

DEPARTMENT OF STATE
AGENCY FOR INTERNATIONAL DEVELOPMENT
WASHINGTON, D.C. 20523

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Professor Wesley C. Fishel
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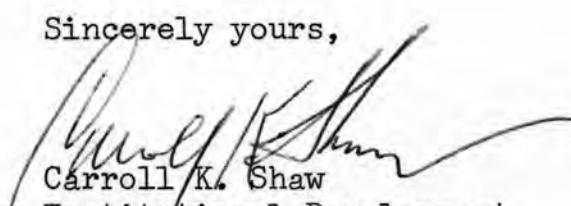
Dear Professor Fishel:

Separately, I sent you a copy of "Highlights of Group Discussion of July 16, 1966," in which I tried to summarize the principal points resulting from the meeting. I erroneously classified this paper as "Limited Official Use." Actually the meeting itself was not classified in the sense of our security regulations and the resulting paper should not be classified. I have declassified the document and enclose a copy with the unclassified designation stamp on it. Please destroy the other copy which you have already received which carries the designation "Limited Official Use." Under security regulations documents carrying this classification must be stored in locked file cabinets, a limitation not required for this particular document.

However, I call your attention to the last paragraph of my transmittal letter of August 15 in which I indicated that this paper "is not for general public release or use." While we do want you to feel free to discuss with other responsible people problems relating to improvement of legal administration in Vietnam (that is why the paper is not classified), the whole subject should be handled discreetly because we are not sure at this time what course of action might be most appropriate: all the ideas in the "Highlights" document are tentative.

I hope you will respond as soon as you can with further suggestions which may arise out of your reading of the document so that we can have the benefit of your experience and wise counsel.

Sincerely yours,



Carroll K. Shaw

Advisor on Institutional Development
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Enclosure

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Improvement of Vietnamese Legal System
Highlights of Group Discussion, July 16, 1966
ATD, Bureau for Far East

A. Purpose of Discussion

The adequacy and relative effectiveness of its legal institutions significantly affect political, economic and social development of a nation. In South Vietnam, where pacification demands a total government effort, the legal system can make a substantial contribution to creation of a stable and effective government capable of winning and retaining popular support. What changes are required in South Vietnam's legal system? How may they be accomplished?

B. Bases of Present Vietnamese Law

Confucian ethics of Chinese origin established a system of personal obligations and duties which extends beyond family circle into society. Authoritarian concepts are pervasive in system, from emperor or head of state down to peasant head of family. Introduction of French civil code and administrative law resulted in three systems in North, Central and Southern regions (Hanoi, Hue and Saigon); cases are tried under the three codes as determined by home residence of parties, not by current location.

Impact of colonialism, war, and political changes upon society in South Vietnam is accompanied by a disintegration of long-established family institutions and of relationships. As respect for and duty to elders has weakened in family, respect for and duty to law and public authority has declined.

C. Vietnamese Attitudes Toward Legal System

Facts regarding popular views of present legal system are hard to obtain with accuracy, most sources of data are biased one way or another. Apparently, attitudes in urban and rural areas differ, but generally people avoid going to court to seek adjudication of disputes or relief from actions of others because of lack of confidence in the court system. Most disputes are settled out of court with intervention of a third party - a village or provincial official, a respected member of the community not necessarily an attorney, a religious. Inadequacy of this informal system as well as of the formal legal system has created a prevailing attitude of mistrust and even personal hostility between individuals, expressed through frequent violent arguments. Vietnamese law enforcement officials, back from training abroad, are appalled by the operation of the court system.

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The census-grievances teams now beginning to interview individuals in relatively secure areas will probably provide a better factual basis for assessing attitudes toward the legal system. There are indications of a general demand for more equitable and uniform administration of justice. The movement of families from one place to another, made necessary by shifting military operations, has revealed to individuals wide disparities in legal practices observed among localities in Vietnam.

D. Difficulties in Vietnamese Legal System

1. Number of qualified judges and attorneys is relatively small. However, they are well educated and competent as a class.
2. Present system of legal education does not train in problem-solving and analysis, and there is serious shortage of law textbooks.
3. Respected village elders and traditional local leaders who formerly adjudicated disputes outside court system have been liquidated by VC in many areas.
4. Many trained attorneys and recent graduates of law schools have been drafted into the military services.
5. Courts, judges and attorneys are over-taxed by backlog of cases, causing long delays in legal actions.
6. Recent extension of civil law enforcement by military authorities has increased congestion in the few established courts.
7. Local governmental officials charged with administration of laws do not receive copies of new statutes or decrees promptly, nor instructions on their enforcement. Civilians do not regularly have access to laws to learn their rights and obligations.
8. Civilian police officials fear to act against military persecution of civilians: arbitrary seizure of goods or property or persons.
9. In Saigon, competing centers of power often send conflicting instructions to local authorities, who may then refuse to act at all.
10. The bar associations oppose enlarging the profession.
11. Principal Vietnamese governmental officials do not regard legal reform as urgent necessity.

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E. Recent Changes in Vietnamese Legal System

1. Three years ago, GVN abolished the gendarmerie and established a national police force which has since been enlarged considerably. (Present strength is about 53,833)
2. Formerly, the national law "stopped at the village wall," but now the GVN seeks to extend law enforcement to all rural areas in effort to suppress VC activity. In this process, military police have assumed an increasing role in crimes involving civilians.

F. Sources of Information on Present Legal System

1. Provincial representatives of USAID/Saigon, who are closely associated with the GVN provincial officers charged with magisterial as well as executive functions.
2. Public administration advisors of USAID/Saigon, especially those concerned with administrative problems of urban, provincial and district government.
3. Public safety advisors of USAID/Saigon, charged with training and advising GVN national police.
4. Bar associations in Saigon and Hue.
5. Law Society of Free Vietnam, organized by Colonel Prugh, Staff of the Judge Advocate General of the U.S. Army in Vietnam.
6. Law school faculties in Saigon and Hue.

Conferences with any or all of these groups might add substantially to our understanding of the situation in Vietnam respecting administration of laws, and the operation of the court system.

G. Possible Measures to Improve Vietnamese Legal System

1. GVN establish a commission on legal reform to assume task of completing codification of law, and to study existing legal institutions. If requested, USG should supply technical advisors, including experts in comparative law sociology, political science, cultural anthropology.
2. Create a joint GVN-US task force composed of attorneys and social scientists, to study foundations of existing legal system.

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3. GVN improve system of publishing and distributing generally new laws, decrees and significant court decisions.
4. At GVN request, AID contract with a private US institution for study of Vietnamese law and administration.
5. A similar study team organized under multi-lateral auspices (UN?).
6. Send French-speaking American attorneys to Vietnamese law schools under Fulbright program to lecture on comparative law.
7. American Bar Association send a delegation to Saigon to meet members of Saigon bar and compare views on broader questions of jurisprudence, legal rights and procedures.
8. Expand library resources of law schools.
9. Provide program of observation and training in the U.S. and third countries for selected Vietnamese attorneys or law professors.
10. Establish a joint committee of Vietnamese and American law professors to study curriculum and teaching methods of law schools and recommend improvements.
11. GVN organize a campaign to inform and educate Vietnamese citizens on their rights and obligations under GVN laws, especially those regarding property, torts, and personally-operated small businesses.
12. GVN commission to study court dockets and organization and staffing of courts.
13. GVN commissions to study operations of land reform courts and labor courts.
14. Establish a legislative reference service to serve the upcoming constitutional convention and later its successor national legislative assembly.
15. Establish in the curriculum of the National Institute of Administration special short-term courses or seminars on administration of principal laws, for benefit of province and district chiefs. These might be greatly needed when new organic laws are enacted.
16. Scholarship grants to law students (American or Vietnamese) to carry out field studies of aspects of the legal system during vacation periods.

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18. Introduce materials on legal system into civics courses offered at secondary schools, including courses for adults.
19. Establish a system of public defenders for low-income citizens in the courts.
20. Establish a legal research center (regional or national) to make continuing studies of Southeast Asian or Vietnamese legal systems. Such a center should include on its staff not only attorneys, but also sociologists, anthropologists, political scientists interested in the role of law in developing nations.
21. Establish a joint GVN-USAID task force composed of attorneys and economic development advisors with a long-term, two-fold assignment:
 - a) Develop for Vietnam basic concept of role of law in national development program as the instrument which establishes a national policy, describes the program through which policy objectives are to be achieved, assigns specific responsibilities and powers to specific agencies, and authorizes those agencies to receive and use appropriate funds and to recruit and organize competent personnel to execute programs.
 - b) Draft legislation establishing development policies and programs to be reviewed and approved by executive and legislative organs of GVN. This activity might lead to a technical bill drafting service for the GVN, wholly staffed by Vietnamese.

It should be noted that most of the above actions require GVN initiative and participation. Perhaps a first step in any or each of these efforts would be to persuade GVN authorities of the political and economic considerations which make urgent taking some such actions to improve administration of law in Vietnam.

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CKShaw
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