THE IMPACT OF PROPOSED CHANGES IN BANKRUPTCY ADMINISTRATION

PREPARED FOR THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES

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This document is the final report of a study undertaken at the request of the Commission on the Bankruptcy Laws of the United States to investigate and compare the impact of various proposed changes in the management of the U.S. bankruptcy system. The focus of the study was heavily influenced by frequent meetings between the authors and the Commission staff. The report should assist Commission members in evaluating the many proposed changes which they must consider; it will also benefit the administrative personnel who will be charged with implementing the Commission's recommendations.

A second report resulting from this study, An Application of Automation to Bankruptcy Administration and Processes, R-1316-COBL, examines the past experience, future requirements, and potential costs of automating bankruptcy proceedings.
SUMMARY

Many proposals have been suggested to improve the effectiveness and the efficiency of the bankruptcy system of the United States. This final report presents the results of a Rand research study designed to evaluate the impact of these proposals, particularly those intended to reduce the costs of processing personal bankruptcy cases and those intended to improve the management of the system.

More specifically, we have estimated the costs of current bankruptcy functions, evaluated the costs and benefits of some specific proposed changes, and evaluated the potential uses of automated data-processing equipment in the administration of bankruptcy cases.

Our findings are based on observations and interviews in a number of bankruptcy districts; analysis of statistical data compiled by the Administrative Office; new samples of data collected from case records and clerical personnel; and a review of the current bankruptcy literature. We must caution the reader that our estimates of the national impact of various proposals are subject to considerable uncertainty because of the quality of the records from which they are derived and the extensive variation in practices between districts. We would suggest an experimental approach to any major changes intended to affect the behavior of the various parties concerned with bankruptcy proceedings.

Our observations of bankruptcy proceedings convinced us that the following conditions, which a new management system might properly address, currently exist:

(1) There is considerable variation in the treatment of like cases of debtors between jurisdictions. This is most obvious in the handling of exemptions, abandonment of minor assets, choice of remedy, and financial advice.

(2) There are several practices currently employed whose contribution to bankruptcy objectives do not
appear to justify their costs. The most striking of these is the pursuit of small assets in minor cases and the pretense of adversary proceedings where none are likely to occur.

(3) There are neither simple nor consistent procedures for recording the actions or decisions of bankruptcy personnel. The lack of these data imposes a serious constraint on any attempted performance evaluation or centralized control.

In FY 1972, operation of the bankruptcy courts cost the participants and the taxpayers approximately $17 million, about one-third of which went for processing no-asset and nominal-asset cases. Low-asset cases cost more than twice as much to administer than did no-asset cases. In an overall accounting of bankruptcy expenditures, however, these court costs are dwarfed by attorneys' fees and trustee expenses.

The study produced four different models to compare the costs of alternative approaches to the administration of straight-bankruptcy cases: a Current model following existing procedures; a "New-Rules" model reflecting the proposed new rules before the Supreme Court; a Streamlined model, resulting directly from our work, which represents the lowest possible processing costs; and a Counseling model, incorporating the streamlined function and extensive financial counseling for individual debtors. Total annual costs to process straight-bankruptcy cases would amount to $36.2 million, $33.7 million, $26.4 million, and $30.2 million for each model, respectively, assuming no changes in the present caseload. Adoption of the Streamlined over the Current model would result in net annual savings of approximately $3 million in court costs and $7 million in trustee costs. Approximately $6 million of these savings would be achieved by adopting a policy of abandoning low-asset (under $1000) estates to the debtor. Providing extensive counseling, as suggested by the fourth model, for all personal bankruptcy cases would add about $4 million to costs of any of the other models. If attorneys were not required in the filing of no-asset and low-asset cases, their current fees of approximately $43 million annually would be reduced to about $9 million.
Current experience with automated systems indicates that both straight bankruptcies and wage-earner plans can be easily accommodated in an automated data-processing system. After considering a number of alternative system configurations, we concluded that the preferred design would involve a single centralized processing facility with local entry of records. The processing characteristics of the bankruptcy workload do not justify the added expenses required to utilize either remote entry of records or regional systems.

The system contemplated in this study would cost approximately $670,000 to design and develop over a two-year period. A phased implementation schedule would require an additional two years. The complete automation of bankruptcy proceedings would require an additional $300,000 above the cost of the proposed streamlined manual system. In return for this added expense, the bankruptcy administrators would obtain timely and accurate information on current operations and, for audit purposes, detailed visibility of the proceedings in individual cases. This information could not be obtained manually for anything like the same costs.
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I. INTRODUCTION AND OVERVIEW

This document is the product of research undertaken to identify potential improvements in the management and administration of bankruptcy proceedings. It focuses on the cost of current practices and the impact of proposed changes suggested by the Commission on the Bankruptcy Laws of the United States.

The results presented in this report are based on a review of existing literature, observations and interviews in bankruptcy courts, analyses of data generated by the Administrative Office of the U.S. Courts, and supplementary data collected from bankruptcy files. We caution the reader that all of our estimates are subject to some uncertainty resulting from limitations of the data from which our projections are made and from variations in practice encountered between Bankruptcy Court Districts.

THE BANKRUPTCY SYSTEM

The Bankruptcy Statute of 1898, as amended, specifies the following objectives of the U.S. Bankruptcy System:

1) establish a uniform system of bankruptcy administration;
2) protect the interest of creditors and ensure that they are treated fairly;
3) grant relief to debtors through discharge and rehabilitation;
4) consolidate the issue of debt dischargeability determination in the Bankruptcy Court;
5) control the collection of fees and establish court-supervised liquidation of bankrupt estates;
6) be fiscally self-supporting; and
7) maintain full operational control of the bankruptcy process within the judiciary.

The Act consists of fourteen chapters that collectively define the terms and conditions for bankruptcy administration. Chapters I through VII specify that all federal district courts are also courts of
bankruptcy; create the judicial office of referee in bankruptcy, set forth the rights and duties of debtors in bankruptcy and their creditors; establish the procedural steps to be followed; create the office of trustee and state his duties and powers; specify how the assets in the bankrupt's estate are to be administered and disbursed; and set the procedures for the initiation, processing, and termination of straight-bankruptcy cases. Approximately 85 percent of all cases are processed as straight-bankruptcy cases.

Chapter VIII of the Statute deals with the reorganization of inter-state railroads. Filings under this chapter are very infrequent.

Chapter IX covers the composition of debts of certain public authorities, and is also rarely used.

Chapter X addresses the reorganization of corporations whose stock is publicly held. A Chapter X plan can affect the company's capital structure, and can include both secured and unsecured debts. Less than 0.1 percent of the annual filings fall in this category.

Chapter XI specifies how the debtor in business can arrange with his creditors, under court supervision, for an extension of time to pay his debts, or for a reduction in the amount of unsecured debts to be paid. Only unsecured debts can be included in the payment plan, and a majority of the creditors must consent before the plan can be approved. Approximately 0.15 percent of all case filings fall in this category, or about 6 percent of all business bankruptcies. A typical Chap. XI case takes about 2-1/2 years to be processed.

Chapter XII deals with noncorporate debts of the bankrupt that are secured by liens on real estate. This chapter allows for arrangements to pay this type of debt. Chapter XII cases are uncommon; only about 0.05 percent of all case filings fall into this category.

Chapter XIII deals with those proceedings in which a wage earner can propose to pay all or part of the creditors' claims over an extended period of time, under the supervision of the court. A majority of the unsecured creditors and all secured creditors whose claims are dealt with by the plan must agree in order for the plan to be approved. Approximately 15 percent of all case filings are Chap. XIII's. The average wage-earner plan lasts 2 to 3 years, and about half of them are successful.
Chapter XIV deals with bankruptcies involving maritime liens and is rarely used.

In addition to the Bankruptcy Statute as amended, rules and guidelines for procedures are specified in certain other places: General Orders or Rules of the Court supplementing the Act and promulgated by the Supreme Court; official forms that indicate the required information and their recommended format for the steps in bankruptcy; local Rules of the Court set down by the local district court judge (these may vary from district to district); and State Exempt Property Laws specifying what property and/or dollar value of goods a bankrupt does not have to surrender to the court for distribution to his creditors.

For the last several years the annual rate of new filings has averaged about 200,000 new cases per year nationally. Two categories of cases--straight bankruptcies and wage-earner plans (Chap. XIII)--account for over 99 percent of the volume, and consume over 70 percent of the bankruptcy personnel and budget resources. Less than 2 percent of the total case filings are involuntary.

A typical straight-bankruptcy case proceeds as follows. With the aid of his attorney, the debtor prepares a petition describing his current financial status and the debts from which he seeks relief. The petition is filed with the district court clerk. Several weeks later the debtor appears before the referee to be examined. At either the creditor's or the referee's option a trustee can be appointed to determine the nature of the assets contained in the debtor's estate. If there are assets over and above those exempted for the debtor by state law, then the trustee will collect and liquidate them. The proceeds from this liquidation are first used to pay the expenses of administering the estate, and the remainder is distributed among the creditors. Unless the debtor has committed certain fraudulent acts to which his creditors object, he is adjudicated a bankrupt and discharged of his debts.

In actual practice, creditors rarely participate except to object to the discharge of their specific debt. Most referees routinely appoint a trustee to examine the debtors and collect the small amount of assets that normally are found in a personal bankruptcy case.
Less than 10 percent of the annual bankruptcy filings involve an operating business. Of the business-related filings, over 90 percent are for straight bankruptcy, about 6 percent are processed under Chap. XI, and about 1 percent are for relief under the other chapters.

The wage-earner plans under Chap. XIII are an alternative to straight bankruptcy. A debtor who earns a living from a salary, hourly wages, or commissions can utilize this plan to avoid bankruptcy. These plans allow the wage earner, under court supervision and control, to arrange to pay his debts or a portion of them over a specific period of time, and to retain his assets. Currently over 30,000 wage-earner plans are begun each year, and there is a pending case inventory of 65,000.

Presently there are over 150 offices in the 93 federal districts, in which approximately 185 full-time and 33 part-time referees preside. These referees are appointed by district court judges and serve for a term of six years. For all practical purposes, the referee is the judge in a bankruptcy proceeding. When the district court clerk refers a case to a referee, all matters relating to that bankruptcy proceeding must be brought before that referee. The referee has the power to administer oaths, examine witnesses, request the presentation of documents, conduct examinations, and generally to hear controversies relating to property in the bankrupt's possession. In addition, the referee has the duty to provide notice to creditors and other interested parties, to cause the preparation and filing of the schedule of assets and list of creditors of the bankrupt if the debtor fails to do so, to examine the bankrupt's statement of affairs, to provide information on the proceedings to interested parties, to declare dividends, to allow or disallow creditor claims, to publicly examine the debtor at the first meeting of creditors, to conduct hearings as to the bankrupt's right of discharge to all or any one debt, and to dismiss or discharge the bankrupt's petition.

Referees are supervised by district court judges, under direction provided by the Judicial Conference of the United States, the general governing body of the Judicial Branch. In addition, the Bankruptcy
Division of the Administrative Office of the U.S. Courts provides central administrative services and some coordination, primarily in financial, statistical, and office management functions.

PURPOSE AND SCOPE OF THE STUDY

In its most general form, the main issue considered by this study has been whether the management and administration of personal bankruptcy cases can be improved, and if so, what direction these improvements should take. More specifically, we have

- Estimated the cost of current bankruptcy functions.
- Estimated the costs and benefits of procedural changes being considered by the Commission.
- Evaluated potential uses of automated data-processing equipment in processing bankruptcy cases.

As the study progressed, we included in our considerations the apparent inclination of the Commission to favor: (a) extending the quality or degree of protection afforded the consumer debtor, and (b) reducing the need for judicial consideration in routine cases.

METHODOLOGY

In conducting this study we relied on the following sources of data:

1. Observation of bankruptcy proceedings in a variety of districts.
2. Interviews with referees, trustees, attorneys, and Administrative Office personnel.
3. Testimony of witnesses before the Bankruptcy Commission.
4. Case records and docket sheets of bankruptcy cases.
5. Statistical data compiled by the Administrative Office.
6. Research reports, journal articles, and educational materials concerned with bankruptcy matters.

Appendix A contains supplementary tabulated data, and Appendix B lists persons and places visited. A selected bibliography is also included.
Our cost methodology is presented in more detail in Sec. II. Basically, it consisted of collecting time-study data for basic functions; sampling case records to determine how frequently these functions were performed in various categories of cases; and extrapolating data on important events occurring too infrequently in the sample to provide meaningful estimates.

We estimated other impacts of proposed changes both by discussing them with knowledgeable practitioners and by relying on our own observations in districts that were following a variety of practices.

Proposed Alternative Approaches

A number of major changes in bankruptcy administration practices suggested by knowledgeable institutions or persons for the Commission's consideration have been included in this analysis:

1. Removing the responsibility for bankruptcy administration from the judiciary and placing it in an independent administrative agency.

2. Establishing a new office, an Official Trustee, within the judiciary to be responsible for all nonjudicial aspects of bankruptcy administration. The personnel of this agency would replace the private trustees, receivers, accountants, and others who currently serve on individual cases.

3. Extending the powers of the bankruptcy court to deal with secured creditors and to offer greater protection to the debtor after his discharge has been granted.

4. Providing extensive counseling services to debtors from the time they indicate a desire to file so that they might be better informed of the various options available to them. This counseling might also reduce the requirement for the debtor to hire a private attorney.

Many of these proposals currently before the Commission have not yet received any significant field testing. We can only speculate about the eventual impact of such untried changes on the decision of debtors to file or the negotiating stance of creditors. The impact of such measures is further obscured by the complexities and interaction
of various proposals now before the Commission. In addition to drastically streamlining current functions, such reforms would substantially increase the responsibilities of bankruptcy officials for counseling the debtor and protecting his interests after discharge. Still other proposals would increase the attractiveness of straight bankruptcy and Chap. XIII bankruptcy to debtors who currently do not find it in their interests to file.

Study Constraints

The following constraints encountered during analysis of the current bankruptcy proceedings can be expected to introduce considerable uncertainty in our quantitative estimates:

- Variation in practices and goals.
- Presence of institutional inertia.
- Incomplete and inconsistent data.
- Lack of experimental evidence.
- Complexity of proposed changes.

Further, the impact of any particular procedural change will depend on certain factors, such as the following:

- Local procedures currently in effect.
- Referee's interpretation of new procedures.
- Reaction of the local bar.
- Attitude of debtors.
- Caseload size and mix.
- Competence of bankruptcy participants.

Because of the extensive variations between districts in each of these factors, it was difficult to predict what impact a procedure employed in one area could be presumed to have in others. At the present time it is possible to make only the most general observations with any accuracy; extensive experimentation and analysis of the proposed changes would be needed to predict more specific results.

One important characteristic of the present system is the influence of institutional inertia, and therefore of historical events, on current practices. Districts that seem quite similar in caseload
characteristics may vary considerably in actual practice because of initiatives taken by single individuals sometime in the past. Once such practical differences are introduced, there do not appear to be any counteracting forces to bring differing practices back together.

The tracking data available in current case records is somewhat suspect because of local variations (even between individual clerks) in the manner of entry for particular events in the case file or docket sheet. Since these records are not currently used or checked for management reporting purposes, these discrepancies are allowed to proliferate without any controls or documentation. Further, comparisons of docket and case-record entries show a considerable degree of omission or inaccuracy. Such inconsistencies may not cause any severe problems in the routine processing of cases, but they do lead to considerable error in statistical inference, as well as encumber the data collection process.

Because of such extensive variations in local practices and financial conditions, we feel that the performance of the current bankruptcy system will continue to defy all but the crudest analysis until more uniform policies and practices are established and essential data elements can be collected as a routine part of processing each case. Since the cost and effort of participating in bankruptcy proceedings exert a major influence on the expected returns for both creditors and debtors, we feel that controversial reforms can be evaluated only in the light of actual experience. Standard economic theories of individual behavior simply will not apply because of the significant nonmonetary outcomes involved in bankruptcy proceedings.

RESEARCH OVERVIEW

In evaluating the performance of current bankruptcy management practice, we have considered the consistency with which the law is applied, the efficiency with which it is administered, and the effectiveness of the system in meeting the bankruptcy goals. One of the most obvious inequities in the present process is the variation in policy practiced by separate referees, and the resulting inconsistencies in the manner with which similar debtors are treated in different districts. We
presume that one objective of an improved management process would be to reduce the degree of inconsistency presently encountered.

Whether or not the current expenditures in bankruptcy administration can be considered excessive is a somewhat subjective matter. We have identified several areas, however, in which costs can be reduced without any substantial impact on the quality of performance—provided cost reduction is a goal to be sought.

There are four criteria to measure the effectiveness of bankruptcy administration most directly:

- The availability of relief to debtors.
- The degree of relief provided.
- The prevention of debtor abuse.
- The protection of creditors.

The evaluation of these measures is beyond the scope of the present study. We simply point out that the bankruptcy system does not currently collect the data necessary to routinely evaluate its performance in any of these areas. If improvements in effectiveness are to be sought, such evaluations will have to become part of the management process.

Specific Management Shortcomings

If the objective is to operate a bankruptcy system which provides all debtors with a consistent means of relief at a minimum of cost, then the present system has several deficiencies.

The first is the lack of standards for treating individual debtors; these are most apparent in the specific areas of exemptions, abandonment of minor assets, choice of remedy, and financial advice, particularly in dealing with secured creditors. As long as these matters are left in the hands of independent referees and attorneys, the inequities encountered today will continue to exist.

Another shortcoming is the lack of accurate and timely management data by which the performance of the system and all of its components can be assessed. In order to allocate resources, determine the need for new procedures, or monitor the performance of individual offices, the bankruptcy system must routinely collect and analyze data on the
characteristics of debtors, the characteristics of each case, the
tasks that are required to dispose of each case, and the outcome of
major decision points.

The most striking waste of effort in current bankruptcy practices
is the pursuit and liquidation of minor assets. More than 80 percent
of nominal-asset and asset cases realize less than $1000 to cover
both administrative expenses and returns to creditors. The only
beneficiaries from this practice are the trustees involved. The
pursuit of these assets means a net loss to the courts and the debtor,
and insignificant returns to creditors.

Another unproductive practice is the pretense of adversary pro-
ceedings where none are likely to occur. The debtor's presumed need
to retain an attorney exceeds, on the average, more than half the cost
involved in no-asset and nominal-asset cases. Observation of the
performance of attorneys representing debtors in most minor cases leads
us to conclude that many debtors receive little value from the counsel
rendered.

The last factor which contributes needless costs to current pro-
ceedings is the lack of a simplified procedure for recording actions
and decisions for routine cases, and the routine approvals required from
the referee for activities by other personnel. The redundant paperwork
generated in informing all interested parties of routine actions and
in securing the referee's approval for long-accepted standard activities
results in wasted clerical and professional time.

We conclude that these shortcomings, if they are considered serious,
can best be remedied by transferring the responsibility for processing
personal bankruptcy cases to some form of centrally managed administra-
tive agency. Such an agency would then have the power and the motiva-
tion to introduce the needed reforms.

**Summary of Costs**

The operation of the bankruptcy courts cost the taxpayers approxi-
mately $17 million in FY 1972. About one-third of these costs were con-
sumed in the processing of no-asset and nominal-asset cases—$4.6
million and $2.1 million respectively. The cost of processing each
category of case is shown in Table 1, and discussed further in Sec. II.
Table 1

BANKRUPTCY COURT COST BY CASE TYPE
(Estimated for 1971 Caseload)

<table>
<thead>
<tr>
<th>Case Type^a</th>
<th>Unit Cost ($)</th>
<th>Total Cost ($ million)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Assets</td>
<td>40</td>
<td>4.6</td>
</tr>
<tr>
<td>Nominal Assets</td>
<td>80</td>
<td>2.1</td>
</tr>
<tr>
<td>Assets</td>
<td>158</td>
<td>3.8</td>
</tr>
<tr>
<td>Chapter X</td>
<td>7,661</td>
<td>1.2</td>
</tr>
<tr>
<td>Chapter XI</td>
<td>1,207</td>
<td>2.1</td>
</tr>
<tr>
<td>Chapter XII</td>
<td>2,886</td>
<td>.4</td>
</tr>
<tr>
<td>Chapter XIII</td>
<td>88</td>
<td>2.8</td>
</tr>
</tbody>
</table>

^aSee pp. 1-3 for description of case types.

The cost of processing low-asset cases is at least twice as high as for no-asset cases, and substantially greater than their return to the Referees' Salary and Expense Fund.

In an overall accounting of bankruptcy costs, these court costs are dwarfed by attorneys' fees and trustee expenses, especially in minor cases.

ALTERNATIVE PROCESSING MODELS

The area of bankruptcy administration with the greatest potential for cost savings lies in the processing of straight-bankruptcy cases. This area is also the one that would be most directly affected by the adoption of the Official Trustee option.

To illustrate the impact of proposed major changes in the form of bankruptcy administration, we designed models to estimate the cost of three alternative approaches to the present system; we have labeled these the "New-Rules," Streamlined processing, and extensive Counseling models. The New-Rules model simply reflects the impact of the new bankruptcy rules currently before the Supreme Court. The Streamlined model is the result of this research. It represents the least costly processing system that we believe feasible to execute the functions of bankruptcy administration. The Counseling model incorporates extensive
counseling for individual debtors. In the Streamlined and Counseling models, substantial savings in court costs are achieved by eliminating the referee's participation in all no-asset and low-asset cases, except for resolving disputes. Clerical and trustee savings are obtained by screening cases at the time of filing, and abandoning to the debtor all estates of less than $1000 in recoverable value. In no-asset and low-asset cases, there would be no subsequent meetings after the filing of the petition with the debtor. Creditors are informed of the debtor's action and the disposition of the case by a single notice. Debtors in these minor cases would not require an attorney.

In the Counseling model, an average of four hours is provided for investigation and counseling in each case to assist the debtor in selecting the appropriate course for his financial affairs. For comparison, all models use some form of the "Official Trustee" concept. These models are discussed more fully in Sec. III.

Costs for each model are shown in Table 2 along with the expected returns to creditors. Court costs include the referee and his clerical support. Official Trustee costs include the salaries of all required trustees, receivers, accountants, counselors, and other administrative personnel. They also include their clerical support, some of which now is housed in the bankruptcy court.

In arriving at these figures, we divided the straight-bankruptcy caseload into three categories: no-asset, low-asset (less than $1000) and high-asset (greater than $1000) estates.

Table 2
SUMMARY COST COMPARISON OF STRAIGHT-BANKRUPTCY PROCESSING MODELS
($ million)

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Current System</th>
<th>New Rules</th>
<th>Streamlined</th>
<th>Counseling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court</td>
<td>5.3</td>
<td>5.1</td>
<td>2.4</td>
<td>2.4</td>
</tr>
<tr>
<td>Official Trustee</td>
<td>30.9</td>
<td>28.6</td>
<td>24.0</td>
<td>27.8</td>
</tr>
<tr>
<td>Total</td>
<td>36.2</td>
<td>33.7</td>
<td>26.4</td>
<td>30.2</td>
</tr>
<tr>
<td>Returned to Creditors</td>
<td>87.1</td>
<td>87.0</td>
<td>84.4</td>
<td>84.4</td>
</tr>
</tbody>
</table>

NOTE: Based on FY 1971 caseload data.
Adoption of the Streamlined model over the current system could result in a net savings of approximately $3 million in court costs and $7 million in trustee costs. Between $6 and $7 million of these total savings are attributable to the policy of abandoning low-asset estates. Adopting this policy would result in a net loss to creditors of less than $3 million annually.

The provision of extensive counseling in all personal bankruptcy cases would add approximately $4 million annually to the costs of the Official Trustee. However, it might be possible to cut this counseling effort in half without seriously reducing its effectiveness by carefully selecting the cases for which counseling should be used.

The annual expenditure for attorneys to handle straight-bankruptcy cases is estimated to be approximately $43 million. If attorneys were not required for the filing of no-asset and low-asset cases, this large expenditure could be reduced to about $9 million, a potential $34 million saving to debtors. This method should be considered in evaluating the benefits of a counseling program. These matters are discussed further in Sec. III.

AUTOMATION OF BANKRUPTCY ADMINISTRATION

The Commission on the Bankruptcy Laws of the United States has been particularly interested in the potential application of electronic data processing (EDP) to the administration of bankruptcy cases. A companion report examines current automation experience, workload requirements for automating straight-bankruptcy and Chap. XIII cases, alternative system configurations, the potential costs and benefits associated with automation, and feasible development strategies. Findings are presented in this report in Sec. IV.

*M. R. Fiorello and A. B. MacInnes, An Application of Automation to Bankruptcy Administration and Processes, The Rand Corporation, R-1316-COBL.*
To study the impact of automation on straight bankruptcy we designed two processing models: one representing current procedures and the other representing a streamlined procedure in which cases are screened at intake and segregated into no-asset and asset categories. No-asset cases are immediately closed with one consolidated notice sent to all creditors and affected parties. These two processing models show the maximum and minimum requirements that an automated system would have to support.

Approximately 38 bankruptcy offices currently employ automated processing in handling their Chap. XIII cases. These systems are contracted for by the local Chap. XIII trustee. Only two referees have contracted with vendors for automation of straight-bankruptcy cases—one in the Eastern District of Lexington, Kentucky, and the other in the Eastern District of Little Rock, Arkansas.

Experience with existing systems shows that the EDP system can perform the following functions in both Chap. XIII and straight bankruptcies:

- The basic petition or wage-earner plan data can be automatically put into the system, establishing a basic record.
- The computer can automatically prepare routine notices and keep track of all funds.
- Checks can be automatically prepared following the wage-earner plan or the trustee's instructions.
- Notices of special meetings can be automatically prepared upon request.
- Summary reports and exception notices can be prepared automatically for management purposes.
- Management statistics can be compiled for each office to support analysis of current operations or pending changes.

Based on current bankruptcy trends, we have assumed a national caseload of 120,000 no-asset, 24,000 nominal-asset, 26,000 asset, and
30,000 Chap. XIII cases. This workload would result in a daily input volume of approximately 6 million characters under current procedures, or 4.5 million characters using the streamlined procedures. The storage requirements would approach 1.5 billion characters for active cases. The system would produce approximately 2 million lines of output per day under the streamlined system.

We have considered both regional and centralized processing systems employing either remote (on-line) or local (computer-site) data entry. The centralized local-entry system appears clearly preferable to the other alternatives. Neither the processing speed of the on-line system nor the redundancy of a regional system offers sufficient benefits to bankruptcy administration to justify their costs.

The system contemplated in this study would cost approximately $670,000 to design and develop. Hardware costs would run from $530,000 to $630,000 per year. The personnel costs associated with the EDP operation would be about $1.2 million per year, displacing substantial clerical personnel in bankruptcy offices.

An automation of either the streamlined or current procedures is likely to cost between $300,000 and $400,000 more than the analogous manual systems. In return for these costs, the bankruptcy administrator would obtain the following benefits:

- Current and complete data on resource consumption.
- Control over accessibility to bankruptcy files.
- Greater asset visibility and tighter fiscal security.
- Greater interest on pooled assets.
- Current statistical reports.
- Adaptability to geographic changes in workload.
- Better visibility of debtor characteristics.
- Ability to monitor changes in procedure.
- Data base for predictive analysis.
RESPONSE TO THE COMMISSION

Part of the study provides responses to specific questions raised by the Bankruptcy Commission staff at the outset of our investigation. The questions are discussed in Sec. V, and findings are summarized below.

1. Elimination of the creditors' meeting in no-asset cases would save about $750,000 per year in court costs.

2. Elimination of the filing and allowance of claims when no dividend is expected would save about $422,000 per year in court costs.

3. Preparation and issuance of notices of bankruptcy to creditors by the petitioner could save $1 million a year in court costs. But the cost to debtors would be substantially higher than the savings achieved.

4. Dischargeability hearings appear to cost the courts about $500,000 annually.

5. Elimination of false financial statements as the basis for an exception to discharge would eliminate 95 percent of all dischargeability hearings.

6. If notices of discharge were not required and notices of nondischarge were prepared only when a dismissal occurred, the annual savings to the court would be about $1 million.

7. A provision for counseling all wage earners before they file would cost at least $1.2 million annually. The results of such counseling are difficult to predict because bankruptcy professionals hold such diverse views on the relative benefits of Chap. XIII proceedings.

8. A public corporation trustee established to screen, audit, and liquidate assets in all straight-bankruptcy cases involving less than $1000 in realizable assets would require about 82 direct trustee personnel. We
cannot identify any substantive effects resulting from this change unless the basic responsibility for handling consumer cases is shifted from the referee.

9. Within the present system of administering bankruptcy cases, abandoning to the bankrupt all property in estates of less than $1000 value would result in savings of approximately $5 million in trustee costs and $2 million in court costs. The loss to creditors would be less than $3 million, or $70 per case.

10. The referees' calendars in Los Angeles showed an average of five contested matters scheduled for hearing per working day. Forty-six percent of the hearings involved the allowance of claims.

11. When the scope and function of the new corporate trustee become clear, we suggest that several forms of field organization be considered for various parts of the country. These would involve: (1) local administration by referee or corporate trustees, and regional clerical processing by a centralized staff; (2) regional administration from a few centrally located offices, relying on phone and mail service to communicate with debtors; and (3) regional administration with local counseling provided by counseling agents in the field.

12. In order to make up the current $6 million deficit in the Referees' Salary and Expense Fund, we find these suggestions appropriate:

(1) Filing fees could be raised by $30 per case.

(2) Filing fees for asset and chapter cases only could be raised by $100.

(3) Charges against estates in bankruptcy could be raised by 6 percent.

(4) A $100 charge could be required when a contested hearing is requested.
The first option falls most heavily on personal bankrupts, the second on low-asset cases, the third on high-asset cases, and the last on contesting parties.
II. THE COST OF BANKRUPTCY ADMINISTRATION

The purpose in designing a cost model is twofold: to determine the cost of various functions in the current system and to evaluate the cost impact of proposed changes.

Under the present system most of the costs are expended for the following categories of personnel:

- referees
- trustees and other appointed personnel
- direct clerical
- administrative (supervisory) clerical

Nonpersonnel costs include:

- postage and mailing
- stationery and supplies
- space, utilities, telephones, etc.
- travel
- office equipment and furniture, computer expense

We have estimated costs for each of these categories for both asset and no-asset bankruptcy cases.

BUILDING A BANKRUPTCY COST MODEL

Normally the following procedure is used to obtain costs for the production of any given product. The sum total of the input resources required is divided by the total units produced, to derive an average or representative unit cost. Input resources could include direct and indirect labor, materials, tooling, and overhead, for example. Unfortunately, using this type of calculation to derive an average bankruptcy case cost does not assure meaningful results, because the same people work on a variety of cases—such as personal asset and no-asset, business, corporate, and wage-earner cases, each of which requires varying resources. Further, we need to obtain costs by function, such as claims processing, calendar docketing, etc., so that the potential cost savings attributed to elimination of functions can be determined.
It would have been desirable to use nationwide average clerical costs to predict the impact of proposed changes on the court's resources. Unfortunately, neither the clerical costs nor the data to derive them exist at the national level. Instead we have utilized the Los Angeles Bankruptcy Court, the nation's largest by volume, to sample clerical input/output relationships, and extrapolated these in turn for the nation as a whole. During a 2-week period in November 1972, we conducted a special time-study survey of the operations of the 4 Los Angeles referee suites to get time-output data describing bankruptcy processes. The Los Angeles office (Central California Court District) is comprised of 11 referees, 8 located in Los Angeles at the Federal Courthouse, and 3 located in cities outside of Los Angeles. The 8 Los Angeles referees are further divided into 4 suites, each consisting of 2 referees and approximately 10 or 11 clerks. In addition, there is a 5-man staff attached to the clerk of the court which supports all 11 referees and a centralized reproduction and mailing facility employing 12 staff members devoted entirely to bankruptcy matters. The 2-man referee suites are quite independent of each other and function the same as if they had separate offices.

We distributed questionnaires to all of the clerical staff of each suite, asking the clerks to record their time and output by case. For some of the functions, such as calendar and claims where this was not possible, we approximated case costs.* We then averaged the data by function to obtain mean times necessary to perform each job. By multiplying these mean times by the appropriate salary, using JSP-ratings ** at Step 3 by job description, we obtained an average cost. The study provides for other clerical costs, such as clerk of the court, telephone answering, receptionist activities, general supervisory work, and general secretarial functions in the overhead or indirect administrative clerical costs.

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* We made a side study of this by estimating the average number of claims processed per case.
** JSP ratings are the equivalent for the Judicial System of GS (Government Service) job classification ratings.
The last personnel cost to be included in the cost model was that of the referee. Since the Administrative Office of the U.S. Courts had recently conducted a referee case-profile study that had produced typical referee time inputs per case, we used that information to cost the referee input.

Nonpersonnel costs, such as stationery, space, utility costs, travel, etc., were obtained from the annual budget of the Administrative Office; these were prorated by case.

**TYPES OF DATA USED IN THE COST MODEL**

We required several types of data for the cost model: data describing the system characteristics (number and type of cases), data describing the system resource requirements (personnel and other costs), and data on the frequency of occurrence of various system functions.

The Annual Report of the Director of the Administrative Office of the U.S. Courts (1971) gives the following breakdown of cases for the nation as a whole and for the Central District of California--basically Los Angeles--which is the principal source of our cost data, as shown in Table 3.

**Table 3**

**BANKRUPTCY CASES--FILINGS FOR FISCAL YEAR 1971**

<table>
<thead>
<tr>
<th>Type of Case</th>
<th>Number of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Nationwide</td>
</tr>
<tr>
<td>Involuntary</td>
<td>1,215</td>
</tr>
<tr>
<td>Straight bankruptcy</td>
<td>167,149</td>
</tr>
<tr>
<td>Chapter X&lt;sup&gt;a&lt;/sup&gt;</td>
<td>179</td>
</tr>
<tr>
<td>Chapter XI&lt;sup&gt;a&lt;/sup&gt;</td>
<td>1,782</td>
</tr>
<tr>
<td>Chapter XII&lt;sup&gt;a&lt;/sup&gt;</td>
<td>120</td>
</tr>
<tr>
<td>Chapter XIII&lt;sup&gt;b&lt;/sup&gt;</td>
<td>30,904</td>
</tr>
<tr>
<td></td>
<td>201,352</td>
</tr>
</tbody>
</table>

<sup>a</sup>Chapters X, XI, and XII of the U.S. Bankruptcy Statute deal principally with corporate case reorganizations. Chapter X cases are those in which the public holds securities; Chap. XI cases are for those companies without secured debt, and Chap. XII involves real-estate security.

<sup>b</sup>Chapter XIII covers wage-earner plans.
Table 3 shows that Los Angeles processes about 10 percent of the nation's straight bankruptcies, excluding those cases labeled Chap. X to Chap. XIII; it therefore is the largest single source of data available.

We were able to obtain data on referee time expenditures by case type, as shown in Table 4, from the Memorandum for the Committee on Bankruptcy Administration, September 14, 1971. These times are the result of referees recording the actual time expended on individual cases during the first 6 months of 1971.

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Referee Time (hr)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No assets</td>
<td>0.6</td>
</tr>
<tr>
<td>Nominal assets</td>
<td>1.2</td>
</tr>
<tr>
<td>Assets $0 - $999</td>
<td>1.9</td>
</tr>
<tr>
<td>$1000 - $9,999</td>
<td>5.9</td>
</tr>
<tr>
<td>Over $10,000</td>
<td>32.9</td>
</tr>
<tr>
<td>Chapter X</td>
<td>243.2</td>
</tr>
<tr>
<td>Chapter XI</td>
<td>38.4</td>
</tr>
<tr>
<td>Chapter XII</td>
<td>91.6</td>
</tr>
<tr>
<td>Chapter XIII</td>
<td>1.8</td>
</tr>
</tbody>
</table>

From the existing records, we can only surmise the specific clerical costs for bankruptcy courts because of the aggregate nature of the figures, the total clerical costs for all cases. Obviously such a measure, which gives no information on costs by type of case, to say nothing of the cost of individual clerical functions, is fairly meaningless.

In order to overcome this deficiency, we conducted the special time-and-output survey previously described, for all the clerical personnel working for the 8 referees in the Los Angeles Bankruptcy Court. Inputs to the survey covering approximately 44 employees provided the processing time and output by function (most of the output was in terms of cases; some was by specific item, such as claims). Where the function was not a bankruptcy clerical chore, but of a more general nature such as secretarial, receptionist, filing, etc., or where the task was basically supervisory, we listed the output as administrative.

We found that the time for some of the bankruptcy functions was surprisingly uniform—filing claims, discharges, and miscellaneous notices
apparently take a fairly standard time. Other functions, however, such as closing asset cases and filling out referee expense sheets, exhibited more diverse values. We then multiplied the mean time per unit of output, by the appropriate salary rate to obtain the costs. The salary levels we used were the actual JSP job ratings, as shown in Table 5.

Table 5
JSP YEARLY SALARY RATES--1972

<table>
<thead>
<tr>
<th>JSP Rating</th>
<th>Equivalent Annual Salary (At Step 3 of Grade)</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>$6,160</td>
</tr>
<tr>
<td>4</td>
<td>6,980</td>
</tr>
<tr>
<td>5</td>
<td>7,807</td>
</tr>
<tr>
<td>6</td>
<td>8,697</td>
</tr>
<tr>
<td>7</td>
<td>9,657</td>
</tr>
<tr>
<td>8</td>
<td>10,681</td>
</tr>
<tr>
<td>9</td>
<td>11,782</td>
</tr>
<tr>
<td>10</td>
<td>12,961</td>
</tr>
<tr>
<td>11</td>
<td>14,197</td>
</tr>
<tr>
<td>12</td>
<td>16,924</td>
</tr>
</tbody>
</table>

The clerk of the court provides additional administrative functions, i.e., collecting fees, establishing case files, distributing cases to referees, and finally filing completed cases. We included the cost of the personnel involved in this operation as another administrative cost.

The last personnel costs to be incorporated in the model were those for the central reproduction and mailing facility which serves all the bankruptcy referees but does not serve the rest of the federal courts. Thus, the 12 people staffing the reproduction office constitutes a cost that is solely bankruptcy-related. Since the office receives some revenue from charging $0.50 per page for reproducing copies, we have used the office's net expense in this study.

Finally, we obtained data for a number of other costs such as travel, stationery, and the like, by prorating nationwide costs based on records from the Administrative Office of the U.S. Courts. Costs for telephone and other utilities were based on costs of equivalent commercial activities. No charge for space or office rental needed to be included, since most bankruptcy courts and offices are located in government-owned facilities.
PERSONNEL COSTS

We divided all bankruptcy processing costs into two categories, personnel and nonpersonnel costs. Personnel costs include the charges of referees as well as direct and indirect charges of clerical personnel. The nonpersonnel costs consist principally of stationery, postage, travel, utilities, and office equipment items. These are based on the clerical time survey, unless otherwise specified. Let us examine each in turn.

Referee Costs

The referees' costs were simply dollar translations of the times reported in the aforementioned Administrative Office survey. Taking the referee's $30,000 annual salary (1972 budget), 8 percent fringe benefits, 50 week/year, 40 hours/week, yields a $16.20 hourly rate, which we then applied to the number of hours by type of case to get referee costs. This procedure assumes that the workload is steady, so that new filings can be a proxy for the referees' entire caseload.

Direct and Indirect Clerical Personnel Costs

The next few pages show the breakdown of all the clerical functions for asset and no-asset cases. In the two-week period of the survey, however, there were insufficient corporate cases to be useful in deriving clerical values for those cases.

Calendar. We computed the average per-case cost of the calendar function by dividing the mean weekly cost of $45.00 per calendar clerk (there is one calendar clerk per referee) by 33, the average number of cases per referee per week. This number, $1.36, represents an average cost per case for both asset and no-asset cases, since both require essentially the same amount of preparation for court.

First-Meeting Notices. The average time spent in preparation for first-meetings per case cost $1.86. Because the bulk of the clerical work involved the cutting of a single stencil, we were able to use the same figure for both asset and no-asset cases, since this work is nearly identical for both.
Claims. It takes the same amount of clerical time to process an individual claim whether it is an asset or a no-asset case. Using the average cost from the clerical time survey, the cost per claim is $0.30, which, when multiplied by 4, the number of claims filed in a no-asset case, and 4.9, the number of claims for an asset case (i.e., the average number of claims filed per case type per our data sample), yields the respective case claim cost.

Special Notices. Notices other than opening or closing notices, such as notice of sale, appointment of alternate trustee, etc., are special notices. Assuming an average of one special notice per case, the cost per case is $1.69. The likelihood of special notices being required in a no-asset case is fairly low.

Final Meeting Notices. The average unit cost of preparing final meeting notices is $1.87. This figure applies principally to asset and nominal-asset cases.

Discharges. The average clerical time spent preparing discharge notices costs $0.46 per case. The same figure applies to both asset and no-asset cases, since the main portion of the work is in cutting a simple stencil, common to both.

Closing No-Assets, Assets, and Corporate Cases. The average time spent for closing no-asset cases cost $0.82, and for asset cases, $5.36. The data sample for closing corporate cases was extremely small but is shown nevertheless because it is over three times the cost of closing an asset case ($16.34).

Dockets. The cost of maintaining the docket sheets for each case was determined to be $1.32 per case from the clerical cost study.

Referee and Corporate Expense Sheets. The cost of preparing the referee's expense sheets is $2.77 for an asset case, and $11.47 for a corporate case.
Clerical Time for Printing and Mailing Costs. In the California Central District there are 12 clerks in the reproduction section, at a total monthly salary cost of $7,187. This expense is offset by revenue received from photostat service to lawyers and others, returning approximately $1,900 per month, leaving a net expense of $5,287 to reproduce 80,000 pieces of paper per month, or a unit cost of $0.07.

Administrative, Clerical Indirect Costs. These indirect costs reflect the total time spent in the administrative function of the Chief Clerks, and all the indirect time reported by the remainder of the clerical personnel.

Administrative, Clerk of the Court Indirect Costs. These costs are based on the sum of the salaries of the five people in the Clerk of the Court's office associated entirely with bankruptcy.

NONPERSONNEL (OTHER) COSTS

Nonpersonnel costs represent a small portion of the total cost of preparing bankruptcy cases in California. They are important, nevertheless, for the completion of the cost model. Most of the figures come from the Annual Report of the Director of the Administrative Office of the U.S. Courts.

Referee Travel Cost. The referee travel cost per case was derived from the FY 1972 national budget for travel and transportation of $192,000. Using an average annual caseload of 200,000 cases, the travel cost per case is $0.96.

Stationery and Forms

The national budget for 1972 shows a total national figure for printing and reproduction of $120,000, and for supplies and materials, $150,000; this makes a total of $270,000 for a national bankruptcy caseload of 200,000 cases. The average per-case figure is thus $1.35. From our data sample we see that there are 85 percent no-asset cases as opposed to 15 percent asset cases. No-asset cases required 60
stationery items or form pieces each, and asset cases required 185 pieces. To weight the overall average of $1.35, we multiplied 85 percent by 60 and 15 percent by 185, achieving an average of 79 pieces of paper per case. This, divided into the $1.35 per-case figure, gives a unit cost of $0.017. When totaled, this amounts to $1.02 per no-asset case and $3.15 per asset case.

**Postage**

This unit expense is based on $0.08 postage for 33 penalty mailings and $0.04 postage for 20 bulk mailings per typical no-asset case, and 156 penalty mailings at $0.08, and 20 bulk mailings at $0.04 per typical asset case.

**Utilities**

The average monthly telephone expense per referee in the California Central District is $90.00, and the average monthly caseload per referee is 132 cases, giving a prorated per-case cost of $0.68. The only other major utility cost not included in the rental figure is electricity, which we have estimated at approximately $0.32 per case, for a total utility expense per case of $1.00.

**Office Equipment**

The national estimate for FY 1972 was $353,000 for office equipment. Prorating this amount for the California Central District, which processes 10 percent of the total caseload or 18,600 cases (FY 1971), yields $1.89 per case.

Table 6 summarizes the costs just presented. The estimated clerical cost for no-asset cases is $28.50, while that for asset cases is $76.75. The high overhead rate of 130 percent is due to the large fraction of time the clerks spend answering phones, assisting attorneys, and performing other tasks not directly case-related.
Table 6
AVERAGE CLERICAL COSTS PER CASE

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>No-Asset</th>
<th>Asset</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unit Cost</td>
<td>Case Cost</td>
</tr>
<tr>
<td>Direct Clerical Personnel Costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Calendar</td>
<td>1.36</td>
<td>1.36</td>
</tr>
<tr>
<td>First meeting notice preparation</td>
<td>1.86</td>
<td>1.86</td>
</tr>
<tr>
<td>Claims processing</td>
<td>1.20</td>
<td></td>
</tr>
<tr>
<td>Special notices</td>
<td>--</td>
<td>1.69</td>
</tr>
<tr>
<td>Final meeting notices</td>
<td>--</td>
<td>1.87</td>
</tr>
<tr>
<td>Discharge notice preparation</td>
<td>0.46</td>
<td>0.46</td>
</tr>
<tr>
<td>Closing</td>
<td>0.82</td>
<td>5.36</td>
</tr>
<tr>
<td>Referee expense sheets</td>
<td>--</td>
<td>2.77</td>
</tr>
<tr>
<td>Dockets</td>
<td>1.32</td>
<td>1.32</td>
</tr>
<tr>
<td>Subtotal direct</td>
<td>7.02</td>
<td>18.16</td>
</tr>
<tr>
<td>Indirect Clerical Personnel Costs:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clerical @ 105%</td>
<td>7.37</td>
<td>19.07</td>
</tr>
<tr>
<td>Clerk of the Court Clerical @ 25%</td>
<td>1.76</td>
<td>4.54</td>
</tr>
<tr>
<td>Subtotal indirect</td>
<td>9.13</td>
<td>23.61</td>
</tr>
<tr>
<td>Subtotal, direct &amp; indirect clerical</td>
<td>16.15</td>
<td>41.77</td>
</tr>
<tr>
<td>Fringe benefits @ 8%</td>
<td>1.29</td>
<td>3.34</td>
</tr>
<tr>
<td>Total clerical expense</td>
<td>17.44</td>
<td>45.11</td>
</tr>
<tr>
<td>Other Costs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Printing and mailing:</td>
<td>3.71</td>
<td>12.32</td>
</tr>
<tr>
<td>Personnel @ 0.07</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Postage @ 0.08/penalty, @ 0.04/bulk</td>
<td>3.44</td>
<td>13.28</td>
</tr>
<tr>
<td>Stationery &amp; forms @ 0.017/piece</td>
<td>1.02</td>
<td>3.15</td>
</tr>
<tr>
<td>Utilities</td>
<td>1.00</td>
<td>1.00</td>
</tr>
<tr>
<td>Office equipment</td>
<td>1.89</td>
<td>1.89</td>
</tr>
<tr>
<td>Subtotal (other)</td>
<td>11.06</td>
<td>31.64</td>
</tr>
<tr>
<td>Total</td>
<td>$28.50</td>
<td>$76.75</td>
</tr>
</tbody>
</table>

ESTIMATING NATIONAL BANKRUPTCY COSTS

Our visits to a number of bankruptcy courts across the country reinforced the presumption that the estimated costs derived in Los Angeles would be representative of the average costs experienced in other offices. This assumption can be verified by using the cost estimates we have derived to produce national administrative costs. A comparison between these national estimates and actual costs will provide an indication of the validity of the estimating relationships.
Our projection of national bankruptcy costs is displayed in Table 7. The first line shows the number of cases filed by type of case in FY 1971. We took this to be the steady-state workload of the court. The next line (in the unit cost location) shows the conversion of the referee's time per case (from the study by the Administrative Office) to dollars per case on the basis of $16.20 per hour plus $0.96 per case for travel expenses. The total estimated case cost is achieved by multiplying the number of cases by type, times the unit-case cost. Straight-bankruptcy asset and no-asset cases have the highest total cost, while Chap. X cases have the highest unit cost. The actual cost for referee salaries for FY 1971 was $6.24 million and the travel budget approximately $0.2 million; therefore the actual referee cost of $6.44 million is in close agreement with the estimated cost of $6.63 million.

The clerical costs shown in the next line in Table 7 were derived for both asset and no-asset cases from the clerical time/output study summarized in Table 6. Clerical costs for nominal-asset cases and Chap. XIII cases were derived by estimating the time to accomplish the tasks for those cases with the time and functions required for asset and no-asset cases. Clerical costs for Chap. X, XI, and XII cases were assumed to be directly proportional to referee costs as estimated for asset cases; that proportion is $0.94 of clerical cost for each $1.00 of referee costs. The implied assumption is that referee and clerical demands for chapter cases should be quite similar to those for asset cases.

The unit costs show that the simple cases—no-asset, nominal asset and Chap. XIII—require far more clerical resources than referee resources; the more complex asset and Chap. X, XI, and XII cases require more referee time and a more equalized referee/clerical resource input. The total estimated cost of the entire clerical function as shown in Table 7 is $10.41 million. Actual clerical expenses for FY 1971 were $10.1 million, from which $0.2 million should be subtracted for transportation, leaving $9.9 million. This means that in the model the distribution of clerical expenses has only been over-stated by 5 percent, which is reasonably accurate.
Table 7

DISTRIBUTION OF CURRENT BANKRUPTCY SYSTEM COSTS, FY 1971

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>No Assets</th>
<th>Nominal Assets</th>
<th>Assets</th>
<th>Chap. X</th>
<th>Chap. XI</th>
<th>Chap. XII</th>
<th>Chap. XIII</th>
<th>Total Estimated Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Caseload</td>
<td>117,044</td>
<td>25,908</td>
<td>24,237</td>
<td>160</td>
<td>1,782</td>
<td>120</td>
<td>30,904</td>
<td>200,115</td>
</tr>
<tr>
<td>Referee</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit cost ($)</td>
<td>11.17</td>
<td>20.24</td>
<td>81.31</td>
<td>3940.80</td>
<td>622.39</td>
<td>1484.88</td>
<td>27.69</td>
<td>--</td>
</tr>
<tr>
<td>Total cost ($ million)</td>
<td>1.30</td>
<td>0.52</td>
<td>1.97</td>
<td>0.63</td>
<td>1.11</td>
<td>0.18</td>
<td>0.92</td>
<td>6.63</td>
</tr>
<tr>
<td>Clerical and Other Court</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit cost ($)</td>
<td>28.50</td>
<td>60.00</td>
<td>76.75</td>
<td>3719.80</td>
<td>585.05</td>
<td>1401.70</td>
<td>60.00</td>
<td>--</td>
</tr>
<tr>
<td>Total cost ($ million)</td>
<td>3.34</td>
<td>1.55</td>
<td>1.86</td>
<td>0.60</td>
<td>1.04</td>
<td>0.17</td>
<td>1.85</td>
<td>10.41</td>
</tr>
<tr>
<td>Total Bankruptcy System</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unit cost ($)</td>
<td>39.67</td>
<td>80.24</td>
<td>158.06</td>
<td>7660.60</td>
<td>1207.44</td>
<td>2886.58</td>
<td>87.69</td>
<td>--</td>
</tr>
<tr>
<td>Total cost ($ million)</td>
<td>4.64</td>
<td>2.07</td>
<td>3.83</td>
<td>1.23</td>
<td>2.15</td>
<td>0.35</td>
<td>2.77</td>
<td>17.04</td>
</tr>
</tbody>
</table>
Total costs for each type of bankruptcy case are shown in the final line in Table 7. Interestingly, this line shows us that the no-asset case costs are just being covered by revenue—$39.67 expended, and $40 gained in revenue ($50 filing fee less $10 for trustee). Of course, in FY 1972 and subsequent years, as salary raises are granted and normal step progressions are attained, and if filing fees are not increased, this part of the bankruptcy system will operate at a loss. We note here in passing that no-asset cases account for 27 percent of total costs, and together, no-asset and nominal-asset cases account for 40 percent of total costs—yet these two classes comprise 72 percent of all bankruptcy cases.

DETERMINING VARIATIONS BETWEEN DISTRICTS

We have already noted that the characteristics of the caseload and the procedures for handling it may vary considerably between districts. In order to determine the extent of the variation existing between offices, we estimated administrative costs for three other offices recommended by the Commission—Newark, New Jersey; New York, New York; and Kansas City, Kansas.

The Newark and New York offices are characterized by a higher percentage of business and chapter cases than the national average and by a higher average estate value for asset cases. Kansas City is characterized by an absence of high-asset chapter cases and a lower-than-average estate value for asset cases.

Table 8 displays estimated and actual clerical costs for actual case closings, as indicated by the referees' records.* There is considerable variation.

Estimated costs for Newark are greater than actual costs. This is somewhat surprising since we would expect to find that the high percentage of business cases caused a higher actual cost in Newark. Some of this difference can be accounted for by the fact that Newark has been unable to fill one of its 6 clerical positions. The clerical staff puts in considerable unpaid overtime to make up for this shortage of help. If this additional position were filled, the actual costs would be quite close to our projection.

* Distribution of no-asset, nominal, and asset cases is based on FY 1969 closings.
Table 8
NUMBER OF CASES CLOSED IN THREE CITIES AND COMPARISON OF ESTIMATED AND ACTUAL CLERICAL COSTS, FY 1972

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Cases Closed, FY 1972</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Newark</td>
</tr>
<tr>
<td>No-asset</td>
<td>497</td>
</tr>
<tr>
<td>Nominal-asset</td>
<td>145</td>
</tr>
<tr>
<td>Asset</td>
<td>150</td>
</tr>
<tr>
<td>Chap. X, XI, XII</td>
<td>51</td>
</tr>
<tr>
<td>Chap. XIII</td>
<td>38</td>
</tr>
<tr>
<td>Estimated Clerical Costs</td>
<td>$66,500</td>
</tr>
<tr>
<td>Actual Clerical Costs</td>
<td>$55,400</td>
</tr>
</tbody>
</table>

New York costs exceeded our estimation by a factor of three. This variation is attributed to the complicated nature of their business cases: they are both larger in value and run longer than elsewhere in the country. Part of their higher costs are also caused by the fact that they have been short one referee for over a year, so their closings are lower than would be normal.

The lower-than-projected actual costs in Kansas City are somewhat explained by the fact that, except for one person, all of their clerical staff has been on the job less than one year, and they are therefore paid less than the national average for clerical help.

This comparison of actual costs with those estimated by our cost model, in offices with varying types and numbers of cases, corroborates the accuracy of our results. The disparity between our estimates and the actual expenditure in New York was understandable, given the nature of New York's cases.
III. THE COST OF ALTERNATIVE MODELS FOR PROCESSING STRAIGHT-BANKRUPTCY CASES

In this section we develop and display estimates of the costs associated with four different models for administering straight-bankruptcy cases. These are called

- Current-System model
- Proposed "New-Rules" model
- Streamlined model
- Counseling model

Our analysis is limited to the straight-bankruptcy portion of the total caseload because it is the one area where potential savings are likely to be most significant and where our information is most complete. In any of the four alternatives considered, chapter cases could be handled either as they are today or in a manner more consistent with changes proposed for straight-bankruptcy cases.

MODEL INPUTS

For all of these models we have assumed that some form of Official Trustee will be utilized. For the Current-System and proposed "New-Rules" models we have assumed that the referees would carry essentially the same responsibilities they do today. In the other two models, Streamlined and Counseling, we have assumed that the new Official Trustee agency will be given complete responsibility for processing all straight-bankruptcy cases, except for the hearing of contested matters.

In addition to the changes in referee participation, the Streamlined and Counseling models eliminate or consolidate processing steps in order to reduce administrative costs.

Cost Categories

We have distinguished five major categories of cost:
Referee costs include the referee's salary, fringe benefits, and travel expenses attributable to his participation in each type of case.

Clerical costs include the costs of all clerical functions currently performed by bankruptcy personnel. These include wages, fringe benefits, office supplies, postage, and equipment.

In addition to those clerical costs presently incurred in the bankruptcy courts, we have assumed that one-third of all trustee or other administration costs are consumed by clerical support. These clerical costs would become a government expense under the Official Trustee concept.

The total clerical effort has been divided between the referees and the Official Trustee according to the following rule: Clerical support has been provided to referees on a one-for-one basis. Each referee is assigned one clerical position at an assumed annual salary rate of $9,000.

Administrators' costs cover all of the nonclerical employees of the Official Trustee except counselors. Included are office administrators, trustees, receivers, attorneys, appraisers, accountants, etc. We have assumed an average salary rate of $20,000 annually for these positions. Their actual cost is estimated by using the remaining two-thirds of the current expenses incurred in administering straight-bankruptcy cases.

The counselor costs are those attributable to the new category of employee required for the Streamlined or Counseling models, who would assist the debtor in filing his petition, screen the schedules, and help order his financial affairs.

The last cost category listed is that of the bankrupt's attorney. Although we lack accurate data to estimate these costs, we have included our own estimate, based on observed practice, since these costs account for such a large proportion of total bankruptcy costs.
Case Categories

In our study we distinguish three categories of cases: no-asset, low-asset, and high-asset. No-asset cases are those in which there are no assets recovered to pay administrative expenses or distribute to creditors. Low-asset cases are those in which the total recoverable assets are less than $1000. These include most (97+ percent) of the nominal-asset cases (cases where the assets are all consumed in the bankruptcy proceedings, and there is no distribution to creditors); and about one-half of the asset cases. High-asset cases are those in which the value of the recovered property exceeds $1000. The $1000 value of realizable assets has benefits as a cutoff point because it shows the effects of a screening policy that would abandon all assets below that value. As subsequent data will show, the return to creditors from liquidation of these assets does not justify the administrative expense: it is not cost-effective.

For comparative purposes, we assumed the annual caseload to include 120,000 no-asset, 40,000 low-asset, and 7,000 high-asset cases. These figures are consistent with the proportions found in the 1969 caseload.

MODEL DESCRIPTION

1. Current-System Model. At present, creditors' meetings are held in every case. Claims are filed and processed as if there will be assets in every case. Final meetings are held in all nominal and asset cases. Trustees are utilized in most of the no-asset cases as well as in all the nominal and asset cases. Most of the debtors retain an attorney.

Processing procedures for the current system are described in detail in another report on potential automation.*

2. Proposed "New-Rules" Model. The administrative structure and basic staffing pattern remain the same for the New-Rules model.

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Claims are not processed in no-asset cases. Final meetings are not held in nominal-asset cases. Trustees are omitted for a larger percentage of the no-asset cases.

3. **Streamlined Model.** Debtors are provided with detailed instructions for completing their petition and schedules in this model. Petitions and schedules are audited for completeness and accuracy at the time of filing. When the forms are determined to be complete, they are screened by senior clerical personnel to determine the asset status of the case. If it does not appear to involve any substantial assets for return to creditors, it is treated as a no-asset case. A single consolidated notice is sent to the creditors and all other interested parties informing them of these factors: that the debtor has been adjudicated a bankrupt; that creditors are restrained from further action against the debtor; that there are not likely to be any assets disbursed; and that unless the creditor hears otherwise within 60 days, the debtor will be discharged of his debts. The case is then closed (no meetings are held) pending any challenge by creditors to discharge (on severely restricted grounds).

4. **Counseling Model.** The procedures followed in the Counseling model are essentially those of the Streamlined model with one important exception: the debtor files an open petition which does not specify the type of relief being sought. The schedules require the debtor to prepare a personal budget within which he and his family can maintain a reasonable standard of living.

After the petition has been filed, a bankruptcy counselor reviews the schedules in detail and presents the debtor with facts and figures explaining alternative methods of relief. The counselor may also counsel the debtor concerning other personal financial matters. Following the session with the counselor, the debtor makes the final choice as to the method of relief he desires. The case then proceeds as in the Streamlined model. After his discharge, the debtor may continue to seek the counselor's advice or assistance in resolving financial problems.
ESTIMATED MODEL COSTS

The costs of processing our standard caseload by the current system are shown in Table 9. This section explains the derivation of these figures.

1. Current-System Model

Referee. Derived from Administrative Office time survey as discussed in Sec. II. Costs for low-asset cases are a weighted average of nominal and 0-$1000 cases. Costs for high-asset cases are a weighted average of $1001-$10,000 cases and over $10,000 cases.

Referee Clerical. Secretarial assistance for the referee is estimated on a one-for-one basis. The clerical grade is JSP 7; the annual salary, $9000, including fringe benefits. The cost factor for clerical assistance is 0.32 of the referee's cost less travel expense.

Official Trustee.

Clerical. This cost is derived from our clerical time study (see Sec. II) less that assigned to Referee Clerical (above) plus that assigned to support the administrator of the Official Trustee, which is one-third of the administrator cost. Average salary is assumed to be $9000 per year including fringe benefits.

Administrator.

No-Asset. Assumes $10 per case in 70 percent of the cases less one-third for clerical support; this one-third has been added to clerical costs.

Asset. Derived from Reports of Referees in Bankruptcy in Asset and Nominal-asset Cases Terminated in Straight Bankruptcy,* 1969 data. Administrative costs less the costs for the Referees' Salary and Expense Fund (in referee costs, above); attorneys for creditors; and an attorney for the bankrupt. The average administrator's salary is assumed to be $20,000 per year, including fringe benefits.

Attorney for Bankrupt.

No-asset. Assume $250 per case in 95 percent of cases.

Low-asset. Assume $300 per case.

High-asset. Assume $400 per case.

Returned to Creditor. 1969 JS-19 data.

2. Proposed "New-Rules" Model

The expected costs of processing the standard caseload under the proposed new rules are shown in Table 10. The derivation of estimates follows:

*Hereafter referred to as JS-19 data.
### Table 9

**CURRENT-SYSTEM MODEL COSTS**

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>No-Asset Cases</th>
<th>Low-Asset Cases</th>
<th>High-Asset Cases</th>
<th>Total for All Cases</th>
<th>Number of Employee Positions Required</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per Unit ($)</td>
<td>Total ($ million)</td>
<td>Per Unit ($)</td>
<td>Total ($ million)</td>
<td>Per Unit ($)</td>
</tr>
<tr>
<td>Referee</td>
<td>11.17</td>
<td>1.3</td>
<td>27.00</td>
<td>1.1</td>
<td>244.00</td>
</tr>
<tr>
<td>Referee Clerical</td>
<td>3.29</td>
<td>0.4</td>
<td>8.38</td>
<td>0.3</td>
<td>78.23</td>
</tr>
<tr>
<td>Official Trustee</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Clerical</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) Administrators</td>
<td>27.54</td>
<td>3.3</td>
<td>91.63</td>
<td>3.7</td>
<td>1003.50</td>
</tr>
<tr>
<td></td>
<td>4.67</td>
<td>0.5</td>
<td>70.12</td>
<td>2.8</td>
<td>1934.97</td>
</tr>
<tr>
<td>Total Court and</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Official Trustee Costs</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Attorney for Bankrupt</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>--</td>
<td></td>
</tr>
<tr>
<td></td>
<td>28.5</td>
<td>--</td>
<td>--</td>
<td>12.0</td>
<td>--</td>
</tr>
<tr>
<td>Total Cost of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bankruptcy Administration</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>19.9</td>
<td>--</td>
</tr>
<tr>
<td>Amounts Distributed to Creditors</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>--</td>
<td>--</td>
<td>--</td>
<td>17.7</td>
<td>--</td>
</tr>
</tbody>
</table>

**NOTE:** Table assumes an annual caseload of 120,000 no-asset, 40,000 low-asset, 7,000 high-asset cases.
### Table 10

**PROPOSED "NEW-RULES" MODEL COSTS**

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>No-Asset Cases</th>
<th>Low-Asset Cases</th>
<th>High-Asset Cases</th>
<th>Total for All Cases</th>
<th>Number of Employee Positions Required</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per Unit ($)</td>
<td>Total ($ million)</td>
<td>Per Unit ($)</td>
<td>Total ($ million)</td>
<td>Per Unit ($)</td>
</tr>
<tr>
<td>Referee</td>
<td>11.17</td>
<td>1.3</td>
<td>22.00</td>
<td>0.9</td>
<td>244.00</td>
</tr>
<tr>
<td>Referee Clerical</td>
<td>3.29</td>
<td>0.4</td>
<td>7.08</td>
<td>0.3</td>
<td>78.23</td>
</tr>
<tr>
<td>Official Trustee</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Clerical</td>
<td>22.61</td>
<td>2.7</td>
<td>75.69</td>
<td>3.0</td>
<td>1003.50</td>
</tr>
<tr>
<td>b) Administrators</td>
<td>2.00</td>
<td>0.2</td>
<td>51.63</td>
<td>2.1</td>
<td>1934.97</td>
</tr>
<tr>
<td>Total Court and</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Official Trustee Costs</td>
<td>--</td>
<td>4.6</td>
<td>--</td>
<td>6.3</td>
<td>--</td>
</tr>
<tr>
<td>Attorney for Bankrupt</td>
<td>--</td>
<td>28.5</td>
<td>--</td>
<td>12.0</td>
<td>--</td>
</tr>
<tr>
<td>Total Cost of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bankruptcy Administration</td>
<td>--</td>
<td>33.1</td>
<td>--</td>
<td>18.3</td>
<td>--</td>
</tr>
<tr>
<td>Amounts Distributed to Creditors</td>
<td>--</td>
<td>0</td>
<td>--</td>
<td>2.6</td>
<td>--</td>
</tr>
</tbody>
</table>

**NOTE:** Table assumes an annual caseload of 120,000 no-asset, 40,000 low-asset, 7,000 high-asset cases.
Referee Costs. Essentially the same as in the Current-System model except for some reduced costs, $10 per case, in half of the low-asset cases caused by elimination of final meetings. The average referee cost per low-asset case will be $22.

Official Trustee.

Clerical Costs. No-asset costs will be $3.50 lower because of elimination of claims processing. The elimination of the final meetings in half of the low-asset cases will result in an average savings of $8 per case.

Administrator. The use of administrators in no-asset cases will be reduced from 70 percent to 30 percent, saving $400,000. Reduced use of administrators in low-asset cases will save 50 percent of the administrative costs in all cases with less than $250 in assets—a total saving of $1.3 million.

Attorney for Bankrupt. Same as in Current System.

Returned to Creditor. Reduced from current figure by $64,000 which is currently obtained from cases with 0–$100 in assets.

3. Streamlined Model

The expected costs for processing our standard caseload by the Streamlined model are shown in Table 11. The estimates were derived in the following manner:

Referee Costs. Eliminate participation in no-asset and low-asset cases except for disputes which should amount to about 5 percent of present costs.

Clerical Costs. The clerical costs for the Streamlined model were derived from the current system by subtracting the costs for the functions that were completely or partially eliminated. These functions can be eliminated:

- first meeting calendar entries
- first meeting status report
- filing and docketing of claims
- discharge notice preparation
- docket entries
- reduction in reproduction

The following basic clerical costs have been eliminated from no-asset cases: $1.36 calendar, $1.20 claims-processing, $0.46 for discharges, and $1.32 for docket. The total direct cost saving is $4.34 and the administrative saving is $6.55. In addition, because the number of notices will be reduced by more than half (notice of discharge is eliminated and notices to taxing agencies are combined), the cost of printing, stationery and postage is reduced from $8.17 to $3.61. The cost of utilities and office equipment is unchanged from the current values of $1.00 and $1.89, respectively.
<table>
<thead>
<tr>
<th>Cost Category</th>
<th>No-Asset Cases</th>
<th>Low-Asset Cases</th>
<th>High-Asset Cases</th>
<th>Total for All Cases</th>
<th>Number of Employee Positions Required</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per Unit ($)</td>
<td>Total ($ million)</td>
<td>Per Unit ($)</td>
<td>Total ($ million)</td>
<td>Per Unit ($)</td>
</tr>
<tr>
<td>Referee</td>
<td>0.55</td>
<td>0.1</td>
<td>1.35</td>
<td>0.1</td>
<td>244.00</td>
</tr>
<tr>
<td>Referee Clerical</td>
<td>0.18</td>
<td>0</td>
<td>0.43</td>
<td>0</td>
<td>78.23</td>
</tr>
<tr>
<td>Official Trustee a) Clerical</td>
<td>12.97</td>
<td>1.6</td>
<td>12.72</td>
<td>0.5</td>
<td>1003.5</td>
</tr>
<tr>
<td>b) Administrators</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1934.97</td>
</tr>
<tr>
<td>c) Counselors</td>
<td>8.00</td>
<td>1.0</td>
<td>8.00</td>
<td>0.3</td>
<td>0</td>
</tr>
<tr>
<td>Total Court and Official Trustee Costs</td>
<td>--</td>
<td>2.7</td>
<td>--</td>
<td>0.9</td>
<td>--</td>
</tr>
<tr>
<td>Attorney for Bankrupt</td>
<td>--</td>
<td>0</td>
<td>--</td>
<td>6.0</td>
<td>--</td>
</tr>
<tr>
<td>Total Cost of Bankruptcy Administration</td>
<td>--</td>
<td>2.7</td>
<td>--</td>
<td>6.9</td>
<td>--</td>
</tr>
<tr>
<td>Amounts Distributed to Creditors</td>
<td>--</td>
<td>0</td>
<td>--</td>
<td>0</td>
<td>--</td>
</tr>
</tbody>
</table>

NOTE: Table assumes an annual caseload of 120,000 no-asset, 40,000 low-asset, 7,000 high-asset cases.
Administrator. Administrators will not be required for no-asset and low-asset cases. Administrator expenses for higher asset cases will continue as they now are.

Counselor. No-asset and low-asset cases will be screened and audited by a new category of administrative personnel earning approximately $16,000 per year including benefits. We assume these personnel will be able to handle 2000 cases per year. The cost per case will therefore be $8.00.

Attorney for Bankrupt. None will be required for no-asset cases. Fifty percent of the low-asset cases will have an attorney at $300 per case. High-asset cases will remain unaffected.

Returned to Creditors. Nothing from no-asset or low-asset cases since assets of less than $1000 are to be abandoned. The return from high-asset cases remains unaffected.

If the policy of abandoning all assets to the debtor in low-asset cases is not adopted, additional costs shown in Table 12 would be incurred for the collection, liquidation, and distribution of these assets.

<table>
<thead>
<tr>
<th>Table 12</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDITIONAL EXPENSE OF ADMINISTERING</td>
</tr>
<tr>
<td>LOW-ASSET CASES</td>
</tr>
<tr>
<td>($ million)</td>
</tr>
<tr>
<td>Referee</td>
</tr>
<tr>
<td>Referee Clerical</td>
</tr>
<tr>
<td>Official Trustee</td>
</tr>
<tr>
<td>Clerical</td>
</tr>
<tr>
<td>Administration</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

If some of the functions presently performed by referees in low-asset cases could be eliminated, then the above costs might be reduced by as much as $1,000,000.

4. Counseling Model

The costs for processing our standard caseload by the Counseling model are shown in Table 13. The estimates were derived as follows:
### Table 13
COUNSELING MODEL COSTS

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>No-Asset Cases</th>
<th>Low-Asset Cases</th>
<th>High-Asset Cases</th>
<th>Total for All Cases</th>
<th>Number of Employee Positions Required</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Per Unit ($)</td>
<td>Total ($ million)</td>
<td>Per Unit ($)</td>
<td>Total ($ million)</td>
<td>Per Unit ($)</td>
</tr>
<tr>
<td>Referee</td>
<td>0.55</td>
<td>0.1</td>
<td>1.35</td>
<td>0.1</td>
<td>244.00</td>
</tr>
<tr>
<td>Referee Clerical</td>
<td>0.18</td>
<td>0</td>
<td>0.43</td>
<td>0</td>
<td>78.23</td>
</tr>
<tr>
<td>Official Trustee</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Clerical</td>
<td>12.97</td>
<td>1.6</td>
<td>12.72</td>
<td>0.5</td>
<td>1003.05</td>
</tr>
<tr>
<td>b) Administrators</td>
<td>--</td>
<td>0</td>
<td>--</td>
<td>0</td>
<td>1934.97</td>
</tr>
<tr>
<td>c) Counselors</td>
<td>32.0</td>
<td>3.8</td>
<td>32.0</td>
<td>1.3</td>
<td>0</td>
</tr>
<tr>
<td>Total Court and Official Trustee Costs</td>
<td>--</td>
<td>5.5</td>
<td>--</td>
<td>1.9</td>
<td>--</td>
</tr>
<tr>
<td>Attorney for Bankrupt</td>
<td>--</td>
<td>0</td>
<td>--</td>
<td>6.0</td>
<td>--</td>
</tr>
<tr>
<td>Total Cost of Bankruptcy Administration</td>
<td>--</td>
<td>5.5</td>
<td>--</td>
<td>7.9</td>
<td>--</td>
</tr>
<tr>
<td>Amounts Distributed to Creditors</td>
<td>--</td>
<td>0</td>
<td>--</td>
<td>0</td>
<td>--</td>
</tr>
</tbody>
</table>

**NOTE:** Table assumes an annual caseload of 120,000 no-asset, 40,000 low-asset, 7,000 high-asset cases.
Referee. Same as Streamlined model.
Clerical. Same as Streamlined model.
Administrator. Same as Streamlined model.

Counselor. We assume that the average counseling effort per case will take about four hours, which includes investigation, assisting the debtor to choose the appropriate form of relief, and advising him how to handle related financial matters. There will obviously be a great deal of variation from case to case. If the counselor's compensation is $16,000 per year, the average cost per case for this effort will be $32.

Attorney for Bankrupt. Same as Streamlined model.

Returned to Creditors. For this analysis we assume returns to creditors will be the same as in the Streamlined model. Since there may be greater use of Chap. XIII, however, the return to creditors may be substantially increased by debtors choosing this method of relief. At this time we have no basis for estimating what this increase may be. The extensive counseling that presently occurs in some Chap. XIII operations is provided by persons who strongly favor this method of relief. The effect of counseling by a more neutral participant is impossible to determine at this time.

COMPARISON OF ALTERNATIVE MODELS

Table 14 shows the comparative costs for the four processing models considered. Comparing these costs leads us to the following observations:

- The combined annual costs of the bankruptcy court and the Official Trustee may vary from $36 million to $26 million, depending on the processing procedures adopted.
- Adoption of the proposed New Rules will result in annual savings of $2.5 million in administrative costs.
- Eliminating the referee's participation in no-asset and low-asset cases reduces by half the number of referees required to process straight-bankruptcy cases.
- The total administrative costs of a reasonably well-staffed counseling program will be less than those incurred by current administrative practices if the savings from our streamlined processing rules are achieved.
- Abandoning all recoverable assets of less than $1000 in value results in a net loss of less than $3 million to creditors.
Table 14

COST COMPARISON OF ALTERNATIVE MODELS
($ million)

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Current System</th>
<th>New Rules</th>
<th>Streamlined</th>
<th>Counseling</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referee</td>
<td>4.1</td>
<td>3.9</td>
<td>1.9</td>
<td>1.9</td>
</tr>
<tr>
<td>Referee Clerical</td>
<td>1.2</td>
<td>1.2</td>
<td>0.5</td>
<td>0.5</td>
</tr>
<tr>
<td>Official Trustee</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Clerical</td>
<td>14.0</td>
<td>12.7</td>
<td>9.1</td>
<td>9.1</td>
</tr>
<tr>
<td>b) Administrators</td>
<td>16.9</td>
<td>15.9</td>
<td>13.6</td>
<td>13.6</td>
</tr>
<tr>
<td>c) Counselors</td>
<td>0</td>
<td>0</td>
<td>1.3</td>
<td>5.1</td>
</tr>
<tr>
<td>Total Court and Official Trustee Costs</td>
<td>36.2</td>
<td>33.7</td>
<td>26.4</td>
<td>30.2</td>
</tr>
<tr>
<td>Attorney for Bankrupt</td>
<td>43.3</td>
<td>43.3</td>
<td>8.8</td>
<td>8.8</td>
</tr>
<tr>
<td>Total Cost of Bankruptcy Administration</td>
<td>79.5</td>
<td>77.0</td>
<td>35.2</td>
<td>39.0</td>
</tr>
<tr>
<td>Amounts Distributed to Creditors</td>
<td>87.1</td>
<td>87.0</td>
<td>84.4</td>
<td>84.4</td>
</tr>
</tbody>
</table>

NOTE: Table assumes an annual caseload of 120,000 no-asset, 40,000 low-asset, 7,000 high-asset cases.
and a net saving of from $6 to $7 million in administrative costs.

- The largest potential for savings in total bankruptcy costs comes from the reduction in fees paid to the debtor's attorney in small personal cases.
IV. BANKRUPTCY SYSTEM AUTOMATION

The purpose of the automation study was threefold:

(1) to provide a means for comparing the costs and benefits of candidate electronic data-processing (EDP) systems;

(2) to identify the system design that appeared to best meet the needs of national bankruptcy administration;

(3) to establish a basis for subsequent detailed design studies.

A detailed description of this analysis is contained in a companion document. A summary is given in this section.

The analysis focuses primarily on the processing of straight-bankruptcy cases and wage-earner (Chap. XIII) plans, which together account for over 99 percent of the national bankruptcy caseload.

The automation analysis and cost-benefit comparisons are based on a detailed examination of the current functional flows at the system level for processing both straight-bankruptcy and Chap. XIII cases. By consolidating national caseloads for both types of cases we achieved a total caseload that could be translated into EDP workload requirements. We determined the EDP input, output, and storage necessary for each case type. As a strategy, we selected maximum and minimum workloads to establish the range of EDP requirements using the Current and Streamlined models as upper and lower bounds. We also assumed that all Chap. XIII cases were to be automated (as many already are) by some representative system reflecting the various applications

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**This analysis used the published data from the Administrative Office of the U.S. Courts, Bankruptcy Division, Washington, D.C., and the automation experience of existing EDP bankruptcy systems in the United States.
now in use, and that the workload component was constant for both maximum and minimum computations.

Next we compared automation options representing various centralized and decentralized alternatives for inputting and processing case data from the standpoint of information-system effectiveness. Finally, we designed an exemplary configuration for the preferred alternative and recommended a development and phased implementation strategy for automating the present bankruptcy system.

Currently, about 65 percent of all Chap. XIII cases in the United States are processed using some automation contracted for by local Chap. XIII trustees in approximately 38 districts. There are over 10 different automation facilities that are either vendor- or trustee-owned. Of the 93 U.S. Federal Districts, only two utilize automation to process straight-bankruptcy cases: the Eastern District of Kentucky and the Eastern District of Arkansas. All of these EDP systems provide substantial evidence of the practicability of automating the consolidated national workload for straight-bankruptcy and Chap. XIII cases. As they are currently designed, however, none of the existing EDP systems can handle the total straight and Chap. XIII workloads.

If the system is to be successfully automated, the following five functions should all be included:

1) data entry,
2) notice preparation,
3) financial monitoring and check distribution,
4) summary report printout,
5) management statistics.

The process begins by entering the summary petition or wage-earner plan into the EDP system, establishing a basic, ongoing set of records. The computer can automatically prepare either routine or special notices upon request. The EDP system can keep track of all funds, determine financial balances, and prepare dividend or refund checks, following the wage-earner plan or the trustee's instructions. It can prepare status or summary reports of actions, and exception notices for better administrative information and management control. And finally, the computer can compile management statistics for each office to support analysis of current procedures or to monitor pending changes.
The EDP system considered in this analysis is designed to process an expected annual caseload of 120,000 no-asset, 24,000 nominal-asset, 26,000 high-asset, and 65,000 pending Chap. XIII cases (of which 30,000 new wage-earner plans are filed annually). This workload would result in a daily input volume of approximately 6 million characters under current procedures, or 4.5 million characters using the streamlined procedures. The storage requirements would approach 1.5 billion characters for active cases, and the system would produce approximately 2 million lines of output per day under current procedures, or 1.4 million lines under the streamlined system.

We considered three automation alternatives, each depicting different EDP configurations and data-entry processes for centralized and decentralized systems: (1) A central facility with batch-processing and local on-line data entry and remote off-line data preparation; (2) a central processing facility with remote on-line data entry; and (3) regional processing facilities with local on-line input and remote off-line data collection. We compared these alternatives using criteria of cost, system responsiveness, data accuracy, reliability, convenience of use, and security. The comparison showed that the centralized off-line batch-processing alternative would be the preferred EDP system to process the bankruptcy workload. Such an EDP system would require 1-1/2 to 2 years to design and develop at an estimated cost of $670,000 for manpower and equipment, and another 1-1/2 to 2 years to implement. We have suggested a phased implementation schedule that requires EDP-related personnel and equipment expenditures of approximately $846,800 during the prototype stage, and $1,324,200 during the second year of implementation.

For any given model, fully automated processing of bankruptcy cases will probably cost an additional $300,000 to $400,000 over the expenses of a manual system. In return for these additional costs, the automated bankruptcy system will provide management, at no extra procurement costs, with improved and uniform data-collection and processing, currency in case-processing and report generation, and increased management control. The latter improvement encompasses the expanded data requirements of a centralized management system that can be provided only at extra costs in a manual system.
Our development and implementation strategy assumes an in-house effort and a dedicated EDP facility. The cost and time values are also useful as a basis for comparison, however, should bids be let for proposals from vendors. If the option of having a vendor or service agency develop and implement the automated system is to be considered, then careful attention must be given to the performance/penalty provisos in any contractual agreement. In addition, the EDP system requirements for the stand-alone facility can be used as a basis for evaluating possible sharing of existing EDP resources. The following list represents the condensed findings of our analysis:

1) It is practicable to automate all straight-bankruptcy and Chap. XIII cases.

2) The preferred EDP system is a single batch-processing facility with centralized on-line data entry and input data prepared at the District Office level.

3) The completely automated bankruptcy system will require 1-1/2 to 2 years to design and develop at an estimated cost of $670,000.

4) A phased implementation schedule will require 1-1/2 to 2 years to automate all District Offices.

5) Adoption of the automated Streamlined System would result in an estimated annual saving of $3.5 million from the current system's cost of $8.6 million to process straight and Chap. XIII cases.

6) The automated version of the Streamlined System model is estimated to cost approximately $300,000 more per annum than the manually implemented version.

7) Beneficial by-products of automation (available only at extra cost in the manual system) at both the operational and management levels include:
   o more current and complete data on resource consumption;
   o increased control over accessibility to bankruptcy data and files;
   o greater visibility and tighter fiscal security over bankrupt estate assets;
higher interest earnings by centralized monitoring and pooling of liquidated assets being held for distribution;

- complete currency of caseload statistical summaries, and greater flexibility in report formatting;

- improved adaptability to changes in workload, whether by caseload mixture or seasonal cycles;

- current visibility of the personal characteristics of the population of bankrupts; also a straightforward capability to monitor premature repetitions in bankruptcy;

- standardized procedures for monitoring procedural changes caused by new policies or laws;

- a convenient data-base for predictive analysis.
V. QUESTIONS RAISED BY THE COMMISSION STAFF

In this section we respond to specific questions and problems raised by the staff of the Commission on the Bankruptcy Laws of the United States at the outset of this study. All cost comparisons are made using the current system (1971-1972 data) as a baseline.

1. What would be the time and cost benefits of eliminating creditors' meetings in consumer bankruptcies?

In the current system, the creditors' meeting constitutes the most significant step in a consumer bankruptcy proceeding. Unless the dischargeability of a particular debt is contested, all significant analysis and decisionmaking take place during the meeting. All other steps are strictly routine.

Creditors' meetings are held in open court sessions lasting 1 or 2 hours during which 15 or 20 individual cases may be heard. A referee with a caseload of 1500 cases per year (typical of high-volume consumer districts) who holds court for 50 weeks would therefore hear 30 cases per week.

Besides the referee, the debtor, and his attorney, the other participants in these meetings can include a standing trustee, usually selected in rotation from a panel of candidates, a court reporter, and rarely, some creditors.

The procedure for conducting these meetings varies between individual referees, although the end results are similar. The one major difference between courts is the vigor with which the trustee pursues minor assets that can be used to pay his fee. Such pursuit of minor assets usually results in a high percentage of so-called nominal-asset cases in which the assets recovered are all consumed by administrative expense. During 1969 the ratio of nominal-asset cases to total-asset cases varied from a low of 15 percent to a high of 83 percent across all districts.

During each meeting the following sequence of steps is routinely accomplished:
-53-

- The debtor is placed under oath and takes the stand.

- He is asked a series of routine questions to verify the data on his petition and check any items which might be expected to change between the time of filing and the time of the meeting. These questions usually cover the debtor's residence, marital status, employment status, automobile, real estate, cash, bank accounts, strong box, tax return, wages due, inheritances, and insurance settlements.

- The trustee may then probe for any voidable transfers, especially to relatives, or easily liquidated assets.

- Secured creditors may appear to negotiate with the debtor for continued payments or the return of their security.

In place of the current creditors' meeting, we can consider two options for accomplishing its essential functions:

Option 1. A private meeting between the debtor and a trustee/administrator. This would save the costs of the referee's participation and any other associated courtroom costs.

Option 2. Clerical screening of the bankrupt's petition at the time of filing and elimination of further meetings unless demanded by creditors or evidence of substantial assets. This would save the cost of the trustee as well.

Either or both of these options are easily subject to experimentation within the current system. If either option is attractive we would suggest a field experiment in one or two districts to test it in practice. Special provisions should be made to measure the use of personnel both before and after any such change so that the true savings of personnel can be estimated and not simply absorbed in the overhead.

The estimated savings from eliminating the first creditors' meeting in no-asset cases are presented in an abbreviated form below. The savings from these changes have also been incorporated in our streamlined administrative processing model discussed in Sec. III.
Assumption: 75 percent of referee's time in a no-asset case is spent in preparation for and holding of the first (and only) meeting.

Option 1: Savings per Case:

Current referee cost
(0.63 hour plus travel expense) ................. $11.17
Less 25% of current cost .. 2.59
Total .................... $ 8.58

Nationwide savings in 70 percent of no-asset cases where trustee is appointed:

$ Savings = $8.58 × 120,000 cases × 0.70 = $720,000 per year.

Assumption: No incremental increase in clerical costs for screening petitions.

Option 2: Savings per Case:

Referee time ................. $ 8.58
Trustee @ $10 per case,
70% of cases ............. 7.00
Calendar preparation, including overhead ...... 2.79
Total ..................... $18.37

Nationwide savings:

$ Savings = 120,000 × $18.37 = $2,200,000.
2. What would be the time and cost saving of eliminating the filing and allowance of claims and the preparation of a claims docket in cases where no dividend is expected?

The primary savings from this obviously sensible change would be in the clerical time required to file and docket the claims. In a letter of February 24, 1970 to Jerry Zeifman of the staff of the House Judiciary Committee, Royal Jackson estimated the cost savings of the change to be $500,000. Our independent estimate of $422,450 savings confirms this figure quite closely. We derived our figure as follows:

Our estimates show an average of four claims filed per no-asset case.

We show a clerical cost per claim of $0.30.

We estimate 40 percent of the $1.32 docketing costs per case or ($0.53) to be attributable to claims.

The administrative expense at 105 percent is $1.82.

When this $3.55 saving is applied to 119,000 no-asset cases, the resulting annual saving is $422,450.

Table 15 shows the cost savings of eliminating claims where no dividend to creditors is expected.

If it is possible, on the basis of looking at the debtor's petition alone, to determine that there will be no distributable assets

<table>
<thead>
<tr>
<th>Item</th>
<th>Total Saving Per Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claims (@0.30/4 per case)</td>
<td>$1.20</td>
</tr>
<tr>
<td>Docketing (@ 40% of $1.32)</td>
<td>$0.53</td>
</tr>
<tr>
<td></td>
<td>$1.73</td>
</tr>
<tr>
<td>Plus administrative expense</td>
<td></td>
</tr>
<tr>
<td>@ 105%</td>
<td>1.82</td>
</tr>
<tr>
<td>Total</td>
<td>$3.55</td>
</tr>
</tbody>
</table>
in a case, then this saving could be extended to most nominal-asset cases as well; at a national average of 20,000 such cases, this would result in maximum additional savings of $87,400.

3. What would be the costs and benefits of requiring notices of bankruptcy to creditors to be prepared and issued by the petitioner?

Our analysis of straight-bankruptcy clerical costs indicates that approximately $1.5 million in government expenditures for salaries, stationery, postage, and reproduction costs might be saved if the distribution of first notices to creditors were made the debtor's responsibility. Nevertheless, we would strongly advise against making this change for a variety of reasons listed below.

In costing out this alternative we have assumed that the debtor or his attorney will assume the responsibility of preparing all first notices up to the point of mailing. The recipients of these notices include not only creditors but official government agencies and functionaries within the bankruptcy system. In order for the court to ensure the notices are actually sent, we assume that the package of notices will be delivered to a bankruptcy clerk for crosschecking against a master list and subsequent mailing. The expected savings to be derived from eliminating the preparation of notices within the bankruptcy office must therefore be adjusted to include this added checking expense.

Our cost estimate, which is detailed in Table 16, was derived in the following manner: Those clerical costs not incurred by the court (they would be shifted to the petitioner or his attorney) are clerical costs of preparing and reproducing first notices, stationery, and postage. The estimated number of first notices is 34 per no-asset case and 52 for asset cases; there are 120,000 no-asset cases per year. There are 47,000 combined nominal and asset cases.

We estimated net costs by function in our clerical time survey for each of the clerical functions assumed by the bankrupt. These costs were totaled, and the cost added for the new function of verifying the notices prepared by the bankrupt. The resultant figure represents the cost savings to the bankruptcy system.
Table 16
SAVINGS FROM PETITIONER-PREPARED NOTICES

<table>
<thead>
<tr>
<th>Item</th>
<th>No-asset Cases</th>
<th>Asset Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Cases Annually</td>
<td>120,000</td>
<td>47,000</td>
</tr>
<tr>
<td>Costs per case (in dollars)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clerical cost to prepare first meeting notices</td>
<td>1.86</td>
<td>1.86</td>
</tr>
<tr>
<td>Administrative cost @ 105%</td>
<td>1.95</td>
<td>1.95</td>
</tr>
<tr>
<td>Stationery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No-asset</td>
<td>34 @ 0.017</td>
<td>0.58</td>
</tr>
<tr>
<td>Asset</td>
<td>52 @ 0.017</td>
<td>0.88</td>
</tr>
<tr>
<td>Reproduction personnel</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No-asset</td>
<td>34 @ 0.07</td>
<td>2.38</td>
</tr>
<tr>
<td>Asset</td>
<td>52 @ 0.07</td>
<td>3.64</td>
</tr>
<tr>
<td>Postage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No-asset</td>
<td>34 @ 0.08</td>
<td>2.72</td>
</tr>
<tr>
<td>Asset</td>
<td>52 @ 0.08</td>
<td>4.16</td>
</tr>
<tr>
<td>Savings per case</td>
<td>$9.49</td>
<td>$12.49</td>
</tr>
<tr>
<td>Verification expense</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No-asset</td>
<td>34 @ 0.046</td>
<td>1.56</td>
</tr>
<tr>
<td>Asset</td>
<td>52 @ 0.046</td>
<td>2.39</td>
</tr>
<tr>
<td>Total net savings per case</td>
<td>$7.93</td>
<td>$10.10</td>
</tr>
<tr>
<td>Total nationwide savings</td>
<td>$952,000</td>
<td>$475,000</td>
</tr>
</tbody>
</table>

Although this particular change might result in a sizable government saving, we strongly advise that it not be adopted for the following reasons:

- The efficient preparation and processing of these notices is quite sensitive to volume. The greater the volume, the more feasible it becomes to justify cost saving investments.

- The high-volume offices, such as Los Angeles, now process these notices quite efficiently for a manual system. The costs per notice for an individual debtor or his attorney would be much higher.
The proposed change would result in a net cost increase when the costs of the debtor were considered.

We believe that a true net saving could be achieved if the notice preparation functions were performed at a few central locations for many of the low-volume districts.

If an automated processing system such as that proposed in this study were adopted, one of its chief benefits would be the economical processing of these notices.

4. What has been the cost in time and money to the bankruptcy system—i.e., to the referees' offices—of the dischargeability amendments of 1970? What would be the time-and-cost saving of eliminating the notice of discharge now required by §14f of the Act?

The October 4, 1972 memorandum of the Administrative Office of the U.S. Courts provides the basis for estimating referee time used in dischargeability matters. The data show tremendous variability among referees. For example, in the 4-month period of the survey, 1096 trials were held, an average of 6 per referee, but one referee accounted for 54. In spite of the variability, we used this information to compute the cost of the referee's time.

There are two principal types of hearings concerning dischargeability. The first, and longest, is a hearing where a full trial is held and both sides appear. These hearings occur about one-third of the time and take 6.21 hours (survey mean time). Preparation for the hearings and post-hearing opinion writing is included in the 6.21 hours. The second type of hearing, which accounts for approximately two-thirds of the trials, is much shorter and occurs when only one side appears, or when a compromise is reached or one side stipulates to an agreement. The mean time for these hearings is about one hour. From this we compute the annual workload of dischargeability hearings for the typical referee to be 18 full hearings (the average of 6 per referee) and 33 lesser hearings based on an average of 11 for the 4-month survey.

Table 17 shows the complete cost of dischargeability hearings for the bankruptcy courts; cost items include the referee and clerical time plus related nonpersonnel costs.
Table 17

**COST OF DISCHARGEABILITY HEARINGS**

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Cost ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Referee cost</td>
<td></td>
</tr>
<tr>
<td>205 national referees, 18 cases per year @ 6.21 hours per case @ $16.20 per hour</td>
<td>371,200</td>
</tr>
<tr>
<td>205 national referees, 33 cases per year @ 1.00 hour per case @ $16.20 per hour</td>
<td>109,600</td>
</tr>
<tr>
<td>Clerical cost</td>
<td></td>
</tr>
<tr>
<td>Special notices @ $1.69 per case for 51 cases per year per referee</td>
<td>17,700</td>
</tr>
<tr>
<td>Administrative expense</td>
<td>18,600</td>
</tr>
<tr>
<td>Postage and reproduction</td>
<td></td>
</tr>
<tr>
<td>Postage (2 mailings per case @ $0.08 each)</td>
<td>1,700</td>
</tr>
<tr>
<td>Reproduction (2 mailings per case @ $0.07 each)</td>
<td>1,500</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>520,300</td>
</tr>
</tbody>
</table>

5. What are the likely or possible costs and benefits of eliminating the false financial statement as the basis for an exception to the effect of a discharge?

The only information available comes from the Dischargeability Survey conducted by the Administrative Office in 1972. This survey showed that, of the total number of applications for dischargeability of a debt filed between January 1, 1972, and April 30, 1972, 96 percent were filed under subsections 2, 4 and 8 of §17a, which include not only false financial statements but also debts arising from fraud or embezzlement and willful, malicious injury to the person or property of another. Our interviews with referees and inspection of case records indicate that almost all hearings would fall into the false financial statement category. Thus over 90 percent of the current exceptions to discharge hearings, and associated costs, would be omitted if the false financial statement basis is eliminated.

Available data do not permit an accurate estimate of the cost savings; however, it is likely that at least half of the total costs of dischargeability hearings indicated in Table 17 would be saved.
6. What will be the cost of implementing proposed Bankruptcy Rule 408 (providing for issuance of a Notice of Non-discharge)?

In this event, notices will be sent out only in those cases where a discharge is denied and the bankruptcy is dismissed. Present nationwide costs incurred in preparing and mailing discharge and dismissal notices (for an average of 51,000 asset and nominal-asset cases, and 119,000 no-asset cases) amount to roughly $1,210,000 (see Table 18).

Table 18
CURRENT COST OF DISCHARGE/DISMISSAL NOTICES FOR ALL STRAIGHT BANKRUPTCIES

<table>
<thead>
<tr>
<th>Cost Category</th>
<th>Asset/Nominal-Asset ($)</th>
<th>No-Asset ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clerical</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>$0.46</td>
<td>$0.46</td>
</tr>
<tr>
<td></td>
<td>0.48</td>
<td>0.48</td>
</tr>
<tr>
<td>Stationery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asset, 52 pieces @ $0.017</td>
<td>0.88</td>
<td></td>
</tr>
<tr>
<td>No-asset, 34 pieces @ $0.017</td>
<td>0.58</td>
<td></td>
</tr>
<tr>
<td>Postage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asset, 42 @ $0.08, 10 @ $0.04</td>
<td>3.76</td>
<td></td>
</tr>
<tr>
<td>No-asset, 24 @ $0.08, 10 @ $0.04</td>
<td>2.32</td>
<td></td>
</tr>
<tr>
<td>Reproduction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asset, 52 @ $0.07</td>
<td>3.64</td>
<td></td>
</tr>
<tr>
<td>No-asset, 34 @ $0.07</td>
<td>2.38</td>
<td></td>
</tr>
<tr>
<td>Total per-case cost</td>
<td>$9.22</td>
<td>$6.22</td>
</tr>
</tbody>
</table>

Today's cost ($)  
119,000 no-asset cases × 6.22 = 740,000  
51,000 asset cases × 9.22 = 470,000  
Subtotal $1,210,000

Predicted dismissals ($)  
4,879 no-asset cases × 6.22 = 30,300  
2,091 asset cases × 9.22 = 19,300  
Subtotal $49,600

Net savings $1,160,400
In order to determine the net savings involved, since regular discharges and dismissals are not broken down this far in our cost summary, we first had to determine the ratio of dismissals to discharges. We obtained an average of 4.1 percent dismissals from tabulated records of the reproduction section of the California Central District. According to these figures, 95.9 percent of the entire cost of the current procedure (sending notices of all discharges as well as dismissals) would be saved. The estimated number of dismissals continuing to receive notice is 4.1 percent of the total number of cases, or 4,879 no-asset and 2,091 asset and nominal-asset cases, or a continuing cost of $49,600 (see Table 18). The remainder of the total expense, or $1,160,400, is the net saving.

7. What would be the costs and benefits of requiring every wage earner who files a petition seeking relief under the Act to withhold specification of the relief desired until his schedules and statement of affairs have been reviewed by a counselor and he has been counseled as to the feasibility of his proposing a wage-earner plan of extension or composition?

Only a rough estimate of the costs required to carry out this function can be provided at this time. We will point out a number of factors affecting this cost that can only be evaluated by experimentation.

In order for the counselor to determine the feasibility of a plan, the debtor must first estimate his required living expenses. This task will require some instruction to the debtor before he files on how such a budget should be prepared. This might be accomplished by a booklet, a weekly class for prospective bankrupts, or by one-to-one counseling. Our initial estimate would be that most debtors could develop a budget with the aid of a booklet and appropriate forms, and only a very few would find it necessary to contact the counselor for additional help.
We must assume that many, perhaps half, of the debtors would be obviously unsuitable for Chap. XIII proceedings. Of course, if compositions are accepted at very low percentages (20 or 30 percent), then the distinction between straight-bankruptcy and Chap. XIII bankruptcy becomes rather blurred, and every case would have to be evaluated.

If we assume that only half of the petitions filed will require serious counseling and plan preparation, our preliminary estimate is that each counselor could handle at least 10 cases per day (of all types), or 2,000 annually. This estimate is based on observing the Sacramento, California Chap. XIII trustee who is able to handle most such counseling sessions, including plan preparation, in less than an hour.

In order to attract personnel with the proper business and social skills to these counseling positions, we believe it would be necessary to pay a salary and benefits from between $15,000 to $18,000. Assuming an annual consumer caseload of 150,000 cases, the costs of providing these counseling services would be 150,000/2,000 = 75 counselors at $15,000 to $18,000, costing $1,125,000 to $1,350,000.

During FY 1972, Chap. XIII creditors received approximately $42 million in disbursements. If the debtor counseling resulted in a 20 percent increase in use of this remedy, the additional return to creditors would be approximately $8.4 million.

8. What would be the costs and benefits of substituting a public corporation trustee for the present system of ad hoc appointment or election of receivers and trustees in (a) all cases; or (b) consumer bankruptcies?

An answer to this question is complicated by the following four factors:

1. There is no clear quality measure of the trustee's performance.
2. We do not know what impact public employment will have on the trustee's capabilities or motivation.

3. There are a number of options as to the nature of the tasks the trustee might perform.

4. We have no good estimates of the relationship between workload and effectiveness for the trustee function.

Notwithstanding these difficulties, we can still set up a framework that will allow us roughly to cost out and compare various trustee options. Table 19 displays such a framework.

For this analysis we will include only those functions performed by straight-bankruptcy trustees in the current system. We specifically exclude any counseling tasks that may be added later to the system and can be costed separately.

We have divided the trustee activities into three distinct functions:

1. Screening cases for realizable assets.

2. Uncovering assets by questioning the debtor or supplementary investigation.

3. Liquidating and distributing assets.

We have assumed that in those cases involving more than $1000 in assets, in excess of exemptions, the trustee will continue to be elected by the creditors and compensated from the estate.

For the remaining cases we have distinguished no-asset, nominal-asset, and low-asset (less than $1000) categories. The volume of cases is based on 1969 caseload statistics.

Each entry in Table 19 shows our estimate of the average time per case the trustee will spend to perform this task, and the required number of trustee man-year equivalents generated by the performance of this task. For instance, we estimate that the trustee can screen no-asset cases at the rate of five per hour. The number required to screen 120,000 per year, assuming 2,000 working hours per man, is 12.
Table 19
ALTERNATIVE TRUSTEE REQUIREMENTS

<table>
<thead>
<tr>
<th>Trustee Functions</th>
<th>No-asset (120,000/year)</th>
<th>Nominal-asset (24,000/year)</th>
<th>Low-asset less than $1000 (16,000/year)</th>
<th>Total Man-years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Screen Cases</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time per case</td>
<td>0.2</td>
<td>0.2</td>
<td>0.2</td>
<td>16.0</td>
</tr>
<tr>
<td>Trustee man-years</td>
<td>12.0</td>
<td>2.4</td>
<td>1.6</td>
<td></td>
</tr>
<tr>
<td>Uncover Assets</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time per case</td>
<td>0.2</td>
<td>0.2</td>
<td>0.5</td>
<td>18.4</td>
</tr>
<tr>
<td>Trustee man-years</td>
<td>12.0</td>
<td>2.4</td>
<td>4.0</td>
<td></td>
</tr>
<tr>
<td>Liquidate Assets</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time per case</td>
<td>0</td>
<td>2.0</td>
<td>3.0</td>
<td>48.0</td>
</tr>
<tr>
<td>Trustee man-years</td>
<td>0</td>
<td>24.0</td>
<td>24.0</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>82.4</td>
</tr>
</tbody>
</table>
The estimates of time requirements may be subject to considerable error. Nevertheless, they do allow us to explore the effect of various trustee options. If one believes that the time for some functions must be doubled, then the implications of this for staffing requirements become immediately obvious.

Our estimates show that approximately 82 trustees would be required to perform the complete set of functions on all cases of less than $1000 in assets. Adopting a policy of not seeking additional assets in no-asset and nominal-asset cases would save 14.4 positions. Not liquidating nominal-asset cases would save approximately 24 positions. Assuming an annual salary and fringe benefit rate of $25,000 and a 100 percent overhead factor for clerical support, the cost of each trustee position would be $50,000. The cost of 82 trustees would be $4.1 million.

As long as the referees retain their independence and current responsibilities for personal bankruptcy cases, we cannot identify any significant benefits in making trustees public employees. The savings in referees' administrative time would be minimal. Referees who claim to have difficulty securing competent trustees to handle small cases are in a definite minority. Most prefer the kind of control of trustee activities provided by the current arrangements.

A real benefit from the use of public trustees would arise if the trustee could relieve the referee of all responsibility for minor cases, except disputes. Under these circumstances, substantial benefits in consistent treatment and streamlined procedures could be anticipated.

9. What would be the costs and benefits of abandoning to the bankrupt all property where the aggregate value of the estate does not exceed, say, $1000, or does not appear sufficient to permit the payment of any dividends to creditors?

The answer to this question concerns the amount of assets consumed by the administration of low- and nominal-asset estates. These amounts, mostly trustee commissions, would, under the conditions described above, be allowed to remain the property of the bankrupt.
For such cases, Table 20 lists the amount realized, the administrative costs, the distribution to creditors, and the percent of the distribution, both incrementally and cumulatively to $1000. The source of data is the 1968-69 JS-19 summary reports. The table shows that over 93 percent of the assets are consumed in the smallest cases (0-$100) while in the largest ($500-$1000) 55 percent of all assets are distributed to creditors.

Our analysis of bankruptcy court processing costs suggests that the cost per case (for referee and clerical support) for asset cases realizing less than $1000 is $50 greater than for no-asset cases. Abandoning these assets to the debtor, according to our analysis, would result in an additional $2 million savings in bankruptcy system costs.

The effect of this change would be most pronounced on the trustees who receive the majority of the administrative cost. The loss to creditors would be approximately $2.7 million, or about $70 per case.

10. Can a study be designed that would determine how often contests arise in bankruptcy proceedings in respect to certain matters (e.g., involuntary petitions, appointment or election of officers, examination of debts and other, allowance of claims, setting aside exemptions, granting of discharges, determination of dischargeability of particular debts, collection of assets (including accounts receivable), abandonment of assets, sale of assets, determination of priority of secured and unsecured claims, allowance of fees and expenses, etc.)? Would not the results of such a study be helpful in establishing a structure for handling matters administratively rather than as part of an adversary process?

To determine how often contests arise regarding each of the above categories, we made a study of the daily calendar sheets kept by four Los Angeles referees for 117 working days. The calendars itemize all subjects to be addressed in the daily court sessions. Table 21 shows the frequency of occurrence of contests as enumerated above; since all other contests observed occurred less frequently than 5 percent of the time, they were aggregated in an "All Other" category.
Table 20

BANKRUPTCY ADMINISTRATIVE EXPENSES AND DISTRIBUTIONS
FOR LOW-ASSET CASES

<table>
<thead>
<tr>
<th>Range of Assets</th>
<th>Number of Cases</th>
<th>Amount Realized ($)</th>
<th>Administrative Expenses ($)</th>
<th>Distributed to Creditors ($)</th>
<th>Percent Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-$100</td>
<td>17,197</td>
<td>960,097</td>
<td>895,705</td>
<td>64,392</td>
<td>6.7</td>
</tr>
<tr>
<td>$101-$250</td>
<td>12,651</td>
<td>2,050,648</td>
<td>1,663,609</td>
<td>387,039</td>
<td>18.9</td>
</tr>
<tr>
<td>Cum to $250</td>
<td>29,848</td>
<td>3,010,745</td>
<td>2,559,314</td>
<td>451,431</td>
<td>15.0</td>
</tr>
<tr>
<td>$251-$500</td>
<td>6,072</td>
<td>2,142,292</td>
<td>1,278,360</td>
<td>863,933</td>
<td>40.3</td>
</tr>
<tr>
<td>Cum to $500</td>
<td>35,920</td>
<td>5,153,037</td>
<td>3,837,674</td>
<td>1,315,364</td>
<td>25.5</td>
</tr>
<tr>
<td>$501-$1000</td>
<td>3,470</td>
<td>2,452,720</td>
<td>1,100,388</td>
<td>1,352,331</td>
<td>55.1</td>
</tr>
<tr>
<td>Cum to $1000</td>
<td>39,390</td>
<td>7,605,757</td>
<td>4,938,062</td>
<td>2,667,694</td>
<td>35.1</td>
</tr>
</tbody>
</table>
Table 21
FREQUENCY OF OCCURRENCE OF CONTESTED MATTERS
IN BANKRUPTCY PROCEEDINGS
(for 117 working days)

<table>
<thead>
<tr>
<th>Category of Contest</th>
<th>Frequency of Occurrence</th>
<th>Percent of Total Occurrences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Involuntary Petitions</td>
<td>4</td>
<td>0.8</td>
</tr>
<tr>
<td>Appointment or Election of Officers</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Examination of Debtors and Other</td>
<td>30</td>
<td>5.7</td>
</tr>
<tr>
<td>Allowance of Claims</td>
<td>240</td>
<td>45.7</td>
</tr>
<tr>
<td>Setting Aside Exemptions</td>
<td>1</td>
<td>0.2</td>
</tr>
<tr>
<td>Granting of Discharges</td>
<td>37</td>
<td>7.0</td>
</tr>
<tr>
<td>Dischargeability of a Debt</td>
<td>68</td>
<td>13.0</td>
</tr>
<tr>
<td>Collection of Assets</td>
<td>21</td>
<td>4.0</td>
</tr>
<tr>
<td>Abandonment of Assets</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Sale of Assets</td>
<td>1</td>
<td>0.2</td>
</tr>
<tr>
<td>Preferential Payment (includes one hearing on subordinated claim)</td>
<td>7</td>
<td>1.3</td>
</tr>
<tr>
<td>Allowance of Fees and Expenses</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>All Other</td>
<td>116</td>
<td>22.1</td>
</tr>
<tr>
<td>Total</td>
<td>525</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The first category shown in Table 21, "Involuntary Petitions," included hearings on applications of creditors to intervene as creditors in involuntary petition, with debtor's answer.

The second category, "Appointment or Election of Officers," did not occur in the data sample.

"Examination of Debtors and Others" included examinations of debtors and creditors after the first meetings had taken place. Reasons for additional examinations were not apparent from the calendars and would require inspection of each individual file.

The matter most frequently contested was the objection to a claim, either in its entirety (e.g., duplication of claims), or to some aspect of a claim as filed (e.g., incomplete forms or failure to document
sufficiently). There was only one instance of a hearing regarding exemptions; it involved an objection to the Trustee’s Report of Exempt Property.

"Granting of Discharges" includes matters presumably involving both objections to discharge and voluntary dismissal; this frequency count is valid only for hearings other than the final meeting of creditors.

"Dischargeability of a Debt" occurred quite frequently, accounting for 13 percent of the total number of contests observed.

The category "Collection of Assets" is interpreted rather broadly to include all contests involved in bringing assets into the estate, such as an "Order to Show Cause" why an escrow company should not turn over cash to the estate; a hearing to determine indebtedness due the estate; applications to sell property or collateral free and clear of liens, leases, or claims, and to transfer proceeds to the estate; and a hearing to determine ownership of stock.

There were no contests in the data sample over the abandonment of assets.

"Sale of Assets" was contested just once in our sample, in a hearing regarding an application to withhold assets from sale.

The "All Other" category included a large number of "Order to Show Cause" hearings, usually with temporary restraining orders, but the calendar entry gave no further details. It was determined that they probably were contested matters, but we could not verify this without studying the individual files.

II. Can the Rand report help the Commission make recommendations regarding the organization and number of bankruptcy offices (whether a judicial or administrative or corporate structure is chosen)?

Our analysis of current bankruptcy operations has not provided much evidence on the optimal size and location of bankruptcy offices, nor do we believe that the full range of options for organizing these offices has yet been tested. Within the current structure, the staff
supporting each single referee or pair of referees is self-contained; one or two referees and their supporting clerks form the basic office unit. In an area such as Los Angeles or Chicago, where more than two referees are required, each basic unit described above continues to function independently as if they were in different cities.

In sparsely settled rural areas where debtors and attorneys would have to travel a considerable distance to be heard by the single referee serving their area, the referee arranges to travel among a number of alternate sites in order to make his services more readily available.

Regardless of whether or not an administrative agency is established to process consumer cases, a number of alternative arrangements should be carefully evaluated as to their cost and practicality in serving particular areas.

Local Administration and Regional Processing

Referees on bankruptcy administration would continue to serve in approximately the same location they are placed today. Each administrator would be served locally by only a single secretary. All other clerical functions would be aggregated and performed at some (7-12) large regional centers. The regional centers would create, maintain, and update all case records and be responsible for their timely and accurate administration.

This proposed modification of the present system could result in substantial clerical savings and the use of more consistent procedures. It would be more suitable to serve a nationally administered trustee system rather than the independent referee system in existence today.

Regional Administration and Processing
Using Mail and Phone

Under this system, the western states could all be serviced by a few large centers in Los Angeles, Seattle, Denver, and Dallas.

Debtor who could not visit a center in person would conduct all of their business by mail or phone. Initial counseling prior to filing could be done by phone. Supplementary information and blank petitions
could be sent to the debtor via mail. The petition and schedules
would be returned via mail. Any supplementary examination of the debtor
could be conducted by phone. Objections to claims or to discharge
could be stated in writing and transmitted by mail.

This approach would be especially attractive if the frequency of
occasions for dispute could be reduced and the grounds for resolving
disputes standardized.

It would not be so attractive in a system that contemplates
several hours of individual counseling per case.

Regional Administration and Processing with
Local Counseling or Hearing Offices

Depending on the population distribution of the region, the
counselors might serve in a number of fixed locations or ride circuit
among a number of locations.

Responsibility for processing each case and all decisions would
reside in the regional office. The local counselors would be limited
to informing debtors of the options available to them or conducting
hearings and taking depositions as instructed by the regional office.

If significant counseling or onsite hearings are considered
necessary, this model still would preserve the cost and standardization
benefits of regional high-volume processing.

When the Commission has decided what kinds of service it will
offer the debtor and how cases are to be routinely processed, the ef-
ficient organization of offices for each part of the country can then
be considered. Field tests and experiments should be undertaken to
determine how well these various models will work. Each model should
be evaluated in terms of personnel and travel costs, processing delays,
convenience to debtors and creditors, and the quality of counseling
and issue resolution provided by the system.

The Distribution of Referees to Handle Business Cases

Some of the proposals currently before the Commission would limit
the participation of bankruptcy referees primarily to business cases—
both straight and chapter proceedings. There is some concern with
this concept in that if the number of referees is reduced proportionately to handle this lower workload, the availability of referees, due to geographic limitation, might become a severe problem in the more sparsely settled areas of the country.

As a way of explaining this problem we have assembled the figures shown in Table 22. These figures display the relative business caseload in each circuit and the number of referees who would be required to handle them, assuming an average caseload of 300 cases per referee per year. Figure 1 is a map of the circuits showing the location of the business caseload.

These figures would seem to indicate that the number of referees is not so small as to cause severe accessibility problems. In the Ninth Circuit the caseload is distributed in such a way that four referees could serve Alaska, Idaho, Montana, Oregon, and Washington; four referees could serve Northern California and Nevada; and nine referees could serve Southern California and the Pacific.

12. Is it feasible to assess the consequences of raising filing fees and charges against estates in bankruptcy sufficiently to make the system self-supporting?

The difference between payments and receipts to the referees' salary and expense fund is expected to be a deficit of approximately $6 million for FY 1973. If the Commission desires to reduce this deficit in future years, the following options can be considered to generate additional funds: across-the-board increase in filing fees; increased filing fees for asset cases; increased percentage charge to asset and chapter cases; and increased special charges.

The least justifiable alternative would appear to be the across-the-board increase in filing fees, where the additional cost would be fully borne by the debtor. Assuming 200,000 new cases filed per year, the filing fee increase would have to be $30 to make up the $6 million deficit. Our estimates of the costs required to process various categories of cases indicates that no-asset cases cost roughly $40 to process. A flat increase in filing fees would place an unfair burden on these no-asset debtors, and would further restrict the access which truly indigent debtors have to the court.
Fig. 1 — Geographic distribution of U.S. business bankruptcy cases
Table 22

DISTRIBUTION OF BANKRUPTCY CASES AND REFEREES

<table>
<thead>
<tr>
<th>Circuit No.</th>
<th>Total Cases Commenced FY 1972</th>
<th>Total Business Cases Commenced FY 1972</th>
<th>Percent of Business</th>
<th>Current No. of Referees</th>
<th>Average No. of Business Cases per Referee (Full time only)</th>
<th>Required No. of Referees for 300 Cases per Man</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4,518</td>
<td>553</td>
<td>12.2</td>
<td>6 Full, 2 Part</td>
<td>92</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>9,194</td>
<td>1,488</td>
<td>16.2</td>
<td>17 Full, 1 Part</td>
<td>88</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>3,830</td>
<td>1,143</td>
<td>29.8</td>
<td>10 Full, 2 Part</td>
<td>114</td>
<td>4</td>
</tr>
<tr>
<td>4</td>
<td>8,836</td>
<td>625</td>
<td>7.1</td>
<td>9 Full, 5 Part</td>
<td>69</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>25,562</td>
<td>2,246</td>
<td>8.8</td>
<td>29 Full, 9 Part</td>
<td>77</td>
<td>8</td>
</tr>
<tr>
<td>6</td>
<td>32,799</td>
<td>1,903</td>
<td>5.8</td>
<td>31 Full, 1 Part</td>
<td>61</td>
<td>6</td>
</tr>
<tr>
<td>7</td>
<td>23,809</td>
<td>1,456</td>
<td>6.1</td>
<td>20 Full, 2 Part</td>
<td>73</td>
<td>5</td>
</tr>
<tr>
<td>8</td>
<td>14,646</td>
<td>1,305</td>
<td>8.9</td>
<td>14 Full, 3 Part</td>
<td>93</td>
<td>4</td>
</tr>
<tr>
<td>9</td>
<td>46,295</td>
<td>4,987</td>
<td>10.8</td>
<td>38 Full, 6 Part</td>
<td>131</td>
<td>17</td>
</tr>
<tr>
<td>10</td>
<td>13,253</td>
<td>1,292</td>
<td>9.7</td>
<td>10 Full, 2 Part</td>
<td>129</td>
<td>4.4</td>
</tr>
</tbody>
</table>

-
The greatest deficit in the current system appears to result from the processing of nominal- and low-value asset cases whose processing costs are at least twice those of a no-asset case, but which return only slightly more to the Referees' Salary and Expense Fund. Processing a $400 case costs the bankruptcy system well over $100 but returns only $64. The $6 million deficit could therefore be made up by charging all of the approximately 60,000 nominal, asset, and chapter cases a supplementary $100 filing fee. These additional charges would be fully borne by the creditors and would not have any impact on the debtor's decision to file.

Another way to tax the asset and chapter cases would be to increase the charges made as a percentage of asset value or obligations paid.

With annual realization of assets running at $100 million, a 6-percent increase in charges would be sufficient to cover the deficit. These funds would also come strictly from the creditors but represent a definite move to have the larger cases subsidize the smaller ones.

The final approach to raising additional revenues which might be considered would be to increase the charges made to parties who request special hearings. For items such as objections to discharge or objections to sale, the court might make a $10 charge where the objection is submitted in writing only, and charge $100 if a hearing on the matter is requested. If each referee held only 200 hearings per year, this revenue would amount to over $4 million annually. In addition to raising additional revenue, this approach would act as a strong incentive to reduce the number of petty disputes now occupying much of the bankruptcy court's time.

In summary, we find that there are approaches to raising additional revenue for the bankruptcy system that will tax the creditor, the debtor, or the contesting party. We would argue strongly that any changes in current fee structure be made so as to reduce the incentives to engage in petty disputes.
### Table A-1

**NUMBER OF NOTICES MAILED FOR NO-ASSET AND ASSET CASES**

<table>
<thead>
<tr>
<th>Type of Notice</th>
<th>Number of Notices</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No-Asset</td>
</tr>
<tr>
<td>First Meeting</td>
<td>34</td>
</tr>
<tr>
<td>Special</td>
<td>5</td>
</tr>
<tr>
<td>Final Meeting</td>
<td>0</td>
</tr>
<tr>
<td>Dismissal/Discharge</td>
<td>24</td>
</tr>
<tr>
<td>Total</td>
<td>63</td>
</tr>
<tr>
<td>Bulk Mail</td>
<td>20</td>
</tr>
<tr>
<td>Penalty Mail</td>
<td>43</td>
</tr>
</tbody>
</table>

**SOURCE:** Files of closed cases, Los Angeles Court, 1971.

### Table A-2

**FREQUENCY OF OCCURRENCE OF CERTAIN BANKRUPTCY EVENTS**

<table>
<thead>
<tr>
<th>Event</th>
<th>Asset Cases</th>
<th>No-Asset Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td>% of Cases</td>
</tr>
<tr>
<td>1. Objections to Claims</td>
<td>17</td>
<td>21</td>
</tr>
<tr>
<td>2. Installment Payments</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>3. Challenges to Dischargeability of a debt</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>4. Objections to Discharge</td>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>5. Dismissal of Bankrupt</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

**Number of Cases in Sample**

<table>
<thead>
<tr>
<th></th>
<th>Asset Cases</th>
<th>No-Asset Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>81</td>
<td>178</td>
</tr>
</tbody>
</table>

**SOURCE:** Files, Los Angeles Court, 1971.
Table A-3

CLAIMS LISTED ON PETITION AND CLAIMS DOCKET—BY CASE TYPE
FOR FOUR COURTS

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Average Number of Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Los Angeles</td>
</tr>
<tr>
<td></td>
<td>Petition</td>
</tr>
<tr>
<td>Personal No-asset</td>
<td>24.0</td>
</tr>
<tr>
<td>Personal Asset</td>
<td>42.0</td>
</tr>
<tr>
<td>Business No-asset</td>
<td>28.2</td>
</tr>
<tr>
<td>Business Asset</td>
<td>38.6</td>
</tr>
<tr>
<td>Corporate Asset</td>
<td>NA</td>
</tr>
</tbody>
</table>

**SOURCE:** Petition data from schedules in petitions filed and claims dockets attached to BK-74 docket sheets for docketed claims, 1972.

* Only one case in sample.
Appendix B

PERSONS AND PLACES VISITED

This appendix contains a list of persons and places visited during the course of the research. The authors discussed specific aspects of the study and collected data from these sources.

Los Angeles, California
Referees:
Howard V. Calverley
Norman E. Neukom
John E. Bergener
Joseph J. Rifkind
Ronald L. Walker

District Court Clerks:
Chief Clerk of the Court:
Emery Hatcher
Chief Bankruptcy Clerk:
Rex Lawson

Referee Chief Clerks:
Chief Clerks:
Irene Smith
Marian Kadomatsu
Moreen Dunbar
Vy Bankert
Marilyn Turner,
Chap. XIII
Elsie Davis

Trustees:
Irving I. Bass
William Lazaro

Sacramento, California
Referees:
Robert E. Woodward
Bryte M. Petersen

Chief Clerk:
Ms. LaCroix

Trustees:
Robert Loheit, Chap. XIII
Don Frazier

Portland, Oregon
Referees:
Folger Johnson, Jr.
Donald Sullivan

Portland, Oregon (cont.)
Chief Clerk:
T. Luther

Trustees:
Celia Lesman, Chap. XIII
Jerome Shank

Chicago, Illinois
Referees:
Lawrence J. Miller
Robert Tieken

Chief Clerk of the Court:
William S. Cunningham

Atlanta, Georgia
Referee:
W. Homer Drake

Chief Clerk:
Mr. Goza

Trustee:
Sam Flownen - Chap. XIII

Newark, New Jersey
Referees:
Vincent J. Commissa
Joseph D. De Vito

Chief Clerk:
Charlotte Cafone

New York City, New York
Referees:
Asa S. Herzog
Roy Babitt

Deputy Chief Clerk:
Diane Rebholz
Acting Chief Clerk:
Ann Oberg
Kansas City, Kansas

Referee:
    Milton J. Sullivant

Chief Clerk:
    Mrs. Thelma Hagen

Clerk of the Court:
    Arthur Johnson

EPI representative:
    Claude Rice

Trustee:
    Tom McDowell, Chap. XIII

Lexington, Kentucky

Referee:
    Joe Lee

Trustee:
    Jerry D. Truitt

UDC representative:
    Don Lamb

Little Rock, Arkansas

Referee:
    Arnold Adams

Bankruptcy Division of the Administrative Office of the U.S. Courts, Washington, D.C.:

    Acting Director: Berkeley Wright
    Thomas Beitleman
    Kent Presson
    Ernest Gleesen

Information Systems Division of the Administrative Office:

    Dick Breakiron
    Tony Engel

Judicial Center:

    Joe Ebersole
BIBLIOGRAPHY


Herzog, Asa S., "Bankruptcies--Are We on the Right Road?" Credit and Financial Management, June 1968.


