

FJC Staff Paper

Assessment of Videotaped Bankruptcy Discharge Hearings in the U.S. Bankruptcy Court for the Western District of Pennsylvania

Federal Judicial Center



ASSESSMENT OF VIDEOTAPED BANKRUPTCY DISCHARGE HEARINGS
IN THE U.S. BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

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This paper is a product of a study undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the author. This work has been reviewed by Center staff, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

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In late 1983, the Federal Judicial Center provided videotape equipment to the U.S. Bankruptcy Court for the Western District of Pennsylvania to enable the court to test the use of a videotaped presentation as part of the bankruptcy discharge hearing required by 11 U.S.C. § 524(d). The rationale for using a videotaped presentation is that a significant portion of the information that must be imparted to debtors at a discharge hearing is standardized.¹ It was proposed that the use of a videotaped presentation of this standard part of the hearing might both improve the quality of the communication to debtors and be cost-effective in saving bankruptcy judges' time. The objective of the test reported here was to evaluate this proposition.

The evaluation was not designed to be particularly rigorous, for two reasons. First, there was considerable support for and little expected objection to the idea that a videotaped presentation could be superior to a judge's live recitation in consistently imparting required information to debtors. Second,

1. The standardized portion of the hearing is primarily that which is required by 11 U.S.C. § 524(d)(1). The court must inform the debtor:

- (A) that [a reaffirmation agreement] is not required under this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section, and
- (B) of the legal effect and consequences of:
 - (i) [a reaffirmation agreement]; and
 - (ii) a default under such an agreement.

Good-faith compliance with this provision requires that the court explain to the debtor a fairly extensive set of legal rules concerning what does and does not constitute a legally effective reaffirmation, the debtor's ability to rescind such an agreement within thirty days, the concept of the creditor's holding a security interest in personal property of the debtor, special provisions regarding debts to relatives, and the consequences of the bankruptcy discharge itself and of default of obligations under the reaffirmation.

consideration of the modest cost of the necessary videotape equipment and the estimated judge time the videotaped presentation would save made it hard to doubt that the test would be cost-effective. The evaluation was therefore designed simply to document the expected time savings and to discover whether objections would be made to the use of the videotape.

The court was provided with the necessary equipment and assistance in producing a videotape of the judge's presentation. The court was asked both to maintain a log of the use of the tape and to take note of comments by counsel or debtors about the videotaped presentation. This evaluation effort was maintained throughout calendar year 1984. The results lend confirmation to the proposed benefits of the videotaped presentation.

Time Savings

The log sheets indicate the videotape was played on thirty-nine occasions in 1984, to groups of debtors that ordinarily ranged in number from twenty to forty (accompanied by counsel usually numbering from four to twelve).² The tape has a playing time of fifteen minutes, which suggests that its use will result in the saving of about ten hours of judge time annually. The clerk of court indicated that he believes the real time saved is at least thirty minutes per hearing. There are apparently two reasons why the perceived time savings exceed the running time of the tape. First, the tape does not, as a judge in a live presentation might, forget to cover issues that are commonly of concern to debtors and therefore does not generate many follow-up

2. More than 1,100 debtors saw the videotape. The number of viewings of the videotape by attorneys exceeded two hundred (this figure probably includes repeat viewings on the part of many attorneys).

questions about the subject matter of the standard presentation. Second, the proceeding and videotape are introduced by the judge's law clerk. Whereas it might seem pompous of the judge to have an introduction by a subordinate when conducting the discharge hearing entirely live, such an introduction is acceptable and quite natural when the proceeding begins with the videotape and is followed by a live presentation by the judge only to cover those matters that must be dealt with on an individual basis by the judicial officer.³ Hence there is reason to suppose that the use of the videotape may result in actual time savings of about twenty judge-hours per year.

Although time savings of ten or twenty hours are not dramatic, they can be appreciated as cost-effective. A conservative estimate of the cost of a bankruptcy judge's time is \$150 per hour (taking account of the judge's salary and benefits, and the costs of the judge's staff and physical space requirements). Although the saving of judicial time does not equate to direct and immediate monetary savings for the court system, it leads to increases in judges' capacity to handle increased numbers of cases, and thus defers the time when the number of judges in a given court must be increased to meet rising caseloads. It thus seems entirely fair to evaluate the cost-effectiveness of the videotaped portion of the discharge hearing by comparing the \$1,326 cost of the videotape equipment (which has a life expectancy of seven years) with annual savings that are at the very least \$1,500, and quite

3. Title 11, section 524(d)(2), of the U.S. Code requires that the court determine at the discharge hearing whether certain reaffirmation agreements meet the requirements of section 524(c)(4), which have to do with whether the agreement is in the best interests of the debtor and whether the agreement was entered into in good faith.

likely \$3,000 (assuming that twenty hours of judge time are saved per year).⁴ On this basis, the test clearly demonstrates that use of the equipment is cost-effective.

Effectiveness in Imparting Information to Debtors

The clerk of court perceives a very positive effect of the videotape as a means of accomplishing the communicative purposes of the discharge hearing. The videotape appears to hold the debtors' attention as well as or better than a live--but inevitably "canned"--presentation does. There have been a number of positive responses to the videotape from counsel attending the hearings and only one negative comment (simply that the presentation "should be live").

The videotape also affords an incidental benefit of convenience for debtors who are unable to attend a scheduled "mass" discharge hearing. The court can accommodate an individual debtor flexibly by having the debtor view the videotape and then having the judge make a brief (five-minute) appearance to handle any specific needs the debtor has. Without the videotape, the judge would first have to deliver the fifteen-minute standard talk to the debtor and hence would be much less inclined to accommodate the debtor's difficulty in attending a regularly scheduled hearing.

4. The equipment consists of a VHS videotape recorder, a color television set, and a wheeled cart. The court was able to borrow a camera from the district court to tape its presentation (other bankruptcy courts could likewise borrow a camera or rent one at nominal expense). The life expectancy of the equipment is thought to be seven years for the videotape recorder, ten years for the television set, and indefinite for the cart. Assuming a seven-year life expectancy applicable to the total \$1,326 purchase price, and 10 percent as the applicable interest rate, the amortized annual cost of the equipment is less than \$300 per year.

Recommendation

The information provided by this admittedly nonrigorous assessment of the concept of a videotape-supplemented discharge hearing suggests that the use of a videotape can be recommended as a means of both conserving judge time and enhancing the value of the discharge hearing to the debtor. However, this recommendation must be assessed in light of certain limitations and qualifications. First, the use of videotaped discharge hearings is likely to be cost-effective only in districts with a volume of bankruptcy cases sufficient to warrant frequent discharge hearings. The cost-effectiveness of the practice would be doubtful for a court that can handle its caseload with twelve or fewer discharge hearings per year.

Second, to ensure that the videotaped portion of the hearing is an effective communication device, the judge's performance must be of high quality. It would be unwise to approach the use of a videotaped presentation merely as a means to save time or to avoid the boring duty of repeating the same talk forty times each year. Because a live presentation allows the judge to perceive when debtors appear confused and thus to invite questions and offer clarification, it cannot generally be assumed that a videotaped presentation will be as good as a live one. There is clearly the risk that an inadequate taped presentation will fall far short of a live presentation in imparting important information to debtors. It is only by virtue of the difficulties of maintaining quality in repeated live presentations that a videotape can be better than the average of many live presentations. But to overcome the limitations inherent in a truly canned presentation, the videotaped presentation must be a genuinely superior "performance."

In short, the use of a partially videotaped discharge hearing can be recommended as sound practice if (a) the anticipated frequency of discharge

hearings indicates that the procedure is likely to be cost-effective, and (b) the videotape is approached primarily as a means of improving the quality of communication to debtors and only secondarily as a means of avoiding the need to repeatedly give a standard, live talk.



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