repayment and recovery. Yet it is, unavoidably, an imperfect and adversarial system. Credit extended in good faith is not repaid. There are abuses, at times substantial and widespread, by some debtors and by some creditors. The consequences of poor economic judgment or misfortune, whether individual or business, are borne in part by those who were neither wrong nor unfortunate.

The Constitution authorizes Congress to adopt “uniform laws” on bankruptcy. Even if it did not, there would have to be a legal system to address financial failure and to ensure that those who have failed economically—and their creditors, who involuntarily share the burden of that failure—have another opportunity to succeed. Indeed, every business and every consumer shares the same burden in the prices and interest they pay, but they also share the benefits of a bankruptcy system that permits failure to become success.

With this Report, filed on time and under budget, the National Bankruptcy Review Commission submits more than 170 individual recommendations to the Congress, the President and the Chief Justice of the United States for improving bankruptcy law and procedure. The recommendations are as diverse as the bankruptcy system itself, but they have been designed with a common theme: to improve the integrity, the accountability and the efficiency of that system. Above all else, the recommendations address the need to maintain—and, in some instances, to restore—balance. A bankruptcy system that does not balance the interests of creditors and the interests of debtors will have neither their confidence nor, of even greater importance, the confidence of the American people.

The Last 20 Years

Congress, in enacting the Bankruptcy Code in 1978, relied in part on the work of an earlier commission and on nearly a century of economic experience that included a great depression as well as periods of unprecedented prosperity. The changes in the law were comprehensive, particularly for businesses facing financial crisis, but Congress retained two basic principles that long have characterized American bankruptcy law: fair treatment for creditors and a fresh start for debtors, both businesses and consumers.

Twenty years ago, some 182,000 American families sought the protection of consumer bankruptcy—liquidating their assets and discharging their debts in a process then known as “straight bankruptcy” or adopting a plan approved by the bankruptcy court to repay their creditors at least in part over time. The population has grown 21 percent since then while total consumer debt has increased more than 700 percent. This year, more than 1.3 million families will use the consumer bankruptcy system, choosing either a Chapter 7 liquidation or a Chapter 13 payment plan. That also represents a seven-fold increase over 1978. Indeed, consumer bankruptcy filings now have reached record levels, rising 26 percent in the last year alone and increasing in virtually every judicial district in the country. This development, coming at a time of economic prosperity with low unemployment and low inflation, has brought new attention and new controversy to the consumer bankruptcy system.

Twenty years ago, 32,000 American businesses filed bankruptcy—either to liquidate or to attempt to reorganize by continuing the business and paying their creditors in whole or in part under a plan confirmed by the bankruptcy court. Beginning in 1986, family farmers in economic difficulty were given a new alternative in Chapter 12, designed by Congress to protect them and their creditors in a special proceeding. Today, the number of business and farm bankruptcies remains relatively stable: about 53,500 in 1996. Yet there are new challenges, unforeseen or unforeseeable 20 years ago, in business failures that involve mass tort claims for product liability and in the need to address the special problems raised by the insolvency of multinational corporations.

There has been a revolution in the last 20 years in the way American families borrow and use credit and in the way American businesses finance their growth. The result, over time, has been sustained economic expansion and, for families, unprecedented access to credit to purchase more consumer goods and services. Businesses constantly search for new and creative sources of capital—to help meet the growing demand for those consumer goods and services. In 1978, according to the Federal Reserve, less than 40 percent of American families had a credit card. Today, four of every five families have at least one. Non-mortgage consumer debt, from all sources, stands at \$1.7 trillion. The American free market has produced

remarkable prosperity, but not every business succeeds, not every consumer prospers.

There are too many bankruptcies today. There always will be “too many” bankruptcies. Indeed, the last commission report expressed concern in 1973 about the “rising tide of consumer bankruptcies.” For businesses as well as families facing financial difficulty, for creditors as well as debtors, the process is always painful. And it always can be improved to make it more efficient and reduce its costs. However, as the number of consumer bankruptcies increases, there is a corresponding need to give consumer debtors more incentive to avoid bankruptcy or, if they cannot do that, to use the bankruptcy process to repay more of their debts to more of their creditors.

The remarkable increase in consumer bankruptcy over the last two years is particularly alarming. It warrants prompt attention from Congress, which already has begun to address the difficult and complex questions presented by that increase in a series of hearings that began earlier this year and will continue into 1998. Over the last year, the Commission has heard a number of witnesses explain a wide range of theories for the dramatic increase in consumer bankruptcy filings. The Commission has not attempted to identify with precision any one “cause” for this development, however, both because of its limited resources and the broad spectrum of problems that can lead to financial distress. Some of the factors that may well contribute to the increase in consumer bankruptcy lie well outside the scope of the bankruptcy laws: legalized gambling, attorney advertising, credit solicitations, changes in health insurance, and divorce, garnishment and collection practices regulated primarily by the states. Yet, the Commission has addressed the consequences of this dramatic increase with a series of balanced proposals and, for both consumer bankruptcy and business bankruptcy, recommended changes to make the process faster, less expensive, and more accountable.

The Commission’s Charge

The Bankruptcy Act of 1898 established this country’s first comprehensive bankruptcy system. With the Chandler Act of 1938, in the wake of the great depression, Congress enacted a consumer bankruptcy law that, in its essential structure, remained the law in the new Bankruptcy Code adopted in 1978. It remains, with some modifications, the law today. That comprehensive revision 20 years ago, embodied in title 11 of the United States Code, now has been tested over time—used by millions of families and businesses, creditors and debtors—and applied and interpreted by the federal courts. The law has been analyzed, criticized and modified. And for the law to be effective, for its equilibrium to be maintained, the process of analysis, criticism and modification must be continual.

While Congress made significant changes in the bankruptcy law in 1984, 1986 and 1994, it also concluded in 1994 that there was benefit in establishing another commission to review the bankruptcy system. The 1970 commission was charged with recommending revisions for a bankruptcy law from the last century. By contrast, when Congress established the National Bankruptcy Review Commission, it pronounced itself “generally satisfied with the basic framework established in the current Bankruptcy Code,” counseling that the Commission’s recommendations “not disturb the fundamental tenets of current law.”

This Report and the more than 170 individual recommendations it contains honor that Congressional admonition. While the Commission’s review was comprehensive, it did not adopt *any* of the proposals for radical or architectural change submitted to it—either for business bankruptcy or for consumer bankruptcy. At the same time, the Report and the recommendations necessarily do reflect the dramatic developments in American law and the American economy that have occurred not just since 1978 but, indeed, in the brief time available for the Commission’s work:

- Mass tort cases have produced high-cost litigation that threatens adequate compensation for thousands of people with valid claims and, simultaneously, threatens the survival of businesses and jobs.
- With the rise in multinational corporations, the number of international business failures has increased, but current law does little to stop businesses in other countries from taking advantage of American creditors and putting companies and jobs at risk all over the world.
- Beginning in 1995, the Administrative Office of the U.S. Courts has reported a steady increase in consumer bankruptcy filings from quarter to quarter, year to year, in each quarter and in virtually every judicial district.
- Legalized gambling, a new phenomenon in many states, may be the “single fastest-growing” cause of consumer bankruptcy, according to a research study released in August.
- The number of credit card solicitations in 1996 reached at least 2.5 billion, according to news accounts, approximately 25 for each household in the United States.
- Federal and state regulators are investigating allegations that several major companies used the bankruptcy process to force consumers to repay discharged or dischargeable debts, and

the government settlements with one retailer reportedly involve more than \$200 million in refunds to thousands of debtors across the country.

Since 1978, this country has experienced periods of extended prosperity, but there have been serious economic disruptions as well, affecting different sectors of the economy and different parts of the country. A number of major corporations, some among the nation's largest, have reorganized successfully in Chapter 11 over the last 20 years. Millions of people today shop at stores, fly on airlines and conduct business with companies that have used the Bankruptcy Code to reorganize. Family farmers have been able to stay on their land with the help of the changes Chapter 12 has brought about in agricultural credit. The way Americans obtain and use consumer credit has changed significantly as well, and that development too has had an inevitable and substantial impact on the bankruptcy system.

The bankruptcy law continues to evolve as Congress legislates changes and the courts apply the law to changing circumstances and cases. Indeed, a series of U.S. Supreme Court decisions has had a significant effect on bankruptcy law and practice, including a recent opinion that calls into question the bankruptcy courts' very jurisdiction over state governments, which often have an important role in business and consumer bankruptcy cases. While much has changed over the last 20 years, however, the indispensable requirements of a bankruptcy system that is fair have not changed.

Balance: The Recommendations and the Report

Beginning in May 1996, in a series of public meetings and hearings that continued through August 1997, the Commission adopted 172 separate recommendations for improving the bankruptcy system. They are set forth twice in this Report: first, in the resolution form in which they were adopted by the Commission at its meetings or by mail ballot and, second, in an analytical narrative. The narrative reflects the Commission's hearings, the more than 2,300 submissions the Commission received from the bankruptcy community and the public, and at least the last 20 years of developing bankruptcy law. The Report and the separate Appendix, which contains selected background materials submitted to the Commission, are invaluable resources for anyone interested in bankruptcy law and practice. Indeed, in many areas, the Report is a comprehensive survey of American bankruptcy law.

U.S. Senator Charles E. Grassley (R.-Iowa), long active in bankruptcy legislation and the chairman of the Judiciary Committee's Administrative Oversight and the Courts Subcommittee, noted in a recent interview with *The National Journal* that bankruptcy law is not necessarily an easy subject for Congress. "We set up this

commission,” the publication quoted him as saying, “because the laws are difficult to change.” And, according to the article, he said he hoped the Commission “will be bold. ‘I’m imploring them to be a bit more adventuresome.’” Adventuresome or only innovative, the Commission’s recommendations and Report should provide a catalyst for legislative change and, before that takes place, a basis for continuing the national dialogue on the bankruptcy system.

Balance is essential. Without it, the American bankruptcy system can be neither equitable nor efficient. The laws enacted over the last 100 years have had balance as their goal and their common theme, spoken or unspoken, trying to provide both fair treatment for creditors and a fresh start for debtors. Yet the twin objectives are often in conflict with each other. The interests of debtors inevitably collide with the interests of creditors. The interests of secured creditors often diverge from those of unsecured creditors and, in turn, from the interests of government taxing authorities.

These inherent conflicts were evident virtually every time the Commission met and on almost every subject the Commission addressed—evident in the testimony of witnesses, evident in the often competing proposals advanced and evident in the Commission’s own deliberations. This Report embraces the controversy.

The Commission’s nine members achieved remarkable agreement on a broad series of recommendations involving the bankruptcy appellate structure, transnational insolvency, mass tort claims, partnerships in bankruptcy, the compilation and dissemination of bankruptcy data, and a series of procedural issues, to name but a few. In other areas, there was consensus including the small business proposals and the specific consumer bankruptcy recommendations for uniformity in exemptions, random audits, a national filing registry, better consumer financial education, and the need for a bright line test to bar the discharge of credit card debt. Where there has not been consensus, however, the Report sets forth comprehensive majority and alternative views that fully address the issues. The Commission’s goal was not to make binding decisions or to change the law but to make recommendations that will help Congress improve the law. In this regard, while the Commission’s work has concluded, the discussion has only just begun.

Far from being counterproductive, the Commission’s vigorous debates have had at least two results: they emphasize the continuing need for balance and, in the Commission’s recommendations, the debate has helped achieve it. More importantly, the recommendations that have emerged from this process will give the Congress a basis for its necessarily continual effort to maintain the equilibrium essential to the bankruptcy system. The controversy and the balanced result are nowhere more in evidence, nor more important, than in the Commission’s consumer bankruptcy proposals—adopted on a 5-4 vote under the sponsorship of

Commissioner M. Caldwell Butler, a former Congressman from Virginia and, for 10 years, a member of the Judiciary Committee of the U.S. House of Representatives.

This Report will not fully satisfy anyone. It will be controversial. It is meant to be controversial. The Commission did not adopt the cause or the interests of any group—corporate or individual, creditor or debtor. The system itself has few advocates and, by definition, the interests of balance have few lobbyists. The Commission’s recommendations, as a result, will be criticized with equal enthusiasm by creditors and their advocates as well as by the advocates for debtors. That is not only inevitable, it is also a mark of the Commission’s care in reviewing and discussing the bankruptcy laws, from diverse perspectives, with the goal of recognizing both the interests of creditors and the interests of debtors.

To maintain—and, in some instances, to restore—balance in the bankruptcy system, the Commission recommends that Congress consider the proposals adopted for each chapter of the Bankruptcy Code:

- For consumer bankruptcy, a uniform approach to exemptions for debtors that—coupled with audits, national filing records and a limit on both repeat filings and the reaffirmation of unsecured debt—should help slow or stop the increase in consumer bankruptcies and enable debtors to repay more of their obligations to more of their creditors.
- For business bankruptcy, increased efficiency and cost savings through new proposals for the treatment of partnerships in bankruptcy, contracts and some preferential payments, a recognition of the special challenges of transnational insolvency and mass tort damages claims, a new venue standard and, for small business reorganizations, accelerated procedures to help eliminate unproductive cases.
- For family farm bankruptcy, the permanent establishment of Chapter 12 and, for municipal bankruptcy, improvements in light of the experience of the Orange County Chapter 9 case.
- For the entire system, a major savings of time and money in the elimination of a mandatory appeal to the federal district courts or the bankruptcy appellate panels, improved compatibility between the bankruptcy law and the Internal Revenue Code, and renewed attention to the roles and responsibilities of bankruptcy judges, private trustees and the U.S. Trustee system.

With the exception of the Internal Revenue Code, no federal law directly affects as many people and businesses as the Bankruptcy Code. The bankruptcy courts, in turn, are an integral and significant part of the federal judicial system. One of every four federal judges is a bankruptcy judge. The U.S. Senate's Report on the Commission's enabling legislation specifically suggested a review of the "constitutionality of the bankruptcy court structure," reflecting both the Congressional debate on the issue in 1978 and several U.S. Supreme Court decisions since then that have raised fundamental questions about the jurisdictional status of bankruptcy judges. The Commission has done that—developing a recommendation to give all bankruptcy judges, over time, Article III status under the Constitution. That would resolve lingering constitutional questions and, in the process, eliminate many of the practical problems arising from those questions that needlessly complicate bankruptcy jurisdiction and procedure and increase the cost of bankruptcy.

The Commission submits this Report on time, two years after its first meeting as required by law, and within its \$1.494 million appropriation. The Report has been published electronically, with only a limited number of printed copies, to save money and to increase the public accessibility of the Commission's recommendations—along with the scholarship that supports those recommendations. The entire Report is available on-line through the Government Printing Office website at www.access.gpo.gov. The Commission itself terminates by law on November 19, 1997, but the Commission's files and records will remain available to the public through the National Archives and other institutions. Those records include a comprehensive computer database of the submissions to the Commission and all of the transcripts of its meetings.

The Commission itself has had no legislative or judicial authority. Its work will have no immediate effect on the Bankruptcy Code, the rules formulated by the judiciary, or the determination of bankruptcy cases. The 1970 commission sent Congress a comprehensive revision of the entire bankruptcy system. This Commission has not found that necessary nor, under its charge, was that permissible. For these reasons, the recommendations do not generally take the form of specific statutory language.

The Commission's recommendations are just that: specific proposals for specific change—some with a broad reach, some very technical—submitted for the consideration of the Congress, the Administration and the judicial branch. They also are submitted to the public that ultimately determines, through the democratic process, the broad shape of American statutory law. The Commission's "authority" rests, accordingly, in the force of the recommendations and they, in turn, depend in part on the Commission's success in following the Congressional directive "to solicit divergent views of all parties concerned with the operation of the bankruptcy system."

In response to that mandate, the Commission has undertaken over the last 18 months an extraordinarily expansive and inclusive series of public hearings and meetings designed to solicit every point of view about the bankruptcy system, asking what works and what does not work. The Commission held 21 national and regional hearings over 35 days, attended by more than 2,600 people, devoting almost half of its entire budget to public meetings, hearings, communication and outreach.

Using a “roundtable” format, the Commission brought more than 600 people involved in the system—creditors and debtors, judges and trustees, lawyers and accountants, bank and credit union representatives, and academics—directly into its own deliberations. Virtually every Commission meeting included an “open forum” that, without limitation, permitted anyone to address the Commission about the bankruptcy system. Almost 300 people accepted that invitation—in Des Moines, in Seattle, in Akron, in Detroit, in San Diego and everywhere else the Commission met.

The Commission solicited and received written submissions and proposals from every state and on every conceivable subject related to bankruptcy, credit, business failure and reorganization, and family financial distress. There have been more than 2,300 submissions altogether. Available on a database, indexed by subject, these materials are an invaluable resource for the Congress and the public. No Commission, whatever its subject, has ever had this level of public and professional involvement—all of it volunteered—nor the benefit of so many ideas and proposals.

Acknowledgments

This Report is essentially the work of hundreds of volunteers, most from the bankruptcy community broadly-defined, who gave their time and counsel without compensation or reservation to help the Commissioners and the Commission staff. Those contributions have been invaluable and indispensable. While it is difficult to single out, from the many, particular individuals or organizations for acknowledgment, their effort warrants that.

No one has more direct experience with the Bankruptcy Code or with the debtors and creditors involved in the system than this country’s 315 sitting bankruptcy judges. The Commission received suggestions from more than one-third of them. A number of judges participated regularly in the Commission’s work—at the national and regional meetings and in the working groups. Particular recognition is appropriate for Hon. Thomas Carlson for his work on the small business proposals, Hon. John Akard, Hon. Ronald Barliant, Hon. Thomas Bennett, Hon. Joyce Bihary, Hon. Arthur Briskman, Hon. Leif Clark, Hon. Lisa Hill Fenning, Hon. Polly Higdon, Hon. Ralph Kelley, Hon. Keith Lundin, Hon. Margaret Mahoney, Hon. Geraldine Mund, Hon. Elizabeth Perris, Hon. Barry Schermer, Hon. Mary Davies Scott, Hon. Marilyn Shea-Stonum, Hon. Susan Sonderby, and Hon.

Arthur Spector for their work on a range of issues, and the Hon. Joe Lee for sharing the benefit of his years of experience. Hon. Richard Arnold and Hon. Conrad Cyr, of the United States Court of Appeals, and Hon. David Coar, of the United States District Court, are acknowledged for sharing their perspectives.

Institutionally, the Administrative Office of the U.S. Courts, under the leadership of Leonidas Ralph Mecham, made the Commission's work literally possible by donating the office space for its staff and support services. The Bankruptcy Judges Division, through Frank Szczebak and Beth Bowling, provided assistance and encouragement at every turn, attending virtually every Commission meeting. The National Conference of Bankruptcy Judges—under Hon. Louise Adler, Hon. Robert Martin, Hon. Frank Koger and Hon. Robert Hershner—was always involved in the Commission's discussions and meetings, providing yet another channel of communication between the bankruptcy judges and the Commission. The Federal Judicial Center through Gordon Bermant, Denise Neary and Beth Wiggins made the Commission and its work accessible to the bankruptcy bench as well.

The government's contribution to the Commission process was never limited to the judicial branch or to the federal government. From the outset, the Commission staff and individual Commissioners worked closely with the representatives of the U.S. Department of Justice, the U.S. Treasury Department, the Securities and Exchange Commission, the Pension Benefit Guaranty Corporation and, on the complex relationship between bankruptcy law and tax law, the Internal Revenue Service. Rather than offering an "official" position on any issue, they provided something more valuable: their expertise, their experience and a collegial willingness to discuss ideas and issues freely. In particular, Francis Allegra, Joyce Bauchner, Steve Csontos, J. Christopher Kohn, Judith Starr, Alan Tenenbaum and Tracy Whitaker provided invaluable suggestions and guidance.

The U.S. Trustee Program, under the leadership of Jerry Patchan, its director, is an indispensable part of the bankruptcy system, and the Commission reviewed the Program as part of its work. More than 35 attorneys from the U.S. Trustee's executive and field offices contributed to the Commission's substantive discussions—particularly in the area of small business reorganizations and consumer bankruptcy. In this regard, John Byrnes, Martha Davis, Joe Guzinski, Linda Stanley, and Marcy Tiffany were particularly helpful. Bankruptcy Administrators, from Alabama and North Carolina, shared their practical experience and ideas at the Commission's hearings and meetings.

State and local governments have an important role in the bankruptcy process, and the Commission worked closely with their representatives. In particular, the National Association of Attorneys General, through Karen Cordry, provided detailed suggestions to the Commission and thoughtful analysis of the issues pending before it. The Commission also had the contributions of the States'

Association of Bankruptcy Attorneys and a variety of helpful suggestions from the representatives of state, county and municipal governments across the country.

The Commission's ability to meet its statutory mandate to involve the entire bankruptcy community in its review of the system depended, in no small part, on the enthusiastic cooperation and support of a number of organizations. No group was more involved or supportive than the American Bankruptcy Institute, and no individual more encouraging than its executive director, Sam Gerdano. The American Bar Association, the American College of Bankruptcy, the Association of the Bar of the City of New York, the Commercial Law League of America, the Credit Union National Association, the National Association of Bankruptcy Trustees, the National Association of Chapter 13 Trustees, the National Association of Consumer Bankruptcy Attorneys, the National Association of Federal Credit Unions, the National Bankruptcy Conference, the National Consumer Bankruptcy Coalition, the National Multi-Housing Council/National Apartment Association, and the National Retail Federation and all made substantial and continuing contributions to the Commission's deliberations and the national dialogue on the bankruptcy system. Suzanne Bingham, who works with several of these organizations as a Washington, D.C., representative, was especially helpful.

The list of individuals who contributed generously of their time, through written statements, testimony and participation in the Commission's work, is long and distinguished. To all of them, whose names appear in the Appendix at the risk of omitting some, the Commission expresses its deep appreciation and notes, in particular, the contributions of Prof. Barry Adler, Dean Douglas Baird, Elizabeth Baird, Neal Batson, Raymond Bell, Donald Bernstein, Dean Cooper, Phil Corwin, Sarah Cummer, Mallory Duncan, Jan Elston, David Epstein, Nathan Feinstein, Malcolm Gaynor, Marcia Goldstein, Norma Hammes, Henry Hildebrand, Richardo Kilpatrick, John King, Prof. Kenneth Klee, Gary Klein, Ralph Mabey, Michael McEneny, Harvey Miller, Robert Mitsch, Max Moses, Sally Neely, Prof. Grant Newton, Hugh M. Ray, Michael Reed, Leonard Rosen, Jean Ryan, Bernard Shapiro, Myron Sheinfeld, Ike Shulman, Mike Sigal, Gerald Smith, Henry Sommer, David Sykes, Richard Toder, Myron Trepper, Ronald Trost, Robert Waldschmidt, Prof. William Whitford, and Joseph Wittman.

In the area of consumer bankruptcy, special recognition is due several individuals. Prof. Richard Flint regularly contributed his advice and ideas to the Commission and to individual Commissioners. Hon. William Brown and Prof. Lawrence Ponoroff accepted the Commission's assignment to analyze state and federal exemptions, focusing the Commission's debate in this area. The Commission also asked two judges and two law professors to review the difficult area of consumer discharge and dischargeability, and Hon. Samuel Bufford, Hon. Eugene Wedoff, Prof. Margaret Howard, and Prof. Jeffrey Morris responded with an analysis that was both comprehensive and thoughtful. Prof. Karen Gross gave the Commission the benefit

of her perspective and research on consumer financial education and its critical role in the debtor-creditor relationship.

The most difficult aspect of any acknowledgment is finding an appropriate way to thank those individuals who worked the longest and the hardest. That is particularly true in this process. The Commission decided, almost from the outset, to devote a substantial part of its financial resources to meetings and hearings, communications and outreach to the bankruptcy community and the public. That left a very heavy burden on the staff and the senior advisers who, for their extraordinary work, professionalism and devotion, can never be adequately thanked.

Susan Jensen-Conklin has served as the Commission's general counsel but, far more than that, she provided the skill, judgment and practical bankruptcy experience as well as the perseverance and stability that carried the Commission through all but three months of its active life, through the transition from one Chairman to another, and through more than 20 meetings and hearings with countless agendas, mailings, submissions and telephone calls. No less indispensable was the work of Elizabeth Holland and Melissa Jacoby, the senior staff attorneys who provided the Commission with their incomparable legal knowledge, extensive research, and thoughtful analysis. This Report is in many ways their report, and it is the result of incredibly long hours of work under trying circumstances.

Serving first as staff attorneys and then as volunteer staff attorneys, George Singer and Jennifer Frasier gave their legal skills and experience to the small business, tax and government working groups before returning to their law firms. The proposals from the Commission in these areas required hard work and comprehensive legal analysis, and they provided both. Judith Benderson, a bankruptcy lawyer on detail to the Commission from the U.S. Department of Justice, brought with her unique talents in Congressional and media relations and contributed significantly to the Commission's outreach efforts.

None of the remarkable analysis provided by the staff attorneys would have been possible, of course, without an administrative staff that supported their efforts and helped them disseminate that work—to the Commissioners, to the bankruptcy community and, now, to the public in this Report. Carmelita Pratt and Joe Kuehne provided that support with enthusiasm and dedication.

In Madison, "J.J." Vosskamp, a student at the University of Wisconsin Law School, helped the Chairman keep a schedule of more than 50 presentations and seminars and, in addition, lent his research and organizational skills to the preparation of the Report. Ann Virnig and the administrative staff at the Chairman's law firm provided invaluable support as well. The law clerks and staff in the chambers of Hon. Edith H. Jones and Hon. Robert E. Ginsberg and the staff at each Commissioner's law firm or company also warrant special appreciation. The work of Christiane

Wollaston-Joury and Andrea Rylander at Harvard Law School made the Report literally possible. They worked tirelessly with the Government Printing Office, the Commission staff and individual Commissioners to transform words into a report that can be read in published or electronic form.

In an 18-month period characterized by volunteer effort, none deserve more recognition, praise or gratitude than the individuals who served *pro bono* as senior advisers to the Commission. Prof. Lynn M. LoPucki of Cornell Law School and Prof. Jay L. Westbrook of the University of Texas Law School played major roles in the Commission's work on, respectively, data collection and dissemination and transnational insolvency. Prof. Jack Williams of the Georgia State University College of Law accepted the daunting task of chairing the Commission's ten-member tax advisory committee, acknowledged by name in the Appendix, which undertook an unprecedented analysis of the relationship between tax law and bankruptcy law. His group addressed more than 140 separate issues in six months, reached an unanticipated degree of consensus, and provided the Commission with specific recommendations that Congress will find invaluable.

Professor Lawrence P. King of the New York University Law School is this country's pre-eminent bankruptcy scholar and editor and of counsel to Wachtell, Lipton, Rosen & Katz. Stephen H. Case of Davis, Polk & Wardwell is a bankruptcy lawyer with a national reputation in corporate reorganization who, not incidentally, teaches consumer bankruptcy law. Both of them served, without compensation, as senior advisers to the Commission. Prof. King in the area of jurisdiction and service to the estate and Steve Case in the area of small business and partnerships lent their extraordinary talent and wisdom to the Commission, working daily—often, hourly—with the Commission's working groups and leading the discussions at Commission meetings. They provided consistency, structure and stability to the Commission's consideration of the bankruptcy system.

The Commission at its first meeting voted unanimously to appoint as its reporter and consultant Elizabeth Warren, Leo Gottlieb Professor of Law at Harvard Law School. For two full years, the Commission has been part of her daily professional life, and she has devoted countless hours, boundless energy, and rigorous intellectual standards to it. However, the Commission has only been one part, defined and limited, of her 20-year commitment to learning, teaching, and helping others understand the indispensable role of bankruptcy in American law, economics, and life. That commitment will continue and, for that no less than her major contributions to the Commission's process and Report, the Commission and staff express their appreciation and gratitude.

This preface concludes with a personal note. The Commission began under the chairmanship of Mike Synar, who served the people of Oklahoma and the United States as a member of the U.S. House of Representatives for eight terms beginning in 1979. President Clinton appointed him to head the Commission—no doubt to bring to it the same enthusiasm, the same belief in basic principles of fairness and the same interest in the law that characterized his work in Congress. Illness led him to resign his position late in 1995, and he died soon after that. His legacy lies not in any recommendation, nor in the Report itself, but in the commitment—shared by every member of the Commission, by its staff, and by the thousands of people who worked with them—to a balanced bankruptcy system that protects creditors and debtors and that well serves the American economy and the American public.