

"The Questions Behind the Numbers"

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"Subvert the Dominant Paradigm," the bumper sticker told me, as I numbly followed along in the unending line of traffic. As a student in the sixties, I liked the idea. But in 2001 I think more in terms of "reformation." And as a U.S. Trustee I think constantly in terms of bankruptcy and case administration. So, following the dictate of a bumper sticker, I asked myself: What is the dominant paradigm in the administration of bankruptcy estates? And if I could describe it, how would I reform it?

Coincidentally, while thinking about the bumper sticker, I was carrying in my briefcase a draft of a thoughtful and thought-provoking white paper titled "Report of the United States Trustee Program on Chapter 7 Asset Cases," which I will refer to simply as the "Report."

By the time you read this, the Report should be in final form and publicly available. The Report by no means answers, nor is it intended to answer, the ultimate questions raised above. It does not describe the prevailing patterns in the administration of bankruptcy cases nor does it point a direction for reforming policy. However, it does provide a starting point for a discussion of these two issues and it provides the germ of an idea. What if a group of panel trustees, U.S. Trustees, and representatives of the Executive Office studied the Report, jointly defined what they thought ought to be the dominant paradigm for the administration of chapter 7 bankruptcy cases, and recommended best practices to shape case administration?

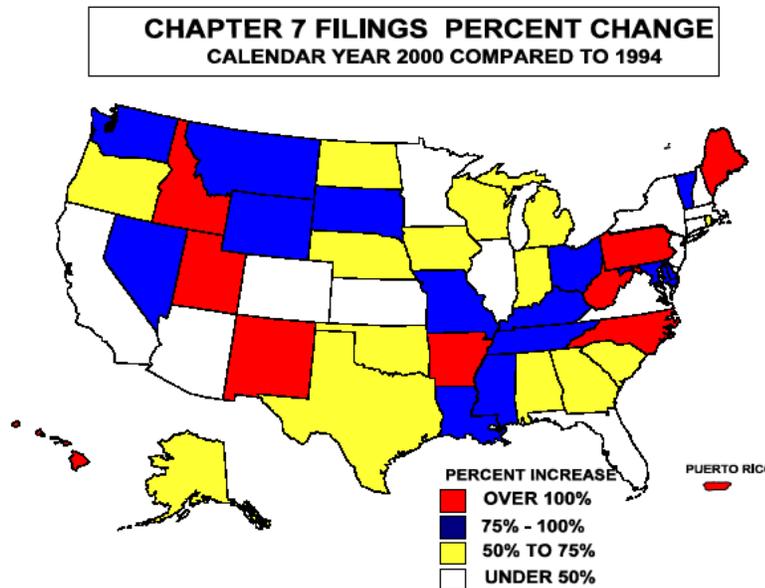
The Report was written by three talented members of the Executive Office: Ed Flynn of the Office of Research and Planning, and Suzanne Hazard and Erna Seals of the Office of Review and Oversight. It extracts reports and statistics on chapter 7 cases filed and closed between 1994 and 2000, with particular focus on activity during the year 2000. It excludes information on cases closed in Alabama and North Carolina because those states are served by bankruptcy administrators. Much of the information is extracted from trustees' distribution reports (TDRs) and the related forms trustees file when closing a case. These reports and forms are collected and summarized in our semi-annual distribution statistics.^{1/}

^{1/}Effective July 1, 1999, we adopted a new Form 4 in cooperation with representatives of the NABT that eventually should allow panel trustees and U.S. Trustees alike to extract more and better

But what does this Report tell us about the current "paradigm" in chapter 7 case administration and, more to the point, what questions does it raise for joint discussion and research? The following is an introduction.

The Baseline

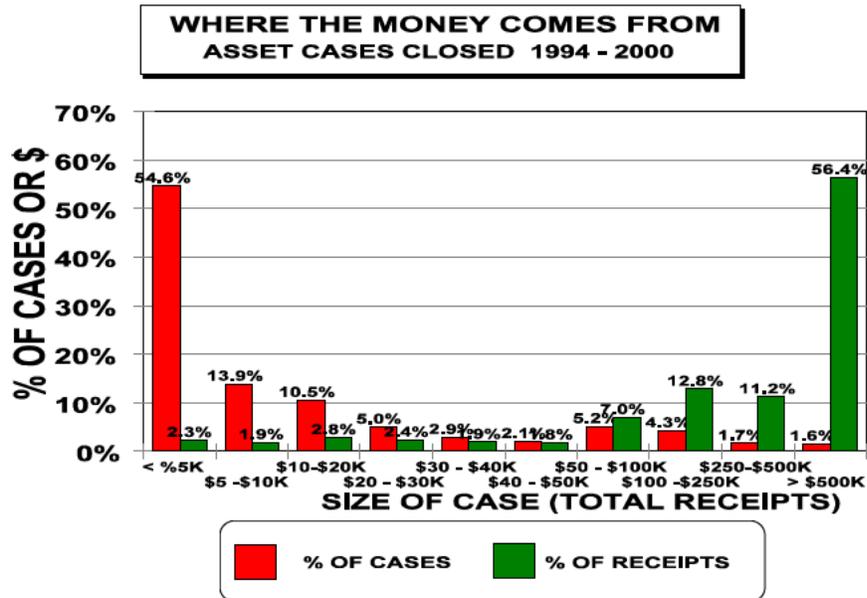
Over the last seven years, 70% of bankruptcy cases were filed in chapter 7, 29% in chapter 13, and less than 1% in chapter 11.^{2/} The number of chapter 7 filings increased dramatically during the last half of the 1990s, peaking in 1998 at 1,036,000 and then declining to approximately 859,000 last year. In 2001, barring bankruptcy reform, we expect approximately 950,000 Chapter 7 filings. The decline in the number of filings for the last two years and the succeeding increase actually follows a clear pattern that dates back at least to 1960. The increase and decrease in filings, while not uniform in every state, did not exhibit significant geographic differences. While some states showed greater increases or decreases than others, practically all of them followed the same basic trend.



information. In addition, we anticipate that uniform transaction codes, which are scheduled for implementation starting in December of this year, will generate even better data.

^{2/}While this is the average for the entire country, a separate draft report written by Gordon Bermant of the Office of Research and Planning also points out the wide disparities in the percent of chapter 13 cases filed. For example, in Tennessee, the percentage of chapter 13 cases runs from 55% to 65%, whereas in Massachusetts it runs from 12% to 18%.

over \$500,000 in assets. Between 1994 and 2000, cases with receipts of less than \$5,000 accounted for 55% of the cases closed, but only 2.3% of the disbursements. Conversely, a relatively small number of cases with disbursements of over \$500,000--3,179 or 1.6% of the cases--accounted for 56.4% of the money distributed.

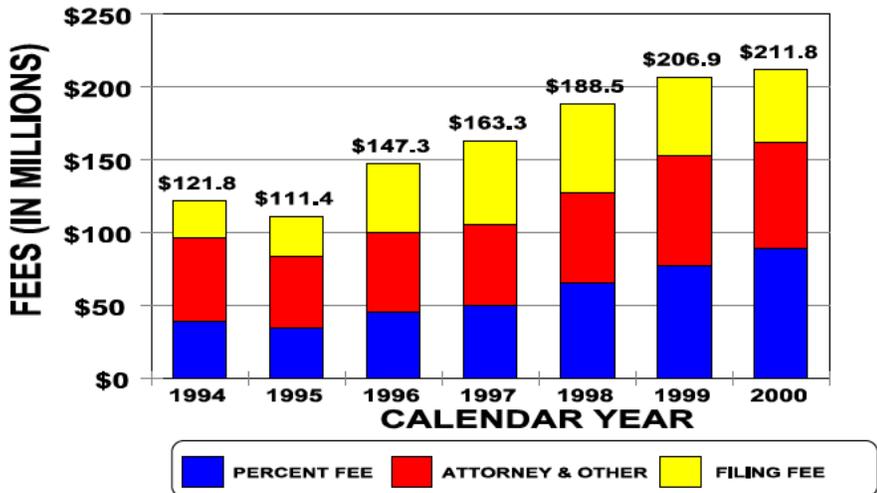


Over the last seven years the number of very large asset cases closed has been stable, ranging between 413 and 470 each year. As noted above, however, each year these large cases account for between 50% to 60% of the total money distributed. Query if this will continue, given that half of these were originally filed as chapter 11 cases and the number of chapter 11 cases has declined by more than 60% since 1991. What is the significance of this trend on trustee compensation? Likewise, if there is a diminishing number of large chapter 7 asset cases in the pipeline due to the decline in the number of chapter 11 cases, would trustees find it worthwhile to administer more small cases?

Trustee Compensation

From the trustee's point of view, the good news is that total compensation has nearly doubled in the last six years. Of course the number of filings, at least in chapter 7 cases, has also doubled. The following chart shows the dollar amounts and the sources of that compensation broken down by these categories: (i) statutory compensation orders under § 330; (ii) professional fees from self-retention as attorney or accountant; and (iii) closing fees for each assigned case (\$45 until October 1994, and \$60 thereafter).

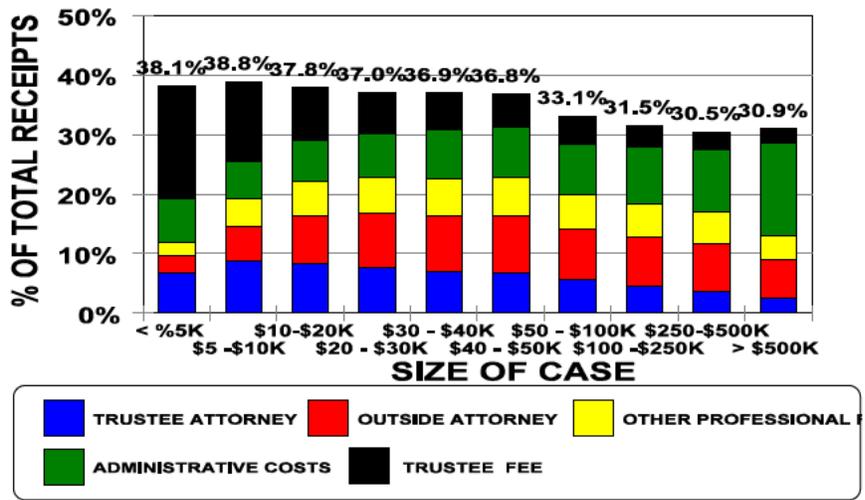
**TRUSTEE FEES AND EXPENSES
CALENDAR YEARS 1994 - 2000**



Cost of Administration

The difference in the cost of administering cases with less than \$50,000 in assets and the cost of administering cases with more than \$50,000 in assets is not significant. The combined cost of professional fees, trustee fees, and administrative costs ranges from a low of 30.9% for the largest cases to around 38% in the smaller cases. This raises the questions whether the cost of administration varies significantly with case size and whether it is efficient or cost-effective to administer cases of different sizes.

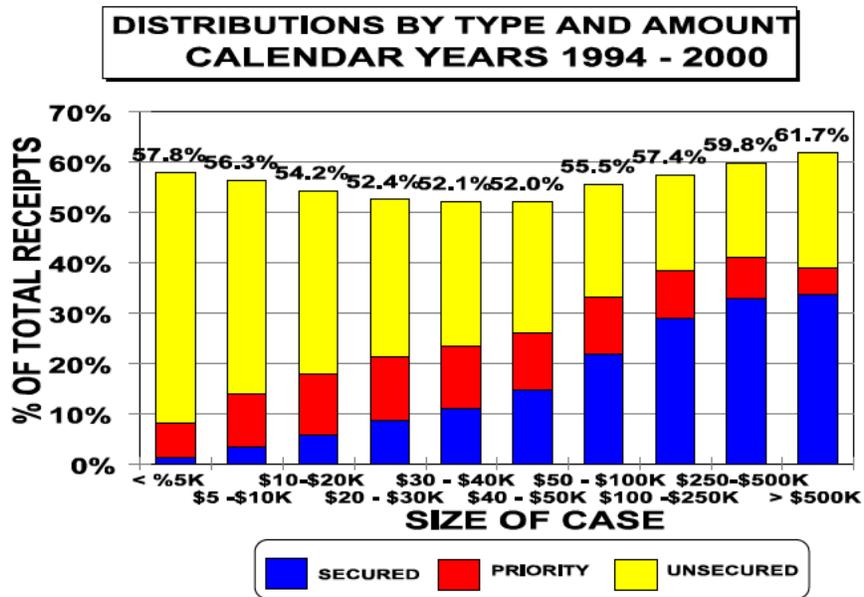
**PROFESSIONAL FEES BY TYPE AND AMOUNT
CALENDAR YEARS 1994 - 2000**



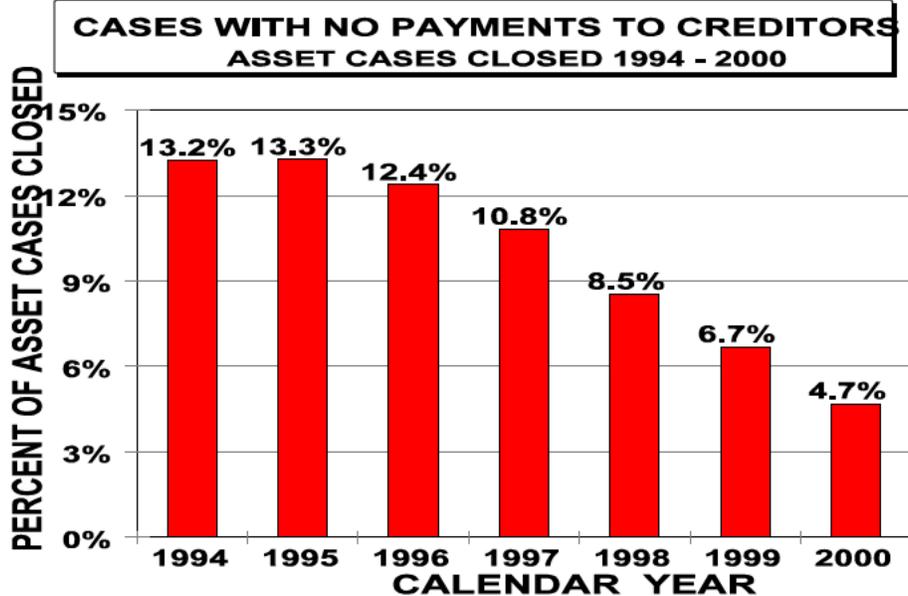
Distributions by Case Size

Case size affects who gets the money. In the smallest cases, the largest portion of the money distributed, as much as 50%, goes to unsecured creditors and a minuscule percentage, less than 1.2%, goes to secured creditors. In the larger cases, a much higher percent goes to secured creditors, approximately 33%, and relatively less, about 23%, goes to unsecured creditors.

Do the relatively large percentage distributions to unsecured creditors in the smaller cases indicate that those cases are worth administering, in the interests of both creditor distributions and efficiency? While we do not know what percent of the claims in those cases is paid, we do know that a relatively large portion of the money goes to the unsecured creditors and that the trustees can administer those cases without incurring disproportionately high administration costs or trustee or professional fees. And if that can be done in some locations, why can't it be done everywhere?



The Report is encouraging in showing success in implementing policy. Once we decide on a policy, such as closing old cases or reducing the number of cases with zero return to creditors, we can implement it. For example, cases with no distributions to creditors have decreased steadily over the last six years. Cases with no payments to creditors comprised 13.2% of the asset cases closed in 1995, but only 5.1% of the asset cases closed in 2000.



Note that "no distribution to creditors" was defined to be exactly that: no distribution to any creditor, whether it be priority, secured, or general unsecured. To me, the chart raises the question as to what types of cases are being administered where no money is paid to any creditor, even secured creditors.

Likewise, the Report shows that we have made great progress in moving cases. The number of cases open 10 or more years has declined from 706 in January 1994 to 207 in January 2001, or a 71% decline. (Note that this is down from 3,999 cases as of April 1992, when the U.S. Trustees started tracking the statistic.) In addition, cases open more than three years have declined from 22,404 in April 1992 to 8,792 in January 2001. These numbers raise the question whether we should declare victory and shift our focus to improving the quality of administration.

The Report, like any statistical analysis, raises more questions than it answers, but it provides a starting point for a discussion of how we, the panel trustees and the U.S. Trustees, establish our priorities in the administration of bankruptcy cases and how we achieve our goals. It also raises the question that Clarkson McDow has frequently asked: How do we currently use statistics, and how should we use them? Finally, the Report underscores the importance of collecting the type of data that we need in order to discuss these ideas in an objective and informed way. The Report should impel us to examine these issues, communicate with each other, establish goals, and measure our progress.

In short, we do not have to subvert the dominant paradigm. We can define and determine it.