WORKING TO MAKE BANKRUPTCY WORK: THE FIRST HUNDRED YEARS OF THE NATIONAL CONFERENCE OF BANKRUPTCY JUDGES

PART I

by

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The National Conference of Bankruptcy Judges (NCBJ) turns 100 this year. This article tells the story of those first 100 years.

The NCBJ's story is in many ways the story of bankruptcy itself, because of the vital role that the NCBJ has played in the development of that law and practice. The bankruptcy referees who associated in Detroit in 1926 were essentially at-will employees of the district judges, paid by commission on the cases referred to them (hence the title "referee"). They combined the job of judge, court clerk, and today's U.S. Trustee. Not until 1946 would they be salaried; not until 1973 would they be referred to as judges; and not until 1979 would they have 14-year terms and a more strictly judicial function.

Bankruptcy referees were aware from the start that they worked in an area of the law about which most people were unfamiliar, but that they knew a great deal. And they set about to improve bankruptcy law, and their status, by associating with one another; with other legal and commercial organizations; with bankruptcy professionals, law professors, and other federal judges; and with the members of Congress who write the laws that its members applied.

And more often than not they succeeded. This article proceeds in two Parts. This Part I tells of the early days of the NCBJ (first called the National Association of Referees in Bankruptcy), the NCBJ's role in the passage of the 1930s bankruptcy law amendments (that provided for both business reorganizations and wage-earner plans), its existential crisis in the 1940s, and

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its involvement in the adoption of the Bankruptcy Rules in 1973 that made them judges.

I. Introduction

The National Conference of Bankruptcy Judges (NCBJ) observes and rightfully celebrates its 100th anniversary in 2026. The office of U.S. Bankruptcy Judge did not exist in 1926. Instead, referees in bankruptcy, who formed the organization, had the job of adjudicating, and to a substantial extent administering, bankruptcy cases.[1] Those referees were appointed on an *ad hoc* basis by the U.S. District Judges in their districts, for two-year terms. But because the referees' district judges could dismiss their referees any time their services were no longer needed or for any other reason (or for no reason), the referees were effectively at-will employees.[2] Most were part-time and practiced law at the same time.[3] The referees' compensation was equally uncertain. They were paid not by salary but by commission, consisting of part of each filing fee and a small percentage of the amounts disbursed to creditors.[4]

On July 9–10, 1926, in Detroit, Michigan, a group of bankruptcy referees held a conference and organized themselves into the National Association of Referees in Bankruptcy (NARB), the predecessor to the NCBJ. About eighty referees from twenty-five of the forty-eight states and the District of Columbia attended. The farthest away came from Jacksonville, Florida, and the nearest was from Detroit.[5] All but one of the referees—Mary L. Trescott, a lawyer from Wilkes-Barre, Pennsylvania (admitted to practice before women could vote)—appear to have been men.[6] The youngest, Russell G. Nesbitt from Wheeling, West Virginia, was twenty-seven years old, and the oldest, Gideon S. Ives from St. Paul, Minnesota, would "admit to 80." At least two had been

[1] Bankruptcy Act of 1898, Pub. L. No. 55-541, § 1(21), 30 Stat. 544.

[2] *Id.* § 34.

[3] "Only in those few places where the number of references" of cases "made heavy demands on their time did they, in effect, give full time." Herbert M. Bierce, *Twenty-Five Years of Association Activity: In Retrospect*, 25 J. NAT'L ASS'N REF. BANKR. 67, 68 (1951).

[4] Bankruptcy Act of 1898, § 40. Commentators expressed the thought that, because the referees received no compensation whatsoever, until after their services were rendered, "their interests impel[led] them to attend to all business promptly and settle estates as soon as possible." Amos Burt Thompson, *The Bankruptcy Act of 1898 in Operation*, 6 WEST. RES. L. J. 157, 162 (1900).

[5] *Greetings!*, 1 J. NAT'L ASS'N REF. BANKR. 1, 1 (1926) [hereinafter *Greetings!*].

[6] *Referees in Bankruptcy in Attendance*, 1 J. NAT'L ASS'N REF. BANKR. 57, 57 (1926) [hereinafter *Referees*].

appointed in 1898, the year in which the Bankruptcy Act had gone into effect.[7] About fifty spouses of the members, listed as "Ladies Attending," also attended, and were invited to a special program, including a luncheon and a game of bridge at the Detroit Yacht Club. Speakers at the first Annual Conference included U.S. District Judges, two law professors, and representatives of the American Bar Association (ABA), the Commercial Law League (CLL), and the National Association of Credit Men (NACM), three of the leading legal and commercial associations of the day.[8]

The referees, notwithstanding the unsure nature of their employment and compensation—and their laboring in what a leading bankruptcy scholar of the day would call "a gloomy and depressing" area of law—appear to have been passionately engaged in, excited by, and good at their work.[9] Within six months they had published their first issue of the *Journal of the National Association of Referees in Bankruptcy* (JNARB), which in 1971 became the *American Bankruptcy Law Journal* (in which this article is published). The first issue of JNARB in 1926 contained a detailed account of the July conference and listed more than 150 "Active Members" and several "Honorary Members" (including three local U.S. District Court Judges) of the brand-new association.[10]

"Greetings! My Fellow Referees," began Paul H. King, NARB's first President. Although much had already been accomplished, King continued, the formation of NARB and its first conference marked an "important step in the movement to improve bankruptcy administration and to raise the standard of bankruptcy practice." The federal judiciary, "under the leadership of Chief Justice Taft," had "taken a deep interest in the matter."[11] Taft had recommended to the ABA in 1923 that it form a Special Committee on Practice in Bankruptcy Matters. The Special Committee had been formed and its work had resulted in the just-enacted 1926 amendments to the Bankruptcy Act, which were "concerned chiefly with promoting the equal and economical distribution of the debtor's property among his creditors."[12] Numerous organizations, said King,

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[7] *Official Proceedings of the First Annual Conference of the National Association of Referees in Bankruptcy held in the Book-Cadillac Hotel, Detroit, Michigan, July 9–10, 1926*, 1 J. NAT'L ASS'N REF. BANKR. 3, 5 (1926) [hereinafter *Official Proceedings*]; WIKIPEDIA, https://en.wikipedia.org/wiki/Mary_Luella_Trescott (last visited Dec. 15, 2024).

[8] *Speakers*, 1 J. NAT'L ASS'N REF. BANKR. 57, 58 (1926).

[9] CHARLES WARREN, BANKRUPTCY IN UNITED STATES HISTORY 3 (1999).

[10] *Greetings!*, *supra* note 5, at 1.

[11] *Id.*

[12] James J. Robinson, *Scope and Effect of the 1926 Amendments to the Bankruptcy Act*, 12 CORNELL L. Q. 49, 49 (1926–1927). Taft's interest in bankruptcy went back to at least 1895, when as a U.S. Circuit Judge, he gave a speech arguing that equity receiverships used at the

including the major commercial associations in attendance, had "co-operated to help bring about the much needed and salutary amendments to the Bankruptcy Act" which had just taken effect.[13] King astutely included the ABA Special Committee's Chair among the invited speakers.[14] It was "now certainly 'up to us,'" the referees, King urged, "as the active administrators of the Bankruptcy Act, to do everything in our power to assist in carrying on the good work already so well begun." Such strivings, he concluded, demanded the "thoughtful consideration and the active effort of every Referee."[15]

The NCBJ thus was originally formed in 1926 and known as NARB—an association of the bankruptcy referees who became today's U.S. Bankruptcy Judges. It would play a vital role in the development of bankruptcy law and practice in the years that followed. Sometimes its engagement was public, active, and key to major changes in bankruptcy law—as with the formation of the National Bankruptcy Conference (NBC) and the overhaul of U.S. bankruptcy law by the Chandler Act in the late 1930s, the transformation of the referees into judges in the 1970s (and its opposition to Chief Justice Burger's 1984 effort to strip bankruptcy judges of their judgeships), and the Code's

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time to reorganize railroads might be replaced with a federal bankruptcy proceeding. *See* William H. Taft, *Recent Criticism of the Federal Judiciary*, 43 AM. L. REG. & REV. 576, 601–02 (1895); Stephen J. Lubben, *Fairness and Flexibility: Understanding Corporate Bankruptcy's Arc*, 23 U. PA. J. BUS. L. 132, 152–53 (2020–2021). Taft had a long resume, though he is often remembered as the only former President to be appointed Chief Justice. (This occurred several years after he lost the 1912 Presidential election, as an incumbent, to Woodrow Wilson, the third candidate in which was former President Theodore Roosevelt under whom Taft had served as Vice President.) In law school, Taft had worked as a reporter for a Cincinnati newspaper, covering the local courts. He then served as a city prosecutor, a federal tax collector, a state court judge, Solicitor General of the United States, a U.S. Court of Appeals Judge, Governor of the Philippines (toward the end of the Spanish-American War), Secretary of War, Vice President, President, and Chief Justice. While on the Sixth Circuit, he also was a law professor and Dean at the University Cincinnati Law School (from which he had received his law degree). Between his 1912 presidential defeat and his appointment as Chief Justice, he was a law professor at Yale (from which he had received his undergraduate degree). WIKIPEDIA, https://en.wikipedia.org/wiki/William_Howard_Taftei (last visited Jan. 20, 2026); Donald F. Anderson, *Building National Consensus: The Career of William Howard Taft*, 68 U. CIN. L. REV. 323, 326 (2000).

[13] *Greetings!*, *supra* note 5, at 1.

[14] The Special Committee's Chair, Samuel Fleischmann of Buffalo, New York, graciously noted at the Conference that he "not had the honor to be a referee." *Discussion*, 1 J. NAT'L ASS'N REF. BANKR. 24, 24 (1926). He added that he had not hesitated to accept the invitation "from Brother King – I trust I may call him that – to come up here and speak" on what he called "a memorable occasion of legal progress in the United States." *Interest of the American Bar in the Bankruptcy Practice*, 1 J. NAT'L ASS'N REF. BANKR. 37, 37 (1926).

[15] *Greetings!*, *supra* note 5, at 1.

enactment between 1968 and 1978. At other times—such as with the 1946 Referees' Salary Act, which made the referees salaried, federal employees while also reducing their numbers—it judiciously has kept to the sidelines.

Through it all, the NCBJ prevailed and flourished. Its Annual Conference has become the largest annual gathering of restructuring and insolvency professionals in the United States, with more than 1,200 attendees in 2025. At the Annual Conference and at other events throughout the year, bankruptcy judges meet, and with other judges and bankruptcy professionals consider and debate the latest changes in the law, legal theories, and hot topics.[16] From the start, and to great effect, the NCBJ has fostered close, working relationships among its members, with other legal and commercial organizations, with bankruptcy professionals, law professors, and other federal judges, and with the members of Congress who write the laws that its members apply. And the NCBJ has stayed true to its core purpose, set forth in its first Constitution nearly 100 years ago: to promote better acquaintance and cooperation among the bankruptcy judges and generally to improve the practice in bankruptcy cases.[17]

This article offers a history of those first 100 years, in two Parts. This Part I begins with the NCBJ's short-lived predecessor, founded in 1899. It then turns to the 1926 founding of the NCBJ, initially called NARB. This Part I recounts NARB's role in passage of the 1938 Chandler Act, NARB's near demise in 1940s, the effect of the 1946 Act by which the referees became salaried, and the 1973 adoption of the Federal Rules of Bankruptcy Procedure under which the "bankruptcy referees" were renamed "bankruptcy judges" (after which the name was changed to the NCBJ). Part II begins with the NCBJ's role in passage of the 1978 Bankruptcy Code, by which the bankruptcy judges' roles were made fully judicial. It recounts the unsuccessful attempt by

[16] *See* Hon. Jan Baer, *President's Message: An Invitation to the Windy City*, and Hon. Gregory R. Schaaf, *Education Chair's Message*, available at the National Bankruptcy Archives at Biddle Law Library, Penn Carey Law, University of Pennsylvania; *Who's Going*, available at the National Bankruptcy Archives at Biddle Law Library, Penn Carey Law, University of Pennsylvania.

[17] NARB's first constitution, Art. II, § 1 of which set forth its purpose, was printed in 4 J. NAT'L ASS'N REF. BANKR. 31, 31–32 (1929–1930). The NCBJ's current statement of its mission is: "to promote the interests of United States Bankruptcy Judges generally; to utilize our expertise on issues of bankruptcy law and procedure to improve the administration of the bankruptcy system; to foster scholarship, collegiality and diversity among members of the bankruptcy bench and bar; and to provide opportunities for education and networking for bankruptcy judges and the bankruptcy community at large." "*Our Mission*," NCBJ, available at https://ncbj.org/about/mission/.

Chief Justice Burger in 1984 to strip them of their judgeships. Part II then turns to the NCBJ's more recent work in improving bankruptcy law and practice while preserving the status and stature of the bankruptcy court and judiciary.

II. "To Confer Together"—The First (and Short-Lived) National Association of Referees in Bankruptcy

The 1926 NARB was not the first such association of referees. Less than a year after the October 1, 1898, effective date of the 1898 Bankruptcy Act, the just-appointed referees were already seeking to associate, to share their experiences under the new law with their fellow referees and with the representatives of other legal and commercial associations, academics, (other) federal judges, and Congress, and to improve upon bankruptcy law and practice. The *National Bankruptcy News* is perhaps the only periodical of the time devoted to bankruptcy. In May 1899, it published a letter dated April 26 from Sidney C. Eastman, a referee in the Northern District of Illinois, titled "A Convention Proposed:"

> Dear Sir – It has been suggested that there should be a convention of the referees in bankruptcy for the whole United States at an early date, with a view of conferring together to suggest amendments to the Bankruptcy Law, to be recommended to Congress at its next session. There is not little doubt that amendments will be presented to the next Congress, and it can hardly be disputed that the referees, as a body, are now better qualified to suggest amendments to the Law than any other body of men.[18]

Referee Eastman suggested that the group meet on August 28, 1899, in Buffalo, New York, because the ABA was meeting there then. Ultimately, it was decided that the meeting would better held at an earlier date, so that the new association's "committees, which would be appointed, could formulate some conclusions," and the convention either could reassemble to meet in Buffalo, "or the result of their deliberations could be presented to the Bar Association for its co-operation as well."[19] Chicago was chosen, as "the most central point," that "would accommodate the greatest number," with "very

[18] Sidney C. Eastman, *A Convention Proposed*, Supplement to 11 NAT'L BANKR. NEWS at unnumbered page following 273 (May 1, 1899), in NAT'L BANKR. NEWS & REPS. (William C. Sprague and Griffith Ogden Ellis, eds., vol. 1) (reprinted by Skilled Books: India).

[19] *Id.*

comfortable hotels, conveniently near to the lake, in which conventions are frequently held." Eastman gave his thoughts on who to invite:

> I would suggest that that the clerks of the District Courts and representatives from the leading Credit Men's Associations, as well as experts on Bankruptcy Law, and also the members of their Judicial Committee of both houses of Representatives, and the Senate of the United States, and the District Judges of the United States should be invited to participate in this gathering. I will state in behalf of the referees for the Northern District of Illinois, with most of whom I have conversed on this subject, that they will very gladly co-operate to furthering this object. The referees in each district should appoint a representative to act as a committee to organize the calling of a convention here in Chicago, or elsewhere, and to arrange details….[20]

The *National Bankruptcy News* enthusiastically endorsed the project and offered to lend to it "all possible publicity."[21]

Not all the referees agreed that an association of bankruptcy referees, if formed, should convene. Joel C. Baker, a referee in Rutland, Vermont, wrote in his June 16 letter to the *News* that the referees, as "judicial officers" under the Act, were "out of place when they call and hold a convention, to formulate and suggest desirable amendments to the law under which they hold their appointments and exercise their judicial functions."

> Judges do not do their best work when they criticize the laws they were appointed to administer or spend their time and energies to procure amendments to those laws, especially in the direction of increasing their own compensation, or modifying the amount of work to be done by their respective courts.

"The referee in bankruptcy has a jurisdiction," Baker continued, "which is almost purely judicial."

> He is the judge who in the first instance passes upon and decides a large proportion of the contested questions of fact and law that arise in these cases. He has an extended jurisdiction and acts under the sanction

[20] *Id.*
[21] *Id.*

> of the same oath as that prescribed for Judges of the United States Court. Can there be any difference in propriety, then, between the proposed convention of referees and a convention of United States Judges to influence Congress to enact or amend laws upon which the same judges in their capacity as courts must adjudge and settle the rights of litigants? Such a convention was never held and never will be.[22]

Eastman, in his reply, asked rhetorically whether the proposed convention was "In Bad Form?" He answered that it was not, stressing that in many places it was a duty of judges "to make recommendations to the legislature, whether State or National."[23] And George D. Judson, another referee (from the Northern District of New York) urged the public benefit of the convention, noting that defects in the Bankruptcy Act could be improved. Though the referees were "very much underpaid," as the author understood it, "the object of the proposed convention" was "to confer together and exchange ideas and experiences and communicate the result of such experiences to the lawmaking powers as aids to them in improving the Law, in the sense that any good representative should know the views of his constituents as to the effects of laws he has participated in making or contemplates making."[24]

The view prevailed that it would be proper and beneficial for the referees to form the first NARB and convene. The first NARB held its inaugural Annual Conference in Chicago on July 25–27, 1899. About thirty referees attended.[25] NARB's Rules, adopted on July 27, stated: "The objects of this association shall be to promote the purposes of the National Bankruptcy Law, by making practice in bankruptcy more uniform, and suggesting desirable and proper amendments."[26] The sessions focused on the administration of cases, the

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[22] Joel C. Baker, *Opposed to the Convention of Referees*, 15 NAT'L BANKR. NEWS 346, 346 (July 1, 1899).

[23] Sidney C. Eastman, *Is the Proposed Referees' Convention "In Bad Form"?*, 16 NAT'L BANKR. NEWS 378, 378 (July 15, 1899).

[24] George D. Judson, *The Spirit in Which the Proposed Convention of Referees Will Be Held*, 16 NAT'L BANKR. NEWS 379, 379 (July 15, 1899).

[25] *Proceedings of the National Convention of Referees in Bankruptcy, Held July 25, 26and 27, 1899, at Chicago Beach Hotel, Chicago, Illinois*, 19 NAT'L BANKR. NEWS 433, 433 (Sept. 1, 1899).

[26] Robert Jacobvitz, *The NCBJ's Formation*, NAT'L CONF. BANKR. JUDGES (Dec. 15, 2023), https://ncbj.org/the-ncbjs-formation. Robert H. Jacobvitz is a United States Bankruptcy Judge for the District of New Mexico, appointed in 2009, and has served on the Tenth Circuit Bankruptcy Appellate Panel since 2012. He has authored approximately 400 judicial opinions and is a Fellow in the American College of Bankruptcy. He is acknowledged by the NCBJ as

General Orders just issued by the Supreme Court to govern bankruptcy proceedings, and improvements and amendments that might be made to the 1898 Act.[27] The referees, on their return home, "in almost every case submitted to interviews" with local newspapers which wrote of how they "had enjoyed and profited by the convention, and the impressions they took away regarding the Law and those appointed to administer it."[28]

Notwithstanding the enthusiastic start of the first NARB, it was short-lived and became inactive about five years later. About twenty years after that, in 1927, its former Secretary-Treasurer "turned over the defunct organization's accumulated funds, $118.04," to the then newly formed, second National Association of Referees in Bankruptcy (also NARB).[29] Sidney C. Eastman, who in 1899 had written to the *National Bankruptcy News* to urge his fellow referees to form the first NARB was still serving as a referee when the second NARB was formed in 1926, but just barely. Eastman's retirement in December 1926, was noted in JNARB, which the second NARB had begun publishing immediately following its formation. He had by then officiated in over 15,000 bankruptcy cases and was the author of "Eastman on Bankruptcy" "which enjoyed a wide sale." He was praised on his retirement, as "one of the first to recognize the necessity of a national organization of Referees in Bankruptcy for the purpose of establishing a consistent policy in aid of making the national bankruptcy law a permanent law and procuring suitable amendments to permit its more economical and efficient administration."[30]

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one of the foremost historians of the organization, having authored over twenty articles and histories regarding the NCBJ and its members or other bankruptcy-related topics over the years. He is also the author of a forthcoming history of the NCBJ, which is being published by the Ninth Judicial Circuit Historical Society's *Western Legal History Journal* in June 2026. Judge Jacobvitz gladly shared his draft article with the author, and together with their conversations and his other publications provided significant understanding of the creation, development and current structure of the NCBJ.

[27] *Proceedings of the National Convention of Referees in Bankruptcy, Held July 25, 26 and 27, 1899*, 19 NAT'L BANKR. NEWS 433, 433–64 (Sept. 1, 1899).

[28] *The Referees on Their Return Home*, 22 NAT'L BANKR. NEWS 525, 525 (Oct. 15, 1899). The attendees' one complaint was that the Chicago press, "controlled by commercial houses," distorted the referees' discussions about possible improvements to the Act by reporting that the referees unanimously supported its repeal. "This was nothing more or less than utter rot," said Frank H. Mortimer, Clerk of the District Court in New Orleans. "Nothing of the kind ever entered the heads of those present." 22 NAT'L BANKR. NEWS at 525.

[29] Jacobvitz, *supra* note 26.

[30] *Sidney Corning Eastman*, 1 J. NAT'L ASS'N REF. BANKR. 1, 64 (1926–1927). The JNARB article on Eastman recounted that he was born to a "noted Abolitionist" father, who President Lincoln appointed U.S. Consul to Bristol, England from 1861 to 1869. Eastman, the

III. "We Must Be Up and Doing"—The 1926 Formation and Early Years of NARB

"We must be 'up and doing' and lend our aid towards the solution of the problems which are confronting us," said Paul H. King, the just-elected first President of the second NARB in his opening address at the association's first meeting in 1926.[31] It was the year after the Grand Ole Opry's first live radio broadcast (from Nashville), and the year before Charles Lindbergh's solo nonstop flight from New York to Paris set a new world record for distance flight, ushering in the era of global air transportation.[32]

King's speech strongly focused on the size of the national bankruptcy docket and the inefficiencies of the bankruptcy system. "With nearly 45,000 bankruptcy cases each year and total liabilities of three-quarters of a billion dollars with less than a 10% return to general creditors," there was, he thought, "a terrific economic waste that, were it to occur at one time or in one place, such as the wrecking of a big business institution or something of that kind, would startle the entire country." King urged that the referees not close their "eyes to this situation and go along in the ordinary routine as heretofore." Rather, they had "got to do something about it."[33]

The referees who convened in Detroit had set few goals and were clearly feeling their way. President King said: "We have a heavy program" and he was "just a trifle sorry" that the conference was two days instead of three.[34] There was "so much to do in the way of getting acquainted and discussing matters of mutual interest" that it would be difficult even to get through the subjects that were scheduled for discussion. At least, King thought, the issues could be

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referee, had been "instrumental" in securing the Illinois presidential nominating delegation for William McKinley, who would sign the 1898 Bankruptcy Act into law.

[31] King's 62 years of life were characterized by his own "up and doing." He was born in a sod house in Nebraska where he was schooled by his mother. He became involved in the legislative process at 12 years old, as a page in the Minnesota House of Representatives. He read law in Michigan, was credited with the framing of the State's Constitution, and later headed the committee which framed the Detroit city charter. He was the first lay person to serve as president of the Detroit Council of Churches, and was president of the International Society for Crippled Children. All of this was in addition to his becoming the first President of NARB and, a few years later, the first Chairperson and Secretary of the NBC (*see infra* Part I, § IV). NY TIMES, *Paul H. King Dies; Detroit Attorney* (May 19, 1942), https://timesmachine.nytimes.com/timesmachine/1942/05/19/96557241.html?pageNumber=20.

[32] WIKIPEDIA, *Grand Ole Opry*, https://en.wikipedia.org/wiki/Grand_Ole_Opry (last visited Dec. 3, 2025); WIKIPEDIA, *Charles Lindbergh*, https://en.wikipedia.org/wiki/Charles_Lindbergh (last visited Dec. 20, 2025).

[33] *Greetings!*, *supra* note 5, at 1.

[34] *Official Proceedings*, *supra* note 7, at 5.

introduced to the referees so that they could "be thinking about them during the coming year," and when they got together "somewhere next year for our conference," their ideas would be more developed, and they could "work them out." He noted that not a single resolution for consideration by the conference had been prepared by anyone.[35]

The referees in the different judicial districts were isolated, King observed. Until they all met in Detroit, he had known but a half-dozen. If all that happened was that the referees got better acquainted with one another, the "gathering would be well worth while." King hoped that acquaintance, friendship, and fellowship would follow, which would give rise to better understanding and cooperation among the referees. The first Annual Conference was "a starter," King observed, "a free and open conference for you people." "It is your conference."[36]

[35] *Id.* at 6.
[36] *Id.*

"Referees in Bankruptcy Convention"[37]
The First Annual Conference of the National Association of Referees in Bankruptcy Cadillac Hotel, Detroit, Michigan
July 9, 1926

King envisioned a permanent organization of referees, from the start. The experiences of referees in different parts of the country "could be

[37] This photograph of attendees at the 1926 first Annual Conference of the second NARB (today's NCBJ), held in Detroit, Michigan, was printed in the *Official Proceedings*. *See supra* note 7, at 31.

broadcast, so to speak, to all others" and the association could be a clearinghouse for their ideas and a forum for discussion among them. It could improve and promote greater uniformity in bankruptcy practice and administration. It could help to increase a greater public respect for the bankruptcy practice. And when it came to matters of legislation, there would be someone who could be consulted. At the present time, King noted, there was "no group of Referees in the country to whom any law maker could go to ask for information or suggestions."[38]

Paul H. King was widely recognized for his leadership and other qualities, both in bankruptcy and in other areas (*see supra* Part I, § IV). But Referee Herbert M. Bierce of Minneapolis, for finding and enlisting King, may have been the most instrumental person in the second NARB's founding. Bierce had heard that King was "a man of personal magnetism, high ideals and splendid organizing ability." Bierce, in 1923, concerned over shortcomings in the bankruptcy practice and the possibility that Congress might repeal the Bankruptcy Act, first wrote to King about forming NARB. King expressed interest.[39] Bierce was clearly correct in assessing King's organizational abilities. "At the time, there was no centralized list of Referees in Bankruptcy." King went about the task of compiling one "by contacting each Clerk of the District Courts across the country, which showed there were approximately 535 active Referees in Bankruptcy in the continental United States."[40]

The 1926 NARB held its second conference in Buffalo, New York, on August 29–30, 1927. The "first convention to be held following the organization of an association is one of the utmost moment and of serious concern to those vitally interested" wrote the editors of JNARB (who appear to have been its second President, Watson B. Adair (of Pittsburgh); Past President King; and Secretary, Herbert M. Bierce (of Minnesota)).[41] They asked: "Has the organization held the interest of those who attended at its inception, where so much enthusiasm was expressed? Has it successfully aroused interest among

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[38] *Official Proceedings*, *supra* note 7, at 6.

[39] Jacobvitz, *supra* note 26. Bierce was clearly correct in assessing King's organizational abilities and energies. "At the time, there was no centralized list of Referees in Bankruptcy. Paul [King] compiled a list by contacting each Clerk of the District Courts across the country, which showed there were approximately 535 active Referees in Bankruptcy in the continental United States. For many years, Herbert [Bierce] maintained the 'only reasonably accurate roster of Referees for this country."

[40] *Id.* ("For many years, Herbert [Bierce] maintained the 'only reasonably accurate roster of Referees for this country.").

[41] *The Buffalo Conference*, 2 J. NAT'L ASS'N REF. BANKR. 1, 6–7 (1927–1928).

those to whom it should appeal and who did not personally assist in the organization?" They enthusiastically asserted that NARB had done both. The attendance at the Buffalo conference, fifty-eight referees and the chief clerk of a fifty-ninth, "bespoke the keen and continuing interest of Referees in Bankruptcy generally." The experiment of holding the conference approximately with that of the American Bar Association (ABA) had "proved most successful."[42] Also encouraging, 203 referees had become members of NARB since its organization in Detroit in July, 1926, and no active referee had resigned.[43] Favorable responses to NARB had been received from both full-time and part-time referees, and from those in the "large mercantile centers" and in the smaller cities, and every judicial circuit was represented.[44]

JNARB praised The Hotel Lafayette in Buffalo and its manager, who "gave personal attention to the welfare of all his guests." The editors described the "ladies' program" as "delightful in every respect," including a complimentary theater party at Shea's Buffalo Theater, an automobile tour of the city, a trip to "East Aurora where the Roycroft Shops were inspected and a complimentary luncheon had at the Roycroft Inn." The ladies and other guests joined the members for "the Monday noon luncheon and both evening dinners."[45]

There were women referees in the 1920s as well, though few in number. In 1928, the *Ladies' Home Journal*, the highest-circulation ladies' magazine in the country, published a piece on Felice Cohen, a Reno, Nevada referee, which was later reprinted in JNARB.[46] The *Ladies' Home Journal* called Miss Cohn a "real pioneer of the West," and "America's first and only woman referee in bankruptcy." It noted that she was the "first of her sex to practice law in her state," and listed several of her other "firsts." Herbert Bierce, NARB's Secretary, wrote to the *Ladies' Home Journal*, begging to advise it in the "interest of accuracy and justice to other women who occupy this position," that the honor of being the first woman bankruptcy referee belonged to Miss Mary L. Trescott, of Wilkes-Barre, Pennsylvania, and that Miss Cohn shared "this honor not only with Miss Trescott but with Miss Gertrude K. Durham of

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[42] *Id.* at 6.

[43] *Our Membership*, 2 J. NAT'L ASS'N REF. BANKR. 7, 7 (1927–1928).

[44] *Id.* at 7–8.

[45] *The Buffalo Conference*, *supra* note 41, at 6. The editors appear to have been Watson B. Adair, President, Paul H. King, Past President, and Herbert M. Bierce, Secretary, under whose supervision JNARB was published. *Id.* at 6.

[46] *Women in Business*, 3 J. NAT'L ASS'N REF. BANKR. 57, 57 (1928–1929), reprinting *Women in Business*, LADIES' HOME J. (Nov. 1928); WIKIPEDIA, *Ladies' Home Journal*, https://en.wikipedia.org/wiki/Ladies%27_Home_Journal (last visited Aug. 19, 2025).

Grants Pass, Oregon." The *Ladies' Home Journal* thanked Bierce and promised, in "justice to Miss Trescott and Miss Durham," "to mention their names in some future issue."[47]

NARB, of course, had its own journal, the *Journal of the National Association of Referees in Bankruptcy* (JNARB). Though its circulation was far lower than that of the *Ladies' Home Journal*, its contents furthered NARB's associational purposes and likely held the new association together between the Annual Conferences. The pages of JNARB recounted the events of each year's Conference, and contained legal articles, case notes, and news. It was distributed to all members, to all referees who were not members, to all U.S. circuit and district judges, and "to instructors in bankruptcy, to libraries of law schools and to members of bankruptcy committees of the ABA, the CLL, the NACM, and other organizations."[48] Favorable comments had been received, its editors noted. The officers of NARB expressed their view that the costs of printing and mailing it were justified.[49]

The members of NARB at its second conference in Buffalo, continued to get to know one another and also got down to work. They unanimously elected Watson B. Adair as the second President after King declined a second term, saying that "he desired to establish a precedent of one term for the presiding officer."[50] The conferees "reluctantly acceded to his viewpoint" before electing Adair.[51]

NARB adopted its first Code of Ethics in 1927–1928. JNARB described it as "comprehensive, yet concise," based on the principles that the office of referee was "a public trust of great responsibility, affording an opportunity for

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[47] *Women in Business*, *supra* note 46, at 57. Florence Olson, who like Durham presided in Oregon, was the first woman referee under the under the Bankruptcy Act of 1898, serving from "1898 until at least 1903." Helen F. Althaus, *Bicentennial Feature: 'Women with the West in their Eyes,'* 36 OR. ST. B. BULL. 3, 8 (1976); *Bankruptcy Firsts: Women in Bankruptcy*, NCBJ (March 1, 2024), https://ncbj.org/women-in-bankruptcy/. By the mid-1930s, these women referees were gone. In 1934, Felice Cohn was not reappointed. Mary Trescott died in 1935. WIKIPEDIA, *Mary Luella Trescott*, https://en.wikipedia.org/wiki/Mary_Luella_Trescott (last visited Dec. 15, 2024).

[48] *Secretary's Report*, 2 J. NAT'L ASS'N REF. BANKR. 11, 13 (1927–1928).

[49] *Id.* at 13.

[50] *The Buffalo Conference*, *supra* note 41, at 7.

[51] *Id.* The only exceptions to the one-year-term precedent set by King occurred during World War II, when two-year terms were served by Irwin Kurtz (1942–1944) and then by Estes Snedecor (1944–1946). The Annual Conference was not held in 1943 or 1945, due to wartime restrictions, so Kurtz and Snedecor presided over one conference each. NCBJ, *NCBJ Past Presidents*, https://ncbj.org/about/ncbj-past-presidents (last visited Feb. 27, 2026).

important service, demanding the highest degree of honor, skill and efficiency and condemning inefficiency, waste and delay."[52]

The Code of Ethics set a high judicial and administrative standard for each referee, regarding the hearing and administration of bankruptcy cases. And recognizing the interconnections between bankruptcy and the wider society, legal system, and economy, it described the referee's ethical obligations as also owing to the persons, agencies, and organizations involved in bankruptcy cases, and to the greater public. It stressed the significance of a referee's relationships with "the Judges of the Court of which he is a part," with "the U.S. Department of Justice in its supervisory capacity," and with district attorneys, clerks, marshals, receivers, trustees, other bankruptcy professionals ("auctioneers, investigators, auditors and clerical assistants"), the lawyers practicing before the bankruptcy court, creditors "of whatever class, —secured, prior or general," "claimants of whatever kind," "bankrupts, worthy and unworthy," his fellow referees, and "the public generally."[53]

The Code of Ethics required the referee to prepare for the role, "by familiarizing himself with the bankruptcy law, decisions and rules of

[52] *Our New Code of Ethics*, 2 J. NAT'L ASS'N REF. BANKR. 8, 8 (1927–1928).

[53] *Code of Ethics of the National Association of Referees in Bankruptcy*, 4 J. NAT'L ASS'N REF. BANKR. 16, 16–17 (1929–1930). The reference to the referees' relationships with the Department of Justice (DOJ) "in its supervisory capacity" appears in Article IV(b) of NARB's Code of Ethics. It is not clear what was intended. The 1898 Bankruptcy Act did not refer to the U.S. Department of Justice, though it required the U.S. Attorney General to collect and annually submit to Congress statistics on bankruptcy. Bankruptcy Act of 1898, Pub. L. 55-541, § 5, 30 Stat. 544. "Officers" under the 1898 Act included the referees and were required to "furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the Attorney-General, for statistical purposes, within ten days after being requested by him to do so." Bankruptcy Act of 1898, Pub. L. 55-541, §§ 1(18), 54, 30 Stat. 544. Article V(b) of the Code of Ethics emphasized that, for "right relations" to be maintained with the DOJ, the referee "shall willingly and cheerfully give every assistance to the Department of Justice in making its examinations of his offices as provided by law, and shall give to the Department from time to time such information as it may require." *Code of Ethics of the National Association of Referees in Bankruptcy*, 4 J. NAT'L ASS'N REF. BANKR. at 16–17 (1929–1930). In addition, the year before adoption of the Codee of Ethics, NARB had adopted a rule that the referees "should more generally report to the Department cases in which there are suspicious circumstances," for investigation by the DOJ, adding that the "general knowledge that investigations are the rule rather than the exception will in itself have a salutary effect." *Proceedings of the Chicago Conference*, 3 J. NAT'L ASS'N REF. BANKR. 76, 93 (1929). Likely, then, the Code of Ethics' requirement that the referees maintain good relations with the DOJ went to their providing the DOJ with the required statistical information and to their cooperating in DOJ investigations. Certainly, there was nothing in 1927 similar to the Office of the U.S. Trustee, which is a part of the DOJ, and has far more extensive, statutory powers and supervisory duties.

practice."[54] Regarding the administrative obligations of the position, it required the referee to maintain a proper office and records, with "as capable clerical assistance as the income of the office permits," and to be "ready at all times to furnish full and complete information from his office to those who are entitled to it." Addressing the judicial responsibilities of the position, it required the referee to "maintain the dignity of the Court by refraining himself from any conduct which would be unbecoming in a judge and prohibit all practices before him which tend in any way to lower the dignity and impressiveness of the Court," to attend hearings punctually, and to consider courteously the matters presented to him.[55]

NARB's first Constitution also was printed in the October 1929, issue of JNARB. NARB's purposes, as set forth in that Constitution, were "to promote better acquaintance and co-operation among the Referees in Bankruptcy of the United States Courts, to secure a greater degree of uniformity in the administration of estates in Bankruptcy, to encourage expedition in the liquidation of estates and economy in the administration thereof, and generally to improve the practice in bankruptcy cases."[56] "Active members" of the association were dues-paying referees in bankruptcy who applied for membership and referees who had voluntarily retired from the office.[57] "Honorary members" were persons "rendering or having rendered public service in connection with Bankruptcy work."[58] An elected Board of Directors, consisting of one member from each judicial circuit and NARB's officers and immediate past president, were to manage NARB.[59] It would have five standing committees, and each would have at least one member from each judicial circuit: "Uniformity of Practice" (to "consider and report upon all matters affecting practice in Bankruptcy Courts"); "Legislation" (to which all matters of proposed Legislation were to be referred for consideration, action and report); "Ethics" (tasked with preparing and presenting to the association a Code of Ethics "for the guidance of members" and to "act as a committee on grievances," to investigate, report on, and make recommendations with respect

[54] This was no simple task because there were no bankruptcy reporters at the time. Some of the cases applying the Bankruptcy Act would be reported in summary form in JNARB.

[55] *Code of Ethics of the National Association of Referees in Bankruptcy*, *supra* note 53, at 16–17.

[56] *The Association's Constitution*, Art. I, § 1, 4 J. NAT'L ASS'N REF. BANKR. 31, 31–32 (1929–1930).

[57] *Id.* at Art. II, § 2.

[58] *Id.* at Art. II, § 3.

[59] *Id.* at Art. V, § 1.

to "any complaints which may be made"); "Resolutions" (to which "resolutions determining the policy or expressing the sentiment of the organization in any respect" were to be referred for consideration and report, prior to final action thereon"); and "Nominations" (which nominated, at each national conference, the association's officers and directors).[60]

Two recurring issues had already emerged by the time NARB held its second conference in Buffalo, which NARB and its referees would continue to confront in the years and decades to follow. The first was the referees' peculiar jurisdiction and place in the federal judiciary. The second was how to most effectively, and with propriety, improve the bankruptcy law that they applied and far and away knew the most about.

As to the first issue, the referees' jurisdiction, 100 years ago as today, derived from that of the federal district court of which it was a part. Then, as now, the Supreme Court struggled with the delineation of judicial authority between the two courts. At the 1928 Annual Conference, for example, Referee Cameron Baldwin from Wisconsin noted that the jurisdictional section of the 1898 Act left with the district court, and took away from the referee, jurisdiction over a composition (the closest thing at the time to a reorganization) and discharge matters. The "whole trouble," Baldwin continued, was that the Supreme Court had ruled that compositions and discharges "*might* be referred to the Referee." Baldwin suggested that the ruling was "invalid," since the Court itself had said "that they cannot overcome a positive statute."[61]

Second, the referees had an active interest in improving their specialized area of law, which was central to the economy, and of which most lawmakers, other judges, lawyers, and members of the public were generally ignorant. NARB's fervor and openness to new ideas was evident from its earliest years. At its third conference, in Chicago in 1928, it invited William O. Douglas—then a Yale Law professor and later the Chair of the Securities and Exchange Commission and an Associate Justice of the U.S. Supreme Court—to speak about an extensive study of bankruptcy law that he and Yale Law School had undertaken, focused on improving bankruptcy practice in the United States. Douglas began by saying that the conferees could "well imagine the respect and regard" he had for their association by their knowing that, to address them, he "was forced to leave New Hampshire's best bass fishing."[62]

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[60] *Id.* at Art. VI, §§ 1–6.

[61] *Report of Committee on Legislation*, 3 J. NAT'L ASS'N REF. BANKR. 16, 21 (1928–1929) (emphasis added).

[62] *Professor Douglas' Address*, 3 J. NAT'L ASS'N REF. BANKR. 48, 48 (1928–1929).

Douglas acknowledged that he knew "little of the problems of bankruptcy administration," and supposed that few teachers of bankruptcy law did. The time was, he said, when it was not the fashion for law professors "to know the facts; when the professor of law would create his logical systems in a closed office with nothing but cases and opinions." But that time was passing. A "small group of earnest, legal educators" had placed the study of a legal rule "in its economic, social and business environment," so that before it became law "the economic and social forces which the rule" was "intended to regulate should be ascertained and studied."[63]

And "on the edge of the wedge," Douglas continued, was the law school at which he taught, which was "making plans for the most significant undertaking in the history of law schools." Part of that study would embrace "the whole subject of bankruptcy and related liquidating devices." The project would embrace "in its scope the functioning of the whole credit system of the country and, as the point of departure, the administration of the bankruptcy law." Beginning with bankruptcy was appropriate "since it is the point where the credit system breaks down and the credit losses are suffered and felt."[64] Douglas had read JNARB and praised it for furnishing to "teachers and students of bankruptcy some of the fact material so sorely needed and never before available."[65]

As intellectually intriguing and ambitious as the referees may have found Professor Douglas' talk, their persistent efforts to improve the bankruptcy law by amendments to the substantive statutory law raised the same issue of judicial propriety as it had for the first NARB. The referees had a depth of experience, Douglas recognized, in a specialized area of which others knew little. In 1899, at the time of the first meeting of the first NARB, the referees had debated whether it was "bad form" for them to seek legislative change.[66] Referee Carl Friebolin, Chair of the Legislative Committee, would say at the

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[63] *Id.*

[64] *Id.* The Yale study, Douglas continued, "would not ignore the rather informal liquidating devices such as compositions, control through creditors' committees and liquidation under supervision of Boards of Trade." Each "liquidating and salvaging device, known to modern industrial society, would be thrown into focus and studied, in view of the important relation" that each bore "to the functioning of the credit system under which modern business is done." *Id.* at 49.

[65] *Id.* at 48.

[66] Joel C. Baker, *Opposed to the Convention of Referees*, 15 NAT'L BANKR. NEWS 346, 346 (July 1, 1899); Eastman, *supra* note 23, at 378; George D. Judson, *The Spirit in Which the Proposed Convention of Referees Will Be Held*, 16 NAT'L BANKR. NEWS 379, 379 (July 15, 1899).

1928 second conference that his "committee's chief function is not aggressively to espouse favored legislation, but to act in an advisory capacity for those who may seek changes in the bankruptcy laws." With "the above declaration clearly understood," the committee proceeded to endorse several amendments to the 1898 Act.[67]

On the NCBJ's 50th anniversary in 1976, Bankruptcy Judge Russell L. Hiller in Reading, Pennsylvania, and the 1967–1968 President of NARB, would insightfully write that in the early days the referees were "mindful of their role as judicial officers and not legislators." This sentiment was "sufficiently shared to prompt an association policy proclaiming that the 'Association and its members take no part or active interest in initiating or opposing amendments to the Bankruptcy Act.'" NARB "would simply offer its services, expertise and experience to other responsible organizations." Yet time, Hiller further observed, again "adapted that early policy."[68]

The 1920s were a decade of general prosperity in the United States. The number of cars on the road tripled. The sales of radios increased more than tenfold. Average wages more than doubled between 1914 and 1924, while over the same period the price of a Model T Ford, the best-selling car in America (and the world) went down by nearly one-half.[69] The referees from their special vantage point in the economy had seen hints of a downturn even as the good times continued. A 1929 issue of JNARB contained a chart showing high rates of farm bankruptcies in Minnesota, North Dakota, South Dakota, and Montana between 1923–1927, and high rates of bank failures during the same period. The filings in those sectors were ebbing by 1928–1929.[70] But whatever the improvement, it did not last.

It was well and good that the just-founded second NARB had set its house in order by the late 1920s. Storm clouds were on the horizon.

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[67] *Report of Committee on Legislation*, 3 J. NAT'L ASS'N REF. BANKR. 16, 21 (1928–1929).

[68] Russell L. Hiller, *A Conference Anniversary—50 Years in Retrospect, by National Conference of Bankruptcy Judges 1926–1976*, 51 AM. BANKR. L.J. 31, 33 (Winter 1977).

[69] Steven Mintz, *"Statistics: The American Economy during the 1920s,"* GILDER LEHRMAN INST. AM. HIST., https://www.gilderlehrman.org/history-resources/teaching-resource/statistics-american-economy-during-1920s (last visited Feb. 27, 2026); WIKIPEDIA, *Ford Model T*, https://en.wikipedia.org/wiki/Ford_Model_T (last visited (Dec. 11, 2025).

[70] *Bankruptcies and Failures in the Ninth Federal Judicial District*, 4 J. NAT'L ASS'N REF. BANKR. 106, 107 (1929–1930).

IV. "Above All, Try Something"—NARB and the Great Depression

The U.S. economy in the 1930s sank into the Great Depression. Between 1930 and 1932, unemployment rose from 9% to 24% (and would hit 25% the following year).[71] The shares, between September 3, 1929 and their 1932 lows, of General Electric dropped from 364 to 34, of General Motors went from 73 to 8, of New York Central Railroad fell from 256 to 9, and of U.S. Steel descended from 261 to 21.[72] Between 1929 and 1932, real U.S. gross domestic product contracted by 25%.[73]

At the National Association of Referees in Bankruptcy's 1931 Annual Conference in Atlantic City, New Jersey, Carl D. Friebolin, its sixth President, asked:

> What's the matter with us?
> No country had more and no country ever had less. Ten men in our country can buy the world and 10,000,000 can't buy enough to eat. In the South we raise so much cotton that the Farm Board wants us to destroy one third of the crop and yet people go naked. In the North and West we raise so much wheat and corn that they plan to burn it for fuel. We produce more than we can sell or use and manufacture more than we have a market for.[74]

NARB and its referee members would not sit idly by. All attempts to improve the administration of the bankruptcy law, said Friebolin, should take as their starting point the "great body of practical knowledge and experience" the referees had accumulated. Any new features of the law should, at least, be consistent with such knowledge and experience. The association and its referees "should heed the Apostolic admonition—'Prove all things,—hold fast that which is good.'"[75]

A desperate need for change was in the air. At NARB's 1931 conference in Atlantic City, New Jersey, Lloyd Garrison from the U.S. Department of Justice (DOJ) thanked the Association and all the referees who had answered

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[71] CITY UNIV. N.Y., *Graph of U.S. Unemployment Rate, 1930–1945*, https://shec.ashp.cuny.edu/items/show/1510 (last visited Feb. 26, 2026).

[72] Mintz, *supra* note 69.

[73] FED. RSRV. BANK ST. LOUIS, *Table Data – Real Gross Domestic Product*, https://fred.stlouisfed.org/data/GDPCA (last visited Feb. 26, 2026).

[74] *Annual Address of President*, 6 J. NAT'L ASS'N REF. BANKR. 8, 8 (1931–1932).

[75] *Id.* at 9.

questionnaires and requests for statistics and with whom the DOJ had worked to complete a survey for the purpose of improving the bankruptcy law. Garrison had "no doubt" but that word from NARB "to every Referee in the country had a great deal to do with the remarkable co-operation" which the DOJ received.[76]

The proposals discussed at the 1931 Atlantic City conference included: for the first time, wage-earner or "debt amortization" plans by which individuals could restructure and pay their debts over time without suffering the stigma of being adjudicated a "bankrupt";[77] voluntary corporate reorganization provisions;[78] and streamlining the composition procedure by which a sole proprietorship or a partnership could restructure its debt.[79]

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[76] *Department of Justice Survey*, 6 J. NAT'L ASS'N REF. BANKR. 22, 23 (1931–1932).

[77] *Id.* at 24. Most wage-earner bankrupts were regularly employed and went bankrupt because of garnishment proceedings or attachments, which threatened "to destroy their earning power and to make them a charge on the community." Garrison said that the DOJ was "not in sympathy with the proposal to limit the privilege of bankruptcy to individuals who owe[d] more than a certain minimum amount of money." Rather, the relief which the law afforded was "absolutely essential to the small debtor as well as to the large one." He suggested a provision in the law whereby a wage-earner whose wages threatened with garnishment or were garnished would "be permitted to file a voluntary petition as a debtor, not as a bankrupt, asking for the aid of the court in working out a gradual amortization of his debts over a period of not to exceed two years." The proceeding would be held before the Referee and the Referee would call a meeting of the creditors and appoint a trustee, who would collect the amount that the debtor should pay each month or each week out of his earnings. If a wage-earner who could amortize elected to take the easier course of bankruptcy, the proposed law "would give him that right, but in such cases he would later face the likelihood of a suspended discharge." *Id.*

[78] *Id.* at 25. The proposed corporate reorganization law would "permit a corporation to file a voluntary petition as a debtor, not a bankrupt," which alleged that it was unable to pay its debts but wanted "to work out a scheme of reorganization. Approximately the same machinery would then follow as … obtain[ed] in equity receiverships." Under the suggested procedure, "the trustee would have title to the assets all over the country, thus avoiding ancillary receiverships; he could sell free of liens; minority creditors could be dealt with more easily than in equity, and the courts could be given wider powers." *Id.*

[79] *Id.* at 23–24. The proposal was to take "out of the bankruptcy law proper" the composition provisions by which a debtor might agree with creditors regarding adjustments of debt and provide that "only debtors who come in without adjudication in bankruptcy may have the benefit of these provisions." Two reasons were offered. First, it would preserve a distinction between a composition, with its "constructive features for the relief of debtors," and a proceeding in which a person was adjudicated a "bankrupt" and the assets were then liquidated. Second, the "composition proceedings needed to be brought on quickly and expeditiously passed upon." "In other words," Garrison continued, "we want to make it possible for debtors to work out these composition and extension arrangements outside of court, the way that business men do it, sitting around the table and when everybody, substantially, has agreed and a small minority is holding out, to bring the proposal into court, give everyone notice and a chance to be heard and confirm it or reject it," and giving "the Referee full jurisdiction over the

The DOJ at the 1931 conference also proposed increasing the judicial authority, compensation, and job security of the referees. The referees' powers and jurisdiction should be enlarged, the DOJ thought, so that "they have the whole bankruptcy law to administer, instead of a part of it."[80]

The referees remained keenly aware of their curious judicial authority. A referee from Duluth, Alexander G. McKnight, in the same 1931 issue of JNARB, wrote that the status of the referee was "unique" and the courts could not "agree on just what that status is or should be." The Supreme Court had said that the referee was "not in any sense a separate court, nor endowed with any independent judicial authority." Remington in his bankruptcy treatise had called the referee "an inferior judicial officer." Yet another court had stated that a referee was "a judicial officer, and all of his acts are presumed to be legal."[81]

But the referee, who was both an administrator and a judge, held a peculiar position under the 1898 Bankruptcy Act. A modern equivalence would be to combine the tasks of Clerk of the Bankruptcy Court, Office of the U.S. Trustee, and U.S. Bankruptcy Judge into one job.

The referee was required, among other things under the Bankruptcy Act: to examine the bankrupt's schedules of property and lists of creditors (and to require amendments if necessary or prepare the schedules and lists if the bankrupt had failed to do so); to give notices to creditors as provided by the Act; to furnish information to interested parties; to transmit records in contested matters, of evidence and findings to the district judge; to declare dividends (distributions) and prepare dividend sheets for the trustees that showed the dividends declared and to whom they were payable; and to keep and transmit to the district court clerk, at the conclusion of the case, the docket and other records.[82] The referee also conducted most of the judicial proceedings in a case.[83] This could include, on specific referrals from the district court, hearings

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whole matter." *Id.*

[80] *Id.* at 28.

[81] Alexander G. McKnight, *Extending the Power and AUTHORITY of Referees*, 6 J. NAT'L ASS'N REF. BANKR. 32, 32 (1931).

[82] Prudence Beatty Abram & Andrew DeNatale, *From Referee in Bankruptcy to Bankruptcy Judge: A Century of Change in the Second Circuit*, in THE DEVELOPMENT OF BANKRUPTCY & REORGANIZATION LAW IN THE COURTS OF THE SECOND CIRCUIT OF THE UNITED STATES 74–75 (Matthew Bender, 1995); Bankruptcy Act of 1898, Pub. L. 55-541, § 39, 30 Stat. 544.

[83] General Order XII.1, *General Orders and Forms in Bankruptcy – Adopted and Established by the Supreme Court of the United States (*Nov. 28, 1898), https://www.govinfo.gov/content/pkg/SERIALSET-06080_00_00-002-0010-0000/pdf/SERIALSET-06080_00_00-002-0010-0000.pdf (last visited Feb. 27, 2026).

to grant discharges, to approve compositions of creditors (the closest thing to today's reorganization plans), and to stay other legal proceedings.[84] The referee took testimony, entered orders, and even provided bankrupts with "protection from arrest."[85]

Referee McKnight wrote that: "We all know the dual capacity of administrator and judge which the Referee occupies and this makes his duties as difficult to perform as his status is hard to define."[86] The 1930 Donovan Report had urged that the bankruptcy courts "be relieved of their administrative responsibilities, and these responsibilities should be centralized in the executive branch of the Federal Government."[87] McKnight referred to the discussions held within NARB, and the suggestions that had been proposed, nearly all of which were "looking toward increase in the power of the Referee and generally the Referees who have expressed themselves on the question are favorable to that idea."[88]

The referees' commission-based compensation structure was also problematic. Referees were paid only on cases referred to them by the district court. They received: ten dollars of the twenty-five dollar filing fee for each voluntary case (which was increased in 1903 to fifteen dollars); one percent of amounts distributed in the case if it was a "straight bankruptcy" (liquidation) case; one-half percent of amounts paid in a composition; and twenty-five cents for each proof of claim (though the referees in New York City apparently charged a dollar).[89] If the referred case was dismissed or was a pauper case, the referee received nothing.[90] William Miller Collier, the author of the treatise that still bears his name, was the initial referee in Cayuga County in rural upstate New York.[91] He was so dissatisfied with his meager compensation as a referee,

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[84] *Id.* at XII.3.

[85] *Id.* at XXIII.

[86] McKnight, *supra* note 81, at 32.

[87] Abram & DeNatale, *supra* note 82, at 88, quoting version of Donovan Report reprinted by the House Committee on Judiciary, 71st Cong., 3rd Sess., Administration of Bankruptcy Estates (Comm. Print 1931). The 1930 Donovan Report was the culmination of the Thacher Hearings and an investigation into bankruptcy administration in the Southern District of New York. NY TIMES, *Donovan Finishes Bankruptcy Report; Drastic Changes in Laws and Procedure to Be Urged as Result of Year's Inquiry* (Mar. 20, 1930), https://www.nytimes.com/1930/03/20/archives/donovan-finishes-bankruptcy-report-drastic-changes-in-laws-and.html.

[88] McKnight, *supra* note 81, at 32.

[89] Abram & DeNatale, *supra* note 82, at 76; Bankruptcy Act of 1898, Pub. L. 55-541, § 40, 30 Stat. 544.

[90] Abram & DeNatale, *supra* note 82, at 76.

[91] *Id.* at 67.

that he wrote a letter to Congress, cosigned by more than 200 fellow referees, which "no doubt contributed to his early resignation."[92]

The fee structure also had the effect of dividing the referees between those in the cities (most of whom did well under the system) and those in the country (whose compensation generally was less). Lloyd Garrison, speaking for the DOJ at NARB's 1931 Annual Conference characterized the DOJ's consideration of "a proposal that Referees should be salaried" as "the most delicate and difficult and distasteful part of my talk." He "need not say" to the referees "how distasteful personally" to him the proposal was, and he recognized "fully the hardship that would be caused to some of the individual Referees in the larger cities."[93]

Garrison added that the DOJ also proposed increasing the term of the referees from two to six years.[94] NARB thought that extending the referee's term was highly desirable, though Garrison did "not think it is possible to do anything more than to write a declaration of policy into the law."[95]

The Sixth Annual Conference of the National Association of Referees in Bankruptcy
Atlantic City, New Jersey
September 14-16, 1931[96]

But the frightening state of the U.S. economy appears to have been of far greater moment to the referees' than their hybrid administrative-judicial

[92] *Id.* at 67–68.
[93] *Department of Justice Survey*, *supra* note 76, at 28.
[94] *Id.* at 27.
[95] *Id.* at 27–28.
[96] This photograph of attendees at the 1931 Sixth Annual Conference, held in Atlantic City, New Jersey, was printed at 6 J. NAT'L ASS'N REF. BANKR. 1, 42–43 (1931–1932).

status or the structure or amount of their compensation. In May 1932, presidential candidate Franklin D. Roosevelt gave his famous, "but above all, try something" speech at a university commencement in Atlanta. The country, Roosevelt continued, demanded "bold, persistent experimentation." It was "common sense to take a method and try it: If it fails, admit it frankly and try another." He urged "enthusiasm, imagination and the ability to face facts, even unpleasant ones, bravely," and the "need to correct, by drastic means if necessary, the faults in our economic system from which we now suffer."[97]

For NARB, FDR was preaching to the choir. NARB and its member referees and their allies had been considering since at least 1931 what they might try to do to help their financially distressed fellow citizens survive the hard times and had been working to bring it to pass. Serendipitously or by design, NARB held its 1932 Annual Conference in Washington, D.C., while bankruptcy amendments were pending in Congress, and in the same week in which the cornerstone for the new Supreme Court building was laid.[98] JNARB reported that the "first bit of mortar was placed by President Hoover" on October 13, 1932. "Several Referees in Bankruptcy were present at this historic and memorable ceremony."[99] There was "a larger attendance at the Washington meeting than at any previous meeting since the founding."[100] Conference attendees were received at the White House by President Hoover who a month later would be voted out of office.[101]

George M. Beach, NARB's seventh President, stressed at the 1932 conference that: "Our country is still in a serious depression." In this period of stress, a very important duty was placed on the referees in bankruptcy, "not only to carefully administer the law, but to be helpful to the unfortunate." He was confident that all would "measure up" and hoped that by the next convention, the outlook would be "more propitious than at the present moment."[102]

In January 1933, the lame-duck Hoover (having lost the 1932 election to Roosevelt), urged Congress to pass bankruptcy amendments, saying that enactment of "legislation for this relief of individual and corporate debtors"

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[97] Franklin D. Roosevelt, *Address at Oglethorpe University in Atlanta, Georgia* (May 22, 1932), https://www.presidency.ucsb.edu/documents/address-oglethorpe-university-atlanta-georgia.

[98] *The New Home of the Supreme Court in the United States*, 7 J. NAT'L ASS'N REF. BANKR. 85, 85 (1932–1933).

[99] *Id.* at 85.

[100] Hiller, *supra* note 68, at 37.

[101] *Remarks of Mr. Garrison*, 7 J. NAT'L ASS'N REF. BANKR. 69, 70 (1932–1933).

[102] *Our President's Message*, 7 J. NAT'L ASS'N REF. BANKR. 1, 1 (1932–1933).

was "a matter of the most vital importance."[103] Hoover signed the Bankruptcy Amendments Act of 1933 into law on March 3 as he left office.[104] The main changes were in three new sections of the Act: Section 74 (compositions and extensions for small businesses and partnerships, "without the stigma of bankruptcy" because under such proceeding the debtor was not adjudicated a bankrupt);[105] Section 75 (agricultural compositions);[106] and Section 77 (railroad reorganizations).[107]

NARB did not think highly of the Bankruptcy Amendments of 1933. Hearings were held before subcommittees of the Judiciary Committees of the House and Senate between April and June 1932.[108] The bill as earlier proposed had included provisions for wage-earner (amortization of debt) plans and corporate reorganizations. That version would "have become the law of the land but for the objections urged by the American Bar Association," which appeared before the subcommittees and opposed the bill "in its then form." The ABA and the CLL "made a most impressive argument" against the bill. While NARB had offered to the subcommittees its services "and any information which it or its members could give, these were not availed of," though two referees did appear before the committee "of their own volition and were heard."[109] Paul King would write in JNARB that "the new legislation constitutes in my judgment no permanent contribution to our bankruptcy law." It was "not in fact bankruptcy legislation at all." He called it "*fanciful*, in seeking to remove the 'stigma' of bankruptcy."[110] King acknowledged that Congress "wanted sincerely to do something, but, frankly, with the exception of a very few members, did not know what to do, how to do it, or what it had done when it passed the bill." Hastily enacted, King wrote, it was "so loosely drawn that no one knows what it means or how to use it."[111]

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[103] 7 J. NAT'L ASS'N REF. BANKR. 82, 86 (Jan. 1933).

[104] Bankruptcy Amendments Act of 1933, ch. 204, §§ 74–77, Stat. 47; Ivar Wingren, *1933 Amendment to the Bankruptcy Act,* 10 DICTA 203 (1933).

[105] Lloyd K. Garrison, *The New Bankruptcy Amendments: Some Problems in Construction*, 8 WIS. L. REV. 291, 291 (1932–1933).

[106] *Id.* at 317–19.

[107] *Id.* at 291–92.

[108] Paul H. King, *Experimenting With Our Bankruptcy Act: Recent Changes and Prospects for Further Amendment*, 7 J. NAT'L ASS'N REF. BANKR. 98, 98 (1933).

[109] *Id.* at 99. King did not indicate in his article the names of the referees who testified in their individual capacity, or which subcommittee they testified before.

[110] *Id.* at 99 (emphasis in original).

[111] *Id.* at 100.

NARB knew that Congress would try again. Fred S. Hudson, NARB's 1933–1934 President, recognized that businesses were trying to solve their problems, "as never before, through the Bankruptcy Courts." At no past time had "the Referee been so much in the commercial limelight."[112]

And Paul King and other prominent members of NARB had already started down a second path toward reform. They and members of the ABA and the CLL had formed the working group that would come to be called the National Bankruptcy Conference (NBC). A contemporaneous account, by Reuben G. Hunt of the CLL, would give credit to his fellow member, Robert A. B. Cook, for gathering at his home in Boston in June 1932 a small group who "set to work to devise a sane and sound revision of the bankruptcy act." The group initially consisted of Hunt and Cook (both of the CLL), Jacob Lashly (of the ABA and later a President of that organization), King (NARB's first President), Carl Friebolin (NARB's then-current President), Joseph B. Jacobs ("a noted bankruptcy lawyer" of Boston), and J. A. McLaughlin (a professor at Harvard Law, "who was specially skilled upon the subject of bankruptcy").[113] At the June 1932 meeting, they spent, in King's words, "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 more nearly met the conditions.[114]

The NBC's first plan was to prepare two bills, "one a 'short' bill to cover immediate requirements and the other a 'long' bill to include all desirable changes." The group soon realized that its task was "gigantic." Little was accomplished at the first meeting other than to agree that further meetings were "imperatively necessary" and to select NARB's Paul King as Chair.[115] King also "performed the duties of secretary without complaint."[116] Hunt described King's "genius for organization, mastery of detail, and restrained patience in conducting meetings," as having been potent factors in the later success of the NBC.[117]

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[112] *Our President's Message*, *supra* note 112, at 1.

[113] Reuben G. Hunt, *The National Bankruptcy Conference*, 39 COM. L.J. 576 (1934); NY TIMES, *Jacob M. Lashly, Lawyer, 85, Dead; Former President of A.B.A. Was Active in St. Louis* (Oct. 3, 1967), https://www.nytimes.com/1967/10/03/archives/jacob-m-lashly-lawyer-85-dead-former-president-of-aba-was-active-in.html.

[114] Letter from Paul H. King to Harold Remington (July 12, 1932) [hereinafter King Letter], *quoted in* John D. Honsberger, *The Origins of The National Bankruptcy Conference: A Hinge-point of Change 1932–1933* at 15–16 (Sept. 1985 unpublished), http://nbconf.org/wp-content/uploads/2015/10/NBC-History-1.pdf.

[115] Hunt, *supra* note 113, at 576.

[116] *Id.* at 577.

[117] *Id.* at 576.

The NBC group next met in St. Louis in September 1932, at the same time as the Annual Meeting of the NACM, today's National Association of Credit Management, and two members of that organization joined. Over the next year the NBC assembled several times, all the while adding members, including Referees Watson Adair (NARB's second President) and Peter Olney (a future NARB President).[118] In May 1933, it abandoned its idea of a "short" bill and centered its attention "upon a complete revision" of the Bankruptcy Act.[119]

The NBC, according to Hunt, was still "simply an unofficial body of earnest, hard-working men, intensely interested in a conservative, but forward-looking, revision of the bankruptcy act to the end that bankruptcy administration" would "be improved by substantial increase in the dividends to general creditors." King had a more neutral and practical view of the "long" bill, saying that the NBC had faithfully endeavored to develop a workable proposal, "not as radical as some would have it, nor as conservative as others would wish."[120]

Whatever the NBC's charge, Paul King, the first President of NARB and, six years later, the first Chair of the NBC, appears to have had an epiphany: if Congress valued the views of NARB less than it did those of the ABA, the CLL, and similar organizations, then NARB should join forces if it wanted to effectuate change. He would write, in his letter inviting Harold Remington to join in September 1932, that the goal was to have the group be "representative," while keeping "membership of the group as small as possible" "in order to avoid protracted discussion which might result in getting nowhere."[121] King continued to keep his colleagues at NARB up-to-date. He wrote in the April 1933 issue of JNARB, shortly after Congress had snubbed NARB over the 1933 amendment, that the "group of conferees" who for the past year had "been actively engaged in preparing a draft of a proposed law," were still at work and would convene again later that month.[122] He provided further details in the October 1933 issue of JNARB, stressing that experience had shown "that without the cooperation of all of these principal groups, there isn't any

[118] *Id.* at 576–77. It is not clear why the ABA and the CLL opposed the wage-earner's and corporate reorganization provisions of the 1933 bankruptcy amendments, which NARB appears to have favored, since the groups were already working in concert under the auspices of the NBC.

[119] *Id.* at 576.

[120] *Id.* at 577–78.

[121] King Letter, *supra* note 114, at 25.

[122] King, *supra* note 108, at 100.

bankruptcy legislation."[123] The group that comprised the NBC, he said, "was good enough to ask" him to preside, and he had "been glad to contribute that much toward the good work."[124] At the moment all were "working together splendidly, harmoniously and cooperatively," and if that continued, the NBC's draft stood "a very good chance of being enacted by Congress."[125]

King's strategy was working. The CLL held its 1933 conference on Mackinac Island, concurrently with NARB's Annual Conference.[126] Frank W. Stonecipher, the CLL's immediate past President and its current Chairman of the Committee on Bankruptcy, corroborated the closeness with which the groups were working, under the auspices of the NBC, to improve the bankruptcy law.[127] He wrote that it was a "real privilege to learn first-hand something of [the] important project" of amending the bankruptcy law, and that Referee King had "made a splendid contribution" to the CLL's own bankruptcy symposium. Three CLL members spoke, on invitation, at NARB's Conference—John B. Edward, Reuben Hunt, and Frank C. Oliver.[128] Stonecipher fondly added that the referees' presence at the CLL banquet had "added not a little to the enjoyment of the occasion."[129]

Congress enacted further amendments to the Bankruptcy Act in June 1934. NARB's Annual Conference, held in Cincinnati that year, included sessions on both Section 77B which for the first time enabled corporations to

[123] Paul H. King, *The Amendatory Situation*, 8 J. NAT'L ASS'N REF. BANKR. 46, 47 (1933–1934).

[124] *Id.* at 46.

[125] *Id.* at 49.

[126] CLLA, *Past Presidents*, https://clla.org/clla-past-presidents/ (last visited Feb. 27, 2026); NCBJ, *NCBJ Past Presidents* (2025), https://ncbj.org/about/ncbj-past-presidents (last visited Feb. 27, 2026).

[127] *Past Presidents*, *supra* note 126.

[128] *Proceedings of the Eighth Annual Conference of the National Association of Referees in Bankruptcy held at Mackinac Island, Mich., July 20th, 21st and 22nd, 1933*, 8 J. NAT'L ASS'N REF. BANKR. 3, 10, 12 (1933).

[129] Frank W. Stonecipher, *The Nineteen Thirty-three Conference*, 8 J. NAT'L ASS'N REF. BANKR. 2, 2 (1933).

reorganize under U.S. bankruptcy law,[130] and the Frazier-Lemke Farm Moratorium Act, which protected farmers from foreclosure.[131]

But NARB and the NBC appear to have looked past enactment of the 1934 amendments, keeping their eyes on the prize of the more comprehensive "long" bill on which they had begun working in 1932. The October 1934 issue of JNARB, reported that a "further meeting of the conferees representing interested organizations engaged in drafting amendments to the Act which are considered advisable was held in Chicago" in late September.[132] The NBC had grown to include one future President and three past Presidents (including Paul King) of NARB, and representatives of the American Bankers Association and

[130] Corporate Reorganizations Act, Pub. L. 296, 73rd Cong., 2d Sess. (June 7, 1934). The reasons for enactment of the Section 77B reorganization proceeding went beyond the Great Depression. Before Section 77B became law, bankrupt corporations could only liquidate under the 1898 Bankruptcy Act and the only procedure by which "embarrassed corporations" could reorganize was the equity receivership, conducted before the federal district judge and not the referee. Henry J. Friendly, *Some Comments on the Corporate Reorganizations Act*, 48 HARV. L. REV. 39, 41 (1934). But recurring dicta in U.S. Supreme Court opinions in the early 20th century suggested that the equity receivership was improper unless the public good was involved (such as with a railroad) or legitimate private interests would otherwise be harmed. Corporate counsel "could not take the responsibility for advising as to a standard" that had become "so subjective and tenuous," and the federal equity receivership had become "a vehicle of dubious utility for reorganization except in the case of railroad and other public service corporations." *Id.* at 39, 40, 42, 44–45. Section 77B provided for voluntary and involuntary filings. The debtor might remain in possession rather than the court's appointing a trustee. An article in JNARB noted that the debtor in possession provisions of Section 77B had "aroused some criticism," and considered why continuing the debtor in possession might be desirable, and why it might not, previewing the debate on this issue that was held at the time of enactment of the 1938 Chandler Act. John F. Gerdes, *Corporation Reorganizations Under Section 77B*, 10 J. NAT'L ASS'N REF. BANKR. 75, 77 (1935–1936). Either the debtor or its creditors could propose a plan, which the court could confirm if it was fair and equitable and had been approved by two-thirds of each class of creditors affected by the plan. Friendly, *Some Comments*, 48 HARV. L. REV. at 40.

[131] *Cincinnati: The 1934 Conference*, 9 J. NAT'L ASS'N REF. BANKR. 3, 3 (1934–1935); Federal Farm Bankruptcy Act of 1934, Pub. L. 73-486, 48 Stat. 1289 (June 28, 1934). The farmer bankruptcy amendment, more commonly called the Frazier-Lemke Farm Moratorium Act, was held to be unconstitutional by the Supreme Court in *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935), on the ground that the five-year moratorium provided for in the Act was a taking that deprived a secured creditor of its property rights, in violation of the Fifth Amendment of the U.S. Constitution. WIKIPEDIA, *Frazier–Lemke Farm Bankruptcy Act*, https://en.wikipedia.org/wiki/Frazier%E2%80%93Lemke_Farm_Bankruptcy_Act (last visited June 10, 2025).

[132] *Cincinnati: The 1934 Conference*, *supra* note 131, at 4.

the U.S. Chamber of Commerce. "Every effort" was "being made to have the draft completed by the new year."[133]

Meanwhile, working people in addition to businesses were suffering under the severe financial downturn. One referee, Valentine Nesbit, in Birmingham, Alabama, and the district judge who had appointed him, Irwin Grubb, would not wait for Congress to enact the consumer wage-earner plan legislation that had been removed from the 1933 amendments. Grubb had appointed Nesbit as a "special referee" to handle the new Section 74 small business composition cases. Nesbit saw the possibility of using Section 74 for the working man and woman.[134] Alabamans were suffering disproportionately, with more wage-earner filings in Alabama than in New York, which had five times the population. Alabama wage-earners whose wages were garnished were being fired by their employers and many, if threatened with a garnishment, would file for bankruptcy just to save their jobs. Yet, Nesbit thought, they wanted to avoid the disgrace of bankruptcy and to try to pay their debts. They just needed their jobs and some "breathing room" to do so.[135] Judge Grubb concurred. He had consulted with business leaders and lawyers about the high number of bankruptcy filings in the state and had concluded that wage earners, who comprised the majority of bankruptcy filers in Alabama, "would pay their debts if given the chance."[136]

Nesbit used the 1933 composition amendment, designed for businesses, to create his wage-earner plan proceeding. The debtor under Section 74 would propose a plan for payments to both secured and unsecured creditors over time.[137] Nesbit would consider whether to approve these wage earners' payment plans in what he called a "debtors' court," rather than a bankruptcy court, with its incumbent stigma.[138] Majority rather than unanimous creditor assent to the plan was required. Nesbit estimated that the court's involvement in the matter took from four to seven minutes.[139] Occasionally, a creditor would object. "In those cases, Nesbit would dispense justice and equity 'as he saw fit,' confirming proposals that he considered fair for all concerned."[140]

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[133] *Id.*

[134] Timothy W. Dixon and David G. Epstein, *Where Did Chapter 13 Come From and Where Should it Go?*, 10 AM. BANKR. INST. L. REV. 741, 748 (2002).

[135] *Id.* at 748–49.

[136] *Id.* at 748.

[137] *Id.* at 750–51.

[138] *Id.* at 759.

[139] *Id.* at 751.

[140] *Id.*

Under a plan, "the debtor was entitled to a living for himself and his family, and 'if there [was] anything left' it would be divided among the creditors, who would not be permitted to take a man's living." Nesbit was not starry-eyed. He thought that both the wage earners and their creditors were responsible for the bad debts—the wage earners for spending beyond their means, and the creditors for extending credit to those who were not likely to repay.[141] But a debtor, he would later testify, "owes a social obligation to society to provide for his family."[142]

Even Nesbit would acknowledge that he was pushing the envelope. His procedure found its statutory basis in Section 74 only by a creative construction.[143] But it was generally liked both by creditors, because it made debt collection easier, and by debtors for the debt relief and the dignity it afforded them. Some debtors sent Nesbit "thank-you" letters.[144] Little was said of Nesbit's creation in the pages of JNARB in the first years following his establishment of his "debtors' court," whether because he preferred not to draw attention to it, or because NARB preferred to keep a low profile about what he was doing, or for some other reasons.

The ongoing economic depression remained in the forefront in 1936, when JNARB would also recognize the 10th Anniversary of its first Annual Conference. President Peter Olney in his understated address said that 1936 was "a most interesting and fascinating time in which to be a Referee in Bankruptcy." A break-out text box at the bottom of the same page of JNARB announced: "It's DETROIT in 1936 September 14th, 15th and 16th *We're Going Home*."[145] In a touch of sentiment, the 10th Anniversary conference would be held not only in the same city, Detroit, but in the same hotel—the Book-Cadillac Hotel—as was the first conference.[146]

NARB and the other organizations that comprised the NBC continued to make progress toward comprehensive bankruptcy reform. The July 1936 issue of JNARB reported that Congressman Chandler, chair of the key

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[141] *Id.* at 748–49.

[142] *Id.* at 748 (quoting *An Act to Establish a Uniform System of Bankruptcy Throughout the United States: Hearings on H.R. 1981 Before the Subcomm. on Bankruptcy and Reorganization of the House Comm. on the Judiciary*, 75th Cong. 33, 29 (1937) (unpublished) (testimony of Valentine Nesbit)).

[143] Dixon & Epstein, *supra* note 134, at 750.

[144] *Id.* at 754.

[145] *Our President's Message*, 10 J. NAT'L ASS'N REF. BANKR. 105, 105 (1935–1936).

[146] *Our "Homecoming" Conference – Detroit September 14–16th*, 10 J. NAT'L ASS'N REF. BANKR. 123, 123 (1935–1936).

subcommittee in the House, "having charge of the general amendatory bill, commonly known as the Chandler Bill," had suggested that the drafting committee of the NBC prepare a redraft of its bill "giving consideration to the various suggestions" made at the congressional hearing. The NBC had done so, and Chandler had then reintroduced the bill in the House. While no action had been taken on it in the current session, present plans were to have the bill promptly reintroduced in the next Congress.[147]

The significance of the NBC and NARB's role in its founding and its subsequent efforts were not lost on NARB's Secretary, Herbert Bierce, even before the Chandler Act passed. Bierce wrote in JNARB in late-1937 that NARB's creation of a Special Conference Committee, "the general purpose of which was to offer the association's services to any responsible organization interested in amending the Bankruptcy Act," had facilitated the organization of the NBC. Bierce opined that, while the work of the NBC was nearly completed, it was desirable that "some sort of clearing house" remain. To Bierce, "no better service to the country in this respect" could "be rendered than by placing the National Bankruptcy Conference upon some sort of permanent basis" and it would be very proper, he believed, that NARB "take active steps to that end."[148]

Senate hearings were held on the Chandler Bill on January 19, 1938. JNARB reported that the NBC's witnesses included the NBC's chairman King, other referees, and the members of the other organizations with which NARB had allied over the bill. Referee Valentine Nesbit of Birmingham, whose wage-earners' plan procedure would soon become Chapter XIII, also testified. The Chair of the House Judiciary Committee "appeared for the purpose of indicating his interest" and Congressman Walter Chandler "was in constant attendance." The objections to passage focused on Chapter X for the reorganization of large, public corporations, "being the redrafting of the present § 77B." Some amendments to "Chap. XIII, regarding wage earner amortization, were presented by Referee Nesbit" and by a representative of the NACM.[149]

The Chandler Bill passed in the House by unanimous vote on August 10, 1937. It passed the Senate on June 10, 1938. JNARB called it the culmination of six years of effort "on the part of those interested in the revision of the Bankruptcy Act which was accomplished through the informal organization styled the national bankruptcy conference." The members of NARB may "feel gratified over its effective participation," JNARB reported.[150]

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[147] *Congressional Action*, 10 J. NAT'L ASS'N REF. BANKR. 134, 134 (1935–1936).

[148] *Secretary's Report*, 12 J. NAT'L ASS'N REF. BANKR. 4, 6 (1937–1938).

[149] *The Congressional Situation*, 12 J. NAT'L ASS'N REF. BANKR 90, 90 (1937–1938).

[150] *The Chandler Bankruptcy Amendatory Bill Is Enacted*, 12 J. NAT'L ASS'N REF. BANKR. 124, 131 (1937–1938).

The comprehensive bankruptcy bill that NARB and the NBC's President King and other members had worked for would include both reorganization provisions for business and wage-earner plans for working people.[151]

"The Chandler Bankruptcy Amendatory Bill Is Enacted" ran the headline in the July 1938 issue of JNARB. Giving credit where credit was due, a photograph of "Referee Paul H. King, Detroit" followed. King, the photo caption read, "by his tenacity, good humor and perseverance" had "guided the affairs of the conference to a successful conclusion." He was able to "father" the NBC, and "keep it actively functioning and make it productive of results," aided by numerous other referees, lawyers, and groups.[152] Even in the "dark days" he "held firmly to the need for a revision of the Act which would correct old evils and meet new conditions."[153]

By the time the bill passed, both District Judge William Irwin Grubb and Referee Valentine Nesbit were dead. Grubb died of a heart attack in October 1935, while preparing to leave home for church with his wife.[154] Valentine Nesbit died in February 1938, four months before passage of the Chandler Act.[155] Nesbit, with the encouragement of Grubb, had created his wage-earner plan proceeding two years after it was suggested in the 1931 pages of JNARB. He had done so by use of the business composition amendment, Section 74, that was part of the 1933 Act that had so disappointed NARB and King in 1933, including because the Act had failed to include a wage-earner plan provision.

New York City was the site of NARB's 1938 Annual Conference. Much in the spirit of the first, conferees were asked to: "Please arrive Sunday and promptly make yourself known. This will be a splendid opportunity to renew acquaintances and to become acquainted." The pages of JNARB devoted to the upcoming meeting included photographs of the recently completed Rockefeller Center (1933), Radio City Music Hall (1931), George Washington Bridge (1931), and Empire State Building (1931). The Annual Conference was held at The Commodore Hotel, at the Grand Central Terminal railroad station.[156]

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[151] *Id.* at 124.

[152] *Id.*

[153] *Id.*

[154] WIKIPEDIA, *William Irwin Grubb*, (Jan. 21, 2025), https://en.wikipedia.org/wiki/William_Irwin_Grubb (last visited Jan. 21, 2025).

[155] Dixon & Epstein, *supra* note 134, at 759.

[156] *It's New York – In August*, 12 J. NAT'L ASS'N REF. BANKR. 97, 97–98 (1937–1938).

Rooms were $3.50 to $5.00 for a single or $5.00 to $8.00 for a double, and all boasted "private bath and circulating ice water."[157]

There were no longer any women referees by the time the Chandler Bill passed and the conference met in New York in 1938. Felice Cohn (D. Nev.) was not reappointed in 1934, likely because of her refusal to testify in a case called *Owl Drug*.[158] Mary L. Trescott (M.D. Pa.), the last of the early group, had died in 1935.[159] Not until 1959, when Arline M. Rossi (S.D. Cal.) was appointed, would there be another.[160]

Paul King lived to see the passage in 1938 of what he had called the "long" bill in the pages of JNARB in 1932. But not by much. He died in 1942. King, as the first President of NARB and the first Chair of the NBC, had played a key role in establishing the vibrant and enduring life of both conferences and in the passage of the "long" bill that he had aimed for in 1932. His obituary in the New York Times lauded him as one of Detroit's leading lawyers and as the former president of the International Society for Crippled Children, which he had somehow also found the time to lead from 1937 to 1938, while the Chandler Act was nearing passage.[161] His memorial in JNARB was several pages long. Among other tributes, District Judge Arthur J. Tuttle, who had appointed King, called him "modest and unassuming," yet he "must have known that he had great ability or he would not have taken a laboring oar and done all the work in connection with all these things with which he was associated." Judge Tuttle did not know when he had "been so shocked and grieved by the death of anyone outside of" his "own family circle as in this loss of Paul."[162]

NARB and the referees, though, continued with the work that they with King had begun. When the NBC met in Philadelphia after King's death in 1942, it selected as its Chair Referee Peter B. Olney, another former President of NARB, to succeed King, and Referee Fred H. Kruse as Secretary. JNARB reported to its members that the NBC had prepared "amendments to Chap. 11

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[157] *Id.* at 97.

[158] NCBJ, *Women in Bankruptcy* (March 1, 2024), https://ncbj.org/women-in-bankruptcy/. Cohn might also have been less than sanguine by the district court's cutting her commissions in half and not approving her expenses including for a stenographer. *See In re* Owl Drug Co., 16 F. Supp. 139, 150, 155 (D. Nev. 1936).

[159] WIKIPEDIA, *Mary Luella Trescott*, https://en.wikipedia.org/wiki/Mary_Luella_Trescott (last visited Dec. 15, 2024).

[160] *See Women in Bankruptcy*, *supra* note 158.

[161] NY TIMES, *Paul H. King Dies; Detroit Attorney* (May 19, 1942), https://www.nytimes.com/1942/05/19/archives/paul-h-king-dies-detroitttorney-once-served-as-president-of.html.

[162] *Paul H. King: 1879–1942*, 16 J. NAT'L ASS'N REF. BANKR. 1, 115–16, 119 (1941–1942).

especially and several to the Act generally for possible Congressional consideration."[163]

Herbert Bierce, a founder and tireless officer of NARB, in his 1952 "Valedictory" on stepping down as President, would pick up where he had left off in 1937. Bierce gave NARB primary credit for the Chandler Act, and for the formation of the NBC that had been key to its passage. "Our Referees," wrote Bierce, "have had a direct part in securing these amendments by considering proposals and needs at our conferences, as well as action taken." "The earliest suggestion leading to a national conference of representative bodies came from us," Bierce continued, "culminating in the organization of the National Bankruptcy Conference, so well led by its leaders, first the late Referee Paul H. King, followed by Referee (retired) Peter B. Olney, and now by Referee Samuel C. Duberstein."[164] Several other referees had "served most ably in the N.B.C. work," and NARB had become associated with other "vitally interested organizations" and "their leaders in bankruptcy thought."[165]

V. Hard Times for NARB: World War II, the Referees' Salary Act of 1946 and the Post-War Years

Bankruptcy filings rose in what Studs Terkel would call the "hard times" of the 1930s Great Depression.[166] Bankruptcy law was rewritten and the "bankruptcy bar came into existence."[167] More referees were appointed to full-time positions (though the number of referees nationwide declined, likely because of fewer part-time referees). Respect for the referees was increasing. "The referee became the bankruptcy expert in the territory he served."[168]

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[163] *Proceedings of the New Orleans Conference (Concluded from the October Issue)*, 17 J. NAT'L ASS'N REF. BANKR. 1, 43, 46 (1942–1943); *Report of the Special Conference Committee*, 17 J. NAT'L ASS'N REF. BANKR. 66, 66 (1942–1943).

[164] *Valedictory*, 26 J. NAT'L ASS'N REF. BANKR. 97, 97 (1952). Referee Samuel C. Duberstein, in addition to having the distinction of chairing the NBC, was Bankruptcy Judge Conrad Duberstein's uncle. Samuel was also a professor at law at St. John's, and Conrad as a law student there took his uncle's bankruptcy class. *Transcript of Interview of Conrad Duberstein by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (May 4, 1994) at 2, 17, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.

[165] *Valedictory*, *supra* note 164, at 97.

[166] STUDS TERKEL, HARD TIMES: AN ORAL HISTORY OF THE GREAT DEPRESSION (Pantheon Books 1970).

[167] *The Old Order Changeth*, 16 J. NAT'L ASS'N REF. BANKR. 82, 82 (1941–1942).

[168] *Id.*

When filings fell in the 1940s, though, NARB and the referees had their own hard times. In an April 1942 article titled "An Old Order Changeth!," JNARB reported that with "a decrease in the number of filings and with the larger corporate reorganizations effected and out of the way," the referees had to adjust. They faced reduced incomes, and many who had subordinated their law practices to their referee work found it "difficult to rebuild them." Those who met with such a reduction in the number of cases referred to them could "hardly afford to maintain personnel and a complete library." Still, their responsibilities remained and were "being met in these changing times."[169]

The drop in bankruptcy case filings began in 1942 and by 1945 was precipitous. In 1926, the year in which NARB was formed, about 47,000 cases filed. During the depression of the 1930s that number peaked at about 70,000. Annual filings from 1926 through 1942 averaged about 57,000 and ranged from 46,000 to 70,000. Case filings began falling after that, to about 52,000 in 1943 and 35,000 in 1944. In 1945, only 12,862 cases filed, *one-fifth* of the 1926–1946 average. The number in 1946 (10,196) was lower still.[170]

None of this was a puzzle. People were earning again. Manufacturing wages increased by about 70% from 1940 to 1943, and the minimum wage rose by 60% from 1938 to 1945.[171] Dynamite Garland, one Terkel's Hard Times interviewees, spoke of her family's grim financial condition as a child during the Depression. After she married, her husband was making $14 a week. Then the war broke out and "we jumped to $65 a week, working in a defense plant . . . Wow! Boy were we rich."[172] Harry Terrell, an Iowa farmer, told Terkel: "Much as I hate to say it, the Second World War *did* end the Great Depression."[173] More prosperity followed the war's end. The U.S. unemployment rate was 1.9% in 1945 and remained under 4% through 1948.[174] And people were careful

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[169] *Id.*

[170] FEDERAL JUDICIAL CENTER (FJC), *Caseloads: Bankruptcy Cases, 1899–2017*, https://www.fjc.gov/history/work-courts/caseloads-bankruptcy-cases-1899-2017 (last visited Feb. 27, 2026).

[171] *Before Special Senate Subcommittee of Wartime Health & Education (Committee on Education & Labor) (statement of Arthur J. Altmeyer, Chairman, Social Security Board)* (January 28, 1944), https://www.ssa.gov/history/aja144.html (last visited Feb. 27, 2026); U.S. DEPARTMENT OF LABOR, *History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938–2009*, https://www.dol.gov/agencies/whd/minimum-wage/history/chart (last visited Feb. 27, 2026).

[172] TERKEL, *supra* note 166, at 95.

[173] *Id.* at 216.

[174] JAMES T. PATTERSON, GRAND EXPECTATIONS: THE UNITED STATES, 1945–1974 at 62 (1996).

to live within their means, "with vivid memories of the Depression years, when it had been easy to fall over the cliff into ruin."[175]

The fee system imperiled the referees' compensation during good times when filings decreased. It also discouraged referees from active involvement in some of their cases, "since spending additional time on a case would only make sense if it produced substantial new assets and thus additional fees."[176] It fostered unsavory practices. Referee Asa Herzog (S.D.N.Y.), in his 1993 oral history, said that because the referees' livelihoods depended on a good case, they "got friendly with the Clerks of the Court who made the reference."[177] When "a juicy case came along, they referred it to a particular referee." Whether the Clerk got a kickback or not, Herzog didn't know.[178]

And the nation was at war, as was much of the world. From the United States' entry into World War II in 1941 to the end of the war in 1945, over sixteen million Americans served in the armed forces.[179] More than 400,000 Americans were killed and over 600,000 were wounded. The referees and their employees were volunteering for or being drafted into the military. JNARB

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[175] *Id.* at 63.

[176] David A. Skeel, Jr., *The Genius of the 1898 Bankruptcy Act*, 15 BANKR. DEV. J. 321, 326, 337 (1999).

[177] *Transcript of Interview of Asa Herzog by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (Oct. 21, 1993) at 16, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories [hereinafter *Herzog Transcript*].

[178] *Id.* at 16. At least one district, the Southern District of New York, made matters worse by depriving the referees of the upside of the fee system. The court capped the commissions that a referee might earn at $20,000 per year, in apparent contravention of the Bankruptcy Act which had no cap. *Id.* at 15; Chandler Act of 1938, § 40 One referee heard that in New York they had said that "you are not going to make more than the District Court Judges." *Transcript of Interview of Joseph Patchen by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (Nov. 18, 1993) at 15, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories. Matters came to a head when the referee in the *International Match* case, Oscar Ehrhorn, earned statutory commissions of about $80,000, and kept the money notwithstanding the district court's rule. After the district ordered Ehrhorn to turn over his commissions, he took his case to the Court of Appeals and lost. *In re* International Match Corp., 190 F.2d 458, 460 (2d Cir. 1951). He went to the U.S. Supreme Court, where he lost again. "They turned him out of his job, and they sued him and they recovered it," Herzog related. *Id.* at 15.

[179] WIKIPEDIA, *Military history of the United States during World War II*, (Dec. 7, 2025), https://en.wikipedia.org/wiki/Military_history_of_the_United_States_during_World_War_II (last visited Dec. 7, 2025); WIKIPEDIA, *Demographic history of the United States*, https://en.wikipedia.org/wiki/Demographic_history_of_the_United_States (last visited Nov. 12, 2025).

regularly published a list of referees "In Military Service." Some of them resigned their referee positions, while others obtained leaves of absence.[180]

NARB's dues and membership dropped during the war. The members of NARB in the military who remained referees received no case "references, of course," and were "carried as in good standing although not actually paying dues" to the association.[181] In 1942–1943, Secretary Herbert Bierce would report, there was the additional loss incident to the non-payment of dues by twenty-five members, who were dropped under the provisions of NARB's Constitution, while several more remained delinquent. The reorganization of "the bankruptcy setup in a few federal districts," by which part-time referees were pushed out and jurisdictional territories were reassigned, had further reduced the number of referees and thus members.[182]

If all the members who owed their dues would pay them by the close of the fiscal year, Bierce continued, NARB could probably close its books with a small balance. If not, it would need to look to "next year's receipts in order to pay our obligations for the year." The outstanding obligations were the cost of publishing the most recent issue of JNARB, printing the programs for the Annual Conference, and other "usual" expenses. NARB was also "unable to respond to the appeal for a contribution to the expense of the National Bankruptcy Conference" that year, "but should arrange to do so this coming year."[183] No Annual Conference was held in 1943, due to wartime restrictions, and likely also NARB's decline in membership and financial straits.[184] The prospects for the forthcoming year were such that NARB would "need to curtail expenses in some particular or secure additional funds."[185]

JNARB reported in 1944: "Unquestionably these are trying days for our referees in bankruptcy."[186] The 1938 Chandler Act, for all its improvements to substantive bankruptcy law, had done little to increase the fees of the referees. The referees' fees were augmented only by the addition of a one-half percent commission on debts whose maturity was to be extended and on debts to be paid in full. And the 1938 Act had added a proviso that the referee's district judge could, "by standing rule or otherwise, fix a lower rate of compensation,

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[180] *See, e.g.*, *In Military Service*, 16 J. NAT'L ASS'N REF. BANKR. 128, 128 (1941–1942).
[181] *Proceedings of the New Orleans Conference*, *supra* note 163, at 44.
[182] *Id.*
[183] NCBJ, *NCBJ Past Presidents* (2025), https://ncbj.org/about/ncbj-past-presidents.
[184] *Id.*
[185] *Proceedings of the New Orleans Conference*, *supra* note 163, at 45.
[186] *This Issue*, 18 J. NAT'L ASS'N REF. BANKR. 98, 98 (1943–1944).

so that no referee shall receive excessive compensation during his term of office."[187]

Not since 1919 had there been so few filings. In 1944, JNARB also noted that without filings and the commissions they generated, the referees made no money. Full-time referees in the cities, with larger staffs, were reorganizing their offices "due to calls into the military service for men and women" and decreased commissions. The part-time referees confronted the same problems while also having to give "special attention to their law practices" to make ends meet.[188]

The editors of JNARB urged that there was "a positive need for holding a conference" in 1944, as the conference had not been held in 1943. New problems must be considered. "We must prepare," the editors continued, "for the post-war duties which will come to us."[189]

Yet NARB's problems worsened. Secretary Bierce in October 1944 wrote in JNARB that the "membership situation" called "for serious consideration." The number of referees continued to shrink as the reorganization of the referee "set-up" continued. Other referees "resigned owing to reduced revenues from their bankruptcy work," and with the reduction in filings in every district, it was "not easy to induce a newly appointed referee to become a member." NARB, Bierce suggested, had "lost, also, in prestige" by not holding the Annual Conference in 1943.[190]

The 1944 return of the Annual Conference, held in Toledo, Ohio, did little to help. It was lightly attended notwithstanding the hiatus. A "larger attendance of our referees was in order," Bierce wrote in 1945, opining that the absentees would realize "what they missed."[191]

NARB Secretary Bierce himself was feeling the financial pinch of too few cases and too few fees. His declining income "as a referee with a very small number of references" necessitated his giving more attention to his law practice. Noting that he had served for eighteen years as Secretary and saying that NARB's finances were "right now in satisfactory condition," he asked that he be relieved of his office.[192]

Bierce would reconsider. The membership voted to separate the editorship of JNARB from the office of Secretary-Treasurer, and Bierce stayed

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[187] Chandler Act of 1938, ch. 575, Pub. L. No. 75-696, § 4, 52 Stat. 840.
[188] *This Issue*, *supra* note 186, at 98.
[189] *Id.* at 98.
[190] *Treasurer's Report*, 19 J. NAT'L ASS'N REF. BANKR. 4, 4 (1944–1945).
[191] *The Secretary Opines*, 19 J. NAT'L ASS'N REF. BANKR. 2, 2 (1944–1945).
[192] *Treasurer's Report*, *supra* note 190, at 6.

on in the latter capacity.[193] Two years later he began his third decade as Secretary. The July 1946 issue of JNARB yet again stated in its masthead: "Address communications and remit subscriptions to Herbert M. Bierce, secretary, Winona, Minn."[194]

An obvious solution to many of these problems was for the federal government to put the referees on salary. The Referees' Salary Act of 1946, or some version of it had been in the works for years. Not all the referees were for it, as the DOJ's Lloyd Garrison had recognized fifteen years earlier at NARB's 1931 Atlantic City conference.[195] But the pressure for the bill had increased during the war and hearings on it were held in Congress. Herbert Bierce wrote of the bill in JNARB in 1942, just before filings began their steep decline. NARB had "taken no official action as to the bill, in keeping with its traditional attitude" that the referees would not express themselves formally as to any proposed legislation which concerned them personally. Bierce said that "if there are referees who personally are opposing the measure, their effort in that respect is offset by other referees who are favoring it." He stressed that he was writing "in an individual capacity only,—as a lawyer with a general practice; as a referee of nearly a quarter century's experience serving in an agricultural district mainly, similar to the large majority of referees." Bierce thought that calling it "the referees' bill" was a misnomer. It "was not drafted to favor referees," although there were provisions beneficial to them, such as the security of tenure of office and the retirement features. Rather, the proposed new law provided for "a marked reduction in the number of referees so that, as far as possible each referee may devote his entire time to his work, and receive a prescribed salary." These, he thought, were its basic purposes.[196]

JNARB reported regularly on the progress of the Salary Act.[197] The legislation was supported by the NBC, which appears to have used its leverage to insist on federal pensions for the referees as a condition for its backing.[198] NARB's Committee on Legislation had early deferred on the issue to NARB's Special Conference Committee, which was essentially the liaison between

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[193] Russell L. Hiller, *A Conference History—50 Years in Retrospect, by National Conference of Bankruptcy Judges 1926–1976*, 51 AM. BANKR. L. J. 31, 48 (1977).

[194] *The Bankruptcy New Era*, 20 J. NAT'L ASS'N REF. BANKR. 98, 98 (1945–1946).

[195] Referees' Salary Act of 1946, Pub. L. 464, 60 Stat. 323. *See also supra* Part I, Section IV (Garrison's remarks at the conference).

[196] Herbert M. Bierce, *Pending Legislation Reorganizing the Bankruptcy Courts*, 16 J. NAT'L ASS'N REF. BANKR. 91, 91 (1941–1942).

[197] *See, e.g.*, *Referees' Salary Bill: The Senate Debate*, 20 J. NAT. ASS'N REF. BANKR. at 105, 106 (1945–46).

[198] *Report of Special Conference Committee*, 17 J. NAT'L ASS'N REF. BANKR. 66, 66 (1942–43).

NARB and the NBC and the other associations with which NARB had allied in the 1930s.[199] The Special Conference Committee, "neither advocated nor opposed" the measure, in "accordance with the policy of this association," but likely also because of the split among its member-referees.[200] In the end, the bill had strong support, from the NBC (which included four prominent NARB members among its ranks), the CLL, the ABA, the SEC, and the Attorney General of the United States.[201]

Shortly after War's end the referees became government employees under the Referees' Salary Act of 1946, achieving a measure of independence and job security they had never before had under the 1898 Act.[202] The Salary Act required, for a referee's appointment, the concurrence of all the judges of the district (rather than by a single judge to whom the referee had always been beholden), extended the referee's term from two to six years, and required cause for removal before the end of the referee's six-year term. The referees and their office staff were paid federal salaries and were brought into the federal Civil Service retirement system.[203] Charles Horsky, who had served as Director of the U.S. Attorney General's committee that had pushed for enactment of the bill, and who had witnessed Truman signing it, would write: "Full-time, salaried positions should by themselves attract men of competence."[204] The bill also contained "strong precatory language in favor of full-time referees."[205]

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[199] *Id*.

[200] *Id*.

[201] *Referees' Salary Bill*, *supra* note 197, at 106.

[202] Referees' Salary Act of 1946, Pub. L. 464, 60 Stat. 323 (1946); 1 William L. Norton, Jr. & William L. Norton III, *Norton Bankruptcy Law and Practice* § 1:18 (2009). The pre-1946 referee system was so haphazard that when the referees were made salaried employees of the U.S. government in 1946, the Administrative Office of U.S. Courts did not even have a list of their names or know how many there were. James W.M. Moore & Philip W. Tone, *Proposed Bankruptcy Amendments: Improvement or Retrogression?*, 57 YALE L.J. 683, 684 (1948).

[203] Charles A. Horsky, *The Salary Bill of 1946*, 52 COM. L.J. 7, 8 (1947).

[204] *Id*.

[205] *Id*. at 8 n.5.

President Harry S. Truman Signing the Referees' Salary Act of 1946
June 28, 1946 [206]

Whatever the reasons for passage—whether to address the problem of the referees' shrinking revenues, or to provide them with some security of tenure and income, or to reduce their number, or to remove their financial interest in cases—the editors of JNARB called it "The Bankruptcy New Era."[207] In the "New Era," the number of referees would likely be further reduced, and

[206] This photograph was published in JNARB under the caption "PRESIDENT TRUMAN SIGNS BILL," accompanying an article recounting passage of The Referees' Salary Act of 1946, H.R. 4160, by which Congress reorganized "the referee set-up" and established a salary basis of compensation." Truman signed the bill into law on June 28, 1946. This version of the photograph is from the Truman Presidential Library, available at https://www.trumanlibrary.gov/photograph-records/59-1210. Those gathered round President Truman to witness the signing are *(Left to right):* Cong. Sam Hobbs (Ala.); Ernest L. Geeslin, assistant chief of bankruptcy division, Administrative Office of U. S. Courts; Cong. Chauncey W. Reed (Ill.); Edwin L. Covey, Chief, bankruptcy division, Administrative Office; Charles Horsky (rear), director of Attorney General's committee on bankruptcy administration; Sen. James Huffman (Ohio); Leon Frechtel, assistant director of Attorney General's committee; Elmore Whitehurst, Assistant Director of Administrative Office; Miss Velma Smedley, clerk of House judiciary committee, and Cong. Martin Gorski (Ill.). *The Bankruptcy New Era*, 20 J. NAT'L ASS'N REF. BANKR. 98, 99 (1945–1946).

[207] *The Bankruptcy New Era*, *supra* note 206, at 98.

the trend toward full-time referees would likely continue.[208] And a referee with the more lucrative cases under the fee system would make the same salary as a referee with smaller cases.

In the short term, the Referees' Salary Act of 1946 and the changes to the bankruptcy "set-up" appear to have further weakened NARB. Edmond E. Talbot, NARB's President, wrote in his April 1947 message to members that if the recommendations of the Administrative Office of the United States Courts (AOUSC) were carried into effect in July of that year, "the number of surviving Referees" would be 166, only forty-nine of whom would be full-time, "a reduction of approximately fifty percent in the number of Referees in our judiciary system." Such a reduction presented "a very grave problem as to the future" of NARB.[209]

Talbot's dire predictions proved true. About 200 referees had not been reappointed as of July 1947. "Consequently," Hiller would later write, "there passed from the scene many men of long and faithful service in bankruptcy administration, some of whose service dated back as far as 1902."[210] Secretary Bierce reported later in 1947 that NARB's "losses due to non-payment dues because of impending changes" in the law "were more than usual." The heaviest reductions in membership, though, were from referees who retired from office "due to the new Act and who probably" would "not continue their memberships" (though they were permitted to do so under NARB's Constitution).

The remaining members of NARB "now face[d] the task of rebuilding this organization." Its twenty-one years of existence had "clearly demonstrated its value and need," and there remained in the future "an opportunity for real service in the interests of adequate and efficient administration of the Bankruptcy Act."[211] "A Referee of long standing, serving in a metropolitan area," and "nationally known for his activities in bankruptcy work," wrote: "There should be a conference of Referees this year. They are disturbed and somewhat confused. Now is the time they need an interchange of opinion and some advice and encouragement."[212] Yet just 156 active referees remained in office, only forty-seven of whom were full-time. And only thirty-eight of them were members of the association, *one-sixth* of the membership in 1927.[213]

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[208] *Id*.
[209] *President's Message*, 21 J. NAT'L ASS'N REF. BANKR. 69, 69 (1947).
[210] Hiller, *supra* note 193, at 46–47.
[211] *Secretary's Report*, 22 J. NAT'L ASS'N REF. BANKR. 4, 4 (1947–1948).
[212] *The 1947 Conference*, 21 J. NAT'L ASS'N REF. BANKR. 102, 102 (1947).
[213] *The Buffalo Conference*, 2 J. NAT'L ASS'N REF. BANKR. 6, 6 (1927–1928); *Secretary's*

NARB's troubles and the nationwide post-war economy also were weakening the two legs that had supported it since its formation—JNARB and the Annual Conference. Subscriptions to JNARB, the publication of which kept NARB's members informed of developments in bankruptcy law and practice nationwide, continued to shrink. The number of copies printed of each issue had fallen below 1,000 and the task of securing subscriptions, wrote Bierce, was burdensome. And no invitation from a metropolitan center to hold the Annual Conference had been received. "Each Referee approached had valid reasons for asking that the choice of his community be deferred." The post-War hotel situation "remained acute" and though conventions were accepted, many cities were not yet encouraging them. NARB was "fortunate in being able" to hold the 1947 Conference at Cedar Point (Sandusky), Ohio.[214] The members, said Bierce, would need to finance the conference "wholly ourselves" including by paying an additional charge for "special meals."[215]

Other adverse developments would hamper the referees in their work. NARB at its 1948 Annual Conference noted that the American Bankruptcy Reports had ceased publication during the war years, likely due at least in part to the decline in bankruptcy filings[216] "The absence of a publication to report bankruptcy court decisions was deemed a major handicap and discussions were held in an endeavor to find a solution."[217]

The pages of JNARB still stressed the importance and broad scope of the referees' work. Referee Samuel Duberstein, in his 1948 article published in JNARB, titled "Bankruptcy—Its Future!," would assert that bankruptcy law was dynamic and "more than a scholastic exercise." It dealt "with the grim, cold realities of life—although, occasionally, as upon the final granting of a discharge or the confirmation of an arrangement, one senses the emotional warmth of a heartfelt, sympathetic expression of accomplishment and gratitude." Our country, Duberstein continued, had been blessed "with an

Report, *supra* note 211, at 4.

[214] *Secretary's Report*, *supra* note 211, at 4.

[215] *Id.* at 5.

[216] Hiller, *supra* note 193, at 47. American Bankruptcy Reports was a bankruptcy reporter "purporting to cover the field, completely, of Federal, Referee, and State cases under the Bankruptcy Act of 1898." Early editors included William M. Collier. *Book Reviews*, American Bankruptcy Reports, Annotated, Volume V, 1 S. L. Rev. 394 (Oct. 1901). The "old series," which ran from 1899–1923 (49 volumes), and the "new series," which ran from 1924–1945 (57 volumes), are available at https://heinonline.org/HOL/Index?index=bank/ambrean&collection=bank. The 1948 conferees would further note that: "The only other service then available was a loose leaf service of Commerce Clearing House, entitled the Bankruptcy Law Reports, reporting in digest form." Hiller, *supra* note 193, at 47.

[217] Hiller, *supra* note 193, at 47.

inspired Constitution, wise Congressional enactments and sagacious Court interpretations." These were "sufficiently powerful to abolish imprisonment for debt and economic servitude," all in "the attempted fulfillment of the Golden Rule." "The future," Duberstein concluded, "should be even greater than the past."[218] A few years later, JNARB would republish Professor Albert Hill's article, "The Erie Doctrine in Bankruptcy." Hill wrote of the breadth of the constitutional power of Congress (and of bankruptcy judges under the bankruptcy statute) to alter state law and of "the demonstrated capacity for growth and adaptation" which was "inherent in the bankruptcy power." He argued that the bankruptcy power was limited only by several other provisions of the Constitution, such as the due process clause, and by the few things that had "nothing to do with bankruptcy," such as granting a divorce to a man whose chief liability was his wife. Hill called it "unlikely that Congress, under the bankruptcy power, could authorize the court to do so."[219]

Membership in NARB would stabilize and then rebound. By 1950, the number of referees had increased only slightly to 161, but NARB's membership efforts were successful. Active membership in NARB had grown to 130 active members—not 1927 numbers, but a lot better than the 38 in 1947. NARB's new Secretary, Archie Cohen, wrote that the association's task was "to enroll every active Referee," which he was confident could be achieved.[220] The association chose Detroit—the site of its first conference and its 10th anniversary conference—for its 25th anniversary conference in 1951.[221] By 1955, membership had risen slightly, to 133.[222]

At the same time, the reduced numbers of referees were handling an ever-growing caseload. Annual bankruptcy filings tripled from the 1946 low, to 33,392 in 1950. In 1955, they reached 59,404, a Depression-era level notwithstanding a general economic prosperity.[223]

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[218] Samuel C. Duberstein, *Bankruptcy—Its Future!*, 22 J. NAT'L ASS'N REF. BANKR. 113, 113 (1948).

[219] Alfred Hill, *The Erie Doctrine in Bankruptcy*, 27 J. NAT'L ASS'N REF. BANKR. 107, 111 (1953) (reprinted from 66 HARV. L. REV. 1013–50 (1953)).

[220] *Treasurer's Report*, 25 J. NAT'L ASS'N REF. BANKR. 4, 4 (1951). Cohen was described as "a worthy successor to genial and reliable Herbert M. Bierce," who had finally successfully stepped down from the job of Secretary after 23 years. *Id.* at 8. Bierce did not ride off quietly into the night but became Vice-President of NARB. *The President's Message*, 25 J. NAT'L ASS'N REF. BANKR. 65, 65 (1951).

[221] *The President's Message*, *supra* note 220, at 65.

[222] *Secretary-Treasurer's Report*, 30 J. NAT'L ASS'N REF. BANKR. 31, 31 (1956).

[223] FEDERAL JUDICIAL CENTER (FJC), *Caseloads: Bankruptcy Cases, 1899–2017*, https://www.fjc.gov/history/work-courts/caseloads-bankruptcy-cases-1899-2017 (last visited

The economy continued to improve into the 1950s and 1960s, yet paradoxically bankruptcy filings remained high. Fewer referees were handling higher caseloads in an increasingly complex economy. NARB President Frank C. Kniffin, in his Salutatory Message in 1958, said that:

> After the greatest boom in our history, and it's slowing down, we find the economy of the Nation in a period of transition. Drastic shifts in the competitive status of all forms of commerce are now well underway. Referees realize that they are to be faced with a progressively increasing number of new cases for some time to come. This condition is now being noticed to a considerable extent by the general public.[224]

But with only "164 Referees today as compared with 500 Referees twenty-five years ago," Kniffin continued, "we may experience some trying times."[225]

The Referees' Salary Act of 1946 in the short term reduced the number of referees and membership in NARB. In the longer term, though, the 1946 Act resulted in greater respect for the bankruptcy referees and their work, and for their association, in Congress and elsewhere, by further professionalizing the referees within the federal bankruptcy judiciary. Bankruptcy Judge Geraldine Mund (ret.) would write that, as the majority of referees following enactment of the Salary Act "committed to a full-time career in government service, their self-awareness and interest in controlling their situation increased greatly."[226]

Fifteen years after enactment, in 1961, Alfred P. Murrah (10th Cir.) would call the Act of 1946 "probably the most significant in the long history of bankruptcy law," because it gave the referee a six-year tenure, secured against removal without cause, and emancipation "from the hated fee system" replaced by a salary and retirement comparable to Civil Service. The question remained, he concluded, whether the Judicial Conference would recommend legislation

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Feb. 27, 2026).

[224] *President's Salutatory Message*, 32 J. NAT'L ASS'N REF. BANKR. 1, 1 (1958).

[225] *Id.*

[226] Geraldine Mund, *Appointed or Anointed: Judges, Congress, and the Passage of the Bankruptcy Act of 1978, Part One: Outside Looking In*, 81 AM. BANKR. L.J. 1, 4 (Winter 2007). United States Bankruptcy Judge Geraldine Mund (C.D. Cal.) was appointed in 1984 and presently serves on recall. She obtained her M.A. in History from California State University, Northridge, in 2007. Her excellent five-part article on the enactment of the Bankruptcy Code which began with the first installment cited in this footnote is "a slightly revised version of her thesis." *Id.* at 1, n.*. Judge Mund's sources included numerous conversations with those involved, the recordings and transcripts of which are located in the National Bankruptcy Archives at Biddle Law Library, Penn Carey Law, University of Pennsylvania.

whereby the referees would "be raised to the rank and dignity which the duty of their office justly entitled them."[227]

VI. Referees to Robes—The 1960s and the 1973 Federal Rules of Bankruptcy Procedure

Times were changing in America in the 1960s and the 1970s, not just for the nation generally but for bankruptcy law and procedure. The referees' desire for change was expressed in the pages of JNARB.

From a low of 10,196 new filings in 1946, filings rose every year but one for the next twenty years, to 192,354 in 1966 and to 208,329 in 1967 (nearly triple the number at the height of the Great Depression though the population had only grown by one-half).[228] The number of referees, though—about 220 in 1966—was less than half the 550 in 1926.[229]

The Chandler Act and the Referees' Salary Act had altered the landscape too, regarding both the substantive law and the referees' judicial status in administering it.[230] Referee Asa Herzog, who began practicing law in the 1920s, recalled that before the Chandler Act added the reorganization chapters to the Bankruptcy Act, the cases were "run of the mill."[231] "We didn't have the great big bankruptcy cases," but just "straight bankruptcies," in which the assets were liquidated and proceeds distributed.[232] All "you could do was go into bankruptcy and get a discharge," except for "one section" of the Bankruptcy Act, "about maybe 15 lines, whereby you could work out a composition of

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[227] Alfred P. Murrah, *The Referee in Bankruptcy,* 35 J. NAT'L ASS'N REF. BANKR. 97, 98 (1961). Murrah was made a district judge at the age of 32 by Franklin Delano Roosevelt, and five years later was appointed to the 10th Circuit Court of Appeals by the same President. His name was given to the federal building in Oklahoma City, destroyed in the Oklahoma City bombing on April 19, 1995. WIKIPEDIA, *Alfred P. Murrah*, https://en.wikipedia.org/wiki/Alfred_P._Murrah (last visited Oct. 21, 2025).

[228] *Caseloads: Bankruptcy Cases*, *supra* note 223; U.S CENSUS BUREAU, *Historical Population Change Data (1910–2020)*, https://www.census.gov/data/tables/time-series/dec/popchange-data-text.html (last visited Feb. 27, 2026).

[229] *Bankruptcy Referees*, CQ ALMANAC 1968, 24th ed., 12-669, https://library.cqpress.com/cqalmanac/document.php?id=cqal68-1282070# (last visited Feb. 27, 2026); *Valedictory*, 26 J. NAT'L ASS'N REF. BANKR. 97, 97 (1952).

[230] *See generally*, Bruce Grohsgal, *From Referees to Robes: The Establishment of a U.S. Bankruptcy Bench and the Battle for Article III Status as Told in the Bankruptcy Oral Histories*, 31 NORT. J. BANKR. L. & PRAC. ART. 4 (2023).

[231] *Herzog Transcript*, *supra* note 177, at 2–4, 16.

[232] *Id.* at 10.

creditors."[233] The Referees' Salary Act "incorporated the referees into the federal judiciary as salaried employees of the government, increased their term in office, and strengthened their tenure."[234] Herzog thought that, to the extent that the commission-based compensation system had encouraged unsavory favoritism in case assignments, the 1946 Salary Act had "cleaned it up."[235]

The referees' higher caseloads and aspirations and improved status and practices were at odds, though, with their day-to-day working conditions in the federal court system they served. Most did not have courtrooms until well in the 1960s. Referees in the Southern District of New York "would practice out of their own [law] offices, and each one set aside a room for hearings and each one had a clerk. They used their own secretaries."[236] Only one had "a real courtroom," and "with the others you felt that you were in a conference no matter how important it was … and it was still a conference because you sat at a library table." Morton Levine, an Atlanta bankruptcy lawyer, in his oral history would say "we had a long, long table" in the basement. "Judge Mundy, I guess he was a referee at that time and I call him Judge Mundy, he sat at the end of the table, and all the lawyers for the day, we all just sat around the table and discussed what was going on."[237] Robert Hughes, appointed in the 1960s as a referee in Oakland, California, had his courtroom in "the former office for Marine Recruitment or something" that he inherited from his predecessor referee. The Marines who were in there before had "made a room for him by cleaning out the recruiters and they just made one big room" for him.[238] Alex Paskay, who also became a referee in the 1960s, had a courtroom in which he presided. "I had a little desk in the corner for a clerk's office," he said. "That was in my courtroom. Too bad."[239]

Archie Katcher, a former Michigan referee, in his address to the Conference in 1965 would reflect on "the hectic days," when he and others in the audience were "required to hear each case where the bankrupt resided, and you ran from county to county trying desperately to maintain a semblance of a docket and time schedule, and hoping that no one had moved in on the space

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[233] *Id*.

[234] Moore & Tone, *supra*, note 202, at 684.

[235] *Herzog Transcript*, *supra* note 177, at 15.

[236] *Id*.

[237] *Transcript of Interview of Morton Levine by Hon. Joyce Bihary (Bankr. N.D. Ga., ret.) and Hon. Paul W. Bonapfel (Bankr. N.D. Ga.)* (Mar. 20, 2014) at 10–11, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.

[238] *Transcript of Interview of Robert L. Hughes by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (Jan. 20, 1996) at 42, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.

[239] *Transcript of Interview of Alex Paskay by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (April 12, 1994) at 17, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.

you had begged for free since the last time you had talked to the custodian." It was most difficult, he added, "to maintain even the semblance of dignity while conducting court in some civil service examination room where the chairs had been designed for use in schools, and you were lucky if you had a desk for a bench."[240] When Referee Conley Brown presided over hearings in Chico, California, "he used a hotel mezzanine and his plat-form was laid on wooden Scotch whiskey cases."[241]

Most referees did not wear a robe. Morton Levine would say, of Referee Mundy, "of course he never wore a robe. I had never seen the judge with a robe at that time."[242] Referee Basil Coutrakon, an Illinois referee who sat in Springfield and, occasionally, Chicago, Illinois, said he "never wore a robe." He "didn't see any need for it" and always figured he "had enough respect." No one ever told him to, he didn't own any, and "it wasn't part of your official garb or anything." He "never wore one in Chicago either."[243] Referee David Kahn in Georgia, by comparison, said that he "always wore a robe."[244] So did Alex Paskay in Florida, though he recalled "a guy sitting in Arkansas or something," who said: "'Robes, if I go hold Court in the Ozarks wearing a robe, they think I'm a Pope, they'll run me out of town.'"[245]

Much of the referees' job was administrative notwithstanding their increased judicial responsibilities after enactment of the 1930s amendments. Professor Lawrence King, of New York University School of Law, would assert that the role of the referee under the Bankruptcy Act prior to the Chandler Act was *strictly* administrative.[246] The referees were appointed, back in the early days to the '30s, to do a "lot of administrative work," such as "reviewing claims and things like that."[247] Conrad Cyr, who was appointed a referee in Maine in 1962, said that "in those days a referee in bankruptcy was at least 60% administrator, did everything and not a great deal was truly significant judicial

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[240] Archie Katcher, *Image of the Bankruptcy Court*, 40 J. NAT'L ASS'N REF. BANKR. 7, 7 (1966).

[241] Mund, *supra* note 226, at 4 (citing Daniel R. Cowans to Thomas J. MacBride, 20 June 1977, letter, David Kline personal Collection, Oklahoma City, Oklahoma).

[242] *Levine Transcript*, *supra* note 237, at 10–11.

[243] *Transcript of Interview of Basil Coutrakon by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (Oct. 19, 1996) at 14, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.

[244] *Transcript of Interview of David Kahn by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (Apr. 13, 1994) at 20, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.

[245] *Paskay Transcript*, *supra* note 239, at 21.

[246] *Transcript of Interview of Lawrence King by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (Oct. 19, 1993) at 21, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.

[247] *Id.* at 20.

decision making. A lot of administrative decisions."[248] George Paine, appointed a bankruptcy judge in Tennessee in 1981, said that "it was a fascinating time to be a bankruptcy judge, because you had the older judges who had basically been administrators, and they were phasing out. A lot of them were actually unhappy that the job had become so much larger and so much more complicated."[249]

But the referees' job had changed with the Chandler Act and then the Salary Act, and the younger referees and the editors of JNARB unflaggingly sought recognition of the referees' growing judicial role and stature. Articles in JNARB proposed raising the status of the bankruptcy courts to the district court level. They urged improving the image of the bankruptcy court, including by the referees' wearing robes and having proper courtrooms.[250] Referee William H. Tallyn, in Newark, New Jersey, wrote in JNARB in 1960 that his district had decided, based "on the premise that a referee is a judicial officer performing judicial functions," "that the referees should have courtrooms." The district court had also "ordered the referees to wear robes, and in so doing they had the active cooperation of the bar associations, which furnished the robes." A local rule required the marshals to open court for the referees, just as they did for the district judges, and transcription of testimony by a court reporter.

The referees' courtroom in Newark was small, Tallyn said, but it had "all the essentials of a judicial workroom: the bench, the witness stand, counsel tables and chairs, and a railing to separate the space reserved for attorneys from the benches provided for the general public and for those persons waiting for their matters to be reached." There was no jury box, so when one of Tallyn's fellow referees held a jury trial (on the issue of whether the debtor was insolvent) he used the district judges' courtrooms for a four-day period.[251] The

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[248] *Transcript of Interview of Conrad Cyr by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (Oct. 8, 1994) at 10, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.

[249] *Transcript of Interview of George Paine by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (Oct. 11, 2004) at 4, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.

[250] William J. Rochelle, Jr. & John L. King, *A Proposal to Raise the Bankruptcy Courts to District Court Level*, 39 J. NAT'L ASS'N REF. BANKR. 118 (1965); Archie Katcher, *Image of the Bankruptcy Court*, 40 J. NAT'L ASS'N REF. BANKR. 7, 7 (1966); Claud D. Hughes, *The Image of the Bankruptcy Court*, 42 J. NAT'L ASS'N REF. BANKR. 41, 41 (1968).

[251] William H. Tallyn, *A Judicial Atmosphere at Hearings*, 34 J. NAT'L ASS'N REF. BANKR. 35, 36 (1960). Hiller would note that: "One referee had even hazarded (and won) the disfavor of the Judicial Conference by presuming to conduct a jury trial in a contested involuntary proceeding, on no more substantial ground than that the statutory definition of 'court,' as used in Section 19 of the Act, include[d] both district judge and referee." Hiller did not indicate whether the referee to whom Tallyn referred and the one who incurred disfavor or the JCUS were on in the same. Hiller, *supra* note 193, at 49–50.

New Jersey district's requirement that the referees wear robes seemed to Tallyn to be in line with "a growing trend of opinion that judicial officers not only should act like judges but also should look like judges."[252] Referees owed to bankrupts, creditors, and others who appeared before them, "the duty of providing a forum in which property rights are determined with dignity as well as with justice" in "a real, honest-to-goodness court."[253]

Very slowly, the district courts in other jurisdictions began to follow suit. The July 1960 issue of JNARB reported that the district judges of the Southern District of California had ordered the Los Angeles referees to commence "the wearing of judicial robes while presiding over sessions of the bankruptcy court, thus joining the referees in the districts of Massachusetts and New Jersey in this respect." The editor asked to be informed if the referees in any other districts had "adopted or hereafter adopt the custom."[254] In October 1963, the editor reported that the "eastern referees group" had "gone on record in favor of the wearing of judicial robes by referees when presiding," which was approved by the district judges of the District of Connecticut.[255] By 1965, the referees in the Eastern District of New York appear to have had proper courtrooms in which they wore their robes.[256] In 1969, the referees of the Southern District of Indiana "adopted the wearing of the judicial robe," presented to them by the Indianapolis Bar Association.[257]

But many Article III judges resisted the trend toward the referees looking and acting as judges and protected their prerogative to treat the referees poorly. Joe Lee would relate in his oral history that the Judicial Conference of the United States (JCUS) became so concerned that it "passed a resolution that referees not be permitted to wear robes."[258] In some districts the bankruptcy referees could not use the same parking lot or ride the same elevator or eat in

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[252] Tallyn, *supra* note 251, at 36 (1960). Hiller would write, in 1976, that by 1960 "the wearing of judicial robes by referees, now a standard practice, had begun to take hold." Hiller, *supra* note 193, at 49.

[253] Tallyn, *supra* note 251, at 36.

[254] *Referees in Southern California Wear Robes*, 34 J. NAT'L ASS'N REF. BANKR. 69, 69 (1960).

[255] *Referees in Connecticut Enrobed*, 37 J. NAT'L ASS'N REF. BANKR. 98, 99 (1963).

[256] Samuel C. Duberstein, ed., *A History of the United States Court for the Eastern District of New York: To Commemorate and to Celebrate A Centennium 1865–1965* (1965) at 11, https://www.nyed.uscourts.gov/history-court.

[257] *All Referees in Southern Indiana Wear Robes*, 43 J. CONF. ASS'N REF. BANKR. 69, 69 (1969).

[258] *Transcript of Interview of Joe Lee by Hon. Randall J. Newsome (Bankr. N.D. Cal.)* (Dec. 30, 1993) at 22, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.

the same cafeteria as the Article III judges.[259] The "judges' lunchroom in the San Diego federal courthouse was restricted to Article III federal judges, but California superior court and appellate court judges were welcome while bankruptcy judges, magistrates and municipal court judges were excluded."[260] Under the Chandler Act, Chapter X cases were not automatically referred to the referees. When a suggestion was made before a Los Angeles district judge, Charles Hardy Carr, that a hearing in a Chapter X case be held in front of a referee, Carr responded "to the effect that, 'to him, no, he's just a court attaché.'"[261] In the Southern District of New York, Judge Edward Weinfeld's antipathy toward the referees was common knowledge. Referee (and later Judge) Alex Paskay recalled "a referee conference in '64 in Washington," where there "was sort of a round table discussion." And "the New York guys" said that the district judges "wouldn't let them wear robes." "One guy said that Judge Weinfeld said that as soon as the referees learn how to wear shoes we might think about letting them wear robes."[262]

The "referees were handling more cases and more complex issues," which was increasingly apparent at the national level.[263] Many of the new referees, who had been appointed to full-time positions after enactment of the Referees' Salary Act in 1946, were satisfied in their work but dissatisfied in their status, lack of administrative support, and exclusion from the decision-making process at all levels of the federal judiciary, including from decisions affecting bankruptcy cases and administration.[264]

In 1964, the AOUSC began a seminar program for newly appointed referees, under the direction of Referee Asa Herzog. In 1965, the AOUSC expanded the program to include refresher courses for experienced referees.[265] Bankruptcy Judge Joe Lee (E.D. Ky.), appointed a referee in 1961, would say that these seminars brought "the rebels" together, "giving them an opportunity to get to know each other and share their aspirations and frustrations as well as

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[259] *Cyr Transcript*, *supra* note 248, at 20; *Paskay Transcript*, *supra* note 239, at 12; Vern Countryman, *Scrambling to Define Bankruptcy Jurisdiction: The Chief Justice, the Judicial Conference, and the Legislative Process*, 22 HARV. J. LEG. 1, 2 (1985).

[260] Geraldine Mund, *Appointed or Anointed: Part Two*, 81 AM. BANKR. L. J. 165, 184 (2007).

[261] *Id.* at 183 (citing the author Mund's interview with Richard Levin). The story about Judge Carr's comments was confirmed by George Treister. George Treister, phone interview by author, tape recording, Dec. 3, 2004.

[262] *Paskay Transcript*, *supra* note 239, at 17.

[263] Mund, *supra* note 226, at 4.

[264] *Id.* at 5.

[265] *Id.* at 4–5.

plan their future actions—and all at government expense."[266] The new generation of referees informally dubbed themselves "the young turks," and soon took over the leadership of the National Conference of Referees in Bankruptcy (NCRB), the new name for NARB beginning in 1966. From that platform they "expressed their hopes and expectations."[267]

A "record number" of ninety-seven referees attended the 40th Annual Conference in New Orleans in 1966.[268] Hiller would call the 1967 Annual Conference in Washington, D.C. "the beginning of the modern era for the Conference." Herzog "presided over a Conference which would assert itself increasingly more effectively in every sphere bearing upon bankruptcy law and administration."[269]

Whether the bankruptcy judiciary should be called "judges" or "referees" became a flashpoint to the NCRB, and to its members.[270] Asa Herzog published in Judicature in 1969 an article on the subject titled *The Referee in Bankruptcy: A Judge in Search of a Name*. The article was republished in the CLL's Commercial Law Journal 1970, and then again that year in NCRB's renamed journal, "The Journal of the National Conference of Referees in Bankruptcy" (JNCRB).[271]

"The referee is no longer a special master to hear and report," Herzog wrote. "The referee *is* the court."[272] The 1938 amendments to the Bankruptcy Act, he explained, had made the referee a judicial officer. The referee took the same oath of office as did the other federal judges, and the case law upheld his judicial status. Under the 1938 amendments, the reference of bankruptcy cases to the referees was automatic, unless the district judge directed otherwise. The referee tried disputed issues and entered final orders. "The many administrative duties imposed upon him by the Act" were "secondary to his enlarged judicial role." By this time, Herzog wrote, most referees had "dignified chambers and courtrooms, often in United States courthouses or other federal buildings."[273]

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[266] *Id.* at 5 (citing Joe Lee conversation with author, San Antonio, Texas, November 3, 2005).

[267] *Id.* at 5.

[268] Hiller, *supra* note 193, at 50.

[269] *Id.* at 51.

[270] *Our New Name and Revised Constitution*, 40 J. NAT'L REF. BANKR. 3, 3 (1966).

[271] Asa S. Herzog, *The Referee in Bankruptcy: A Judge in Search of a Name*, 53 JUDICATURE 202 (1969); 75 COM. L. J. 37 (1970); 44 J. CONF. ASS'N REF. BANKR. 39 (1970).

[272] *Id.* at 40 (emphasis in original).

[273] *Id.*

Herzog expressed appreciation to the Presidential Commission that had recently recommended referee salaries of $40,000 per year but took a shot at the Commission for its "startling misapprehension" of the role of the referee, by its reciting that the referees "recommend decisions on both law and fact to the Judge of the District Court, who then renders that court's decision." Such "an erroneous appraisal from a highly knowledgeable group," Herzog thought, was "astonishing and disheartening."[274]

The referees, Herzog continued, were "ever hopeful of recognition." There was "an acute need to educate not only the public which seeks relief in the bankruptcy courts, but also the upper echelon of the economic, business, and professional world, as to the important judicial role of the referees." Perhaps, thought Herzog, the referees were "partially at fault by exhibiting too much modesty and humility." If the referees would not take an active part in such a campaign "to educate the public as to their place in the judicial family, nobody else will do it for them."[275]

It was generally agreed, Herzog concluded, "by those interested in improvement of bankruptcy administration, including many United States district judges, that a change of the title 'Referee' must be the first step in the program." The title "Judge of the Bankruptcy Court" had been suggested. It was "a good title" and it was "difficult to imagine substantial opposition to it, since it more aptly than any other title" conveyed "the true role of the referee in bankruptcy jurisprudence."[276]

Herzog's thanking the Presidential Commission was premature. The referees' $40,000 salary would take six years to materialize. Congress in 1969 *authorized* referees' salaries of $36,000 and district judges' salaries of $40,000. But it gave the JCUS, led by Chief Justice Warren Burger, the discretion to set the referees' salaries *up to* that maximum amount. Burger decided that the $36,000 was "much too close" to the district judges' new salaries. So, the JCUS unilaterally fixed the referees' salary at $30,000. Several referees "became so upset with things that were going on, because we couldn't see the light at the end of the tunnel, that we decided that perhaps our families would be better served by our practicing law." Homer Drake was one of these and returned to practicing law for three years."[277] Congress in 1976 would take away the

[274] *Id.*
[275] *Id.*
[276] *Id.*
[277] *Transcript of Interview of Homer Drake, Jr. by Hon. Paul W. Bonapfel (Bankr. N.D. Ga.) and Hon. Joyce Bihary (Bankr. N.D. Ga., ret.)* (July 28, 2014) at 31–2, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories. Mund, *supra* note 226, at 25–26.

JCUS's authority to fix the bankruptcy judges' salaries below the congressional cap, in large part because some members of Congress justifiably felt that the JCUS had usurped congressional authority in the manner in which it had exercised its discretion. And by doing so it had caused each bankruptcy judge to lose, unfairly, $36,000 over the six-year period.[278]

Burger's antipathy toward the referees extended beyond salary matters. He uniformly declined to communicate directly with the officers of the NCRB, even in response to formal requests and inquiries. In 1970, NCRB President William O'Neill requested NCRB representation on the Bankruptcy Committee of the JCUS. Rather than respond himself, Burger directed Roland Kirks, the Director of the AOUSC, to inform O'Neill that "it has always been the policy of the Judicial Conference to confine membership of its committees to judges," i.e., Article III judges, except on the Rules Committee.[279] Mund would note that it appeared also to have been a policy of Burger himself not to respond to bankruptcy referees or bankruptcy judges, though if they were later invested as district judges (as a few occasionally were) he was quite willing to communicate directly with them.[280]

Likely in response to these persistent affronts, the NCRB in 1971 would amend its Constitution to make clear that its purpose included: "To elevate the status and stature of Courts of Bankruptcy and Referees in Bankruptcy." Stated reasons for the change were living in an "age of rapid change" which "of necessity require[d] rapid decisions to be made."[281]

NCRB's education campaign and quest for recognition included rebranding and repositioning its journal. The journal was renamed the "American Bankruptcy Law Journal" (ABLJ), and henceforth would be a proper law review, containing articles of scholarly and practical interest, book reviews, and case notes. No longer would the accounts of the Annual Conferences, committees and officers' reports, or the bankruptcy news of the

[278] Mund, *supra* note 226, at 27–28.

[279] *Id.* at 9–10 (citing Rowland F. Kirks to William J. O'Neill, December 14, 1970, letter, Weinfeld Collection, National Bankruptcy Archives, Biddle Law Library, University of Pennsylvania, Philadelphia, PA).

[280] Judge Mund, who conducted and used extensive interviews for her *Appointed or Anointed* article, would add that there was "no record of Burger responding directly or personally to a bankruptcy judge. But once a bankruptcy judge was elevated to district judge, Burger became accessible." Mund, *supra* note 226, at 9, n.26.

[281] NCRB Conference Newsletter, July 1971, National Bankruptcy Archives, Biddle Law Library, University of Pennsylvania, Philadelphia, PA.

day be featured on its pages. The first issue, published in winter 1971, included the following dedication by the ABLJ's first editor, Conrad Cyr:

> This inaugural issue of *The American Bankruptcy Law Journal* is dedicated to my colleagues of the National Conference of Referees in Bankruptcy, whose individual efforts and collective commitment have so improved the quality of justice administered in our courts of bankruptcy. With this issue their *Journal* merely alters form, in recognition of the needs and support of Bench and Bar. So long as the *Journal* is published, however, its dominant objectives will continue to be the education and inspiration of the Bankruptcy Bench and Bar toward a deeper appreciation of the importance to the Federal Judiciary of their endeavors to enhance the quality of justice available in their courts.[282]

NCRB membership and subscriptions to the journal "were increased substantially, indispensable steps in enabling effective Conference action in respect to a host of vital issues facing it and its members."[283]

The NCRB's campaign to improve the judicial stature of its members, the bankruptcy judiciary, extended, not so subtly, to the very cover image used for the new ABLJ. The contents of the first issue were printed over an artful rendition, in black over a red background, of a proper courtroom, with a judge (implicitly, the bankruptcy judge), in robes, sitting on a raised bench above, with the court reporter and a witness seated immediately below, with counsel standing at the podium addressing the court, and with the other attendees at the hearing seated in benches behind the bar.[284]

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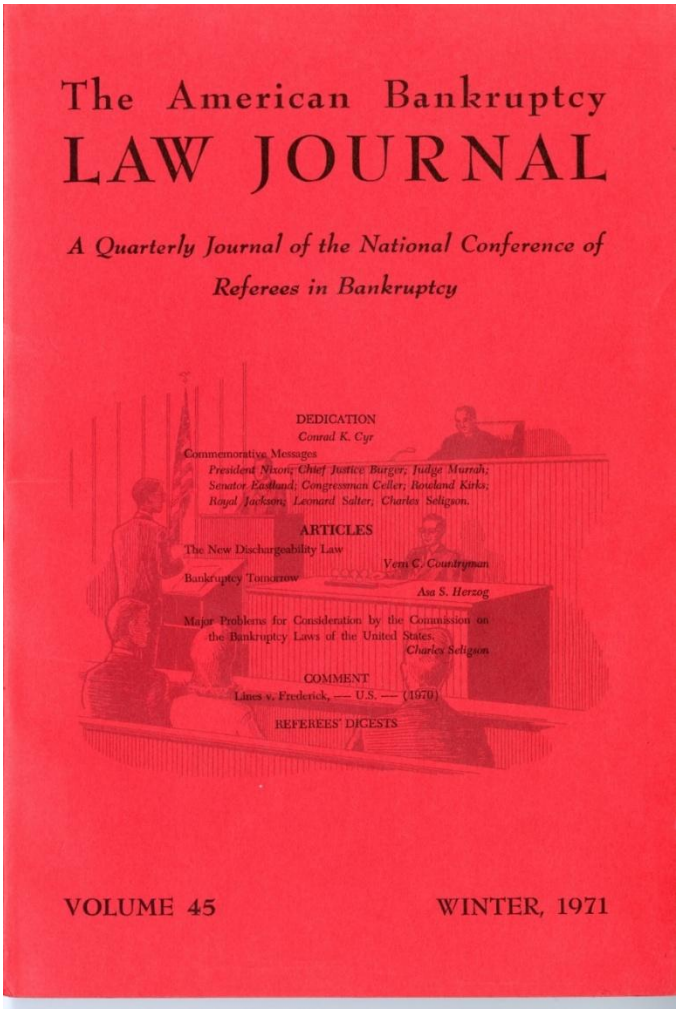
[282] Conrad K. Cyr, *Dedication*, 45 AM. BANKR. L.J. iv (1971).

[283] Hiller, *supra* note 193, at 53. Hiller would write that, at the same time, the NCRB recognized and prepared to meet "the need to accommodate the substantial jurisdictional expansion conferred upon the court by the recent dischargeability legislation, for which members of the Conference had labored diligently for years," and "the need to consider ways and means to assure that the valuable contribution of the Conference be brought to bear effectively upon the work of the Commission on the Bankruptcy Laws of the United States." *Id*. at 53–54.

[284] *Cover*, 45 BANKR. L.J. (Winter 1971). The content of the first issue, articles by Harvard Law Professor Vern Countryman, Asa Herzog, and New York University Law Professor Charles Seligson, also made a statement.



Cover of the Inaugural Issue of the
American Bankruptcy Law Journal, Winter 1971 [285]

[285] *Id.* The original, print edition, has a red background, and the drawing of the court in session, as shown here. The HeinOnline digital version, unfortunately, does not include an image of the cover. This red cover with the courtroom drawing was used two years before the referees in bankruptcy were renamed "judges" by the 1973 Federal Rules of Bankruptcy Procedure. With publication of this first issue of the ABLJ in 1973, the National Conference of Referees in Bankruptcy (NCRB) (f/k/a the National Association of Referees in Bankruptcy (NARB)) bifurcated its journal into the ABLJ (a law review with scholarly articles and book reviews), and a conference newsletter, that went by several names (which provided its member-judges with much of the news and accounts of the Annual Conferences, progress of legislation, and similar information that previously was also included in the journal).

Cyr strategically announced the first issue of the ABLJ to President Nixon, Chief Justice Burger, the AOUSC, Court of Appeals Judge Alfred P. Murrah, members of Congress, and others. The continuing and often confrontational debate over whether the bankruptcy judiciary were to be called "Judges" or should remain "Referees" was apparent even in the "Commemorative Messages" that Cyr received in response. The ABLJ published several of these responses in its first issue, in the winter of 1971. President Nixon addressed his letter to "Mr. Cyr," and politely commended Cyr for his efforts to further improve upon the valuable contents of the Journal and "to further raise its high standards of professional excellence."[286] Chief Justice Warren Burger pointedly addressed his letter to "Referee Cyr," and commended the NCRB for its contribution to the federal judiciary's goal of "keeping pace with the times," "by providing a valuable aid for the bench and bar in the new format of its Journal."[287] Both the Chief of the Division of Bankruptcy of the AOUSC, and the Director of the AOUSC, also used the salutations "Dear Referee Cyr."[288]

But far different tones were struck in the "Judge" v. "Referee" debate by Senior Judge Alfred P. Murrah (10th Cir.), Senator James O. Eastland (D-Miss.), and Representative Emanuel Celler D-N.Y.)—fully two years before the Federal Rules of Bankruptcy Procedure would use the term "Judge." Judge Murrah, in his capacity as Director of The Federal Judicial Center, wrote "Dear Judge Cyr." He hoped that the recently-appointed Commission on the Bankruptcy Laws of the United States would "first recommend that the anachronisms of the bankruptcy laws will be eradicated; that the term 'Referee in Bankruptcy' will be a thing of the past; and that instead these important courts will be presided over by bankruptcy judges with appropriate status, adequate powers and sufficient supporting personnel to enable them to properly discharge, in the public interest, the heavy responsibilities entrusted to them."[289] Senator Eastland similarly began with "Dear Judge Cyr." He called

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[286] *Letter from President Richard M. Nixon to Conrad K. Cyr (Oct. 27, 1970)*, 45 AM. BANKR. L.J. vii (1971).

[287] *Letter from President Warren Burger to Conrad K. Cyr (Nov. 18, 1970)*, 45 AM. BANKR. L.J. viii (1971).

[288] *Letter from Royal E. Jackson, Chief, Division of Bankruptcy, Administrative Office of the U.S. Courts (Nov. 2, 1970)*, 45 AM. BANKR. L.J. xii (1971); *Letter from Roland F. Kirks, Director, Administrative Office of the U.S. Courts (Nov. 19, 1970)*, 45 AM. BANKR. L.J. xix (1971).

[289] *Letter from Judge Alfred P. Murrah, Senior Circuit Judge (10th Cir.) and Director of the Federal Judicial Center (Nov. 20, 1970)*, 45 AM. BANKR. L.J. ix (1971).

the Journal "the leading bankruptcy Law Journal in the United States," and added that he knew "of no other instance where judges have voluntarily associated themselves, without either public or private support, for the purpose of enhancing the quality of justice available in their own courts through the publication of a law journal devoted to broadening and improving the understanding of the bench and bar."[290] Representative Celler also addressed his letter to "Judge Cyr," and praised the Journal for its important role in the development of new and improved bankruptcy laws for half a century.[291]

The 1973 Bankruptcy Rules would make the word "Judge" more than the honorific used by Judge Murrah, Senator Eastland, and Representative Celler when they wrote to Conrad Cyr in 1971. The development of the bankruptcy rules was part of a process begun by Congress when it directed the JCUS to make recommendations to the Supreme Court for changes to federal court rules.[292] The drafting and adoption of the Bankruptcy Rules followed, by a quarter-century, the adoption of the Federal Rules of Civil Procedure in 1938, which had created nationwide procedural uniformity for civil matters in the federal courts.[293] The process for the Bankruptcy Rules was similar. An Advisory Committee was established in 1960.[294] Cyr's District Judge Edward T. Gignoux (D. Me.), who respected the bankruptcy referees, was a member from the start, and Professor Frank Kennedy, who a few years later would be a principal architect of the Bankruptcy Code, was the Reporter.[295] The thirteen member Advisory Committee, appointed by the Chief Justice, included three Article III judges, three law professors; four bankruptcy lawyers; and three

[290] *Letter from Sen. James O. Eastland, Chairman, U.S. Senate, Committee on the Judiciary (Nov. 10, 1970)*, 45 AM. BANKR. L.J. x (1971).

[291] *Letter from Rep. Emanuel Celler, Chairman, U.S. House of Representatives, Committee on the Judiciary (Oct. 7, 1970)*, 45 AM. BANKR. L.J. xi (1971).

[292] Edward T. Gignoux, *A Progress Report on the New Bankruptcy Rules*, 44 J. NAT'L CONF. REF. BANKR. 13, 14 (January 1970).

[293] *See* Rex R. Perschbacher & Deborah Bassett, *The Revolution of 1938 and Its Discontents*, 61 OKLA. L. REV. 275 (2008).

[294] Gignoux, *supra* note 292, at 13. "General Orders" issued by the Supreme Court had governed bankruptcy proceedings since shortly after enactment of the Bankruptcy Act of 1898. But the scope of the Supreme Court's rulemaking authority regarding the General Orders was problematic, because "procedural changes" were not authorized. *Id.* at 14. The process of writing the Bankruptcy Rules began 22 years after adoption of the Federal Rules of Civil Procedure in 1938, as part of the project of promulgating and adopting nationwide rules for civil, criminal, and admiralty practice.

[295] *Id.* at 13–14.

bankruptcy referees—Herzog; Estes Snedecor (D. Or.), a past-NARB President; and Elmore Whitehurst (N.D. Tex.).[296]

The first four and one-half years were devoted to "fiddling around with" the Supreme Court's General Orders that had long governed bankruptcy proceedings under the Bankruptcy Act.[297] George Treister, a Los Angeles bankruptcy lawyer who was on the Advisory Committee, would later say: "The general orders didn't say anything. The general orders, if you look through those old general orders, you could throw them away and you wouldn't have lost much."[298] The Advisory Committee, concerned with the scope of its authority, caused a bill to be introduced in Congress "providing the Supreme Court with the same general rule-making power in bankruptcy that it already had in civil, criminal and admiralty practice." The Rules authorization bill was enacted, effective on October 3, 1964, and codified as 28 U.S.C. § 2075.[299] The law enabled the Supreme Court "to promulgate rules that would supersede the statute." Treister would say: "So they had to throw out everything they'd done in the first couple of years because it was an entirely new ball game."[300]

Years of activity followed, prompting Professor Kennedy to write in 1966 that the Advisory Committee and he had "been working for several years now with a considerable input but no comparable output."[301] He acknowledged that the project was formidable.[302] Nonetheless, over the next few years, the Rules were written, with Referee Asa Herzog as one of the principal drafters.[303]

As the rules drafting process reached its culmination, the referees appear to have seized upon the chance to change their title to "Judge." Homer Drake, a referee in Atlanta, said: "of course, all—a lot of the judges (I know I did) wrote the Committee suggesting that this was a prodigious time to do it by Rule, and luckily, the people on the Committee agreed. At that time, most of them—most of the members of that committee, even though you called it the Committee on Bankruptcy Rules and Procedure, were made up of Article III judges."[304] One of those, though, was Judge Gignoux, who in his 1970 article

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[296] *Id.* at 14. Whitehurst was a former Secretary-Treasurer of NARB, former editor of JNARB, and former Deputy Director of the AO. Hiller, *supra* note 251, at 49–51.

[297] *Transcript of Interview of George Treister (Bankr. N.D. Cal.)* (July 9, 1994) at 91, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories. Gignoux, *supra* note 292, at 14.

[298] *Treister Transcript*, *supra* note 297, at 94.

[299] Gignoux, *supra* note 292, at 14.

[300] *Treister Transcript*, *supra* note 297, at 92.

[301] Frank R. Kennedy, *Bankruptcy Study*, 11 L. QUADRANGLE 6, 6 (Spring 1967).

[302] *Id.* at 19.

[303] *Drake Transcript*, *supra* note 277, at 38.

[304] *Id.* at 33.

on the Advisory Committee's progress, published in JNCRB (soon to be renamed the ABLJ), already was referring to the referee-members as "Judges."[305]

With the NCRB's transformation of its 45-year-old Journal into the ABLJ in 1971, the Conference's job of keeping its membership up-to-date on the progress of the Rules, the recently-formed Commission on the Bankruptcy Laws of the United States, and other significant developments fell to a conference newsletter. The first iteration was called "The Silver Whistle," "a referee's friend," "The newsletter of your national conference." David Kahn (N.D. Ga.), who was editor at Asa Herzog's request, delivered the bankruptcy news in a jocular style. "The Silver Whistle" ended after just the third issue, dated January 1971, when the 33-year-old Kahn and the 66-year-old Herzog had a falling out, to put it politely.[306]

In May 1971, NCRB began circulating the Silver Whistle's replacement, "The Conference Newsletter," which was typewritten and edited by Arthur N. Votolato (D. R.I.). Votolato, though at thirty-five was nearly as young as Kahn, clearly appreciated the gravity of the job. The Conference Newsletters informed the NCRB's members of the status of the Bankruptcy Rules, which if adopted would "radically change the practice and procedure in our Court," the convening of the Presidential Salary Commission which would determine the referee/judges' salaries, and the legislative process which would culminate in the enactment of the Bankruptcy Code seven years later.[307] Homer Drake, who was the NCRB's President in 1972–1973, would urge that: "Because of the pendency of so many important matters, it is imperative that our Conference be able to act quickly when the occasion demands."[308]

Bankruptcy Judge Raymond Hiller would write on the 50th Anniversary of the NCBJ that in 1973 "a great deal was accomplished by the Conference under the able leadership" of Judge Drake, "by way of prompting the promulgation of the new Bankruptcy Rules" which would give the "Referees" the title of "Judge."[309] The Supreme Court was required to transmit the Rules to the Congress by May 1, 1973, or face a minimum further one-year delay in their adoption. Judges Drake and Cyr, and Conference counsel Murray Drabkin, Esquire, "made a final effort to free the Bankruptcy Rules from the

[305] Gignoux, *supra* note 292, at 14.

[306] Part II of this article contains more about "The Silver Whistle" and "The Conference Newsletter" and "Conference News" which came later.

[307] NCRB Conference Newsletter, *supra* note 281.

[308] *Id*.

[309] Hiller, *supra* note 251, at 56.

rules logjam at the Supreme Court."[310] At the same time, they were concerned that Senator Sam Ervin (D-N.C.) would block adoption of the Rules, in the same way that he had slowed congressional approval of the Federal Rules of Evidence "because of his concern that fundamental legal rights were being affected by the rulemaking process."[311] Drake and Cyr, through Senator Talmadge, got an appointment with Senator Ervin, who was also Chair of the recently formed Senate Watergate Investigative Committee. Drake would recall:

> He was very cordial and we told him how important it was to the bankruptcy system, the program, that this title be changed. We needed these Rules to be approved and not held up like he had held up the Federal Rules of Evidence. He told us, first of all, how much he thought of his good friend Senator Talmadge. The fact that our appointment with him had come through Talmadge obviously meant something. He assured us that he was on our side and would not hold up the Rules, and that was a major accomplishment for us to get that change in title.[312]

Senator Ervin assured Drake, Cyr, and Drabkin, "on the eve of the public disclosure of the Watergate scandal," that the Bankruptcy Rules would not encounter his resistance.[313]

Professor Lawrence King, an Associate Reporter for the Rules Advisory Committee from 1968 to 1976, wrote that there was widespread support among the members of the Advisory Committee for the Rules to refer to the bankruptcy judiciary as "Judges."[314] Judge Gignoux certainly had used the term intentionally in his 1970 "Progress Report" on the Rules, as had Judge Murrah, Senator Eastland, and Representative Celler in their "Commemorative Messages" to Cyr on publication of the first issue of the ABLJ at the end of the next year.[315] A "basic approach was to enhance the stature of the office of referee in bankruptcy which had undergone much change in the 1940s to

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[310] *Id*.
[311] *Id*.
[312] *Drake Transcript*, *supra* note 277, at 23.
[313] Hiller, *supra* note 251, at 56.
[314] Lawrence P. King, *The History and Development of the Bankruptcy Rules*, 70 AM. BANKR. L. J. 217 (1996).
[315] *See supra* Part I, § VI.

1960s." That included "chang[ing] the title of the office from referee to bankruptcy judge (a matter of some subsequent controversy)."[316]

The change wrought by the new Rules did not sit well Chief Justice Burger. Cyr wondered why "people didn't get fired because they didn't keep him well informed on the Rules for Heaven's sake." Burger could easily have learned what was about to happen before it did. Judge Gignoux was "a trusted and admired chairman." The AOUSC had provided the support staff to the Advisory Committee. But Burger appears not to have known. "It was a wonder heads didn't roll, I swear to God," Cyr would say, adding that Gignoux "hadn't thought he was doing anything untoward."[317]

Many referees began using the title "bankruptcy judge" upon adoption of the Rules, effective October 1, 1973, "and the title was largely adopted by Congress." The NCRB immediately amended its By-Laws and Articles of Incorporation, changing its name to the "National Conference of Bankruptcy Judges" (NCBJ), which remains its name today.[318]

By this time many Article III judges supported the name change. But others shared Burger's disapprobation. And they were not above acting on it, notwithstanding that by doing so they were flouting the duly-adopted Bankruptcy Rules. Professor Lawrence Kennedy would later relate that he and Professor Charles Seligson "at one point seriously considered suing the bench of the southern district of New York" right after the 1973 Rules became effective. Even "with the official forms being signed by bankruptcy judge and the like," the Southern District entered an order "that they shall not use the title of bankruptcy judge, they shall not sign their orders bankruptcy judge, they shall not wear robes, they shall not use the elevator, the judges elevator." We "couldn't do anything about the elevator, maybe not about the robes, but we were upset as to how they were trying to get around the rules."[319]

VII. Conclusion (to Part I)

The NCBJ, from its 1926 founding as NARB, has had an unusual place among organizations of judges. Judging bankruptcy cases requires knowledge of a specialized area of the law, which few people want to talk about and fewer understand. Yet bankruptcy cases also comprise, almost every year, the largest

[316] King, *supra* note 314, at 222.
[317] *Cyr Transcript*, *supra* note 248, at 26.
[318] Mund, *supra* note 226, at 20; Hiller, *supra* note 193, at 55.
[319] *Kennedy Transcript* at 23–24.

part of the federal judicial docket. This was true in 1926 when the NCBJ was founded, and it remained true on the 50th anniversary of the NCBJ in 1976.[320] Yet the bankruptcy judges mostly worked outside of the eye of the public and the Article III judiciary.

It is not surprising that the bankruptcy referees (who in 1973 became bankruptcy judges) would take an interest in the substance of the bankruptcy law that Congress enacted. Referee Carl Friebolin, Chair of NARB's Legislative Committee, would say in 1928 that his "committee's chief function" was "not aggressively to espouse favored legislation, but to act in an advisory capacity for those who may seek changes in the bankruptcy laws."[321] Yet with time, Russell Hiller would observe in 1976, NARB and its members "adapted that early policy," as they were denied a seat at the table at more than one critical juncture in the development of the bankruptcy law that they applied.[322] In the 1930s, NARB, dissatisfied with the pace of bankruptcy reform, was instrumental in forming, and its leaders led, the NBC that steered the Chandler Act into law. After surviving threats to its very existence in the 1940s, NARB (renamed the National Conference of Referees in Bankruptcy (NCRB) in 1966) would play a key role in the decade-long process that culminated in the adoption of the 1973 Federal Rules of Bankruptcy Procedure.

Challenging days were to come, though. When Congress in 1970 authorized a Commission to reform the bankruptcy laws of the United States, no member of the NCBJ or the bankruptcy judiciary was appointed to it. In 1982, the Supreme Court in *Northern Pipeline* declared the bankruptcy courts'

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[320] In 1926, 46,374 bankruptcy cases were filed in the United States, as compared with only 21,217 private civil cases filed in the district courts. In 1976, 246,549 bankruptcy cases were filed in the United States, as compared with only 90,733 private civil cases filed in the district courts. Federal Judicial Center (FJC), *Caseloads: Bankruptcy Cases*, *supra* note 223; FEDERAL JUDICIAL CENTER (FJC), *Caseloads: Civil Cases, Private, 1899–2017*, https://www.fjc.gov.
/history/work-courts/caseloads-civil-cases-private-1873-2017 (last visited Feb. 27, 2026). In 2024, the most recent year for which year-end data is available from the AO, 517,308 bankruptcy cases were filed, as compared with 271,802 civil case filings in the district courts. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending December 31, 2024*, https://www.uscourts.gov/sites/default/files/2025-01/bf_f2_1231.2024.pdf (last visited Feb. 27, 2026); ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *Federal Judicial Caseload Statistics 2025*, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2025 (last visited Feb. 27, 2026).

[321] *Report of Committee on Legislation*, 3 J. NAT'L ASS'N REF. BANKR. 16, 21 (1928–1929).

[322] Hiller, *supra* note at 251, at 33.

jurisdiction unconstitutional on the ground that bankruptcy judges had 14-year terms rather than lifetime tenure under the 1978 Bankruptcy Code. Immediately following the 1984 signing into law of Congress's legislative fix, Chief Justice Burger with the AOUSC in tow seized upon the opportunity to try to strip the bankruptcy judges of their judgeships and make good on his promise to "teach that bunch" and "just take 'em out of existence."[323]

Part II of this article begins with the NCBJ's role in these events that dramatically changed United States bankruptcy law. It then turns to the NCBJ's more recent work in improving bankruptcy law and practice while preserving the status and stature of the bankruptcy courts and judiciary.

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[323] Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, 98 Stat. 333; *Transcript of Interview of David Kline by Susan Imswiler* (Oct. 11, 2004) at 8, https://law.upenn.libguides.com/biddle_archives/nba/oralhistories.