

Vietnam Feature Service

(TCB-094) May 1971

South Vietnam will elect more  
SUPREME COURT JUSTICES

Once again this year electoral commissions will be busy in the Republic of Vietnam. The legislative, judicial and executive branches all have elections scheduled before the end of 1971.

In a ruling interpreting the Constitution, the Supreme Court on April 20, 1971, declared that the National Assembly, Vietnam's bicameral legislature, will have to pass special election laws this year for all three branches of the government. The lower house elects a new 135-man body

of legislators on August 29; balloting for the President and Vice President of the republic will be held October 3, and the Supreme Court will get six new justices later this fall.

Created on October 22, 1968, the Supreme Court will grow to its full size this year. The Court's nine original justices will stay on the bench, but will be reinforced by the six newcomers chosen in the second election in judicial branch history. Like the first in 1968, it will be conducted according to rules uniquely designed to bring forth seasoned, objective men of wisdom and to keep political choices off the nation's highest bench.

Constitutionally, the Supreme Court is a bench limited to 15 justices, each serving a six-year term. But because six of the justices are regularly elected when the terms of the other nine are half over (and vice versa in alternate election years) there is never a complete turnover, never a time of transition from one Court to the next. Election contests for these top savants of the judiciary are held every three years -- in 1968 and 1971 to fill the first Court, in 1974 and 1977 for the second,

and so on. Overlapping terms of office assure consistency in judicial rulings and continuity of effort; there are always experienced incumbents familiar with the docket whenever new jurists are elevated to this court of last resort.

Making the electoral system even more unusual -- and more democratic than in many countries of the world -- is a multi-phased procedure enabling Supreme Court justices to be selected by the nation's legislators from a slate nominated by the candidates' peers in the legal professions. The electorate is thus a knowledgeable as well as a distinguished one composed of law-makers, judges, prosecutors and lawyers. Review of applications within the legal fraternity by colleagues familiar with each candidate's character, professional competence and ethical standards insures that the qualifications of would-be justices are weighed thoroughly and objectively.

The system is designed to encourage independent thinkers. Because he is sent on to the bench by a mixed jury of his peers, a Supreme Court justice carries into his term of office no political indebtedness; he owes fealty

to no sponsoring faction, boss, party, administration, ministry or other appointing body. "Nobody could pack this court without the collusion of the nation's entire legal profession,"<sup>1/</sup> says a Western observer visiting Saigon.

#### Election Process

The 1967 Constitution and Law No. 007/68 spell out the unique electoral process for Supreme Court contests, and to these authorizing documents now must be added the Court's constitutional ruling of April 20, 1971. During a "regular" election, such as in 1974 and 1977 (the Court ruled that 1971's is a "special" election to finalize the Court's formation), the timetable for the process is set routinely by the Council for Election of Supreme Court Justices, popularly called the electoral commission. During a two-week period designated by the commission, high court candidates submit their names to the commission,

---

1/ In order to "pack" a court the appointing authority adds to it an overbalancing quota of men subscribing to its own political or factional persuasions, as U.S. President Franklin D. Roosevelt unsuccessfully tried to do with the Supreme Court in Washington in the 1930s and as the U.S.S.R. Politburo twice has succeeded in doing in Moscow, most recently at the 1971 Party Congress. The preliminary to "packing" such a body is to increase the size of its membership.

whose members include the President of the Senate, one other senator, the Chairman of the House of Deputies (i.e., the lower-house Speaker), one other deputy, a judge, a prosecutor and a lawyer. The electoral commission screens the list of Court candidates, eliminating those who do not meet all of the Constitution's criteria. While there are no age requirements for Supreme Court justices, they must be Vietnamese citizens with at least 10 years' experience as judge, prosecutor or lawyer. They must have records free of any serious legal or professional offense and free of any anti-government or pro-communist activity. A male candidate (women are eligible, but so far none has applied) must have complied with military draft regulations.<sup>2/</sup>

The nation's three prestigious professional groups then enter the picture. By voting at national conventions or by polling the memberships, the Bar Association, the Association

---

2/ For constitutional and legislative authority and other details of the electoral process, see two earlier Vietnam Feature Service releases: (TCB-028) of November 1968, "Toward representative government . . . VIETNAM ESTABLISHES A SUPREME COURT," and (TCB-051) of August 1969, "Strengthening individual rights . . . THE JUDICIARY IN VIETNAM."

of Judges and the Association of Public Prosecutors each choose a panel of members, ordinarily 50 to a panel, and their job is to whittle down the list of Court candidates still further. The 150 thus chosen -- men representing professional circles around the country, particularly long-established groups centering about the appeals courts in Hue and Saigon -- form the electoral college. Members of the electoral college convene in Saigon to debate the candidates' qualifications. (The 1968 electoral college totaled 149 delegates because one lawyer from a remote region of the country failed to reach Saigon in time for the debate.)

In "regular" election years, the electoral college caucuses on a date set by the electoral commission to select a slate of not more than 30 names from among the candidates. Ideally, the slate would include 10 from each of the three branches of the legal community. But this is not always feasible; in 1968 the electoral college, after reviewing qualifications of 45 approved applicants, nominated 10 judges, 10 prosecutors and only four lawyers. Lawyers seeking election were not numerous enough to provide a full quota.

Only six lawyers submitted their names to the electoral commission, which disqualified two (along with four judges and three prosecutors) who failed to meet constitutional criteria. The electoral college nominated all four lawyers remaining on the list of candidates submitted to it. Of the nine justices named to the bench from the college's 24-man slate, one was a lawyer.

#### Many Lawyers

Yet lawyers are not as scarce in Vietnam as this experience would seem to indicate. The law is a prestigious profession and the nation's universities are producing <sup>3/</sup> sizeable crops of young lawyers each year. Many of the law graduates, however, go into the ranks of the armed forces, the civil service or business. But not politics; unlike those in Western countries, young Vietnamese law graduates do not have the opportunities to go into politics immediately. There are as yet no province-level or district-level constituencies for the untried politico to

---

3/ See the Vietnam Feature Service release (TCB-093) of April 1971, "Decade of expansion for HIGHER EDUCATION IN VIETNAM."

contend in, nor are political parties yet a power factor. It is therefore the older, experienced lawyers who run for National Assembly or council posts. Of the lawyers, young and old, who go into private practice, most shun the provinces and settle in Saigon, which has more than 500. Some gravitate to the Hue courts, with only a handful spreading through the rural districts. But as far as potential Supreme Court justices are concerned, their numbers are limited. Relatively few in private practice have earned the requisite reputations as outstanding lawyers -- no more than 200 around the country. With the pace of litigation quickening as the population nears 18 million and as the people taste the new climate of individual rights stemming from the 1967 Constitution, the services of veteran trial lawyers are in great demand. They have such flourishing practices that few of these men of national stature are inclined to seek salaried posts on the bench. How many lawyers will throw their hats in the ring for this year's Court elections is not yet known, but four members of the Saigon Association of Lawyers already are reported planning to submit their names as candidates.

Once the electoral college has performed its function of whittling down the list of candidates, the process moves to the National Assembly. From the slate selected by the electoral college, the Senate and the lower house -- balloting in joint session -- choose the new Supreme Court justices. The names of the winning candidates are sent to the President of the republic for appointment.

This year the electoral commission, organized by Senate President Nguyen Van Huyen, started what it thought would be its routine work in March. On April 6 it issued a communique setting the election timetable, including the date of April 30 as the deadline for naming the 150-man electoral college. But on April 20 the Supreme Court declared the communique unconstitutional. Such initiative by the electoral commission, it ruled, was appropriate in "regular" years. But 1971 is a "special" year, said the Court, because the elections this year are not routine but are designed to bring the Court for the first time up to its full constitutional strength. In that sense the 1971 elections are a continuation of the 1968 elections. Therefore, said

the Court, the National Assembly must pass a special election law, just as it must do for executive and legislative branch contests.

Legal observers believe the National Assembly will pass such a special election law this summer, probably after the August 29 elections in the lower house. Then the process can begin again, with the electoral commission carrying out the terms of the new law. It is expected that the law will prescribe the same process as that used to elect the first nine justices in 1968. If there are any changes, they may concern the size of the slate selected by the electoral college. Some sources close to the high court have pointed out that if a 24-man slate was used to name nine justices in 1968, a 30-man slate to name six justices in 1971 would increase National Assembly responsibility and decrease electoral college responsibility in the process.

Essentially, however, the principal effect of the Court's ruling of April 20 will be to delay start of the balloting preliminaries. This may not be a bad thing,

says one observer. If the process had been started this early in the year, the National Assembly might have received the slate of Court candidates at a time when a number of lower-house delegates were off the floor campaigning for reelection. This would have given Senate members a proportionately greater voice in selection of the justices.

The special law probably will set the date for this National Assembly plenary session. Observers believe it will be set late in the fall so it will come close to the Court's third anniversary and close on the heels of the presidential elections scheduled for October 3. The names of the six candidates winning the most ballots in the Assembly then will be sent to the President starting a new term.

When the six Court members are sworn in, South Vietnam, having fulfilled the stipulation set forth in the Constitution, for the first time will have a full Supreme Court of 15 elected justices -- a complete judicial branch of government separate from and equal to the executive and the legislative branches.

### Naming the Chief Justice

One more electoral procedure then will remain to be followed. The President of the Supreme Court -- i. e., the nation's Chief Justice -- is elected from among their ranks by the justices themselves every year. The first Chief Justice was Dr. Tran Van Linh, 46; he headed the judicial branch during 1969. Now serving a second, nonconsecutive term as Chief Justice, he will hold that title until December 1971. Then the justices will ballot again, not only for a new Chief Justice, but to fill other Court Offices:

- \* First vice president and chairman of the board of cassation, a post currently held by Associate Justice Nguyen Van Bien, 46;
- \* Second vice president and chairman of the board of constitutional protection, now Trinh Xuan Ngan, 57;
- \* Magistrate in charge of judiciary management, now Mai Van An, 50;
- \* Magistrate in charge of internal affairs, Nguyen An Thong, 46;

\* Magistrate in charge of external affairs, Nguyen Mong Bich, 52;

\* Magistrate in charge of legal research, Tran Minh Tiet, 49, who was Chief Justice during 1970.

The other present Court members are Tran Van Liem, 45, the only practicing attorney elected to the bench (but he has taken down his office shingle for the duration of his term) and Nguyen Van Si, at 59 the dean of the Court. In that capacity Si did much to get the Court speedily organized in 1968 after the justices were sworn in and before the Chief Justice was chosen.

Many legal observers say Chief Justice Linh has one of the best judicial minds and the widest knowledge of Vietnamese law among the present justices, although as one observer put it, "any one of them would do a good job as Chief Justice." Linh, a native of Bien Hoa who earned his licentiate of law in Saigon in 1951, was a judge in the Saigon appeals court, the Saigon court of first instance and the Vinh Long court of first instance before ascending the high court bench. Independent politically, he is considered to be a strict constructionist.

"Election of the Chief Justice on a rotating basis by the Associate Justices of the Supreme Court," says the Western observer, "is an additional measure that will tend to prevent the Court from ever becoming a tool of any administration or faction. Because the rotating tours are short, the Court does not take on the complexion of any one personality or any one philosophy. From beginning to end, this electoral process is a democratic one. Even in the United States, which prides itself on having innovated the triple checks and balances system of government, the Chief Justice -- like the Associate Justices -- is appointed by the executive branch with legislative approval.

"The Supreme Court in Saigon has potent powers of its own, derived through legislation rather than delegation," he points out, "and these include the crucial power of judicial review -- ruling on the law's constitutionality. While the right of judicial review once was delegated to a constitutional court under President Ngo Dinh Diem, its members were appointed by the President and they acted largely as an arm of his administration until it was

overthrown in 1963. Not until the Supreme Court was established in 1968 did any authority in Vietnam have the power to nullify any legal code or any act of the legislature or any decree of the executive."

#### Court Functions

Law No. 007/68 gives the Supreme Court extensive powers affecting the administration of government. It has the authority to:

- \* Interpret the Constitution and rule on the legality of all laws, decrees and administrative decisions of the government;
- \* Administer the judicial branch of government and oversee the operations of subordinate courts;
- \* Rule on appeals from judgments rendered in any lower court and decide on petitions for retrial or revision of sentences;
- \* Determine the jurisdictional boundaries of lower courts;
- \* Replace lower-court judges in cases of questionable competence or ethics;

- \* Dissolve a political party whose policies, pronouncements or activities are judged to be opposed to the republican form of government;
- \* Establish the list of presidential and vice-presidential candidates, rule on the validity of their election, announce final election returns, and witness the swearing in of the President of the republic.

Until October 22, 1968, when the first nine Supreme Court justices were sworn in, the judiciary had been part of the executive branch, with the Ministry of Justice's civil and criminal directorates controlling the operation of all nonmilitary courts and appointing all judges and prosecutors. "Judges were formerly dependent upon the Minister of Justice for appointment and advancement," says Chief Justice Linh. "Our decisions were independently made, but in our structure and political matters we were not free." Now the Supreme Court has full jurisdiction and control over all civil, criminal and administrative courts in the country, with the Justice Ministry retaining control only of the public prosecutors.

Running the judicial branch of government entails overseeing the work of more than 120 separate courts, ranging from justice of the peace courts through courts of first instance up to the two appeals courts. (Two higher courts, the Court of Cassation and the Administrative Tribunal, were incorporated into the Supreme Court's structure on its formation.)

"We are a kind of ministry because we administer all personnel and judges of the court system," says Justice Linh. About 150 judges sit on the various benches, aided by some 1,600 secretaries, bailiffs and clerks. "It's not much," says the Chief Justice, "but we can work with this."

Administrative decisions affecting lower courts are made by the Supreme Court on the advice of the judicial council, made up of four judges from appeals courts and four judges from courts of first instance, each man serving a two-year term. The council proposes appointments, promotions, transfers and disciplinary measures for judges and advises on other matters pertaining to the court system. The council members' actions are not binding on the Supreme Court, but "we always respect their advice," says Justice Linh.

To handle the functions previously assigned to the Court of Cassation, the Supreme Court has a cassation division which acts to revise or annul final judgments appealed from lower courts. It is composed of civil, criminal and administrative sections. Three justices regularly work in each section. As all Court members except the Chief Justice have these assignments, at least one justice must work in two sections under the nine-man Court, but the work will be spread out after this year's elections.

The most publicized responsibility of the high court is interpreting the Constitution. In addition to public bodies and the legislative and executive branches, any defendant in any court is allowed to raise constitutional questions, and these must be brought before the Supreme Court on an initiatory petition or through an appeals court. On constitutional questions, seven of the nine justices must concur in the decision. In other cases a simple majority is required.

### Constitutional Questions

In the last two years the Supreme Court has taken bold steps to establish itself as a viable third branch of the government. In exercising the power of judicial review in a nation still at war, a nation with a long history of justice based on imperial fiat, it was inevitable that the Supreme Court should find itself on a number of occasions at odds with the legislature or with executive branch and military officials accustomed to wartime emergency powers. The Court has not flinched from these confrontations.

Hardly had the Court moved into its new quarters in the Gia Long Palace in downtown Saigon when it was called on to interpret the Constitution. Article 39, Clause 3, provides that the National Assembly shall vote on questions concerning any peace negotiations. President Nguyen Van Thieu was seeking an affirmative vote on his proposal that the Republic of Vietnam send a negotiating team to the Paris peace talks. But the procedure for such a vote was unclear. The Constitution did not specify

whether the two houses of the legislature voted jointly or separately on such a question. The difference could change the outcome of the vote. On December 6, 1968, the Supreme Court ruled that the Assembly should vote in joint session. The delegation went to Paris.

More constitutional judgments came the following year. When the economy-minded legislators cut President Thieu's proposed national budget of 129,992 million piasters by nearly 1,000 million,<sup>4/</sup> the President returned the budget bill to the Assembly. Such action on other types of bills is provided for in the Constitution; it requires the Assembly to muster a two-thirds vote to defeat executive amendments, otherwise the bill goes into effect as changed by the President. In the case of the budget, however, the Constitution did not specifically give the President that privilege. The Supreme Court

---

4/ The exchange rate then was 118 piasters per US\$1. That remains the official rate for most transactions today, but a more valid measurement is the accommodation rate established in October 1970 for certain exchange and foreign trade transactions: 275 piasters per US\$1.

decided that the President did have the power to return the budget for the executive branch, but he could not return the budgets of the legislative and judicial branches. Typical of public reaction was the liberal newspaper Hoa Binh's, which wrote: "Although the President has clearly won his case, the Assembly clearly has not lost its, either." The newspaper described Chief Justice Linh's Court as "wise and practical."

The decisions were more difficult in 1970. Under the leadership of Chief Justice Tiet, a former Justice Minister, the Court handled three major cases which did much to curtail the military courts' authority over civilian offenders, decided which branch of government had the power to tax, and threw out the legality of confessions extracted under duress. In these cases the Court found itself in dispute with the executive branch, but while it continued to exercise its "wise and practical" tactics, it did not compromise on essential issues.

An important constitutional precedent was set in the Court's decision on the tax case. A ministerial decree

law had been signed in October 1969 that imposed "austerity taxes" on certain imported goods. Senator Nguyen Van Chuc brought suit the next year before the Supreme Court, challenging the validity of any direct tax measures imposed by a ministry of the executive branch. The Supreme Court ruled that the National Assembly alone could enact tax measures, by ballot after floor discussion, so the austerity taxes were unconstitutional. As a result, the Economy Ministry sent to the National Assembly a series of new tax bills. Substantially the same type of austerity taxes are being collected, but now the taxes are those imposed by the legislative branch. While the importer may not care, to legal circles the decision is vital to future tax administration. The judicial branch won its point but the executive branch, while bowing to the Court's authority, managed to keep its operations relatively undisturbed. This pattern was to emerge in other 1970 constitutional cases.

### The Chau and Mam Cases

The case attracting the most attention involved Tran Ngoc Chau, a lower-house deputy accused of meeting with a communist agent (his brother) without informing government authorities. President Thieu asked the lower house to lift Chau's congressional immunity so he could be brought to trial. A petition signed by 102 of the 135 deputies was submitted, asking that Chau either be cleared or convicted.

The Defense Ministry issued an order for Chau's arrest on February 19, 1970.

The case went to the III Field Mobile Military Court, because since Decree Law No. 49/67 of October 30, 1967, Mobile Courts have had jurisdiction over national security cases. The president of a Mobile Court need not be legally trained; he is a line officer, colonel or above, while the alternate president is a Military Justice Corps officer.

The military court found Chau guilty. During the brief trial Chau remained in his Assembly office, continuing

to claim congressional immunity. The court sentenced Chau in absentia to 20 years' imprisonment. The 46-year-old legislator then appealed the case to the same military court on the grounds that he had not been present at the trial. Mobile Court decisions can be appealed only on those grounds, or in cases where the verdict is the death penalty. On hearing the appeal March 2 through March 5, the court reconfirmed Chau's guilt but reduced the sentence to 10 years.

Three weeks later a Senate committee rebuked the lower house for allowing the congressional immunity of a deputy to be lifted, criticized Chau's ill treatment at the time he was finally taken into custody, and requested the Supreme Court to step into the case.

The Court accepted the case. Its acceptance was based on an earlier case involving 21 students, chief among them Huynh Tan Mam, Student Union leader at Saigon University. They had been tried by the same III Field Mobile Military Court after a series of violent student disorders. On conviction they appealed their case to the Supreme Court.

This was the first major case in which an initiatory petition was accepted directly by the high court from the defendants. The Supreme Court ruled that the Mobile Court's actions were unconstitutional because it did not assure a defendant's right to be tried by a professional judge, his right to counsel and his right to appeal to a higher court. The Supreme Court also based its rejection of the military court's verdict on evidence that the students' confessions had been obtained "through torture, threat or coercion, a fact that nobody denied at the hearing session." The Court declared the form of the military court unconstitutional and ruled that as a general principle a civilian could appeal a military court decision to the Supreme Court.

With this case as a precedent the Supreme Court entered the Chau case. In a decision announced on October 30, 1970, the Court overturned Chau's conviction on the grounds that the deputies' petition suspending his congressional immunity had been improperly compiled. The Court said immunity could be lifted only by a three-quarters

vote after open debate by the entire house. In Chau's case the petition had been circulated outside the Assembly with no discussion on the floor, and several of the deputies later said their signatures on the petition had been forged. The Supreme Court also rebuked the military court for ignoring constitutionally guaranteed civil liberties and judicial procedures.

While the Supreme Court in overturning Chau's conviction had directed that he be freed, its order conceded it had no authority to annul the Defense Ministry's February 19 order directing Chau's arrest. On that technicality Chau remains in jail. The executive branch, aware it is on weak legal grounds but justifying its decision on wartime necessity to prevent subversive activities, has declined to free Chau but indicated he may be retried at a later date "to regularize his status."

As a result of the Court's ruling that the form of the Mobile Court was unconstitutional, President Thieu signed new legislation on June 23, 1970, that reconstituted the military courts, but with narrower jurisdiction and

with provisions meeting many of the Court's criticisms.

First established in 1962, military courts were designed to judge expeditiously "those accused of certain offenses dangerous to the existence of the nation in time of war" and were authorized to try civilians as well as military men charged with such violations of national security.

As rewritten after the Supreme Court declared such courts unconstitutionally structured, the military court law provides that civilians may be tried by a military bench only if they are accomplices of military personnel charged with violations of national security. Military judges now must be career legal experts selected by the Supreme Court from a list prepared by the Defense Ministry, and the president of each military court must be a civilian judge from the Saigon or Hue appeals court. A major difference between the old and the new military courts is the addition of the right of appeal. Except in desertion cases, any person convicted by a military court may appeal the verdict directly to the Supreme Court.

Legal observers, as they did at the time of the budget case and the tax case, are saying that the judicial branch may have won its case against the military courts but the executive branch has not lost its case either. But with sentiment in both the judicial and the legislative branch obviously growing toward restricting the activities of military courts, especially in their dealings with civilians, it is considered a matter of time before the entire military justice system is brought under judicial branch control if not administration.

For the moment, however, there is no denying that the judicial branch has suffered a setback in the administration's refusal to free Chau. What further steps the Court might take to enforce its decision are unclear --

5/ no major tribunal in the world has real enforcement capabilities.

Sources close to the Court characterize the Chau and other 1970 cases as "the first important steps in feeling out the

---

.5/ When the U. S. Supreme Court ruled against the executive branch in the case of a treaty with Indian tribes in Georgia, President Andrew Jackson (1829-33) ignored the ruling. "(Chief Justice) John Marshall has made the decision," said Jackson. "Now let him enforce it."

relationship" between the judicial and executive branches.

For the present the young Court seems to be following a course which would permit it to continue to be called "wise and practical." Like the chief tribunal in any country, the Supreme Court must keep its fingers on the pulse of the society, not getting too far ahead of the people. In a nation at war the society demands protection against subversion, and the Court is the first to recognize there can be no justice without national security. It also is fully cognizant that it is not an anti-government body, but an integral part of government. "There will be more setbacks on the road toward full representational government in Vietnam," says one observer, "but the road has been well mapped and the Supreme Court, for one, is busily helping to pave it."

#### Reorganizing the System

Vietnam is seeing the beginnings of a reorganization of the entire judicial system. Although many of the new attributes of the judiciary are still on the drawing board, reform and restructuring push forward despite the war.

Difficulties encountered in establishing a successful Vietnamese judicial system are largely a byproduct of the nation's past and its frequent domination by foreign powers. From China Vietnam's emperors inherited the concept of imperial law codes. The last major revision of the code used by the Nguyen dynasty in the imperial capital at Hue was made more than 150 years ago under Emperor Gia Long. The Gia Long Code, as later amended to suit French colonial requirements, continues to be the code in effect today for the area of South Vietnam once known as Annam, roughly stretching from the Demilitarized Zone to Nha Trang. Annam became a French protectorate about the mid-1880s, but more than 20 years earlier the French had made Cochinchina, the vast Delta area south from Saigon, an outright colony and imported the Napoleonic Code. Thus today the appeals court at Hue follows the Gia Long Code while the appeals court in Saigon follows the Napoleonic Code, despite the Constitution's requirement that the nation should be governed under one legal code.

The coming of the French to Indochina weakened the imperial concept of law based on morality, law aimed at protecting public morals and insuring public order. Confucian logic considered any offense against an individual a violation of public order requiring appropriate punishment, and imperial punishments were harsh, including torture, exile, death and banishment. The French introduced the concept of individual rights, eliminated many of the drastic oriental punishments, distinguished between civil and criminal cases and abolished the concept of the monarch retaining all administrative, legislative and judicial powers. But the French made their language the language of the courts, and they established special courts for French citizens. As a result, few Vietnamese in the provinces feel the courts are for their benefit; the courts are alien, and designed for the rich. So one of the major tasks of the Supreme Court, aided by experts in the Justice Ministry, is to design a single Vietnamese judicial system belonging to the people of an independent Vietnam.

In January 1969 the Vietnamese government turned for technical assistance in this task to the United States because judicial organization had been pioneered in America and because the Supreme Courts of both nations are similar in structure and concept. The Agency for International Development (U. S. AID) signed a contract with Louisiana State University to give the Vietnamese judiciary technical assistance on a wide variety of subjects, including review of new codes. This university was selected because the state of Louisiana was part of the territory purchased from the French and inherited a state court system based essentially on the Napoleonic Code and French laws. Louisiana is the only so-called "civil law" state in the Union, the other 49 basing their laws more on the English concept of common law -- precedent rather than codification.

The Louisiana State University team consisted of two researchers who spent 20 months in Vietnam and a staff of seven maintained in Baton Rouge to compile reports and research papers. The LSU team members

and their Vietnamese counterparts worked with the newly formed Supreme Court in many fields. The American and Vietnamese experts helped the Court organize internal operations, establish jurisdiction and organize a lower court system under Supreme Court control. Corollary objectives included preempting military courts' jurisdiction over civilians, strengthening the bar and other professional associations, upgrading legal education (including the publishing of textbooks in Vietnamese) and implementing civil rights provisions of the Constitution.

Through March 1971 the technical assistance project was funded by U.S. AID and The Asia Foundation. Now The Asia Foundation is financing the project with its own resources because the major work has been accomplished and U.S. AID participation no longer is necessary.

Already drafted and being studied in the lower house's judiciary committee are criminal, criminal procedure, civil and civil procedure codes. A commercial code is undergoing final revision in the legal research section of the Justice Ministry and should be completed within the next few months.

A vote by the National Assembly on this recodification program is one of Chief Justice Linh's main objectives for 1971. "Two years ago I proposed that the legislators discuss the codes in committee and then bring the entire package to the floor for one final vote," he says. "But the legislators wanted to discuss it before the entire house, an article at a time, so it still is not done." He expects that a final vote may be taken on the entire recodification plan after the October presidential elections.

Another problem the Court is attempting to solve, says Justice Linh, is the overconcentration of lawyers in Saigon and the scarcity of counsel in the rural provinces. The Constitution guarantees the right of a defendant to legal counsel, but the shortage of lawyers in the countryside hampers the speedy administration of justice, and the task is doubly hard when the defendant is poor. "He can ask for a free lawyer and the Bar Association must provide one," says Linh, "but lawyers don't like free cases." The Chief Justice says one of his projects this year is to earmark five million piasters from the Court's total budget of

440 million piasters and use the money to cover the expenses of lawyers having to take free cases in rural areas. "This would provide transportation to the province, food and a place to stay so the lawyer will not lose money by taking the case," he says. "But as security conditions improve I hope more lawyers will settle in the countryside. The judiciary cannot do its work properly in the provinces without their support."

Later in the year Justice Linh expects that his Court will be called on for more interpretations of the Constitution -- possibly on the powers of the Inspectorate, or on the Press Code, or on the Land to the Tiller law. "We must settle these cases," he says. "It is our work."

That work is appreciated more and more in  
6/  
Vietnam. Says an editorial in a Saigon newspaper:

"There are nine men in this country who deserve the unqualified adulation of our people if they continue

the courageous course they have so far been following.

These are the justices of the Supreme Court. Tradition here has been either not to stand up to the government at all, or else -- when the situation becomes completely unbearable -- to go to the other extreme and stage a violent overthrow. By its actions the Supreme Court has provided us with a model of due process of law. By declaring its decisions it has also shown us that the government is not always an awesome ogre. By no means do we expect the Court always to find against the government. It should just continue to have the courage of its convictions and decide dispassionately on the basis of right and wrong."

#####