

tion of the country should declare ignorance to be entitled to as much political power as knowledge."

A SUPERFLUOUS COURT?

Yet this, swinging to the opposite extreme, is precisely what the Supreme Court declares in its strongly egalitarian ruling. Equality means, literally, deficient in quality and to eliminate quality has never been a dominant American objective, in the choosing of legislative bodies or in any other function. Though "all men are created equal," in the sense of being entitled to equal social consideration and legal protection, they do not remain equal in their abilities and accomplishment. Equal opportunity has never implied that competition is undesirable. The customs and laws of the country have always encouraged individuals to "get ahead"—which means to become unequal.

Justice Harlan has the importance of excellence in mind when he warns that the reapportionment edicts have "portents for our society and the Court itself which should be recognized." We shall have a very different society if a dead level of mediocrity is successfully established as the national image. If the Federal structure is destroyed to gain this objective, there will no longer be any function for the Supreme Court. Its only constitutional purpose is to maintain the delicate balance between the National and State Governments. If the latter lose their autonomy the Court becomes superfluous.

There is no similar organ in the Soviet Union, where totalitarian democracy is triumphant, at the cost of representative government.

The Layman's View of Bankruptcy

EXTENSION OF REMARKS

OF

HON. JOHN V. LINDSAY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 3, 1964

Mr. LINDSAY. Mr. Speaker, Mr. Allyn M. Schiffer, one of my distinguished constituents, is active in credit and collection fields, and heads a large and successful commercial agency known as Allyn M. Schiffer, Inc., at 770 Lexington Avenue, New York City. Mr. Schiffer is considered an expert on the subject of credit. He has lectured before business groups and schools in this country and abroad, and is the coauthor of "Credit and Collection Know-How" and also the recently published book, "Profitable Use of Credit in Selling and Collecting," published by Fairchild Publications, Inc., of New York City.

Recently Mr. Schiffer wrote a most interesting article in the July 1964 issue of Commercial Law Journal, entitled "The Layman's View of Bankruptcy." I am taking the liberty of inserting Mr. Schiffer's excellent article in the Record for the edification of my colleagues in the Congress:

THE LAYMAN'S VIEW OF BANKRUPTCY

(By Allyn M. Schiffer)

"Bankruptcy." What a frightening word. Prior to the great depression of 1929, generally speaking, a man's entire business life came to an end with bankruptcy. When a business "took bankruptcy," the proprietor lived for the day when he could retrieve a lost reputation, sometimes by repaying his just debts to creditors, who had "staked"

him in his enterprise. With the advent of the depression, a new approach was tried in the form of Government aid through the Reconstruction Finance Corporation. In addition, after the 1929 crash, the Bankruptcy Act was expanded so that utilities and publicly held corporations could reorganize under sections 77 and 77B (now chapter X) respectively, instead of liquidating. This allowed the firm to continue in business as a going concern. Unlike actual bankruptcy, the new sections improved on the equity receivership to enable a debtor to submit a reorganization plan for the approval of its creditors. Later, chapter XI was added. Under this amendment to the bankruptcy laws, any business can propose an arrangement with its unsecured creditors. Chapter XI is available to individuals, partnerships, and corporations, whether owned by a few or many shareholders.

What effect has all this new legislation had upon business in general? Very few firms filing under chapter XI or X have been able to pay off dollar for dollar to creditors. Why? Is it because bankruptcy legislation perhaps appears to put the stamp of approval on business tactics that jeopardize a creditor's position? The Wall Street Journal (May 20, 1963), headlined "Big Jump Reported in Bankruptcy Frauds." It is not an easy matter to prove fraud. Proof of fraud generally requires the production of facts showing a "state of mind." Eliciting such facts from witnesses and documents involves substantial services on the part of attorneys, accountants, creditors, credit, and collection agents. The objective of a prosecution, if it is to be successful, must be the presentation of proof that a bankrupt, or debtor under chapter XI or X, has "hidden," "gambled," or "diverted" assets. However, a petitioner under the bankruptcy laws is not always fraudulent. Perhaps he has been a poor manager or frittered away his assets negligently. This, of course, is not comforting to creditors. In a recent chapter XI proceeding, the attorney for the petitioner stated that "there has not been a certified audit for 47 years." How appalling.

Can suppliers be blamed for the increasing number of petitions under the Bankruptcy Act? The urge for increased sales on the part of management may be a factor. Credit executives, to meet competition, may find themselves in a dilemma, unless they can convince their management of the extent to which the credit risk overbalances the advantage of higher sales. The National Association of Credit Men through its Fraud Prevention Department is bending ever effort to work with the U.S. Department of Justice "to uproot the parasitical growth." (November 1963 issue—Credit and Financial Management.) The small recovery realized by creditors on their claims is equally appalling. Some suppliers have turned to credit insurance to reduce their losses. However, credit insurance companies charge premiums, and a credit executive must evaluate the cost of his policy with the profit on sales and the cost of collection. Credit departments can obtain some protection by selling to purchasers on a guaranty or copurchasing basis. Such action serves as an additional "cushion" in the event of bankruptcy or chapters X or XI. Despite the precautions taken by creditors, the recovery in a proceeding under the Bankruptcy Act remains small. Frequently the Government receives the lion's share. Federal, State, and local taxes are entitled to priority over general creditors. Some effort is being made to place a limitation on the priority of tax claims in bankruptcy. (H.R. 3438.) Should this bill become law, unpaid tax claims over 3 or more years would be dischargeable and would not have priority under the Bankruptcy Act. This would be a small step forward toward helping creditors share in a greater portion of the assets.

Today, a bankruptcy petition may have

a salutary purpose. By discharging his debts, it may give the petitioner a new lease on his business life. It may enable him to reappraise his talents and abilities and to use them to advantage in a new undertaking, and also to accept a new responsibility in the business community. Unfortunately a few will not accept the law as it was intended to operate. Some men go in and out of business like the proverbial revolving door. They find it not too difficult to reincorporate, buy up the assets of the bankrupt firm under a different corporate name, and even continue the same business at the same old address. They may sell their business under the bulk sales law. They may comply with all the provisions of the law, but still the creditors end up with a small settlement. Creditors can only resent such action, unless they choose protracted litigation to set aside the sale at an expense that would prove burdensome. It may be desirable to amend the bankruptcy law to declare a bulk sale an act of bankruptcy. This would permit creditors faced with a questionable bulk sale to invoke the provisions of the bankruptcy law.

In 1938, when the current Bankruptcy Act was enacted, very little attention was given to the salaried employee or wage earner. Now we are confronted with the rising tide of "consumer credit." During the depression only straight or ordinary bankruptcy was available to individuals or nonbusiness debtors to extricate themselves from their accumulated debts. So, in 1938, the Bankruptcy Act was amended by adding chapter XIII. This enables the wage earner to extend or settle his indebtedness and to make payments in the form of installments under the jurisdiction of the Bankruptcy Court, without the necessity of becoming a bankrupt. Chapter XIII should assist both creditors and debtors. Employers should also find it beneficial because it should lessen the number of garnishments. So far as the debtor is concerned, it removes the stigma of actual bankruptcy.

Much is being said by leaders in religion, education, and public affairs about the deterioration of the moral climate of American life. The business community is a prime target of such criticism. Whether our false set of business values is attributable to envy, greed, a driving ambition for power, or inadequate leadership, the provisions of our bankruptcy law appear to afford an avenue to a "way of life" for those who would abuse it. A layman considers this sufficient basis for a reappraisal of our Bankruptcy Act. An improved law, however, is not enough. If the risk in the extension of credit is to be lessened, it will be incumbent upon our lawyers, accountants, credit associations, government officials, and the collection industry to cooperate with businessmen in a grand venture devoted to the elevation of the moral and ethical standards under which our business affairs are conducted.

A Blundering Vietnam Policy

EXTENSION OF REMARKS

OF

HON. STEVEN B. DEROUNIAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 3, 1964

Mr. DEROUNIAN. Mr. Speaker, the General Accounting Office, in its factual report, sets forth the shocking attitude taken by this administration in its handling of aid to Vietnam. The lives of our military men, which have been given for the cause of democracy and freedom,

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are wasted when our foreign policy is permitted to take the course indicated by the GAO report.

John McMullan outlines some of the facts in his article which appears in the Long Island Press on August 26:

WASTE IN AID TO VIETNAM COMPILED IN
119-PAGE REPORT

(By John McMullan)

WASHINGTON.—The blunderings of U.S. aid policy in South Vietnam are detailed with embarrassing precision in a little-published report by the Government's General Accounting Office.

From expensive perfume and scotch whisky to cars and fertilizer, U.S. aid too often has eased the life of Saigon's rich instead of the country's poor, the GAO found.

GAO barks so often at waste and mismanagement in U.S. Government that its voice often is muffled into the nearest filing cabinet.

Its 119-page, two-booklet indictment of U.S. Vietnam policy met the usual fate despite these findings:

Kerosene, used almost entirely by low-income groups in rural areas for illumination, was taxed at the excessively high rate of 40 percent of the retail price by the Saigon Government.

"On the other hand, alcoholic beverages, traditionally considered a luxury, were relatively undertaxed." Imports of Scotch whiskey rose from 9,000 gallons in 1958 to 19,000 gallons in 1962.

Gasoline, used mostly by the wealthy residents in the capital of Saigon was kept at a retail price far below that in other southeast Asian countries because imports were financed by the U.S. Agency for International Development.

One thousand cars were imported into South Vietnam in 1960 and again in 1961, which "further accentuated the disparity between the low living standard in the countryside and the opulence in the cities.

While the Vietnamese Government's foreign exchange was being "used to finance the importation of passenger cars," the GAO auditors added, "AID was meeting the country's more essential transportation requirements by providing funds for the importation of buses, trucks, and repair parts."

Expensive perfume, affordable only by the rich, was taxed at 10 percent. But the cheap brands often were taxed as high as 35 percent.

Fertilizer was imported "during the demand season when prices are highest." GAO estimated that \$240,000 could have been saved by bringing it in during the off-season and storing it.

Providing electricity in small cities and rural areas was recognized as important in winning the loyalty of the people for the South Vietnamese Government. Yet 3 years after one set of 50 diesel generators was imported in 1959, 6 of them were still in a Government warehouse.

Many cities had no drinkable water, so drilling 5,000 wells by 1965 became a top-priority project. "As of June 30, 1962, only 1,108 wells had been drilled," GAO noted.

Rat infestations were causing low morale among farmers in June 1961, and an emergency appeal was sent to AID headquarters in Washington. Thirteen months later the shipment came in by air, after the crops were ruined. (Extra cost of the air transportation was estimated by GAO at \$20,000).

GAO's scrutiny of United States-Vietnam foulups cover 1958-62, through both Republican and Democratic administrations.

The report is a compilation, and at the same time an authentication, of piecemeal revelations of corruption and mismanagement within the South Vietnamese Government—and of weaknesses in U.S. policy and direction that permitted the abuses.

South Vietnam's tax structure and collection system were criticized by GAO, which found that "little action resulted" from recommendations made by U.S. advisers.

"The unsound and complicated system of a basic exchange rate, intertwined with a series of varying taxes, has continued as a burdensome drag on the country's progress toward economic development," the report stated.

At the time of GAO's review "one-quarter of the properties in the Saigon-Cholon area were not on the tax roll and only about 60 percent of the property taxes actually assessed were collected.

"The large Chinese business community in Cholon paid little or no taxes." Asked why, a top Vietnamese official explained that the tax collectors did not understand the records.

Only 15,000 individuals in a country of 13 million population paid income taxes.

GAO auditors complained that "certain policies and practices applied by aid in the administration of nonproject assistance and of local currency increased the cost of U.S. aid substantially."

As a result, South Vietnam's foreign exchange reserves grew considerably. "Higher levels of consumption were encouraged than were warranted by the state of Vietnam economy, and positive incentive for the Government of Vietnam to mobilize its own resources was weakened," the Government watchdogs said.

U.S. aid officials thought that it might help the poor Vietnamese to see what wonders had been wrought in the outside world. They agreeably went along with some of the imports that GAO criticized in its report.

So GAO inspectors found Vietnamese who formerly had worn cotton socks, delighted with AID-financed nylons. GAO pointed out that nylon "cost nearly \$3 a pound against a cost of only about 45 cents a pound for rayon and cotton yarn.

"It seems to us," GAO said, "so long as outside assistance on a large scale is required by Vietnam, the import beyond token amounts of commodities not required or of marginal necessity to that country's economic survival or development adds an unjustified burden on the United States."

Between fiscal years 1955 and 1962, AID obligated \$1.5 billion for the economic and technical assistance program in Vietnam.

Some Vietnamese businessmen apparently knew when they had a good thing, GAO said, in effect.

This led to imported pharmaceuticals being priced higher than necessary "because of commissions and promotional allowances paid to Vietnamese importers by pharmaceutical suppliers."

Twenty-one drug suppliers have had claims amounting to \$806,000 filed against them by AID, of which \$414,000 has been collected.

Is the situation in South Vietnam better today under a new regime?

Government auditors concede that certain corrections were promised at the conclusion of their field work, but they are continuing to review the South Vietnam procedures.

"We are by no means convinced," the GAO report concluded, "that measures such as these reportedly taken will solve the deficiencies disclosed by our review, at least not without top agency management exercising close control and supervision."

Kennedy-Johnson Rivalry

EXTENSION OF REMARKS

OF

HON. ROBERT H. MICHEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, September 3, 1964

Mr. MICHEL. Mr. Speaker, the following editorial in the August 26, 1964, issue of the Peoria Journal Star points

up the growing friction between the Kennedy clan and the Johnson camp as both attempt to build their authority, based on illegitimate power.

Under unanimous consent, the editorial follows:

BOBBY'S CLAN

Bobby Kennedy's appearance at the Johnson convention, dragging a reluctant Mayor Wagner with him, has nothing to do with the work of the convention—boosting Lyndon Johnson's "image" and political stock. Bobby is there to boost Bobby.

He resigned as a delegate in favor of making an entrance as a candidate for Senator in the State of New York. Meanwhile, Jacqueline Kennedy declined to be a part of the Johnson convention because of "painful memories."

The Kennedys are in this convention, in their own way, and in there punching—but fighting their own fight, not Lyndon Johnson's.

While Bobby is a reject for Vice President, he has, in effect, overruled the President by running for the Senate from New York.

After all, President Johnson said that he wasn't considering Bobby for Vice President because Bobby was "so important" as Attorney General that he'd be needed on that job and wouldn't have time to campaign.

He might not have time to campaign for Vice President in Johnson's estimation, but he has made it clear he'll find time to campaign for Senator.

(Meanwhile, Johnson also finds plenty of time from his duties as President for campaigning.)

This election will decide a lot of things concerning the Kennedy future as well as Johnson's, whether the President likes it or not.

If PIERRE SALINGER wins in California, there's not much doubt who will take over the California organization, nor to whom that organization will be loyal. It is to be remembered that PIERRE SALINGER worked for Robert Kennedy before he was known to John F. Kennedy, and was recommended to the job of press secretary by his friend, Bobby.

If Bobby, himself, wins in New York, after riding straight over Mayor Wagner, already, who is going to emerge as the real power in the New York delegation, do you think?

TED KENNEDY, of course, is already the Senator from Massachusetts and a political power in the party in that State, after beating the McCormacks in an election that sees the party there firmly in hand.

New York and California combines the east and west coasts and the two biggest single political power centers in the United States.

The third largest in many ways, and the geographical balance certainly, is the State of Illinois.

And there is a string in the bow of the family for Illinois as well, for Sargent Shriver, personable head of the successful Peace Corps, the most famous Kennedy brother-in-law and another specific reject for Vice President, has his political roots in Illinois, is a bona fide resident of Illinois, and will doubtless be heard from one of these days in local politics.

What seems to be building behind the scenes of the Atlantic City convention, and in spite of the obvious disapproval of President Johnson, is one of the most unique political power structures in American history—if it succeeds.

And at its head, undoubtedly, is the man who was the real campaign manager for his famous brother in 1960, one of the canniest and hardest-driving political organizers this land has known—Robert Kennedy.

And look where he sits. If Johnson should be beaten (and Kerner beaten in Illinois), where do you think the party leadership would instantly go? And if Johnson wins,