

6 June 1968

MEMORANDUM FOR THE RECORD

SUBJECT: IV CTZ Field Trip, Observations and Recommendations

A. SUMMARY OF FIELD EVALUATION

1. In an effort to continue the study of the Legal Processing of Civilian Security Suspects (CSS's), this evaluation undertook a trip to IV CTZ Can Tho and Kien Hoa Province commencing 10 May 1968 and ending 19 May 1968. I received excellent cooperation from the Regional PHOENIX Staff, as well as from the Kien Hoa PHOENIX team, particularly Don Picard.
2. CPT David Hickman, SJA, IV CTZ Advisor to Military Courts, was contacted in regard to the operations of the IV CTZ Military Courts. Among other things, he reported that the IV CTZ Field Court has a backlog of 218 desertion cases plus 400 other suspects in prison, approximately 1/2 of whom are civilian subversives. He noted that pre-trial confinement often runs over a year. The prosecutor usually has a dossier about 5 months before the case is brought to trial.
3. In Kien Hoa Province, five districts were visited - Don Nhon, Ham Long, Truc Giang, Giong Tram, and Binh Dai. District and police officials, and their American advisors were interviewed. In Can Tho, regional and provincial police and judicial officials were contacted, as were the appropriate American counter-parts.
4. Mr. Tran van An, Chief of the Special Branch, Kien Hoa Province was somewhat vague in his responses to questions. Initially saying that PSB can hold a prisoner one month at the most, he later contradicted this saying that the longest he has the power to detain is 48 hours. 80% of the suspects that PSB receives come from S-2; 20% from the police, either district or provincial.

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5. Concerning the reports from the district on VC suspects, Mr. An noted that he receives very thorough reports from district. He objected the term "suspect" observing that those detainees he receives for interrogation are usually always guilty, having been already screened as to guilty or innocent at district or at the S-2. Rarely are any of these detainees set free; the Province Security Committee releases only 3%-5% of those whose cases are presented before it.

6. He commented that sufficient evidence is no problem (contrary to what most other officials say), and even the political cadre can be detained on sufficient evidence. The usual sources of evidence included documents, weapons, statements of hoi chanh and other VC prisoners. He showed us what he said was a typical file on a suspect, 5 pages long containing a report from district, the PSB's interrogation report, and the detainee's statement. It is doubtful, however, that the files on other suspects, are as thorough.

7. The Province Security Committee receives on the average, 100 to 180 cases per month. These figures could not be verified. He indicated that in Kien Hoa, there is no delay in processing prior to the PSC hearing. The PSC hears detainee cases immediately - no delay longer than one month.

8. Judge Tham Van Hue, presiding Judge and Public Prosecutor of Kien Hoa Judicial Court, was very cooperative and direct. He is the legal advisor to the Kien Hoa PSD, although he is not a voting member. In effect, the Province Chief has the final say at PSC hearings. He confirmed the prior information that more than 90% of the detainees appearing before the PSC are adjudged guilty.

9. Concerning the proceedings before the PSC, Judge Hue informed us that if a suspect has a dossier from the district. This dossier, along with any provincial police interrogation files will be seen by the PSC. In Kien Hoa, he said that cases are delayed two months at the most before a PSC hearing.

10. Judge Hue cited the following major problems in the judicial penal system:

a) Shortage of trained personnel and equipment, the lack of which contributes primarily to delay in processing.

b) Transportation. Judge Hue expressing an eager willingness to go travel to Kien Hoa's districts to hold court,

investigate cases, take witnesses' depositions, etc. But because of the lack of logistics, especially since Tet, he has been unable to travel securely. The advantages of having a judge, representing GVN judiciary, out in the districts was self-evident. In another province, he used to travel to the districts once every 2 weeks. [redacted] with PSA [redacted] approval was thereafter assigned to provide Judge Hue with helicopter transportation for this purpose. It was immediately effected, and Judge Hue, having been provided with U.S. logistics support, will be able to fly to the districts of Kien Hoa for judicial and investigatory purposes.

US-GVN cooperation of this sort is recommended highly in other provinces. ✓

6) The prison. We had previously visited the province prison and noted the abominable conditions there. Among these include no rehabilitation facilities whatsoever, no segregation of hardened criminals, VC, and 13- and 14-year old prisoners. Judge Hue said that reform of the prison was badly needed, confirming our observations that prisoners had to fight for living space. The food was very bad, and that conditions were generally squalid.

11. Discussions were held with district and police officials in four of Kien Hoa's Districts.

12. In general, we were favorably impressed with the efforts going into the setting up of DIOCC's at the districts visited. However, the inputs of intelligence were poor though sketchy and incomplete, shows promise for future efforts. GVN officials at these levels were motivated and offered to be capable men.

13. We endeavored to get a clearer idea of what records and reports are made and how they are transmitted. In discussions with district chiefs and police chiefs in Kien Hoa, we found that answers to these were somewhat contradictory and confused. It is doubtful that all the reports said to be made are, in fact, being made. Nevertheless, officials appear to realize what type of reporting should be done, whether it is being done or not.

14. We were informed that 3 reports are made: one after capture of a suspect; one after interrogation of the suspect; and one after release of the suspect. A district police Chief stressed that he reports to the province police all cases at district, whether the suspect is innocent or guilty. These reports are not on a regular basis, but only when a VCS

is released or sent up to province. Three copies of a VCS's files are kept: one for the district chief; one for the district police; and one for the province police. This file usually has just the prisoner's statement. It may contain a statement of the circumstances of the capture, but rarely, if even does it contain a statement from the capturing unit.

15. Police investigations produce 2 reports: one is called a preliminary report, made after initial interrogation. We were shown a typical 3-page file of a detainee. The second report on file is compiled after more extensive interrogations. It is assumed that this file is sent to province with a prisoner.

16. A police chief emphasized that he always reports immediately to higher authorities detainees just captured in his jail because "if the jail is shelled and the suspect is killed, no one will know about it!" - and, assumedly, he wouldn't get any credit for picking up a VC.

17. Another district official said that reports are sent immediately to province at the time of capture. From Don Nhon District, 3 to 5 VCS's are sent to Ben Tre, province capital, every month on the average, but that the continuous problem of transportation prevents rapid transfer. In this official's memory, only one VCS has ever been subsequently tried by a military field court in Can Tho.

18. Concerning release of detainees, it was noted that very few detainees are mistakenly or prematurely released, as that particular district is 90% Catholic. Identification and control are not serious problems here.

19. We came across the presence of a district "PHUNG HOANG Committee," formerly a District Security Committee. Its function is to screen and classify detainees, similar in operation to the [redacted] PSC. However, the district chief, who, in effect, runs this committee and is the final authority, does not have the power to detain a suspect at district. He must send a VCS to Province. Additionally, he does not recommend a sentence, and even his classification of the suspect can be overruled by higher level authorities.

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**B. OBSERVATIONS & RECOMMENDATIONS (3)**

1. There can be no solution to the weakness of VCI processing unless an accurate picture can be obtained where the prisoner goes after he is turned over to the police or to the PIC. Neutralization of the VCI is only half-completed when a suspect is picked up and turned over to GVN agencies. In this regard, the "attack on the Infrastructure" reports that are submitted monthly give an accurate picture of those who are picked up and turned over to the GVN. But these reports were intended to go no further. Comments under "Disposition" or "Remarks", contain little, if any, usable information on what is the subsequent processing and disposition. In reality, this only reflects what Americans really know about what happens to a detainee after being turned over to GVN agencies.

This proposes the question of how many of these capturees are really "neutralized" when it is unknown whether they are subsequently released by the police, by the PSC's by the district or province chiefs, or are somehow "lost" in between initial capture and final adjudication. If detainees are released, for what reason are they released? If the reason is insufficient evidence, the problem for this supposed insufficiency of evidence should be examined.

Therefore, it is recommended that the monthly reports be made providing information as to what happens to the captured VCS after the detainee is in police, PIC, S-2 jurisdiction. If the suspect is released, what was the reason given? By what GVN agency? If the VCS is detained, for how long? Efforts should be made to monitor the activities of the PSC's, before whom most captured VC should appear for a hearing. What has the PSC's decision been? If the VCS is adjudged guilty, how long is the sentence of detention? Where?

This added information would give an accurate picture of how many VCS capturees are, in fact, eliminated. More important it would spotlight where, and at what level black-listed or known VC are being released. It would point out other critical problems such as unusual delay at the investigation stage or at the PSC hearing stage. It would provide information relevant to the anticipated backlog of cases which the military courts handle, and would point up the areas where a mobile military field court could be the most effective.

The extra reporting requirement on the PHOENIX Advisor in the field may be somewhat burdensome, but it would effectively pin-point weaknesses in the processing operations, supply us with a tangible facts with which apply pressure on incapable or unwilling GVN officials, and perhaps enable us to suggest remedies and reforms in judicial-administrative processing of VCS's.

2. It is recommended that province-level judges, who may often, if not always, be the legal advisor to the Province Security Committee, be given the jurisdiction and logistical support to travel to the districts in order to hear and try security detainee cases.

The most common problems relating to the present system of having only the PSC hear a security suspect case at province level are as follows:

a) Too much power in the hands of the district chief to release VCS's. The problem of corrupt district and police officials is well-known.

b) Closely related to a.) above is the lack of minimal detention facilities at district. Short of space, and aware that transportation to province may be long in coming, district chiefs and police officials are amenable to premature release of suspects for any reason.

c) One of the major factors in the delay of VCS processing is the problem of logistics- specifically the transportation of a prisoner and his record to province for trial.

d) It has been found that witnesses are almost never brought up to province for a PSC hearing or police investigation - and are never brought to region (if distance and security are factors) for military trials. It is significant to note that those captured are often shot, so that members of the capturing unit (e.g. PF, RF, etc) will not have to testify against the VC. Witnesses testifying against a VCS are not paid for the time spent, are subject to reprisal, and may waste much time before they are called, better spent, they feel, back in their village or hamlet.

e) Finally there is the problem of innocent civilians who are arrested at district and must wait in jail until the police and the district chief decides to release

him, or has the interest and capability of transferring him to province for a hearing.

The system recommended here is a type of circuit-riding judge, who has a reasonable fixed schedule of going to the district towns, is provided logistical support and security, and has been given the authority to hear cases delegated by the PSC.

Advantages of such system would be in providing a legal-trained magistrate at district on a regularized basis (he could be specially called in case of an operation which rounds up a number of suspects at district); it would provide an incentive to procrastinating police investigators who would be able to anticipate when the court will arrive, thus speeding up the pre-trial investigation; it would alleviate the problem of over-crowded detention lock-ups at district, as well as that of corruption and improper releases by district chiefs; it would allow witnesses to testify at district, who for above-mentioned reasons, do not or cannot testify at province or region; it would give detainees the impression of a speedy judicial hearing; it would facilitate the early release of innocent civilians.

Decisions of such a judge with this delegated competence would be reviewable by the PSC. Or he could issue an initial decision whether to release the VCS or to detain further at province, subject to the normal, final decision of the PSC. Suspects are not brought before the PSC hearing anyway. Moreover, the disposition of a PSC case is often decided on the basis of the legal advisor's opinion - which is this same judge.

In certain cases, the circuit-riding magistrate may decide that there exists sufficient evidence so that a case may by-pass the PSC and go directly to a military court (as in flagrante delicto cases.)

The main obstacle to be overcome, of course, would be in having the PSC (in reality, the Province Chief) delegate this authority. Although the judge is familiar with PSC procedures and operations (as in Kien Hoa Judge Hue is the PSC legal advisor), his present legal jurisdiction is to hear only civil (non-security) cases.

Essential problems such as lack of trained personnel, clerks, shortage of equipment such as typewriters would still remain. Rapid judicial processing is hampered now by these shortages.

A possible solution might be the use of Saigon law students to go out to the provinces as apprentices, legal aids, law clerks, etc. during vacation time or some other suitable time. It would provide good experience for the students, serve to acquaint future lawyers with the legal problems of VC insurgency in the country-side, and could relieve some of the burden on judges, prosecutors and innocent detainees.

The feasibility of this suggestion will be explored further in Saigon.

3. The problem of what constitutes sufficient evidence a) to convict a VCS, b) to administratively detain a VCS by the PSC's and c) to continue to hold a VCS for further police and military intelligence investigation has never been fully explored.

The problem is more fully discussed Memorandum For the Record "Using the Charge of Draft Evasion Against VC Suspects", dated 3 June 1968. In summary, this paper suggests the use of this charge against suspected VC, where sufficient evidence of VC activities is impossible to obtain. The draft evasion charge requires less tangible evidence, placing the burden of proof more on the suspect.

It was continuously noted that intelligence files were not sufficiently well-organized to properly identify a suspect when brought in. By this it is meant that, although there were card files of VC, as well as blacklists, they were not indexed so as to identify a suspect using POW's, hoi chanh, other VC members, etc. The identification cards should contain the name of any person willing and able to identify the VC, when apprehended, so that the requirement of tangible physical evidence is overcome. Additionally, innocent civilians mistakenly apprehended could be more easily released.

The critical failing of most blacklists - how to identify a man given only a name - could be overcome with a properly cross-indexed file of those who could possibly identify him and supply sufficient evidence against him.

Identification, with a sworn deposition, provides another approach to overcoming the excuse (real or otherwise) of release of VCS's because of lack of sufficient evidence. Moreover, proper use of identification could help eliminate another weakness - that is failure to apprehend significant important cadre. High-level VC could be targeted, rather than, as in now, the happenstance apprehension of low-level cadre.