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CAMPAIGN FOR LEGAL SERVICES

The Implications Of The Collapsing Credit, Housing And Job Markets
For
Legal Services Organizations In Santa Clara Valley

by

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I'd like to talk today about the implications of the collapsing credit, housing, and job markets for legal services in Santa Clara County. I could be talking about this in just about any county in the country, of course – and later on I'll talk about what difference it makes that this is a national problem, not one that's limited to Santa Clara County or even to California.

The New York Times reported on Sunday that bankruptcy filings are up by 80 percent in California over last year. Bankruptcy filings dropped precipitously after the new bankruptcy law passed in 2005 that made it more difficult, and twice as expensive, to declare bankruptcy. But now filings are above the level that they were in 2005, and we're sure to see them go much higher. And because it's so much harder to declare bankruptcy, the same level of filing represents a much higher level of desperation. A recent study found that the typical family filing for bankruptcy in 2007 had 21% more mortgages and car loans, and 44% more in credit cards and bills, than in 2001. (By the way, we can also see these figures as a sign that credit card companies and mortgage lenders saw the 2005 bill as an insurance policy against bankruptcy – they could continue to lend to people who were in trouble, knowing that they would have a hard time getting out from under).

Foreclosures tell the same story. In the last 2 years foreclosure filings in California have gone up by over 500%. Nearly 80,000 houses are in some stage of foreclosure. Foreclosures are also up by 500% in Santa Clara County. 1,429 properties in Santa Clara County have been foreclosed on this year. 60% of those were owned by people with Hispanic surnames, even though Latinos are only 26% of the county population.

Medical debt has also skyrocketed, and as more people lose their jobs -- and consequently their health insurance -- these bills will begin to push people over the edge of the abyss. As Harvard Law Professor Elizabeth Warren has shown, over half of the people filing for bankruptcy do so due to medical bills, a proportion that will surely grow as people lose their jobs and insurance. People are also being pursued in record numbers by their creditors, mostly in ex parte actions in small claims courts, and often not in any court at all but in phony "arbitrations" under adhesive clauses in credit card applications. And it is this toxic combination of falling home prices, rising medical debt, and the constriction of consumer credit that really should give us pause about the shape of things to come.

These are sad statistics, but they may seem to be outside the realm of legal services organizations. Traditionally, legal services organizations have provided help for the poor, not for the struggling middle class. If you're facing foreclosure, at least you had a house to begin with. People with $80,000 in consumer debt at least had the ability to get the credit in the first place. We assume that they can afford to pay for their own bankruptcies – although it's worth pointing out that a lot of people declaring bankruptcy are having a hard time scraping together the filing fee, payment for the lawyer, and the crowning indignity – the mandatory $100 fee for a credit counseling appointment.

These aren't people who are typically thought of as clients for poverty law programs, and there are very few pro bono or legal service resources currently available to them in Silicon Valley. For example, the Pro Bono Project of Silicon Valley offers a debtors' clinic two times a month, with more than 30 attendees for each of these clinics. There is only one attorney involved in this clinic, and he just dispenses general advice on how to file for bankruptcy and gives referrals for bankruptcy attorneys, who usually must be paid.

But as the figures on the overrepresentation of Hispanics in foreclosures shows, these are families that have only a tenuous grip on the middle class, and that grip is loosening fast. They'll be back to living in rental units soon, but in even more desperate conditions than when they left – with ruined credit, depleted bank accounts, and perhaps burdened with post-bankruptcy debt, one of the oxymorons spawned by the 2005 bankruptcy law. The West County Times had a story last week about one such person, a terminally ill woman in Contra Costa County who had a sub-prime loan, lost her house in January 2008, and is now being evicted from her low-income apartment because she doesn't have the money to pay the rent. Foreclosure and bankruptcy grease the skids for homelessness. Now is a time when we need to expand legal services to try to help people renegotiate mortgages and to navigate bankruptcy in a way that doesn't leave them even more vulnerable to destitution.

These people face another obstacle to getting help. They took out the mortgages that they are now defaulting on, and they signed up for the credit cards that they now can't pay. They went to the PayDay loan store or the car lot and signed the paperwork. They don't necessarily seem like sympathetic victims entitled to relief, and unlike big banks and insurance companies, they aren't too big to fail. Even the newspaper story about the Contra Costa woman that I just mentioned had to focus on her being terminally ill in order to make sure that she was sympathetic enough to evoke pity rather than contempt. Maybe instead of being victims of the credit market collapse these people are the perpetrators?

And indeed, this attitude has often been reflected in media coverage of the "subprime" borrower. Even the term "subprime borrower" has the ring of stigma. As Yale's Robert Schiller put it in the NYT, many Americans think that people facing foreclosure don't deserve any help and need to be taught a lesson about personal responsibility. Sometimes these condemnations are vaguely racially coded. Commentators tend to refer to homeowners as "greedy" or at best "irresponsible" people who took out loans that they had no ability to repay, speculating that their house would go up and taking the world financial system down with them when it didn't. As one Times commentator put it, "they should be punished for their behavior, not rewarded with loan workouts."

The senior Republican on the Senate Banking Committee, Richard Shelby of Alabama, says that this is a "line we should not cross." According to Shelby, there can be no "taxpayer funded bailout of investors or homeowners who freely and willingly entered into mortgages that they knew or should have known they could not afford." Even advocates for foreclosure relief such as Representative Barney Frank publicly fret about "moral hazard" and not wanting to help people who brought their own problems on themselves.

My academic research focuses on the relation between the history of federal disaster relief and the American welfare state. I've been particularly interested in the New Deal and the Great Depression, which seems unfortunately relevant to what's going on today. If we compare the people going through bankruptcy and foreclosure now to the victims of the Great Depression, they seem like even less likely candidates for help. After all, there is no one more worthy than the unemployed standing in bread lines, or the migrants driven from their homes by the Dust Bowl.

But in fact, in the late 1920s (when a serious drought began in the South) and the early 1930s, the unemployed were broadly seen as responsible for their own fate. Even the drought was seen as exposing a failure to take appropriate precautions against the weather. The people who we now think of as icons for the most worthy and deserving of all the poor, different from other poor people in some vague "greatest generation" sense, were during the 1930s seen in precisely the same terms as the hapless victims of today's credit crisis. California closed its borders to the Joads, and Sheriffs chased them over the county line. Letters to the editor in California newspapers openly referred to the migrants as criminals, vermin, and trash. The unemployed were characterized as lazy shovel-leaners, while those facing foreclosure on their home or farm loans were blamed for having imprudently taken on too much debt.

While there was at that time no political precedent for federal aid to the unemployed, there was a long history of federal aid to disaster victims. New Dealers interested in redistribution therefore had the problem of recharacterizing those in need during the 1930s as innocent victims of an economic calamity, people who were in need through no fault of their own, in order to build political support for their relief.

Our understanding today of the Depression-era poor as blameless victims of a singular national calamity is not an observation of a natural fact. It is the result of a serious, sustained, and purposeful campaign by the Roosevelt administration to cast them in that light. Even our visual impressions of the Depression – the migrant mother with her nursing baby, the bread lines in Chicago, the white women and children trapped in the squalid camps in California – were deliberate productions of the Roosevelt administration, through the work of photographers, filmmakers, and writers working for the government. The New Dealers built an overwhelming disaster, the Great Depression, out of countless local events like those we're experiencing here in Silicon Valley today.

Roosevelt himself leaned heavily on the analogy between physical disasters between floods, tornados, storms, and what he termed the "economic earthquake" of the Depression in making the legal and political case for federal intervention on behalf of homeowners and the unemployed. He repeatedly characterized the depression as a "disaster" and the unemployed or those facing foreclosures as those "overtaken by disaster" and in need through no fault of their own. This argument was a central feature of his 1936 reelection campaign. FDR explicitly described New Deal programs in these terms, as he repeated around the country that "we no longer believe that human beings hit by flood, drought, unemployment, or any other national disaster should be left to themselves" or to the states, but instead were entitled to the swift and generous intervention of the national government.

Disaster sites themselves became occasions for arguing that federal government should be just as generous and responsive to victims of the Depression as to more traditional disasters. For example following a tornado in Gainesville Georgia in 1936, Roosevelt spoke to over 100,000 people in that town, saying that "Gainesville suffered a great disaster. So did the nation in those eight years of false prosperity followed by four years of collapse." He urged the crowd to "take a lesson" from federal aid they had received following the tornado, arguing that "application of this principle to national problems would amply solve our national needs." This scene was repeated dozens of times around the country. The Roosevelt administration never missed an opportunity to make the case for the blameless (and hence, deserving) nature of what he called "these innocent victims of this economic disaster."

Today, we have the same job that FDR had in the 1930s. Our work as political advocates for the poor is to make the case – a true case, I believe – that the conditions befalling them are not of their own making. By the way, from this perspective, the fact that we all now believe that we are experiencing a widespread economic catastrophe is helpful for making this case. The truth is that the poor are always being taken advantage of by unscrupulous lenders and profiteers, and it's much harder to rally support for protecting them in good times – just look at Clinton's welfare reform for an example of that.

Our work as legal advocates for the poor is even more challenging. We have an opportunity to make the case that legal service clients are not responsible, or at least not fully responsible, for their desperate situations, and that the credit card companies and mortgage lenders that they face are not innocent victims. The flip side of aggregating local events into a national calamity is taking that national calamity and bringing it back to serve as an explanation for local problems, even problems the size of individual bankruptcies, defaults, and foreclosures. As Senator Kenneth McKeller of Tennessee argued for relief during the drought of 1931, "it was not the fault of these people that there was a great Panic in New York. It is not their fault that there was a great period of depression in this country. It is their misfortune, and this country has from time immemorial provided for such a situation and it is our duty to provide for this one now."

Today, we face an urgent situation. We are already quite a ways down the road toward a similar situation to that experienced in the 1930s. And unlike other downturns experienced over the past 80 years, we are heading into it with key aspects of the New Deal safety net in tatters, particularly the AFDC program eliminated by President Clinton and new restrictions on qualification for SSI and Social Security Disability benefits, and without the unions who had pressured FDR to do more for the working and middle classes. We should, as Roosevelt urged, "take a lesson" from history, by arguing that those facing foreclosure and bankruptcy are victims of a disaster in need through no fault of their own, and by coming to their aid.