

Michigan Law Review

Volume 82 | Issue 2

1983

Frank R. Kennedy

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Recommended Citation

Vern Countryman, *Frank R. Kennedy*, 82 MICH. L. REV. 195 (1983).

Available at: <https://repository.law.umich.edu/mlr/vol82/iss2/3>

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FRANK R. KENNEDY

*Vern Countryman**

No one knows more about the law of debtor and creditor than Frank Kennedy and, save for Steve Riesenfeld who edges him by two years, no one has been teaching it longer. Frank is a man of many and diverse talents (he is, among other things, a superb ball-room dancer). As one (only slightly) his junior, I have been asked to write about his contributions to the practicing bar and his contributions to the development of the law of debtor and creditor.

I doubt that even Frank, the most meticulous of record keepers, could make more than a rough estimate of the number of appearances he has made, over the years and in all parts of the country, on continuing legal education programs. At each appearance, the lawyers in attendance could count on receiving in response to the sponsoring organization's invariable request for an advance written outline of his topics, a virtual mini-treatise on each subject. Frank invariably supplemented these writings in his oral presentation with all of the latest developments. And, no matter how firmly the moderator urged the members of the audience not to seek exhaustive treatment from the speakers of all the problems those members had brought from their offices, at every such program I attended Frank was the last participant to emerge from the meeting room at the end of the day. He always stayed to attempt to deal with every question presented to him by those who persisted in seeking fast answers to their office problems.

It was always clear to me that these after-hours interrogators had already gotten more than their money's worth from Frank during the scheduled hours of the meeting. But, typically, that was never Frank's reaction. His view has always been that he also learned from his extended sessions.

Visible evidence of Frank's contributions to the development of the law goes back a long way. His years of service as Chairman of the Drafting Committee of the National Bankruptcy Conference, responsible for casting the Conference's numerous proposals for amendments to the Bankruptcy Act into legislative form, as well as his outstanding reputation as an expert in the field, made him the

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natural choice as Reporter for the United States Judicial Conference's Advisory Committee on Bankruptcy Rules, when, in 1961, it began the task of drafting Rules of Bankruptcy Procedure. Larry King and I joined the project later as Associate Reporters, Larry for Rules for Chapters IX-XII and I for Rules for Chapter XIII, and still later Walter Taggart became an Associate Reporter for Rules for Section 77 railroad reorganizations. But we all shamelessly cribbed from the excellent work Frank had already done on the Rules for bankruptcy liquidation cases. As the late Judge Phillip Forman, Chairman of the Advisory Committee, wrote in submitting the first installment of the new rules to the Judicial Conference's Standing Committee on Rules:

Of course, the work was made possible only by the prodigious and devoted effort exerted by the Committee's Reporter, Professor Frank R. Kennedy. In addition to his vast knowledge of the subject, he brought a limitless capacity for meticulous research to the job, which I believe has made it as complete and all-encompassing as possible.¹

Once again, when Congress in 1970 created a Commission to study and revise the old Bankruptcy Act, Frank was the natural choice for, and became, its Executive Director. His conscientious and indefatigable service in that job made even his performance on the Rules pale by comparison. Over a three-year period, he supervised a full-time staff of more than two dozen, the commissioning of a number of studies by other experts, and the conducting of public hearings in all parts of the country. In addition, he did more than his share of the research and drafting that went into the Commission's final report, which included a draft of a complete new Bankruptcy Code. I was involved to assist in a minor capacity in the final weeks of preparation of that report and recall that when, at the end of what we regarded as a long day's work, most of us would leave the office for a soothing libation we would leave Frank busily at work in his office. We would not infrequently return the next day to learn that what sleep he had gotten the night before was on a cot in his office.

Once the Commission's report was completed and its proposed bill was introduced in Congress, Frank continued his efforts by numerous appearances in Washington to testify at Congressional hearings and to consult with Congressional staff. The end product of the effort for Frank and many others, though no one's more than his, is the current Bankruptcy Code of 1978. While matters are in disarray

1. COMMITTEE ON RULES OF PRACTICE AND PROCEDURE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES, PRELIMINARY DRAFT OF PROPOSED BANKRUPTCY RULES AND OFFICIAL FORMS UNDER CHAPTERS I TO VII OF THE BANKRUPTCY ACT xxiii (March 1971).

now because of Congress' delay in dealing with the Supreme Court's 1982 decision in the *Marathon* case² (holding the basic grant of bankruptcy jurisdiction too broad to be conferred on Article I bankruptcy courts), Frank cannot be faulted on that point. He supported making the bankruptcy courts Article III courts both before and after *Marathon*.³ When finally the Congress does act to clear up the jurisdictional muddle — as it must — our resumed experience with the substantive provisions of the new Code will continue to show that they are a vast improvement over the substantive provisions of the old Act. And for much of that improvement we are indebted to Frank.

Meanwhile, he has somehow found time to contribute to other substantive improvements in related areas. While he was still working on the Bankruptcy Code, he became the Reporter for the drafting of the Uniform Exemption Act, approved by the National Conference of Commissioners on Uniform State Laws in 1976. Even now he is serving as Reporter for the same Conference and its revision of the Uniform Fraudulent Conveyance Act of 1918.

Frank has retired from full-time teaching but that act merely represents some reordering of his extraordinary energy and talents. He will never retire from his full-time efforts to contribute to the development of the law in his area and to assist others who also labor in that field.

2. *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 102 S.Ct. 2858 (1982).

3. *Hearings Before Subcommittee on Civil and Constitutional Rights of House Judiciary Committee on H.R. 8200*, 95th Cong., 1st Sess., 243 (1977); *Hearings Before Subcommittee on Improvements in Judicial Machinery of Senate Judiciary Committee on S.2266 and H.R. 8200*, 95th Cong., 1st Sess., 831, 852 (1977); *Hearings Before Subcommittee on Monopolies and Commercial Law of House Judiciary Committee on H.R. 6109*, 97th Cong., 2d Sess. (1982).