

Saigon's Military Courts Dominate Judicial System

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The following article is the second in a series on Vietnam.

By DAVID K. SHIPLER

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SAIGON, South Vietnam Aug. 18 — The small courtroom is lit dimly by a few bare bulbs on the ceiling. From behind the heavy black judicial bench five army officers in battle fatigues peer out at the prisoners, who stand silently among their families and friends. In an aisle a military policeman fingers half a dozen handcuffs, getting them ready. The chief judge, lieutenant colonel, reads the verdicts.

Three months to the young man for selling canned milk and soap to the enemy. Five years in absentia to the three women for treason. Four months, three months and three months to the three men for using heroin. A year to the boy for deserting, but no sentence for his mother, who is charged with helping him.

In just two hours on a recent morning the court tried 15 people without witnesses, without cross-examination. Nine were jailed and six released.

This is the Military Field Court in Saigon, one of four in South Vietnam. Over the last 20 years, little by little, these courts, which began as emer-

gency and temporary institutions on the battlefield, have expanded their jurisdiction and have become major instruments of judicial power, even though the Supreme Court declared them unconstitutional in 1970.

Most Major Cases

According to lawyers, policemen and judicial officials, they now handle virtually every case of pro-Communist or anti-Government activity — plus many purely criminal matters — in which some scrap of evidence exists. Most cases without sufficient evidence go to panels of army officers known as Provincial Security Committees, which conduct their proceedings in secret, without defense attorneys and sometimes without even the defendants present.

Together, the Military Field Courts and the Provincial Security Committees form the judicial arm of an extensive police system that operates in a twilight zone between military and political warfare.

It evolved as a weapon against what the Government saw as the Communists' im-

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mense skill in infiltrating and wooing the civilian population. But dissidents charge that this potent machinery is also used to jail students, labor leaders, writers and political opponents of the Government who have no connection with the Communists.

The police and judicial systems operate within a framework of martial law, which was declared in South Vietnam in 1965 and renewed in 1972.

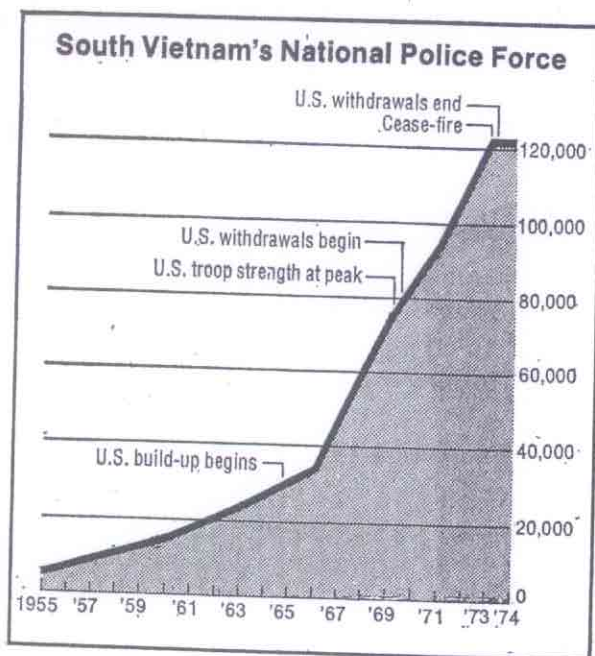
Under martial law President Nguyen Van Thieu has used his powers to issue decrees that, in effect, prohibit all political parties except his own Democratic party; prohibit strikes and demonstrations; forbid the assembly of seven or more persons without a permit; outlaw organizations and associations not approved by the Government; prohibit the possession and distribution of any printed matter or photographs deemed harmful to national security, and allow the police to search homes without warrants, detain anyone considered dangerous and assign citizens to forced places of residence.

The entire structure is designed to deal swiftly with emergencies, and its judicial arm has dispensed with the time-consuming observance of defendants' rights and rules of evidence. The system relies heavily on confession and thereby, in the view of a number of South Vietnamese lawyers and legal experts, provides a firmly institutionalized motive for torture during interrogation.

Some weeks ago Phan Van Ban stood before the five military judges in the Saigon court, whose proceedings are usually open to the public. He lived in Tay Ninh Province north of Saigon, where patches of Vietcong and Government control blur into each other just off the major highways. He was accused of buying a tractor to sell to the Vietcong. He denied the charge.

"Then why did you sign here?" asked the chief judge, a lieutenant colonel, pointing to Mr. Ban's confession in the police dossier.

"Because I was tortured so I just signed," he replied. There was no reaction from the judges, no murmur of surprise in the crowded courtroom.



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'They Beat Me Too Much'

"Did you plan to buy it and sell it to the VC?"

"No."

"Then why did you admit you planned to sell it to the VC at the police interrogation?"

"Because they beat me too much so I admitted it."

"According to the dossier, this is the second time you tried to buy a tractor."

"Because I have a son with the VC they always suspect me and force me to admit it," Mr. Ban replied, referring to his 14-year-old boy, who joined the Vietcong two years ago.

Mr. Ban was not sentenced that day but was tried again later. Convicted after denying the charge again, he was sentenced to six months in prison.

The major evidence before the courts and committees is the police dossier—a collection of papers stuffed into a heavy folder and set before the chief judge.

He and his four fellow judges wear dark green fatigue uniforms, on the left shoulders of which are sewn patches embroidered with perfectly balanced scales of justice.

The defendant who stands before the bar has not seen the dossier, which contains statements and confessions made during interrogation as well as allegations by informants and policemen.

He will learn nothing more about the contents than the chief judge chooses to tell him during the trial, so the rebuttals he makes will be shaped by the judge's questions. He is not allowed to call witnesses or confront and examine those who have accused him.

His lawyer, dressed in a black robe with a starched white collar, stands slightly to the rear, saying nothing. When the chief judge is finished the Government prosecutor — an army officer who sits near the judges—may ask something and then summarizes the prosecution's case.

The defense counsel responds with a summary statement. He is not allowed to question the defendant to bring out aspects of the case that may have been omitted by the judge's questions and his client's answers.

Without witnesses or cross-examination, each case often comes down to the word of the defendant against the reports in the police dossier, with the confession, if there is one, playing a pivotal role.

"No citizen can be tortured, threatened or forced to confess," states Article 7, Section 4, of the South Vietnamese Constitution. "A confession obtained by torture, threat or coercion will not be considered as valid evidence."

'They Confess'

"They confess," said a police officer. He is a high-ranking officer in the Special Branch of the national police, which is responsible for gathering intelligence and arresting Vietcong and their sympathizers among the civilian population.

"We do not beat them," he said, "but we show them violence, we threaten them. We have people crying in the next room so the subject thinks they're being tortured. We keep them awake, constantly questioning them for 20 hours, 24 hours, not letting them sleep, shifting teams of interrogators."

His English was flavored with a trace of a French accent. A cigarette dangled precariously from his lips.

"Vinegar and sugar," he explained — an interrogator who is harsh followed by one who is easy. "Vinegar and sugar," he repeated.

The Constitution notwithstanding, "getting a confession is a very important job of the police," said a prominent civilian judge who has watched with growing dismay as the military courts' power has expanded.

Whether the confession is true or false often remains an open question, the judge observed, since no witnesses are called. Nevertheless, he continued, wherever the truth lies in a case, military judges have long tended to take confessions seriously and to dismiss attempts to rescind them.

There are many accounts of torture. In the early nineteen-sixties one man, as a high-school student, was charged with throwing a hand grenade in his school although he insisted that all he had done was to distribute anti-Government leaflets for the Vietcong. During interrogation he finally signed what he said was a false confession after severe torture. Then he repudiated his confession in court, denied the

crime and told the judges he had been tortured. He was convicted and sentenced to five years, he said; he remained in prison for six.

A high-school mathematics teacher, active in the peace movement and an advocate of a cease-fire, said he was arrested in 1965 and beaten until he admitted falsely that he had handled money for some Vietcong members.

Last September, after five months in prison, Nguyen Thua Nghiep, president of the Petroleum and Chemical Factory Workers Union, was brought to trial with two other union leaders who had been accused of working for the Communists.

Mr. Nghiep, a courtly man, had displeased both his employer, Esso Eastern, Inc.—Exxon's subsidiary in the Far East—and the Government with some strong union action and a campaign to ease the burden of the income tax. He was about to begin an effort to increase benefits for workers' families.

According to an account of his trial that has appeared in union publications, Mr. Nghiep told the military judges that although he had signed a confession, he did so under pressure. He denied working for the Communists and was said to have declared: "I hoped that when I would appear in court I could explain all the truth. I believed I would be given a fair trial."

He was convicted and sentenced to 18 months but was released three weeks later after pressure from international labor organizations.

The American executives of Esso in Saigon, where he had worked as an accountant for 26 years, dismissed him, citing his conviction. The letter of dismissal was dated Aug. 26, 1973, eight days before the trial. Now Mr. Nghiep sits at his empty desk at Esso, drawing no pay, surviving on the contributions of fellow workers.

Accounts by Prisoners

Prisoners, in Kafkaesque descriptions of their wanderings through the prison and judicial system, say they never confessed and were convicted nonetheless—but by what evidence they were never sure—were convicted but released, were acquitted but jailed, jailed but never tried.

The trial of Mr. Nghiep and the others, scheduled to begin at 9 A.M., actually began at 8, well before the arrival of his lawyer, Bui Chanh Toi, who wrote angrily to the bar association that the change "was intentionally premeditated to deprive the defendants of the right to have the lawyer whom they had chosen to plead for them."

Tran Tuan Nham, a high-school teacher who was arrested after running a strongly anti-American campaign for a National Assembly seat, said that he sat in prison for eight months without trial. Two days before the Paris agreement was signed in January, 1973, a mo-

bile military court appeared, he recalled, and he was hurriedly taken before it.

"I protested that they were not following even the most minimal legal procedures, not to notify my lawyer, not to inform me of the charges," he said.

"I was asked a series of questions — why I opposed the Americans. I started to answer the first question, saying why it was necessary to oppose the Americans, and the head of the military court told the military police to come and take me out before I'd even finished answering the first question."

Three days later, he said, he was told the verdict: guilty of disturbing public security.

Barred From Courtroom

A student who said he was arrested after supporting some striking factory workers gave this account of his trial before a Provincial Security Committee:

"They called about 20 people all at once to come to a meeting room on a Tuesday afternoon. Some people were allowed to enter and others were not. I was one of the ones who was not allowed to enter.

"Before they took us there and while we were sitting there we were blindfolded so we could not see anything. After they had reached a decision we were taken back. I was not told anything. Even now that I am out I do not have any idea why I was sentenced or for how long."

Since the Provincial Security Committees—each headed by a province chief, who is an army officer—meet in secret, they provide even less opportunity for an accused to defend himself than do the military courts.

Such committees get a case "if they have reports about a man but no evidence of what he is doing," a high-ranking civilian judge explained. An officer in the Special Branch of the police working in one of the provinces confirmed this, adding that if some evidence existed, the case was usually sent to the Military Field Courts.

"Naturally with this way of doing things there are many abuses," the judge observed. "You can suspect any person you don't like. It's very easy to accuse somebody and put somebody in jail."

"It's much better to release 9 or 10 suspects instead of condemning one innocent man," he added. "But that's the opposite of the present policy. They prefer to condemn 9 or 10 innocents than release one suspect. This means that these special measures touch more innocents than guilty."

Civilian Courts Affected

The rise of South Vietnam's military system of justice to pre-eminence appears to have seriously weakened the civilian judiciary. The Military Field Courts, which the French, when they controlled Indochina, instituted as temporary bodies to try local military-related crimes, gained permanent jurisdiction under the presidency of Ngo Dinh Diem, which ended with his murder in 1963. As the guerrilla war intensified, the courts gained power.

This has removed many cases from the purview of the civilian court system, which was transformed by the 1967 Constitution into an independent judiciary, co-equal with the legislative and executive branches. Under the Constitution civilian judges ceased to be appointed by the executive through the Ministry of Justice and are named by an independent Supreme Court.

In contrast, the powerful military judges are appointed and assigned by the Minister of Defense, and it is this that led the Supreme Court to declare the Military Field Courts unconstitutional in 1970.

The ruling has had virtually no effect, according to legal experts. The executive branch made a concession that is widely regarded as irrelevant: It allowed the Supreme Court to



United Press International

South Vietnamese students accused of being Communists arriving for trial before a military court in Saigon in 1970. Though military courts became unconstitutional that very year, they still exist as a major judicial instrument.

name a civilian judge to act as president of the Military Field Court in each of the four military regions.

But as a judicial official and a Government prosecutor observed, the civilian is normally assigned to act as chief judge only in minor cases, and he can always be outvoted by the army officers. In important cases, they added, the panel is usually headed by its vice president, a military man.

'Justice of Dictatorship'

"They are ornaments, these tribunals — decorations," scoffed a defense attorney who came to the South after trying in vain to defend clients in the Communists' judicial system in North Vietnam during the nineteen-fifties. "The justice in the North is also the justice of dictatorship," he added.

Efforts to obtain official Government comment on the military courts were unsuccessful.

The military justice system and the national police apparatus are two sides of the same coin; each functions as part of the war effort.

The police are heavily influenced by the military. The national police commander, Brig. Gen. Nguyen Khac Binh, and many top officers are career army men. There is considerable movement by officers back and forth between army and police.

President Thieu has told the police in a number of speeches that one of their main jobs is to counter the Vietcong. For that purpose the Special Branch operates in the provinces in teams called provincial reconnaissance units. These carry on the Phoenix program, which the United States heavily financed and advised. It attempts to gather intelligence on, arrest, detain and—some American officials have said—assassinate Vietcong officials.

The units have a built-in motive to arrest a large number of people, according to a high-ranking officer in one such unit, for their ratings and their officers' chances of promotion rise with the number killed or arrested.

Until 1971, he said, cash bonuses were given each month for Vietcong killed and arrested, and when the bonuses stopped the numbers dropped off.

Prizes Still Awarded

Some prizes are still awarded. At an annual ceremony last January a \$600 prize was given to Sgt. Le Van Quy of the police for outstanding performance in destroying the Vietcong "infrastructure"; he was credited with killing 22 men and capturing 16.

There has been criticism that the rewards make the police overzealous and careless in arrests. There is not much holding them back since they have

sweeping powers and the military judicial system provides little ultimate evaluation of their work.

In 1971 a number of American officials who had served as intelligence operatives and police advisers in Vietnam told the House Committee on Government Operations that faulty intelligence often led to the arrest and imprisonment of non-Communists.

One who conceded this possibility under questioning was William E. Colby, then director of the United States Civil Operations and Rural Development Support Program, commonly known by the acronym CORDS. But the Phoenix program, which came under CORDS, had Mr. Colby's support as "an essential element of Vietnam's defense against Vietcong subversion and terrorism."

Both Phoenix and the police apparatus were regarded by many American officials—and still are—as the centerpiece in antiguerrilla warfare. Consequently, the United States has supported a vast expansion of the police force—from 16,000 men in 1960 to 122,000 today.

Big U. S. Investment

Between 1967 and 1972, according to a report of the Government Operations Committee, the United States spent \$125.8-million equipping and training policemen, providing computer and radio systems for police use and improving and expanding the prisons. Over 200 American civilian police advisers and over 600 military advisers were working with the police in 1972, the report said.

According to the United States Embassy in Saigon, the police advisers have left in compliance with the Paris agreement, but the Central Intelligence Agency, whose director is now Mr. Colby, continues to maintain close contact with the Special Branch.

Two high-ranking officers in the Special Branch said recently that C.I.A. officials frequently ask the police to get specific intelligence information. The C.I.A. then gives advice on analysis of the raw data. In addition, Americans who are fluent in Vietnamese still interrogate interesting prisoners—both military and civilian—at "combined interrogation centers" in some province capitals, according to a well-placed officer in a provincial reconnaissance unit.

A high-ranking officer said that the police were using American textbooks on interrogation and intelligence-gathering, and that American films on techniques such as following people were still essential parts of police training.

Precisely what aid continues to flow to the police the embassy steadfastly refuses to say. In response to a Congressional

prohibition on further aid to the police, passed last December, "all U. S. aid to the police has either been stopped or is being stopped with the sole exception of irrevocable contracts," in the words of John A. Swenson, the acting press attaché. He refused to specify what the irrevocable contracts provided.

Prisoners have seen only the shadowy presence of Americans in the police system over the years.

Role of Americans Noted

Mrs. Ton That Duong Ky, whose husband, a professor, was exiled to North Vietnam after signing an antiwar petition, said that an American in civilian clothes was among 40 or 50 South Vietnamese policemen who surrounded her house before dawn in December, 1968, and arrested three of her children. The children saw him later at the police station, she said, and he seemed to have some authority.

A militant Buddhist student who asked to remain anonymous said that as the police were interrogating him in 1969 a stocky, white-haired American came into the room.

The Vietnamese interrogator, a police major, then handcuffed the student's hands behind his back, tied a rope to his elbows and hoisted him off the floor. The student said he was then beaten by the major, who kept saying that the peace movement the student directed was really a Communist movement against the Americans.

The student recalled that the American was standing facing

him, he had put a briefcase in the corner and was holding an envelope of notes clipped together with a ballpoint pen. Occasionally he would write something. "His face was impassive, indifferent," the student said. "Perhaps he was used to seeing such things."

Two American Onlookers

Nguyen Xuan Ham, a student leader at Saigon University, said that in 1972, after he had been beaten and was still tied to a chair, two Americans came in, spoke inaudibly with the official who had beaten him and went out.

A journalist who asked to remain anonymous recalled that after the police had typed up his confession when he was arrested in 1972 he saw a separate sheet of paper in English, labeled "confidential," and his interrogator told him that his dossier had been sent to the "American coordinator."

Tran Tuan Nham, the unsuccessful opposition candidate for the Assembly, said that in the spring of 1973, at least four months after the signing of the Paris agreement, "while I was in a small room being interrogated, another person came in looking for a dossier; the answer was that the dossier had been taken to the American adviser."

On the other hand, many prisoners have said that they saw no trace of Americans working with the police. One noted sardonically, however, that the handcuffs with which he was shackled to a chair during torture were marked, "Made in U.S.A."