

## National Bankruptcy Conference

(A voluntary organization composed of persons interested in the improvement of the Bankruptcy Act and its administration.)

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WACHTELL, LIPTON, ROSEN & KATZ

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Dear Leonard:

For some time I have thought that it would be nice to have a brochure describing the early history of the N.B.C. to be given to new members as too few are aware of it.

Last year while at the annual meeting I had the opportunity to look at the early files of the Conference in the possession of Charles Horsky. From the information obtained, I have made a draft article describing the history primarily from the mouths of the early members. I am enclosing a copy of the article and will also send one to Charles.

I am not sure what might be done with it. If the Conference wants to use it in any way it is welcome to it. It did seem to me that if it was circulated among older members some might be able to add their own annotations. I know for example, that there are several concerning Carl Friebolin which would be interesting to collect.

With kindest regards.

Sincerely,



John D. Honsberger

JDH:ss  
Enclosure

# **National Bankruptcy Conference**

*(A voluntary organization composed of persons interested in the improvement of the Bankruptcy Act and its administration.)*

## **The Origins of The National Bankruptcy Conference: A Hinge-point of Change 1932 - 1933**

This article is primarily based upon the correspondence of Referee Paul H. King in the possession of the National Bankruptcy Conference. Other source material was found in Banks, Charles S.J., The National Bankruptcy Conference and the Bankruptcy Act, Journal of the National Association of Referees in Bankruptcy [1948] July 115 ; McLaughlin, J.A., Amendments to the Bankruptcy Act 4, U of Ch. L. Rev. 309 (1936-37) and Hiller, Russell, A Conference Anniversary - Fifty Years in Retrospect 1926 - 1976 (Pamphlet).

John D. Honsberger

1985

I

Leaders are pushed forward by great events and in times of need. They participate in the making of decisions and policy and have a great capacity to influence events. The "organized power" that they represent, "tends to be most alert and active precisely at the hinge-point of change, where new options, or loss of customary ones impend" <sup>1</sup>.

When the stock market crashed in 1929 and the Great Depression began there was increasing pressure for change in the bankruptcy laws. A small handful of men interested in bankruptcy administration were drawn together by their mutual interests. They became leaders at that historical hinge-point of change. They had an unusual influence upon the legislative process. When it was completed they found that their little group had evolved into the National Bankruptcy Conference.

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1. Lynd, Robert S., Power in American Society as Resource and Problem in Kornhauser, Arthur, ed. Problems of Power in American Democracy, (Detroit, 1957) 2d;

II

In the early spring of 1929 the Association of the Bar of the City of New York, The New York County Lawyers Association and the Bronx County Bar Association jointly petitioned the United States District Court for the Southern District of New York to conduct an investigation into the administration of bankrupt estates. The petition was prompted by the report in the previous month of a grand jury which disclosed serious abuses and malpractices.

The Honourable Thomas D. Thacher on behalf of the Court, directed that an investigation be conducted and that a report be made to him. He appointed Honourable William J. Donovan, a former assistant Attorney General to be counsel and several associate attorneys. During the course of the investigation associate counsel were sent to both Canada and England to examine the bankruptcy systems of those countries particularly in respect to bankruptcy administration. A report dated March 22, 1930 was made and filed with the Court.<sup>2</sup> It was drafted by Mr. Donovan with the assistance of a number of associate attorneys, but primarily by George S. Leisure and Lloyd K. Garrison. The principle recommendations

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2. W Donovan Administration of Bankrupt Estates, House Judiciary Print, 71st Cong., 3d Sess.;

related to the establishment of a centralized system of bankruptcy administration headed by a federal bankruptcy commission and a system of licensed trustees.

Judge Thacher left the bench shortly after the Donovan Report was filed and became Solicitor General in the administration of President Hoover. Almost at once, The Department of Justice with the advent of the Depression, with the approval of the President and no doubt prompted by the new Solicitor General ordered a nation-wide survey of bankruptcy administration. Lloyd K Garrison the former associate attorney in the Donovan Commission and who later became the Dean of the Law School of Wisconsin was appointed a special assistant Attorney General with primary responsibility for the new inquiry.

Mr. Garrison personally visited many centres across the country. Among those he visited was Detroit. There he met and interviewed at length, Referee Paul H. King who four years before was the founding president of the National Conference of Referees in Bankruptcy. He had advanced ideas on bankruptcy administration and ran one of the most efficient courts in the country.

Solicitor General Thacher held a conference in Washington in September of 1931 when Mr. Garrison completed his national survey and before a report was written, to discuss the results of the survey. All interested organizations participated.

There was after the Conference and throughout the Fall of 1931 considerable anticipation mixed with some apprehension concerning the forthcoming report.. Referee King made it his business to keep informed as well as he could on the progress of the report.

Referee H.M. Bierce, the editor of the Journal of the National Association of Referees in Bankruptcy received periodical reports from Referee King. Referee Bierce in a Christmas newsletter of December 23, 1931 to all members of the Association wrote:

Mr. Garrison has advised his report is complete as well as the bill to be introduced.

Referee King, being not one to beat around the bush wrote to the Solicitor General and asked him exactly when his report would be issued. Mr. Thacher refused to be pressured and replied in a letter of January 25, 1932:

The Report we hope will be promptly printed when the President has submitted it to Congress and will be available through the Government Printing office.

The Thacher Report<sup>3</sup> or as it was sometimes called the Thacher-Garrison Report is dated December 5, 1931. It was released in February, 1932. At the same time the Hastings Bill which had been drafted primarily by Mr. Garrison was introduced. Among other things it provided for a system of centralized bankruptcy administration with regional bankruptcy administrators, corporate reorganization, new provisions for compositions and extensions and the supervision of voluntary assignments by debtors. The principle qualifications of Lloyd Garrison to draft the Bill was the work he had done in the Donovan and Thacher inquiries. He had however, very little practical bankruptcy experience.

President Hoover in his message to the Senate and House of Representatives on February 29, 1932 took up the cause of the improvement of bankruptcy administration. The President pointed out that the confusion of judicial and

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3. Strengthening Procedure in the Judicial System, S. Doc. No. 65, 72d Cong. 1st Sess. 4th (1932);

business functions led to delay. He also pointed out the need for overall supervision of bankruptcy administration. As a solution he stated his support for a system of official supervision of bankruptcy administration and for a permanent staff of competent personnel whose job it would be to carry-out the liquidation of estates.

"The choice of the liquidating personnel should be limited to competent individuals or organizations after careful consideration by the courts of their qualifications and ability to maintain an efficient and permanent staff for the conduct of the business. Compensation for such services should be upon a scale that will attract trained business organizations. Competent officials should be charged with the observance of the administration of the law and charged with the duty to suggest to the Courts and to Congress methods for its improvement. The present system is susceptible of improvement to eliminate delay in its cumbersome process much of which results from a confusion of judicial and business functions."

### III

Paul King immediately swung into action. His principal target of opposition was the proposal to centralize bankruptcy administration. He had reason for reacting strongly. He had substantial practical experience. He was a

pioneer in the movement to make bankruptcy administration more efficient. In his own court he had been creative and had introduced many significant innovations. He was also a student with considerable intellectual curiosity in respect to bankruptcy in general. He had strong views on what needed to be done to improve the bankruptcy process and in particular what was necessary to provide relief to groups being hurt by the deepening Depression.

Referee King strongly disagreed with much of the Report, the solutions it proposed and the Hasting Bill designed to implement The Report. During the Spring of 1932 he worked like a "slave" which was his expression in preparing a digest of the proposed amendments to the Bankruptcy Act. When the analysis was completed he printed the digest at his own expense and circulated it to all whom he thought might be interested.

He began an extensive correspondence to gain support for his views. While he had a personal interest in opposing much of the Hasting Bill he never concealed it, but at all times tried to take an impartial and professional point-of-view.

He was a strong, effective and fair advocate for what he believed. He was always well prepared. However, if he failed to carry a point while refusing in most cases to be persuaded he was wrong he nevertheless would accept the result gracefully and would move to the next point of disagreement. He had a strong understanding of what was practical and might be achieved.

Occasionally when people would express opposing views Referee King, if he could, would suppress them. There is an interesting exchange of letters, for example, between Referee King and W.J. Reilley the Canadian Superintendent of Bankruptcy and former Canadian Referee. In a letter to Referee King from Reilley dated April 13, 1933 Reilley wrote "I am rather inclined to think that centralization is a necessary feature of successful bankruptcy administration" which is the Canadian approach. Referee King did not acknowledge the letter, but in pencil wrote at the bottom of Reilley's letter "no answer".

Referee King explained how he regarded the Thacher Report and the Hastings Bill while disclosing his own personal interest in a letter of March 31, 1932 to Referee E.W. Baker of Dallas.

I have been keenly interested in improvement of bankruptcy administration and I have set-up here what could be considered one of the best bankruptcy courts in the country. In the pioneering which we have done in the last thirteen years we have demonstrated, I think, that bankruptcy administration may be made a purely business like proposition, with offices conducted on a purely business basis. During this period of time we have closed 9415 cases, involving a realization of \$38,403,934.33 with an average period of administration of 11.04 months and an average percentage cost of administration of 16.25%. While we have made progress, we do not feel that we have arrived by any means and are constantly working on methods for expediting administration and reducing expense. In view of these things, it is as you may imagine, with mingled feelings that I surveyed the departmental bill, the product of the survey which has been conducted during the past months. In this, as you may know, I gave every possible help, as did our Association of Referees. There are many excellent provisions contained in the bill, such, for example, as those providing for corporate reorganization in bankruptcy proceedings, the bringing under the protection and supervision of the law of voluntary assignments by debtors, and the revision of proceedings in composition cases combined with the provision for extension.

These have, however, been coupled with some things that I regard as positively harmful. I cannot visualize setting-up in Washington, a centralized

administration of bankruptcy cases, with a small army of administrators and examiners. It is sought to place the supervision of a branch of the Judicial Department in the hands of an officer of the Executive Department. This is not only undesirable and unworkable, but basically wrong and being wrong in principle can never be made right. There is absolutely no reason for any such centralization of authority or supervision. The machinery we now have can be easily amplified to accomplish the same results.

Judge King expanded on his views in a letter to Burt D. Dady of May 12, 1932.

"There is no doubt in my mind that the President desires most earnestly to secure a better bankruptcy law, but the promoters, or the chief promoter, the Solicitor General, who is a fine chap, is I think figuring more on the prestige it will bring to the Attorney General's office inasmuch as it will have entire control of the whole bankruptcy business in the entire country, than he is about anything else and who could blame him. If this thing goes through as it is, the organization could be made into the niftiest little political machine that ever was put together, with the ten lieutenants in the persons of the proposed ten administrators, and the 200 or 400 or 600 examiners as captains, and the small army of authorized trustees in every part of the country...

No one has been asked to assist in the preparation of the bill except possibly the National Association of Credit Men. ...the Departmental representatives got

all of the data and information from every source and they did a wonderful job of it - then they went to work and prepared a proposed law which they have handed to the two Houses of Congress with a message from the President "This is it. Adopt it".

There were many other organizations and persons who were also concerned about the Hastings Bill. One of these was Robert A.B. Cook of Boston.

Early in March of 1932 Mr. Cook wrote to Judge King suggesting that they along with Jacob M. Lashly the Chairman of the Committee on Commercial Law and Bankruptcy of the American Bar Association, might get together to discuss the new bankruptcy bill. In a letter dated March 10, 1932 Judge King replied:

My Dear Friend: I am myself placed in a somewhat peculiar position. I have for years, as you know, been working for the improvement of the bankruptcy law and practice, and am keenly interested. Here a bill comes along which is designed in that very direction, but is filled with things I am not for. I frankly do not want to take an antagonistic attitude at all. The only thing I can do, I suppose, is to be entirely impartial, stand for the things which appeal to me as good and as energetically oppose those which seem to be in error.

Your suggestion about a conference with yourself and Mr. Lashly is just fine and I would very much like to sit in, I assure you.

Some two weeks later on March 31, 1932 Judge King wrote to Mr. Lashly:

"Not long ago I had a letter from Mr. Robert A.B. Cook of Boston, suggesting among other things that it would be fine if you, he and I could get together, possibly in Detroit, for a conference and I wrote him that I would be delighted, although strictly speaking, I am not the Chairman of the Referees Committee and it might be well to include him, as I would not want him to think that I were usurping his functions. As you may recall, the Chairman is Honourable Watson B. Adair, of Pittsburgh.. The conference he had in mind, however, was I think purely informal and I would indeed be happy if it might materialize.

Meanwhile Judge King was working hard on his analysis of the Hastings - Michener Bill. On the same day as he wrote Mr. Lashly he wrote, "I am working hard on my analysis every spare minute and expect to have it done this week".

The public hearings on the Hasting-Michener Bill were held before a Joint Special Committee of the Senate and the House Judiciary Committee early in June. Mr. Cook described them:

Mr. Garrison presented the proponent's side of the case. At the conclusion of his remarks, and because I had to be in Boston the next day, I was recognized to

present the opponent's side. Towards the conclusion of my remarks and after pointing-out the inadequacies of the bill before the Committee, I reminded the Special Committee that in the past the Bankruptcy Committees of variously nationally known organizations had happily co-operated with the result the bills previously introduced had represented the thoughts of these national organizations and while I recognized it probably would not be possible to get a large group together to secure the views of these National Associations in time to be heard in connection with the pending bill, or any substitute therefor, nevertheless I did want to call into conference men associated with some of these organizations who I felt were well qualified to prepare and provide suitable amendements for the purposes of the Committee. This permission was granted.<sup>4</sup>

\*The next day and upon my return to Boston, I had a visit from Reuben Hunt of California, then attending a tennis tournament in Boston and before we parted we had arranged for Paul King of Detroit, Carl Friebolin of Cleveland and Jacob Lashly of St. Louis to be in Boston the following Sunday. I knew that Mrs. Cook and our only child then at home were leaving on the steamer for the other side and that we would have the house to ourselves.<sup>5</sup>

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4. Letter from Robert A.B. Cook to Charles S.J. Banks which is reprinted in "The National Bankruptcy Conference and the Bankruptcy Act, Journal of the National Association of Referees in Bankruptcy July, 1948 p. 115 at 116;
  5. Ibid;

Mr. Cook sent a telegram to Judge King on June 16, 1932.

Lashly of St. Louis, Professor McLaughlin of Harvard, Hunt of San Francisco and myself meet here Monday to draft revision Bankruptcy Law would be delighted to have you or Referee Adair your legislation Chairman sit in with us please advise by wire.

Judge King replied the same day:

Delighted to attend Adair cannot make it. He suggested you might wish to invite President Carl D. Friebolin of Referees Association Cleveland who has been doing some work along this line. If so please wire him. I will report your office for duty Monday morning. Regards.

Paul H. King

Mr. Cook replied to Judge King:

Thanks for your acceptance and excellent suggestion have invited Judge Friebolin.

The so called Boston Conference was held from June 18 to 27, 1932.

Mr. Cook recalled that sometime after the event<sup>6</sup>:

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6. This is an extract from a letter of Robert A.B. Cook to Charles S.J. Banks which is to be found in the latter's article "The National Bankruptcy Conference and the Bankruptcy Act, Journal of the National Association of Referees in Bankruptcy, July, 1948, p. 116. The article doesn't say when the letter was written. It simply says: "Mr. Cook who might be called the father of the National Bankruptcy Conference has very kindly furnished the Author with his story of how the National Bankruptcy Conference came into being and the liberty has been taken of quoting from his letter." It would seem from the context that the letter was written shortly before 1948 when the article was published;

Mr. & Mrs. King came and later were joined by Mr. Friebolin and Mr. Lashly. On Monday Mr. Hunt, Professor McLaughlin of Harvard and Joseph B. Jacobs of Boston, now deceased, who had served conspicuously on various bankruptcy committees joined the meeting and with myself constituted the roster of the original meeting. Mrs. King was designated house mother and Paul was made chairman. Our first thoughts were to undertake a 'short form bill', realizing, of course, that an over-all revision would involve much time, and certainly would not have the same chance of early passage as a shorter bill. However, before we concluded our activities, which lasted throughout the week, we found ourselves laying plans for a comprehensive revision. Paul had already designated our group as the National Bankruptcy Conference, and had expressed the thought that the Conference should be kept alive and should be expanded from time to time so as to take in representatives of other organizations interested in the subject. All the work performed at this first Conference, including the secretarial work was performed in our home in Wellesley Hill, Massachusetts.

A more immediate recollection of the Conference was that of Referee King who in a letter of July 12, 1932 to Harold Remington wrote:

In response to a telegraphic invitation I attended a Conference in Boston recently called by Mr. Robert A.B. Cook, Chairman of the Bankruptcy Committee of the Commercial Law League, and we spent a

most intensive ten days in the consideration of the criticisms of the present law and the proposed remedies and the drafting of a tentative revision which to our minds more nearly meets the conditions. The Conference was attended also by Mr. Jacob M. Lashly, Chairman of the Committee on Commercial Law and Bankruptcy of the American Bar Association, Honourable Carl D. Friebolin, President of the Referees Association, Professor James A. McLaughlin, of Harvard University, Mr. Reuben G. Hunt, San Francisco, Specialist, and Mr. Joseph B. Jacobs of Boston, also a member of the League Committee. While every man present had his own notions, each one was involved with the desire to collaborate in a draft which would be workable and therefore more acceptable than the proposed departmental revision. All the conferees could not remain till the conclusion of the Conference. So that the draft which Mr. Cook and I finally completed has been sent to the others for criticisms and suggestions. As soon as it is in a final form for submission I want to send you a copy for your criticisms. I might say that this proposed revision is in response to Chairman Hastings' suggestion when Mr. Lashly appeared before the Congressional sub-Committees, which in effect amount to this: that if he, Mr. Lashly, were going to criticize the pending bill, he ought to submit something constructive in its place. The Conferees have not the temerity to think that the product of their labours will run the gauntlet of criticism without change, and in fact welcome any constructive suggestions that may be made.

The following day July 13, 1932 Referee King wrote to  
Ralph Stone:

We spent ten intensive days discussing first the criticisms of the present Act and the proposed remedies, finally working-out a tentative draft of proposed amendments which to our minds would more nearly meet the conditions than the pending revision.

Professor MacLachlan who played an important part in the Boston Conference and an important continuing role in the bankruptcy reform movement of the Thirties came from a distinguished academic family and was himself an outstanding student, a respected teacher and was to become a legend of Harvard Law School. He had red hair and was often known as "Red Mac". When he was 16 he wrote to his parents, "I wonder if you realize what a peculiar combination I am of highly developed analytic and introspective powers and naive boyishness."<sup>7</sup> His family name was McLaughlin. In mid-life he changed it to MacLachlan as he thought that the spelling was the one that was used by the earliest branch of the family. It produced some confusion to future librarians who had to catalogue articles and books written by both James A. McLaughlin and James A. MacLachlan.

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7. See Ellen Bernstein, Red Mac, Harvard Law School Bulletin, Summer, 1979, pp. 20-23;

MacLachlan was an enthusiastic participant in most sports. He regularly jogged to the Law School from his home many miles away. In between classes he could be found chinning himself on the metal bar that ran across the top of the cubicles in the men's room. In the early years of the National Bankruptcy Conference when it met in the board room of the Union Trust Company in Washington, MacLachlan would insist on throwing open all of the windows half-way through each morning and afternoon session and ask for volunteers to run with him around the White House.

He was not always the easiest person with which to work. He, for example, wrote to Paul King in June of 1932 saying that he was not impressed with Lashly and suggesting that the group rely more on Weinstein and Friebolin.

At the same time Robert Cook took the occasion to write a similar letter on July 14, 1932:

"I should like to see Lashly and McLachlan get together and reconcile their views, for I feel that if there are any two of our Conferees apart it is they. The rest of us are so strongly of one mind that we do not seem to have much difficulty in accommodating ourselves to another's viewpoint.

Professor MacLachlan also wrote about the Boston Conference some years after the event in an article published in the University of Chicago Law Review in 1937:<sup>8</sup>

The opinion prevailed that the best way to meet the Thacher proposals in Congress was to be prepared with an alternative positive program. The administration's lawyers politely recognized the scholarly character of the proposals made with equitable distribution, but showed no interest in incorporating them into administration bills. In fact the proposals affecting administration which interested the Solicitor General's office operated in a field so distinct from that encompassed by the substantive law proposals that there was no substantial contact between the exponents of the two lines of thought. The lawyers and referees, however, were interested in the substantive law proposals, not merely as affording a tangible alternative to the Solicitor General's program but also as having intrinsic merit warranting their careful study and promulgation in the most practical form. The result was what later came to be styled the National Bankruptcy Conference. Two referees, four lawyers, and one full-time law teacher met at a lawyer's home in Wellesley, Massachusetts, one weekend in June, 1932, and pursuant to a declared intention to draft all necessary amendments to the Act by Monday next spent three days arguing over the definitions in section 1. Some of the members of this group were amused at the idea that anything more than a broad discussion of principles could be accomplished in such a limited time, but none anticipated the volume of intensive work, negotiation, and correspondence

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8. McLaughlin, Aspects of the Chandler Bill to amend the Bankruptcy Act (1937), 4 U. of Ch. L. Rev. 360;

lay ahead. Such anticipation would probably have deterred even the most enthusiastic from committing themselves to the investment of time and energy that was to be required.

A few days after the Boston meeting Reuben Hunt wrote to Referee King in a letter of July 5, 1932:

It was a great pleasure to me to work under you at Boston, and I hope we will be able to get together again soon. I will be glad to go East again at any time when I may be of service. Having grabbed the bear by the tail, I am desirous of holding on until something constructive is definitely accomplished.

I am sorry I did not stay with you at Boston until the end...

Referee King in his letter of July 12, 1932 replied to Mr. Hunt:

...Mr. Cook and I spent a great deal of time in the phrasing, but we did not dare to hope, of course, that it would finally stand the tests of the thousands of critical eyes that would be turned upon it and come through without change. In fact, we assumed that there would be many changes suggested, and I telegraphed him from Bay City, only Friday night stating that it is my idea as soon as we have the reaction of the various groups which are giving the subject matter special consideration we should all meet again for a revamping of the drafts. I have not had time to hear from him yet in response to this telegram, although a letter may be received before this is transcribed. If so, I will make reference to it in a postscript.

I do not know when I have enjoyed a conference so much as the one in Boston. Each man present seemed to be involved with the idea of getting the best draft possible without regard to personal views. I know that you generously discarded several pet proposals and I know that I did.

"Our informal committee of seven" was how Professor McLaughlin described the group in a letter he wrote on June 29, 1932 to Mr. Cook. A few months later Judge King began to describe the group as "our conference" and "a voluntary conference" while Mr. Cook referred to "our conferees". The name was not important at the time. What was important was that the little group was extremely active in drafting amongst themselves and forwarding drafts to each other for comment. However, the early use of the expressions "our conference", "voluntary conference" and "conferees" was undoubtedly the origin of the name of what was later to be known as the National Bankruptcy Conference.

The group continued to do much drafting amongst themselves. The drafts were forwarded to each other for comments. They soon developed an immense correspondence.

It was soon decided that a second meeting of the group would be better located than Boston had been, but Mr. Cook cautioned Judge King in a letter of July 19, 1932:

With regard to our further conference, and so far as our conferees are concerned, I must agree with you that Detroit is more centrally located than is Boston. But, have you given thought to the fact that men like McLaughlin have no expense account upon which they can draw, and hence we would probably be without their services.

Judge King replied in a letter of July 26, 1932:

I quite realize the difficulties of Professor McLaughlin's situation, and would like, myself, to defer to it provided that it is agreeable to the others. As a matter of fact, I have no expense account on which I can draw for such purposes. You might be surprised to know this, and I am sure you will be surprised and pleased to learn that my good associate, George Marsten, always insists on bearing a half of such expenses. We pay it out of our pockets and are glad to do it for the good of the cause. We have no doubt also we are in a much better position to pay the expense with our larger income than is Professor McLaughlin. Referee Friebolin is in the same position as Referee Marsten and myself - to pay his own expenses. I presume Mr. Hunt may be paid by the organization which he represents and I do not know how Brother Lashley fares. Possibly his reasonable travelling expenses are defrayed by the American Bar Association. Referee Coles would, I have no doubt, have to pay his own. I had not thought of the next meeting as my conference in any sense of the word, although you are good enough to refer to it as such. It simply occurred to me that it was, but a continuation of your conference. I suppose this may come about because of the fact that in a burst

of good feeling I was chosen Chairman, and yet I am perfectly willing to go ahead and act if you think I should.

There was also activity in other fronts. A group of three of the leaders of the National Association of Credit Men decided to draft a substitute bill. Reuben Hunt heard of the proposal and wrote to Judge King on August 13, 1932 and proposed that W. Randolph Montgomery of New York who was the attorney for the association (and who would later become a Chairman of the National Bankruptcy Conference) should be invited to join the Boston group. "It would save time and expense if they were to amalgamate with us". Earlier Mr. Cook had written to Referee King also suggesting the name of W. Randolph Montgomery with the request that he bring with him the Chairman of the Association's bankruptcy committee.

Other names proposed by Mr. Hunt to whom invitations might be sent were William J.H. Hayes the attorney to the San Francisco Board of Trade, William H. Moore Jr. of Los Angeles and Thomas G. Layton of Portland. Mr. Lashly suggested Referee Coles of St. Louis while Judge King requested invitations to be given to Harold Remington and Jacob Weinstein.

It was finally decided that the second meeting should not be held in Detroit, but in St. Louis in September. Judge King sent a letter on August 12, 1932 calling a meeting of

"our conference" in St. Louis on September 15, 1932 to Hubert A. Cook, Honourable Carl D. Friebolin, Reuben G. Hunt, Joseph B. Jacobs, Jacob H. Lashly and James A. McLaughlin. He also indicated that he would invite William H. Moore, W. Randolph Montgomery, Jacob Weinstein and Referee Coles of St. Louis. Judge King was asked to extend an invitation to Harold Remington a few days before the meeting was to take place. In a letter to him of September 10, 1932 he wrote:

As you may know, a small group of those actively interested in bankruptcy administration and practice got together in Boston in June to consider the proposed revision of the Act with the idea of comparing notes and possibly evolving a substitute draft.

Attending this conference were Mr. Robert A.B. Cook, Chairman of the Committee on Bankruptcy of the Commercial Law League; Mr. Jacob M. Lashly, Chairman of the Committee on Commercial Law and Bankruptcy of the American Bar Association; Professor James A. McLaughlin of Harvard University; Mr. Reuben G. Hunt, of San Francisco, a bankruptcy specialist; Honourable Carl D. Friebolin, President of the National Association of Referees in Bankruptcy; Mr. Joseph B. Jacobs, of Boston; and myself. We were in intensive session for more than a week, developing a tentative draft of amendments to certain sections of the law which we felt should be and could be improved.

Our proposed revision has been the subject of correspondence ever since, and it is now felt desirable to get

together again. The conference has been arranged for St. Louis, beginning Thursday, September 15th, and with the exception of Professor McLaughlin who unfortunately will be unable to attend, all of the Boston conferees expect to be present. The purpose is, of course, to try to agree on a perfected draft for introduction at the December session of Congress. It is not known, of course, just what form this will take, but it might very well be the American Bar Association bill, inasmuch as the sub-Committees of the Judiciary Committees of both Houses have invited the preparation and presentation of such a draft.

While it is desirable, in order to avoid protracted discussion which might result in getting nowhere, to keep the membership of the group as small as possible and yet have it representative, we feel that it would be incomplete without your presence and I have been given the pleasure of extending a most earnest and cordial invitation to you to attend the St. Louis meeting.

Arrangements have been made by Mr. Lashly for the holding of the conference at the law library in the Civil Courts Building and to have those attending accommodated at the Jefferson Hotel. As I say, we will convene on the morning of Thursday, the 15th, at as near ten o'clock as possible.

With kind regards, I remain

Sincerely yours,

Just prior to the St. Louis Committee the standing committee on commercial law and bankruptcy of the American Bar Association made a report on the Hastings - Michener Bill.

The Chairman of the Committee was Jacob H. Lashly. The report noted that there were fundamental charges proposed by the Bill which were unsound and impractical. It recommended opposing the Bill.

"The Bill seeks largely to eliminate judicial control or supervision of bankruptcy administration and to replace it with a new type of so called creditor control which in practice is certain to degenerate into "proxy" or "assignment solicitor" control.

The present bankruptcy law, enacted in the year 1898 and as subsequently amended is fundamentally sound and upon it has been built a great body of judicial decisions which must not be destroyed."

Certainty in the law is always important. It is always interesting however how certainty in the form of a body of judicial decisions is often used to oppose new legislation when a law has lived beyond its time as if the body of judicial decisions interpreting the old law is preferable to a new law designed to meet new circumstances.

The St. Louis meeting worked well in no small measure due to the meticulous planning by Judge King. The agenda he prepared went from early in the morning until late at night. Every few minutes there was listed some section of the bill for discussion, the speaker to make the initial presentation and the time allotted for the entire discussion. Sometimes as little as five minutes was set aside for a topic. Twenty minutes was the most.

Reuben Hunt said in a letter of September 28, 1932 to  
Judge King:

My own reaction to the St. Louis conference is that it functioned even more smoothly than we did at Boston, owing to your able leadership.

A few days before Judge King had written to Jacob Weinstein who had been invited to attend the St. Louis meeting, but could not.

The St. Louis conference was a great success: in fact the results accomplished were much more favourable than I dared to hope.

Events were moving fast. The little group continued its phrenetic pace. Judge King circulated almost weekly memoranda. The others responded with their own. Judge King modestly remarked that he only acted as a clearing house. It nevertheless became apparent that the circulation of memoranda was not enough and that a new meeting was necessary.

A Third Conference was held in Washington on January 26 and 27, 1933 at the Hotel Willard. There were some twenty-five persons in attendance representing nine organizations. The only members of the founding group as expanded was Referee King, W. Randolph Montgomery and Jacob Weinstein.

The minutes described the conference as being "a conference of various organizations interested in the bankruptcy law and its administration and the amendments proposed thereto now pending before Congress".

"The Conference was called to order by the Convenor, Paul H. King, who stated that it is the natural outgrowth of preceding conferences held in Washington, Boston and St. Louis last year, that its immediate purpose is the consideration of certain proposed amendments now pending in Congress; that there is every reason to believe that by virtue of its representative character and the experience of its members as judicial officers, lawyers and credit men, to believe that it may be of service at this juncture".

Another purpose of the January, 1933 Conference in Washington was to meet with Senator Hastings. Two long meetings were in fact held with him and the Conference was assured that the most objectionable features of the bill would be eliminated.

The intensive discussions and meetings that went almost around the clock at the January, 1933 meeting in Washington was described at length in a letter of February 1, 1933 to Herbert M. Bierce the secretary of the National Association of Referees in Bankruptcy.

I have just wired you a brief report on the Washington conference. Not a day went by there but what I thought of you, and many times a day, and wished for your kindly, helpful presence. The burden of the conference naturally fell rather heavily on me, although everyone was disposed to assist in every way possible. We had, as I wired, 25 men there, and, thanks to your splendid backing and support, a goodly number of referees, 14 as I recall. They were not all there at any one time, Mullinix having to go Friday night and Hecker and McAllester not arriving until Saturday morning. Eden was away on account of the funeral of his wife's brother in Illinois, so I made the arrangements for the rooms and copies of the bills, etc. and was all set for the conference when it convened. In order to get lined up I went down a day early, as you know.

We spent Friday morning in reading the bill aloud, and in the afternoon took up Section 74 and went through it word for word, clause by clause, and subdivision by subdivision. This ran us up to midnight and we made altogether about 40 suggestions.

Saturday morning I appointed a committee to check over our work and to redraft the section as we would amend it. This consisted of Messrs. Weinstein, Olney and Friebolin.

I might say that our first committee was a Conference Committee appointed to meet with Solicitor General Thacher and I designated Messrs. Montgomery and Sunderland. The former you know, but the latter probably not. He is a very able lawyer belonging to the John W. Davis firm, and has been counsel for the

receivers in a half a dozen big railroad cases, including the Frisco and the Missouri Pacific. He is a likeable chap and a hard worker. Before this committee met with the Solicitor General we had rather come to the conclusion that we should try to save our regular procedure and draft a special bill to meet the emergencies, and I appointed a Drafting Committee consisting of McCracken, Secretary of the American Bar Association, Olney, Kagy, Richman and McCrackin of Valdosta, Ga., to see what they could do. During the dinner hour on Friday they prepared a rough draft of a bill which was really a very good start, but in the evening our Conference Committee with Judge Thacher reported that he was satisfied that some legislation of the character pending is bound to go through, not because it is economically sound nor because it is in accordance with legal principles, but simply to meet the emergency, that a well defined movement for currency inflation has been started and that this legislation is the only thing that can stave off the inflation. In other words, it is the lesser of the two evils. The General was very approachable and agreed to several of the proposals to remedy some of the worst defects in the bill, such as the one providing for a referee in each county, limiting the fees in extension cases and the one authorizing the court to approve and put into effect a settlement with creditors without their consent or the consent of a majority in number and amount.

On Saturday morning the Conference Committee went back to the Department of Justice to get Judge Thacher's proposed amendments to the corporate reorganization section and the

Department amendments to the railroad reorganization section. They returned at noon with the former, but could not get all of the latter until five o'clock in the afternoon. In the morning we considered an important memorandum from Professor Frankfurter of Harvard with reference to the railroad reorganization bill and passed upon two amendments to Section 74 left over from the day before. In the afternoon we had the amendments to Section 75 to work on and this took us up until the dinner hour, when we went to work on the proposed changes to Section 75.

At the evening session we had become greatly reduced in number, but still a good working force, so we proceeded to draft the letter of transmittal to Senator Hastings and a statement of the reasons for the various amendments. At ten o'clock I was all fagged out and had to be excused, but the rest of the group worked until 1:30 Sunday morning, their train not leaving until 1:55.

The Department of Commerce furnished a stenographer, who got the dictation out Sunday, and it was in my hands at 6:00 o'clock in the afternoon. It being our wedding anniversary I took Mrs. King out to dinner and to "Of Thee I Sing" in the evening, then went back to work and stayed by until 4:00 o'clock Monday morning. I was up at 7:00 and checked the language of each of the amendments to Section 74, had a hasty breakfast and hurried to the Capitol. I wanted to see Senator Hastings the first thing and got there before his office was open, picking up some extra copies of the House bill on the way. I was "Johnny-on-the-spot" when he walked in and he was exceedingly gracious, inviting me in and spending nearly an hour with me. He asked me to

take his bill which had been introduced the previous Saturday afternoon, containing all of the recommendations of the Solicitor General, and annotate it for such changes as our group wished to make. The bill was ready at eleven o'clock, when I again went to the Capitol to get copies, and started in on the annotations, taking the stapling out of the bills, splitting the forms so that each page could be handled separately, having the new matter typed in in red and existing matter deleted by lining out in red, then pasting the statement of reasons on sheets of white paper opposite the sections affected as interleavings, finally binding the whole thing together in the form of a book, as you might say. I had to hold this, however, until the last minute Tuesday, because Sunderland came down early that morning with a whole flock of amendments to Sections 75 and 76, which had to be prepared and put into shape as I have indicated. I got him started on the work with two stenographers and helped him up until noon, when I had to beat it out to Alexandria to keep my Rotary attendance record perfect, but got back in time to finish up the job, check it and send it to the Senator.

It was certainly a busy week. I sent out the telegrams calling the conference on Tuesday, went to Washington on Wednesday evening, spent Thursday in arranging for the meeting, Friday and Saturday in presiding over it and had the satisfaction Tuesday of turning over a complete report. The question now is how much of it will be used. Yesterday I finished up the job by writing Senator Hastings, Solicitor General Thacher and Bob Cook, who is going to be in Washington on the matter for the next few days. I think we ought to have someone there from now on and am going to arrange

for a number of our conferees to take turns, so to speak, until Congress adjourns. Senator Hastings is not sure that any bill will pass, but believes one will. He thinks that if he can get it into conference the managers of the two Houses will readily agree, provided no material changes in substance are made. While I have done my level best to perfect the bill, I would be relieved if the legislation does not pass, because it is certainly unsound in every way. Economically it seeks to stay the necessary processes of liquidation and cancellation of indebtedness that is never going to be paid, and that, of course, cannot be accomplished by law. It is much in the same category as plowing under every third row of cotton, destroying half the coffee crop of Brazil, and buying up all the wheat to stabilize the market. From the standpoint of the law it changes the very foundation principle of our bankruptcy procedure and without question, no matter how they put it, it does impair the obligations of contracts.

The situation in Washington is well nigh indescribable. Economic conditions are so desperate that ordinarily conservative men are suggesting almost anything that has the semblance of being helpful. This is markedly so in the bankruptcy field. It is not so much to say that not a member of the House knew exactly what was in the bankruptcy bill which was passed on Monday. Congressman McKeown, who fathered the composition and extension section had some ideas about that. The LaGuardia railroad bill was written for him. Solicitor General Thacher drafted the corporate reorganization section. No hearings were held and no real Committee meeting. The sub-Committee met frequently and every day a new flock of amendments would come in. The three bills were jammed together in one draft and they didn't

even bother to remove the sections of the corporate reorganization bill making it operative, from the text, but, as you probably noticed, ran them right in with the text--and then passed the mess under suspension of the rules in a two-hour debate. Congressman Michener told me that he was regarded as having put the bill through but he did it entirely as a matter of policy, notwithstanding its faults and knowing that the Senate would fix it up. In the Senate, Senator Hastings is conscientiously doing his level best. He told me frankly that he knows nothing especially about the subject and that he must rely on Judge Thacher to furnish the draft. He welcomes suggestions and criticisms, and altogether was very fine about the whole matter.

On my return to the office I find a letter from Judge Tuttle, written in his characteristically forceful way. It is so good that I have had copies made and am enclosing one to you. In the first section of this letter I enclosed copies of my communications to Senator Hastings, Judge Thacher and Bob Cook. Also a copy of the Senate bill which includes all of Thacher's amendments to date. I did not count them, but our report will make 55 or 70 changes in this draft if they are accepted.

The Journal (Journal of the National Association of Referees in Bankruptcy) arrived as I am dictating this and I have dropped everything to look at it, as I always do when it comes. It is just like getting a letter from home, and this one is fully up to the standard. Every time a new issue arrives I feel proud of it, and of the Association, and of you.

Thank you for the carbon copies of the various communications you have been writing in reply to inquiries. I am glad, indeed, to have these and they have sponsored the thought that it would be wise for me to send out to each Referee a brief statement of the Washington situation. President Beach called me long distance yesterday to thank and congratulate me in connection with the conference, stating that Referee Olney had told him that it was a very great success and complimenting me on my handling of it, and of course, I was glad to have him feel this way about it. During the conversation I suggested the sending out of the circular letter and he thought it would be a splendid thing, because most Referees are naturally without information and have to depend upon what they get in the newspapers, which is not very reliable and certainly not up to date, so I am sending the bulletin today. You will, of course, receive a copy of it. I think I will send it also to the conferees who are present, in addition to the referees attending, the members of the Bankruptcy Committee of the American Bar Association, Commercial Law League and the American Bankers Association.

George suggested that our Directors meeting will probably be held in New York some time within the comparatively near future and wanted me to attend in connection with the working out of the regional conference idea. This I agreed to do.

I do not know that I ever wrote a serial letter like this before, but it was impossible to finish it yesterday and I did want to get something to you right away.

With cordial regards, I remain

As ever yours,

On the legislative front Congress was busy. Indeed, this was the principle reason that prompted the January, 1933 meeting in Washington. Bill (P.L. 27) was the first Bill to be enacted following the Hasting - Michener Bill which had been withdrawn became effective February 11, 1932. Less than a month later the increasing pressures for codification of equity receiverships particularly in respect of insolvent railways resulted in the enactment of section 77 of the Bankruptcy Act. This Bill (P.L. 420) provided for the reorganization of a railroad engaged in interstate commerce. It became effective March 3, 1933.

Congress next addressed itself to the pressing problems of municipalities. It was in the depth of the Depression. Municipality after municipality across the land was defaulting. The two hardest hit cities were Chicago and Detroit. Judge Friebolin in a letter of March 7, 1933 to Judge King however wrote, "Cleveland joins Detroit in what Mr. Hoover called "a reverse of prosperity". A few days before Judge Adair in a letter of March 4, 1933 to Judge King took a philosophical approach to the problems. "After all no

one had seen the like before in the United States and who could say how it would all end." He wrote, "we are living in a very interesting time. They have had such situations in Europe and have lived through them, so I suppose we shall do the same".

Jacob Lashly in a memorandum dated March 23, 1933 to Judge King and to the others in the Conference reported that there were a number of bills pending in Congress designed to extend the operation of the bankruptcy law to municipalities primarily to aid Detroit and Chicago. He concluded his letter by stating "your organization or group might consider it." Judge King replied a few days later in his letter of March 28th. His letter is indicative of a national bewilderment at the immensity of the economic breakdown. It also indicates how Judge King was prepared to face up to the problem and seriously consider solutions that he otherwise thought to be unthinkable. This in itself was a mark of a leader as he undoubtedly was.

"In normal times the proposal would be simply unthinkable, generally speaking, that a municipality should avail itself of our bankruptcy laws, but under present conditions we need not, I suppose, be surprised at anything, not even if they suggest running the United States Government and its tremendous liabilities through a bankruptcy court,

or if they set up some international bankruptcy court so that all of the nations of the world could go through.

I know the situation with us is desperate. A special session of the legislature saved us from defaulting in January. We are taking care and feeding every day 200,000 people, if not more. Our deficits are steadily mounting, our taxes are falling off. I don't like the idea of doing it through the bankruptcy court; it does seem that there ought to be some other way.

Congress ultimately passed the Municipal Bankruptcy Act (P.L. 251) effective May 24, 1934.

Both Congress and the "Bankruptcy Conference" were working at a breakneck pace. The relief amendments were passed on March 3, 1933. Referee King who referring to himself as temporary Chairman called a "Fourth General Bankruptcy Conference" on April 29, 30 and May 1, 1933 to be held again in Washington. The site was the Conference Room of the Chamber of Commerce of the United States.

Referee King was elected permanent Chairman at the Washington meeting of and which Mr. Lashley referred to as the "Joint Conference". During the meeting all major draft amendments which had thus far been proposed by the different organizations were referred to several "Committees and Assignments" for discussion. The seven major committees and their Chairman were: (i) Definitions and Offences, Harold Remington; (ii) Jurisdiction and Procedure, Jacob Lashly;

(iii) Bankrupts, Robert A.B. Cook; (iv) Administration, Paul H. King; (v) Creditors, W. Randolph Montgomery; (vi) Preferences, Liens and Titles, James A. McLaughlin; and (vii) Reorganization - Corporate and Railroad, Edwin S.S. Sunderland.

There was in addition a drafting committee appointed to draft appropriate provisions to be used in proposed legislation to incorporate the resolutions approved by the Conference.

A week after the end of the Washington meeting Robert Cook wrote to Paul King in a letter of May 9, 1933:

We took a giant stride in our Washington meeting...your direction of the meeting was just perfect and surely without your preliminary effort and preparatory work we could not have made early the progress that was achieved within the few days we were together.

A second letter was received by Referee King to the same effect from Reuben Hunt. In a letter dated May 8, 1933 he said:

"The Hastings Bill appears not only to be dead, but completely Burried.

After we get an improved Bankruptcy Act along the lines approved at the Washington Conference we must turn our attention to the next step up the ladder by making referees the court of bankruptcy.

We all appreciate your untiring efforts at Washington and the courteous but firm way you guided the proceedings.

Randolph Montgomery seems well pleased with the results of the Washington Conference and appears definitely allied with us.

Two meetings of the Drafting Committee were held following the Fourth General Bankruptcy Conference. The first was in New York on May 20, 21, 22, 1933 and the second in the Law School, Harvard University, Cambridge on Friday, Saturday and Sunday, June 23, 24 and 25, 1933. The New York meeting was arranged by Randolph Montgomery at the Downtown Athletic Club. Members were informed that rooms could be obtained at the Athletic Club for \$2.50 per night. The Cambridge meeting was arranged by Professor McLaughlin.

The Drafting Committee was the "real" Conference. Those, for example, attending the New York meeting were Paul H. King, Robert A.B. Cook, Carl D. Friebolin, Jacob M. Lashly, James A. McLaughlin, W. Randolph Montgomery, Harold Remington, Edwin S.S. Sunderland, Jacob I. Weinstein who were "assisted by Max Isaac (and) Peter B. Olney Jr."

It was beginning to be difficult for Judge King to hold together his little "Conference". They were getting tired and the travelling expenses were becoming too much for some of the members.

In the summer of 1932 Mr. Cook had written to Judge King that men such like McLaughlin had no expense accounts and accordingly might not be able to attend a meeting if it was to be held in Detroit.

A year later in the summer of 1933 Referee Friebolin of Cleveland felt that he could not attend the meeting of the drafting Committee in Cambridge. He wrote to Referee King, "I think I'll have to let you go along without me.

Referee King immediately replied in a letter of June 15, 1933 imploring him to come:

So please stick to the ship for one more voyage, because without flattery at all we need you. Right now, we must have McLaughlin in order to finish section 60, 67, 68 and 70 and I figure the only way to get him was to have the meeting in Cambridge.

With another meeting coming up later in the summer Carl Friebolin wrote Watson Adair, the Referee in Pittsburgh and the second President of the National Conference of Bankruptcy Referees, that he would send a cheque to Paul King to help pay the costs of the association but:

"I am prompted to say however, that I would rather contribute than attend the Conference. As it is, those of us have attended all of them have spent several hundred dollars already in railroad fares and hotel bills.

The only thing that induces me to send a cheque is that it is going to Paul who has not only been to the expense of the rest of us, but in addition the "Atlas" who has been shouldering the Chief burden.

Referee Friebolin did not attend all the meetings thereafter, but continued to work with the Conference and took an active part with the Referees Association. He was elected its sixth President at the fifth annual meeting held in Atlantic City in 1931.

From all accounts Carl Friebolin was a good lawyer and judge and above all a gentleman with a quiet sense of humour and a natural dignity. Towards the end of his year as President of the Referees Association, Judge Charles H. King of Memphis, the immediate past President wrote to him asking that he speak out on the subject of Referees salaries. Referee Friebolin replied in a letter of August 24, 1932:

"I am sorry that I cannot agree with you that the association take-up the matter of Referees' Compensation. While not addicted to exaggerated assumptions of dignity and being congenitally opposed to stuffed shirts, I still think that for the Referees' Association to initiate anything with regard to compensation is wholly lacking in the dignity which certainly accompanies the judicial position to which we always aspire."

Referee Friebolin was not one to evade the truth even when it hit close to home. The Solicitor General had said that the Bankruptcy Court was no longer a worthwhile and appreciable medium of distribution of insolvent estates. "What he said is true" wrote Carl Friebolin his remark being all the more telling as he was at the time he wrote this the President of the National Association of Referees in Bankruptcy.

Between the two meetings of the Drafting Committee, Harold Remington wrote to Referee King on June 9, 1933 in support of the "great body of judicial decisions" about which Jacob Lashly had written the previous September.

I am entirely out of sympathy with the idea of amending every section of the Bankruptcy Act. That Act has been interpreted and construed by thousands of decisions, and so interpreted and construed is a substantial, valid and well constructed statute. Stability in the law is desirable and there ought to be no general revamping of each and every section of the Act, as seems rather to be the inclination. It will no doubt become the duty of yourself, the astute careful leader of the whole thing, to perform the appropriate cutting out process.

In July of 1933 the National Association of Referees in Bankruptcy which had been founded largely by the efforts of Referee King in 1926 met at the Grand Hotel on Mackinac Island, Michigan. Those who were made honorary members of

and who spoke to the Association at this meeting also suggest the influence of Referee King. Lloyd K. Garrison, who by then had become Dean of the University of Wisconsin Law School, was made an honorary member as was W. Randolph Montgomery, Counsel to the Association of Credit Men and Jacob M. Lashly Chairman of the Committee on Commercial Law and Bankruptcy of the American Bar Association. Reuben G. Hunt in a major address told the legislative history of bankruptcy from the Act of 1800 to date. The remainder of the programme was principally devoted to discussion of the 1933 amendments to the Act.

The American Bar Association met in Grand Rapids at the end of August in 1933. Referee King thought it appropriate to hold one more meeting of the Conference at the same time to enlist the support of the A.B.A. Jacob Lashly by a notice dated August 5, 1933 notified the Conference of a special meeting to be held on August 29th. The notice went to Paul H. King, Robert A.B. Cook, Reuben G. Hunt, C.D. Friebolin, Hubert M. Bierce, Jacob I. Weinstein, W. Randolph Montgomery, Peter B. Olney, Harold Remington and James A. McLaughlin.

The major initial thrust of the new Conference concluded with a meeting in Chicago on December 7-10, 1933. It was held in the Law School of Northwestern University. It was described as the second session of the Fourth General

Bankruptcy Conference. The meeting was held to receive the report of the Drafting Committee appointed in the first session of the Fourth Conference which had met on two occasions.

With so much activity one might wonder about the expenses of the Conference. The fact is that while they were always kept to a minimum, they were not insignificant from the point-of-view of 1933 dollars. A statement of "Bankruptcy Conference Expenses of July 31, 1933" showed the major expense to be printing. There were two drafts of 100 copies each and a third draft of 1000 copies for a total cost of \$877.93. The other expenses for postage, telephone, telegraph, multigraphing and the like were some \$200.00 for a total of \$1,096.00 expenditures. The receipts were \$75.00 contributed by the Conferees themselves and the balance was evenly contributed by the request of the Conference from the American Bar Association, Commercial Law League, National Association of Credit Men and the National Association of Referees in Bankruptcy.

By the end of 1933 the Bankruptcy Conference was thoroughly established. Professor McLaughlin in 1936 gave a description of its founding which has been previously quoted in part. He concluded by describing the growth of the Conference during the few years following.

The Conference later grew to more than forty members. The Bar Association, Referees', Credit Men's and Commercial Lawyers' Associations each undertook a small contribution to pay clerical and printing expenses. Members of the appropriate committees of these organizations were made the basis of the Conference. Additional members were added from time to time as particular interest or particular competence appeared or as a particular subject matter called for the introduction of specialized talent, as in the case of corporate reorganization, stockbrokerage bankruptcy, or real property arrangements by unincorporated persons. Members occasionally added for reasons of diplomacy or promotion did not seriously impair the work. Aged conservatives impressed with the perfections of the Act of 1898 died, withdrew from active participation or gradually acquired an almost human elasticity of mind. Between the ten or more meetings of the Conference which have usually been attended by from 15 to 25 members a lively correspondence has been carried on by the more active members. A Drafting Committee of 5 to 10 has had more frequent meetings. Collaboration between even smaller groups involving occasional personal meetings has contributed to the evolution of the bulk of the actual language. The detailed work of polishing the form of all proposals has naturally fallen into very few hands by a process of informal natural selection.

Professor McLaughlin concluded by saying that:

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9. McLaughlin, Amendments to the Bankruptcy Act, 4 U. of Ch., L.Rev. 364 at 377 (1936-1937);

Although this description of this operation of the Conference has avoided giving prominence to names of individuals, no description of the work of the Conference would be adequate without calling attention to the extraordinary contributions of a few members. The superb tact and tireless leadership of Chairman King have been required to carry such a loose organization through nearly to its goal. The superb draftsmanship and fabulous industry of Jacob Weinstein of the Philadelphia Bar have raised the standard of form to a point rarely approached by American legislative proposals. In the latter part of the Conference's work many flaws have been detected and cured by the keen and patient detailed criticism of Referee Adair of Pittsburgh.

The National Bankruptcy Conference arose out of and was forged in the heat of the debate leading up to the introduction and defeat of the Thacher Bill and the subsequent introduction and enactment of the Chandler Bill in 1938. The Conference was not so much at, but was the hinge-point of change during these momentous changes in bankruptcy legislation.

**United States Bankruptcy Court**

**Eastern District of New York**

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**Chambers**

**Judge Conrad B. Duberstein  
Chief United States Bankruptcy Judge**

**May 24, 1990**

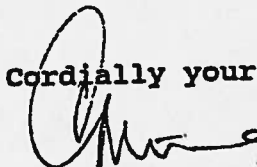
**Leonard Rosen, Esq.  
299 Park Avenue  
New York, New York**

**Dear Len:**

In doing some research I came across the enclosed article which appeared in the July, 1948 issue of the Journal of the National Association of Referees in Bankruptcy, the predecessor to the present American Bankruptcy Law Journal. The article deals with the formation of the National Bankruptcy Conference, of which you are one of its honored members, and I thought it would be of interest to you and your colleagues. Incidentally, my uncle Sam Duberstein was Chairman of the Conference as appears from the enclosed item in the April, 1951 Journal.

**Kindest personal regards.**

**Cordially yours,**



**CONRAD B. DUBERSTEIN  
CHIEF BANKRUPTCY JUDGE**

**CBD/mp**

**Enclosures.**

## The National Bankruptcy Conference and the Bankruptcy Act

By CHARLES S. J. BANKS\*

**W**HEN an economic depression of such magnitude as occurred in the nineteen thirties takes place, it is but natural that thinking men should ask why it happened and why it was so long continued.

One can hardly present a short history of the National Bankruptcy Conference without setting forth the economic background and some of the conditions which preceded the organization of the Conference.

The break in the stock market in 1929 and the closing of State and National Banks were the results of deep seated causes, as well as causes of consequent distressing circumstances. Later in this article we shall mention the basic cause of the break, but at this time will touch on the distressing circumstances which followed. One of these distressing circumstances was the fact that people did not have enough money with which to pay their bills or to buy the necessities of life; similarly, corporate enterprise was short of funds, their sales dropped off and employment lessened. In a word, where had the money gone? The answer to this intriguing question is to be found in the peculiar nature of money. Money is not merely the silver dollar or the greenback, this form of our money represents probably less than 5% of our system of money, or shall we say, our system of circulating media.

The deposit items in our banking systems, Federal and State, constitute our money system. When times are good the market value of listed securities goes up, and these securities are accepted by the banks as collateral for loans, and these loans bring into being a corresponding deposit item in the bank; also corporate lines of credit based upon current asset and liability ratios create deposits; thus do we create money in this country. The security put up as collateral in itself is not valuable, for it is only an engraved piece of paper, but it is the equity interest in or the lien upon the property owned by the issuing corporation which is valuable, because it represents an interest in wealth.

When a corporation defaulted in an interest or principal maturity payment, the issue went into default, and the legal characteristics of the trust indenture were immediately applicable, namely, foreclosure, and the securities no longer had collateral value. The wealth found within such corporate structures vanished from the credit system, such wealth became stagnant.

According to statistics published by the Federal Reserve Board, the comparative bank deposits and bank clearings for all banks in the United States for the years 1929 and 1933 in billions were as follows:

Year	Bank Deposits As of June 30	Bank Clearing For the Year	Velocity of Turnover.
1929	55	727	13 times
1933	41	241	6 times

It may thus be seen that not only had the deposits shrunk 25% but the velocity of turnover was less than half as fast, resulting in a cut in purchasing power to one third. These figures omit the turnover of active currency in circulation. This, therefore, was the reason why people had no money, and why enterprise was short of funds.

The Federal Government under President Roosevelt

sought to remedy this condition by priming the pump of credit through federal loans, but there was also another way.

How to restore stagnant wealth to a virile status, so that it again might form the basis of credit within the banking system and thus increase our deposits, seemed to the author to be the problem, accordingly, he drafted a proposal for a bill to amend the Bankruptcy Act of 1898, so that an effective legal procedure might come into existence, and submitted the same to President Hoover, and received an acknowledgement that the same had been turned over to the Interstate Commerce Commission for study.

Other men had similar ideas, and § 77 and § 77B were submitted to Congress. The author believes that Mr. Lloyd Garrison drafted the main portion of the Hastings Bill and that the Interstate Commerce Commission and its counsel drafted § 77, relating to the reorganization of railroads.

The above sets forth the broad economic background and the genesis of the reorganization concept, but there were even more pregnant factors. The rights of parties-in-interest were involved and the bond holder and general creditor were both clamorous. State foreclosures and federal equity proceedings were underway, and many bankruptcies were in the courts. Inequities in the administration of the law were soon recognized, and various investigations were instituted.

Before this time, however, namely in 1929, Hon. William J. Donovan, former Assistant Attorney General, aided by Messrs. Lloyd Garrison and George A. Leisure conducted a series of investigations into the administration of bankrupt estates before Hon. Thomas D. Thacher, then Judge of the United States District Court for the Southern District of New York. Out of these hearings five remedies were suggested:

(1) More prompt administration upon; (2) a more business-like basis; (3) the relief of the courts from administrative burdens; (4) the limitation of credit control to cases of general creditor interest, and the appointment in such cases of creditor committees to assist in administration; and (5) stricter enforcement of the criminal and discharge provisions of the Act.<sup>1</sup>

This investigation was related to ordinary bankruptcy for, at that time the Debtor Relief Provisions had not yet been enacted.

The Donovan report led to a nation-wide survey by the Department of Justice under an order of President Hoover, dated July 29, 1930. Judge Thacher, who had become Solicitor General, and Mr. Lloyd K. Garrison, Dean of the Law School of the University of Wisconsin, presented a comprehensive report on December 5, 1931, and aided in the drafting of the Hastings-Michener Bill, which was introduced in the 72nd Congress in April 1932.<sup>2</sup>

It was at the hearings on the Hastings-Michener Bill before a joint special committee of the Senate and House Judiciary Committees that Mr. Robert A. B. Cook of Boston was recognized and presented his views. Mr. Cook, who might be called the father of the National Bankruptcy Conference, has very kindly furnished the author with his story of how the National Bankruptcy Conference came into being, and the liberty has been taken of quoting from

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<sup>1</sup> Report of the Committee on the Judiciary No. 1409 to accompany H.R. 8046, 75th Congress, 1st Session, Page 2.

<sup>2</sup> See treatise on Bankruptcy for Accountants, Banks, page 3. Copyright La Salle Extension University 1939.

his letter as follows:

"Judge Thatcher took Mr. Garrison with him, and the latter at once set about the drafting of a bill. In due course this bill was presented to Congress, and public hearings were started in Washington before a joint special committee of the Senate and House Judiciary Committees. Mr. Garrison presented the proponents' side of the case. At the conclusion of his remarks, and because I had to be in Boston the next day, I was recognized to present the opponent's side. Towards the conclusion of my remarks and after pointing out the inadequacies of the bill before the Committee, I reminded the Special Committee that in the past the Bankruptcy Committees of various nationally known organizations had happily cooperated, with the result that the bills previously introduced had represented the thoughts of these national organizations, and, while I recognized it probably would not be possible to get a large group together and to secure the views of these national associations in time to be heard in connection with the pending bill, or any substitute therefor, nevertheless I did want to call into conference men associated with some of these organizations, and who I felt were well qualified to prepare and provide suitable amendments for the purposes of the Committee. This permission was granted."

"The next day and upon my return to Boston, I had a visit from Reuben Hunt of California, then attending a tennis tournament in Boston, and before we parted we had arranged for Paul King of Detroit, Carl Friebolin of Cleveland and Jacob Lashly of St. Louis to be in Boston the following Sunday. I knew that Mrs. Cook and our only child then at home were leaving on the steamer for the other side and that we would have the house to ourselves. Mr. and Mrs. King came, and later were joined by Mr. Friebolin and Mr. Lashly. On Monday Mr. Hunt, Professor MacLachlan of Harvard, and Joseph B. Jacobs of Boston, now deceased, who had served conspicuously on various bankruptcy committees joined the meeting and with myself constituted the roster of the original meeting. Mrs. King was designated house mother, and Paul was made chairman. Our first thoughts were to undertake 'a short form' bill, realizing, of course, that an over-all revision would involve much time, and certainly would not have the same chance of early passage as a shorter bill. However, before we concluded our activities, which lasted throughout the week, we found ourselves laying plans for a comprehensive revision. Paul had already designated our group as National Bankruptcy Conference, and had expressed the thought that the Conference should be kept alive and should be expanded from time to time so as to take in representatives of other organizations interested in the subject. All the work performed at this first conference, including the secretarial work, was performed in our home in Wellesley Hills, Massachusetts."

Under the patient and painstaking leadership of Paul King, of beloved memory, the Conference took shape, and committees of various national groups were appointed to sit in as active conferees in this new, and what was to be, powerful and significant body. Committees from the American Bar Association, the Commercial Law League of America, the National Association of Referees in Bankruptcy and the National Association of Credit Men, together with certain individuals including Professor James A. MacLachlan of Harvard and the author gathered in Chicago for a three day session. In later sessions held in various cities, although mainly in Washington, D. C., Friday, Saturday and Sunday were days of intense and thrilling comradeship, and on Mondays the drafting committee would whip into shape the work of the three preceding days. Later the American Institute of Accountants and the American Bankers Association appointed committees, and other leading individuals became part of the group. The meetings of the National Bankruptcy Conference were usually twice a year, and continued thus until the passage of the Chandler Act in June 1938.

No adequate recognition can be given to the voluminous correspondence that was almost daily between the members or to the unceasing labors of Jacob I. Weinstein of Philadelphia, Chairman of the Drafting Committee. It must be recorded that the subject matter of the deliberations involved billions of dollars of property, highly conflicting interests, and a great body of Judicial Law. Members of the Conference were for the most part learned men in the law, but they listened with respect when Jim MacLachlan discussed for two hours the historical background of the law on "Preferences," or when the keen mind of Watson Adair threw light on some difficult matter.

The conference would start at 10 A.M. and continue, more often than not, to long past midnight, with time out for a snack or a walk around the White House in the falling snow. When the weather was cold Paul would heap the

logs in the fireplace and a lively debate would crop up. These busy men were not too busy to listen patiently and to give of themselves and their time. A never-to-be-forgotten evening was when Jake Lashly talked to uphold the section on jury trials. Jake was not well, but it was a subject dear to his heart. One evening, when the need for relaxation was apparent, after a particularly gruelling day, Ed Sunderland of New York quietly informed us that we were all his guests for the evening, and we all enjoyed the respite of good food and good entertainment.

Paul told us the story of the first meeting at Wellesley Hills, how it was hoped that a complete bill might be written, but after three days they still found themselves discussing Section One. In the first Chicago meeting, the author thinks in 1938, we had the Hastings-Michener Bill which had passed the House but had failed in the Senate, before us, and this new procedure necessitated the setting up of a new act of bankruptcy. Insolvency could not be the test, for that involved the question of valuations, and to value a railroad system or a large enterprise, was not only unfair at the depressed prices of the early thirties, but would have taken many months, or even years to complete. Accordingly, the fifth act of bankruptcy provided in substance that a petition might be filed where the debtor was insolvent, or *unable to pay his debts as they mature* and that the debtor should have suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of all or a major portion of his property. This fifth act was kin to the Canadian law, and brought within the scope of Federal Administration under the Bankruptcy Act those cases which were in State foreclosure and Federal Equity proceedings. Provisions for the relief of debtors, with the debtor-in-possession concept were accepted, and one might imagine that the ghost of the act of August 19, 1841 turned in its historical sleep.

The McKeown Bill setting up the famous § 77B became law in 1934, and the courts set in motion the machinery of reorganization.

As the magnitude of reorganization began to be realized and abuses crept in, it was but natural that Government should take a hand, the Sabath Committee held many hearings and presented a modified bill to Congress. The McAdoo Committee presented a report prepared by Percival E. Jackson, its counsel, and the Securities and Exchange Commission conducted exhaustive investigations and submitted a number of reports thereon to the Congress.

The securities and Exchange Commission which had then been but recently organized was represented in hearings before the National Bankruptcy Conference by William O. Douglas (now Mr. Justice Douglas), and his suggestions not only were inspiring but many of them were adopted. The Securities and Exchange Commission was vested with advisory power to aid the courts in the determination of whether or not the plan was fair, equitable and feasible. The disinterested person became a live factor, and full disclosures of inter-related interests was required. The McKeown bill, or § 77B thus underwent a sea change, and the Chandler Act under the statesmanlike guidance of Congressman Chandler, Tennessee, became the final and permanent statute on reorganizations. The years had rolled by, it was now June 1938, and five full years of labor had elapsed, and it was reward indeed to the laborers to hear the warm words of praise from Congressman Sam Hobbs of Alabama who stated that in his thirty years' experience as a legislator in Congress he had never seen so fine a piece of legislative draftsmanship, nor had he known of such years of unselfish devotion as that given by the members of the National Bankruptcy Conference, and on August 10, 1938 on the floor of the House, he spoke appreciatively of the work of the Conference mentioning by name many of the members.

It would seem that the work of the Conference was done, and at a victory dinner in Cleveland to celebrate the pas-

sage of the Chandler Act, the members gathered to discuss the future. Some thought that the Conference should be incorporated and made a permanent body, others pointed out that in the very informality of its organization lay its strength. Accordingly it was decided to continue its existence as it had been awaiting the opportunity of further service.

One of the important services yet to be performed was that of education, members of the various organizations composing the Conference, agreed to hold symposiums among their own groups, and to the author's own knowledge both Carroll Teller and Charlie Adams did much to acquaint their groups in the middlewest. Jac Weinstein and John Gerdes both published books on the new law and numerous addresses which were printed and distributed were given by many of the members. The chairman requested the Circuit Judges to hold conferences with the referees in their circuits so that the referees might be informed of the new procedures.

A word should be uttered concerning finances. The Conference printed several voluminous Conference Prints and these were paid for out of contributions by the organization members thereof. Never did the budget exceed \$1,000.00, and each member paid all of his own expenses. No thought was given to compensation for time spent, and many of the members participated at considerable pecuniary loss to themselves, and were glad to do so.

One cannot leave the five years 1933 to 1938 without some kindly mention of those who played a part and while it is not possible to remember all of the conferees, the author hopes he may be forgiven if he should mention some and forget others.

Bob Cook was the genial daddy, Paul the patient and tactful chairman, always able to keep his temper when the going got rough. Jac Weinstein, the artisan who fashioned the rough Ashlar with consumatic skill. Pete Olney, kindly protagonist of the just, John Gerdes, tower of strength in his erudition. Jake Lashly, bearing gifts of wisdom, urbane Ed Sunderland, always thoughtful and serene. Frank Olive, attentive and possessed of wide experience. Referee Carl Friebohn and later Fred Kruse, practical Bob Montgomery, Harry Zalkin, wise in stock brokerage, Reuben Hunt, and like a comet across the skies Mac, James MacLachlan.

Many more might be named, but the author will be laughed at if he uses more adjectives, so he will mention Colonel Needham and Homer Livingston, bankers; and of course, who could forget charming Charlie Adams, who has gone to his rest, and whose brilliant work was such an inspiration. Carroll Teller, Ben Wham and Luther Swanson, all of them from Chicago and each an authority in his field.

One cannot pass without some special word in memory of Paul King. He was a diminutive person with a fine intellect and charming personality, and to him above all others must be given the main credit for the accomplishments achieved. He, of course, held the conference together. He, the architect, fashioned the structure made out of the thinking of many men, and to him — the accolade of history.

The work of the Conference was to continue through the years and helped in working out the so called Referees' Bill, worked out by the office of the Attorney General, and Hon. Henry P. Chandler, Administrator of the United States Courts, whereunder the referees in bankruptcy were brought within the Federal judiciary as permanent courts. Now, ten years after the passage of the Chandler Act, the Conference is still active and virile.

Much has been left unsaid. The author would like to discuss some of his pet theories, but common sense must prevail, and not too much liberty may be taken. In closing, however, he would like to make a few suggestions.

The Chandler Act made provisions whereby governmental taxing bodies might come to an agreement with the

holders of special assessment or district bond issues without encroaching on sovereign rights, and this gives rise to the thought that perhaps a feasible way might be worked out within the concept of an International Law on Arrangements, whereby defaulting nations or their nationals could clean the slate of repudiated or defaulted debts. Perhaps within the frame work of the United Nations such a concept might be worked out, and what better group than the National Bankruptcy Conference could be found to explore the possibilities. Perhaps a Code! Perhaps a Court!

Earlier in this article we said we would indicate what in our opinion was the basic cause of the break in 1929. For a period of two generations the rapid growth of our economic frontiers had been facilitated by the use of the long term credit concept. Bond issues were floated to build railroads, utility systems, industrial plant, office buildings, hotels and apartment houses. These bond issues carried small repayment provisions or none at all, but did carry final maturity dates. It was through the use of the long term credit concept that we developed our marvelous economic mechanism, but the method was wrong. A day of reckoning had to arrive, serial maturities defaulted, even interest payments went into default, and finally final maturity dates arrived and refinancing was difficult. As early as 1913 one railroad refinanced two issues for one hundred million dollars to mature in 2013, so through the years this colossus of static debt mounted, and the credit spiral had to reach a peak. The stock market break was but a manifestation of the unsound credit structure.

The author believes that plant may come into existence without the use of bond issues. He believes that the true justification for plant expansion lies in consumer demand and not availability of long term credit. It would seem to be axiomatic that plant should be built with invested and not borrowed capital. The priority which the bond issue enjoyed in earnings and liquidation gave to such securities the nature of highest grade, of better worth than preferred or common stocks. But the author postulates a question: Of two corporations, theoretically identical except for the nature of their capital structures, which is the stronger — the one whose plant has been built with borrowed money, the bond issue, or the one whose plant has been built with invested capital? The simple answer is that the company which has no debt is a stronger company than the one which is heavily laden with debts. Which is then the better security, the first mortgage lien of the company heavily laden with debt, or the preferred stock of the company with no debt? The question might be debatable, but if we introduce the character of permanent priority to the preferred stock, the answer again is simple, for it will be, "Why, of course, the preferred stock is a better security than the lien, for the lien may default and all the lienholder will get after foreclosure or reorganization will be an equity interest in assets depleted by costs and disrupted going value."

The author has conceived of and designed a type of Protected Preferred Stock ahead of which no major issue of debt may be incurred by writing into the corporate charter and into the terms of the Certificate, the provision that no senior capital issue, either bond or stock, superior to that issue of Protected Preferred Stock then presently authorized to be issued may ever be issued. To provide for an expansive system of capital financing, it would be provided that additional shares of the same character of the Protected Preferred Stock might be issued at a reasonable cash discount.

If bankers, both commercial and investment would get together with the State Insurance Commissioners and view this subject broadmindedly, they could start a movement which would grow and permeate our capitalistic system of free enterprise, so that it would be impregnable to the virus of totalitarian ideologies. If labor economists took up the thought and adopted it as a national aim, they would do much to justify their claim to a share in management.

Exceptions have been carried into that tax claims were a third exception and that this was not the case. The court follows the English bankruptcy law and decided again any question that may be raised by unsecured claims, indicating that such claims should be allowed only if they are not paid at the date of bankruptcy, or if they are not paid at the date of liquidation.

It is, of course, the one thing that seems to be the general rule, interest should be allowed on unsecured claims in the situations we have seen in the recent case of *Oppenheimer vs. Oppenheimer*, 86, C.C.A. 5th (1949), cited by the Referees' JOURNAL, supra, the court allowing interest to the date of liquidation if it is not realized. In writing an article of this sort, the Referee, though a member of the court, should not be critical of his superiors. An exception doesn't come very often, and who

it doesn't mean to be disrespectful and to make a point. The Court of Appeals in *Oldham* states that its decision in *New York vs. Saper*, and seems to be in the negative language of *Vanston Bondholders' Committee vs. Green* —

claims accruing after the petition was filed are of no value if they are not paid at the date of liquidation and are worth more than the sum of

the practice of allowing interest after the date of bankruptcy as a matter of course, is consistent in principle with the cases (citing *Sexton vs. Dreyfus*, 5th Circuit states —

the fundamental principle of the bankruptcy law is that interests designated as liens and pledges, should not be impaired in the administration and the Bankruptcy Act manifests no intent to deviate

from the "fundamental principle" of *Dreyfus*, and reaffirmed in *City of New York* which was carried over from the old system, that interest on both secured and unsecured claims stops at the date of bankruptcy and it is more proper to say that the intent is to deviate from this latter

principle that the principles announced in *Green* should be limited to the facts of that case. But it is no more consistent to rely on its facts than it is to rely, as stated in *Vanston Bondholders* on different facts — interest on unsecured claims stops at the date of liquidation if the equitable considerations so require.

the secured creditor equitable should be allowed interest beyond the date of the petition. Conversely, if the secured creditor stood to gain as much as the unsecured creditors, or if the secured creditor acquiesced in the proceedings expressly or by implication, he ought not to be allowed any interest beyond the date of the petition. If there is any undue delay in affecting the sale, that factor must be taken into consideration in determining whether to allow any interest beyond the date of bankruptcy. It will simply be necessary to exercise a sound judicial discretion in each case in weighing the equities. No mechanical rule is available other than the general rule.

To summarize then:

As a general rule interest stops on both secured and unsecured claims at the date of bankruptcy, except where the securities themselves earn interest or dividends, and except where the estate is solvent. The general rule can and should be varied when, but only when, substantial equities require the allowance of interest to a later date.

### REFEREE DUBERSTEIN NEW CHAIRMAN OF NATIONAL BANKRUPTCY CONFERENCE



REFEREE  
SAMUEL C. DUBERSTEIN  
Brooklyn, N. Y.

Referee Samuel C. Duberstein of Brooklyn, N. Y. was elected Chairman of the National Bankruptcy Conference, to succeed Jacob I. Weinstein of Philadelphia, at the session held on February 24, 1951. Peter B. Olney, former referee and past President of our Association, was elected Treasurer.

Referee Duberstein has been an active member of our Association since his appointment in 1945 and has attended our annual conferences regularly since that date. Mr. Weinstein expects to continue his interest in the activities of the National Bankruptcy Conference but was compelled to ease up on his doctor's orders.

We are confident that Referee Duberstein will render valuable service as the new chairman of the National Bankruptcy Conference, and our Association extends to him our congratulations and best wishes.

Lipkin

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if jurisdiction is had of the parties or of the property as set forth in Rule 26(a), that notice could be given to the

cases that come before you. For example, in the Ninth Circuit, which is generally ahead of all the others in bankruptcy business, only 102 petitions for review were filed among the some 11,000 cases that were terminated in the last fiscal year. For the same period in the First Circuit, which is close to the bottom of the ladder in bankruptcy business, 1,455 cases were terminated and in only 14, were petitions for review filed. In the Second Circuit, one of the larger bankruptcy circuits, only 49 such petitions were filed out of the some 3,800 cases terminated last year. And in the Seventh Circuit, which is ahead of the Second in bankruptcy cases, there were about 7,100 cases terminated and only 29 petitions for review filed. The country-wide figures tell the same story. As I have already stated, there were about 52,000 bankruptcy cases of all types terminated in the fiscal year 1955. Out of these only 387 petitions for review were filed. I suggest that all this shows the confidence which bankruptcy litigants have in your work, a fact from which you should draw much satisfaction.

I suppose that even such a preoccupied and dedicated group as you Bankruptcy Referees are not wholly insensible to efforts which are under way to increase the emoluments of your office. As you know, the House of Representatives before adjournment passed the salary increase bill, as recommended by the Judicial Conference of the United States, and I am informed that there is every expectation that the Senate will take favorable action on the bill when the Congress reconvenes. It is not an irrelevant circumstance that the Bankruptcy Referee system, unlike other parts of the federal judicial machinery, is self-sustaining, and that the proposed salary increases could be absorbed without placing any burden on the federal treasury.

I close with the hope that the day is not far off when the compensation of the Referees will be made more commensurate with the vital work they are doing in the effective administration of the bankruptcy laws.

#### REMARK'S OF CHARLES A. HORSKY, ESQ.

This is for me a very welcome and at the same time a very uncomfortable experience. It is welcome, of course, because it gives me an opportunity to meet a great many of you whose names have long been familiar, but who until now were only names. I will hope to spend some more time with you, but I must apologize now at how limited it will be. The convention dates find me, unfortunately, right on the verge of the due date for a Supreme Court brief and an argument in the Court of Appeals.

That is, for me, unfortunate, for I should like to meet and talk with all of you, and to enjoy myself as I have with many of your members, past and present, such as Peter Olney, Carl Friebohn, Watson Adair, Ed Covey, and of course the wonderful man who was your first president as well as the first chairman of the National Bankruptcy Conference — Paul King of Detroit. But this is not the reason why I am uncomfortable. That sensation comes from knowing that my experience in bankruptcy is so slight that I almost don't dare talk about it. You gentlemen *know* bankruptcy, live with it daily, and are necessarily aware of all of its current trends and difficulties. I am not even a bankruptcy lawyer, and have only rarely handled a bankruptcy matter for a client.

This is not to say that I am not interested in bankruptcy, or bankruptcy administration. Quite the contrary. My interest, however, originated in my work on the Attorney General's Committee on Bankruptcy Administration, in

of the Administrative Office of the United States Courts devoted to bankruptcy administration.

What I should normally do, then, to avoid my embarrassment, would be to talk about bankruptcy administration. The temptation to do so was considerable. However, since the program will afford you tomorrow a full afternoon session with Messrs. Chandler, Covey and Jackson, I was forced to conclude that you would have had enough.

So I have decided to tell you, instead, something about the National Bankruptcy Conference. I hope that all of you are at least generally aware of what it is and what it tries to do. You should be; your Association has always helped us with the modest financial support that we need. Nevertheless, some of the details about the Conference may be of interest to you.

The National Bankruptcy Conference dates back to 1933. Congress, at that time, was beginning its consideration of amendments to the Bankruptcy Act, which, some time later, eventuated in the Chandler Act of 1938. In any event, the Hastings Bill, which radically amended the act, was pending before the Bankruptcy Subcommittee of the House of Representatives. The proposed amendments did not meet with unanimous approval, to put it mildly; there were about as many points of view as there were witnesses.

After a few days of this, someone on the sub-committee, perhaps Representative Michner of Michigan, or perhaps Senator Hastings himself, suggested that instead of leaving it to Congress to reconcile the varying points of view, the interested parties do it themselves. Senator Hastings is supposed to have said, "If you folks don't like my bill, well, why don't you bring in one of your own?" His invitation was accepted. Robert A. B. Cook, of Boston, who had been attending the hearings, asked a group to meet with him to work out a substitute bill. In addition to Mr. Cook, this first meeting was attended by Carl Friebohn of Cleveland, Reuben Hunt of Los Angeles, Prof. MacLachlan of the Harvard Law School, Jacob M. Lashly of St. Louis, Joseph Jacobs of Boston, and Paul King of Detroit. The meeting selected Referee King as its Chairman, and called itself, first, the Joint Bankruptcy Conference, and shortly the National Bankruptcy Conference. The Conference expanded its membership, it met from time to time, it established smaller groups to serve as committees, and eventually it produced the Chandler Act.

Financial support for the Conference — principally to pay for mimeographing and the like — was supplied from the outset not only by your Association but also by the American Bar Association, the Commercial Law League, and the National Association of Credit Men. These organizations, joined somewhat later by the American Bankers Association and the American Institute of Accountants and the New York Credit and Financial Management Association, have continued to help us.

That first meeting, which lasted a week at Mr. Cook's home in Wellesly Hills, Massachusetts, was not very different from the meetings which have followed. The Conference has not grown more formal; a proposal last year to adopt a constitution and by-laws was rejected, largely, I suspect, because we think we can, like the British, get on better without a written constitution, and make rules from time to time as we need them.

The membership of the Conference has gradually increased, over the years, until it now is just under 50. There is only one thing, I think, which the members have in common — a sincere interest in having the best bankruptcy law and the best bankruptcy administration that can be had. There are persons whose professional interests lie

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## Horsky

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the entire body of the Act, and whose practical experience with it from day to day and from case to case is invaluable. Both in bringing to attention areas in which it does not work properly, and in evaluating the possibility of proposed changes.

The membership also includes representatives of the several organizations which I have already mentioned. It is not easy to define what "representative" means, however, in that context. The "representatives" of the American Bar Association, for example, do not have the authority to speak for the Association at our meetings, nor do they feel that they are unable to take a position of their own because they cannot speak for the Association. Perhaps a way to say it is that the Conference is a clearing house, from which the Conference members can take a sense of what should be done to their own organizations.

I think it a tribute to our members that on most things we can come to a final, unanimous agreement. I don't mean to suggest that it is always easy to do so, but we are all firm believers in the proposition that when there is adequate time for discussion and analysis of questions, of points of view, and of proposed language, there can be final agreement on what is best. This is not always so, but even then the matter usually comes up at the next annual meeting, and we try again.

There would be no point in detailing the matters with which the Conference is now concerned. There are, however, two or three which I should like to mention. At the first session of the current Congress, the Conference persuaded Mr. Celler, the Chairman of the House Judiciary Committee, and Senator Kilgore, the Chairman of the Senate Judiciary Committee, to introduce two important bills—one to raise the permissible maximum salary of referees, and one to increase the schedule of trustees' compensation.

You will hear in detail on Wednesday morning from Referee Duberstein on the Referees Salary Bill, and I will not attempt to cover that ground. Suffice it to say that the Conference has worked closely with your own Committee. I testified in favor of the bill, and strongly urged the \$17,500 maximum, in the House. When the House bill, with its \$15,000 maximum, went to the Senate it appeared that no hearings would be held, so I wrote to the Senate Judiciary Committee urging that the ceiling be raised to \$17,500. I joined with Referee Duberstein in an unsuccessful attempt to have the Judicial Conference at its meeting last month modify upward its \$15,000 recommendation to Congress. I think I can fairly say that the National Bankruptcy Conference is squarely behind you on this, and that we will be almost as disappointed as you are if the final result is no more than \$15,000.

On the trustees bill, we are fortunately not at odds with the Judicial Conference. Our Committee on Trustees and Receivers Compensation has been urging a higher schedule for some years. In accordance with its recommendations, I appeared before a Bankruptcy Committee of the Judicial Conference when it was considering the Langer Bills, which, as you no doubt recall, proposed official trustees and receivers. Our position was then that the better approach was in the direction of higher compensation to trustees of the sort we have now. After further study we prepared and the Conference approved a schedule of increased rates for trustees.

At just about the time that I was preparing to ask Congressman Celler to introduce a bill embodying the Conference proposals, I learned that the Bankruptcy Committee of the Judicial Conference had likewise proposed a new and higher schedule of rates. They were slightly different, but only slightly. If you are interested in what the differences were, you will find them set out in the last issue