

BANKRUPTCY 2.0(05): CHAPTERS, CHANGES, AND CHALLENGES

FOREWORD

A FEW LINES

DAVID G. EPSTEIN*

Joaquin Phoenix is not alone in “borrowing” the song, “I Walk the Line” from that American icon¹ John R Cash. Before the highly acclaimed Phoenix/Witherspoon biopic² was the somewhat less acclaimed Nimoy/Shatner album, which includes Leonard Nimoy “singing” “I Walk the Line.”³ And, more recently, the even less-acclaimed Bankruptcy Abuse Prevention Consumer Protection Act (“BAPCPA”) in which, Congress as the “man in black”⁴ in essence sang:

* For the past two and half years, David Epstein has worked at the *Dedman School of Law of Southern Methodist University* in Dallas, Texas, where he teaches bankruptcy and other stuff to the most attractive, best-dressed law students in America. Epstein thinks of himself as a “law school legend.” *See, e.g.*, <http://www.westacademic.com/Students/ProductDetails.aspx?tab=7&productid=130527>. The *Law Review* editors think of Epstein as the symposium participant who submitted the largest reimbursement claim and the smallest manuscript.

1. If Ruben Studdard can be an “American Idol,” then John R. Cash is easily an “American icon.” *Cf.* <http://www.americanidolmusic.com/>.

2. In the Oscar-nominated movie, “I Walk The Line”, Phoenix of course sang “I Walk the Line.”

3. <http://www.amazon.co.uk/exec/obidos/ASIN/B0000089JE/203-5782223-3259125>.

4. Not a “man in black in the John R Cash” sense. For most of his career, John R. Cash regularly performed dressed all in black, wearing a long black knee-length coat. Cash wrote the song “Man in Black” to help explain his dress code:

“I wear the black for the poor and the beaten down,
Livin’ in the hopeless, hungry side of town,
I wear it for the prisoner who has long paid for his crime,
But is there because he’s a victim of the times.”

Cash’s words do not describe Congress’s role in BAPCPA. Most bankruptcy judges,

“Bankruptcy is just another form of crime⁵
Debtors take bank’s dollars, pay back dimes⁶
Zwicky⁷ says it happens all the time⁸
And judges have no spines⁹
So we’ll draw the lines.”¹⁰

Law is in substantial part about drawing lines.¹¹ Both opponents and proponents of BAPCPA acknowledge that in BAPCPA Congress has drawn lines for both business bankruptcy cases and consumer bankruptcy cases different from the lines that previously were drawn by judges and Congress.

The Articles in this symposium not only analyze and evaluate these new lines but also deal with how lawyers and judges can best deal with the lines drawn by Congress and the courts. And so, after reading this symposium, you will be able to paraphrase yet another John R. Cash line about lines in a song, “Folsom Prison Blues:”

lawyers and professors view Congress in BAPCPA as the “man in black” in the sense that the “bad guys” in the classic Saturday-matinee westerns always were dressed in black. *See, e.g.*, <http://www.filmsite.org/westernfilms.html>.

5. Cash’s line was “I keep a close watch on this heart of mine.” Notice how adroitly your author has followed Cash’s rhyme scheme and rhythm.

6. Instead of “I keep my eyes wide open all the time.”

7. “Zwicky” is of course Professor Todd Zwicky, the most prominent professorial proponent of BAPCPA. *See, e.g.* Todd Zwicky, *Institutions, Incentives, and Consumer Bankruptcy Reform*, 62 WASH. & LEE L. REV. 1071 (2005).

8. Cash’s line was “I keep the end out for the tie that binds.” You have to pause after the word “says” to make my line work but then Cash has to use the nonsensical word “end” to make his line work.

9. Replacing “Because you are mine.” I added the word “And” to the beginning of my line to make it clear to any judges who might ever be thinking about appointing me as an “Examiner” in some high profile case that these words about judges not having spines are words of either Congress or Professor Zwicky, but clearly not me.

10. Cash’s line was of course “I Walk The Line.” And, of course, lawyers and judges will be walking the lines drawn by Congress, albeit reluctantly at times. *See In re Sosa*, 336 B.R. 113, 114 (Bankr. W.D. Texas 2005)

One of the more absurd provisions of the new Act makes an individual ineligible for relief under the Bankruptcy Code . . . if a debtor does not request the required credit counseling services from an approved nonprofit budget and credit counseling service before the petition is filed, . . . This Court views this requirement as inane. However, it is a clear and unambiguous provision obviously designed by Congress to protect consumers.

11. *E.g.*, *The New York E. Coast Mgmt. v. Gonzales*, 376 N.J. Super, 264, 267, 870 A.2d 314, 318 (2004) (“much of the law is a matter of line drawing”); Paul T. Hayden, *A Goodly Apple Rotten at the Heart: Commercial Disparagement in Commercial Advertising As Common-Law Unfair Competition*, 76 Iowa L. Rev. 67, 91 (1990) (“Yet one can say, with apologies to Justice Holmes, that the law is not logic but line-drawing.”).

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“If they hire me as their lawyer, if the bankruptcy case is mine
I’ll now be able to move the case a little further down the line.”¹²

12. The original of course is “Well, if they freed me from this prison, if that railroad train was mine, I bet I’d move on over a little farther down the line, Far from Folsom Prison, that’s where I want to stay, And I’d let that lonesome whistle blow my blues away.” <http://www.toptown.com/hp/66/folsom.htm>.

Borrowing from the New Yorker cartoon caption contest, <http://www.newyorker.com/captioncontest/>, I will send the signed “original” of this manuscript to the reader who sends me, depstein@smu.edu, the best re-writing of Cash’s last two lines.