

MISDIAGNOSIS: A COMMENT ON *ILLNESS AND INJURY AS CONTRIBUTORS TO BANKRUPTCY* AND THE MEDIA PUBLICITY SURROUNDING IT

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I. INTRODUCTION

In early February 2005, a barrage of media publicity accompanied *Health Affairs'* publication of *Illness and Injury as Contributors to Bankruptcy*—just a few weeks before the U.S. Senate was scheduled to take up bankruptcy reform legislation.¹ Headlines like “Medical Bills Blamed in Half of Bankruptcies”² and “Medical Bills Cause About Half of Bankruptcies, Study Finds”³ ran in major newspapers all over the country.⁴ For a while, the publicity made bankruptcy policy seem almost glamorous.⁵

The problem with these headlines is that they were false.⁶ The study made no finding that medical bills were involved in half of

1. David U. Himmelstein et al., *Illness and Injury as Contributors to Bankruptcy*, HEALTH AFFAIRS, Feb. 2, 2005, <http://content.healthaffairs.org/cgi/reprint/hlthaff.w5.63v1.pdf> [hereinafter *Illness and Injury*].

2. Diana Keough, *Medical Bills Blamed in Half of Bankruptcies*, CLEV. PLAIN DEALER, Feb. 2, 2005, at A1.

3. Liz Kowalczyk, *Medical Bills Cause About Half of Bankruptcies, Study Finds*, BOSTON GLOBE, Feb. 2, 2005, at C6.

4. See also *Medical Bills Make Up Half of Bankruptcies*, ASSOC. PRESS, Feb. 2, 2005, <http://www.msnbc.msn.com/id/6895896>; Bonnie Miller Rubin, *Medical Bills Pave Way to Poorhouse, Study Says; Many Bankruptcies Linked to Illness*, CHI. TRIB., Feb. 2, 2005, at 1C; Rick Stouffer, *Half of Personal Bankruptcies Caused by Medical Bills*, GREENSBURGH TRIBUNE-REVIEW, Feb. 3, 2005, available at http://www.pittsburghlive.com/x/tribune-review/business/s_299756.html.

5. Other newspapers made essentially the same assertion in the text of their articles covering the release of the study. See Al Lewis, *Medical Bills Behind Many Bankruptcies*, DENV. POST, Feb. 6, 2005, at K1 (“Medical bills contribute to about half of all personal bankruptcies, according to a study published . . . by legal and medical researchers at Harvard University.”); Julius A. Karash & Paul Wenske, *Medical Bankruptcies: Double Dose of Trouble*, KAN. CITY STAR, Feb. 3, 2005, at A1 (“A new study by Harvard University legal and medical researchers . . . estimates that nearly half of all U.S. bankruptcies are caused by soaring medical bills.”); Justin Dickerson, *Medical Bills Induce Many Bankruptcies; Health Costs Increasingly Lead ‘Play by the Rules’ People to Financial Crisis, a Study Finds*, L.A. TIMES, Feb. 2, 2005, at A13 (“About half of all bankruptcy filings in the United States occur because of health-related expenses—and that share is growing, a study released today has found.”). See also Jane Brisset, *Bankruptcies Decline in Duluth During 2004*, DULUTH NEWS-TRIB., Feb. 10, 2005 (“A recent study by Harvard researchers said about half of personal bankruptcies are due to medical bills.”); *Major Medical Bills Lead to Bankruptcy*, CONSUMER BANKR. NEWS, Feb. 17, 2005 (“Medical bills were the cause of half of the consumer bankruptcies filed during 2001, according to research conducted by Harvard Law School and Harvard Medical School”); Ted Evanoff, *Bankruptcies Rise to a Record Level Throughout State*, INDIANAPOLIS STAR, Feb. 19, 2005, at 1A (“A recent Harvard University study of 1,771 bankrupt U.S. residents said 54 percent said medical bills paid with credit cards pushed them into personal bankruptcy.”); Karen Dybis, *Bankruptcies Hit Record in Michigan; Personal Filings Are Up 38% from 2001, as Job Loss, Credit Debt, Medical Bills, and Divorce Take Toll*, DETROIT NEWS, Feb. 22, 2005, at 1A (“A Harvard University study released this month found that medical debt caused half of all personal bankruptcies.”); Holly Yeager, *US Bankruptcy Bill Faces Rough Senate Ride*, FIN. TIMES (London), Feb. 28, 2005, at 7 (“About half of US bankruptcies are caused by medical bills, affecting about 2m people a year, according to a report this month from Harvard Medical School.”).

6. See *infra* part II.

all bankruptcies. Nor did it find that illness or injury, at least as those terms are ordinarily used, were major (or even minor) contributors to half of all bankruptcies.⁷ Stripped of its rhetorical excess, the study's actual findings were far more modest—to the point that the media might not have been interested at all if they had understood it better.

Ordinarily, of course, it would be a mistake to hold a study's authors responsible for errors made in the media about its meaning. Such misunderstandings are common even when authors exercise abundant caution. But in this case, the authors should have been more careful. Regardless of their intention, they gave the media reason to believe that the study concerned bankruptcies caused by the crush of medical bills, which, despite the media's readiness to believe it, was simply not true. The press release accompanying the study issued by Physicians for a National Health Program, an organization co-founded by the lead author and one of the co-authors, stated in its title: *Harvard Study: Half of U.S. Bankruptcies Caused by Medical Bills*.⁸ Similarly, the announcement of the study by Harvard Law School, at which another of the study's co-authors is a faculty member, misreported that “[n]early half of all Americans who file for bankruptcy do so because of medical expenses.”⁹ If the authors

7. See *infra* parts II, III. Newspapers nevertheless mistakenly made the assertion. See Lori Rackl, *Illness Triggers Half of Bankruptcies*, CHI. SUN-TIMES, Feb. 2, 2005, at 3 (“Medical bills and illnesses are a major cause of roughly half of this country’s personal bankruptcies, according to [a new Harvard study of bankruptcy] published today on the Web site of the journal Health Affairs.”); Christopher Snowbeck, *Study: Bankruptcies, Medical Debt Often Tied*, PITTSBURGH POST-GAZETTE, Feb. 2, 2005, at A2 (“About half of all personal bankruptcies in the United States strike people in the wake of an illness or injury, according to a new study . . .”); Lisa Rapaport, *Illness Can Kill Financial Health*, SACRAMENTO BEE, Feb. 2, 2005, at D1 (“Medical problems are now a major cause in half of all personal bankruptcies in the United States, according to a Harvard University study to be released today.”).

8. *Harvard Study: Half of U.S. Bankruptcies Caused by Medical Bills*, U.S. NEWswire, Feb. 2, 2005, <http://releases.usnewswire.com/GetRelease.asp?id=42456>. Lead author Dr. David U. Himmelstein and co-author Dr. Steffie Woolhandler are co-founders of Physicians for a National Health Program, an organization that advocates a single-payer system as “the only solution to solving the United States’ many health care problems.” See Physicians for a National Health Program Home Page, <http://www.pnhp.org> (last visited Oct. 7, 2005). Drs. Himmelstein and Woolhandler have been long-time supporters of the single payer system. See DAVID HIMMELSTEIN ET AL., BLEEDING THE PATIENT: THE CONSEQUENCES OF CORPORATE HEALTH CARE (Common Courage Press 2001); Steffie Woolhandler & David Himmelstein, *A National Health Program: Northern Light at the End of the Tunnel*, 262 JAMA 2136 (1989); David Himmelstein & Steffie Woolhandler, *The Corporate Compromise: A Marxist View of Health Maintenance Organizations and Prospective Payment*, 109 ANNALS INTERNAL MED. 494 (1988).

9. *Harvard Study Finds Medical Bills Push Many into Bankruptcy*, http://www.law.harvard.edu/news/2005/02/03_bankruptcy.php (last visited Oct. 7, 2005) [hereinafter

left responsibility for the accuracy of these announcements to persons unfamiliar with the study, they made a mistake.¹⁰

Moreover, their own comments sometimes pointed journalists in the wrong direction. In commenting to the media, lead author David Himmelstein stated, “Our study is frightening. . . . Too often private health insurance is an umbrella that just melts in the rain.”¹¹ Co-author Elizabeth Warren stated in the Harvard Law School announcement of the study that “[a] broken health care finance system is bankrupting middle class America.”¹² Their emphasis on health care financing encouraged journalists to believe that the study focused on bankruptcies that were indeed the result of a broken health care finance system.¹³ Their dramatic language suggested that the study had uncovered something on that topic that should frighten or shock the average American.

Should the media also share in the blame for the vast amount of misinformation that circulated about the study? Yes, of course—perhaps even a greater share of the blame. A careful reading of the study itself (and not just the press releases) would have gone a long way toward separating fact from fiction. But very few journalists engaged in such careful readings. Instead, as a result of inaccuracies and excessive rhetoric, the public debate on bankruptcy reform was compromised.

Harvard Announcement] (the title also refers to “medical bills” but does not specifically state that half of bankruptcies are involved).

10. This is particularly so, when, as here, a study is released with great fanfare shortly before an important and related item of legislation is set for consideration.

11. See, e.g., Lee Bowman, *Medical Bills to Blame for Half of All Family Bankruptcies*, SCRIPPS HOWARD NEWS SERV., Feb. 1, 2005, http://www.shns.com/shns/g_index2.cfm?action=detail&pk=MEDBANKRUPTCY-02-01-05 (“Our study is frightening . . .” said Dr. David Himmelstein . . . “Too often, private health insurance is an umbrella that just melts in the rain.”). His statement was echoed almost word for word by co-author Steffie Woolhandler. See Bonnie Miller Rubin, *Medical Bills Pave Way to Poorhouse, Study Says*, CHI. TRIB., Feb. 2, 2005, at 1 (“Our study is fairly shocking,” said Steffie Woolhandler . . . “We found that, too often, private health insurance is an umbrella that melts in the rain.”).

12. *Harvard Announcement*, *supra* note 9.

13. The study’s basic design may also have contributed to the erroneous impression that it focused on catastrophic medical debt leading to bankruptcy. If it had actually done so, the study might have had significant implications in the areas of bankruptcy and health care finance policy. As designed, however, the study has few, if any, policy implications. It was natural, therefore, for journalists to assume that a study released with such fanfare must be on a topic that would merit that publicity. And the opaquely written study itself did little to dispel that assumption.

II. STUDY ABOUT MEDICALLY RELATED BANKRUPTCIES, BROADLY DEFINED, NOT MEDICAL BILLS

The truth is that the study is not about bankruptcies caused by medical bills. It is not even about bankruptcies caused by illness or injury. It is about bankruptcies that can—at least if you are willing to stretch things—be classified as medically related. Its central findings are that 54.5% of all bankruptcies have a “medical cause” and that 46.2% of all bankruptcies have a “major medical cause.”¹⁴ But “medical cause” and “major medical cause” are specially defined terms. Not everyone whose bankruptcy was classified as having a “medical cause” or a “major medical cause” would agree that illness and injury were involved at all. Some might even laugh at the notion.

For example, the authors state that their study classified bankruptcies in which the debtor cited “uncontrolled gambling,”¹⁵ “alcohol or drug addiction,” “death in family,” and

14. *Illness and Injury*, *supra* note 1, at W5-66. The study was based on a weighted sample of 1,771 bankruptcy filings in 2001. *Id.* at W5-64. The sample was comprised of 250 filings from each of five (from a total of seventy-seven) federal judicial districts plus 521 filings by homeowners. Written questionnaires were administered to all such debtor households. *Id.* at W5-64 to -65. Further information was obtained through follow-up telephone interviews, to which seventy percent of the debtor households agreed (and in which ultimately 931 debtor households (fifty-three percent) actually participated). *Id.* at W5-65. The study also had findings on a variety of other less publicized issues such as the age, gender, educational attainment, and occupational prestige of the average debtor in bankruptcy and whether those debtors maintained health care insurance throughout the period leading to the bankruptcy. *Id.* at W5-66 to -67. Also included were findings on how many debtors went without telephone service, food, a prescribed medicine, or some aspect of medical or dental care on account of cost prior to filing for bankruptcy. *Id.* at W5-68. Publicity surrounding the study, however, focused mainly on the findings that 54.5% of all bankruptcies have a “medical cause” and 46.2% of all bankruptcies have a “major medical cause.” *See supra* notes 4–5. For the sake of brevity, this comment will focus only on those findings.

15. Although the study states that debtors were asked whether “uncontrolled gambling” was a cause of their bankruptcy, the questionnaire used in the underlying research asked whether “[g]ambling” was among the causes of their bankruptcy—and indeed the study concedes in a footnote that “more-stigmatized causes of bankruptcy (such as addiction, mental illness, or profligate spending) may be underreported.” Debtor Questionnaire, at 4 (on file with the author); *Illness and Injury*, *supra* note 1, at W5-73 n.18. The authors point out that “[u]ncontrolled gambling is classified as a psychiatric disorder in the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition.” *Illness and Injury*, *supra* note 1, at W5-73 n.16. Interestingly, the authors report that only 1.2 percent of debtors cited gambling as even one among many causes for their bankruptcy. *Id.* at W5-67. If so, it suggests that some of the debtors may have been less than honest in responding to the questionnaire. The National Council on Gambling Problems reports that about one percent of American adults are compulsive gamblers, and about three or four percent have gambling problems. NATIONAL COUNCIL ON GAMBLING PROBLEMS, PROBLEM GAMBLING RESOURCE AND FACT SHEET (2001), http://www.ncpgambling.org/media/pdf/epa_flyer.pdf. Those figures suggest that some of the debtors responding to the questionnaire may have failed to report their

the “birth/addition of new family member”¹⁶ as having a “medical cause” (but not necessarily a “major medical cause”).¹⁷ It is true there may be situations in which a researcher might legitimately want to classify those conditions as “medical,” but a study touted by one of its authors as showing that “[a] broken health care finance system is bankrupting middle class America” is not one of them.¹⁸ A father who has gambled away his family’s mortgage payment is not likely the victim of crushing medical bills and reforming the health care finance system will do nothing to solve his problem. Similarly, new parents who find that they can no longer afford their previous lifestyle now that one of them has to stay home with the baby will usually find the obstetrician’s bill the least of their problems. Babies are a financial hardship even when hospitals give them away free.

Even if the media had correctly reported that the study was not about bankruptcies caused by the crush of medical debt but about bankruptcies with a “medical cause,” it still would have been inappropriate to include these bankruptcies in the count, especially during the final weeks of debate over the Bankruptcy Abuse Prevention and Consumer Protection Act. Few of those concerned about bankruptcy policy understand the term “bankruptcy with a medical cause” to include bankruptcies caused by gambling.¹⁹ Moreover, many, perhaps most, people

gambling problems—unless some plausible reason exists for why problem gamblers are systematically *less likely* than other Americans to file for bankruptcy. Intuitively, one would expect the opposite.

16. The actual questionnaire used in the research asked debtors whether the “[a]ddition of a family member” was among the causes of their bankruptcy. Debtor Questionnaire, at 4 (on file with the author).

17. To qualify as a “medical cause,” there was no need for those situations to result in medical bills or in lost income due to lost employment. According to the authors, any bankruptcies in which the debtor cited “uncontrolled gambling,” “alcohol or drug addiction,” “death in family,” and “birth/addition of new family member” were included. *Illness and Injury*, *supra* note 1, at W5-65.

18. *Harvard Announcement*, *supra* note 9 (quoting Professor Elizabeth Warren).

19. In arguing against the bankruptcy bill, many newspapers cited to the study approximately one month after its initial release. In almost every case, the newspapers seriously misstated the study’s actual findings or reported statements from the study that were not remotely supported by the data. See Editorial, *Fairness in Bankruptcy*, BOSTON GLOBE, Mar. 3, 2005, at A14 (“A recent study reveals the true face of bankruptcy It concluded that between 46.2 and 54.5 percent of filings could be traced back to serious medical problems.”); *Bankruptcy Law: Don’t Add to the Costly Ordeal of Serious Illness*, DETROIT FREE PRESS, Mar. 2, 2005, at 6A (“Changes being sought in the bankruptcy code look even more ridiculous after last month’s release of a study by Harvard legal and medical professors. The research shows that fully half of those who file for bankruptcy hit the financial wall because of medical problems.”); Editorial, *A Dangerous Bankruptcy Bill*, CHATTANOOGA TIMES FREE PRESS, Mar. 4, 2005, at B6 (“[I]n fact, a new Harvard study shows that the greatest contributor to the need for bankruptcy is not purposeful

believe that debtors beset by traditionally-defined serious illness or injury ought to be granted dispensation from overwhelming debt incurred as a result. The higher the proportion of bankruptcies attributable to such misfortune, the more lenience the public may agree to in the formulation of bankruptcy policy. But there is far less agreement that debtors beset by gambling, alcoholism, or drug addiction should be protected by the easy availability of the bankruptcy option. Indeed, some would probably take the position that holding such persons accountable for their debt would be therapeutic. Classifying gambling, alcoholism, and drug addiction with those involving traditionally defined injury or illness only serves to confuse the issue and mislead the reader.

debt avoidance, but the price of medical care.”); Editorial, *Bankrupt of Compassion*, L.A. TIMES, Mar. 9, 2005, at B10 (“A study released in February by the Harvard medical and law schools suggests that nearly half of all personal bankruptcy filings result from medical problems that disrupt household finances.”); Editorial, *The Protect Corporations from Consumers Act*, AUSTIN AM-STATESMAN, Mar. 10, 2005, at A12 (“One recent study shows that about half of all bankruptcy filings are linked to a serious medical problem—and 75 percent of those had health insurance when the disease or injury struck. This study was done by a group of Harvard University researchers.”); Editorial, *How a Bad Bill Becomes Law*, S.F. CHRON., Mar. 13, 2005, at C4 (“A recent Harvard University survey found that more than half of all personal bankruptcy filings can be attributed to medical bills”); Editorial, *Bankrupt Bill: Consumers Have Rights Too*, STAR-TRIB. (Minneapolis), Mar. 9, 2005, at 10A (“A recent study from Harvard University Medical School found that fully half of personal bankruptcies result from major illness or medical debt—no surprise given the staggering costs of even a hospital visit and the growing number of Americans without health insurance.”); Editorial, *Bankrupt Tactic: Giving Some Military Personnel More Bankruptcy Protection Rings Hollow When Lawmakers Penalize Others for Illness*, NEWS AND OBSERVER (Raleigh, N.C.), Mar. 6, 2005, at A28 (“In a recent study of 1,771 bankruptcy cases, researchers from Harvard’s law and medical schools found medical bills to be the cause in 46 percent of those cases.”); Editorial, *Bankruptcy Bill Is a Gift to the Rich, Business; Cuts Away Safety Net for Ordinary Folks*, HERALD NEWS (Passaic County, N.J.), Mar. 17, 2005, at E7 (“Given Harvard University’s recent finding that about half of personal bankruptcies are brought on by just one major medical calamity, the misnamed Bankruptcy Abuse Prevention and Consumer Protection Act is particularly poorly timed.”); Editorial, *Senate Bankrupting the Bankruptcy Law*, HONOLULU ADVERTISER, Mar. 14, 2005, at 10A (“A recent Harvard University study found that, rather than abusing and scamming the bankruptcy laws, about half of all people filing for personal bankruptcy were brought low by medical emergencies.”); Editorial, *The Flawed Bankruptcy Bill: Legislation Would Harm People Forced into Insolvency by Life’s Vagaries*, BUFF. NEWS, Mar. 9, 2005, at A6 (“A study by Harvard’s medical and law schools found that medical-related bankruptcies have gone up 2,200 percent since 1981.”). *See also* Paul Krugman, Editorial, *The Debt Peonage Society*, N.Y. TIMES, Mar. 8, 2005, at A23 (“One recent study found that more than half of bankruptcies are the result of medical emergencies.”); Molly Ivins, Editorial, *Bankruptcy Bill Has Big Problems*, CHARLESTON GAZETTE & DAILY MAIL (W. Va.), Mar. 5, 2005, at 4A (“According to a study by two associate medical professors at Harvard . . . bankruptcies are indeed shooting up. Between 1981 and 2001, personal bankruptcies rose by 360 percent, but those caused by medical debts rose an astronomical 2,200 percent.”); Gregory Stanford, Editorial, *This Bankrupt Congress on the Job for the Rich*, MILWAUKEE J. SENTINEL, Mar. 6, 2005, at J4 (“A recent Harvard University study has found that illness accounts for half of all bankruptcies—yet another symptom of the health care crisis that afflicts the nation.”).

All this, however, is just one among many ways that *Illness and Injury as Contributors to Bankruptcy* caused illness and injury to appear to play a larger role in bankruptcy than they actually do.

III. ONLY 28.3% OF DEBTORS CITED ILLNESS OR INJURY AS AMONG THE REASONS FOR THEIR BANKRUPTCY

While the study takes the position that 54.5% of all bankruptcies have a “medical cause” and 46.2% of all bankruptcies have a “major medical cause,”²⁰ it is important to note that only 28.3% of all debtors questioned for the study cited illness or injury as a reason for their own bankruptcies,²¹ and even that figure is bloated. The authors gave debtors an extensive list of possible reasons for their bankruptcy and encouraged them to “check all of those that apply to your situation.” Among the reasons listed were: (1) “Job problems”; (2) “Illness or injury to self or family member”; (3) “Divorce or family breakup”; (4) “May lose home (eviction, foreclosure)”; (5) “Victim of fraud or crime”; (6) “Addition of a family member”; (7) “Gambling”; (8) “Trouble in managing money”; (9) “Employer’s business failed”; (10) “Car accident”; (11) “Death of a family member”; (12) “Credit card debt out of control”; (13) “Victim of disaster (for example, flood or fire)”; (14) “Aggressive collection efforts by creditor”; (15) “Alcoholism or drug addiction”; and (16) “Something else (what?).”²² The 28.3% figure was obtained from the results of this question.²³

20. *Illness and Injury*, *supra* note 1, at W5-66. In the study, the difference between “medical cause” and “major medical cause” is that “major medical cause” does not automatically include all cases in which the debtor attributed the need for bankruptcy to “uncontrolled gambling,” “alcohol or drug addiction,” “death in family,” or “birth/adoption of new family member.” *Id.* at W5-65. To be a bankruptcy with a “major medical cause,” there is no requirement that the bankruptcy be the result of a serious physical illness or injury, or even a serious mental illness or injury. *Id.* Any debtor, who checks “[i]llness or injury of self or family member” as *among* the reasons for bankruptcy (and any who did not check it, despite the opportunity to do so), is included. *See id.*

21. *Id.* at W5-67.

22. Debtor Questionnaire, at 4 (on file with the author).

23. *Illness and Injury*, *supra* note 1, at W5-65. This may be unfortunate, because the study states that the 931 telephone interviewees were asked whether illness or injury had been a “significant cause of their bankruptcy.” *Id.* (emphasis added). If this is correct (and not just a misstatement of the questionnaire question), then whatever answers were generated from that question were apparently not used. *See id.* The authors preferred to use the questionnaire data, for which the debtors were asked whether illness or injury was “a” cause and were urged to check all that apply. *See id.* The telephone interview data was used to identify which family members had been ill or injured. *Id.* For three-quarters of the 391 telephone interviewees “whose medical problems contributed to bankruptcy,”

Any bankruptcy of a debtor who cited “[i]llness or injury of self or family member” was counted as having a “major medical cause,” regardless of how many other reasons were also cited by that debtor.²⁴

The study fails to make this clear. Although it states that some debtors “cited more than one medical contributor,”²⁵ it fails to make clear that some debtors no doubt checked both medical and non-medical reasons for their bankruptcy. Some may even have checked all sixteen reasons. Such bankruptcies were nevertheless recorded as having a “major medical cause.”²⁶

A more cautious approach to the study of medically-related bankruptcies might have been to proceed from the 28.3% figure to determine which of these cases involved bankruptcies in which illness or injury was the *primary* cause or a *major* cause, rather than simply “a” cause. This is where the telephone interviews could have been useful. A compulsive gambler or shopper who optimistically hoped that he could pay off his debts by working evenings as a waiter might in good faith answer that illness or injury was “a” reason for his bankruptcy if he sprains his ankle and must therefore give up his evening job for two weeks (but not his day-time desk job). But he is unlikely to regard that illness or injury as the primary or even a major cause of his predicament.

Instead of paring the 28.3% down to those cases in which illness or injury was the primary cause or a major contributor to the bankruptcy, the authors chose to move in the opposite direction. In order to get to 46.2%: (1) they assumed that all cases in which the debtors cited illness or injury were not only

the person experiencing the illness or injury was the debtor or spouse; for 13.3 percent, it was a child; and for 8.2 percent, it was an elderly relative. *Id.* at W5-69.

24. *See Illness and Injury, supra* note 1, at W5-65.

25. *Id.* at W5-66. Again, under the authors’ definition of “medical,” gambling, alcoholism, drug addiction, addition of a family member, and death of a family member all count.

26. *Id.* at W5-65 to -66. Although presumably it would have been easy to do so, the study does not reveal how many debtors checked “[i]llness or injury of self or family member” as the sole reason for the bankruptcy. *See id.* Nor does it reveal how many debtors checked both “[i]llness or injury” and some completely different reason, such as “[e]mployer’s business failed” or “[g]ambling.” *See id.* The one figure that is given is that those who cited illness or injury were sixteen percent less likely than other debtors to also cite “difficulty in managing money” as a cause of their bankruptcy. *Id.* at W5-68. This is not the same as a finding that those who cited “[i]llness or injury” are unlikely to have also cited “difficulty in managing money” as a cause of their predicament. A figure is not necessarily small simply because it is sixteen percent smaller than another undisclosed figure.

legitimate but worthy of characterization as having a “major medical cause,”²⁷ and (2) they added the following doubtful categories:

- *All cases in which the debtor had more than \$1,000 in unreimbursed medical expenses over the course of the two years prior to the bankruptcy, even if the debtor himself did not cite illness or injury as among the reasons for his bankruptcy.*²⁸

Nobody likes to have to pay \$1,000 in unreimbursed medical expenses, even if it is spread over two years.²⁹ But for most Americans (particularly those with enough at stake to declare bankruptcy), it is not catastrophic. And for many individuals and families, it is routine—amounting to only \$125 per year, per family member for a family of four.³⁰ It may not even require illness or injury. New eyeglasses or routine trips to the dentist or doctor could easily cost that much or more. To designate all such cases, regardless of the circumstances, as bankruptcies with a “major medical cause” is misleading. Many of the same debtors no doubt spent more than \$1,000 in telephone bills over a two-year period. Yet presumably, the authors would not claim that the high price of telephone service is “bankrupting middle class America” or that a “broken” telephone finance system is a significant part of the problem.³¹

It bears emphasis that by adding this category, the authors are adding *only* bankruptcies in which debtors did *not* cite illness or injury as even one reason among many for their bankruptcy. Those debtors who cited “[i]llness or injury of self or family member” as a reason

27. *Id.* at W5-65.

28. *Id.* at W5-65, W5-67.

29. It is worth noting that only twenty-seven percent of debtors had medical expenses exceeding \$1,000 over the course of two years. *Id.* at W5-67. That means that seventy-three percent had medical expenses of \$1,000 or less during that period. If that fact had been made clear to newspaper readers from the beginning, it would have been obvious that the extravagant claim that half of all bankruptcies were due to the crush of medical bills was false.

30. Unsurprisingly, the debtors who reported incurring medical expenses in excess of \$1,000 over the course of the two years preceding the bankruptcy tended to have larger families than the bankruptcy debtors who did not. *Id.* I am only speculating, but I suspect that families of four with medical expenses of less than \$1,000 over a two-year period are the exception rather than the rule.

31. *See supra* note 12 and accompanying text.

for their bankruptcy would already have been included.³² The fact that some debtors might find such bills unduly burdensome is thus irrelevant, since those debtors had the opportunity to cite illness or injury as a reason for their bankruptcy and presumably took it. What is important here is that some debtors *do not* find such bills unduly burdensome—and yet their bankruptcies are included as bankruptcies with a major medical cause.

- *All cases in which the debtor or the debtor's spouse lost at least two weeks of work-related income due at least in part to illness or injury, even if the debtor himself did not cite illness or injury as among the reasons for his bankruptcy.*³³

The \$1,000 standard in the previous category was set unrealistically low (especially given its application to all income levels and all family sizes). That is less true of this category. Although not necessarily catastrophic, the loss of two weeks of income due to illness or injury is less likely to be routine for an appreciable segment of the population.³⁴

In the questionnaire used to generate the data for the study, however, debtors were not asked if they had lost at least two weeks of work-related income on account of illness or injury; instead, they were asked if they had lost at least two weeks of work-related income since January

32. See *Illness and Injury*, *supra* note 1, at W5-65.

33. *Id.* at W5-65, W5-67.

34. The major exception is for employees with part-time jobs, who often do not carry with them sick leave benefits. A part-time employee, who works only part of the week (e.g. Mondays and Tuesdays), could easily lose two weeks of work simply by having two head colds over the course of two years. Consequently, the loss of two weeks of work-related income will likely be common among populations that are more likely to hold part-time jobs—like students, retirees, and the mothers of young children. The problem is that these same populations often have part-time jobs rather than full-time jobs with benefits because they have other means of support. The student may continue to receive support from his parents; the retiree may have a pension; and the mother of young children may receive support from her husband. For such debtors, the two-week loss of income, though certainly unwelcome, may have had only an insignificant impact on their ultimate bankruptcy. Instead, the student may have been unable to find a full-time job upon graduation; the retiree may have a gambling problem; and the mother of small children and her husband may have filed for bankruptcy because his highly-leveraged small business went sour. There is every reason to suspect that the overwhelming majority of debtors in bankruptcy who declined to designate illness or injury even as one cause among many understood their own financial predicament better than the study's authors did. Classifying such bankruptcies as having a "major medical cause," despite the debtors' failure to cite illness and injury as a cause, is definitional overreach.

1, 1999.³⁵ They were then asked to check *all applicable answers* from among the following: (1) “Yes, through layoff, firing, etc.”; (2) “Yes, through illness or injury”; (3) “Yes, for other reasons”; (4) “No”; and (5) “Not employed at all since Jan. 1999.”³⁶ A debtor who had been very briefly ill and then laid off might check both (1) and (2) if the illness and layoff periods combined added up to two weeks or more, even if the period of illness was only a day or so. Similarly, a debtor who became very briefly ill during a long layoff might check both reasons when in fact he would have been without income even if he had been healthy.

Again, the question is whether this category should have been included given that any debtor who cited illness or injury of self or a family member had already been included in the count. Only those who specifically declined to cite illness or injury as a significant cause are brought in by the inclusion of this category into the authors’ definition of bankruptcy with “a major medical cause.”³⁷

- *All cases in which the debtor “mortgaged a home to pay medical bills,” even if the debtor himself did not cite illness or injury as among the reasons for his bankruptcy.*³⁸

The study itself did not specify with precision what is meant by this category. Must the debtor specify that the medical bills were the sole reason for the mortgage? The primary reason? Or, is it sufficient that the debtor mortgaged a home to pay bills that included, among

35. Debtor Questionnaire (on file with the author). The questionnaires were administered over the course of the spring and summer of 2001. *Illness and Injury*, *supra* note 1, at W5-65. Using the January 1, 1999 date means that some debtors were asked if they had lost two weeks of work-related income over a little more than two years, and others were asked about a period of more than two and-one-half years.

36. Debtor Questionnaire, at 1 (on file with the author).

37. This category is also inappropriate for a study that is being touted as evidence that “[a] broken *health care finance system* is bankrupting middle class America,” since it has no direct connection to medical bills. See *supra* note 12 and accompanying text (emphasis added). Insofar as this category uncovers cases in which the bankruptcy is primarily the result of crushing medical bills, it is redundant with the previous categories (in which either the debtor himself cited illness or injury as a reason for his bankruptcy or the debtor had more than \$1,000 in medical bills over the two-year period leading up to the bankruptcy). To the extent it is not redundant, it is uncovering cases in which the problem is not medical bills but lost income or, alternatively, the problem is not substantially related to illness or injury at all.

38. *Illness and Injury*, *supra* note 1, at W5-65, W5-67.

others, a few medical bills? The actual questionnaire used in the research shows that the answer is closest to the last of these possibilities. Debtors were given a long list of possible reasons to take out a mortgage and urged to “[c]heck all that apply.”³⁹ The study does not reveal how many debtors, if any, checked only “[t]o pay medical expenses” and how many checked another reason (or many other reasons) as well. Many readers were probably left with the mistaken impression that these mortgages were solely or largely taken out in order to pay medical bills.

Again, the question is what this category adds to the study. Are there really bankruptcy cases for which (1) debtors did not identify “illness or injury” as one among many reasons for their bankruptcy; (2) the debtors stated that neither they nor anyone they are financially responsible for had more than \$1,000 in uncovered medical bills during the two-year period leading up to the bankruptcy; and (3) the debtors stated that neither they nor their spouses had lost two weeks of work-related income due to illness or injury since January 1, 1999, but for which they mortgaged a home to pay medical bills?⁴⁰ If so, what kind of cases are these? Is it fair to categorize them as bankruptcies with “a major medical cause”? What is the evidence that medical issues had anything “major” to do with the situation?

In the end, the only clear conclusion that can be drawn from *Illness and Injury as Contributors to Bankruptcy* is that the study’s authors were very interested in making the categories of “medical cause” and “major medical cause” seem as large as possible. And they were successful in doing so. Careless readers are left with the

39. Debtor Questionnaire (on file with the author). On the list of possible reasons were: (1) “To buy this house, condo, etc.”; (2) “To refinance to get a lower interest rate”; (3) “To refinance to lower payments by stretching loan over longer time”; (4) “To pay for home repairs or improvements”; (5) “To finance a business”; (6) “To pay educational expenses”; (7) “To pay medical expenses”; (8) “To buy other goods or services”; (9) “To pay off other debts”; and (10) “Other.” *Id.* at 3.

40. *Id.* Exhibit 2 of the study indicates that two percent of all debtor-homeowners cited “medical expenses” as “a reason” for taking out a mortgage. *Illness and Injury*, *supra* note 1, at W5-67. Of those who did *not* report uncovered medical expenses exceeding \$1,000 over the preceding two years, 0.8% cited medical expenses as “a reason” for taking out a mortgage. *Id.* at W5-68. In those cases, it seems unlikely that medical expenses were a major part of the reason for the mortgage.

misimpression that the study shows that “a broken health care system” is “bankrupting middle class America.” In fact, however, they are given almost no information on how common bankruptcies in the aftermath of serious health problems really are.⁴¹

IV. THE AUTHORS CONCEDE THAT EARLIER STUDIES CAME TO VERY DIFFERENT CONCLUSIONS

In discussing trends in medical bankruptcy, the authors concede that in 1981, “the best evidence available suggests that about 25,000 families filed for bankruptcy in the aftermath of a serious medical problem” and that this constituted “8 percent of the 312,000 bankruptcy filings that year.”⁴² If so, that is quite a distance from the 46.2% of bankruptcy filings that the authors categorize as having a “major medical cause.”⁴³

The study they cite, *The Fragile Middle Class: Americans in Debt*, uses 1991 data, not 1981 data.⁴⁴ And it actually finds that 19.3%

41. Many Americans—policymakers and ordinary citizens alike—would likely have been interested to find out what proportion of bankruptcies are brought on by truly catastrophic medical debt (perhaps something along the lines of \$10,000 in a single year for a household with an income of \$60,000 or less). Curiously, however, this is not addressed in the study even though it appears that the study would have generated data to make such calculations possible. Of course, an educated guess can be made: Given that the study found that only twenty-seven percent of bankruptcies involved medical bills of more than \$1,000 over the course of two years, the number of cases in which medical expenses topped \$10,000 in a single year is likely to be quite small, perhaps even extremely small. See *Illness and Injury*, *supra* note 1, at W5-67. The study’s findings that “those whose illnesses lead to bankruptcy” had mean out-of-pocket medical expenses of \$3,686 for the year just prior to the bankruptcy and \$11,854 for the entire length of the illness do not contradict this. See *id.* at W5-69. Two things are worth noting about those figures. First, it is not clear what subset of bankruptcies the authors are talking about here, but it does not appear to be the same group as either the 54.5% of bankruptcies designated as having a “medical cause” or the 46.2% of all bankruptcies designated as having a “major medical cause.” See *id.* at W5-66. It appears to be a smaller group—35.7% of the 931 cases from which the authors conducted an in-depth telephone interview. *Id.* This group may include only cases in which the telephone interviewee identified “illness or injury” as a cause (or some subset of that group), or it may also include those who cited “uncontrolled addiction,” “alcohol or drug addiction,” “death in family,” or “birth/addition of new family member.” More importantly, the figures are means and not medians. One truly catastrophic illness costing a total of \$5 million over any length of time would be enough to put the group’s mean at above \$12,000, even if nobody else in the sample ever spent a dime on medical bills. It is hard to see why the authors would use the mean instead of the median if the point of the study is to demonstrate fairly that a large proportion of bankruptcies are caused by medical bills. Means cannot show that—they only mislead.

42. *Illness and Injury*, *supra* note 1, at W5-71.

43. *Id.* at W5-66.

44. TERESA A. SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT*, at xiii (2000).

of bankruptcy filings occur on account of “medical problems”⁴⁵—also quite a distance from 46.2% or 54.5%,⁴⁶ but somewhat less so than eight percent.⁴⁷ Perhaps they intended to cite *As We Forgive Our Debtors* (another book by the same authors), which, using data collected in 1981, found that “at most only 1% to 2% of the debtors in bankruptcy are demonstrably there because of catastrophic medical losses” but that a little over eight percent of the debtors in one of the federal judicial districts sampled, where debtors were required to fill out a form disclosing the reasons for their bankruptcy, “reported health problems to be the principle reason for their bankruptcy.”⁴⁸

What accounts for the huge gap between the earlier studies and the present study? The authors of *Illness and Injury as Contributors to Bankruptcy* acknowledge that there were differences in methodology.⁴⁹ And they are obviously right. *As We Forgive Our Debtors*, for example, reported on the proportion of bankruptcies involving “catastrophic medical losses” and on the proportion of bankruptcies for which health problems were cited as the “principle reason for the bankruptcy.”⁵⁰ Nothing in the present study contradicts in any way the conclusions drawn in that book. The studies are simply different. One examines bankruptcies brought on by catastrophic medical losses or at least a major health problem;⁵¹ the other examines bankruptcies with any kind of relationship, however attenuated, to illness, injury, or medical bills defined broadly.⁵²

But almost as soon as the authors of the present study acknowledge the differences between studies, they turn around and ignore them by making the extraordinary statement that their “findings suggest that the number of medical bankruptcies had increased twenty-threefold by 2001.”⁵³ This claim is just plain silly. When one’s data suggest a 2,200% increase in the

45. *Id.* at 142 n.5.

46. See *Illness and Injury*, *supra* note 1, at W5-66.

47. See *id.* at W5-71.

48. TERESA A. SULLIVAN ET AL., *AS WE FORGIVE OUR DEBTORS: BANKRUPTCY AND CONSUMER CREDIT IN AMERICA* 168, 175 n.1 (Beard Books 1999) (1989).

49. *Illness and Injury*, *supra* note 1, at W5-71.

50. SULLIVAN ET AL., *supra* note 48, at 168, 175 n.1.

51. *Id.*

52. *Illness and Injury*, *supra* note 1.

53. *Id.* at W5-71.

number of bankruptcies caused by medical problems, it is time to look at the data with a little more care. In this case, it would demonstrate that the authors were correct the first time when they conceded that there were methodological differences that would account for the differing results. The authors of *The Fragile Middle Class* asked debtors in their sample to complete a short questionnaire the final question of which was open-ended: “On the back, in your own words, please indicate what you believe to be the reasons for your bankruptcy.”⁵⁴ Their answers were then categorized as focusing mainly on “job,” “creditor problem,” “medical,” “family,” “housing,” or “other.”⁵⁵ Some debtors gave answers that put them in more than one category.⁵⁶

The Fragile Middle Class authors found that a total of 19.3% of the sampled debtor households gave medical reasons for their bankruptcy.⁵⁷ Included within that figure were 11.4% who cited illness or injury of either debtor, 1.8% who cited illness or injury of a family member, 5.7% who cited medical debts, 2.1% who cited insurance problems, and 2.1% who did not specify the nature of the relationship between their bankruptcy and their medical reasons.⁵⁸

Unlike the present study’s authors, the authors in *The Fragile Middle Class* did not attempt to expand the count of medically related bankruptcies by including filings in which the debtors had specifically forgone the opportunity to cite illness or injury as one among many reasons for their bankruptcy. Their 19.3% finding is more directly comparable to the present study’s finding that 28.3% of all debtor households cite “illness or injury” as a significant cause of their bankruptcy.⁵⁹ Even so, the discrepancy between the two figures is substantial. And while many factors might help explain this, one factor of great importance is the method by which the data was gathered. According to the authors of *The Fragile Middle Class*:

54. SULLIVAN ET AL., *supra* note 44, at 270. The authors of *The Fragile Middle Class* used a sample of about 2,400—150 from each of sixteen federal judicial districts in five states. *Id.* at 7. The questionnaire consisted of nine questions, the first eight of which requested mainly demographic information. *Id.* at 270.

55. *See id.* at 14–22.

56. *See id.* at 15.

57. *Id.* at 145 fig.5.1.

58. *Id.* Since some debtors mentioned more than one of these, the figures do not add up to 19.3%. *See id.*

59. *Illness and Injury, supra* note 1, at W5-67.

In gathering our data, we did not ask debtors specifically about medical factors in their bankruptcy. Our information comes from their responses to our open-ended question about why they became bankrupt. . . . If we had asked debtors if they had difficulties with medical bills or with lost income because of medical problems, a higher proportion of the sample would undoubtedly have been tagged with a medical problem. Instead, we limited our analysis to those who see themselves as overwhelmed by a medical problem while excluding those who added medical bills and lost time from work to a long litany of financial woes.⁶⁰

The present authors did precisely what *The Fragile Middle Class* authors declined to do: They asked debtors directly if they thought illness or injury was “a reason” for their bankruptcy.⁶¹ Not surprisingly, as *The Fragile Middle Class* authors predicted, the present authors found a significant number of debtors (28.3%) willing to include illness or injury as a reason for their bankruptcy,⁶² no doubt sometimes as part of “a long litany of financial woes.”⁶³ Interestingly, one of *The Fragile Middle Class* authors was also a coauthor on the present study.⁶⁴

V. CONCLUSION

There is nothing wrong with conducting a study to measure what proportion of bankruptcies can somehow be broadly classified as “medically related,” broadly defined. Such a study would have far fewer policy implications than a study of how many bankruptcies are primarily the result of medical bills or of illness or injury. But there is no reason why it should not be studied, provided that the authors make clear what the study is all about. This was not done in this case.

On April 20, 2005, President George W. Bush signed the Bankruptcy Abuse Prevention and Consumer Protection Act into law, despite the arguments generated from *Illness and Injury as Contributors to Bankruptcy*. Here’s hoping he did the right thing. No doubt it would have been helpful to have up-to-date, accurate empirical information about how often crushing

60. SULLIVAN ET AL., *supra* note 44, at 143.

61. Debtor Questionnaire, at 4 (on file with author).

62. *Illness and Injury*, *supra* note 1, at W5-67.

63. SULLIVAN ET AL., *supra* note 44, at 143.

64. Elizabeth Warren was a coauthor of both studies. *See supra* notes 1, 44.

medical bills are the primary cause of bankruptcy or even how often illness or injury is a major cause of bankruptcy. Unfortunately, reliable figures of that sort were unavailable. While *Illness and Injury as Contributors to Bankruptcy* was touted as a study addressing those issues, it did not.