



The Court Legacy

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Editor's Introduction: With the approval and support of the Judges of the U. S. Bankruptcy Court for the Eastern District of Michigan, and under the oversight and supervision of Judge Walter Shapero, Kevin Ball was recruited to write the history of the Bankruptcy Court. The following article is a chapter from the book which is still in preparation.

Paul King and the Making of the Modern Bankruptcy Courts

By: Kevin Ball¹

Bankruptcy courts have received a fair amount of attention in recent years. While their workings are mystifying to some, they generally share the prestige enjoyed by other judicial forums. However, that was not always the case. As originally conceived, bankruptcy law was practiced before part-time officials in private offices often located far from the Federal courthouse.

In the early twentieth century especially, bankruptcy courts were commonly criticized for lax administration, cronyism and corruption. Paul King saw greater potential in the courts. No person in the first half of the twentieth century had a greater impact on improving the quality and reputation of the bankruptcy courts in the United States than King, who served as Referee in Bankruptcy in the Eastern District of Michigan from 1919 until his death in 1942.

Paul King made important contributions to the fields of politics, public charities and law. He began his career as a Michigan Republican Party official and played a key role in securing President William Howard Taft's re-nomination for President in 1912, against Theodore Roosevelt's insurgent bid to regain the office. However, his political endeavors very

nearly cost him his career and freedom in one of the most notorious political trials in American history. Forsaking politics, he became a tireless leader of the local and national bankruptcy community and of many civic and charitable organizations. While he is virtually forgotten today, his influence is still felt in each of these fields.

Early Life and Career²

Paul King's family moved often. His father was a surgeon but desired greater fortune than that profession provided at the time. Dr. John King's belief that financial success would be found in farming led the family to Arapahoe County,

Nebraska, where Paul was born in a sod house in 1879. However, Dr. King's expectations of wealth were not satisfied in Nebraska and the family moved again, first to Chicago and then Iowa, before settling in Minnesota. Dr. King died in 1891, when Paul King was twelve. Young Paul needed to work to supplement his mother's small schoolteacher's income. At fourteen, he found work as a page in the Minnesota House of Representatives.

In 1897, King's mother moved the family to Dowagiac, Michigan, to be near her own relatives. King again found work as a legislative page, this time in the Michigan Senate. In a pattern that would repeat itself throughout his life,

he quickly gained success through his skillful behind-the-scenes work on behalf of legislative leaders. He advanced to the position of Assistant Secretary of the Senate in 1901. When the Senate was not in session he served as the Secretary of State's private secretary.

King was 19 when he graduated from Dowagiac High School, perhaps delayed by his family's recent move and his need to work to support his family. He did not attend college. Instead, he continued working in the Legislature and studied privately for the bar,



Paul King in 1919, at the time of his appointment as Referee in Bankruptcy in the Eastern District of Michigan.

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a practice that remained common even at the turn of the twentieth century. He was admitted to practice in 1904, scoring highest of 23 applicants taking Michigan's bar examination that year. Thereafter, he practiced law in Lansing and later Detroit. In 1910, King married Sarah Bidwell in Lapeer, Michigan. Together, they would have four daughters.

Not unlike his father, Paul King divided his attention and activities between his chosen profession and other endeavors. Though he practiced law, first in Lansing and then in Detroit, his interests were increasingly drawn to politics and business. He moved from Assistant Secretary of the Senate to Assistant Chief Clerk of the Michigan House of Representatives, before advancing to Chief Clerk in 1909.

In 1907 and 1908, King was the Secretary of the Michigan Constitutional Convention. He chaired Charles Townsend's campaign for the United States Senate in 1910, and afterward became Secretary of the Republican State Central Committee. His time with the Central Committee was particularly eventful. In 1912, the Republican Party was divided between supporters of the incumbent President, William Howard Taft, and insurgents who were campaigning to return his immediate predecessor, Theodore Roosevelt, to office. The Party's State Convention devolved into fisticuffs when one of Taft's supporters physically attacked a speaker advocating Roosevelt's candidacy. While the State Police were called to maintain order on the Convention floor, they could do nothing to maintain order in the Party. Michigan's Republicans sent two slates of delegates to the National Convention in Chicago.

Despite the Roosevelt forces' insurgent successes, Taft and his people controlled the national convention. King and most of Michigan's Republican establishment supported Taft. King worked behind the scenes with the President's campaign to seat Michigan's Taft delegates, helping to assure the incumbent's re-nomination.

By 1912, Paul King had turned his professional attention to the world of business, particularly railroads. While not abandoning his law practice, he became Secretary to the President and General Manager of the Grand Rapids Railway Company. In 1914, he joined the Grand Rapids, Holland & Chicago Railroad as its Assistant Secretary-Treasurer. By that same year King had gained the attention of U. S. District Judge Arthur J. Tuttle of the Eastern District of Michigan, who appointed him to be the operating receiver of the Pere Marquette Railroad, a position he held for three years.

Crisis: The 1918 U. S. Senate Election⁴

In 1918, the Michigan Republican Party's establishment called on King again, this time to chair Truman Newberry's campaign for election to the U. S. Senate. It became one of the most notorious political contests in the State's history, and it nearly destroyed King's career. Newberry was heir to one of Detroit's great fortunes, an early investor in the Packard Motor Company, and a former Secretary of the Navy for Theodore Roosevelt. Two former governors and auto pioneer Henry Ford opposed Newberry in the Republican primary. Ford wished to appear non-partisan and so also ran in the Democratic primary. Newberry won the Republican nomination, Ford the Democratic one.

King's diligence as Newberry's manager resulted in the great crisis of his adult life. Newberry's election campaign was dogged by rumors of massive spending. At the time, Federal law prevented Senate candidates from spending more than \$10,000 on their election. The Newberry campaign indisputably exceeded that threshold. Estimates indicate that the campaign spent nearly \$200,000 in the election, almost twenty times the legal limit. The amounts spent by the campaign were an open secret and many Republicans voted for Ford. However, Ford's refusal to campaign actively on his own behalf gave Newberry a narrow victory in the general election.

Frustrated by his loss, Henry Ford used his considerable resources to conduct an investigation of the Newberry campaign and ultimately turned over much of the information obtained to the Federal government. The claims against the campaign had implications that extended beyond Michigan. Newberry's election gave the Republican Party a two-vote advantage in the U. S. Senate. The change of a single seat would evenly divide the chamber, giving control to the Democrats through Woodrow Wilson's vice president's tie-breaking vote. On November 29, 1919, a Federal grand jury in Grand Rapids charged Newberry, King, and 124 others with four counts of violating the Federal Corrupt Practices Act in connection with the primary election, and violating Federal bribery and mail fraud statutes in the primary and general elections.

The *New York Times* described the trial as, "one of the greatest legal battles ever waged in Michigan."⁴ Newberry himself never testified; King was the defendants' primary witness. Responding to charges of heavy-handed political tactics and rampant fund

raising, King testified for several days. At the conclusion of his direct examination, he collapsed and was hospitalized. The *New York Times* described it in an article dated March 10, 1920 as a nervous breakdown. Whatever the cause, the prosecution never cross-examined him.⁵

The jury (ten of twelve of whom professed at *voir dire* to be Republicans) deliberated for less than two days before returning verdicts against King, Newberry, and seventeen others on the first count of the indictment. King was sentenced to two years in Leavenworth Penitentiary, Kansas, and fined \$10,000. He made a statement protesting the verdict the next day:

No jury and no court can make a criminal out of me nor out of my splendid associates . . . There is, thank God, another day and another court, in which justice will ultimately be done, and this monstrous thing made right. . . There was not a single act of corruption in the Senatorial campaign, and the final result will demonstrate that this was the cleanest campaign ever conducted, and not a criminal conspiracy.⁶

King's statement betrays an internal dissonance between the fact of the conviction and his self-image as a person of great integrity. It may have created in King a blind spot to his culpability in the scandal. However politicized the trial might have been, and however often the campaign spending limits might have been exceeded in other elections, it is clear that the Newberry campaign spent more than the law allowed. However, the prosecution's case was weak and its presentation of the facts ambiguous. One of the jurors told a reporter at the conclusion of the trial that, "Without Paul King's testimony that he told Senator Newberry that the campaign would cost \$50,000, the Government had a weak case, and without the King-Newberry letters [voluminous correspondence between the two about the conduct of the campaign that was introduced by the defense] no case at all."⁷ It is entirely conceivable that for all of King's political and legal acumen, his belief that he was being unfairly prosecuted and his desire to clear his reputation may have blinded him to the pitfalls of testifying until it was too late.

The Newberry defendants' choice of counsel for their appeal to the Supreme Court was a savvy, and certainly more prestigious one: the former and future Supreme Court Justice Charles Evans Hughes. Hughes obtained a reversal of his clients' convictions, but not on a clear-cut finding of innocence. Instead, on May 2, 1921, the Court unanimously reversed the convictions on grounds that the Corrupt Practices Act did not regulate primary elections.⁸

Truman Newberry's name became synonymous with electoral corruption. He went on to take his seat in the Senate but was ostracized and investigated by his colleagues. Newberry was so reviled by his new colleagues that when Charles Evans Hughes was nominated to be the new Chief Justice in 1930, his representation of Newberry was raised as grounds for denying his confirmation.⁹ Newberry's own efforts to retain his Senate seat did not improve his reputation. Despite the overwhelming evidence produced at trial of his role in the campaign, he claimed through his allies that King kept him in the dark about the campaign's spending. He resigned his seat before the end of his term and never again sought political office.

However, it turns out that Paul King's fears of the harm the prosecution would cause to his reputation were unfounded. The respect in which others held King overcame any possible taint from the trial. Even King's indictment seven months after his appointment to the bankruptcy bench did not shake Judge Tuttle's support. Shortly after the indictment, Tuttle wrote King concerning the administration of particular cases, stating,

Let me suggest that you do not bother with this matter at this time . . . I am certain that Referee Marston will be glad to look after this and all other matters in order to relieve you of these details at the present time.¹⁰

Later in the year, a Justice Department official wrote Tuttle to ask whether King's indictment required his removal from office. Tuttle categorically rejected the inquiry, replying in a letter dated July 9, 1920, "I have already given careful consideration to this question and reached the conclusion that it does not disqualify him and that it should not do so."¹¹

On the one hand, Tuttle was an ardent Republican and, like many others, may have seen the Newberry matter as a case of partisan political excess. On the other hand, Tuttle was famous for his sense of integrity. He would not tolerate even the appearance of misfeasance or impropriety. However reluctant he might have been to do so, had Tuttle believed the charges against King were legitimate, he certainly would have sought his resignation. That he did not reflected the high regard for King that he shared with many others. Some later accounts of King's life mentioned his role as Newberry's campaign manager, but none of them mentioned his prosecution or conviction.¹²

Paul King withdrew from partisan politics after the trial. However, freed of the threat of prosecution and imprisonment, he embarked on an illustrious public

career that would bring him the universal respect and admiration of his contemporaries.

Bankruptcy Administration in the Early 20th Century¹³

On April 10, 1919, U.S. District Judge Arthur J. Tuttle appointed King Referee in Bankruptcy for the Eastern District of Michigan. The Bankruptcy Courts, and indeed the Bankruptcy Act, had existed for barely more than twenty years. King was only the fourth Referee appointed in the Eastern District of Michigan since the Act's inception.¹⁴

Despite its explicit provision in Article I of the Constitution, Congress would not enact a permanent bankruptcy law until 1898. Its three prior efforts had been short-lived and unpopular. The administration of earlier insolvency laws drew the ire of both creditors and debtors, who believed that the Bankruptcy Courts served little function other than to enrich court officials and professionals. A court officer called the register supervised cases under a law enacted in 1867 but had no judicial authority. The District Judge resolved any disputed matters. Nonetheless, the registers and the professionals they employed collected considerable fees for their efforts. Antipathy toward the 1867 bankruptcy law (repealed in 1878), brought on by complaints of high costs and corrupt administration, was so great that supporters of the 1898 Bankruptcy Act needed eighteen years to overcome opposition engendered by the old law.¹⁵

Like the 2005 revisions to the modern Bankruptcy Code, interest groups played a major role in drafting the 1898 Act. To a large extent, the creation of the position of Referee in Bankruptcy reflected Progressive-era businessmen's faith in the ability of professional government managers to counter the waste and corruption of the Gilded Age. Just as urban reformers sought to replace political machine bosses with professional city managers, the proponents of new bankruptcy legislation sought to correct past abuses by creating the position of bankruptcy Referee.

The Referees were charged under the Bankruptcy Act with general case supervision. Their positions were somewhat analogous to those of today's Bankruptcy Judge, but also included many of the duties performed by the United States Trustee and case trustees under the Bankruptcy Code. The Referees' judicial responsibilities included the authority to grant or dismiss voluntary and involuntary bankruptcy petitions and conduct meetings of creditors, as well as to exercise such other additional duties that might be assigned them by the District Judge.

Bankruptcy in the Eastern District in the Twenties and Thirties

In addition to their judicial responsibilities, Referees were also responsible for many administrative activities now performed by case trustees or the United States Trustee. In particular, Referees themselves made all disbursements to creditors. By placing the lion's share of responsibility for case administration with a single official, moreover one whose compensation depended on successful outcomes, the drafters of the Bankruptcy Act believed they had resolved the accountability problems that had been the downfall of prior national insolvency laws. However, while the system worked well in the Eastern District of Michigan during Paul King's tenure, abuse continued and even thrived in some other jurisdictions. Moreover, abuses in the conduct of corporate reorganization cases, in which the referees played smaller roles, led to major investigations of the Bankruptcy Courts. King would give much of his attention over the remainder of his career to solving these systemic challenges.

While Referees were properly considered judicial officials, they were unique in many important respects. Referees were not political branch appointees. In fact, no Federal department or agency had authority to supervise bankruptcy administration under the Bankruptcy Act. Instead, Bankruptcy Court supervision fell within the exclusive authority of the District Judges in each Federal judicial district. The judges appointed the Referees for two-year terms, and appointments were generally renewed. The appointments were originally conceived as part-time positions; almost all Referees were lawyers who maintained a private practice (although they were barred from acting in other capacities in bankruptcy cases).

The Bankruptcy Courts were self-sustaining entities. Court operations were funded through a combination of filing fees and fees retained as a percentage of funds collected in asset cases. This extended to the Referees, who were paid a small flat fee plus a percentage of the disbursements made in each case. In other words, most of a Referee's compensation was in the nature of a contingency fee; the Referee received no compensation beyond the flat fee unless assets could be liquidated and distributed to creditors.

The Bankruptcy Courts' independence extended to their physical locations. With rare exceptions, bankruptcy Referees maintained offices and courtrooms away from the District courthouse, usually in leased office space. Paul King and his co-Referee, George Marston, first leased offices in Detroit at 419 W. Fort Street, and then in the Buhl Building before moving into the new United States Courthouse in 1934.

Arthur J. Tuttle was the Eastern District of Michigan's only District Judge in 1919, and he took a particular interest in bankruptcy administration. This was partly attributable to the fact that, until the enactment of the Volstead Act in 1920 (which flooded the Federal courts with prosecutions against bootleggers and speakeasy operators), bankruptcy cases made up a significant portion of District Judges' dockets. However, it was also Judge Tuttle's nature. A man of great personal and public dignity, his attitude toward the Court and its staff was described as paternal, and he took an active interest in the Court and its operations.

By 1919, he was anxious to revamp the Bankruptcy Court's operations.¹⁶ Bay City and Detroit had each had its own Referee since 1907. Judge Tuttle devised a plan under which new cases filed in the entire district would be assigned jointly to both trustees, which would even out the workload between the two divisions (Detroit was increasingly the busier of the two) and would promote quicker administration and faster case closings.

Judge Tuttle was greatly impressed by Paul King's performance as the operating receiver of the Pere Marquette Railroad. He credited King's management with sufficiently improving the company's financial condition to make its reorganization possible. Tuttle believed that King's managerial skills and legal background would make him the ideal person to implement his plan. However, King was not seeking the job. Therefore, Tuttle himself approached King and enlisted him for the position.¹⁷ King readily accepted the appointment, and began work almost immediately. Tuttle was pleased with his choice. The two formed a close relationship, and he frequently expressed to King his satisfaction with the new arrangement.

In both theory and practice, the duties traditionally associated with judging made up only a small part of the work of the early bankruptcy Referees. Case administration occupied the larger part of the Referees' attention. Although Paul King would play a significant role in shaping the Chandler Act, which made significant substantive changes to bankruptcy law in the late 1930s, his professional career primarily focused on improving bankruptcy administration, both in his own court and nationally. This was partly by inclination; since as a young man King had been drawn to the organizational and managerial aspects of his endeavors, whether it was in connection with state legislatures, political campaigns or the law.

However, King's efforts to improve bankruptcy administration were also compelled by necessity. Despite the efforts of the Act's drafters, some critics continued to assail the Bankruptcy Courts as being, at best, inefficient and, at worst, corrupt. In some jurisdictions this was undoubtedly true. The title of a 1923 expose published in the *New York Times* by a noted bankruptcy authority was self-explanatory: "The Wolves of Bankruptcy and the Tactics They Employ."¹⁸ Small cliques of attorneys and other professionals dominated the Bankruptcy Courts in many major cities; they prospered while leaving little of a bankrupt's assets for creditors. Conflicts of interest were common and widespread, with one attorney frequently representing trustees and creditors in the same case. Contributing to the problem was bankruptcy's unseemly image. Prominent law firms avoided the practice in the same way that they left criminal and personal injury cases to smaller, less prestigious firms.

Such problems were of particular concern to King at the time of his appointment. His predecessor had resigned in the face of charges by Judge Tuttle of cronyism, conflicts of interest, and mishandling of estate assets. King wished to elevate the reputation of bankruptcy administration in general and Referees in particular. He frequently offered the opinion that better administration of cases would remove some of the stigma that attached to bankruptcy.

Judge Tuttle, whose interests were more parochial, encouraged his efforts. Tuttle's concern was to run the cleanest court possible. In 1940, Tuttle reflected on his twenty year association, with King, stating, "For years I have been trying to hold the expenses of your office down to such a point that when criticism came it would not hit us and that we should have not only done justice but that we could prove that we had."¹⁹ Their complementary efforts made the Eastern District of Michigan's Bankruptcy Court a model of both efficiency and probity.

King's initial efforts were aimed toward improving the workings of his new court. King and Tuttle gave attention in 1919 and 1920 to improving the Bankruptcy Court's financial reports. King implemented organizational and procedural changes to the Court, with the goal of improved efficiency. He believed that Referees should strive to reduce case expenses, thereby enhancing the distribution to creditors in a case. Therefore, he made enthusiastic use of the relatively new field of program evaluation, carefully studying data in search of further improvement. His penchant for statistical analysis was evident in a tribute to his colleague George Marston

that he wrote in 1928. King emphasized the connection between the changes made in court operations and improved outcomes for creditors:

All references of cases are made to us jointly and severally, so that either Referee may act in any matter, at any stage of the proceedings and in any part of the District [Then as now, the Eastern District extended south from the Straits of Mackinac to the southern state line]. The work is evenly divided, one of us presiding in Detroit one month and the other "out-state" so to speak, the next month. Compensation is also equally divided.

During the nine years of our administration 4753 cases have been closed at an average expense ratio of 14.81% of the proceeds realized, and in an average period of administration of 14.03 months per case. \$25,506,394.33 in proceeds have been realized and the sum of \$20,883,040.02 has been paid to creditors, the difference being in expenses of administration, exemptions and reclamations. There are now pending 823 cases with \$1,552,331.76 on hand in cash.

The great volume of business is handled systematically by a well-organized staff, and the plan by its flexibility has proved highly efficient. It is giving, we think, general satisfaction to litigants, attorneys and the public. Referee Marston and I are constantly striving to make the offices of the Referees in this District a model of efficiency and service.²⁰

These efforts were successful. By 1926, the Eastern District of Michigan ranked 17th among the nation's 84 judicial districts in the ratio of fees to overall sums administered per case.²¹ By that same year, King extended his efforts to the local bankruptcy bar. He organized regular meetings with himself, Judge Tuttle, Referee Marston, and local attorneys. These meetings provided the officials with a forum to explain procedural reforms, but King also valued the opportunity to enhance the overall camaraderie of the bankruptcy bar.

Over time, King became an increasingly vocal proponent of bankruptcy's social benefits. The easy access to credit during the 1920s was reflected in the increasing debts that bankrupts sought to discharge. Banks and merchants commonly complained (as they do now) that their customers were hoodwinking them. By 1926, King was publicly contradicting this argument, offering his opinion that most businessmen went bankrupt because they were unqualified to run a business and not because they were dishonest and corrupt.²²

King would refine and expand this theme throughout his career. By 1939, after overseeing a decade of Depression-era bankruptcy cases, he was quoted in the *New York Times* as describing bankruptcy as “a social agency as well as a necessary economic devise.” He added, “We may look at its possibilities from the point of view of the rehabilitation of business units as commercial agencies which mean progress, instead of merely as a means of clearing away wreckage.”²³

Paul King and National Bankruptcy Reform

King believed that Bankruptcy Courts should be thought of as more than collection agencies. However, after seven years on the bench, he was convinced that his vision of the courts would not be achieved unless the quality of bankruptcy administration throughout the United States was improved. However, its diffuse structure and lack of a central authority stood in the way of effective reform. Therefore, King decided to focus his considerable organizational skills on his own profession.



Banquet at the first conference of the National Association of Referees in Bankruptcy at the Book Cadillac Hotel in Detroit in 1926.

In 1926, King and his fellow Eastern District Referee, George Marston, hosted a conference at Detroit’s Book Cadillac Hotel to establish the National Association of Referees in Bankruptcy. King organized the conference and was elected the Association’s first president. The themes discussed at the conference reflected King’s concerns. Despite the resistance voiced by some of his colleagues, many of whom enjoyed the autonomy the bankruptcy system provided them, he pushed for the adoption of at least some uniform practices. Second, he urged the conferees to adopt the administrative practices of their most efficient colleagues. Finally, he suggested that the public’s perception of bankruptcy would be improved if the first two goals were successfully achieved.²⁴

In the course of the following year, King identified the most and least efficient Referees through a comparative statistical study of administrative fees

and creditor distributions for all eighty-four Federal districts, which he had apparently compiled himself.²⁵ His other major project during his term as the organization’s president was the preparation of a Uniform Code of Ethics for Referees. The Code was adopted at the Association’s second annual meeting in Buffalo in 1927.

King had great faith in voluntary organizations and particularly believed that the Referees could and should regulate themselves. However, his efforts met with varying degrees of success. Despite his vigorous efforts through the Association to promote the adoption of uniform practices among the referees, such rules were not adopted until after bankruptcy administration was brought within the Administrative Office of the United States Courts in 1946. Until then, bankruptcy administration varied widely among districts. Lax administration by Referees in some districts fueled the public perception of corruption. The nature of this criticism is described elsewhere in this article.

By the late 1920s, major investigations of bankruptcy practice in New York led to calls for major bankruptcy reform. It was here that Paul King’s exceptional organizational skills provided the Referees with the greatest benefit. King understood that because of the absence of a national structure, the Referees lacked a cohesive political voice. While each Referee enjoyed broad personal autonomy, their national organization provided them with the political authority they needed to influence the coming amendment of the Bankruptcy Act.

The National Bankruptcy Conference was an informal organization formed to draft and advocate changes to the 1898 Act. Its members were representatives from the major bankruptcy-related organizations and influential professionals and academics. While the original idea for the group was not King’s, he played an active role in its formation and was its chairman from its inception in 1932 until his death in 1942. The Conference played a primary role in drafting the Chandler Act, the overhaul of the 1898 Act adopted by Congress in 1938. As the *New York Times* reported that year, “The conference has grown into a definite, recognized reference body on bankruptcy and corporate reorganization and, though unofficial, enjoys the confidence of members of Congress.”²⁶

In 1937, one of his colleagues in the Conference resorted to sports metaphors to describe King’s role in the group: “They remind me of a football team, [Jacob] Weinstein is center, he passes the ball back to [Watson] Adair, who passes the ball to Paul King, and

Paul King always runs to a touchdown. He has held the Conference together for five years, and the suave way in which he keeps them good tempered is marvelous.”²⁷

King’s substantive influence can be seen in the Chandler Act’s treatment of Referees. Despite the major revisions to the Act, Referees’ authority was not only left untouched, but their scope was extended in corporate insolvencies and by the creation of personal reorganization cases. However, enactment of the Chandler Act, which incorporated these changes, also led to the appointment of a commission to investigate the disparity in administration between districts and the desirability of putting the Referees on salary.

Despite the intention of the original Act’s drafters, in practice the fee-based system for compensating Referees was a common source of criticism of the Bankruptcy Courts. Opponents argued that it created an inherent conflict of interest by providing referees with an incentive to rule in favor of arguments that increased the distributable assets in the estate, notwithstanding the merits of doing so in a particular case. For all of his efforts to improve the standards of judicial administration in bankruptcy cases, King gave short shrift to such criticism. Responding to Judge Tuttle, who closely monitored Referee compensation in his district and seemed in support of proposals to put the officials on salary, King stated that he was not aware of any instances of real abuse by Referees. He suggested that the real problem was that the Referees frequently earned more than the District Judges who supervised them.²⁸

However, by 1940 the National Bankruptcy Conference had come to support the concept of placing Bankruptcy administration under a single national authority. Ever the consummate organizational leader, and perhaps frustrated by his own inability to encourage the Referees to adopt their own uniform procedures, King provided his personal and organizational support to the Attorney General’s Committee on Bankruptcy Administration.²⁹ The Referees were not made salaried employees under the central authority of the Administrative Office of the United States Courts until 1946. It was not



Judge Arthur Tuttle (center) with Molly and Archie Katcher, Referee in Bankruptcy from 1946-1956.

until the Bankruptcy Reform Act of 1978 that Congress accorded them the title of Bankruptcy Judges. However, until those events, it is fair to say that no single individual did more to elevate the status or quality of the Bankruptcy Courts than Paul King.

Public and Charitable Activities

Despite Paul King’s long tenure on the bench and his prominence in the national bankruptcy community, he was better known to the general public for his charitable activities. He focused his considerable organizational skills on these endeavors with great success. During World War I, King was the Michigan director of the Red Cross war fund campaign, which raised more than \$4 million for the organization’s relief work.

Following Theodore Roosevelt’s death in 1919, King led Michigan’s effort to raise funds for a memorial to the former President, raising more than \$100,000 in small contributions, better than all states but TR’s own New York. King’s involvement in this particular effort was somewhat ironic, given his efforts to defeat Roosevelt’s bid to regain the Presidency in 1912.

King was deeply involved in the local, State and national Rotary Clubs and served in leadership roles at all three levels. While having no formal connections, Rotary Clubs were closely involved with programs that assisted disabled children. In typical fashion, King came to lead the State, national and international Societies for Crippled Children. Similar to his effort to organize bankruptcy Referees, much of his attention was directed toward improving patient care by promoting discourse and cooperation between individuals and groups specializing in the problems of the disabled. He organized world congresses for people working with physically disabled children in Ostend, Belgium in 1927, in Geneva in 1929, at The Hague in 1931, in Budapest in 1936 and in London in 1939. The international organization broadened its scope to include disabled adults during King’s tenure as its leader.

By 1933, the Depression had dramatically restricted the national Society’s fundraising results. At its national convention that year, Paul King advocated the sale of stamps, or seals, as a way to raise funds for the organization. He proposed that the Easter season would be an ideal time to conduct such sales. Hence, the Society’s Easter Seals campaigns were born. The first Easter Seals were sold in 1934, and became so well known that the organization eventually renamed itself after the seasonal stamps.

The stamps themselves continue to be one of the group's primary fund-raising tools.³⁰

King was an active member of the North Woodward Congregational Church. Typically, he was the President of its Board of Trustees. This, combined with his other civic activities, led to his election as the first lay president of the Detroit Council of Churches in 1930. Again, he used his role to seek innovative ways to address the problems brought on by the Great Depression. Under King's direction, the Council's Board sought in the Spring of 1930 to alleviate Detroit's growing unemployment by encouraging church ministers to hire workers for odd jobs in and around their churches. Unfortunately, the Council's efforts did not find much success, as the City's profound economic downturn overwhelmed private efforts to provide relief.³¹

King's Last Years

This high level of activity took its toll on King. By the late 1930s, he experienced health problems, particularly heart disease. His wife and close friends tried to convince him to slow down and take better care of himself. Although King made some concessions, he maintained his usual frenetic pace. Judge Tuttle, King's boss, mentor and friend, sent him a poignant letter in June 1939 urging him to take better care of his health:

You told me some time ago that you were planning to go to London for the Fourth World Congress of Workers for the Crippled. I am not only glad to have you make the trip but I am delighted to know that Sarah and Pauline [King's youngest daughter] are to accompany you. My only request is that you do not load yourself down with work. Your activities in connection with the crippled children will be enough. Please do not take any work from the office or from this side of the Atlantic with you. You need a rest and I want you to get some real relaxation and recreation out of the trip. You owe it to yourself, you owe it to Sarah and you owe it to Pauline . . . I also note that immediately on your return you are going to Los Angeles for the annual meeting of the Referees in Bankruptcy. I think of that as so intimately connected with your work as referee in Bankruptcy that I add my approval to that trip. I urge you, however, for many reasons, not to take on additional duties in connection with the crippled children or in connection with the conference of referees. You over-tax your energies by adding on so many outside activities

and you do that extra work without any money compensation. It is your position as Referee in Bankruptcy that gives you your income. You not only owe it to the office to give your time, energy and effort to that office, but having done that you haven't enough time or energy left to give to these other things without over-taxing yourself. It just means that you are either going to overwork or else neglect the job which gives you the income. Neither one of those things is right. Please help Sarah and me figure it out in such a way that your working time and energy is given to your position as Referee in Bankruptcy and the balance of your time is given to real recreation.³²

As it turned out, King did not go to the Referee's meeting in Los Angeles. He explained to Judge Tuttle in a letter dated August 14, 1939 that he could not justify the \$200 cost of the trip, given the decline in case filings (resulting from the region's slowly improving recovery) and his daughter's school expenses.³³ However, it was the first Referees' conference that he had missed since he formed the Association in 1926. Given Judge Tuttle's concerns, one wonders whether King felt physically up to making a second long trip.

King suffered a heart attack on May 14, 1942 and was taken to Highland Park General Hospital, where he died three days later. Such was his devotion to public and private service that his colleagues were moved to profess their affection for him in the most profound terms. Judge Tuttle wrote,

I do not know when I have been so shocked and grieved by the death of anyone outside of my own family circle as in this loss of Paul . . . I wonder if he knew how much we all loved him and how much we needed him. As I think about it, I imagine he did. He was such a modest and unassuming little chap, and yet I think he must have known that he had a 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.

The National Bankruptcy Conference eulogized him as, a man of large vision, deep insight, good judgment, and splendid open-mindedness which made him a wise counselor and a foresighted, patient and tactful presiding officer at all meetings of the Conference. He was an uncompromising foe of anything which, openly or by implication, destroys honor and integrity,

in public or private affairs. He was a jealous guardian for the oppressed and unfortunate, a fighter for the right, as God gave him to see the right . . . This was the man, and yet we cannot write of Paul King without emotion, we are all moved by a sense of deep loss. As men love men, we all loved him, and mourn him . . .”³⁴

Unfortunately, few of Paul King’s personal papers exist today, and his life must be pieced together from the recollections of his contemporaries. Those accounts, almost without exception, express acclaim for King’s character, his generosity, and his commitment to service to others. His leadership of the bankruptcy community raised the status of Bankruptcy Courts throughout the country and influenced the reforms enacted by Congress in the late 1930s and 1940s. His work for the Crippled Children’s Societies resulted in the creation of one of charitable fundraising’s most famous tools and established a model for sustaining the societies and other public charities. King may be all but forgotten, but the impact of his efforts is still being felt today. ■

End Notes

1. J.D., Ph.D. candidate, Wayne State University; Adjunct Professor of Law, University of Detroit Mercy Law School. This article is drawn from the author’s forthcoming book on the history of bankruptcy in the Eastern District of Michigan. The author would like to thank the Bankruptcy History Committee of the Historical Society for the Eastern District of Michigan and especially Judge Walter Shapero, John Mayer, and Judy Christie for their support in the preparation of this article.
2. The information in this section is drawn from obituaries for Paul H. King (PHK) that appeared in the *Journal of the National Association of Referees in Bankruptcy* (J.NARB) Vol. 16, No. 4 (July, 1942), p. 115, and in the *New York Times* (NYT), May 19, 1942. Additional material is taken from Andrews, Roger M., “Regarding Paul King,” *Credit Digest* (February 1928), and Newmark, J.H., “Paul H. King: the Story of a Man Who Delivered the Goods,” *Detroit Free Press*, June 6, 1915.
3. Except as otherwise noted, the information in this section is from Dunbar, Willis F. and May, George S. (1995). *Michigan: A History of the Wolverine State*. Grand Rapids, Michigan: Wm. B. Eerdmans Publishing Co.; Ervin, Spencer (1935) *Henry Ford vs. Truman H. Newberry*. New York: Richard R. Smith; and from several articles appearing in the *New York Times* between January 27, 1920 and January 10, 1922.
4. *New York Times*, January 27, 1920.
5. King’s debilitation, whatever its nature, appears to have been quite real. In a letter to Judge Tuttle dated September 30, 1920, Marston referred to King’s extended absence from the bench “on account of ill health.” Arthur J. Tuttle (AJT) Papers, Bentley Historical Library, University of Michigan.
6. *New York Times*, March 22, 1920.
7. Ervin, page 57.

8. *Newberry v. United States*, 256 U.S. 232, 41 S.Ct. 469, 65 L.Ed. 913 (1921).
9. Pusey, Merlo J. (1951). *Charles Evans Hughes*. New York: The Macmillan Company, p. 659.
10. AJT to PHK, January 29, 1920. AJT papers.
11. AJT to USDOJ, July 9, 1920. AJT papers.
12. However, it was the headline of Newberry’s obituary in 1945 (*New York Times*, Oct. 4, 1945).
13. Two excellent sources of information on the early history of the Bankruptcy Courts are Beatty, Prudence Abram and DeNatale, Andrew (1995). *From Referee in Bankruptcy to Bankruptcy Judge: A Century of Change in the Second Circuit*, in *The Development of Bankruptcy & Reorganization Law in the Court of the Second Circuit of the United States*. New York: Matthew Bender & Company, Inc., and David Skeel’s essential work, *Debt’s Dominion: A History of Bankruptcy Law in America*. Princeton: Princeton University Press (2001).
14. The others were Harlow P. Davock, who died in 1911, Lee E. Joslyn, who was appointed in 1906 and resigned in 1919; and George Marston. Marston was born in Bay City in 1873. The son of a Michigan Supreme Court justice, he graduated from the University of Michigan Law School in 1896 and replaced Lee Joslyn as bankruptcy Referee in Bay City when the latter moved to Detroit in 1910. Although highly respected and having sat longer as a referee, King’s more dynamic personality overshadowed Marston’s. Marston took a leave of absence from his Referee appointment in 1944 and formally resigned the position in 1947. He died in California in 1953.
15. Warren, Charles (1935, 1999). *Bankruptcy in United States History*. Washington, D.C.: Beard Books, p. 127.
16. AJT correspondence to J.S. Hurd, April 14, 1919. AJT papers.
17. AJT letter to Clyde Webster, April 14, 1919. AJT papers.
18. NYT, February 11, 1923.
19. AJT correspondence to PHK, April 20, 1940. AJT papers.
20. King, Paul H. (1928). *George Marston*. *Credit Journal* (February 1928).
21. Idaho had the lowest ratio and Nevada the highest.
22. J.NARB (1926-1927), pp. 6-7.
23. NYT, June 16, 1939
24. J.NARB, Vol. 1., No. 1, p.3 (1926-1927).
25. King, Paul H. (1926). Bankruptcy administration analysis, 1 J.NARB, No. 2, p.78; 2 J.NARB, No. 1, p.4.
26. *New York Times*, August 23, 1938.
27. J.NARB, October 1937, p.2.
28. PHK to AJT, June 13, 1939. AJT Papers
29. PHK correspondence to Attorney General Frank Murphy, April 13, 1939. AJT papers.
30. King’s role in creating Easter Seals is documented at the organization’s website, easterseals.org, and a Rotary website, rotary100.org.
31. Pratt, Henry J. *Churches and Urban Government in Detroit and New York, 1895-1994*. Detroit: Wayne State University Press (2004), p. 40.
32. AJT correspondence to PHK, June 15, 1939. AJT Papers.
33. PHK correspondence to AJT, August 14, 1939. AJT Papers.
34. J.NARB, Vol. 16, No. 4 (July 1942).

Court Historical Society in the News

Editor's Note: The following picture and article were published in the Detroit Legal News on August 7, 2009. They are reprinted here with permission. Judge Cohn is one of the founding members of the Court Historical Society who continues to be an active member of the Board of Trustees of the Society.

Four Score and 5 Years Ago

By: Tom Kirvan, Legal News

As birthdays go, this one was a milestone for Avern Cohn, judge of the U.S. District Court for the Eastern District of Michigan.

Yet, the distinguished federal jurist celebrated his 85th birthday on July 23 much like many special occasions before – among family and judicial friends at the Lafayette Coney Island, just a short walk from his chambers in the Theodore Levin U.S. Courthouse in downtown Detroit.

The birthday festivities were attended by such notables as federal court colleagues Gerald Rosen, Marianne Battani, Nancy Edmunds, and David Lawson, along with a number of well known Detroit area attorneys who have appeared before Judge Cohn during his three decades on the bench. His daughter, Leslie (Cohn) Magy, also was on hand for the lunchtime fun, as were three of his seven grandchildren, Harrison, Hannah, and Jeremy.

When lunch was over, the birthday celebrants adjourned to Judge Cohn's office where cake was served, bringing a sweet-tasting end to a party filled with joyful memories.

"It's always nice to see so many good friends," said Judge Cohn of the birthday gathering. "We've been doing this for 30 years and each year it is special."

This year's birthday bash will serve as a forerunner to several other notable celebrations for Judge Cohn over the next several months, according to Lori Van Hove, his judicial secretary. In September, he will return to Ann Arbor for the



Credit: Detroit Legal News

Judge Avern Cohn was in the spotlight at a July 23 birthday luncheon in Detroit, expressing his thanks to well-wishers who gathered for the occasion at the Lafayette Coney Island.

60th reunion of his law school class at the University of Michigan. Also that month, Judge Cohn will receive the Founder's Award from the State Bar Association and the Outstanding Achievement Award from the State Bar's Council of the Negligence Law Section. A few weeks later, on October 9, Judge Cohn will mark his 30th year on the federal court, earning the appointment from then President Jimmy Carter.

A veteran of the U.S. Army, Judge Cohn was in private practice from 1949-79, the last 18 years with the Detroit firm of Honigman, Miller, Swartz & Cohn. He has long been active in public affairs, serving on the Michigan Social Welfare Commission, the Michigan Civil Rights Commission, and the Detroit Board of Police Commissioners. He is a past president of the Jewish Welfare Federation of Metropolitan Detroit, and at various points chaired the Michigan Civil Rights Commission and the Detroit Board of Police Commissioners.

It is his work on the federal bench, however, that has cemented his important legacy, according to Mike Lavoie, an attorney with Butzel Long who formerly served as an assistant prosecutor with the U.S. Attorney's Office in Detroit.

"Judge Cohn has always been known for his honesty and integrity, for being tough but fair," said Lavoie. "He is held in the highest regard."

Chief Judge Rosen echoed the sentiment.

"Avern has been a warm and generous friend as well as a mentor of mine for 20 years," said Chief Judge Rosen. "His career is an inspiration to the practicing bar and his colleagues on the bench." ■

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