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## Opening Statement & (and) Dedication

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## OPENING STATEMENT & DEDICATION

I think it is appropriate in this symposium issue of the North Dakota Law Review to recognize the great contribution of North Dakotans that led to the Bankruptcy Reform Act of 1978.<sup>1</sup> I dedicate this Statement to these North Dakotans: First, the late United States Senator Quentin N. Burdick of North Dakota who served as the congressional quarterback for this important legislation; second, the late Richard H. (Dick) Barry who sparked Senator Burdick into pressing for reform of the prior bankruptcy law and served as the catalyst in generating national interest in bankruptcy reform and, finally, the North Dakota lawyers who rendered valuable assistance to Senator Burdick and Dick Barry.

This Statement does not detail the intense struggle in Congress to achieve bankruptcy reform, but instead briefly reviews Senator Burdick's contribution to the Bankruptcy Reform Act of 1978. It begins with Burdick's articulation of the problems of the prior bankruptcy act in 1965 and follows his efforts leading to the creation of the Commission on the Bankruptcy Laws of the United States in 1970.

The North Dakota contribution to the Bankruptcy Reform Act of 1978, for the most part, is chronicled neither in the congressional record nor in the bankruptcy texts. Rather, the information is found in newspaper articles, in correspondence between participants and Senator Burdick, and in Dick Barry's autobiography.<sup>2</sup> In my Statement, I shall refer to these sources.

In 1965, Barry served as trustee for Dalco American Enterprises, Inc., a bankrupt corporation which had operated in North Dakota. The bankruptcy case was a large and complex endeavor. As trustee, Barry concluded that his work had been made more difficult by the "antiquated, awkward, confusing and time consuming"<sup>3</sup> problems with the administration of a bankruptcy estate under the prior 1898 Act<sup>4</sup> as amended in 1938.<sup>5</sup>

Barry discussed these problems with a number of bankruptcy specialists and other lawyers in his hometown of Fargo, North

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1. Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified at 11 U.S.C. §§ 101-1330 (1988)).

2. R.H. Barry, *Success from Within; First We Make Our Goals—And Then They Make Us* (1981) (privately printed) [hereinafter Barry, *Success From Within*].

3. Gifford Herron, *Dalco Case Here Centers Attention on Moves to Update Bankruptcy Law*, FARGO FORUM, Feb. 17, 1966, at 14.

4. Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (1898) (current version at 11 U.S.C. §§ 101-1330 (1988)).

5. Bankruptcy Act of 1898, ch. 575, 52 Stat. 840 (1938) (current version at 11 U.S.C. §§ 101-1330 (1988)).

Dakota. In a chance meeting with Senator Burdick on an airplane ride between Minneapolis and Fargo, Barry expressed his views to the Senator. In a letter to Senator Burdick dated September 28, 1965, he wrote in part:

Supplementing our visit on the plane between Minneapolis and Fargo the evening of September 24, 1965, I am enclosing, as a suggested mechanical approach, a proposed draft of a letter to be addressed to approximately 200 Referees in Bankruptcy in the United States

.....

My tentative concept would be to avoid a debate about the merits of my suggestion with the Chief of The Division of Bankruptcy of the Administrative Office of the United States Courts. You may recall that we tried that approach and it only resulted in several pages of gobbledgegoop.

Now let's try going directly to the 200 Referees who are faced with the staggering problem of handling in excess of 175,000 bankruptcy cases annually.<sup>6</sup>

Senator Burdick adopted his suggestion and in a letter dated October 14, 1965, he wrote each of the referees in bankruptcy in the United States:

One of my constituents in North Dakota, Richard H. Barry, who is Trustee of a Bankruptcy Estate with estimated assets of over two and one-half million dollars and liabilities of over four million dollars has suggested that the Bankruptcy Act of 1898 as amended is sorely in need of a comprehensive overhaul by Congress.

I am addressing an inquiry to each of the Referees in Bankruptcy in the United States asking whether or not they are encountering sections of the Bankruptcy Act which conceivably should be evaluated in the light of changes and developments in the economy of our nation in the last 25 years.<sup>7</sup>

That letter produced results. As the *Fargo Forum* observed, "[v]irtually all of the referees replied. They agreed changes are

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6. Letter from Barry to Senator Burdick (Sept. 28, 1965) (from the personal files of David T. DeMars, Fargo attorney and later member of Cass County Bar Association Bankruptcy Committee).

7. Letter from Quentin N. Burdick, United States Senator, to Honorable Norman E. Neukom (Oct. 14, 1965).

needed but there was some disagreement as to how extensive they should be.”<sup>8</sup>

Barry then sought assistance from the Cass County Bar Association. He contacted the late George A. Soule, an expert in bankruptcy litigation. Most of the bar referred to him as the “dean of bankruptcy law.” Barry wrote Soule: “I have an idea which may fit into the work of the Cass County Bar Association [C]ommittee on [B]ankruptcy.”<sup>9</sup>

Soule then initiated action in the Cass County Bar Association, resulting in the appointment of a committee on bankruptcy consisting of Soule as chairperson, Herman F. Wegner and David T. DeMars. Barry and this committee worked with Burdick in his efforts to encourage Congress to adopt legislation funding the examination of the need for a comprehensive overhaul of bankruptcy laws in the United States. The State Bar Association, at the request of Soule, gave impetus to the North Dakota effort to obtain new legislation in the bankruptcy area by a resolution asking the President to appoint a commission to study the Bankruptcy Act of 1898.<sup>10</sup> These efforts culminated in the creation of the Bankruptcy Commission.

Senator Burdick’s statement on the resolution undergirding creation of the Bankruptcy Commission<sup>11</sup> noted the need for the study of the present system of bankruptcy administration and incorporated into the record a contemporary statement written by Barry which amplified Burdick’s statement and concluded:

Prompt and favorable action by your Subcommittee on Senate Joint Resolution 88 can well be another step in bringing early and coordinated leadership on a high level to a head on the part of many of the administrative agencies of our Federal Government and the business community as a whole to deal with the economic side effects and problems of a nation which, to put it mildly, has been on a continuous credit spree of both good and low quality since the end of World War II.<sup>12</sup>

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8. Gifford Herron, *Dalco Case Here Centers Attention on Moves to Update Bankruptcy Law*, FARGO FORUM, Feb. 17, 1966, at 14.

9. Letter from R.H. Barry to George A. Soule (Dec. 5, 1966) (from the personal files of Mr. David T. DeMars).

10. See Article, *And Now, It's the Bankruptcy Act That Draws Barry's Attention*, Commercial West (Minneapolis, Minnesota), March 23, 1968, and a letter to Senator Burdick from George A. Soule (July 1, 1967) (from the personal files of Mr. David T. DeMars).

11. Pub. L. No. 91-354, 84 Stat. 468 (1970).

12. Barry, *Success from Within*, *supra* note 2, at 271.

The legislative history of the new bankruptcy act essentially began in 1968 with the Burdick subcommittee hearings of the Senate Judiciary Committee. These hearings led to the adoption of a law creating the nine-member Commission on the Bankruptcy Laws of the United States.<sup>13</sup> The Commission commenced hearings in June of 1971 and concluded its work with the filing of its final report on September 6, 1973, recommending changes to the Bankruptcy Laws of the United States. Thereafter, similar bankruptcy legislative proposals were introduced in the House by Congressperson Don Edwards, who devoted eight years of his life to this legislation,<sup>14</sup> and in the Senate by Quentin N. Burdick and Senator Marlow Cook. Burdick also devoted many years of his political life to the development of the new bankruptcy act.

The premier bankruptcy work, *Collier on Bankruptcy*,<sup>15</sup> frequently mentions Senator Burdick's role in the creation of the new bankruptcy legislation. Senator Dennis DeConcini of Arizona comments:

Enactment into public law of the Bankruptcy Reform Act was certainly one of the monumental achievements of the 95th Congress.

. . . .

But in the final analysis, although the Congress can duly take great pride in its work on the bankruptcy laws, there were many people and groups that worked tirelessly behind the scenes giving selflessly of their time and expertise to assist the Congress in understanding and developing a new bankruptcy system of laws and courts. Most will never be recognized other than in the knowledge that they played a key role in enacting a landmark [sic] piece of legislation that will be a stable foundation for decades upon which the bankruptcy laws of this nation can evolve. I want to thank them all.

Certain individuals and groups must be recognized for their contributions.<sup>16</sup>

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13. Pub. L. No. 91-354, 84 Stat. 468, 468 (1970). My emphasis on local history is not intended to disregard other groups and organizations, including the Brookings Institute and the National Bankruptcy Conference, which had been pressing for changes in the bankruptcy laws of the United States. See Letter from Bertram K. Wolfe, Referee in Bankruptcy to Quentin N. Burdick (October 25, 1965) (reproduced in Barry, *Success From Within*, *supra* note 2, at 281).

14. The Bankruptcy Reform Act of 1978 is often referred to as the "Edwards Act." 2 *Collier on Bankruptcy* vi (Lawrence P. King et al. eds., 15th ed. 1992).

15. *COLLIER ON BANKRUPTCY* (Lawrence P. King et al. eds., 15th ed. 1992).

16. 1 *COLLIER ON BANKRUPTCY* ix (Lawrence P. King et al. eds., 15th ed. 1992).

These individuals and groups include: The Judicial Conference of the United States, staff of Administrative Office of United States Courts, National Conference of Bankruptcy Judges, Commission on the Bankruptcy Laws of the United States, and National Bankruptcy Conference.<sup>17</sup>

As far as North Dakota is concerned, Senator DeConcini recognizes the work of Senator Burdick in these further words:

Special recognition is also due members of the [Congress] who perceived a problem with the bankruptcy laws and spent literally a decade in mid-wifing, nursing, and developing the Bankruptcy Act into a piece of legislation that is a benchmark against which future complex legislation can be measured. Particularly responsible are Senator Quentin Burdick, who did much of the spadework in the Senate, and Congressman Don Edwards, who led the fight for so many years in the House of Representatives

. . . .<sup>18</sup>

Attorney David T. DeMars, in a letter to this author, summarized the contributions of North Dakotans to the enactment of bankruptcy reform and observed that the process "started right here in North Dakota."<sup>19</sup>

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17. *Id.* at ix-x.

18. *Id.* at x. For reference to Senator Burdick's contributions to the Bankruptcy Act of 1978, see COLLIER ON BANKRUPTCY, app. 2, vi-x (15th ed. 1992).

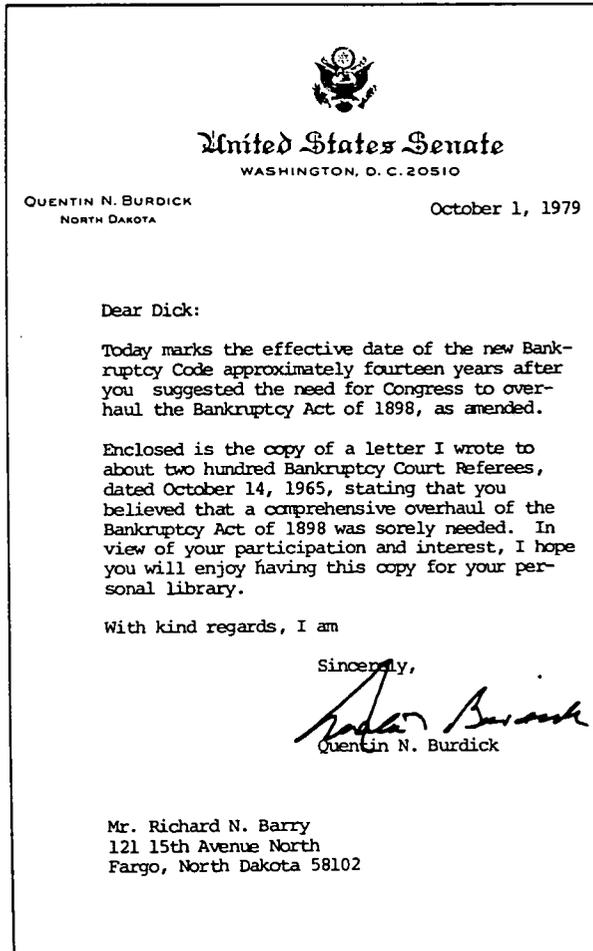
19. Letter from David T. DeMars to Judge Myron H. Bright (December 23, 1992). Mr. DeMars wrote:

It is in the context of what was the comparatively rare and unusual occurrence of bankruptcy, that the late Richard H. Barry of Fargo, North Dakota in 1965-66 drew the attention of the late Senator Quentin Burdick to the need for bankruptcy reform. At that time, Richard Barry was serving as bankruptcy trustee of Delco American Enterprises, Inc., which was then one of the most substantial bankruptcy cases ever filed in North Dakota. Richard Barry was a practical man not particularly attuned to the niceties of academically sound legal theory, constitutional questions of due process or distinctions between Article 1 and Article 3 Courts. Mr. Barry's attention focused on the need for action for bankruptcy relief after his attempts to use innovative financing and business ideas during the course of administration of the Delco bankruptcy were found to be either not permitted, difficult or cumbersome under the Bankruptcy Act of 1898 with its patchwork of amendments, last studied in a comprehensive manner when the Chandler Act was passed in 1938.

. . . .

As a result of the actions of that [Burdick] subcommittee, Richard H. Barry and the Cass County Bar Association Special Committee, Public Law 91-354 was finally enacted on July 24, 1970 to establish a [C]ommission on [B]ankruptcy [L]aws of the United States . . . . Senator Burdick, members of the Cass County Bar Association bankruptcy committee, Richard H. Barry, bankers, and other interested parties from the midwest and throughout the nation supplied information to the Commission during the following six or seven years of the study of the bankruptcy system . . . . In due course, the studies of the [C]ommission and a similar group appointed by the National Conference of

Senator Burdick, in recognition of Mr. Barry's efforts, wrote this letter:



Referees in Bankruptcy with input of various and diverse groups of special and general interest focused in Washington, D.C. resulted in enactment of the comprehensive bankruptcy reform evident by the presently existing Bankruptcy Code which seems to continue in constant process of amendment and development.

.....  
 Although the contributions of United States Senator Quentin Burdick, Richard H. Barry, and the Cass County North Dakota Bar Association Committee on Bankruptcy towards bankruptcy reform cannot be focused on a particular clause or section of the Bankruptcy Code as may be the case with others who influenced the Commission during the 1970s, it is nevertheless gratifying to know that at least the movement for reform through enactment of Public Law 91-354 *started right here in North Dakota* with the efforts of the late U.S. Senator Quentin N. Burdick and the Cass County Bar Association.

*Id.* (Emphasis added).

Readers can take pride in the knowledge that the bankruptcy reform legislation under consideration had its beginnings right here in North Dakota.

*The Honorable Myron H. Bright,  
Senior United States Circuit Judge  
United States Court of Appeals for the Eighth Circuit*

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## United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

January 6, 1993

The Honorable Myron H. Bright  
United States Court of Appeals  
Eighth Circuit  
P.O. Box 2707  
Fargo, North Dakota 58108

Dear Judge Bright:

It is a great pleasure to provide you with further detail on the role Senator Burdick played in the development of the 1978 Bankruptcy Reform Act.

Senator Burdick served two important roles during the 1970s which had a significant impact on the creation of the 1978 Bankruptcy Reform Act. First, he served as chairman of the Senate Judiciary Subcommittee on Improvements in Judicial Machinery from December 1970 through 1976. This subcommittee had jurisdiction over all bankruptcy legislation and Chairman Burdick began the legislative process in the Senate which led to the enactment of the 1978 Act. I succeeded Chairman Burdick as Chairman of the Subcommittee and can attest from personal knowledge of the outstanding work he did to move this legislation forward.

Second, Senator Burdick was appointed by the President of the Senate as a member of the Commission on the Bankruptcy Laws of the United States which was created in 1970 to "study, analyze, evaluate, and recommend changes" in the Bankruptcy Act. The Commission, which issued its final report in July 1973, evaluated the current system of bankruptcy administration in the United States and made recommendations for changes necessary to meet the demands of the times. A major accomplishment of the Commission was its proposal for a new Bankruptcy Act. It was this draft legislation created by the Commission in 1973 which served as the foundation for the 1978 Bankruptcy Reform Act.

It was an honor to have served with Senator Burdick in the Senate. It was through his tireless work on the Commission and as Chairman of the Subcommittee that the 1978 Act became a reality.

Sincerely,

  
Dennis DeConcini  
United States Senator

DDC/jl